

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Linn County, Unincorporated Areas .....	410136	April 9, 1974, Emerg; September 29, 1986, Reg; December 8, 2016, Susp.	.....do .....	Do.
Millersburg, City of, Linn County .....	410284	July 21, 1982, Emerg; July 21, 1982, Reg; December 8, 2016, Susp.	.....do .....	Do.

\* do = Ditto.  
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: November 21, 2016.

**Michael M. Grimm,**  
*Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.*

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**SURFACE TRANSPORTATION BOARD**

**49 CFR Part 1250**

[Docket No. EP 724 (Sub-No. 4)]

**United States Rail Service Issues—Performance Data Reporting**

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (STB or Board) is adopting a final rule 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, semiannual, and occasional basis.

**DATES:** This rule is effective on January 29, 2017. The initial reporting date will be February 8, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Board initiated this rulemaking proceeding in response to the service problems that began to emerge in the railroad industry in late 2013. Those service problems affected the transportation of a wide range of commodities, including grain, fertilizer, ethanol, coal, automobiles, chemicals, propane, consumer goods, crude oil, and industrial commodities.

In response to the service challenges, the Board held two public hearings, in April 2014 in Washington, DC, and in September 2014 in Fargo, ND, to allow interested persons to report on service

problems, to hear from rail industry executives on plans to address rail service problems, and to explore options to improve service. During and after these hearings, parties expressed concerns about the lack of publicly available information related to rail service and requested access to performance data from the railroads to better understand the scope, magnitude, and impact of the service issues,<sup>1</sup> as well as the underlying causes and the prospects for recovery.

Based on these concerns and to better understand railroad operating conditions, the Board issued an order on October 8, 2014, requiring all Class I railroads and the Class I railroad members of the CTCO to file weekly reports containing specific service performance data. *See U.S. Rail Serv. Issues—Data Collection (Interim Data Order)*, EP 724 (Sub-No. 3) (STB served Oct. 8, 2014).<sup>2</sup> Railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination, and loading metrics for grain and coal service, among other information. The data were intended to give both the Board and its stakeholders access to current information about the operations and performance of the Class I railroads and the fluidity of the Chicago gateway. In addition, the data were expected to assist rail shippers in making logistics decisions, planning operations and production, and mitigating potential losses.

On October 22, 2014, the Class I railroads and the Association of American Railroads (on behalf of the

CTCO) filed the first set of weekly reports in response to the *Interim Data Order*. As requested by the Board, each carrier provided an explanation of its methodology for deriving performance data in response to each request. Generally, the reports corresponded to the elements of the *Interim Data Order*; however, some railroads approach individual requests differently, leading to variations in the reported data. The different approaches are due primarily to the railroads’ disparate data-keeping systems, different railroad operating practices, and/or unintended ambiguities in certain requests. Certain railroads have also departed from the Board’s prescribed reporting in order to maintain consistency with their own weekly data runs and analyses.

The weekly filings have allowed the Board and its stakeholders to monitor the industry’s performance and have allowed the Board to develop baseline data. Based on the Board’s experience with the reporting to date, and as expressly contemplated in the *Interim Data Order*, the Board proposed new regulations for permanent reporting by the members of the Class I railroad industry and the CTCO, through its Class I members. *See U.S. Rail Serv. Issues—Performance Data Reporting (NPR)*, EP 724 (Sub-No. 4) (STB served Dec. 30, 2014).

The proposed reporting requirements in the *NPR* included many of the requests contained in the *Interim Data Order*. The *NPR* proposed nine weekly metrics that would apply to Class I railroads: (1) System average train speed; (2) weekly average terminal dwell time; (3) weekly average cars online; (4) weekly average dwell time at origin and interchange; (5) weekly total number of loaded and empty trains held short of destination or scheduled interchange; (6) daily average number of loaded and empty cars operating in normal movement which have not moved in specified periods of time; (7) weekly total number of grain cars loaded and billed, by state; (8) for grain cars, the total overdue car orders, average days late, total new grain car orders in the past week, total orders

<sup>1</sup> See generally National Grain and Feed Association Letter, *U.S. Rail Serv. Issues*, EP 724 (filed May 6, 2014); Western Coal Traffic League Letter, *U.S. Rail Serv. Issues*, EP 724 (filed Apr. 17, 2014); Apr. Hr’g Tr. 154–155, *U.S. Rail Serv. Issues*, EP 724 (Apr. 10, 2014); Western Coal Traffic League Statement 5–6, *U.S. Rail Serv. Issues*, EP 724 (filed Sept. 5, 2014); Sept. Hr’g Tr. 48, 290, *U.S. Rail Serv. Issues*, EP 724 (Sept. 4, 2014).

<sup>2</sup> On motion of Canadian Pacific Railway Company, the Board modified the *Interim Data Order* by decision served on February 23, 2016, to allow it to discontinue reporting data related to the Rapid City, Pierre & Eastern Railroad, Inc.

filled in the past week, and number of orders cancelled in the past week; and (9) weekly total coal unit train loadings or carloadings by region. The *NPR* also proposed metrics pertaining to service in Chicago as well as reporting on major rail infrastructure projects. Finally, the *NPR* proposed to exempt Kansas City Southern Railway Company from filing state-specific information in response to Request Nos. 7 and 8, due to the nature of its grain business and its very limited number of customers in a small number of states in its service territory.

Following receipt of comments in response to the *NPR*, the Board issued an order announcing that it would waive its ex parte communications rules in order to allow Board staff to hold meetings with interested parties to develop a more complete record with regard to technical issues in this proceeding. See *U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served Nov. 9, 2015) (with Board Member Begeman concurring in part). Following the meetings, the Board posted a summary of each meeting in this docket and then parties provided additional comments on the summaries. As a result of the comments and meetings, the Board issued a supplemental notice of proposed rulemaking. See *U.S. Rail Serv. Issues—Performance Data Reporting (SNPR)*, EP 724 (Sub-No. 4) (STB served Apr. 29, 2016), corrected, (STB served May 13, 2016). The *SNPR* proposed changes to six of the proposed reporting metrics in the *NPR* (Request Nos. 1, 4, 5, 6, 8, and 9), modifications to the reporting week and definition of a unit train, and the addition of three new metrics (Request Nos. 10, 11, and 12) (grain shuttle/dedicated grain trips per month, weekly originated carloads by commodity, and car order fulfillment percentage for 10 car types). See *SNPR*, slip op. at 24–26. With regard to Request No. 7 and No. 8, KCS was not required to report information by state, but instead only system-wide data. See *NPR*, slip op. at 7; *SNPR*, slip op. at 28.

In response to the *SNPR*, the invitation for stakeholder meetings, and the *NPR*, the Board received a significant volume of comments and proposals from stakeholders. We have carefully reviewed those comments, proposals, and meeting summaries in order to identify both general themes regarding service reporting and better technical methods for collecting information.

The primary purpose of this rulemaking has been to develop a set of performance data that will allow the agency to monitor current service conditions in the industry and to

identify trends or aberrations, which may indicate problems. The cumulative data will give the Board reference points for measuring an individual railroad against its past performance. A corollary benefit is that shippers and other stakeholders will have access to the reported data to assist in their business decisions and supply-chain planning. At the same time, the Board has sought to make sure that any rule adopted regarding service data results in the collection of information that will be useful to the agency and its stakeholders. The Board believes that the final rule adopted here is an appropriate balance of considerations that will provide helpful information to both the agency and the public.

These rules will be effective on January 29, 2017. Carriers will begin reporting on Wednesday, February 8, 2017.<sup>3</sup> The data required under 49 CFR 1250.2 and 1250.3(a) must be emailed to [data.reporting@stb.gov](mailto:data.reporting@stb.gov), in Microsoft Excel or other format specified by the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC). The narrative data required under 49 CFR 1250.3(b) and 1250.4 must be reported to the Director of OPAGAC and emailed to [data.reporting@stb.gov](mailto:data.reporting@stb.gov). Any updates to the method and form for reporting data will be posted on the Board's Web site.

#### Discussion of Issues Raised in Response to the SNPR

The following parties provided comments in this proceeding, either in the form of written comments or oral comments during the ex parte meetings that were then summarized and posted by the Board, or both:

Alliance for Rail Competition et al.; American Chemistry Council; Association of American Railroads (AAR); BASF Corporation; BNSF Railway Company (BNSF); Canadian Pacific Railway Company (CP); Chicago Metropolitan Agency for Planning (CMAP); CSX Transportation, Inc. (CSXT); Freight Rail Customer Alliance; Highroad Consulting, Ltd. (HRC); Kansas City Southern Railway Company (KCS); Thomas F. McFarland and Gordon P. MacDougall; National Corn Growers Association; National Grain and Feed Association (NGFA); National Industrial Transportation League

<sup>3</sup> With the adoption of these final rules, the Board is concurrently issuing a decision in *U.S. Rail Service Issues*, Docket No. EP 724 and *U.S. Rail Service Issues—Data Collection*, Docket No. EP 724 (Sub-No. 3), which will terminate those proceedings and terminate reporting under the *Interim Data Order*. To maintain continuity in data collected by the Board, reporting under the *Interim Data Order* will conclude on Wednesday, February 1, 2017.

(NITL); Norfolk Southern Railway Company (NSR); South Dakota Corn Growers Association; The Fertilizer Institute (TFI); Texas Trading and Transportation Services, LLC, et al.; Union Pacific Railway Company (UP); U.S. Department of Agriculture; U.S. Department of Transportation; and Western Coal Traffic League, et al. (WCTL). The Honorable John Thune, Chairman, Senate Committee on Commerce, Science, and Transportation, submitted comments in this proceeding as well.

Below we generally summarize the comments received on the *SNPR*,<sup>4</sup> and explain the changes being adopted in this final rule. Although not all comments and recommendations will be adopted, all of the many comments parties have submitted were carefully reviewed and considered in deciding on the final rule.

