

include requirements for providing notice (i.e., deed recordation) in the real property records for properties where residual contamination will remain. For this Site, the ICs include a deed recordation with a notice that buried contaminants remain on the property, and a prohibition against any reuse, development or other activities that might disturb or damage the affected areas without the approval of EPA, TCEQ and the property owner. The requirement for institutional controls was met through the August 2, 2006 deed recordation in the Official Public Records of Real Property of Orange County, Texas for each of the two capped areas.

Five-Year Review

Hazardous substances remain at the Site above levels that allow for unlimited use and unrestricted exposure. Therefore, the EPA must conduct a statutory five-year review of the remedy no less than every five years after the initiation of the remedial action pursuant to CERCLA Section 121(c), and as provided in the current guidance on Five Year Reviews (OSWER Directive 9355.7-03B-P, Comprehensive Five-Year Review Guidance, June 2001). Based on the five-year reviews, EPA will determine whether human health and the environment continue to be adequately protected by the implemented remedy. Five-year reviews for this Site were completed in September 2000 and September 2005. The reviews found that the remedy remains protective of human health and the environment, and that the Site appears to have been properly maintained during the period between reports. The next five-year review will occur no later than September 2010.

Community Involvement

Public participation activities required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617, have been satisfied, and documents which EPA generated and/or relied on are available to the public in these information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Texas, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective October 15, 2007

unless EPA receives adverse comments by September 13, 2007. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 19, 2007.

Richard E. Greene,

Regional Administrator, EPA Region 6.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under Texas (“TX”) by removing the entry for “Bailey Waste Disposal.”

[FR Doc. E7-15891 Filed 8-13-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1243

[STB Ex Parte No. 661 (Sub-No. 1)]

Rail Fuel Surcharge Reporting

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board is amending its regulations to require Class I railroads to report certain data concerning fuel costs and fuel surcharges billed. The data reported pursuant to this rule will provide an overall picture of the use of fuel

surcharges and will permit the Board to monitor the fuel surcharge practices of Class I carriers. The new rule will be codified as 49 CFR 1243.3. The reporting form can be found in an Appendix to this section.

DATES: This rule is effective November 12, 2007.

ADDRESSES: Comments and material received from the public, as well as documents referred to herein, are part of the Board’s docket in STB Ex Parte No. 661 (Sub-No. 1) and are available for inspection or copying at the Board’s Public Docket Room, Room 131, 395 E Street, SW., Washington, DC 20423-0001, are posted on the Board’s Web site, at <http://www.stb.dot.gov>, and are available from the Board’s contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: asapdc@verizon.net; telephone number: 202-306-4004).

FOR FURTHER INFORMATION, CONTACT:

Joseph H. Dettmar at 202-245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The Board instituted this proceeding, in conjunction with our decision in *Rail Fuel Surcharges*, STB Ex Parte No. 661 (STB served Jan. 26, 2007), to solicit comments, pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), regarding the Board’s proposal to require all Class I (large) railroads to submit a monthly report containing the following information: (1) Total monthly fuel cost; (2) gallons of fuel consumed during the month; (3) increased or decreased cost of fuel over the previous month; and (4) total monthly revenue from fuel surcharges. In *Rail Fuel Surcharges*, STB Ex Parte No. 661 (Sub-No. 1) (STB served Jan. 26, 2007) (published at 72 FR 4676 on Feb. 1, 2007), the Board sought comments regarding: (1) Whether the particular collection of information described above 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.

Comments

The Board received comments on the proposed rules from the following shipper interests: Edison Electric Institute (EEI); National Grain and Feed Association (NGFA); North Dakota Grain Dealers Association (NDGDA); Snavelly King Majoros O'Connor & Lee, Inc. (Snavelly); Total Petrochemicals, USA, Inc. (Total). The Board also received comments from the following rail carriers: Canadian National Railway Company (CN); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); and Union Pacific Railroad Company (UP). All but NS support the reporting requirement. Railroads suggest several ways to minimize their reporting burden. In contrast, shippers suggest additional data that they assert should be collected to increase the report's utility. No comments were received on burden estimates.

CN, CSXT, and UP suggest that the report be submitted quarterly, rather than monthly, to reduce the degree to which the data might be misinterpreted and to be consistent with reporting periods used by the Securities and Exchange Commission (SEC), as well as periods used by the STB for other reports. CSXT and UP also suggest that the deadline for submitting a report should be 30 days after the end of the reporting period (rather than 20 days, as proposed) to be more consistent with other STB reporting deadlines.

