

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. EP 768

**PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS**

OPENING COMMENTS OF PETITIONERS

Pursuant to the decision served in this proceeding on April 1, 2022 (“*April 1 Decision*”) the North America Freight Car Association (“NAFCA”), The National Grain and Feed Association (“NGFA”), The Chlorine Institute (“CI”), and The National Oilseed Processors Association (“NOPA”) (together “Petitioners”)¹ hereby submit their Opening Comments in response to the issues and questions raised by the Board regarding the Petition for Rulemaking (“Petition”) filed by Petitioners on July 26, 2021.

**I.
INTRODUCTION**

Petitioners are pleased and appreciative that the Board has commenced this proceeding to accept public comments on their proposal that the Board exercise the authority granted to it by 49 U.S.C. §§ 1321 and 11122(a) and promulgate regulations that would help incentivize the Nation’s Class I railroads’ to use the freight railcars supplied to them by railcar owners, shippers, and other non-railroad entities (“Private Railcars”) more efficiently and with fewer delays. Petitioners believe it is more evident than ever that an update to the rules governing the railroads’ use of

¹ Summary descriptions of each the Joint Petitioners were provided at pages 3-4 of the Petition.

Private Railcars is long overdue. This is not only because the railroad industry has evolved to the point that approximately 73% of the railcars in service today in the North American rail network are Private Railcars for which shippers and other parties have spent tens of billions of dollars, as explained in the Petition. It also because the lack of financial incentives for the Class I railroads to operate Private Railcars efficiently has contributed greatly to the systemic deterioration of rail service Nationwide to the low point it has reached in the months since the Petition was filed and the *April 1 Decision* was issued. The adoption of rules that create appropriate financial incentives for railroads to transport Private Railcars more quickly and efficiently will therefore not only protect the investment by parties who supply Private Railcars to the railroads and their businesses, it will also help resolve some of the root causes of periodic Class I railroad service failures, which have become more severe over time.

Petitioners reiterate that the overall goal of their proposal is to maximize the Class I railroads' efficient use of Private Railcars without unduly infringing upon the railroads' freight operations over their respective systems, recognizing that some level of service variability is inherent in any railroad's operations.

II.

RESPONSES TO QUESTIONS POSED BY THE *APRIL 1 DECISION*

In the *April 1 Decision* the Board posed a number of questions relating to the regulations proposed by Petitioners and issues raised by interested parties in response to the Petition. Petitioners provide their collective responses to the questions in these Opening Comments, some of which were also addressed in the Petition, which is hereby incorporated by reference.

A. Examples and Data Demonstrating Inefficient Use of Private Railcars

Petitioners provided several anecdotal examples of the inefficient use of Private Railcars based on their experiences prior to the July 26, 2021 filing date of the Petition.² In the *April 1 Decision* the Board invited “commenters to provide detailed, concrete examples of carriers’ inefficient use of private freight cars (*i.e.*, the carriers and car owners involved, relevant dates and times. They may also wish to provide context for their comments by including information about the quantity of private freight cars owned or leased, volume of traffic shipped, storage capacity, and seasonality of shipments (if any).”³

In context, it is important for the Board to understand that providing an example of the “inefficient use of a private freight car” in this and other STB proceedings does not mean that the Private Railcar was previously being operated in an efficient manner. Rather, in today’s rail industry where the Class I railroads have considerable market power, an example of the inefficient use of a Private Railcar identifies a railcar being used even more inefficiently than the provider of the railcar anticipated based on past performance. This is because the lack of incentives for railroads to transport Private Railcars in a reasonably predictable and timely manner has, over time, produced a national system where railroads use Private Railcars in the manner that the railroad unilaterally decides is in its best interests, regardless of any representations it might make to a shipper concerning “trip plans” or other aspirational service levels. Consequently, many, if not most, shippers who have fleets of Private Railcars incorporate costly extra “buffers” into their own operations in the form of larger-than-necessary railcar fleets, redundant rail infrastructure, and additional employees based on the expectation and historical reality that their rail service will be inefficient and unpredictable. Moreover, for many shipper

² Petition at 13-14.

