

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Docket No. EP 767

FIRST-MILE / LAST-MILE SERVICE

**Opening Comments of
the American Chemistry Council, American Fuel & Petrochemical
Manufacturers, and The Fertilizer Institute**

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The American Chemistry Council (ACC), the American Fuel & Petrochemical Manufacturers (AFPM), and The Fertilizer Institute (TFI) (collectively, “Shipper Associations”) submit these comments in response to the Surface Transportation Board’s (the “Board”) decision served on September 2, 2021 that requests comments on first-mile/last-mile (FMLM) service.

Shipper Associations thank the Board for exploring whether FMLM service reporting would be helpful for identifying and addressing FMLM service issues. Breakdowns in FMLM service are highly disruptive and costly for rail customers. In fact, some of our members report 17-day dwell times and railroad-blocked sidings that prevent delivery of cars, resulting in railcar storage assessments. FMLM issues have also increased to alarming levels in recent years, following the adoption of lean operating models by many Class I railroads. Despite this, the rail service performance reporting by railroads under the Board’s current rules do not capture FMLM performance and, thus, provide an incomplete picture of rail service. Not only does this undermine the accuracy of the performance reporting, but it prevents rail customers from being able to use the reporting to identify issues related to FMLM service, to adjust their operations to help mitigate the impact of the FMLM issues, and to engage railroads in commercial discussions about FMLM service and broader service matters. Yet, FMLM is where most service issues occur. Shipper Associations and their members thus encourage the Board to adopt FMLM reporting requirements.

As explained in Part III, Shipper Associations recommend that the Board require Class I railroads to report three categories of FMLM information weekly: overall transit performance (i.e., information about the end-to-end movement of cars); FMLM operational performance (i.e., information about how cars are moving and switches are operating on FMLM segments); and FMLM service-fulfillment information (i.e., information about whether switches are handling cars awaiting switching). Within each category, Shipper Associations recommend specific metrics for reporting, as follows:

| Category | Metrics |
|------------------------------|--|
| Overall Transit Performance | <i>On-Time Placement Percentage</i> : the percentage of cars constructively or actually placed at their destination within one day of the original estimated time of arrival. |
| | <i>On-Time Placement Variation</i> : the difference between original estimated time of arrival and time of constructive placement, actual placement, or interchange to the next railroad (as applicable), measured in hours. |
| | <i>Terminal Dwell Time</i> : the time a car resides at a terminal location, expressed in hours, for each railroad’s 20 largest terminals. |
| FMLM Operational Performance | <i>Serving-Day Performance</i> : the percentage of serving days that a railroad identifies for a facility where the facility received a switch for cars released or ordered in before the cutoff time for that serving day. |
| | <i>First-Mile Dwell Time</i> : the difference between the time a railcar is released for shipment until the railcar leaves the local yard on a line-of-road train, measured in hours. |
| | <i>Last-Mile Dwell Time</i> : the difference between the time of arrival of a car at a local yard, or other hold point pending actual placement, and the time the car is actually placed at the receiving facility, measured in hours. |

| Category | Metrics |
|--------------------------------------|---|
| FMLM Service-Fulfillment Information | <i>Switch-Delivery Percentage</i> : the percentage of all cars awaiting switching to their destination facility that were delivered on the next switch. |
| | <i>Switch-Origination Percentage</i> : the percentage of cars that a customer released to the railroad prior to a switch's cutoff time that were actually picked up by the railroad |

Railroads generally would be required to stratify reported data by manifest traffic, unit-train traffic, and all traffic, and substratify the data by loaded cars, empty private cars, and all cars. They would also report the data at two levels: to the Board in aggregate form by railroad geographic subdivision, except as noted below; and to rail customers by customer facility and by each origin-destination pair of the customer's traffic, except as noted below.

Shipper Associations also recommend that the Board require railroads to provide next-in-line reports to rail customers. These reports would advise each rail customer when its facility is the next facility that will be switched by the serving local train.

I. The Board should require railroads to report their FMLM service performance.

FMLM performance reporting has become necessary to help rail customers address FMLM service issues. FMLM service issues are highly disruptive and costly for rail customers and have become common as railroads continue to pursue ever lower operating ratios. Existing rail service reporting does not capture these issues effectively, if at all, which marginalizes the utility of the reporting for rail customers when planning their operations and adjusting them to avoid service

problems. With railroad-reported information about FMLM issues and the credibility that information affords, rail customers will be better positioned to make operational adjustments to mitigate FMLM issues and to engage railroads in commercial discussions about FMLM service.

A. Poor FMLM service is common, costly, and disruptive.

FMLM service issues pose a large problem for rail customers. Not only are they highly disruptive to customers' businesses, but they also impose unnecessary costs on rail customers, can impact manufacturing processes, and can impair a rail customer's ability to avoid storage and demurrage charges.

Among the most significant FMLM service issues are switch problems, including cancelled switches, inconsistent switches, and car delivery and pickup failures; local yard dwell; and reductions in service days.

Cancelled switches have a highly disruptive impact on rail customers' businesses. Rail customers plan their operations and infrastructure largely around the service days that railroads assign to their facilities. If a railroad does not provide a switch on days it says it would, it can interrupt a rail customer's supply of loaded cars needed to support operations, deprive a rail customer of empty cars that it may need for the goods it produces, and prevent a rail customer from fulfilling its customers' orders. The impact of these cancelled switches is exacerbated by a reduction in service days many rail customers have experienced as part of railroads shifting to lean operating models. Put simply, a cancelled switch is even more important when the number of service days has already been reduced.

