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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 385 (Sub-No. 8)

WAYBILL SAMPLE REPORTING

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

Pursuant to the schedule established by the Surface Transportation Board (“STB” or “Board”) in the Notice of Proposed Rulemaking in this proceeding served on November 29, 2019 (“NPRM”), the Association of American Railroads (“AAR”) respectfully submits these comments.

AAR is a trade association representing the interests of North America’s major freight railroads, and often presents comments and testimony in STB proceedings. AAR and its freight railroad members have a strong interest in this proceeding and in ensuring that the Waybill Sample is appropriately collected and utilized in Board proceedings. AAR supports the Board’s desire to create a more robust Waybill Sample. To that end, AAR supports the NPRM proposal, subject to one modification that will meet the Board’s stated goals and improve the sample, namely to retain the sample rate for non-intermodal carloads in the 16-to-60 carload strata, the 61-to-100 carload strata, and the 101-and-over carload strata (“larger carload strata”). With this proposed modification, AAR believes the Waybill Sample will create a more robust data source for supporting the Three Benchmark rate review process, as well an improved, if still limited, data source for other purposes.

AAR also supports separating the sampling of intermodal shipments from non-intermodal carload shipments, given the Board's recognition that "intermodal transportation is generally exempt from Board regulation."¹ AAR submits that, rather than reducing the sampling of some non-intermodal carloads, the Board should retain the current sample rate for non-intermodal carloads in the larger carload strata to ensure a robust sample. The NPRM proposes an across-the-board sampling rate of 1/5 for all non-intermodal carload strata, regardless of number of cars. While this means there will be more observations for the smaller carloads in the 1-to-2 carload strata and the 3-to-15 carload strata, there will be fewer observations in the 16-to-60 carload strata, the 61-to-100 carload strata, and the 101-and-over carload strata if the sampling rate decreases from the current levels of 1/4, 1/3, and 1/2, respectively. AAR proposes that the Board retain the current sampling rates for the larger carload strata to ensure more, not fewer observations.

Although single carload movements and blocks up to 15 carloads tend to have variable shipping patterns, with multiple origins and destinations, this feature is not limited to smaller shipments. Larger carload blocks frequently have variable shipping patterns as well, and this is especially true for non-coal unit trains. While coal unit trains often run on a shuttle or semi-regular basis between a single origin and destination pair, making a high sampling rate unnecessary to obtain a representative set of waybills, this is frequently not the case with non-coal unit trains or larger blocks of shipments. For example, grain shuttles, fertilizer, oil or other chemical products, and rock, sand or gravel construction materials frequently move to or from a variety of locations as customers seek out new markets or additional terminal capacity. These

¹ See NPRM at 7, fn 14. See also NPRM at 4 ("[T]he Board agrees that it should change its sampling requirements so that a greater portion of the Waybill Sample data would represent regulated traffic instead of exempt traffic.").

non-coal larger blocks of shipments are more likely to have greater variance in their characteristics, including in size, frequency, and origin-destination pairs. Retaining current sampling rates for the larger carload strata will ensure that much of this detail will not be lost, as could happen as a result of the proposed reduction in the sampling rates.

The NPRM places significant emphasis on the Board's rate reasonableness process and the importance of the Waybill Sample in some of those cases.² Generally, there is no reason to suspect that shipments in the larger carload strata would be any less relevant to the small rate case process. Therefore, the need for more observations is just as important as for the smaller carload strata. The Board's proposal to reduce the number of samples for the larger carload strata is at odds with the overarching goal of broadening access to relief and addressing the scarcity of data concerns expressed by the Board.³ Retaining the current sample rates for the larger carload strata, however, will achieve the Board's goals by broadening the Waybill Sample data used to support the comparison process utilized in the small rate cases.

² See NPRM at 8-11 (analyzing how the Board's proposal would reduce the number of movement categories with scarce observations to help address the data shortcomings in rate cases); NPRM at 11 (summarizing its analysis to find, for parties to a rate case, that "with more observations available, interested parties would be able to choose additional and more narrow comparability factors to identify movements that are more similar to the issue traffic but also still maintain a sufficient number of observations.").

³ See NPRM at 8 ("[T]hese proposed changes would [...] address the shortcomings that were acknowledged by the Board and parties in Board proceedings concerning the scarcity of data in some rate cases. See *US Magnesium v. Union Pacific Rwy.*, NOR 42114, slip op. at 9-12, 9 n.12 (noting the dearth of observations for certain toxic-by-inhalation commodities in the parties' comparison groups); *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1), slip op. at 83 (acknowledging that there may be instances in Three-Benchmark cases where a particular movement is so unique that there would be insufficient comparable movements in the Waybill Sample).").

CONCLUSION

For the foregoing reasons, AAR supports modifying the NPRM as described above.⁴

Respectfully submitted,



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⁴ The AAR supports the Board's efforts in this proceeding, even though the Board did not engage in a cost-benefit analysis. The AAR notes that the Board engages in significant analysis in Appendix B of "burdens" placed on the railroads by the regulation for the purposes of the Paperwork Reduction Act, which evidences its ability to calculate certain costs for the regulated industry. Furthermore, the Board engaged in some sort of weighing of costs and benefits, because its conclusion states: "For the reasons described above, the changes proposed in this NPRM (as shown in Appendix A) would create a more robust Waybill Sample and result in more comprehensive information that would assist both the Board in its decision-making and analyses and other users of waybill data in their analyses [i.e., the benefits] without creating an undue burden on railroads (as shown below and in Appendix B) [i.e., the costs]." NPRM at 11. While the Board may not have engaged in a thorough, quantitative analysis of costs and benefits, certainly the Board's conclusion is evidence that in choosing to regulate in this instance, the Board found the benefits outweighed the costs.