

Before the Surface Transportation Board

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

**Comments of Dow, Inc.
on the Supplemental Notice of Proposed Rulemaking**

Dow, Inc., submits these comments in response to the Supplemental Notice of Proposed Rulemaking the Surface Transportation Board served in the above-captioned proceeding on April 30, 2020 (the “SNPRM”). Dow applauds the Board for proposing modifications and additions in the SNPRM to the demurrage¹ billing rules initially proposed in an earlier decision in this same docket served on October 7, 2019 (the “NPRM”). These modifications to the initial proposed rules will make demurrage invoices more transparent and less burdensome to audit. Dow also appreciates the Board’s willingness to revise its initial demurrage billing rule proposals in response to many suggestions Dow made in its comments on the NPRM.

Here, Dow responds primarily to the Board’s request for comments on specific issues involving the SNPRM proposals and on actions the Board should require Class I carriers to take to ensure demurrage invoices are accurate and warranted. Dow refers the Board to its NPRM comments for additional comments on many of the SNPRM proposals.

I. Billing Cycle Information

Dow supports requiring carriers to include on their demurrage invoices the period that the invoice covers. This billing cycle information is a common-sense requirement that will reduce the burden of auditing demurrage invoices, thereby promoting fair billing practices.

¹ Dow uses the Board’s definition of demurrage, which includes private car storage. SNPRM at 1-2 n.2.

Billing cycle information makes the invoice easier to understand and validate. Carriers bill demurrage monthly by the date it accrues rather than by the date the demurrage event ends. When a demurrage event occurs across more than one invoicing period, the demurrage charges will be split among separate invoices. Without billing cycle information, ascertaining the scope of demurrage events that an invoice covers, how charges are split across invoices, and whether an invoice overlaps an adjoining invoice involves a time-consuming comparison of multiple invoices.

Readily available billing cycle information also facilitates the investigation of invoice events. As Dow explained in its NPRM reply comments, many carrier websites make demurrage event data available only by billing cycle. If the carrier has not identified the billing cycle in its invoice, Dow cannot obtain data about a specific demurrage event from the carrier's website without reviewing each billing cycle's event data until it finds the cycle with the event.

Carriers should provide billing cycle information on each demurrage invoice rather than in a separate document. This would make auditing invoices less burdensome because the auditor will not have to cross-reference the invoice with the document containing the billing cycle information.

II. Original ETA and Date and Time Cars Received at Interchange

Dow supports the Board's proposal to require carriers to provide each car's original ETA on their demurrage invoices and, if applicable, the date and time of receipt at interchange. As Dow explained more fully in its NPRM opening comments, requiring carriers to provide this information will enable rail users to identify demurrage charges that arise from transit delays and address them with the carrier.²

² Dow NPRM Opening Comments at 5-7.

In this Part II, Dow responds to the Board's specific requests for comments on when original ETA should be issued and how it should be defined, whether date and time of interchange should be provided only for the interchange with the delivering carrier, and when carriers should be required to provide this information.

A. Original ETA: Definition

For private cars, original ETA should be defined as the estimated date and time of constructive placement as determined by the delivering carrier immediately upon proper release of a car by the shipper to the rail carrier (for single-line movements) or the carrier's receipt of a car in interchange (for joint-line movements). A carrier's receipt of a car in interchange should be determined under applicable AAR interchange rules.

The purpose of original ETA is to allow a rail user to measure transit delay on the delivering carrier's line. Original ETA cannot achieve this purpose unless it identifies when a car would have been constructively placed without transit delays.

To identify the date and time constructive placement will occur without transit delays, original ETA must be the constructive-placement estimate made immediately upon the delivering carrier receiving control over a car. If original ETA were a constructive-placement estimate made after the delivering carrier receives control over a car, it would project constructive-placement with any delays that had already occurred. Since, in Dow's experience, bunching and delays tend to occur at origins and interchanges while the carrier waits for a critical mass to build a train, constructive-placement estimates issued after the delivering carrier receives control over a car are unreliable for determining carrier-caused delay or bunching.

B. Interchange Information: Limits

An invoicing carrier should provide the date and time each car was received in interchange for each interchange with a Class I carrier.

This information is important for demonstrating that a delay occurred on an upstream carrier's line. The Board's policy statement on demurrage states that "carriers should consider the actions of upstream carriers when administering their demurrage rules and charges."³

Without interchange information, Dow will not be able to demonstrate that upstream bunching occurred. Also, if an invoicing carrier refuses to consider upstream bunching, interchange information for each upstream interchange to a Class I carrier will enable Dow to identify the carrier on whose line the bunching occurred and address the bunching with that carrier.

This information is important regardless of whether the invoicing carrier appropriately accounts for upstream bunching. Dow has a strong incentive to address carrier-caused bunching. Bunching results in higher costs for Dow by increasing transit time variability and, thus, requiring more shipments. It also increases the risk of rail-related supply disruptions at Dow's and its customer's facilities. Carriers, however, are reluctant to discuss bunching unless Dow provides data showing that the bunching occurred on their line. Upstream interchange information will help Dow address upstream bunching with the responsible carriers and potentially avoid bunching-related costs.