Car delivery and pickup failures have a similar effect. Even when a rail customer receives a switch, if the switch does not deliver a car that it was supposed to deliver or if it delivers the wrong type of car or a car containing the wrong commodity, or if it does not pick up a car that was released for transportation, the rail customer might not receive the cars it needs to maintain its operations or originate traffic when necessary to support the rail customer's own customer. Additionally, when a switch does not remove cars that it is supposed to pick up, it can leave a facility without sufficient space to accept inbound cars, potentially leading to demurrage or storage charges.

Inconsistent switch times also place significant burdens on rail customers. When a local train arrives to perform a switch, rail customers must be ready to receive cars and must have all of their outbound cars set out in accordance with the railroad's requirements; otherwise the railroad may not perform the switch, resulting in significant fees for demurrage, storage, or not being prepared for service. Some rail customers also must stop all in-plant switching activities when receiving a switch from a railroad, which in many cases involves stopping production operations at their facility because cars cannot be moved for unloading or loading. If a switch might occur at any time of day, it forces the rail customer to stage all outbound cars the day before the switch, which might be an impediment to the customer's operations until the switch occurs and is less efficient than being able to load and set out cars until the switch arrives. Also, if the railroad requires the rail customer's facility to cease or limit operations during switching by the

railroad, the customer may need to operate in reduced capacity so that it can dial back its operations on a moment's notice when the switch arrives.

Excessive local yard dwell also has a negative impact on rail customers. Rail customers carefully time their rail shipments to ensure that they arrive at their destination with a cadence that prevents a supply disruption or, in the case of empty movements, an inability to load or ship goods, while also not exceeding the destination's capacity to handle cars. When cars dwell for excessive periods at an origin or destination local yard, the destination facility could face a supply or empty-car disruption that prevents the facility from maintaining operations at current levels. For example, a disruption in empty-car supply may cause product that a facility produces to back up, requiring a reduction of operations. Additionally, when a car dwells for an extended period, subsequent shipments in the pipeline may catch up and bunch together with it. The result is that the destination may receive more cars at one time than it has the capacity to handle, resulting in demurrage or storage charges.

Reductions in service days also are disruptive and can be costly, and they compound many of the issues discussed above. When a railroad reduces a facility's service days, the facility essentially must hold onto cars that otherwise would have been received or shipped on the service day that the railroad eliminated. Many facilities do not have the rail infrastructure to hold the additional cars and are forced to build additional track, lease storage track, or incur demurrage or storage charges.

These issues are not hypothetical. Shipper Associations' members report that FMLM issues are responsible for the vast majority of rail service disruptions that they experience. Car delivery and pickup failures occur frequently, and railroads commonly do not provide switches on every service day. Many also observe that switching windows are unreliable and that, even if they were more reliable, they would be too broad to be of any value. Also, some members report excessive FMLM dwell times, sometimes up to 17 days, and situations where railcars get stuck in yards or a railroad is unable to deliver cars for an extended period because the railroad has blocked a member's siding. These issues are particularly concerning for rail customers that do not have access to competitive transportation options, and therefore lack meaningful recourse through commercial markets.

Further, Shipper Associations fully expect that these issues will continue to be a key cause of inadequate rail service, as many railroads have recently adopted lean operating models, like Precision Scheduled Railroading, which involve reducing crews, equipment, and service events. While this may please Wall Street, it has left many FMLM operations woefully understaffed and without sufficient equipment. It also has reduced service days for many rail customers.

B. The Board's current rail performance data reporting does not adequately capture FMLM issues.

Despite the problems that rail customers commonly face involving FMLM service, the service information that railroads report under the Board's current rail performance reporting rules are inadequate for identifying FMLM issues. As a result, many rail customers and the Board itself have little, if any, insight into

FMLM service performance, and the reported data provide an incomplete and potentially misleading view of overall rail service.

For manifest traffic, the Board's performance reporting rules do not require railroads to report FMLM-specific data. Instead, they require reporting of certain middle-mile data and other data that provide little insight into overall FMLM service. For example, the rules require reporting average number of trains holding per day, average number of cars with dwell of at least 48 hours, system-average train speed, and Chicago terminal statistics intended to identify fluidity of the gateway as a hub for traffic moving across the nation.

Additionally, while the reporting rules require reporting FMLM data for unit trains, this data is limited to origin dwell time.¹ This unit-train data has little relevance outside of unit-train traffic because unit trains, which involve the movement of a fixed train of cars between a single origin and single destination, are likely to require less FMLM service than manifest traffic, which involves gathering cars from multiple origins, consolidating them for movement toward a common destination area, and distributing them to multiple nearby destination facilities.

At bottom, the lack of FMLM information under the Board's performance data reporting ensures that the reported information provides an incomplete, if not misleading, picture of actual rail service. While the data may show a fluid system with few issues, it overlooks that rail customers may be experiencing significant FMLM issues that are resulting in poor overall rail-service performance.

¹ 49 C.F.R. § 1250.2(a)(4).

C. FMLM performance information from railroads is necessary for the Board and rail customers to identify and address FMLM service issues.

As explained above, FMLM service is a critical aspect of rail-service performance, but the Board's current service-performance reporting overlooks FMLM performance. To bridge this gap and, thus, enable rail customers and the Board to identify and address FMLM issues, the Board must require railroads to report their FMLM performance.