³ *April 1 Decision* at 5-6.

members of Petitioners, because trip plans and other representations of future service are so unreliable, the only planning tool they use to make their business plans and determine fleet size is the historical cycle time for the service.⁴ Historical cycle times are consistently higher than they should be because they reflect extremely inefficient and irregular rail service, but they at least provide a data-based baseline from which to make business decisions on the acquisition and deployment of Private Railcars.

Thus, the current systemic use of the approximately 1.2 million Private Railcars in service by the Class I railroads is inherently inefficient, and so to the extent the Board is informed of examples of the inefficient use of Private Railcars, they are instances where the railroad, despite all the buffers and other measures taken by their customers, nevertheless provided a level of service below that baseline level, thereby causing the shipper to incur even greater costs to acquire still more Private Railcars and to incur more business damages.⁵

Petitioners also note that subsequent to the *April 1 Decision* the Board has accumulated a significant body of “detailed, concrete example of carriers’ inefficient use of private freight cars” as part of the administrative records developed in Docket No. EP 770,⁶ and to a lesser extent Docket No. EP 762, *Revisions to Regulations for Expedited Relief for Service*

⁴ Simply, the time calculated from when a car is released to a railroad for transportation, to when it is loaded or unloaded, and then returned to the origin or to another location to be emptied or loaded, as the case may be.

⁵ Witnesses in EP 770, *Urgent Issues in Freight Rail Service* (“Docket No. EP 770”) testified about this general issue. See April 26-27, 2022 Hearing Tr. at 57, 74, 378, 661, 668, 670. Current operating metrics being reported to the STB subsequent to those hearings clearly indicate slower velocities and dismal trip plan compliance, which means this problem persists to the detriment of Private Car providers.

⁶ For example, the Board heard from witnesses, including the Secretary of Transportation, that more incentives to improve rail service are needed. See Hearing Tr. at 12, testimony of Transportation Secretary Buttigieg (“Finally, we must do everything we can to incentivize railroads to provide the best service.”). Numerous witnesses specifically mentioned that financial incentives are necessary improve railroad utilization of Private Railcars. See *id.* at 18, 19, 41, 42, 67-68, 86, 383, 590 and 647.

Emergencies.

Unfortunately, as the Board will no doubt understand, many rail shippers are extremely reluctant to publicly complain about their service and provide “specific concrete examples” of inefficient use of their Private Railcars that identify a specific Class I railroad. This reluctance was not assuaged by the existence of the Protective Order in this proceeding, and, to some extent, it has prevented Petitioners from providing the more detailed examples the Board sought in the *April 1 Decision*. Petitioners have provided some additional anecdotal examples of inefficient Private Railcar use from their members in Section B.4 below. However, Petitioners have also sought to try to overcome this hurdle by including in Section B.1 and the attached Verified Statement of Mathew R. Johnson, Vice President of Technology and Information Services of AllTranstek (“Johnson V.S.”), an analysis of Car Location Message (“CLM”) Event Sighting Codes data for over 950,000 origin to destination movements of just under 90,000 Private Railcars, AllTranstek is one of North America’s largest and most comprehensive rail transportation management and consulting companies, with core competencies that include railcar fleet management and strategic market consulting services.⁷ The CLM analysis, which is of aggregated CLM data, is offered to demonstrate the pervasive scope of the problem of Class I railroads holding onto Private Railcars too long and how the proposed use of CLM data to identify inefficient usage and correct it through the process set out in the proposed regulations makes sense and could be easily administered.