#### Board Authority

AAR's position is that the Board should state a valid regulatory purpose for the rule before adding to the cumulative regulatory burden on the railroads. (AAR *SNPR* Comments 5.) AAR argues that the rules are not necessary for improving rail service, expressing the view that rail service improved in 2013–2014 “because of efforts of railroads to serve their customers.” (*Id.* at 6.) Finally, AAR asserts that the *SNPR* “does not articulate how the proposed rules would be useful in carrying out the specific statutory provisions the Board cites” and argues that each statutory provision requires “particularized findings related to the specific transportation at issue beyond the proposed data collection.” (*Id.*)

As the Board stated in the *SNPR*, “the need and justification for a permanent reporting rule is clear.” Slip op. at 22. Under the Interstate Commerce Act, the Board has broad authority to require reports by rail carriers under 49 U.S.C. 1321, 11145. The statute also makes clear that service adequacy is a key part of the Board's mandate, beginning with the provisions of the rail transportation policy (RTP) of 49 U.S.C. 10101. See *SNPR*, slip op. at 22. The RTP states that, in regulating the railroad industry, it is policy of the United States Government to minimize the need for regulatory control, 49 U.S.C. 10101(2), promote a safe and efficient rail transportation system, 49 U.S.C. 10101(3), ensure the development of a sound rail transportation system to meet the needs of the public, 49 U.S.C.

<sup>4</sup> Comments on the *NPR* and meeting summaries were summarized in the preamble to the *SNPR*.

10101(3), and encourage efficient management of railroads, 49 U.S.C. 10101(9). The Board finds that having data that will allow it to monitor service across the rail network advances these RTP goals. The data will help promote the RTP by allowing the agency, as well as shippers and other stakeholders, to more quickly identify and react to service issues than it would otherwise have the ability to do.

As also explained in the *SNPR*, slip op. at 22, the Board has the responsibility for monitoring the adequacy of service under specific statutory provisions, including service emergencies under 49 U.S.C. 11123. The Board's powers under section 11123 are extensive<sup>5</sup> and can be initiated by the agency. The potential triggers for Board action, such as "congestion of traffic" and "other failure of traffic movement" (49 U.S.C. 11123(a)), are clearly implicated by the collection of service metrics, and the Board has explained that reporting would "improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly." *SNPR*, slip op. at 22. Service issues can also be relevant when the Board considers whether railroad service practices are reasonable (49 U.S.C. 10702), whether to force a line sale in the event of inadequate service (49 U.S.C. 10907), and whether railroads are fulfilling their common carrier obligations (49 U.S.C. 11101) or providing safe and adequate car service (49 U.S.C. 11121). See *SNPR*, slip op. at 22 (explaining that "permanent reporting . . . would aid the Board and industry stakeholders in identifying whether railroads are adequately meeting those statutory requirements."). Accordingly, we disagree with AAR's suggestion that the Board has not articulated a justification for the data's usefulness.

The Board also finds no merit to the AAR's suggestion that the data reporting would be unhelpful in determining if some of the statutory provisions listed by the Board are met. The AAR argues that these statutory provisions require "particularized findings" that would necessitate more granular information than would be provided for by the reported data. However, even if more granular information would be required

for the Board to act in a particular circumstance, the Board has explained that the reporting will assist it in determining whether to request more granular data or information. *SNPR*, slip op. at 22. Likewise, AAR's suggestion that baseline service metrics would be "irrelevant" in common carrier or forced sale-cases limits—in advance—what service information shippers and carriers would find probative in such cases.<sup>6</sup>

The Board believes that the long-term utility of the data collection in this final rule outweighs the additional burden placed on the rail industry. It will also help promote the RTP as outlined above.

#### Other Recommendations/General Comments

**Railroad Interests.** The railroads generally oppose metrics focused on particular commodities, train types, or geographic regions. AAR reiterates that a few "macro-level reporting metrics would best serve the Board's goals of maintaining access to information . . . while balancing the burdens imposed on railroads." (AAR *SNPR* Comments 2.) As such, AAR advocates that the Board's final rule be based on macro-level data that is presently reported to the AAR. It asserts that such macro-level metrics best reflect trends and relative changes in service performance while granular reporting is confusing, potentially misleading, and less useful for comparisons over time. (*Id.*) AAR also states that shipper groups have failed to explain how they actually use the data. (AAR *SNPR* Reply 2–3.) Finally, AAR warns that the Board "should be aware that this data inevitably will be . . . cited to the Board as evidence that one railroad is underperforming its peers regardless of whether that conclusion is correct." (*Id.* at 3.)

NSR agrees that service performance metrics tailored to specific commodities may create a misleading picture of overall service and asserts that the burdens of such reporting outweigh the benefits. (NSR *SNPR* Comments 3.) UP and CP likewise assert that the final rule should only include network-specific metrics. (CP *SNPR* Comments 2; UP *SNPR* Comments 2–3.) UP asserts that the more detailed metrics are too narrow

to provide more meaningful information, and can be required based on service issues. (UP *SNPR* Comments 2–3.) In addition, UP again opposes NGFA's request for additional grain reporting. (UP *SNPR* Reply 1–3.)<sup>7</sup>

**Shipper Interests and Other Stakeholders.** NGFA disagrees with the Board's statement in the *SNPR* that "the burden of more granular metrics [than those proposed in the *SNPR*] outweigh(s) their value as a tool for identifying regional or national system-wide problems" and argues that the Board must instead increase the granularity of the rail service performance data it collects. (NGFA *SNPR* Comments 3, 3–5.) NGFA asserts that the Board should "consider the benefits of some additional specific data to rail customers in monitoring service, given the diverse and differing rail transportation service that applies to different types of grain-based agricultural products." (*Id.* at 3.) NGFA cites findings made in a 2015 National Academy of Sciences/Transportation Research Board report and a 2008 Laurits R. Christensen Associates Inc. report<sup>8</sup> while arguing that: (1) The data the Board proposes to collect are too aggregated to provide meaningful insights into service quality; (2) system-wide performance data is less useful to shippers than data based on route, corridor, or commodity, which are important for identifying and rectifying service issues; and (3) variability in service, which tended to be greater in grain and coal units, can be more costly and problematic than absolute service levels. (*Id.* at 4–5.)

**Final Rule.** As noted above, the Board's objective in the proceeding is to obtain weekly data that allows the agency to monitor the railroad industry's current performance and to

<sup>7</sup> UP also asked the Board to discontinue its annual request for a peak season letter, as it would be unnecessary if the Board begins collecting data pursuant to this final rule. (UP *SNPR* Comments 13.) Chairman Elliott announced in August 2016 that the Board was discontinuing the end-of-year letters, citing, among other things, the weekly collection of service performance reports that the Board began collecting pursuant to the *Interim Data Order*. Press Release, Surface Transportation Board, STB Chairman Daniel R. Elliott III Discontinues Annual Letter to Rail Industry Seeking End-of-Year Outlook (Aug. 22, 2016), [https://www.stb.gov/stb/news/news\\_releases.html](https://www.stb.gov/stb/news/news_releases.html) (follow "date of issuance within the current year" or "prior to the current year" hyperlink, as appropriate to access 2016 press releases; then follow "8/22/2016" hyperlink).

<sup>8</sup> See Transp. Research Bd. of the Nat'l Acad., *Modernizing Freight Rail Regulation*, 48–56 (2015); Laurits R. Christensen Associates, *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition*, ES–35 to ES–37 (2009), <https://www.stb.gov/stb/docs/competitionstudy/executive%20summary.pdf>.

<sup>5</sup> When requisite statutory criteria are met, the Board can (1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines; (2) require joint or common use of railroad facilities; (3) prescribe temporary through routes; (4) give directions for—(A) preference or priority in transportation; (B) embargoes; or (C) movement of traffic under permits. See 49 U.S.C. 11123.

<sup>6</sup> As noted above, AAR expresses its opinion that increased service quality after the 2013–2014 crisis was due to "efforts of railroads to serve their customers." (AAR *SNPR* Comments 6.) However, the Board need not find that the interim service reporting caused service improvements to justify the permanent collection of service data, which will facilitate the Board's ability to monitor performance and respond to issues in the event of future service disruptions.

build a data set that will allow the Board to observe trends and make comparisons against past performance. The set of requests being adopted today advances these objectives and strikes an appropriate balance of augmenting the Board's ability to better monitor rail service trends without burdening railroads with excessive reporting requirements. The Board is thus declining to either adopt the railroad industry's request to alter the reporting to the "macro level" data presently reported to AAR or to adopt, for the most part,<sup>9</sup> the shippers' requests for additional "granular" data covering discrete subsets of traffic, specific corridors, or local operations.

### Reporting Week and Timing

The *SNPR* proposes defining the reporting week as 12:01 a.m. Saturday to 11:59 p.m. Friday with reports due the following Wednesday.

*Railroad Interests.* The railroads generally agree with the proposal in the *SNPR*, with one exception. AAR urges the Board to modify its proposed reporting week for Request No. 11 (weekly carloadings) to conform to the reporting week that railroads have historically used to report the same data to AAR. "That data has been based on a week ending at 11:59 p.m. Saturday, which permits the weekly report to capture most of the traffic originated during the week by customers who complete their car loading activities by Friday at close of business." (AAR *SNPR* Comments 7.) AAR notes that it has identified no compelling reason why the weekly carloadings data must match the other service metrics. (*Id.*)

In response to NGFA's criticisms of the Wednesday reporting day, AAR states that NGFA provides no support for its assertion that a Monday reporting day is essential. (AAR *SNPR* Reply 2.) UP also states that it needs until Wednesday afternoon to capture, validate, analyze/process, and compile the information from different sources that goes into its reports. (UP *SNPR* Reply 3–4.)

*Shipper Interests and Other Stakeholders.* NITL does not oppose the *SNPR*'s proposed reporting week. (NITL *SNPR* Comments 2–3.) NGFA also does not oppose the proposed reporting week, but urges the Board to require the weekly reports be filed no later than Monday. (NGFA *SNPR* Comments 7.)

