

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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STB Docket No. EP 757
Policy Statement on Demurrage and Accessorial Rules and Charges

STB Docket No. EP 759
Demurrage Billing Requirements

**COMMENTS ON BEHALF OF
DIVERSIFIED CPC INTERNATIONAL, INC.**

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Dated: November 6, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. EP 757
Policy Statement on Demurrage and Accessorial Rules and Charges

STB Docket No. EP 759
Notice of Proposed Rulemaking
Demurrage Billing Requirements

**COMMENTS ON BEHALF OF
DIVERSIFIED CPC INTERNATIONAL, INC.**

Diversified CPC International, Inc. (Diversified CPC) hereby submits the following comments regarding the proposed Policy Statement on Demurrage and Accessorial Rules and Charges,¹ and proposed rules on Demurrage Billing Requirements,² in response to the Surface Transportation Board's (STB or Board) notices served on October 7, 2019.

Diversified CPC thanks the Board for promptly issuing the proposed policy and rules and we support the Board's proposals. Summarized herein are comments on each proposal.

1.0 DEMURRAGE CHARGES.

Diversified CPC supports the principles behind the proposed policies that (1) confirms a policy that demurrage rules are to incentivize the efficiency of the rail network and (2) addresses

¹ *Policy Statement on Demurrage and Accessorial Rules and Charges*, STB EP 757.

² *Demurrage Billing Requirements*, STB Docket No. EP 759.

the unreasonableness of charges that are outside the “reasonable control of the shipper to avoid.”³

Diversified CPC’s comments presented in the proceeding on Demurrage and Accessorial Charges focused primarily on changes to the Rule tariffs announced by Norfolk Southern Railroad (NS or Norfolk Southern), including the addition of a Congestion Charge, the elimination of demurrage credits on private cars, and railroad operating practices that result in demurrage being assessed on “bunched” cars ⁴

On July 1, 2019, Norfolk Southern announced numerous changes to its Demurrage and Storage Rules and Charges, NS 6004-D; Accessorial Service Rules and Charges Tariff, NS 8002-A; Conditions of Carriage #1-E; Switching and Absorption Rules and Charges Tariff, NS 8001-A, and thoroughbred Bulk Transfer Freight Tariff, NS 9328-P.⁵ Included in the list of numerous changes are:

- The removal of the Additional Charge for Customer-Caused Congestion on Railroad Facilities, Item 6265, NS 8002-A;
- An update to Item 950, NS 6004, Demurrage Storage Rules and Charges establishing, “One (1) credit will be applied for each day for loaded railcars or empty private railcars where NSR Original ETA is not met.”⁶

While the change to Item 950 addresses our concerns about service and bunching, the number of credit days for other shipments are set forth in Item 650:

“(a) One (1) Credit Day will be earned for each Railroad controlled car released for which forwarding instructions have been received.

³ Policy Statement at 14.

⁴ Comments of Diversified CPC International, Inc., Ex Parte 754, *Oversight Hearing on Demurrage and Accessorial Charges*.

⁵ Norfolk Southern Corporation Pricing Services announcement to NS Customers, Rail Business Partners, and NS Tariff Subscribers, dated July 1, 2019.

⁶ Exceptions include (i) customer diverted railcars. (ii) Coal, Coke and Iron Ore shipments. Credits are limited to five (5) credit day for each railcar.

(b) Zero (0) Credit Days will be earned for each empty private car under constructive placement.

(c) Zero (0) Credit Days will be earned for each loaded private car pulled for which forwarding instructions have not been received.”

As submitted in Diversified CPC’s comments for the hearing, zero credits is not reasonable.

Also, singling out private cars and limiting the zero credit policy to private cars, does not conform with the definition of demurrage as set forth in the Policy Statement ability to avert :

“Demurrage is subject to Board regulation under 49 U.S.C. § 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. § 10746, which requires railroads to compute demurrage charges, and establish rules related to those charges, in a way that will fulfill national needs related to freight car use and distribution and maintenance of an adequate car supply. Demurrage is a charge that both compensates rail carriers for the expense when rail cars are detained beyond a specified period of time (i.e., “free time”) for loading and unloading and serves as a penalty for undue car detention to encourage the efficient use of rail cars in the rail network. See 49 C.F.R. § 1333.1; see also 49 C.F.R.pt. 1201, category 106.”⁷ (Underscore for emphasis).

Zero credits, whether applied to private cars or railroad owned cars, is not fair nor reasonable as demurrage charges would be assessed regardless of whether the shipper is diligent in its loading and unloading operations. 100% of Diversified CPC’s shipments occur in private tank cars. Since Norfolk Southern and other railroads do not furnish tank cars, absent a reasonable period of time to accept cars when delivered, our ability to avert demurrage charges is lost.