CN, CSXT, and UP also ask the Board to clarify whether the report is intended to include data on both regulated and unregulated traffic. CN and CSXT argue that it would be difficult to segregate revenue by tariff, exempt, or contract traffic, while UP states that aggregated reporting (at least as to revenue derived from its numerous separate/distinct fuel surcharge programs) may be more burdensome and may lead to confusion and misinterpretation. In addition, CSXT asks the Board to clarify whether reported rail fuel surcharge revenue should include all revenue earned/billed during the time period or only revenue collected, and whether reported fuel costs should include state fuel taxes.

NS opposes this reporting requirement, arguing that Class I railroads must already submit extensive financial reports to the SEC. NS also argues that a carrier that does not impose a fuel surcharge on STB-regulated traffic should be exempt from this reporting requirement because its report would have no relation to any Board function.

Shippers are generally concerned that the proposed Fuel Surcharge Report would not provide sufficient transparency to enable the Board and the public to monitor the fairness of the rail fuel-cost recovery practices. Additional data requested includes: Fuel consumption per the same unit (whether mile, ton-mile, car-mile, etc.) used by the carrier to assess the fuel surcharge; total ton-miles and/or car-miles; total recovery of fuel costs, whether by fuel surcharge or any other means; commodity-specific data; and data that distinguishes between freight that is subject to fuel surcharges and freight that is not.¹

In addition, EEI and TOTAL ask the Board to direct that the report reference a single fuel index and a single, objective source of railroad miles. Snavelly asks the Board to direct that the fuel surcharge data also be reported in the Waybill Sample (in the accessorial field) and to clarify that "total fuel cost" should exclude gains or losses from fuel hedging.

The proposed rule was submitted to OMB for review as required under the PRA, 5 U.S.C. 3507(d) and 5 CFR 1320.11. No comments were received from OMB, which has tentatively approved the reporting requirement, pending publication and review of the final rule. OMB has 60 days to review the final rule. The Board will publish a separate notice of OMB's final action. This collection has been assigned Control Number 2140-0014.²

The Final Rule

Under 49 U.S.C. 10702, the Board has authority to address the reasonableness of a rail carrier's practices. The Board also has specific authority under 49 U.S.C. 11145(a)(1) to require regulated rail carriers to file annual, periodic, and special reports with the Board. This rule to require the Report of Fuel Cost, Consumption, and Surcharge Revenues will provide an overall picture of the use of fuel surcharges and will permit the Board to monitor the current fuel surcharge practices of Class I carriers.

¹ WCTL would further separate the data between interchange and non-interchange traffic and would require data on mis-aligned surcharge threshold recovery (i.e., when the base rate for the fuel surcharge is below the fuel cost in the underlying rail rate, so that the carrier is "double-dipping"), as well as the amount of fuel surcharge credits provided to shippers for months in which fuel costs fall below the level at the time the existing rate was established. Snavelly argues that additional reporting would not burden carriers because they already submit fuel cost data to the Association of American Railroads as part of the Rail Cost Adjustment Factor.

² Unless reapproved, OMB approval for this report expires 3 years after the date of approval of the final rules.

Scope of the Report

The four line items originally proposed are intended to reflect aggregate data on fuel costs and fuel surcharge revenue. Although the underlying ruling adopted in STB Ex Parte No. 661—that the use of rate-based calculations to determine a fuel surcharge is an unreasonable practice—is applicable only to regulated traffic, several carriers argue that it would be unduly burdensome to require railroads to segregate the fuel costs and revenue for regulated traffic. We can discern no practical method for allocating fuel costs for regulated traffic alone. Therefore, we will not require railroads to segregate fuel costs.

However, upon further reflection and review of the comments received, we believe that carriers should be required to segregate and separately report the total fuel-surcharge revenue collected from regulated traffic. Our decision to require these data is consistent with our concerns, as detailed in our decisions in STB Ex Parte No. 661, regarding the potentially disparate impact of fuel surcharges on regulated shippers. Requiring these additional data, as urged by several commenters, will increase the utility of the report as a tool for monitoring the use of these surcharges on regulated traffic and should not unduly burden reporting railroads. This information should be readily available to reporting railroads because railroads bill shippers on an individual basis. If in practice this added requirement is more burdensome for a carrier than we anticipate, that carrier may bring that to our attention by seeking an individual exemption.