*Final Rule.* Except with respect to Request No. 11 (weekly carloadings), the Board will adopt the reporting week and

reporting day proposed in the *SNPR* as the final rule. The 12:01 a.m. Saturday to 11:59 p.m. Friday reporting week comports with the railroad industry's internal reporting practices. Allowing railroads to report data on Wednesday gives them sufficient opportunity to collect, review, and assemble the data prior to submission. For purposes of Request No. 11, and consistent with AAR's suggestion, the Board will modify the reporting week proposed in the *SNPR* to 12:01 a.m. Sunday to 11:59 p.m. Saturday with a Wednesday reporting day. This is consistent with how the industry has historically reported and currently reports weekly carloadings to AAR. The Board does not foresee any issue with the fact that this metric would cover a different weekly period (by one day) than the other metrics.

### Definition of Unit Train

The *SNPR* proposes that, rather than having a single definition for unit train, each carrier be allowed to report unit train data based on how it assigns train symbols (or codes) in accordance with its own business practices.

*Railroad Interests.* Railroad interests generally support the *SNPR*'s definition of unit train, stating that "it will ensure that data collected matches railroads' and their customers' understanding of the traffic." (AAR *SNPR* Comments 4; *see also* UP *SNPR* Comments 1–2; BNSF *SNPR* Comments 2.)

*Shipper Interests and Other Stakeholders.* Shipper interests generally do not oppose the definition of unit train proposed in the *SNPR*. (NGFA *SNPR* Comments 7; NITL *SNPR* Comments 2–3.) However, they ask that the Board draw special attention to the definitions of unit train on its Web site to offer clear guidance on how each railroad defines unit train. (NGFA *SNPR* Comments 7; NITL *SNPR* Comments 2–3.) NGFA also requests that the Board require each carrier to provide updates if and when it changes its unit train definition. (NGFA *SNPR* Comments 7.)

*Final Rule.* The Board will adopt the *SNPR* proposal for defining a unit train as the final rule. In their initial filings under the final rule, the Board will require railroads to explain their practices of making "unit train" designations in the ordinary course of business. This information will be accessible to the public on the Board's Web site with other service performance data, so that the public will understand how each carrier is defining "unit train." Railroads will also be required to inform the Board if their practices change in the future, by electronically submitting to OPAGAC a written

explanation of the change at the time it goes into effect. The Board's Web site will be updated accordingly.

### Request No. 1 (Train Speed), No. 2 (Terminal Dwell Time), and No. 3 (Cars Online)

For Request No. 1, the *SNPR* proposes requiring carriers to provide system-average train speed, measured for line-haul movements between terminals and calculated by dividing total train-miles by total hours operated, for: (a) Intermodal; (b) grain unit; (c) coal unit; (d) automotive unit; (e) crude oil unit; (f) ethanol unit; (g) manifest; (h) fertilizer unit; and (i) system. The *SNPR* modifies the proposal in the *NPR* by adding categories for "fertilizer unit" and "system" and removing the category for "all other."

For Request No. 2, the *SNPR* proposes requiring carriers to provide weekly average terminal dwell time for each carrier's system and its 10 largest terminals. For Request No. 3, the *SNPR* proposes requiring carriers to provide weekly average cars online for several car types, other, and total. The *SNPR* makes no changes to Request No. 2 and Request No. 3 in the *NPR*.

*Railroad Interests.* Railroad interests generally do not object to Request Nos. 1–3, though they again emphasize that permanent reporting should be limited to those metrics that provide a "meaningful view of network health." (UP *SNPR* Comments 2–3; *see also* CP *SNPR* Comments 1; AAR *SNPR* Reply 8.) UP states that this would include Request Nos. 1–4. (UP *SNPR* Comments 2–3.) Other carriers identify Request Nos. 1–3, with the potential addition of a weekly carloadings metric, as sufficient to monitor overall network fluidity. (CP *NPR* Comments 2; AAR *NPR* Comments 12.) In response to NGFA's requests for additional categories under Request No. 3 (Cars Online), UP counters that NGFA provides no justification for either its hazardous material reporting or for what it alleges is an "impracticable" request that industry-placed cars also be included. (UP *SNPR* Reply 4–5.)

Finally, the railroads generally oppose the addition of fertilizer to Request No. 1 and to all other metrics that would require carriers to report data on fertilizer unit trains or carloads. AAR argues that commodity specific reporting, including fertilizer, is not useful for comparing service metrics for traffic that moves in different service and equipment. (AAR *SNPR* Comments 7–8.) It states that although there is no single definition of fertilizer, the Board's proposed definition is overbroad and erroneously includes commodities

<sup>9</sup>As explained in greater detail below, the Board will add some granularity to the required reporting by requiring certain fertilizer carload reporting.

which are not fertilizers. (*Id.*; see also CSXT SNPR Comments 1.) CSXT adds that it can accommodate some of the fertilizer data the Board seeks, but using the Board's proposed Standard Transportation Commodity Codes (STCCs) would be difficult and misleading. (CSXT SNPR Comments 1.) NSR reports that in 2015 it moved less than 11% of its fertilizer traffic in unit train service and consequently believes that the data should not be separately reported. (NSR SNPR Comments 1.) It asserts that fertilizer shippers can monitor macro-level service data trends to gauge fertilizer service. (*Id.*)

UP argues that the Board should not adopt new fertilizer metrics based on past service issues that no longer exist. (UP SNPR Comments 3.) Regarding fertilizer unit train reporting, UP argues that, because a small amount of fertilizer moves in unit train service (one in seven UP fertilizer shipments), the proposed metric would not provide useful information to the Board or allow the Board to reach meaningful conclusions about service. (*Id.* at 3–4.) UP expresses concern that separate reporting on fertilizer unit trains could expose confidential, customer-specific volume information. (*Id.* at 4.) UP states that fertilizer accounted for only 2% of UP total carloadings in 2015. (*Id.*) UP argues that there is no reason for separate reporting because (1) the rail network is fluid and currently has the resources to handle demand, and (2) the Board should avoid requiring commodity-specific reporting absent evidence distinguishing a specific commodity from other, non-reported commodities. (*Id.* at 4–5.) Finally, UP argues that fertilizer carloading reporting would create an unnecessary burden and introduce inconsistencies with historical records. (*Id.* at 5.)

**Shipper Interests & Other Stakeholders.** Shipper interests are generally supportive of the SNPR changes to the first three metrics. NITL strongly supports the addition of “system” and “fertilizer” components to Request No. 1. (NITL SNPR Comments 3.) WCTL continues to support the inclusion of coal unit trains in Request Nos. 1–2. (WCTL SNPR Comments 3.) NGFA continues to advocate for more granular grain unit reporting, however, it narrows its request from its NPR comments to add only vegetable oils and vegetable meals to the existing grain categories in Request Nos. 1–2. (NGFA SNPR Comments 5, 8.) NGFA supports Request No. 3, but urges the Board to add a requirement that “carriers subdivide the ‘tank car’ reporting requirement to include subcategories for cars hauling ‘hazmat’ and ‘non-

hazmat,’” plus require reporting of cars that are industry-placed. (NGFA SNPR Comments 8–9.)

Finally, for Request No. 1 and all other metrics requiring carriers to report data on fertilizer unit trains, TFI recognizes that fertilizer shipments are not evenly distributed across carriers and agrees with UP that reporting fertilizer unit trains may raise confidentiality concerns among railroads with limited shipments. Accordingly, TFI states that it “no longer advocates for the reporting of fertilizer unit trains.” (TFI SNPR Reply 2, 6.)

**Final Rule.** For Request No. 1, the Board will adopt the SNPR proposal with one modification as the final rule. We will exclude fertilizer unit trains from average train speed reporting. As noted above, TFI withdrew its request for unit train metrics for fertilizer movements. Additionally, the railroad industry explained that most fertilizer shipments move in manifest service and only a very small annual volume moves in unit trains. Thus, maintaining a fertilizer unit train speed metric would not advance the Board's objectives. Also for Request No. 1, the Board will adopt the SNPR proposal to add an overall “system” component, which aligns the request with current AAR reporting and provides a fuller picture of service performance. For Request No. 2 and No. 3, the Board will adopt the SNPR proposal as the final rule.

The Board will deny NGFA's request to incorporate vegetable oils and vegetable meals into Request Nos. 1–2. Most carloads of vegetable oils move in manifest service as opposed to unit train service. (AAR SNPR Reply 4–5.) NGFA has not demonstrated a strong need for such a specifically tailored metric. Moreover, NGFA fails to explain why the railroads' reporting of system average train speed for manifest trains does not capture the velocity of vegetable oil and vegetable meal traffic, such that a specifically tailored metric is necessary. Similarly, NGFA fails to demonstrate that weekly average terminal dwell time does not adequately reflect terminal dwell for cars of vegetable oils and vegetable meals.<sup>10</sup>

#### **Request No. 4 (Dwell Time at Origin—Unit Train)**

The SNPR proposes requiring carriers to provide weekly average dwell time at

origin for loaded shipments sorted by grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, fertilizer unit, all other unit trains, and manifest. The SNPR modifies the proposal in the NPR by adding the fertilizer unit and manifest categories and deleting the interchange component, which would have required carriers to report dwell times for trains at interchanges between carriers.

**Railroad Interests.** As discussed above, the railroads generally oppose the requirement to report data on fertilizer unit trains. They also oppose the addition of the manifest category to Request No. 4 because an origin dwell metric is inconsistent with how manifest trains operate. (BNSF SNPR Comments 3 n.1; AAR SNPR Comments 8–9; UP SNPR Comments 10.) AAR comments that the data item is ambiguous, explaining that manifest trains “are not ‘released’ to a line-haul carrier at ‘origin.’ Manifest trains are made up at a railroad's yard and moved after the air brake test is completed.” (AAR SNPR Comments 8–9.) In response to NGFA's request to require carriers to provide industry spot and pull (ISP) reports, UP asserts that shippers already have access to this information for their own traffic and no public interest would be served by public reporting of this customer-specific information. (UP SNPR Reply 3.)