In summary, the adoption of financial incentives for railroads to transport Private Railcars more quickly will protect the significant investments that shippers incur to acquire and maintain 73% of the Nation’s railcar fleet. It will also help to prevent the more egregious

⁷ Johnson V.S. at 1.

examples of “inefficient use” of Private Railcars, and in turn reduce the degree to which rail shippers must incur the additional costs of planning for bad rail service when running their businesses and sizing their Private Railcar fleets. This is because railroads, appropriately incented, would maintain sufficient crew levels and equipment to prevent excessive delays in their use of Private Railcars, and take additional measures such as adequately staffing customer service departments. The overall result would be a fairer allocation the costs of acquiring and maintaining the National railcar fleet, more rationally sized fleet, and a more efficiently run National rail network.

B. Petitioners’ Responses to Other Board Questions

1. How frequently do carriers hold private freight cars for more than 72 consecutive hours?

In response to this and other questions in the *April 1 Decision*, and to provide a data-based illustration of the systemic nature of the problem their proposed regulations would seek to address, Petitioners retained the services of AllTranstek, which regularly collects and analyzes CLM data for rail shippers and other clients, including many members of the Petitioners. As explained by Mr. Johnson, fifteen members of the Petitioners and certain other shippers who in total own or lease 89,851 Private Railcars, provided their CLM data to AllTranstek on a confidential basis.⁸ All told, the participating shippers supplied CLM data for 956,811 Trips of their Private Railcars by Class I railroads. A railroad Trip was defined by Mr. Johnson as “a collection of sighting data points that are sorted and organized in order from the origin to the destination of the railcar.”⁹ Mr. Johnson then refined the data set based on a series of assumptions in order to tailor it to the regulatory process proposed by the Petitioners. This included removing certain dwell times that

⁸ *Id.* at 2.

⁹ *Id.*

are typically legitimate, such as CLM data showing Private Railcars in transit being idled in repair shops, “bad-ordered” Private Railcars taken out of service, and Private Railcars moved into to or in storage.¹⁰ These assumptions and refinements were for the purpose of only considering those periods of idle time or “Events”¹¹ for empty or loaded Private Railcars from the point that they had been billed or released to the railroad for transportation until either constructive or actual placement at the origin or destination customer facility. Pursuant to this analysis Mr. Johnson was able to determine the extent to which Private Railcars in transit were held by the railroad for more than 48 hours in locations covered by the proposed regulations.

In summary, Mr. Johnson’s analysis shows that 297,889 of the 956,811 trips, or 31.13%, had at least one event where the Private Railcar was held for more than 72 consecutive hours.¹² In terms of all recorded instances where Private Railcars were held over 72 hours (meaning a Private Railcar was idled in transit more than once), the data revealed 382,746 total instances, distributed as follows:

Number of Events between 72-96 hrs.:	178,792
Number of Events between 96-120 hrs.:	89,244
Number of Events between 120-144 hrs.:	48,133
Number of Events between 144-168 hrs.:	29,697
Number of Events between 168-192 hrs.:	17,532
Number of Events between 192-216 hrs.:	11,130
Number of Events between 216-240 hrs.:	8,218

According to this analysis, the Class I railroads hold Private Railcars longer than 72 hours at least once around 30% of the time. As explained below in Section G.5, when the threshold is established at 48 hours, twice the 24-hour limit Class I railroads generally place on their customers

¹⁰ *Id.* at 2-4.

¹¹ *Id.* at 4.

¹² *Id.* at 6.

before penalties are imposed, the number of total instances of Private Railcars idled beyond that time leaps to 854,499.¹³ Those delays occurred within 526,537 Trips out of the 956,811 Trips in the study (55%), meaning that over half of the Trips had an average of 1.6 instances where the Private Railcar was held for more than 48 hours.¹⁴

2. To the extent known by the commenter, why do carriers hold private freight cars for more than 72 consecutive hours?

There are many reasons why railroads hold Private Railcars for more than 72 hours. In 2022, the main reasons for such delays are the lack of sufficient crews and other railroad employees, and the number of locomotives in service. Consequently, after loaded or empty release (or billing) from either the origin or the destination, Private Railcars regularly sit idle multiple days at loading origins or unloading destinations until the carriers find and assign crews and locomotives and subsequently pull the private railcars.