We also clarify that the costs reported in lines 1 and 3 should include state fuel taxes, and that the revenue reported in line 4 should be the revenue billed in that period rather than the revenue collected in that period.

Who Must Report

All Class I carriers, even those that impose no fuel surcharges on regulated traffic, will be required to submit this report. This approach will better enable the Board to monitor industry-wide fuel surcharge practices. Moreover, unregulated traffic includes traffic that has been exempted under 49 U.S.C. 10502. Were these reports to suggest that a carrier was imposing fuel surcharges that over-recovered for its actual fuel costs, a shipper could file a complaint asking the Board to investigate and revoke an exemption under section 10502(d).

Frequency and Due Date of Reports

Based on the comments received, we will require these reports to be submitted on a quarterly basis, due 30 days after the end of the reporting period. As the railroads point out, these changes will make this reporting requirement more consistent with other financial reporting to the Board and to the SEC. These changes will decrease the reporting burden on carriers while retaining the utility of the reports. The aggregated nature of the data, combined with the longer reporting interval, will provide a more useful and reliable regulatory tool for monitoring the relationship between changes in revenues and costs.

Suggestions To Require Additional Data

With the one exception noted above, we will not require carriers to submit additional data in this report.³ The Fuel Surcharge Report is intended to provide an overall picture of the use of fuel surcharges. It is not intended as a

³ Any suggestion to add information on fuel surcharge data into the Waybill Sample would be more properly addressed in a petition for a rulemaking involving the Waybill Sample.

substitute for evidence brought in an individual case.

Regulatory Flexibility Analysis

The Board concludes that this action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1243

Railroads, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 721, 49 U.S.C. 11145.

Decided: August 8, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,
Secretary.

■ For the reasons set forth in the preamble, the Surface Transportation Board amends part 1243 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1243—QUARTERLY OPERATING REPORTS—RAILROADS

■ 1. The authority citation for part 1243 continues to read as follows:

Authority: 49 U.S.C. 721, 49 U.S.C. 11145.

■ 2. Add a new § 1243.3 to read as follows:

§ 1243.3 Report of fuel cost, consumption, and surcharge revenue.

Commencing with reports for the 3 months beginning October 1, 2007, all Class I railroads are required to file quarterly a Report of Fuel Cost, Consumption, and Surcharge Revenue, in accordance with the Board's reporting form. Such reports shall be filed, in duplicate, with the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001, within 30 days after the end of the quarter reported.

Appendix to Section 49 CFR 1243.3

OMB Control No. 2140-0014

Expires ____, 2010

Railroad Name _____

QUARTERLY REPORT OF FUEL COST, CONSUMPTION, AND SURCHARGE REVENUE FOR THE QUARTER ENDING _____, 20__

[Instructions: The report shall contain data only for the reported quarter. Cost and revenue are defined as accrued or earned that quarter. The report shall be filed with the Surface Transportation Board on or before 30 days after the end of that quarter.]

| Line No. | Data (a) | Amount (in thousands) (b) |
|----------|---|---------------------------------|
| 1 | Total fuel cost ¹ | |
| 2 | Total gallons of fuel consumed ¹ | |
| 3 | Total increase or decrease in cost of fuel ² | |
| 4 | Total revenue from fuel surcharges ³ | |
| 5 | Revenue from fuel surcharges on regulated traffic | |

¹ Include fuel for freight, yard and work train locomotives. Include fuel charged to train and yard service (function 67—Locomotive Fuels). Include all other fuel used for railroad operations and maintenance, including motor vehicles and power equipment not charged to function 67—Locomotive Fuels.

² Show the total increase or decrease in fuel cost over previous quarter.

³ Show Fuel surcharges billed for all traffic (line 4) and for only regulated traffic (line 5).

I, the undersigned, _____, Title: _____, state that this report was prepared by me or under my supervision and that I have carefully examined it and on the basis of my knowledge, belief, and verification declare it to be full, true and correct.

Supplemental Information About the Fuel Surcharge Report

The following information is provided in compliance with OMB requirements,

pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*:

Information in this report is intended to permit the Board to monitor the fuel surcharge practices of Class I carriers.

The estimated annual hourly, per respondent burden for filing this report is 12 hours.

This report is mandatory for Class I carriers.

Information collected through this report is published on the Board's website and is maintained by the agency for at least 2 years.

The display of a currently valid OMB control number for this collection is required by law. Under 5 CFR 1320.5(b), persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

[FR Doc. E7-15863 Filed 8-13-07; 8:45 am]

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