**Shipper Interests and Other Stakeholders.** WCTL opposes the deletion of the interchange component. (WCTL SNPR Comments 3–4.) It states that customers depending on movements with interchanges found that “interchange dwell can be a telling measure of how the railroads are performing with their interchange partners, their available resources, and whether their systems are constrained.” (*Id.* at 4.) WCTL argues that deleting the interchange component removes a potentially important source of data, invites carries to engage in finger pointing, and deprives shippers of insight into where delays actually occur. (*Id.*)

NGFA urges the Board to require carriers to “provide ISP reports upon one-time written request from rail customers.” (NGFA SNPR Comments 9.) It argues the ISP reports are an important source of data because they are a truer reflection of service than the current metrics which only reflect velocities from terminal-to-terminal. (NGFA SNPR Comments 6.) NGFA asserts that ISP reports better indicate the service shippers and receivers are actually receiving. (*Id.*) NGFA also asks the Board to expand the metric to

<sup>10</sup> NGFA also requests that the Board incorporate vegetable oils and vegetable meals into Request Nos. 4, 5, 6, 7, and 8. The Board will likewise deny NGFA's requests to add additional grain categories to those requests as it has generally not shown a need to single out these specific commodities for more granular reporting.

include vegetable oils and vegetable meals to the existing grain category. (NGFA SNPR Comments 9.)

*Final Rule.* For Request No. 4, the Board will adopt the SNPR proposal with two modifications as the final rule. First, for the reasons discussed above, we will delete the fertilizer unit component. Second, we will remove the manifest component, which would have required carriers to report dwell time for manifest trains. As explained by the railroad interests, manifest trains are not released in the same manner as unit trains at shipper origins, and therefore do not “dwell” in the same sense that unit trains do.

The Board will adopt the proposed change in the SNPR of not including the interchange component. We continue to believe that the “interchange” component would not materially enhance the Board’s perspective on rail service, in light of other performance data that will be collected under these final rules, such as dwell at origin, terminal dwell, trains holding, and cars that have not moved in 48 hours or longer. Moreover, the Board is sensitive to the potential burden that the “interchange” component would create because railroads do not share a common understanding as to when a train is considered to be “released” or “accepted” at interchange or maintain common practices for measuring a train’s idle time at interchange. See SNPR, slip op. at 10.

The Board will not mandate that railroads report to shippers upon request their respective ISP percentages for their local service design plans. NGFA’s basis for seeking such reporting appears to be its view that other metrics contained in the SNPR are too general to allow the Board (and shippers) to assess local service. However, NGFA desires a level of data granularity—tracking at the local level—that exceeds the Board’s objectives in monitoring service performance of the Class I railroads. Additionally, NGFA does not address the reporting burden that the volume of shipper requests would impose upon the industry.

Lastly, for the reasons explained above, the Board will decline NGFA’s request to expand this metric to include vegetable oils and vegetable meals. Additionally, because these commodities typically do not move in unit train configurations, dwell time at origin would not be a meaningful metric.

#### Request No. 5 (Trains Holding)

The SNPR proposes requiring carriers to provide the weekly average number of trains holding per day, sorted by train

type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, fertilizer unit, other unit, and manifest) and by cause (crew, locomotive power, or other). To arrive at these figures, railroads would be instructed to run a daily same-time snapshot and then calculate the weekly averages. The SNPR modifies the proposal in the NPR in several ways. It removes the proposed requirement that railroads report trains held short of destination or scheduled interchange for longer than six hours. It also removes the “all other” train type and the “track maintenance” and “mechanical causes” that were included in the NPR. The SNPR adds “fertilizer unit” and “manifest train” types, and the instruction to run a daily same-time snapshot and then calculate the weekly average.

*Railroad Interests.* CSXT reiterates that it will be a highly manual process to comply with this metric, including the fertilizer component. However, it states that the SNPR proposal is a “tremendous” improvement from the NPR and supports deletion of the six-hour component and the more limited list of causes. (CSXT SNPR Comments 3.)

Since it was proposed in the NPR, BNSF has urged the Board to discontinue this metric, arguing it is not a reliable indicator of railroad performance. (BNSF SNPR Comments 3–4.) BNSF previously expressed that it can only provide a snapshot measure, as proposed here, but is concerned that the snapshot method overstates its numbers. (BNSF Mtg. Summary 2.) BNSF asserts that issues with the metric are exacerbated by the proposal in the SNPR to remove the six-hour category. (BNSF SNPR Comments 4.) BNSF also states, in response to the removal of the interchange component, that its current data set does not distinguish between trains that are held short of destination, interchange, or otherwise. (*Id.*)

*Shipper Interests and Other Stakeholders.* Shippers urge the Board to revisit the decision to eliminate two reportable causes and require more specific reasons for delay rather than “other.” (NITL SNPR Comments 3; WCTL SNPR Comments 5.) NITL asserts that it recognizes the carriers’ concern that trains held as part of normal operations will be captured in this metric, but argues that “in the search for the root causes of ‘abnormal’ operating conditions . . . having more knowledge . . . is preferable.” (NITL SNPR Comments 3; see also WCTL SNPR Comments 5.) NGFA also opposes the elimination of causes and supports BNSF’s suggestion to allow data that

would identify trains being held on the network for railroad-caused reasons, but urges the Board not to eliminate the metric. (NGFA SNPR Reply 4–5.) NGFA asks the Board to expand the metric to include vegetable oils and vegetable meals to the existing grain category. (NGFA SNPR Comments 9.)

*Final Rule.* For Request No. 5, the Board will adopt the SNPR proposal as the final rule with one modification. For the reasons discussed above, the fertilizer unit train component will be deleted.

Both railroad and shipper commenters generally support the modification proposed in the SNPR of converting this metric into a weekly average of a daily snapshot of trains holding on each railroad’s network, which is consistent with the way the industry monitors fluidity. The Board originally created the six-hour category to capture trains holding outside of their operating plan. However, railroads argued that the category was ineffective because some trains are held for six hours or longer as part of their operating plan. Railroads also argued that it was problematic from a data tracking standpoint because their internal metrics were not programmed to be compatible with the six-hour or longer filter. (BNSF NPR Comments 5–7; UP NPR Comments 15–16.) Accordingly, we will proceed to eliminate it from the final rules. The Board recognizes BNSF’s concern that, even by eliminating the six-hour category, the trains holding metric will still capture trains being held as part of their operating plan. Nevertheless, the data will provide value over the course of time by allowing the agency to monitor trends and spot aberrations.

With regard to categorization of trains being held by cause, the Board seeks to simplify reporting, as proposed in the SNPR. Although the “equipment malfunction” and “track maintenance” categories proposed in the NPR could be indicative of general service problems, the Board believes that the “crew shortages” and “locomotive shortages” categories proposed in the SNPR are more significant indicators of systemic, long-term service issues. Thus, the Board will reduce the number of assigned causes.

Lastly, for the reasons explained above, the Board will decline NGFA’s request to expand this metric to cover vegetable oils and vegetable meals. Additionally, because these commodities typically do not move in unit train configurations, the reported data would not be meaningful as a measure of fluidity as to vegetable oils and vegetable meal.

**Request No. 6 (Cars Held)**

The *SNPR* proposes requiring carriers to provide the weekly average number of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more, sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer, or all other). The *SNPR* modifies the proposal in the *NPR* by deleting the category for cars that have not moved in more than 120 hours. The *SNPR* also changes the categorization of such cars held from a period of “greater than 48 hours, but less than or equal to 120 hours,” to a period of “48 hours or more.” Finally, the *SNPR* modifies the *NPR*’s requirement for a daily average of loaded and empty cars held to a weekly average and adds a fertilizer component.

**Railroad Interests.** BNSF reiterates that there is public confusion regarding the differences in hold times for cars for different commodities under this metric. (BNSF *SNPR* Comments 4.) It asserts that these “differences in commodity categories are driven in large part by the ratio of unit train and single car service in the commodity fleet rather than service disruptions or other performance issues.” (*Id.* at 4–5.) In particular, BNSF explains that approximately half of its grain fleet is in shuttle, or unit train, service, whereas the majority of its crude and coal carloads move in unit train service; because unit trains are built for speed and efficiency, while manifest trains require more holding time, BNSF argues that the data between grain and crude oil will differ. (*Id.*)

**Shipper Interests and Other Stakeholders.** Shippers are generally supportive of the *SNPR* changes to Request No. 6. (WCTL *SNPR* Comments 3; NITL *SNPR* Comments 3; NGFA *SNPR* 9–10.) NGFA requests that the Board include a component for cars placed in interchange that are being held. (NGFA *SNPR* Comments 10.) NGFA also asks the Board to expand the metric to include vegetable oils and vegetable meals to the existing grain category. (*Id.*) TFI supports the inclusion of a separate fertilizer component for this metric, which captures carload (as opposed to unit train) data. However, TFI proposes to narrow the definition of fertilizer to 14 seven-digit STCCs. (TFI *SNPR* Reply 4.)

**Final Rule.** For Request No. 6, the Board will adopt the *SNPR* proposal as the final rule with an adjustment to the previously proposed definition of fertilizer. Parties agreed that the 120 hours or greater category proposed in the *NPR* was superfluous because

concern arises when a railcar has not moved for 48 hours. *See SNPR*, slip op. at 12. As with Request No. 5, the Board will instruct carriers to use a same-day snapshot approach to develop a weekly average of cars that hit the 48-hour threshold, broken out by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer, or all other). The Board will also adopt the requirement for reporting of cars in fertilizer service, but will define fertilizer by the 14 STCCs provided by TFI (2871236, 2871235, 2871238, 2819454, 2812534, 2818426, 2819815, 2818170, 2871315, 2818142, 2818146, 2871244, 2819173, and 2871451).

