

Dated: June 11, 2008.

**William R. Steiger,**

*Director, Office of Global Health Affairs.*

Approved: June 23, 2008.

**Michael O. Leavitt,**

*Secretary of Health and Human Services.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Part 1244

[STB Ex Parte No. 385 (Sub-No. 6)]

#### Waybill Sample

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is proposing to require all carriers that submit carload-waybill-sample information (Waybill Sample) under 49 CFR part 1244 to report fuel surcharge revenue in a separate waybill field created by the Board for that purpose, commencing with the Waybill Sample filed for January 2009. The Board will revise the waybill-file-record layout to reflect this change.

**DATES:** Comments are due by July 18, 2008.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 385 (Sub-No. 6), 395 E Street, SW., Washington, DC 20423-0001.

Copies of written comments received by the Board will be posted to the Board's Web site at <http://www.stb.dot.gov> and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC. Copies of the comments will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0235 or 395 E Street, SW., Washington, DC 20423-0001.

**FOR FURTHER INFORMATION, CONTACT:** Mac Frampton, (202) 245-0317 or

[mac.frampton@stb.dot.gov](mailto:mac.frampton@stb.dot.gov). [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** The Board is proposing to require rail carriers to submit waybill information about fuel surcharge revenue as a separate item within the Waybill Sample.

A carload waybill is a document describing the characteristics of an individual rail shipment: originating and terminating freight stations, the names of all railroads participating in the movement, the points of all railroad interchanges, the number of cars, the car types, movement weight in hundredweight, the commodity, and the freight revenue. Under 49 CFR part 1244, a railroad is required to file a Waybill Sample for all line-haul revenue waybills terminating on its lines if, in any of the three preceding years, the railroad terminated 4500 or more carloads, or it terminated at least 5% of the total revenue carloads that terminate in a particular state.

The Waybill Sample is the Board's primary source of information about freight rail shipments terminated in the United States. Of particular importance, the Board relies on the data in the "Freight Revenue" field to compute its "Revenue Shortfall Allocation Method" (RSAM) benchmarks.

In the last few years, questions have been raised about how railroads reported fuel surcharge revenue in the Waybill Sample. The Board sought to address those questions, and to provide for consistency in the reporting of fuel surcharge revenue in the Waybill Sample, by clarifying that all railroads that are required to submit a Waybill Sample under 49 CFR part 1244 should report fuel surcharge revenue in the "Freight Revenue" field (columns 83-91) in the waybill-file-record layout. *Waybill Sample*, STB Ex Parte No. 385 (Sub-No. 6) (*Clarification*) (published at 72 FR 72000 on December 19, 2007).

In a request for reconsideration filed on December 31, 2007, the National Industrial Transportation League (NITL) argued that the Board's *Clarification* made it more difficult to identify fuel surcharge revenue in the Waybill Sample and, therefore, did not promote transparency as to the use of fuel surcharges by rail carriers. NITL, with the support of several other shippers, shipping groups, and other interests, asked the Board to require all carriers that submit a Waybill Sample to report

fuel surcharge revenue separately in a Waybill Sample field established for that purpose. No rail carrier objected to, or even responded to, NITL's petition.

As explained in more detail in the Board's decision served on June 16, 2008, reporting fuel surcharge revenue in a separate field in the Waybill Sample will increase transparency about the use of fuel surcharges by rail carriers without detracting from the Board's ability to obtain consistent results for the purposes of including such revenue in its RSAM calculations. Therefore, the Board proposes to revise the waybill-file-record layout to create a new field for the purpose of reporting fuel surcharge revenue.

The Board's June 16, 2008 decision in this proceeding is available on the Board's Web site at [www.stb.dot.gov](http://www.stb.dot.gov). Copies of the decision will also be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC, or (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0235 or 395 E Street, SW., Washington, DC 20423-0001.

The Board will request incorporation by reference approval from the Director of the **Federal Register** pursuant to 1 CFR part 51 for the January 2009 edition of Statement No. 81-1, Procedures for Sampling Waybill Records by Computer.

Pursuant to 5 U.S.C. 605(b), the Board certifies 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 1244

Freight, Railroads, Reporting and recordkeeping.

**Authority:** 49 U.S.C. 11144, 49 U.S.C. 11145.

Decided: June 12, 2008.

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

**Anne K. Quinlan,**

*Acting Secretary.*

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