In addition, railroads may also hold Private Railcars for more than 72 consecutive hours so they can transport other traffic they deem higher priority, such as intermodal or other “premium” services. Also, if a carrier concludes that a certain location has more Private Railcars than the carrier believes are necessary, even if the cause of such “congestion” is the carrier’s inefficient operations, the carrier will hold Private Railcars until they determine in their sole discretion that the issue has been resolved. Consequently, once pulled from a shipper’s facilities, Private Railcars can sit idle for multiple days at congested railyards until they are “classified” to be placed on outbound trains. Finally, Private Railcars also regularly sit idle at points of interchange along the same railroad, or during interchange from one railroad to another.

¹³ *Id.* at 7.

¹⁴ *Id.* at 6.

3. To the extent known by the commenter, at which location(s) on the rail system are private freight cars held for more than 72 consecutive hours?

As noted above, the delay of more than 72 hours can occur all over the railroad's system, beginning from the initial release at origin to the delivery at destination as well as all points in between.

4. How are rail users' operations, facilities, production, and/or finances affected?

As stated, shippers that supply Private Railcars to railroads already incur additional costs and take other measures that should not be necessary in order to build buffers into their operations to try to mitigate the inherent inefficiencies in today's railroad industry. Petitioners also included a discussion of this general topic at pages 12-14 of the Petition. More recently, participants in the Docket No. EP 770 hearing proceeding provided the Board with additional examples.¹⁵ Petitioners also note the following additional examples from their members:

A member shipper retains up to 10% more railcars that it would ideally have in its fleet to cover impacts from service variability, at an annual cost of up to \$6 million (based on a fleet of 5000 cars with a \$1000 monthly lease rate). Maintaining this buffer has other negative consequences, such as (1) higher track occupancy charges at transloaders or other third-party service providers; (2) higher demurrage charges at sites due to increased bunching and the inherent deviation in railcars arrival times; (3) impacts to site operations due to the presence of more cars than are needed for production which can result in embargoes from railroads for "congestion;" and (4) higher storage cost for extra cars not utilized during peak seasons.

For a shipper of private rail tank cars, the costs and harms from railroads holding its Private Railcars for more than three consecutive days include (1) slowdowns or shutdowns of facilities that result in reduced production, lost sales and contractual defaults. (2) adverse impacts on fleet utilization and costs; and (3) increased employee time and costs devoted to solving railroad service problems and constantly modifying production/marketing/sales plans as a result of service inconsistencies.

A shipper of Private Railcars transporting crude oil in a joint line movement by the

¹⁵ See, e.g., EP 770 Tr. at 16, 37, 57, 73-74, 257, 260, 360-61, 378, 560, 569, 584, 593, 661-662, 668, 670, and 680.

western Class I railroads has experienced the originating railroad first, accumulating the Private Railcars in its yard, and then delivering large blocks of the railcars to the other railroad for final delivery (*i.e.* bunching). However, the plant cannot physically accept all the railcars and so the delivering carrier charges demurrage despite the fact that the root cause of the problem was bunching. Being able to charge the originating railroad for holding the cars in its yard for the railroad's convenience the shipper could partially offset the demurrage charges from the delivering railroad.

On another occasion, after a shipper's customer had received a group of Private Railcars loaded with product and unloaded and released the empties back to the Class I railroad, the railroad took between 29 and 166 days to actually pick up the empty railcars to transport them to new loading origins. When the Private Railcar shipper requested compensation from the railroad, the railroad responded that it had no contractual or legal obligation to reimburse the shipper for this misuse of its Private Cars.