Although AAR and some railroads note that fertilizer represents a relatively small fraction of overall rail traffic, the Board believes that it is necessary to help monitor the rail fertilizer supply chain because of its critical importance to the nation’s agricultural production. As became apparent to the Board at the April 2014 hearing, disruption of the rail fertilizer supply chain arising from service issues threatened to impede spring planting throughout the Midwest. In order to focus attention on restoring the supply chain, the Board directed certain railroads to report on their progress moving fertilizer over a six-week period. *See generally U.S. Rail Serv. Issues*, EP 724 (Sub-No. 1) (STB served Apr. 15, 2014). Reporting of fertilizer as a stand-alone category of cars holding for 48 hours or longer will allow the Board to monitor the fluidity of this commodity, which is a key element in agricultural production, and facilitate early Board intervention, if appropriate. Lastly, for the reasons explained above, the Board will decline NGFA’s request to expand this metric to include vegetable oils and vegetable meals. NGFA has not explained the heightened importance that would warrant separate reporting of these commodities, as has been shown for fertilizer.

**Request No. 7 (Grain Cars Loaded and Billed)**

The *SNPR* proposes requiring carriers to provide the weekly total number of grain cars loaded and billed, reported by state, and aggregated for the following STCCs: 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). It also proposes requiring carriers to report on the total cars loaded and billed in shuttle service (or dedicated train service) versus total cars loaded and billed in all other ordering

systems, including private cars. The *SNPR* makes no changes to Request No. 7 in the *NPR*.

**Railroad Interests.** The railroads did not provide specific additional comment on this metric in response to the proposed metric in the *SNPR*.

**Shipper Interests and Other Stakeholders.** NGFA generally supports the *SNPR*; however, it asks the Board to expand the metric to include vegetable oils and vegetable meals to the existing grain category. (NGFA *SNPR* Comments 10; *see also* NITL *SNPR* Comments 3.)

**Final Rule.** For Request No. 7, the Board will adopt the *SNPR* proposal, which was unchanged from the *NPR*, as the final rule. For the reasons discussed above, the Board will decline NGFA’s request to expand this metric to include vegetable oils and vegetable meals.

**Request No. 8 (Grain Car Orders)**

The *SNPR* proposes requiring carriers to provide, for the same STCCs in Request No. 7, a report by state for the following for cars in manifest service: (a) The running total number of orders placed; (b) the running total of orders filled; and (c) for orders which have not been filled, the number of orders that are 1–10 days past due and 11+ days past due. The *SNPR* significantly modifies the *NPR* requirements, which were to report: (a) The total number of overdue car orders; (b) the average number of days late for all overdue grain car orders; (c) the total number of new orders received during the past week; (d) total number of orders filled during the past week; and (e) the number of orders cancelled during the past week.

**Railroad Interests.** The railroads generally commented that they could report the requested data, subject to various individual limitations in their data systems. NSR explains that it only operates a small portion of its grain transportation on the basis of grain car orders so it would have limited and unrepresentative data in its response. (NSR *SNPR* Comments 2.) CSXT states that it could generate the required data unless the metric includes unit train placements as car orders. (CSXT *SNPR* Comments 3.) CSXT also emphasizes that commercial practices of railroads differ substantially between carriers and cautions against comparing data between railroads. (*Id.*) Finally, CSXT notes that it does not roll-over car orders from week-to-week and thus will not show any orders in the 11+ days category. (*Id.*)

**Shipper Interests and Other Stakeholders.** NGFA suggests that the Board consider requiring each reporting carrier to report the definition of its car-ordering system for shuttles and

manifest traffic. (NGFA SNPR Comments 11.) It also recommends that the Board require each “carrier to report whether it placed or pulled cars that were ordered or cancelled as a result of a railroad spotting more cars than the facility requested.” (*Id.*) NGFA also requests that the Board expand the metric to include vegetable oils and vegetable meals to the grain category. (*Id.*)

**Final Rule.** For Request No. 8, the Board will adopt the *SNPR* proposal as the final rule. This request allows the Board to monitor car order fulfillment for shippers of agricultural products whose traffic moves in manifest (as opposed to unit train) service. Although the Board acknowledges the limitations that CSXT and NSR have noted, the Board believes that, overall, this data will allow the effective monitoring of grain traffic in manifest service over time. With respect to NGFA’s suggestion to refine this request by requiring carriers to report certain definitions, such a proposal seems more responsive to the *NPR*’s proposal than the *SNPR*’s proposal, and in any event is not in line with the Board’s intent to simplify this request. See *SNPR*, slip op. at 14 (“the Board proposes a simpler approach by asking that railroads report running totals of grain car orders placed versus grain car orders filled by State for cars moving in manifest service”). With respect to NGFA’s request for additional data on cars ordered or cancelled, such a proposal does not enhance the Board’s view of grain car order fulfillment. Moreover, it is unclear that railroads track the data that NGFA seeks.

Also, for the reasons explained above, the Board will decline NGFA’s request to expand this metric to include vegetable oils and vegetable meals.

#### **Request No. 9 (Coal Loadings)**

The *SNPR* proposes requiring carriers to provide the weekly average coal unit train loadings or carloadings versus planned loadings by coal production region. The *SNPR* modifies the proposal in the *NPR* by generally returning to the form of the corresponding request (Request No. 10) from the *Interim Data Order*, and adding the requirement to compare actual loadings against railroad service plans.

**Railroad Interests.** UP asserts that it develops neither its own loading expectations, nor independent daily or weekly planned coal loadings. (UP SNPR Reply 11.) UP states that, to the extent that it has a coal loading plan, the plan is based on confidential customer information. (*Id.* at 10.) As such, UP raises concerns that disclosing any planned weekly loadings could reveal

confidential customer information where UP has few coal customers. UP would require a waiver from the Board so that it could aggregate data to prevent revealing that information. (*Id.*) That concern aside, UP argues that comparing planned to actual weekly carloadings provides limited insight into railroad performance because actual carloadings are too dependent upon factors outside the railroad’s control. (*Id.*) AAR also questions the usefulness of including a comparison to plan, arguing that it may present unreliable data because plans fluctuate based on customer preference, commercial factors, equipment, and other issues. (AAR SNPR Comments 9.) AAR stresses that coal traffic primarily moves subject to contracts beyond the Board’s jurisdiction. (*Id.*)

**Shipper Interests and Other Stakeholders.** WCTL and others support the addition of the comparison-to-plan component to Request No. 9. (WCTL SNPR Comments 2–3; NITL SNPR Comments 3.) WCTL states that including the comparison-to-plan component is superior to the metric proposed in the *NPR* and “provides direct and frequent information regarding whether the railroads are meeting the service needs of their customers and even the carriers’ own loading plans [and] whether such divergences are continuing or increasing.” (WCTL SNPR Comments 2–3.) WCTL disagrees with concerns raised by UP that this metric could divulge confidential shipper information, asserting that no specific information would need to be divulged and no shipper has complained under the *Interim Data Order*. (WCTL SNPR Reply 3.) WCTL also argues that “weekly plan reporting is useful precisely because it reflects the requirements of one of the highest volume commodities on all of the railroads and whether the railroads are able to meet that demand” and is potentially a valuable data point because the fluidity of coal routes can impact other shippers. (*Id.* at 3–4.) WCTL also asserts that, despite UP’s claim that it has no coal loading plans, it “requires all coal customers to use the [National Coal Transportation Association] coal forecasting tool, which generally results in a railroad-approved monthly loading plan.” (*Id.* at 4.) Finally, WCTL suggests that, where railroads have a single shipper, they be permitted to withhold the data and make a notation that confidential information might be revealed. (*Id.*)

**Final Rule.** For Request No. 9, the Board will adopt the *SNPR* proposal as the final rule. The Board believes that

there is value in having railroads report their performance versus their plan on a weekly basis for coal loadings. This data will not only allow the agency to track actual loadings, but also to see whether railroads are meeting their own targets. The Board understands the point made by UP that a loading plan is not necessarily static, but is simply a target based on a variety of inputs, which can and does change as surrounding circumstances change. Even so, there is value in seeing whether railroads are meeting, exceeding, or falling short of plans, as it provides context to the reporting of weekly average loadings. To the extent that reporting information about planned loadings under this metric would implicate confidential information, railroads may include a notation in their weekly filing that they are not providing the plan data along with a brief explanation for the data’s absence. Finally, AAR’s argument that coal traffic primarily moves subject to contracts beyond the Board’s jurisdiction does not take into account our statutory responsibility to advance the goals of the RTP, which (as discussed above) includes monitoring service in order to ensure the fluidity of the national rail network. 49 U.S.C. 10101(3), (4). The Board is not asserting jurisdiction regarding the rights and obligations of shippers and carriers associated with coal moving under contracts; rather, the Board is taking action to gain a better understanding of and insight into the general flow of traffic on the system.

#### **Request No. 10 (Grain Unit Train Performance)**

The *SNPR* adds this metric not included in the *NPR* seeking the average grain shuttle (or dedicated grain train) trips per month. The *SNPR* explains that because some Class I railroads operations do not support this reporting, the Board anticipates issuing a waiver decision with the final rules that would permit other Class I railroads to satisfy their obligations under Request No. 10 by reporting average grain unit train trips per month for their total system, including this data in their first report of each month, covering the previous calendar month. Such reports would not include planned trips per month or data by region. Under the *SNPR*, for purposes of reporting under this item, other Class I railroads would report for all grain unit train movements, regardless of whether or not they maintain a grain shuttle or dedicated train program.

