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SURFACE TRANSPORTATION BOARD

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

PETITION FOR RULEMAKING: RAILROAD PERFORMANCE DATA REPORTING

Comments of American Fuel & Petrochemical Manufacturers

I. INTRODUCTION

The American Fuel & Petrochemical Manufacturers ("AFPM") is pleased to provide its comments to the Surface Transportation Board ("STB" or "the Board") Notice of Proposed Rulemaking ("NPRM" or the "STB proposal") on "Petition for Rulemaking: Railroad Performance Data Reporting."[1] AFPM supports STB's work to date on a range of issues from demurrage and accessorial charge oversight to rate reform initiatives. This NPRM is another step in the direction of ensuring a fair and competitive rail market to the energy industry and, more broadly, the U.S. economy.

II. AFPM INTEREST IN THIS PROPOSAL

AFPM is a trade association representing virtually all the U.S. refining and petrochemical manufacturing capacity. Our members produce the fuels that drive the U.S. economy and the chemical building blocks integral to millions of products that make modern life possible. To produce essential goods, AFPM members rely on a safe, reliable and efficient rail system to move materials to and from refineries and petrochemical facilities. Rail transportation is vital to our members, as well as to manufacturers and customers downstream who depend on our products. Approximately 3.7 million carloads of our members' feedstocks and products — crude oil, natural gas liquids, refined products, plastics, and synthetic resins — were delivered by rail in the U.S. in 2018.[2] To that end, three principles guide AFPM's efforts around transportation and infrastructure issues impacting our members:

1. **Safety & Security** - Ensure the ability to ship feedstocks and products, safely and securely.
2. **Free & Open Markets** - Promote free and open energy markets that benefit the U.S. economy.
3. **Ability to Build & Repair** - Ensure the ability to build, use, repair, maintain and replace energy infrastructure.

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[1] *See* 84 *Fed. Reg.* 53375, "Petition for Rulemaking; Railroad Performance Data Reporting." Notice of Proposed Rulemaking, EP 724 (Sub No. 5) proposed October 7, 2019, https://www.regulations.gov/document?D=STB-2019-0147-0001.
[2] Rail Traffic Data - Association of American Railroads. (2019). Retrieved from https://www.aar.org/data-center/rail-traffic-data/

Refineries and petrochemical manufacturers across the country rely on a healthy rail network as an essential part of their supply chains. Over 75% of refiners and petrochemical manufacturers are served by a single railroad (e.g., captive) and thus have been negatively impacted by excessive freight rail rates, escalating and poorly communicated demurrage and accessorial fees, and lack of competitive rail service for too long.[3] The STB's NPRM, along with other concurrent proposed reforms, are a positive step toward improving how the STB addresses freight rail problems. AFPM is eager to work with the STB members and their staff on modernizing and streamlining outdated regulations and are encouraged STB is seeking ways to improve data reporting, an integral component of carrier accountability.

III. BACKGROUND

The STB is charged by Congress to ensure adequate rail service.[4] To assist the Board in carrying out this mandate, Congress has granted the Board various powers to gather service data. For example, under 49 U.S.C. § 1321(b), the Board may inquire into the management of railroads and obtain from railroads information necessary to carry out its duties. The Board also has authority under 49 U.S.C. § 11145 to require railroads to report information periodically.

In 2014, the Board initiated a rulemaking proceeding to establish new regulations requiring all Class I railroads and the Chicago Transportation Coordination Office ("CTCO"), through its Class I members, to report certain service performance metrics on a weekly basis.[5] The primary purpose of that rulemaking was to develop a set of performance data allowing the agency to monitor current service conditions in the industry and improve the Board's ability to identify and help resolve future regional or national service disruptions.[6] The Board adopted its final rule on November 30, 2016,[7] and the rule became effective on March 21, 2017.[8]

On December 6, 2018, the American Chemistry Council ("ACC") filed a petition for rulemaking[9] to amend those data reporting regulations to:

- Include chemical and plastics (Standard Transportation Commodity Code ("STCC") 28, except fertilizer) traffic as a distinct reporting category for the "cars-held" metric at 49 CFR 1250.2(a)(6);
- Amend 49 CFR 1250.3(a) to clarify that yard dwell must be reported for each yard subject to average daily car volume reporting; and

[3] Escalation Consultants, "Competition at U.S. Freight Rail Stations by State." https://railvoices.org/wp-content/uploads/2012/12/US-Map.pdf. Accessed October 24, 2019.
[4] *See* 49 U.S.C. § 11123(a), (b).
[5] *See U.S. Rail Serv. Issues—Performance Data Reporting* (*2014 NPRM*), 80 FR 473 (Jan. 6, 2015), EP 724 (Sub-No. 4) (STB served Dec. 30, 2014).
[6] . *Id.* at 3.
[7] See *U.S. Rail Service Issues—Performance Data Reporting* (*Final Rule*), 81 FR 87472 (Dec. 5, 2016), EP 724 (Sub-No. 4) (STB served Nov. 30, 2016).
[8] *See* 82 FR 9529 (Feb. 7, 2017).
[9] *See* Petition for Rulemaking to Amend 49 C.F.R. Part 1250. STB Docket No. EP 724 (Sub-No. 5) December 6, 2018. https://www.stb.gov/Filings/all.nsf/d6ef3e0bc7fe3c6085256fe1004f61cb/6246aee99046775485258 35c005671ed/$FILE/246870.pdf.