Finally, for another member, carrier delays have resulted in (1) reduced production facility run rates due to lack of Private Railcars because the carrier did not meet its stated schedule, (2) increased rail fleet size to counter drop in service levels, (3) switched marketing plans to less desirable markets to keep inventory cleared because there are no Private Railcars to transport it.

Other effects of carrier delays in handling Private Railcars include being assessed charges for delayed vessel loadings at ports which result in demurrage, Grain and Feed Transportation Association penalties, and contract defaults.

5. Has the frequency and severity of the issue changed with the implementation of operating changes by Class I railroads?

Yes. As a result of the implementation of "precision scheduled railroading" and other measures to scale back employees and rail equipment assets and services, Private Railcars are left idle for multiple days with much more frequency due to the lack of such resources. The industry has reached a point recently that excessively increasing dwell times for Private Railcars have caused certain Class 1 railroads to restrict the number of Private Railcars that shippers can put on the carrier's system because longer dwell times for Private Railcars, as well as railroad-owned cars, have caused unmanageable levels of railcars on the carriers' systems. This is a significant

issue for shippers who rely entirely on their Private Railcar fleet for service.

C. There Are at Present No Other Viable Means to Create Sufficient Incentives to Encourage Railroads to Use Private Cars More Efficiently

Petitioners explained in their Petition how their proposed regulations are necessary because there are at present no other viable commercial or regulatory mechanisms to sufficiently incentivize the Class I railroads to use Private Railcars more efficiently and thereby protect the investments and businesses of the providers of the Private Railcars.¹⁶ This remains the case. Nevertheless, in the *April 1 Decision* the Board noted specifically that “UP asserts that Petitioners’ proposed regulations are unnecessary because private railcar providers have other avenues to pursue relief, such as through specific service commitments in contracts.”¹⁷ Notably, UP did not provide any specific examples of such a provision, or even describe what such a commitment would look like. Proceeding from the assumption that “specific service commitments” actually exist in rail transportation contracts today, the Board also asked “[d]o such contract service commitments include similar terms to the regulations proposed by Petitioners?”¹⁸ The short answer to these questions is that most, if not all, rail transportation contracts ceased containing “specific service commitments” that penalized the railroads for failure to meet the commitments around 2003.¹⁹ The far more common “service” provision in rail transportation contracts from all Class I rail carriers is that the railroad has no obligation to provide any service under any particular schedule. Because provisions that provide financial penalties for failure to meet an agreed upon service level

¹⁶ Petition at 10-12.

¹⁷ *April 1 Decision* at 6.

¹⁸ *Id.*

¹⁹ A notable exception may be the contracts entered into by certain railroads, such as BNSF Railway and Union Pacific Railroad, for “premium” intermodal service to move containers from West Coast ports to the Midwest. The undersigned counsel are not privy to such contracts, but there is sufficient publicity about BNSF’s and UP’s “premium” service to infer that there are such contractual commitments. UP and BNSF could be ordered to provide such contracts under protective order.

are no longer in the vast majority of rail transportation contracts, the answer to the Board's second question is "no."

D. Questions Regarding the Board's Statutory Authority to Adopt the Proposed Regulations

Part IV of the Petition provided an extensive discussion of the Board's statutory authority to adopt the proposed rules pursuant to its general authority to promulgate regulations on all matters that are the subject of its jurisdiction under 49 U.S.C. § 1321, and the Board's discretionary authority to issue regulations governing the use of Private Railcars by railroads that has existed since at least 1918, and currently resides in 49 U.S.C. § 11122(a). This statute provides in pertinent part, "[t]he regulations of the Board on car service shall encourage the purchase, acquisition, and efficient use of freight cars. The regulations may include – (1) [compensation] . . . (2) the other terms of any arrangement for the use by a rail carrier of a . . . freight car . . . not owned by the rail carrier using the . . . freight car, . . . whether or not owned by another carrier, shipper, or third person; and (3) sanctions for nonobservance." Petitioners hereby incorporate the discussion in Part IV of their Petition into these opening comments.