**Railroad Interests.** Several railroads state that they do not operate grain shuttles or grain trains that cycle so they

cannot provide data on the average trips per month for those services. (UP SNPR Comments 12; CSXT SNPR Comments 4; NSR SNPR Comments 2.) NSR explains that it would not have any average data to report because it does not cycle grain trains, but states that it could report a gross total of the number of grain unit train trips per month. (NSR SNPR Comments 2.) CSXT states that because it does not manage grain transportation regionally, it will only be able to report average trips per month system-wide. (CSXT SNPR Comments 4.) UP notes that it does not control the origins and destinations of its shuttle trains and that origins and destinations routinely shift, making it difficult to report planned trips per month. (UP SNPR Comments 12.) AAR also states that some railroads cannot report the requested data, and argues that the Board should not adopt a rule that requires some carriers to immediately seek waivers. (AAR SNPR Comments 9.)

**Shipper Interests and Other Stakeholders.** Shippers generally support the addition of this metric. (NITL SNPR Comments 3; NGFA SNPR Comments 11). NGFA expresses concern that monthly reporting of this metric is insufficient and asks that the Board require weekly reporting instead. (NGFA SNPR Comments 12.) NGFA also urges the Board not to grant waivers from this requirement because it knows of no Class I carrier that would not be able to track shuttle or dedicated grain trips by region or corridor. (*Id.*) However, NGFA states that if the Board does allow for waivers, that process should be transparent. (*Id.*) In its reply, NGFA reiterates its position that shuttle trains and dedicated grain trips should be reported by corridor and region. (NGFA SNPR Reply 3.)

**Final Rule.** For Request No. 10, the Board will adopt the *SNPR* proposal as the final rule modified to apply only to those carriers operating grain unit trains in shuttle service. The Board will eliminate the requirement for carriers with dedicated grain trains to report trips per month because the disparate data carriers could provide on that type of service would not provide the Board insight into service beyond the velocity data collected elsewhere in this final rule.<sup>11</sup> In the first report of each month, railroads operating grain shuttles will be required to report their average train

trips per month for their system and key destination regions versus planned trips per month for their system and key regions for the previous month. Underlying this request is the Board's need for information about how railroads are performing with respect to the agricultural sector. The service problems that emerged during the winter of 2013–2014 resulted in significant backlogs of unfilled grain car orders and increased train cycle times, indicating that railroads were experiencing severe congestion and failing to meet shipper demand. *U.S. Rail Serv. Issues—Grain*, EP 724 (Sub-No. 2), slip op. at 1 (STB served June 20, 2014). Thus, in the *Interim Data Order* the Board requested grain car order fulfillment data, and data on train round trips versus the railroad's service plan. This data proved very useful in monitoring the progress of BNSF and CP as they improved operations on an actual basis and against their service plan. The “turns versus plan” data will allow the Board to assess how railroads operating grain shuttles are meeting their own expectations.

#### **Request No. 11 (Originated Carloads by Commodity Group)**

The *SNPR* proposes the creation of a second metric not included in the *NPR*. Under this metric, railroads would be required to provide weekly originated carloads by 23 commodity categories.

**Railroad Interests.** The railroads generally support the addition of this metric. (*See* UP SNPR Comments 12; *see also* CP NPR Comments 2.) UP states that the Board can improve the metric by adding a requirement that carriers report “weekly carloads originated and carloads received in interchange [ , which] . . . would be consistent with weekly carloadings data reported by the AAR.” (*Id.* at 12–13.)

However, as discussed above, the railroads oppose the inclusion of fertilizer in this metric. They assert that creating a line-item for fertilizer will require substantial system changes (AAR SNPR Comments 8; BNSF SNPR Comments 5), and point out that fertilizer is not one of the commodity groups currently reported to the AAR on a weekly basis. (AAR SNPR Comments 8; BNSF SNPR Comments 5–6.) UP states that fertilizer accounted for only 2% of its carloadings in 2015. (UP SNPR Comments 4.) CSXT argues that including fertilizer here would “compromise the usefulness of a long-standing economic indicator that has been followed . . . for decades.” (CSXT SNPR Comments 4.)

**Shipper Interests and Other Stakeholders.** Shippers generally

support the addition of this metric. (NITL SNPR Comments 3–4; NGFA SNPR Comments 12–13.) NITL states that it shows some understanding of shippers' requests for additional granularity in commodity groups. (NITL SNPR Comments 4.) NGFA again asks the Board to expand the metric to include vegetable oils and vegetable meals to the existing grain category. (NGFA SNPR Comments 13.) TFI again states that the definition of fertilizer could be narrowed to the same 14 seven-digit STCCs that it proposed for Request No. 6. (TFI SNPR Reply 4.)

**Final Rule.** For Request No. 11, the Board will adopt the *SNPR* proposal with two modifications as the final rule. First, per UP's suggestion, the Board will expand the metric to include separate reporting of weekly cars received in interchange, which the railroads are already reporting to the AAR. Second, the Board will require railroads to report, as a separate line item, weekly originated carloads and cars received in interchange for fertilizer, as defined by the 14 seven-digit STCCs proposed by TFI and defined above.

Through this metric, the Board seeks to gain specific data for carloadings and interchange traffic that will allow it to better monitor this commodity group. However, the Board understands the railroads' concern that including fertilizer could disrupt the continuity of reporting cars originated and received in interchange, as presently reported to AAR. Accordingly, the Board will create two subcategories for this metric. In the first subcategory, the Board will require reporting according to the 22 existing traffic categories currently reported to AAR. The second subcategory will include only fertilizer.

By requiring fertilizer reporting in this manner, the Board is not asking railroads to modify or extract traffic from the existing 22 categories, which should be reported in their current form; rather, the agency is adding a new, stand-alone category covering the STCCs identified above.

#### **Request No. 12 (Car Order Fulfillment Rate by Car Type)**

The *SNPR* proposes the creation of a third new metric not included in the *NPR*. Under this metric, railroads would be required to provide car order fulfillment percentage by 10 car types.

**Railroad Interests.** The railroads strongly oppose the addition of this metric. AAR states that the metric is ambiguous and unworkable. (AAR SNPR Comments 10.) It argues that “Class I railroad practices regarding car supply differ significantly,” (*id.*),

<sup>11</sup> Accordingly, the waiver decision discussed in the *SNPR* would no longer be necessary. The waiver would have applied to those carriers with operations that would not permit the reporting envisioned there. *See SNPR*, slip op. at 15–16. However, the modification proposed here would obviate the need for a waiver decision by including only those carriers operating grain shuttles.

explaining that “cars ‘due to be placed’ and cars placed will not match up week to week.” The AAR also claims that, because cars that are constructively placed are eventually actually placed, the metric creates a potential double count. (*Id.*) AAR also states certain rail cars are supplied by pool arrangements that would distort individual railroad reporting. (*Id.*) UP states that the car order fulfillment percentage concept “applies only in situations where a customer orders and requests an empty car to be placed at a customer facility for loading.” (UP SNPR Comments 5.) UP alleges that there are numerous situations where customers do not place car orders, including intermodal cars, autoracks, covered hoppers, private cars, and pooled cars. (*Id.* at 5–8.) CSXT urges the Board not to adopt the proposed metric, stating that “in a considerable number of car supply scenarios, it is wholly unworkable.” (CSXT SNPR Comments 4.) BNSF and NSR also urge the Board not to adopt the metric, identifying a number of issues with the proposed metric. (BNSF SNPR Comments 6–7; NSR SNPR Comments 2–3.) BNSF questions the value of the data because the metric would cover several car types that customers do not order, and because there are significant differences between commodities and customers of similar commodities. (BNSF SNPR Comments 6–7.) NSR states that because it does not have a tariff governing car orders, the reporting will result in “significant double counting while reporting only actual placement will result in incomplete data.” (NSR SNPR Comments 3.)

*Shipper Interests and Other Stakeholders.* NITL and NGFA generally support the addition of this metric. (NITL SNPR Comments 4; NGFA SNPR Comments 13.) NITL stresses that it would provide additional visibility into industry operations that would be beneficial to a large number of shippers. (NITL SNPR Comments 4.) HRC urges the Board to take into consideration the fact that some railroads expire car orders at the end of each week, which will lead to an understatement of backlog orders. (HRC SNPR Comments 2.)

*Final Rule.* The Board will not adopt the proposed Request No. 12 from the SNPR in the final rules. As noted above, the railroad interests pointed out several practical and definitional challenges posed by this request, which make it incompatible in various ways with their operations and internal data tracking. Although shippers expressed support for this additional data, the Board believes that its potential utility would

be significantly diminished due to the problems identified by the railroad industry. In a revised form, it would not apply to a significant amount of rail traffic. As such, the limited data would not materially enhance the Board’s perspective on service performance.

#### Chicago

The SNPR proposes requiring that the Class I railroads operating at the Chicago gateway jointly report the following performance data elements for the reporting week: (1) Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso; and (2) average daily number of trains held for delivery to Chicago sorted by receiving carrier. Moreover, the request would require Class I railroad members of the CTCO to provide certain information regarding the CTCO Alert Level status and protocols.

*Railroad Interests.* CP reiterates its suggestion that the Board require certain data from the Belt Railway of Chicago (BRC) and Indiana Harbor Belt (IHB), which it states are the heart of the Chicago terminal. (CP SNPR Comments 3.) CP suggests a number of metrics that the two carriers could report on a weekly basis: Number of cars arrived per day, number of cars humped or processed per day, number of cars re-humped or re-processed per day, number of cars pulled per day, number of trains departed each day by railroad, average terminal dwell, average departure yard dwell, and percentage of trains departed on-time each day by railroad. CP believes much of the data is already kept by the switching carriers. (*Id.* at 3 n.3.) CP asserts that, in contrast to the other commodity and geographic specific data the Board proposes to require, information from BRC and IHB “is likely to provide early warnings of rail service issues and more likely to be useful in averting a significant service disruption.” (*Id.* at 3.)

AAR reports that the railroads have agreed to provide CMAP and other Illinois entities with a weekly report related to the Chicago terminal. (AAR SNPR Comments 10.) AAR states that “the railroads have begun to provide the Chicago entities a report that include[s] cars en route to Chicago and cars processed, each broken out by cars terminated in Chicago and those transitioning through . . . [and] a 7-day average freight transit time through Chicago.” (*Id.*) AAR states that it would not object to making the report part of the weekly CTCO report to the Board. (*Id.*) Additionally, in its reply, AAR urges the Board to reject CMAP’s

request for additional data. (AAR SNPR Reply 6–7.)

