



# Freight Rail Customer Alliance

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June 5, 2020

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Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

Re: Docket No. EP 759, Demurrage Billing Requirements  
Supplemental Notice of Proposed Rulemaking

Dear Ms. Brown:

The Freight Rail Customer Alliance (“FRCA”) submits the following comments in response to the Supplemental Notice of Proposed Rulemaking (“SNPR”) that the Surface Transportation Board (“Board” or “STB”) served in the above-captioned proceeding on April 30, 2020.

FRCA is an alliance of freight rail shippers impacted by continued unrestrained freight rail market dominance over rail-dependent shippers. FRCA represents large trade associations that in turn represent more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies and their customers.

FRCA very much appreciates and endorses the STB’s willingness to consider further several actions raised in stakeholder comments submitted in response to the Board’s earlier Notice of Proposed Rulemaking (NPRM) in Docket No. EP 759, Demurrage Billing Requirements, that would enhance the transparency of rail carriers’ invoices for demurrage and accessorial services. The proposals provide information that is vital for achieving the objectives expressed in the Policy Statement on Demurrage and Accessorial Rules and Charges that the Board served in EP 757 on April 30, 2020. At the same time, FRCA urges the Board to act promptly in this proceeding. While the SNPR proposals are important and welcome, the Board could have adopted its initial proposals at the same time that it issued its SNPR. The perfect should not be the enemy of the good, or a cause for its delay.

➤ **Billing Cycle**

FRCA supports requiring the rail carriers’ demurrage invoices to include the dates covered by the invoice, otherwise known as the “billing cycle.” As the SNPR explains, the information is essential for developing and reviewing the charges at issue. The data must be readily available to the carriers and its transparent disclosure will not impose any burdens on the carrier. In short, there is no valid reason not to require disclosure of the data.

➤ **Original Estimated Time of Arrival (ETA) and Date and Time Cars Received at Interchange**

In order for freight rail shippers to be able to determine if they or the carriers bear responsibility for delay, if the carriers contributed to bunching, etc., the invoices need to specify the original ETA or forecasted ETA, the time that the cars or train was received at interchange (if applicable), and any modifications along the route. The carriers must possess this information, and its omission from the invoices places shippers and receivers at an informational and procedural disadvantage that creates an unlevel playing field.

➤ **Ordered-In Date and Time**

Again, in order to help ensure the transparency of demurrage and accessorial charges, FRCA supports



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requiring rail carriers to specify the date and time that cars were ordered into a rail user's facility. Having the carriers include this information, which they must possess, as part of the initial invoice will help to avoid or at least expedite any dispute over the basic data that forms the foundation for the charges.

➤ **Machine-Readable Data**

As FRCA commented previously in response to the Board's NPRM in this Docket, rail carriers should be required to make all information required to be included in the invoice, including potential charges and the underlying data, readily available in a shipper/receiver-friendly format, with a lag of no more than one month. "A shipper/receiver-friendly format" could well be in a machine-readable data format. The overlying concern for FRCA is that whatever format is chosen by a rail carrier it needs to provide transparency, data reliability and consistency, and ease of access for shippers.

➤ **Appropriate Action to Ensure Demurrage Charges Are Accurate and Warranted**

As FRCA commented previously in response to the Board's NPRM in this Docket, the Board needs to take measures to address the fundamental asymmetry in the nature of demurrage and accessorial charges. Specifically, collection of such charges is initiated and controlled by the carriers at their discretion. Carriers benefit from the imposition and collection of such charges, but they face no downside exposure for any abuse in their practices. If a carrier seeks to collect a charge that is improper, the collection may prove unsuccessful (at least if the shipper has the financial resources and documentation to challenge it and prevail), but the carrier suffers no adverse consequence, other than perhaps wasted legal costs. The carrier is thus incented to adopt abusive charges and engage in further abusive collection efforts.

The Board should take measures to address this problem. For example, the Board should require carriers to certify that their rules and practices comply with the Board's standards, and then impose fines or other penalties if noncompliance is demonstrated. In addition, carriers should have an affirmative obligation of carriers to show that their demurrage and accessorial charge rules, practices, and collections are undertaken in good faith. Where a shipper demonstrates otherwise, not only would the charges be disallowed, but otherwise legitimate charges would be reduced by an equivalent amount. This type of measure would provide carriers with an incentive to engage in sound practices and a financial disincentive not to engage in abuse.

To conclude, FRCA appreciates the Board considering further demurrage and accessorial charges billing requirements as stated in this SNPR and welcomes this opportunity to offer its comments. Along with FRCA supporting these supplemental recommendations, FRCA also encourages the Board to act promptly to adopt the proposals and then spend more attention on what it can do regarding enforcement and implementation.

Respectfully submitted,

Ann Warner LLC

Spokesperson for FRCA

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## About FRCA

An umbrella membership organization, the Freight Rail Customer Alliance (FRCA) includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies and their consumers. Through a growing coalition of industries and associations, the mission of FRCA is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

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