

June 5, 2020

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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
325 E Street, NW
Washington, D.C. 20024

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RE: SNPRM STB Docket No. EP 759, Demurrage Billing Requirements

Dear Ms. Brown:

The Portland Cement Association (PCA) respectfully submits these comments in response to the Supplementary Notice of Proposed Rulemaking (SNPRM) on Demurrage Billing Requirements. PCA supports taking steps to ensure greater disclosure of information in a demurrage invoice to a rail shipper.

PCA's members represent 91 percent of the United States' cement production capacity and have facilities in all 50 states. PCA members rely on the railroads to meet their essential service requirements for hydraulic cement and to move their product to market, and often have no practical, feasible modal alternatives to railroad service to meet their business needs. Thus, PCA members have a strong interest in ensuring railroad demurrage charges are transparent, reasonable, warranted, and fairly applied to all shippers, including hydraulic cement shippers.

PCA and its members strongly support the SNPRM's proposal to require railroads to provide certain minimum information with any demurrage invoice, and refrain from issuing invoices where the shipper is not at fault. The proposed reforms constitute minimum steps required for fair and equitable application of demurrage fees, in keeping with the overarching purpose of the demurrage concept itself.

Demurrage should only be invoiced when the charges are "accurate and warranted." EP 759 NPRM at 10. The intent of demurrage is to ensure the efficient use of rail assets by discouraging undue detention of cars at shipper facilities. As such, shippers should not be penalized for carrier practices that create unavoidable bunching or detention events at shipper facilities. Recently, however, cement shippers have experienced an increase in the demurrage charges and invoices as the railroads have moved towards "precision railroading," even when the customer is not actually shown to be at fault. While billed as measures to promote efficiency, in practice these policies have resulted in disruptions to our members' operations through bunching where a large number of containers arrive one day at a cement manufacturing plant instead of over a span of several days, often contravening scheduling arrangements intended to avoid just this issue.

PCA's members always work to ensure efficient loading and return when shipping their products by rail. Class I rail carriers have a reciprocal obligation to conduct shipping operations that minimize unnecessary bunching and other disruptive practices. Where delays do occur, carriers possess the information to ascertain the true cause of the demurrage and determine demurrage responsibility. Prior to sending an invoice, rail carriers should first take steps to ascertain the true cause of the demurrage and ensure that the demurrage charges are both accurate and warranted. This approach would lead to more balanced and appropriate incentives for both shippers and railroads and a reduction in demurrage.

PCA also appreciates the Board taking steps to increase the accuracy and transparency of demurrage charges. In particular, PCA supports the Board's proposal to require Class I rail carriers to include specific information in demurrage invoices, including unique identifying information of each car involved, information related to the shipment, the dates and times of phases of placement of a car, and the number of credit and debits attributable to each car. Greater transparency on the number of credits and debits attributed to each car will help our members who report that their credits fall off at the end of each month, but their debits remain until paid. Transparency will better provide the opportunity to our member to point this out to Class I rail carriers. This will help reduce the vagueness of the demurrage charges which are often very hard to assess and validate. For example, many PCA members have raised concerns that current demurrage invoices make it hard to know exactly when a Class I rail carrier asserts an infraction has occurred, and the shippers lack the backup information to reasonably assess the charges, let alone make operational adjustments to prevent undue detention and ensure more efficient management of rail car unloading and return – the essential purpose of the charge.

By requiring demurrage invoices to include the date range covered PCA members would be able to better correlate the charges to their own records. Additionally, PCA supports requiring demurrage invoices to include the original estimated date and time of arrival of each car and the date and time the delivering carrier received each car at interchange. This information would help PCA members identify delays and carrier-caused bunching that resulted in invalid demurrage charges. PCA members are frequently billed incorrectly for demurrage that was the fault of the rail carrier, not the shipper. All demurrage invoices should include this data. Finally, the cement industry supports requiring railroads to provide demurrage data in a machine-readable format to help making the process of verifying charges less burdensome.

In the preamble to the SNPRM, the Board notes that certain carriers have suggested the proposed additions are unnecessary and that the current information provided by carriers on a voluntary basis in other places (company websites, etc.) should be adequate for shippers seeking to cobble together the requested information. SNPRM at 6-7. Carriers apparently have also characterized the basic information proposed for invoicing as mere "burdensome paperwork requirements." *Id.* As the demurrage hearing and subsequent comments from PCA and other shippers have demonstrated, carriers are far from consistent in the level of information provided, the ease of access of that information, and the transparency of their demurrage procedures. Far from being a mere "paperwork" exercise as characterized by some rail commenters, the information shippers request on invoices is fundamental to the fair and accurate application of demurrage charges, generally, and shippers' ability to review, contest, and/or adapt to such charges, in particular. Requiring shippers to track down such information on a carrier-by-carrier and invoice-by-invoice basis simply shifts the "paperwork" burden of demurrage from the carrier imposing the fees to the customer paying the fee. Given that the Board has already recognized that such

information is “readily available to carriers as it is used in the ordinary course of business to track car movement and place cars” (or, presumptively, to populate websites or other customer resources), forcing shippers to search for such information also magnifies the paperwork burden for the party paying the fee. Such an approach will only obstruct the fair and equitable application of demurrage fees and undermine the underlying purpose for demurrage policy.

PCA appreciates the opportunity to submit these comments. We respectfully request that the Board adopt its proposal related to more information disclosed as part of demurrage bills to a rail shipper, with the additional information suggested above. Please do not hesitate to contact me at 202-719-1977 or cfranklin@cement.org if you would like to discuss these comments further.

Sincerely,

Charles Franklin
Vice President and Counsel, Government Affairs