First, by requiring railroads to report FMLM performance, the Board will facilitate discussions between railroads and their customers to address FMLM issues. Many of Shipper Associations' members report that they are unable to advance discussions with railroads over FMLM performance without data. While members can create some FMLM performance data from their own observations, this data may be insufficient because it is limited generally to a single aspect of FMLM service—switch performance. Also, railroads commonly counter customer-generated data with their own data and metrics that measure or display performance differently. Board required FMLM reporting will provide customers with a baseline set of data to identify issues. Also, because FMLM reporting would include railroad-generated information that could be standardized across the industry, it will help eliminate questions of data credibility so that railroads and their customers can focus their conversations on solving issues rather than determining whether an issue exists.

Second, by providing rail customers with a broader picture of FMLM service than they currently have, Board-required FMLM reporting will better enable rail

customers to mitigate FMLM issues. FMLM reporting will help rail customers establish more accurate expectations about rail service. This will enable them to better plan their operations and shipments to reduce the impact of FMLM issues to the extent possible.

Third, FMLM reporting will allow the Board to engage in data-driven oversight of FMLM performance. Without a formal mechanism for collecting FMLM data, the Board's ability to accurately monitor end-to-end rail performance, verify claims of poor performance, and engage stakeholders to address rail-service issues is limited. To effectively carry out its oversight functions, the Board must have reliable and sufficient FMLM data.

II. Principles for establishing FMLM reporting.

As the Board identifies appropriate FMLM performance reporting, it should be guided by the principles identified in this Part II. Shipper Associations have designed these principles to help the Board focus on reporting requirements that are useful and appropriate.

A. Reported data should be objective.

Any FMLM data reporting that the Board establishes should be objective, meaning that it should be based on direct observation and not be influenced by personal opinions or interpretations, such as individual determinations of causation. This promotes what Shipper Associations view as a key goal of FMLM reporting, which is to advance the discussion of FMLM issues to identifying solutions. Subjective data stands in the way of this goal by inviting disputes over data validity, causation, and whether an FMLM issue even exists.

B. Reporting should reflect the FMLM service performance that rail customers receive.

FMLM reporting must show the impact of FMLM issues on the rail service that customers receive. This enables the Board and rail customers to use FMLM reporting to identify and address FMLM issues that are problematic.

Understanding the difference between actual and expected service levels is of critical, if not primary, importance to rail customers. Rail customers plan shipments and rail infrastructure investment around anticipated service levels, just like an air traveler selects flights and may add an overnight stay based on expected flight departure and arrival times. If expectations are inaccurate, a rail customer might not have a car when necessary to maintain its operations or might not have space available at its facility to receive cars. Similarly, an air traveler with inaccurate expectations may wind up stuck on a delayed flight when the traveler is supposed to be walking into a meeting or may wind up having to find overnight hotel accommodations because the traveler's flight was cancelled.² But unlike rail customers, air travelers have the benefit of mandated airline end-to-end service reporting to inform their expectations.³

² Air carriers are generally required by law to compensate passengers who are denied boarding involuntarily from an oversold flight. 14 C.F.R. § 250.5. Railroads, on the other hand, face no regulatory repercussions for the costs their service failures impose on their customers.

³ The U.S. Department of Transportation requires airlines to report various data related to on-time performance, baggage handling, denied boarding, and other service matters. *E.g.*, 14 C.F.R. pt. 234.

C. Performance measures should be standardized across railroads.

Data reporting should include performance measures that are standardized across all railroads. First, standardization reduces complexity because it ensures that performance measures mean the same thing for each railroad. Second, standardization enables rail customers to compare the performance of competing railroads so that rail customers open to competition can make an informed choice between railroads. This not only promotes competition, which is a policy of the U.S. Government,⁴ but it also helps rail customers avoid disruptions.

D. Rail customers should receive performance information specific to their facilities and shipments.

Rail customers should have access to FMLM reporting for their facilities and shipments. First, customers need FMLM performance information for each of their facilities because service issues on the first mile or last mile between a facility and the serving railroad's local yard are likely to impact all traffic moving into and out of the facility. Second, rail customers need shipment reporting on an origin-destination basis to ensure they have visibility into FMLM issues impacting their traffic at origins or destinations that are not their facilities. Third, reporting to customers for their specific facilities and shipments avoids confidentiality concerns. It prevents rail customers from monitoring FMLM performance that directly impacts their competitors or third parties to whom they do not ship or receive goods by rail.

⁴ 49 U.S.C. § 10101(5).

E. The Board should have access to information that reflects a meaningful aggregation of performance.

FMLM performance data reported to the Board should be aggregated at a meaningful level that enables the Board and public to broadly locate FMLM service issues but does not disclose sensitive commercial information about rail customers.

Although requiring railroads to report FMLM service to the Board on a local-yard basis would provide the Board and the public⁵ with an accurate picture of the locations and severity of FMLM service issues, it may be impractical and could expose sensitive commercial information about rail customers. For the Board to monitor FMLM performance at this level, it would need to regularly review data for hundreds of local yards across the country. Additionally, if this yard-specific data were made public, a rail customer's competitors could easily identify whether the customer is experiencing FMLM issues and use that information to win business away from the customer.

Conversely, requiring railroads to report FMLM performance aggregated on a whole-network basis would protect sensitive commercial information about rail service to an individual rail customer, but would not provide much insight into the location and severity of FMLM service issues.

The Board should adopt an appropriate balance of confidentiality and FMLM insight by requiring reporting at the service division or subdivision level. Shipper Associations understand that railroads typically divide their networks into multiple

⁵ We assume that the Board would not want to maintain a confidential dataset.

divisions or subdivisions, and the local yards and crew staffing are managed on a division or subdivision level. For example, Union Pacific Railroad has two service regions (Northern and Southern) that comprise five-to-ten geographic service units. Reporting at the division or subdivision level would enable the Board to broadly locate FMLM service issues but should be at a high enough geographic aggregation that the service performance could not be reliably identified to a specific rail customer's facility.