- Extend the same types of terminal reporting requirements that are applicable to the Chicago gateway to the New Orleans, East St. Louis, and Memphis gateways ("Mississippi Gateways").

After considering the petition for rulemaking and the comments received, the Board proposes to grant ACC's petition in part to include chemical and plastics (STCC 28, except fertilizer) traffic as a distinct reporting category for the cars-held metric at 49 CFR 1250.2(a)(6). The Board denies ACC's petition regarding its second and third requests. In the request to clarify yard dwell, the Board finds that there was no disconnect between the current reporting practice and the Chicago terminal reporting rule as ACC had asserted and thus denies the request. The Board also found that the petition does not provide adequate justification to extend the terminal reporting requirements beyond Chicago to the Mississippi Gateways.

Consistent service metrics across railroads that provide adequate visibility into critical aspects of the national freight rail system are needed. Shippers benefit directly from the rail service data reported under the rules. Early identification of service issues would provide shippers as much time as possible to mitigate such issues. Moreover, accurate and dependable service metrics would allow shippers to right size their owned and leased fleets, schedule production, and improve intermodal efficiencies, which comports with carriers' push towards Precision Scheduled Railroading ("PSR"). The importance of this information vastly outweighs the marginal additional effort associated with reporting this information to the Board.

IV. AFPM COMMENTS ON RAILROAD PERFORMANCE DATA REPORTING

The Board should include chemical and plastics (STCC 28) traffic as a distinct reporting category for the cars-held metric at 49 CFR 1250.2(a)(6).

Broadly defined, STCC 28 consists of thousands of distinct products. Major subcategories include alcohols, industrial chemicals, ethanol and plastics and synthetic fibers that AFPM members manufacture. Further, STCC 28 encompasses materials relied upon for fuels, and for water purification, pharmaceutical production, and medical-device manufacturing. The efficient movement of STCC 28 commodities is vital to our members and the nation and STCC 28 traffic represents a large share of overall rail traffic. It is second only to coal in total carloads and consistently represents the most waybills of all 2-digit STCC categories.[10] This large traffic volume results in localized service issues having a more significant impact on STCC 28 traffic than most other commodity groups.

As the U.S. petrochemical industry continues to grow, so does the importance of STCC 28 commodities. For example, the U.S. petrochemical industry has invested nearly $15 billion to build the capacity to produce almost 17 billion pounds of ethylene annually, the most-produced

[10] Surface Transp. Bd., 2-Digit STCC Summary Statistics Report, https://www.stb.gov/stb/industry/econ_reports.html [hereinafter 2 STCC Report] (follow "here" hyperlink under "2-Digit STCC Summary Statistics Report" heading) (last visited November 21, 2019).

and in-demand petrochemical building block.[11] In 2019, an additional $4 billion in total ethylene capacity investment is expected to come on line.[12] This increase in capacity will help to bring affordable, modern day products to people around the world, and will require an increase in the number of rail carloads.

In its petition, ACC requested the Board amend 49 C.F.R. 1250.2(a)(6) to include a new sorting category for reporting the weekly average of loaded and empty cars which have not moved in 48 hours for all STCC 28 commodities not already reported under the fertilizer category. ACC asserted that STCC 28 commodities are critically important to the nation, are vulnerable to rail service issues, and are a leading indicator of rail service problems. AFPM agrees with ACC that 49 C.F.R. 1250.2(a)(6) should be amended to expand the current reporting categories.

The cars-held metric is an important indicator of service issues because it indicates fluidity by identifying the volume of cars that may have stalled while moving through a carrier's network. Current reporting requirements do not accurately reflect the fluidity of STCC 28 traffic. As much of the U.S. petrochemical industry is located in the U.S. Gulf Coast, service issues affecting that region have a disproportionate impact on STCC 28 traffic. Further, STCC 28 traffic moves almost exclusively in manifest service. Because manifest cars are usually switched individually or in small blocks when they arrive at terminals and gateways, they are likely to be affected by terminal and gateway congestion.

Ethanol, a STCC 28 commodity already subject to the reporting requirements, has the benefit of increased oversight from the Board. Indeed, it is one of just five commodities receiving a quarterly report at the Board's Rail-Energy Transportation Advisory Committee ("RETAC") meetings along with other energy commodity stalwarts like coal and crude oil. Increased supervision of the broader STCC 28 commodities has the potential to mitigate service issues before they impact manufacturers, downstream customers, and the broader economy.

