

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 724 (Sub-No. 5)

PETITION FOR RULEMAKING TO AMEND 49 C.F.R. PART 1250

Digest:¹ The Board is opening a rulemaking proceeding in response to a petition to amend its railroad performance data reporting rules. The Board does not rule on the merits of the petition but requests additional information regarding several issues raised in the petition and reply.

Decided: April 5, 2019

On December 6, 2018, the American Chemistry Council (ACC) filed a petition for rulemaking² to amend the Board's railroad performance data reporting rules at 49 C.F.R. part 1250. The rules, which became effective on March 21, 2017, require all Class I railroads and the Chicago Transportation Coordination Office, through its Class I members, to report certain service performance metrics on a weekly, semiannual, and occasional basis. ACC requests that the Board modify its rules to: (1) include chemical and plastics (STCC 28) traffic as a distinct reporting category for the "cars held" metric at 49 C.F.R. § 1250.2(a)(6); (2) extend the weekly average terminal dwell time reporting requirement at 49 C.F.R. § 1250.2(a)(2) to include all Class I, terminal, and switching carriers at the Chicago gateway; and (3) extend the same types of terminal reporting requirements for the Chicago gateway (as extended by ACC's second request) to the New Orleans, East St. Louis, and Memphis gateways (together, Mississippi Gateways). (ACC Pet. 1.) Among other things, ACC argues that shippers benefit directly from railroad performance data reported under the Board's existing rules and its members use that data to identify and monitor service issues, anticipate and prepare for the impacts those issues may have as they become more severe, spot service trends that affect railcar cycle times, and mitigate the impact of cycle time variability. (*Id.* at 4.) ACC states that access to performance data also enables its members to have collaborative discussions with carriers and allows shippers to suggest service adjustments to routes, fleet sizes, and sourcing locations as viable solutions. (*Id.*)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On December 12, 2018, ACC filed an errata to its petition.

On January 28, 2019, the Association of American Railroads (AAR) filed a reply in opposition to ACC's petition, arguing that additional commodity-specific reporting should not be adopted, that ACC failed to demonstrate the public benefit of additional Chicago reporting, and that joint Mississippi Gateways information is unnecessary and would be overly burdensome. Among other things, AAR argues that continuous changes to the Board's performance reporting rules would impose ongoing costs on railroads, which would need to make programming changes to their systems to enable compliance. (AAR Reply 3; see also id. (quoting AAR Reply, Jan. 7, 2018, U.S. Rail Serv. Issues—Performance Data Reporting, EP 724 (Sub-No. 4) (stating that "any further changes to the list of required STCC codes [relating to fertilizer] for reporting will necessitate additional programming changes and impose other costs on rail carriers.")).) Further, with respect to the Mississippi Gateways reporting, AAR states, because the Mississippi Gateways do not have the equivalent of the Chicago Transportation Coordination Office, any joint service report would need to be built from the ground up from data from individual carriers and would be burdensome to undertake; AAR states the burden is not justified. (AAR Reply 6.)

The Board will open a rulemaking proceeding because ACC's petition warrants further consideration. At this time, the Board is not making a determination regarding the merits of ACC's specific proposals to amend 49 C.F.R. part 1250, but rather will direct the parties to provide additional information regarding ACC's proposed amendments to the rules.

ACC will be directed to elaborate on shippers' experiences using performance data reported under the existing rules to inform their business and supply chain decision-making, in particular to mitigate rail service problems. The Board seeks specific examples of these situations. ACC will also be directed to explain how the additional data that it proposes to be reported would materially enhance shippers' business and supply chain decision-making with reference to specific scenarios or real-world circumstances.³ And, if possible, ACC should quantify the value of additional reporting.

The Board will also direct ACC to provide additional data supporting its selection of the Mississippi Gateways, relative to other terminal locations, both in terms of their significance to the overall rail network and specifically to chemical traffic shipments. Further, the Board requests ACC provide an explanation in greater detail of why the existing performance data reported pursuant to § 1250.2(a)(2) are insufficient indicators as to rail performance across the network, including at the Mississippi Gateways.

AAR will be directed to explain in greater detail (1) the "programming changes" railroads would need to make to comply with the proposed reporting requirements; (2) the "other costs" that would be associated with complying with the proposed reporting requirements; and (3) the specific process individual carriers would need to undertake to build "from the ground up data" to compile a joint service report at each proposed Mississippi Gateway location. The Board directs AAR to provide data that further describes or quantifies the "ongoing costs" and "burden" of the changes.

³ ACC need not disclose any confidential shipper information.

The Board will direct the parties to provide the information described above by May 6, 2019. Any interested stakeholders may also file comments addressing the information requests described above by May 6, 2019. Replies will be due by May 20, 2019.

It is ordered:

1. ACC's petition for rulemaking is granted to the extent discussed above.
2. The parties are directed to provide the information described above by May 6, 2019. Other initial comments are also due by May 6, 2019.
3. Replies are due by May 20, 2019.
4. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.