III. Recommended FMLM Reporting Requirements.

As explained in this Part III, Shipper Associations recommend that the Board require railroads to report information for three categories of performance related to FMLM issues: overall shipment performance, FMLM operational performance, and FMLM service-fulfillment performance. Shipper Associations further recommend that this information be reported at two levels: to the Board in a meaningful aggregation that enables it and the public to identify the location of material FMLM service issues without revealing sensitive commercial information of rail customers; and to rail customers with information specific to their facilities and traffic. Additionally, to reduce disruption associated with waiting for a switch and help ensure that rail customers are prepared when a switch arrives, Shipper Associations suggest that the Board require next-in-line reports to inform rail customers when their facility is the next facility a local train will switch, similar to how a furniture delivery company may provide a customer with a notice when the customer's home is the next stop of a delivery truck.

Shipper Associations have designed this recommended reporting to provide information that is most relevant to identifying and addressing FMLM issues that are material. In that vein, the performance categories captured by the reporting reflect three fundamental questions that Shipper Associations' members have regarding FMLM service:

- What is the impact of FMLM performance on car arrival times at their destinations?
- Are there any FMLM operational issues that may impact a customer's facility?
- To what extent did the railroad fulfill open switching requests?

Also, the recommended reporting is consistent with the principles articulated above in Part II, which are intended to ensure that reporting is appropriate and useful.

The recommended reporting reflects that the relationship between FMLM issues and the service levels that rail customers experience is complex and is difficult to accurately understand using any single metric. The recommended reporting thus identifies metrics that complement each other such that, when viewed as a whole and alongside performance data reported under 49 C.F.R. part 1250, they provide a reliable and useful indication of how FMLM issues are impacting service levels. Additional information, however, may be necessary to establish the root cause of FMLM issues.

Shipper Associations emphasize that their recommended reporting is an initial recommendation. As indicated throughout these comments, identifying meaningful FMLM reporting that does not place an undue burden on railroads is a complex endeavor. Thus, additional stakeholder input and follow-up inquiries by the Board, as well as additional evaluation by Shipper Associations, may identify various ways in which the recommended reporting may be improved. In fact, for these reasons, Shipper Associations, in Part IV below, emphasize that obtaining a full understanding of the data that railroads currently collect is important.

A. Overall Transit Performance Information.

To help the Board and rail customers identify the relationship between FMLM issues and overall transportation service, Shipper Associations recommend that the Board require railroads to report on-time placement percentage and on-time placement variation. For similar reasons, they also recommend that the Board require railroads to report terminal dwell for a broader set of terminals than they currently report, as explained in this subpart.

1. On-Time Placement Percentage (OTPP).

a. Definition.

OTPP is the percentage of cars constructively or actually placed at their destination within one day of the original estimated time of arrival (OETA). For

upstream segments of joint-line movements, the car's destination will be the interchange location with the subsequent railroad.⁶

For calculating OTPP, OETA means the estimated time of constructive placement (for cars that will be delivered to closed-gate facilities), actual placement (for cars that will be delivered to open-gate facilities), or interchange with the next railroad (for cars moving on an upstream segment of a joint-line movement) that a railroad calculates for a car when the car is released to the railroad at origin or received in interchange by the railroad.

b. Purpose.

OTPP data is intended for use in conjunction with other measures to identify the quantity of car movements that do not meet arrival-time expectations due to FMLM issues. Because the quantity of cars whose delivery is impacted by FMLM issues relates to the overall severity of the issues, OTPP provides important context for determining whether FMLM issues warrant attention.

To use OTPP to identify the severity of FMLM issues, rail customers or the Board would view OTPP data alongside other FMLM performance data and the railroad performance data reported under Part 1250, which generally focuses on middle-mile transportation. If Part 1250 data show a fluid rail network, but OTPP shows a low percentage of on-time arrivals, an FMLM issue may be having a

⁶ The separate calculation of OTPP for each segment of a joint-line movement reflects our understanding that each participating railroad typically issues an OETA only for its segment and does not have sufficient information about the other participating carriers' networks to generate a reliable OETA for the entire joint-line movement.

material impact on a large number of car movements. Conversely, if Part 1250 data show a slow-moving network and OTPP shows a low percentage of on-time arrivals, FMLM performance would not likely be having a clear impact on a large number of car movements. Additionally, an OTPP that shows a high percentage of on-time arrivals may indicate that few car movements are experiencing material FMLM issues. Further validation using other FMLM performance data, such as those involving local-yard dwell, cancelled switches, and switch fulfillment would provide additional information about the degree to which an FMLM issue may be impacting shipments.

At bottom, OTPP is useful for evaluating the quantity of car movements that are impacted by FMLM issues.

2. On-Time Placement Variation (OTPV).

a. Definition.

OTPV is the difference between OETA and time of constructive placement, actual placement, or interchange to the next railroad (as applicable), measured in hours. It should be calculated and reported both using non-absolute values, where a negative time difference indicates an early arrival, and using absolute values.

b. Purpose.

OTPV shares the same general purpose as OTPP, which is to provide the Board and rail customers with information to identify the impact of FMLM issues on car movements. But whereas OTPP may indicate the scope of cars impacted by

FMLM issues, OTPV indicates the magnitude and direction of the impact on arrival performance.⁷ This information is important for several reasons.