2.0 DEMURRAGE BILLING REQUIREMENTS

The National Industrial Transportation League (NITL) and other shippers and receivers raised concerns about the lack of information on demurrage invoices, which require rail customers to dedicate an enormous amount of resources to audit and challenge improper demurrage charges. Also, some carriers have established short deadlines to file disputes while carriers do not respond on a timely basis, making dispute resolution a low priority. In the

⁷ NPRM at 3.

proposed Policy Statement, the Board states that, “if rail carriers practices effectively preclude rail users from determining what happened, then the user would be able to determine whether it is responsible for the delay; the responsible party would not be incentivized to modify its behavior; and the demurrage charges would not achieve their purpose.”⁸

In this NPRM, the Board proposes to require all Class I railroads to include certain minimum information on demurrage invoices stating, “if demurrage invoices are so vague that they effectively preclude shippers from determining what happened, then shippers are unable to challenge the invoices if they believe the demurrage charges were improper or to take appropriate actions to avoid future demurrage charges if they are responsible for the delays (e.g. reporting marks.)”⁹ Proposed requirements for Demurrage Invoices include:

- “Unique identifying information (e.g., reporting marks and number) of each car involved);
- The following shipment information, where applicable:
 - Date the waybill was created;
 - Status of each car, loaded or empty;
 - Commodity being shipped (if the car is loaded);
 - The identity of the shipper, consignee, and/or care-of-party, as applicable;
 - The origin station and state of the shipment;
- The dates and times of (1) actual placement of each car; (2) constructive placement of each car (if applicable and different from actual placement), (3) notification of constructive placement to the shipper, consignee or third party intermediary (if applicable, and (4) release of each car; and”
- The number of credits and debits attributable to each car.¹⁰

Summarized below is a recommended list of information that we believe should be included. The list is in the order that events occur:

- Date of invoice and dates covered by the demurrage bill;
- Identity of shipper, consignee, and/or care-of-party, as applicable;
- Unique identifying information (e.g., reporting marks and number) of each car involved);
- Car Type;
- Private or railroad car;
- Status of each car (loaded or empty);

⁸ Policy Statement awt 16.

⁹ NPRM. Ex Parte 759, at 8.

¹⁰ NPRM, Ex Parte 759 at 9.

- Waybill Date;
- STCC of commodity shipped if the car is loaded;
- Arrival date and time;
- Date and time of constructive placement;
- Station where cars are constructively placed;
- Date and time customer notified if different than constructive placement;
- Date and time cars are ordered in (off constructive placement);
- Date and time cars are released;
- Number of demurrage days for each car;
- Number of demurrage credits for each car;
- Number of extra credit days (if applicable, includes switch failure credits);
- Address: Checks Payable To (if applicable).
- Phone number, fax and E-mail address of Customer Billing.

In its Notice, the Board has requested comments as to whether or not billing requirements should only apply to Class I carriers. Class II and Class III railroads should also comply with the minimum requirements to be established by the Board. Class II and Class III railroads are an integral part of their customers' logistics operations, they typically have first-hand knowledge of a series of events that lead to demurrage and we do not believe complying with the standards will be burdensome for the shortline and regional railroads.

3.0 CONCLUSIONS AND RECOMMENDATIONS

Diversified CPC commends the Board for taking prompt action to address demurrage and accessorial rules and practices. These are very important issues that have a dramatic impact on the costs of operation at our six manufacturing and distribution facilities in North America. We support the Board's proposed Policy Statement and proposed rules, and we encourage the Board to act quickly to adopt its proposals consistent with our comments and recommendations herein.

3.1 Free Time

It is not fair or reasonable for NS to enforce zero credit days for private cars. Application of zero credit days is discriminatory and if the purpose of demurrage and Norfolk Southern's actual objective is to improve the efficient use of railroad assets, then it defies logic for rail users to have less time to handle shipments in private cars versus railroad cars, i.e., railroad assets.

Furthermore, zero credit days for cars of any ownership cannot be a reasonable period of time because it is not even a period of time. This change appears to be more of a revenue generator than a policy to improve the efficiency of assets; this change will result in charges being assessed regardless of whether the shipper or receiver is diligent loading and unloading operations.

Based on the foregoing, we respectfully request that the Board declare Zero Credit days as an unreasonable practice.

3.2 Demurrage Billing Requirements

- We support the Board's proposal to establish standards for invoicing demurrage charges, including minimum information to be included and length of time for filing and settling disputes.
- Furthermore, we recommend that Class II and Class III railroads be required to comply with the established standards.

Respectfully submitted,

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