C. Providing Original ETA and Interchange Information

Original ETA and interchange information should be provided on every invoice. Obtaining this information from carrier websites is inefficient and burdensome. As Dow explained in its NPRM reply comments,⁴ accessing information on carrier websites can be time-consuming. Also, every rail user that is assessed demurrage is going to need this information to verify that the demurrage did not arise from a carrier delay. Moreover, having this information as

³ Policy Statement on Demurrage and Accessorial Rules and Charges, EP 757, slip op. at 12 (STB served Apr. 30, 2020).

⁴ Dow NPRM Reply Comments at 3-5.

part of the invoice eliminates having to cross-reference multiple documents, which is extremely time consuming.

Also, imposing a reasonable request standard on rail users is unnecessary. Dow is not going to ask for this information if it can otherwise readily determine that no delay occurred. The burden of obtaining this information from a carrier is too high to justify asking for it when it's not reasonably necessary.

III. Ordered-In Date and Time

As more fully explained in its NPRM opening comments,⁵ Dow supports requiring invoicing carriers to provide each car's ordered-in date and time. This is a crucial demurrage metric because demurrage stops accruing at that time. Requiring carriers to provide it would enable rail users to efficiently determine the basis for the carrier's demurrage assessment. It would also enable rail users to see how their own actions impact demurrage and identify behavioral changes to avoid demurrage. And it would be consistent with the Board's proposal to require invoices to contain the date and time of constructive placement, which is when demurrage begins to accrue.

IV. Machine-Readable Format

Dow supports requiring all demurrage invoices to be in machine-readable format. In its NPRM comments,⁶ Dow explained at length the benefits of machine-readable invoicing. Below, Dow provides specific comments on the definition of "machine readable."

The Board should adopt a definition of "machine-readable" that promotes the use of open file formats that present data in a manner that is readily useable by computers. A key purpose of

⁵ Dow NPRM Opening Comments at 4-5.

⁶ Dow NPRM Opening Comments at 7-8; Dow NPRM Reply Comments at 6-7.

requiring machine-readable invoicing is to reduce the burden of verifying demurrage charges. Invoices provided in proprietary file formats that require expensive programs to open would not fulfill this purpose. Nor would digital invoices containing data that a computer cannot readily extract or that are subject to data-use restrictions.

In its reply comments to the NPRM, Dow defined “machine-readable” consistent with these principles.⁷ For clarity, Dow restates its definition of “machine readable” as, when used with respect to an invoice, in an open format that can be easily processed by computer without human intervention while ensuring no semantic meaning is lost.⁸ The format must be open (i.e., non-proprietary and not subject to use restrictions) so that rail users will be able to access the data without acquiring specialized programs and without restrictions on how it can use the data. Similarly, the format should be capable of being easily processed by computer without human intervention so rail users can process the data both electronically and without incurring significant up-front costs. The format also must convey the invoice data in a manner that is meaningful to the computer. For example, dates should be readily identifiable by the computer as constructive placement dates or ordered-in dates, as appropriate. Dow believes this machine-readability requirement could be achieved by using a comma-separated-value (CSV) file format, that arranges the data in rows and columns. CSV formats are commonly used for conveying invoice data.

⁷ Dow NPRM Reply Comments at 2 n.3.

⁸ This is similar to the “machine-readable” definition that Congress has adopted for the Federal Information Policy. *See* 44 U.S.C. § 3502(18) (stating “the term ‘machine-readable’, when used with respect to data, means data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost”).

V. Appropriate Actions to Ensure Accurate and Warranted Demurrage Charges

Dow believes that demurrage invoices should be transparent, and carriers should have internal controls that ensure they apply the correct rates and do not assess overlapping charges. Erroneous billing imposes unnecessary expense on Dow. It requires Dow to allocate resources to research and file a claim that typically could have been avoided by simple quality control measures. Moreover, it impacts Dow more than the carriers. To challenge a charge, Dow must gather all the necessary facts to convince the carrier that the charge was invalid. In contrast, the carrier can decide a claim based on the record Dow presents. Dow also always incurs an expense due to an erroneous charge, whereas a carrier retains unwarranted revenue when it slips an invalid charge past Dow.

To address invalid charges, carrier invoices should be required to show the calculations that the carrier conducted to determine the invoiced charge and all the relevant data associated with those calculations, including the demurrage rate and the trip history for each car for which demurrage was assessed. These transparent billing practices will enable Dow to readily audit both the carrier's demurrage calculation and the underlying data. Invoices must be sufficiently transparent to allow Dow to audit both items because an error in either will cause an inaccurate demurrage charge.

Carriers also should be required to implement simple quality controls to address errors in their billing systems that lead to invalid charges. Carriers should regularly audit their billing systems to make sure that the demurrage rates assigned to each rail user are accurate. Carriers should also regularly audit a statistically significant sample of each rail user's invoices to make sure they are accurate and the rail user is not being assessed overlapping charges.

VI. Conclusion

Dow thanks the Board for providing this opportunity to comment on the demurrage billing proposals it outlined in the SNPRM and on the “appropriate action” requirement proposed in the NPRM. Dow respectfully asks the Board to adopt a final rule consistent with these comments and the comments Dow submitted in response to the NPRM.

Respectfully submitted,

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