First, it is a key factor in whether an FMLM issue is in fact a problem. As previously explained, cars that do not arrive at their destination when expected are likely to have a disruptive and costly impact at the destination facility because its need for and ability to handle the cars, including whether it has sufficient staff on hand to receive cars, is tied to the cars' expected arrival time. The further a car arrives from its expected arrival time (either early or late), this impact will probably be greater because the arrival will be less tied to the facility's need for and ability to accommodate the car. It is no different with airline delays, which generally cause greater disruptions to passengers as they grow longer. Thus, to understand whether an FMLM issue warrants attention, it is necessary to understand the magnitude of the issue's impact on arrival time.

Second, the magnitude and direction of on-time performance variability are both necessary to help rail customers adjust their arrival expectations to mitigate the impact of both early and late arrivals. The direction information afforded by OTPV based on non-absolute numbers helps a rail customer and the Board

⁷ To illustrate, if a railroad delivers one car 48 hours early and another 96 hours late, the non-absolute-value OTPV would be 24 hours, even though both cars were delivered far in excess of 24 hours before and after their OETA. By comparison, the absolute-value OTPV would be 76 hours, which better reflects the actual on-time variation than the non-absolute-value OTPV. Together, these values indicate a high degree of variability. In contrast, if the non-absolute-value OTPV was 76 and the absolute-value OTPV was 96, they would indicate that a customer could expect railcars to be delivered around 96 hours late.

understand if cars are arriving early or late. Without this understanding, rail customers will find it difficult to adjust their shipping activities to account for service variability. Additionally, an absolute-value OTPV would provide a more accurate indication of the magnitude of variability because early and late arrivals would not off-set each other as they would when calculating OTPV using non-absolute values. This magnitude information will both help rail customers determine the appropriate degree of activity to address variability and provide the Board a fuller picture of variability.

3. Terminal Dwell Time.

a. Definition.

Terminal Dwell Time means the time a car resides at a terminal location, expressed in hours, beginning with a customer release, received interchange, or train arrival event and ending with customer placement (actual or constructive), interchange offering or delivery, or train departure event. It excludes cars that move through the terminal on a run-through train and stored, bad-ordered, and maintenance-of-way cars.

This definition is consistent with the AAR terminal-dwell measure that railroads generally have adopted for reporting terminal dwell under 49 C.F.R. § 1250.2(a)(2). But, under Shipper Associations' recommended reporting, Terminal Dwell Time would be reported for each railroad's 20 largest terminals instead of 10 largest terminals, which is what railroads currently report under Part 1250.

b. Purpose.

Terminal Dwell Time is useful for determining whether FMLM issues or middle-mile issues are impacting delivery expectations for an entire joint-line movement. Without this information, the Board and rail customers might unwittingly focus attention on addressing FMLM issues when middle-mile issues are having a greater impact on the overall movement.

This problem arises because, for joint-line movements, arrival performance using the delivering railroad's arrival estimates may mask interchange delays. Because downstream railroads are permitted to generate their OETAs *after* interchange and any corresponding delays have occurred,⁸ their OETAs will inherently account for the preceding interchange delay. It follows that arrival performance based on these OETAs will indicate that the traffic did not experience an interchange delay. This masking of interchange delay may make any FMLM and other delays that appear when examining arrival and other performance data seem like the only delays that occurred.

The recommended terminal-dwell reporting would reveal this masking issue by providing dwell data for interchange locations. While some of this data is reported under Part 1250, the Part 1250 reporting does not include many critical terminals. For example, New Orleans is an important interchange location for

⁸ The Board's demurrage billing rules contain the only requirement that railroads provide an estimated time of arrival. *See* 49 C.F.R. § 1333.4(d)(1). Although the requirement directs railroads to provide the estimate promptly after interchange, this could be days after the interchange. *See id.*

traffic moving from the Gulf Coast to the eastern United States, but no railroad reports terminal dwell for New Orleans under Part 1250. Memphis and St. Louis are also key interchange points for traffic moving between the western and eastern United States, but of the five Class I railroads that serve each location, only two report terminal dwell for Memphis under Part 1250 and none report terminal dwell for St. Louis. The recommended terminal-dwell reporting would likely correct for these deficiencies because it effectively expands the Part 1250 reporting to each railroad's 20 largest terminals.

B. FMLM Operational Performance Information.

To help the Board and rail customers anticipate, identify, and address FMLM issues, Shipper Associations recommend that the Board require railroads to report Serving-Day Performance, First-Mile Dwell, and Last-Mile Dwell.

1. Serving-Day Performance.

a. Definition.

Serving-Day Performance means the percentage of serving days that a railroad identifies for a facility where the facility received a switch for cars released or ordered in before the cutoff time for that serving day.

This definition reflects Shipper Associations' understanding that railroads internally plan to provide switches to facilities on certain days. It also reflects that Shipper Associations' members generally do not expect to receive a switch for outbound cars that have not been released before the cutoff time for the switch, inbound cars to open-gate facilities to the extent the cars had not arrived in the local yard before the cutoff time for the switch, and inbound cars to closed-gate

facilities to the extent the cars were not ordered in before the cutoff time for the switch.

b. Purpose.

Serving-Day Performance is useful for identifying whether railroads are providing switches when they say a facility will be switched.

For Shipper Associations' members, this information is critical for multiple reasons. One, a railroad's failure to provide a switch on a serving day is highly disruptive and costly. When an expected switch does not occur, a facility might not receive a loaded or empty car that it needs to maintain its operations, and the transit times for impacted movements increase. To address these impacts, a rail customer may need to increase storage at its facility and, if it uses private cars, increase the size of its private-car fleet, both of which are costly. Two, the switch failure essentially strands cars that need to begin their transportation to reach their destination on time. Thus, the failure impacts not only the facility that failed to receive the switch, but also the facilities that receive traffic from the facility that experienced the switch failure.

