

VI. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal

governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

James Gulliford,
Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart—AA Missouri

- 2. In § 52.1320, paragraph (c), the table is amended by revising the entry for 10-6.180 to read as follows:

§ 52.1320 Identification of Plan.

* * * * *
(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10-6.180	Measurement of Emissions of Air Contaminants.	11/30/2018	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule].	
*	*	*	*	*

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SURFACE TRANSPORTATION BOARD
49 CFR Part 1250

[Docket No. EP 724 (Sub-No. 5)]

Petition for Rulemaking; Railroad Performance Data Reporting

AGENCY: Surface Transportation Board.

ACTION: Notification of commencement of proceeding and request for comments.

SUMMARY: The Surface Transportation Board (Board) is opening a rulemaking proceeding in response to a petition to amend its railroad performance data reporting rules. The Board does not rule on the merits of the petition but requests additional information regarding several issues raised in the petition and reply.

DATES: Comments addressing the information requests are due by May 6, 2019. Replies are due by May 20, 2019.

ADDRESSES: Comments and replies should reference Docket No. EP 724 (Sub-No. 5) and be submitted via the Board's e-filing format or in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at www.stb.gov at the E-Filing link.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm, (202) 245-0391. Assistance for the hearing impaired is available through Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On December 6, 2018, the American Chemistry Council (ACC) filed a petition for rulemaking¹ to amend the Board's railroad performance data reporting rules at 49 CFR part 1250. The rules, which became effective on March 21, 2017, require all Class I railroads and the Chicago Transportation Coordination Office, through its Class I members, to report certain service performance metrics on a weekly, semiannual, and occasional basis. ACC requests that the Board modify its rules to: (1) Include chemical and plastics (STCC 28) traffic as a distinct reporting category for the "cars held" metric at 49 CFR 1250.2(a)(6); (2) extend the weekly average terminal dwell time reporting requirement at 49 CFR 1250.2(a)(2) to include all Class I, terminal, and switching carriers at the Chicago gateway; and (3) extend the same types of terminal reporting requirements for the Chicago gateway (as extended by ACC's second request) to the New Orleans, East St. Louis, and Memphis gateways (together, Mississippi Gateways). (ACC Pet. 1.) Among other things, ACC argues that shippers benefit directly from railroad performance data reported under the Board's existing rules and its members use that data to identify and monitor service issues, anticipate and prepare for the impacts those issues may have as they become more severe, spot service trends that affect railcar cycle times, and mitigate the impact of cycle time variability. (*Id.* at 4.) ACC states that access to performance data also enables its members to have collaborative discussions with carriers and allows shippers to suggest service adjustments

to routes, fleet sizes, and sourcing locations as viable solutions. (*Id.*)

On January 28, 2019, the Association of American Railroads (AAR) filed a reply in opposition to ACC's petition, arguing that additional commodity-specific reporting should not be adopted, that ACC failed to demonstrate the public benefit of additional Chicago reporting, and that joint Mississippi Gateways information is unnecessary and would be overly burdensome. Among other things, AAR argues that continuous changes to the Board's performance reporting rules would impose ongoing costs on railroads, which would need to make programming changes to their systems to enable compliance. (AAR Reply 3; *see also id.* (quoting AAR Reply, Jan. 7, 2018, *U.S. Rail Serv. Issues—Performance Data Reporting*, EP 724 (Sub-No. 4) (stating that "any further changes to the list of required STCC codes [relating to fertilizer] for reporting will necessitate additional programming changes and impose other costs on rail carriers.")) Further, with respect to the Mississippi Gateways reporting, AAR states, because the Mississippi Gateways do not have the equivalent of the Chicago Transportation Coordination Office, any joint service report would need to be built from the ground up from data from individual carriers and would be burdensome to undertake; AAR states the burden is not justified. (AAR Reply 6.)

The Board will open a rulemaking proceeding because ACC's petition warrants further consideration. At this time, the Board is not making a determination regarding the merits of ACC's specific proposals to amend 49 CFR part 1250, but rather will direct the parties to provide additional information regarding ACC's proposed amendments to the rules.

ACC will be directed to elaborate on shippers' experiences using performance data reported under the existing rules to inform their business and supply chain decision-making, in particular to mitigate rail service problems. The Board seeks specific examples of these situations. ACC will also be directed to explain how the additional data that it proposes to be reported would materially enhance shippers' business and supply chain decision-making with reference to specific scenarios or real-world circumstances.² And, if possible, ACC should quantify the value of additional reporting.

The Board will also direct ACC to provide additional data supporting its selection of the Mississippi Gateways, relative to other terminal locations, both in terms of their significance to the overall rail network and specifically to chemical traffic shipments. Further, the Board requests ACC provide an explanation in greater detail of why the existing performance data reported pursuant to § 1250.2(a)(2) are insufficient indicators as to rail performance across the network, including at the Mississippi Gateways.

AAR will be directed to explain in greater detail (1) the "programming changes" railroads would need to make to comply with the proposed reporting requirements; (2) the "other costs" that would be associated with complying with the proposed reporting requirements; and (3) the specific process individual carriers would need to undertake to build "from the ground up data" to compile a joint service report at each proposed Mississippi Gateway location. The Board directs AAR to provide data that further describes or quantifies the "ongoing costs" and "burden" of the changes.

The Board will direct the parties to provide the information described above by May 6, 2019. Any interested stakeholders may also file comments addressing the information requests described above by May 6, 2019. Replies will be due by May 20, 2019.

It is ordered:

1. ACC's petition for rulemaking is granted to the extent discussed above.
2. The parties are directed to provide the information described above by May 6, 2019. Other initial comments are also due by May 6, 2019.
3. Replies are due by May 20, 2019.
4. This decision is effective on its date of service.

Decided: April 5, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,
Clearance Clerk.

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¹ On December 12, 2018, ACC filed an errata to its petition.

² ACC need not disclose any confidential shipper information.