Monitoring railroad tracking data for the frequency of cars held by each carrier allows shippers and the Board, to identify carriers experiencing service issues, and those that are making improvements. In the face of such a large, and growing, proportion of its total carloads, the Association of American Railroads ("AAR") offers that this request would cost each Class I approximately $34,000. The Board rightfully concluded that, "AAR has not shown in its comments to date that the modest one-time coding cost it describes would be unduly burdensome to the reporting railroads."[13] AFPM supports ACC's request and applauds the Board for recognizing that the request would be "reasonable, warranted, and consistent with the rail transportation policy (RTP) of 49 U.S.C. 10101."[14]

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[11] American Fuel & Petrochemical Manufacturers 2019 Annual Report. Accessed November 20, 2019. https://www.afpm.org/system/files/attachments/AFPM-Annual-Report-2019.pdf.
[12] Based on project information in Industrial Info's North American Project Platform.
[13] *See* 84 Fed. Reg. 53,377.
[14] *Id*.

The Board should extend the same types of terminal reporting requirements that are applicable to the Chicago gateway to the New Orleans, East St. Louis, and Memphis gateways ("Mississippi Gateways").

The petitioners request additional data reporting for the Mississippi Gateways because a substantial amount of its members' traffic move through these gateways. The Mississippi Gateways are complex terminals with many interchange yards and multiple carriers, and congestion impacts some of the yards and carriers serving these gateways. Therefore, ACC requests that the proposed Mississippi Gateway reporting provide the terminal- and yard-level data necessary for chemical shippers to pinpoint service issues in these gateways.

In its decision, the Board stated that ACC's petition and comments do not provide adequate justification to extend the terminal reporting requirements applicable to Chicago to the Mississippi Gateways at this time. The Board has focused on reporting at Chicago due to Chicago's unique importance to the overall fluidity of the national rail network. While outside the scope of this proposal, AFPM urges the Board to reconsider this decision.

The Mississippi Gateways are three of just five cities in the country served by five or more Class I railroads. Kansas City and Chicago are the other two.[15] The St. Louis region is the third largest rail hub in the U.S., linking six Class I, local and short line railroads. Importantly for the refining and petrochemical industries, St. Louis' transload capabilities provide supply chain options for shipments to and from both Houston and New Orleans.[16] Moreover, New Orleans is the only seaport in the United States served by six Class I railroads.[17] Indeed, the Class III switching railroad servicing the Port of New Orleans, New Orleans Public Belt ("NOPB"), is the nation's fourth largest rail gateway with 26 miles of mainline track and 75 miles of total track. In the immediate area around Memphis, there are 838 route miles of freight rail track in the area, owned and operated by five Class I rail carriers. These three gateways are vital chokepoints in the nation's freight rail system and urge the Board to keep an open mind regarding their inclusion in reporting requirements.

As previously stated, the U.S. Gulf Coast is home to much of the U.S. petrochemical industry which moves a large volume of STCC 28 materials by rail. Further, this region and the U.S. petrochemical industry continues to grow. U.S. production of hydrocarbon gas liquids (HGLs), feedstocks used in petrochemical manufacturing facilities, reached 5 million barrels per day (b/d) in 2018, an increase of more than 0.5 million b/d (13%) over 2017 levels. HGLs accounted for over a quarter of total U.S. petroleum products output in 2018.[18] This increased production could exacerbate existing rail network capacity problems AFPM members in the Gulf

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[15] "Memphis Regional Freight Infrastructure Plan," HIS Global Insight, March 2010. Accessed November 20, 2019. https://www.memphis.edu/ifti/pdfs/cifts_memphis_infrastructure_plan.pdf.
[16] "Railroads," St. Louis Regional Freight Way. Accessed November 20, 2019. https://www.thefreightway.com/advantages/six-class-1-railroads/.
[17] "Rail," Port NOLA: The Port of New Orleans. Accessed November 20, 2019. https://portnola.com/business/cargo/rail.
[18] U.S. Energy Information Administration, *U.S. hydrocarbon gas liquids production reaches 5 million barrels per day in 2018,* Today in Energy, June 4, 2019. (Accessed December 3, 2019). https://www.eia.gov/todayinenergy/detail.php?id=39712.

Coast are already experiencing. AFPM supports the extension of the terminal reporting requirements applicable to Chicago to the Mississippi Gateways and hopes the Board reconsiders its decision on this aspect of ACC's petition. Such data would provide the Board valuable information on a rapidly growing region.

V. CONCLUSION

AFPM thanks STB for its time and consideration of our comments. AFPM emphasizes the essential need for data-driven policy and supports efforts to better arm the Board to make important decisions. AFPM shares STB's goal of ensuring the flow of commerce on our nation's rail system and looks forward to continued collaboration. Please contact me at (202) 457-0480 or rbenedict@afpm.org if you wish to discuss these issues further.

Sincerely,

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American Fuel & Petrochemical Manufacturers