2. First-Mile Dwell Time.

a. Definition.

First-Mile Dwell Time means the difference between the time a railcar is released for shipment until the railcar leaves the local yard on a line-of-road train, measured in hours.

b. Purpose.

This information provides the duration of the first mile of transportation, which has multiple uses. For one, the Board and rail customers can use this information to ascertain whether fluidity issues are developing or clearing on the first mile and, thus, anticipate changes to FMLM service levels. For another, while this data is not directly correlated to arrival delays, the Board and rail customers can use this data in conjunction with other FMLM data, like OTHP and OTHV, and with Part 1250 middle-mile service data to develop an informed estimation of delay attributable to first-mile issues. This can be useful for determining whether first-mile issues warrant attention and for quantifying the impact of these issues on rail customers, including the sizing of their private-railcar fleets.

3. Last-Mile Dwell Time.

a. Definition.

Last-Mile Dwell Time means the difference between the time of arrival of a car at a local yard, or other hold point pending actual placement,⁹ and the time the car is actually placed at the receiving facility, measured in hours.

Shipper Associations also recommend that, for closed-gate facilities, the Board consider requiring railroads to report constructive-placement dwell time—which is the time between when a railroad provides notice of a car’s constructive placement and when the rail customer orders the car into its facility—and actual-

⁹ Shipper Associations chose to define Last-Mile Dwell Time in terms of arrival at any hold point pending actual placement because we understand that, when local yards are congested, railroads may hold cars short of local yards or at alternative yards. *See, e.g.*, UP 6004-C, Item 9650-B § 9 (defining “constructive placement”).

placement dwell time—which is the time between when a rail customer orders a car into its facility and when the railroad actually places the car at the facility. These dwell metrics would help identify the extent to which last-mile dwell is attributable to the railroad versus the customer and, thus, could provide useful insight into last-mile dwell issues.

b. Purpose.

This information provides the duration of the last mile of transportation, which has multiple uses similar to the uses identified above for First-Mile Dwell Time. First, the Board and rail customers can use this information to ascertain whether fluidity issues are developing or clearing on the last mile and, thus, anticipate changes to FMLM service levels. Second, the Board and rail customers can use this, other FMLM data, and Part 1250 middle-mile service data together to develop a close approximation of delay attributable to last-mile issues. This can be useful for determining whether last-mile issues warrant attention and for quantifying the impact of these issues on rail customers, including the sizing of their private-railcar fleets.

C. FMLM Service-Fulfillment Information.

To help the Board and rail customers identify whether switches are actually picking up and delivering traffic awaiting switching, Shipper Associations recommend that the Board require reporting of Switch-Delivery Percentage and Switch-Origination Percentage.

1. Switch-Delivery Percentage (SDP).

a. Definition.

SDP means the percentage of all cars awaiting switching to their destination facility that were delivered on the next switch. For cars destined for a closed-gate facility or cars on constructive placement for an open-gate facility, the cars are awaiting switching if they have been ordered in before the cutoff time for the switch and had not already been actually placed. For cars destined to an open-gate facility that are not constructively placed, they are awaiting switching if they arrived in the local yard before the cutoff time for the switch, if applicable, and have not been actually placed.

b. Purpose.

SDP indicates the extent to which switches are delivering the cars that they should be delivering. This enables the Board and rail customers to understand whether a material last-mile issue exists even though a facility may be receiving switches on all of its service days.

2. Switch-Origination Percentage (SOP).

a. Definition.

SOP means the percentage of cars that a customer released to the railroad prior to a switch's cutoff time that were actually picked up by the railroad.

b. Purpose.

SOP indicates the extent to which switch crews are picking up the cars that they should be picking up. This enables the Board and rail customers to understand

whether a material first-mile issue exists even though a facility may be receiving switches on all its service days.

D. Reporting Periods and Elements.

Shipper Associations propose that the Board require railroads to report the overall transit performance information, FMLM operational-performance information, and FMLM service-fulfillment information identified above to the Board and to rail customers separately in accordance with the requirements in this Part III.D. These reporting specifications are intended to ensure that the information that Shipper Associations have identified for reporting are reported in a meaningful and usable manner.

1. Information should be reported on a weekly basis consistent with the rules under Part 1250.

For the Shipper Associations' recommended FMLM reporting to the Board, Shipper Associations propose that railroads report information pursuant to the Board's railroad performance data reporting rule at 49 C.F.R. § 1250.1(b). Shipper Associations also propose that the information be based on a weekly reporting period beginning on 12:01 a.m. Saturday and ending 11:59 p.m. Friday, which is the reporting period that generally applies to railroad performance data reported under 49 C.F.R. part 1250.

For Shipper Associations' recommended FMLM reporting to rail customers, Shipper Associations propose that each railroad provide rail customers the report information via its website and for download in machine-readable format by 5 p.m. Eastern Time on Wednesday of each week, which is generally consistent with the

requirement at 49 C.F.R. § 1250.1(b). The reporting period for the report information would be the same as the period applied to reporting to the Board, except that the reported information should also be provided for the 180 days ending 11:59 p.m. on the preceding Friday.

For Terminal Dwell, however, Shipper Associations recommend that each railroad report this information to the Board only and on a weekly basis consistent with the requirements at 49 C.F.R. §§ 1250.1 and 1250.2(a), except that reporting would be for each of the railroad's 20 largest terminals. Railroads would not be required to include Terminal Dwell in their FMLM reports to rail customers.