*Shipper Interests and Other Stakeholders.* NITL states that additional information from BRC and IHB would be helpful to many stakeholders and recommends that the Board contact the Bureau of Transportation Statistics for guidance on designing not overly burdensome operating statistics for these two carriers. (NITL SNPR Comments 4.) NITL also states that “a cooperative joint effort between the Class I carriers that ‘feed’ the Chicago region and the two belt lines to define a set of best measures would likely yield good results.” (*Id.*) NGFA reiterates its recommendation that the Board require three Chicago-specific metrics touching on idled cars in Chicago-area yards. (*Id.*) In its reply, NGFA urges the Board to evaluate whether AAR’s proposed metrics would improve the Board’s understanding of conditions in Chicago. (NGFA SNPR Reply 5.)

As noted above, CMAP also reports that it has reached an agreement with AAR to receive weekly information on “yard inventories, terminal dwell times for railcar yards, the number of railcars en route and processed, and the overall crosstown transit times” for the Chicago terminal, and that it agrees with AAR’s suggestion to share this report with the Board. (CMAP SNPR Comments 1.) CMAP recommends that the Board also require additional performance metrics focusing on intermodal trains. (*Id.*) CMAP also reiterates its suggestion that the Board expand the number of yards included in its terminal dwell metric, and add metrics covering crosstown travel times; speed, volume, and train length for all key rail corridors in the Chicago terminal; and delay and intermodal lifts. (*Id.* at 2.)

*Final Rule.* The Board will adopt the SNPR proposal for Chicago gateway reporting as the final rule. The Board will also accept the AAR’s voluntary offer to include the data it is reporting to CMAP in CTCO’s report to the Board.

While the Board appreciates CP’s recommendations for extending certain reporting requirements to IHB and BRC, the Board believes that the data reporting currently provided by the CTCO, through its Class I members, already provides focused visibility and heightened attention into this key gateway. The final rule, as augmented by the data that AAR has offered to submit voluntarily, will continue to maintain a robust view of operating conditions in the Chicago gateway. In the Chicago metrics, the Board will receive average daily car volumes at eleven key yards in the Chicago

gateway, including yards operated by BRC and IHB, and data showing average daily number of trains held for delivery at Chicago, sorted by carrier. Also, under Request No. 2, the Board will receive weekly average terminal dwell time for several Chicago gateway yards. This data will allow the Board to sufficiently monitor operating conditions and spot congestion or fluidity issues in the Chicago gateway. Therefore, the Board will not require the reporting of additional granularity at this time.

### Infrastructure Reporting

The *SNPR* proposes requiring that each Class I railroad, annually on March 1 with an update on September 1, report a description of significant rail infrastructure projects (defined as anticipated expenditures of \$75 million or more over the life of the project) that will commence during the current calendar year. The narrative report would require a brief description of each project, its purpose, location (state/counties), and projected date of completion. The *SNPR* modifies the *NPR*'s proposal by changing the reporting period from a quarterly report to annual with one annual update, and by increasing the lower limit for projects required to be reported on from \$25 million to \$75 million.

*Railroad Interests.* The railroads are generally supportive of the changes to this metric in the *SNPR*. (UP *SNPR* Comments 2; AAR *SNPR* Comments.) In its reply, AAR urges the Board to reject some shippers' push for more extensive reporting, stating that the *SNPR* "strikes a balance of keeping the Board apprised on the progress of significant infrastructure improvements without unduly burdening railroads with its reporting requirements." (AAR *SNPR* Reply 5.) AAR stresses that because none of the infrastructure reports can be automated, the requirement will draw on the time and effort of personnel to write the narrative. (*Id.*)

*Shipper Interests and Other Stakeholders.* Although some shippers support the modified infrastructure reporting requirements (NITL *SNPR* Comments 4), others urge the Board to adopt the *NPR* proposal (NGFA *SNPR* Comments 14; WCTL *SNPR* Comments 5). NGFA states that it sees one of the fundamental objectives of this proceeding as being the creation of "a one-stop-shop for more standardized information affecting rail service," which should include information on the impacts of infrastructure investment that would have been required under the *NPR*. (NGFA *SNPR* Comments 14.) NGFA asserts that access to this type of

information can vary widely between carriers. (*Id.*) NGFA stresses that having timely access to information on potential disruption to service is extremely important to shippers and, thus, asks the Board to require carriers to report the predicted time frames when freight traffic may be interrupted as a result of infrastructure projects. (*Id.*) WCTL states that infrastructure projects with a projected cost of \$25–\$75 million, which would not be reported under the *SNPR* proposal, can impact quality of service and together have an enormous impact on whether a railroad achieves and maintains fluidity. (WCTL *SNPR* Comments 6.) It also argues that curtailed reporting could undermine the Board's ability to carry out its responsibility to monitor the adequacy of service by rail carriers and their compliance with the common carrier obligation. (*Id.*)

*Final Rule.* The Board will adopt the *SNPR* proposal as the final rule. The Board believes that the request for an initial narrative response (due March 1) and a six-month update (due September 1) strikes an appropriate balance between the Board's need for current information about rail infrastructure projects and the burden of reporting on the railroads. Rather than specifying certain required elements, as in the initial proposal, the Board will allow railroads to exercise discretion and flexibility in preparing their narrative responses.

### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. sections 601–604. In its final rule, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a "significant impact on a substantial number of small entities." section 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. *White Eagle Coop. v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009).

The final rules adopted here are limited to Class I railroads and, thus, will not have a significant economic impact upon a substantial number of

small entities.<sup>12</sup> Therefore, the Board certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

### Paperwork Reduction Act

In a supplemental **Federal Register** notice, published at 81 FR 27,069 on May 5, 2016 (correction published at 81 FR 32268 on May 23, 2016), the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521 and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d), regarding: (1) Whether the collection of information in the proposed rule is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Any comments relating to these issues are addressed in the decision above.

The proposed collection was submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11. OMB withheld approval pending submission of the final rule. The Board has submitted the collection contained in this final rule to OMB for approval. Once approval is received, the Board will publish a notice in the **Federal Register** stating the control number and the expiration date for this collection. Under the PRA and 5 CFR 1320.11, an agency may not conduct or sponsor, and a person is not required to respond to,

<sup>12</sup> Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to our jurisdiction, the Board defines a "small business" as a rail carrier classified as a Class III rail carrier under 49 CFR 1201.1–1. See *Small Entity Size Standards Under the Regulatory Flexibility Act*, EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual carrier operating revenues of \$20 million or less in 1991 dollars, or \$36,633,120 or less when adjusted for inflation using 2015 data. Class II carriers have annual carrier operating revenues of less than \$250 million but in excess of \$20 million in 1991 dollars, or \$457,913,998 and \$36,633,120 respectively, when adjusted for inflation using 2015 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

a collection of information unless the collection displays a currently valid OMB control number.

*It is ordered:*

1. The final rule set forth below is adopted and will be effective on January 29, 2017. The initial reporting date will be February 8, 2017. Notice of the rule adopted here will be published in the **Federal Register**.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

**Summary of Final Rule**

Having considered all written and oral comments on the *SNPR*, the following changes are reflected in the final rule for the new regulations to be codified at 49 CFR 1250.1–1250.2 to

require Class I rail carriers, Class I carriers operating in the Chicago gateway, and the CTCO, through its Class I members, to submit to the Board reports on railroad performance. The regulations are below. The table below provides a brief description of the differences between the *SNPR* and this final rule, which were explained in detail above.

TABLE 1—SUMMARY OF CHANGES IN THE DATA REQUESTS BETWEEN THE *SNPR* AND THE FINAL RULE

SNPR	Final rule
Saturday through Friday reporting week with reports to be filed the following Wednesday.	Modify the reporting week for Request No. 11 to Sunday through Saturday.
Allow carriers to report unit train data based on their assignment of train codes in the ordinary course of business.	Add the requirement to submit the definition of a unit train to the Board for publication on its Web site and update that definition should it change.
(1) System-average train speed for intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, manifest, fertilizer unit, and, system.	Delete the fertilizer unit component.
(2) Weekly average terminal dwell time for each carrier's system and its 10 largest terminals.	No changes.
(3) Weekly average cars online for seven car types, other, and total .....	No changes.
(4) Weekly average dwell time at origin for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, fertilizer unit, all other unit trains, and manifest.	Delete the fertilizer unit and manifest components.
(5) Weekly total number of loaded and empty trains held short of destination or scheduled interchange by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, fertilizer unit, other unit, and manifest) and by cause (crew, locomotive power, or other). Instruct railroads to run a same-time snapshot of trains holding each day and then calculate the average for the reporting week.	Delete the fertilizer unit component.
(6) Weekly average number of loaded and empty cars operating in normal movement, which have not moved in ≥ 48 hours, sorted by service type and measured by a daily same-time snapshot.	Modify the definition of fertilizer.
(7) Weekly total number of grain cars loaded and billed, by state, for certain STCCs. Also include total cars loaded and billed in shuttle service versus all other ordering systems.	No changes.
(8) For the STCCs delineated in Request No. 7, running totals of grain car orders in manifest service submitted versus grain car orders filled, and for unfilled orders, the number of car orders that are 1–10 days past due and 11+ days past due.	No changes.
(9) Weekly total coal unit train loadings or carloadings versus planned loadings by coal production region.	No changes.
(10) Grain shuttle (or dedicated grain train) trips per month .....	Modify to apply only to grain shuttles, not other grain trains.
(11) Weekly originated carloads by 23 commodity categories .....	Add cars received in interchange. Delete fertilizer from the main reporting category, but add a second category requiring carriers to report fertilizer originated carloads and cars received in interchange by the STCCs defined in Request No. 6.
(12) Car order fulfillment percentage for the reporting week by 10 car types.	Delete this proposed request.
<i>Chicago.</i> Class I's operating in Chicago must jointly report each week: Average daily car volume in certain yards, and average daily number of cars held for delivery to Chicago sorted by receiving carrier. Class I railroad members of the CTCO must provide certain information regarding the CTCO Alert Level status and protocols.	No changes.
<i>Infrastructure.</i> An annual report of significant rail infrastructure projects that will be commenced during that calendar year, and a six-month update on those projects. The report is to be in a narrative form briefly describing each project, its purpose, location, and projected date of completion. The Board proposes to define a significant project as one with a budget of \$75 million or more.	No changes.