Also, for Serving-Day Performance, Shipper Associations suggest that railroads would be required to report this information to rail customers for their own facilities only, and not by origin-destination pairs of their traffic. The purpose of this is to protect the sensitive commercial information of each rail customer.

Shipper Associations have developed these reporting requirements to maintain consistency with the Board's reporting requirements under Part 1250 and to help ensure that rail customers have meaningful data. The trailing-180-day reporting is necessary to provide a calculation of OTPP that provides historical context and is meaningful for low-volume facilities and origin-destination pairs.

2. Railroads should report information to each rail customer only for its facilities and traffic.

When reporting the recommended FMLM information to rail customers, railroads should provide each customer with the information only for the customer's facilities and the customer's traffic. Additionally, the information should be

stratified by each of the customer's facilities and by each origin-destination pair of the customer's traffic.

This level of reporting is necessary to enable a customer to identify the extent to which FMLM issues are impacting its facilities and the third-party origins or destinations of traffic moving to or from its facilities. The origin-destination pair data is especially useful for identifying potential issues at a rail customer's supplier or customer facility that might result in a supply disruption for the rail customer or its own customer.

3. Information that railroads report to the STB should be aggregated and stratified by railroad operating regions.

When reporting the recommended FMLM information to the Board, railroads should aggregate and stratify the data by its geographic subdivisions.

As explained in Part II.E above, the FMLM information reported to the Board should indicate where performance issues are occurring. Reporting that is aggregated and stratified by each railroad's geographic subdivisions enables the Board to engage railroads more efficiently on FMLM performance. It would also provide useful information to rail customers for deciding where to source goods that move by rail or where to send private cars for repair.

To determine the appropriate railroad subdivision level for this stratification, Shipper Associations believe that insight from railroad stakeholders is necessary. This insight would be especially helpful if it identifies the extent to which: local-yard staffing, management, and equipment are shared within railroad operating subdivisions; and FMLM performance is uniform throughout subdivisions.

4. Information should be stratified by manifest traffic, unit-train traffic, and all traffic, and by loaded cars, empty private cars, and all cars.

The Board should require that railroads stratify the information they report to the Board by manifest traffic, unit-train traffic, and all traffic. It also should require stratification of information reported to the Board and rail customers by loaded cars, empty private cars, and all cars.

Stratifying information reported to the Board by traffic type provides at least two benefits. First, it gives the Board and the public a more accurate view of FMLM performance. FMLM performance may differ significantly between unit-train traffic and manifest traffic because unit trains move with greater efficiency than manifest traffic.¹⁰ Unit trains also do not require the same level of FMLM service at local yards since all the cars move together in a single block from origin to destination, often bypassing the local yard entirely. Thus, combined performance information for unit-train and manifest traffic probably would not accurately reflect the FMLM performance actually experienced by either unit-train or manifest traffic. Second, reporting information for all traffic alongside information for unit-train and manifest traffic may help the Board determine the extent to which FMLM issues impacting manifest or unit-train traffic warrant attention. For example, where FMLM performance for all traffic and manifest traffic are similar, but FMLM performance stratified by unit-train traffic appears materially worse, the unit-train

¹⁰ See United States Rail Service Issues-Performance Data Reporting, 81 Fed. Reg. 87,472, 87,478 (Dec. 5, 2016) (noting a railroad's statement that unit trains are built for speed and efficiency, while manifest trains require more holding time).

traffic may be a small percentage of the overall traffic. Having information stratified for all traffic thus provides important context for evaluating FMLM performance.

Stratifying reported information by car type also provides important benefits. First, it reflects that the handling of loaded cars is of prime importance for all rail customers. Second, it reflects that many rail customers do not use private cars, and thus, FMLM data for all cars, which would include private empty cars, may not be as relevant to them as data for loaded cars. Additionally, to the extent that private empty cars are experiencing poorer performance than loaded cars (or vice versa), data reported for all cars might not provide an accurate picture of FMLM performance for loaded cars. Third, it reflects that rail customers that use private cars—this includes any rail customer that uses a tank car—have a strong interest in identifying FMLM issues that are causing delay for empty-car movements. These rail customers need an accurate understanding of issues impacting the expected delivery of their empty cars to avoid maintaining oversized car fleets and associated infrastructure, which are costly.

5. Railroads should be required to disclose OETA, facility service days, and switch cutoff times to customers.

To promote rail customers' understanding of reported FMLM information and facilitate collaboration between rail customers and railroads on FMLM issues, the Board should require railroads to disclose to rail customers the underlying criteria for the reported FMLM information. These criteria would include OETA, service days for customer facilities, and cutoff times for switches, as explained below.

Without the criteria used to generate the reported FMLM information, rail customers probably would misinterpret the information or find it unhelpful. For example, if a rail customer does not know the criteria used to generate reported information, it might not understand why the information does not jibe with its perception of FMLM performance or its internal measures of FMLM performance. Similarly, if a customer has an incorrect understanding of the criteria used to generate reported information, it may misinterpret the information and form an incorrect understanding of actual FMLM performance.

Additionally, requiring disclosure of the criteria underlying reported FMLM information promotes productive collaboration between railroads and their customers. It helps to eliminate any gap in a railroad's and its customer's understanding of reported information so that they can focus their conversations about FMLM performance on solutions rather than whether performance was measured correctly.

Disclosure of the measuring criteria used to generate reported FMLM information will also help customers understand the service levels that railroads are providing them. For example, disclosure of serving days at customer facilities will indicate to customers the extent to which the railroad plans to switch their facilities. With this information, rail customers will be better prepared to engage railroads in commercial discussions about the service levels the customers receive.

E. Next-In-Line Reporting.

To help significantly reduce the disruptions and costly errors associated with switching, the Board should require railroads to provide a next-in-line report to rail

customers indicating when the rail customer's facility is the next facility that a local train is scheduled to switch. The report should be generated when the local train bound for the facility arrives at the preceding facility.

Switching can result in disruption to rail customers' facilities and to railroads for several reasons. One, because railroads often do not abide by switching windows and may refuse to receive cars that are not staged for pickup in accordance with their specifications, many customers stage cars for switching the day before the switch. While this helps ensure that cars are ready for switching when the switch arrives, it may limit a customer's internal operations until the switch is performed. Two, railroads may require a facility to slow or shut down operations during a switch. Three, if a switch takes too long, the local train will incur delay, increasing the expense for the railroad and disruption to downstream customers, especially if the train needs to skip customers to ensure the crew does not exceed its duty-time limits.

Facilitating an accurate understanding of when a switch will occur can help to reduce this disruption. Customers with an accurate understanding of when they will receive a switch do not need to stage cars well in advance of the switch. This may enable them to avoid disruption if staging limits their operations. It also enables them to essentially work up to the switch, staging cars that would not have been ready for staging further in advance of the switch. Additionally, if a customer needs to shut down or curtail operations during a switch, an accurate understanding of when the switch will occur enables the customer to avoid being in

an extended state of reduced operation so that they can shut down on a moment's notice when the switch arrives. Next-in-line reporting thus enables rail customers to conduct operations without fear of having to stop on a moment's notice or fear that they will not have enough time to add a car to the block of cars that are ready for switching.

While railroads typically provide switch windows to help customers anticipate when a switch will arrive, these are inferior to next-in-line reports. First, the switch window can be lengthy, causing the customer facility to be in a reduced operational state for long period while it awaits the local train. Second, railroads do not guarantee that their local trains will arrive during the switch window. A local train can arrive before the window, catching a facility off guard and unprepared for service.

At bottom, the Board should require next-in-line reporting to help significantly reduce the disruptions that switches impose on rail customers and to help rail customers ensure they are prepared for switches.

IV. The Board and stakeholders require a full understanding of railroads' current data practices to inform FMLM reporting requirements.

The Board and rail customers face several common challenges in this proceeding. The most notable of these is that the prevalence of knowledge about the collection and existence of desirable data lies solely in the possession and control of the Class I railroads. If the Board's goal is to provide access to meaningful FMLM performance information without unduly burdening railroads, knowledge of such information is critical to the ability of stakeholders to propose, and the Board to

adopt, meaningful data requirements that are practical and reasonably attainable. To this end the Board should consider ways to gather a better understanding from the railroads of what data is currently collected and what is possible. The Board can approach this task in several ways.

First, there are traditional means such as public hearings and requests for comments. But those are dependent to a significant degree upon railroads voluntarily providing full and complete information. While we hope the railroads recognize the value in accurate FMLM reporting and thus voluntarily provide complete information, in absence of that participation, the Board itself may need to submit interrogatories to the railroads and hold hearings, or perhaps workshops, to follow up and delve deeper into the railroad responses.

Second, the Board could rely upon stakeholders to obtain relevant information from the railroads through discovery. To be effective, the Board would need to make the full panoply of discovery available to stakeholders, including interrogatories, document requests, and depositions. The principal downsides to this approach, however, are its dependence upon stakeholders' ability to expend the resources required for such discovery, the requirement that the railroads respond to discovery requests from multiple stakeholders, and the inability of the Board to directly engage with the railroads.

Third, a hybrid of the first and second approaches—whereby the Board first solicits comments on the type of information that railroads should, and can, provide, followed by a consolidated set of information requests issued by the Board itself,

leading to workshops with the railroads, and culminating in a public hearing—is favored by the Shipper Associations. This has the potential to realize the benefits of both approaches without their most significant drawbacks.

A fourth option is a negotiated rulemaking, which involves convening a committee of stakeholders to reach a consensus on the text of a proposed rule.¹¹ It facilitates discussions among the agency and stakeholders that allow agency staff to obtain a better understanding of stakeholder positions and the practical consequences of alternative approaches.¹² It also provides stakeholders an opportunity to directly question each other’s positions with the goal of reaching an agreeable solution.¹³ For example, a negotiated rulemaking could provide an understanding of the type of FMLM data that railroads track, whether internal FMLM scorecarding by railroads would be relevant for identifying and addressing FMLM issues, and the burdens associated with reporting certain FMLM data. Similarly, collaboration under a negotiated rulemaking may provide the Board and railroads with an understanding of the impact of FMLM issues on rail customers, of rail customers’ potentially differing views on the FMLM information they need to inform their operations, and of whether certain forms of reporting are burdensome to rail customers or prevent rail customers from making full use of the reported data. But the ultimate success of a negotiated rulemaking depends upon the

¹¹ 5 U.S.C. § 566.

¹² David M. Pritzker & Deborah S. Dalton, Negotiated Rulemaking Sourcebook 3, 4 (1990).

¹³ *Id.* at 4.

cooperation of the Class I railroads to participate in an open, meaningful, and constructive dialogue. If their objective is to stiff-arm all attempts to establish FMLM metrics, a negotiated rulemaking is doomed to failure. Thus, before even considering a negotiated rulemaking, the Board must be fully satisfied that railroad stakeholders would be cooperative participants.

* * *

Shipper Associations thank the Board for this opportunity to provide feedback on potential FMLM reporting and for the Board's efforts to address FMLM service issues.

Respectfully submitted,

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