**List of Subjects in 49 CFR Part 1250**

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Decided: November 29, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

**Kenyatta Clay,**  
*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, subchapter C, of the Code of Federal Regulations by adding part 1250 to read as follows:

**PART 1250—RAILROAD PERFORMANCE DATA REPORTING**

Sec.

- 1250.1 General.
- 1250.2 Railroad performance data elements.
- 1250.3 Chicago terminal reporting.
- 1250.4 Rail infrastructure projects reporting.

**Authority:** 49 U.S.C. 1321 and 11145.

**§ 1250.1 General.**

- (a) The reporting period covers:
- (1) For § 1250.2(a)(1)–(9), 12:01 a.m. Saturday–11:59 p.m. Friday;
  - (2) For § 1250.2(a)(10), the previous calendar month;
  - (3) For § 1250.2(a)(11), 12:01 a.m. Sunday–11:59 p.m. Saturday;
  - (4) For § 1250.3(a)(1)–(2), 12:01 a.m. Saturday–11:59 p.m. Friday.
- (b) The data required under § 1250.2 and § 1250.3(a) must be reported to the Board via the method and in the form prescribed by the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) by 5 p.m. Eastern Time on Wednesday of each week. In the event that a particular Wednesday is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open.
- (c) Each reporting railroad shall provide an explanation of its methodology for deriving the data with its initial filing and an update if and when that methodology changes. This explanation should include the unit train definition that the railroad will use in its data reporting, which shall reflect its assignment of train codes in accordance with its normal business practices. If and when a railroad changes its definition of unit train it shall notify the Board of the change at the time it goes into effect in the form prescribed by OPAGAC.
- (d) Unless otherwise provided, the performance data, Chicago data and

alert levels, narrative infrastructure reporting, and any methodologies or explanations of data collection reported to the Board under this part will be publicly available and posted on the Board's Web site.

**§ 1250.2 Railroad performance data elements.**

(a) Each Class I railroad must report the performance data elements in paragraphs (a)(1)–(9) and (11) of this section on a weekly basis, and the data elements in paragraph (a)(10) on a monthly basis, for the reporting period, as defined in § 1250.1(a). However, with regard to data elements in paragraph (a)(7) and (8), Kansas City Southern Railway Company is not required to report information by state, but instead shall report system-wide data.

(1) System-average train speed for the overall system and for the following train types for the reporting week. (Train speed should be measured for line-haul movements between terminals. The average speed for each train type should be calculated by dividing total train-miles by total hours operated.)

- (i) Intermodal.
- (ii) Grain unit.
- (iii) Coal unit.
- (iv) Automotive unit.
- (v) Crude oil unit.
- (vi) Ethanol unit.
- (vii) Manifest.
- (viii) System.

(2) Weekly average terminal dwell time, measured in hours, excluding cars on run-through trains (*i.e.*, cars that arrive at, and depart from, a terminal on the same through train), for the carrier's system and its 10 largest terminals in terms of railcars processed. (Terminal dwell is the average time a car resides at a specified terminal location expressed in hours.)

(3) Weekly average cars on line by the following car types for the reporting week. (Each railroad shall average its daily on-line inventory of freight cars. Articulated cars should be counted as a single unit. Cars on private tracks (*e.g.*, at a customer's facility) should be counted on the last railroad on which they were located. Maintenance-of-way cars and other cars in railroad service are to be excluded.)

- (i) Box.
- (ii) Covered hopper.
- (iii) Gondola.
- (iv) Intermodal.
- (v) Multilevel (Automotive).
- (vi) Open hopper.
- (vii) Tank.
- (viii) Other.
- (ix) Total.

(4) Weekly average dwell time at origin for the following train types:

Grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, and all other unit trains. (For the purposes of this data element, dwell time refers to the time period from release of a unit train at origin until actual movement by the receiving carrier.)

(5) The weekly average number of trains holding per day sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and manifest) and by cause (crew, locomotive power, or other). (Railroads are instructed to run a same-time snapshot of trains holding each day, and then to calculate the average for the reporting period.)

(6) The weekly average of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer (the following Standard Transportation Commodity Codes (STCCs): 2871236, 2871235, 2871238, 2819454, 2812534, 2818426, 2819815, 2818170, 2871315, 2818142, 2818146, 2871244, 2819173, and 2871451), and all other). In order to derive the averages for the reporting period, carriers should run a same-time snapshot each day of the reporting period, capturing cars that have not moved in 48 hours or more. The number of cars captured on the daily snapshot for each category should be added, and then divided by the number of days in the reporting period. In deriving this data, carriers should include cars in normal service anywhere on their system, but should not include cars placed at a customer facility; in constructive placement; placed for interchange to another carrier; in bad order status; in storage; or operating in railroad service (*e.g.*, ballast).

(7) The weekly total number of grain cars loaded and billed, reported by state, aggregated for the following STCCs: 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). "Total grain cars loaded and billed" includes cars in shuttle service; dedicated train service; reservation, lottery, open and other ordering systems; and private cars. Additionally, separately report the total cars loaded and billed in shuttle service (or dedicated train service), if any, versus total cars loaded and billed in all other ordering systems, including private cars.

(8) For the aggregated STCCs listed in § 1250.2(a)(7), for railroad-owned or leased cars that will move in manifest

service, each railroad shall report by state the following:

(i) Running total of orders placed;  
 (ii) The running total of orders filled;  
 (iii) For orders which have not been filled, the number of orders that are 1–10 days past due and 11+ days past due, as measured from when the car was due for placement under the railroad's governing tariff.

(9) Weekly average coal unit train loadings or carloadings versus planned loadings for the reporting week by coal production region. Railroads have the option to report unit train loadings or carloadings, but should be consistent week over week.

(10) For Class I carriers operating a grain shuttle program, the average grain shuttle turns per month, for the total system and by region, versus planned turns per month, for the total system and by region. This data shall be included in the first weekly report of each month, covering the previous calendar month.

(11) Weekly carloads originated and carloads received in interchange by 23 commodity categories, separated into two subgroups:

(i) Twenty-two historical commodity categories.

- (A) Chemicals.
- (B) Coal.
- (C) Coke.
- (D) Crushed Stone, Sand and Gravel.
- (E) Farm Products except Grain.
- (F) Food and Kindred Products.
- (G) Grain Mill Products.
- (H) Grain.
- (I) Iron and Steel Scrap.
- (J) Lumber and Wood Products.
- (K) Metallic Ores.
- (L) Metals.
- (M) Motor Vehicles and Equipment.
- (N) Non Metallic Minerals.
- (O) Petroleum Products.
- (P) Primary Forest Products.
- (Q) Pulp, Paper and Allied Products.
- (R) Stone, Clay and Glass Products.
- (S) Waste and Scrap Materials.
- (T) All Other.

(U) Containers.

(V) Trailers.

(ii) Fertilizer commodity category.

(A) Fertilizer (for STCCs defined in paragraph (a)(6) of this section).

(B) [Reserved]

(b) [Reserved]

#### § 1250.3 Chicago terminal reporting.

(a) Each Class I railroad operating at the Chicago gateway must jointly report the following performance data on a weekly basis for the reporting period, as defined in § 1250.1(a). The reports required under this section may be submitted by the Association of American Railroads (AAR).

(1) Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and

(2) Average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week. The average daily number should be derived by taking a same time snapshot each day of the reporting week, capturing the trains held for each railroad at that time, and then adding those snapshots together and dividing by the days in the reporting week.

(i) For purposes of this request, “held for delivery” refers to a train staged by the delivering railroad short of its scheduled arrival at the Chicago gateway at the request of the receiving railroad, and that has missed its scheduled window for arrival.

(ii) If Chicago terminal yards not identified in § 1250.2(b)(1) are included in the Chicago Transportation Coordination Office's (CTCO) assessment of the fluidity of the gateway for purposes of implementing service contingency measures, then the data requested in § 1250.2(b)(1) shall also be reported for those yards.

(b) The Class I railroad members of the CTCO (or one Class I railroad member of the CTCO designated to file

on behalf of all Class I railroad members, or AAR) must:

(1) File a written notice with the Board when the CTCO changes its operating Alert Level status, within one business day of that change in status.

(2) If the CTCO revises its protocol of service contingency measures, file with the Board a detailed explanation of the new protocol, including both triggers and countermeasures, within seven days of its adoption.

(c) Reports under paragraph (b) of this section shall be reported to the Director of the Office of Public Assistance, Governmental Affairs and Compliance (OPAGAC) via the method and in the form prescribed by OPAGAC.

#### § 1250.4 Rail infrastructure projects reporting.

(a) Class I railroads shall submit annually a narrative report of significant rail infrastructure projects that will be commenced during the current calendar year, and a six-month update on those projects. The reports should briefly describe each project, its purpose, location (state/counties), and projected date of completion.

(b) A “significant rail infrastructure project” is defined as a project with anticipated expenditures of \$75 million or more over the life of the project.

(c) The narrative report should be submitted no later than March 1 of each calendar year and the update no later than September 1 of each calendar year via email to the Board's Office of Public Assistance, Governmental Affairs and Compliance (OPAGAC) via the method and in the form prescribed by OPAGAC. In the event that March 1 or September 1 is a Federal holiday, weekend, or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open.

[FR Doc. 2016–29131 Filed 12–2–16; 8:45 am]

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