In the *April 1 Decision* the Board included several questions related to § 11122(a). First, "How, if at all, would Petitioners' proposal regulate "car service" within the meaning of 49 U.S.C. § 11122(a) by "encourag[ing] the purchase, acquisition, and efficient use of freight cars"? Petitioners maintain that the answer to this question is contained throughout these Opening Comments, namely that introducing appropriate incentives for the use of Private Railcars by the Class I railroads will remove the systemic inefficiencies that currently exist for that usage, namely by speeding up the pace at which Private Railcars are transported. Petitioners also explain how better utilization of Private Railcars will alleviate the car shortages that some shippers experience despite expending great sums of money to create buffers for bad service. This will occur because

moving Private Cars faster will result in smaller fleets, which will translate into more Private Railcars being available for other shippers to purchase or acquire through leases.

Second, the Board has invited commenters to address AAR's argument that Petitioners' proposal would regulate the "transportation services" that railroads provide, rather than "car service" within the meaning of § 11122(a). (See AAR Reply 3-6, Aug. 30, 2021) Petitioners extensively refuted AAR's arguments in their Response to Replies of Railroad Parties filed on September 10, 2021, which arguments Petitioners also incorporate by reference into these Opening Comments. The AAR's September 23, 2021 Reply to Petitioners' Response did nothing to overcome the AAR's misplaced reliance on two cases where the Interstate Commerce Commission was found to have impermissibly directly ordered two carriers to take specific action concerning their transportation service, which is a far cry from Petitioners' proposal, by which no carrier will be directly ordered to do anything. Petitioners reserve the right to supplement their existing briefing on this issue to the extent the AAR or other parties raise additional arguments in response to the Board's *April 1 Decision*.

Third, the Board asked; "To what extent is a finding of inadequate car supply a prerequisite for the Board to adopt Petitioners' proposed regulations?" The short answer to the Board's question is that such a finding is not a prerequisite to adopt Petitioners' proposed regulations. Rather, whether or not there is inadequate car supply, the proposed regulations should improve the efficiency of the use of Private Railcars and start to "level the playing field" for Private Railcars as compared to those owned and provided by carriers. Note, however, that even if the proposed regulations are adopted as written, carriers would only owe penalties for holding Private Railcars longer than 72 hours. Many carriers impose penalties on shippers holding railroad-owned railcars for more than 24 hours. So, the playing field would still not be completely "level."

E. Do rail users currently lack access to an adequate supply of freight cars or anticipate a future freight car shortage?

As a general matter, the Class I railroads have created an artificially high demand for Private Railcars because of the systemic inefficiencies discussed previously. The supply of Private Railcars becomes inadequate for individual shippers when railroads do not transport them in accordance with their trip plans, the adjusted expectations of the shipper, or, as the Nation is currently experiencing, when the business decisions of the Class I railroads deprive them of the ability to provide service to the point that there is a national rail service crisis.

For example, a member of a Petitioner (primarily of ethanol) has experienced a shortage in both covered hopper railcars and tank cars especially in the last year, despite having a substantial fleet of Private Railcars. Inefficient use of those Private Railcars and prolonged delays in transit mean the shipper's fleet must be supplemented to continue to meet production and shipping goals. The shipper believes that the outlook is better because new Private Railcar production has increased; however, the timing for new Private Railcars to be put in service is very long as available production windows must be booked months in advance. Newly constructed Private Railcars also take longer and are more expensive. Also, the shortage of covered hopper Private Railcars means that the shipper had to resort to using less-than-optimized cars (grain cars) to move dried distillers' grain because it could not increase its fleet of covered hoppers in a timely manner. So, the possibility of Private Railcar shortages does exist if the Class I railroads are not incentivized to move Private Railcars more quickly and efficiently.

The Board asks how the proposed regulations would help or solve or mitigate the issue of an inadequate Private Railcar supply. Incenting railroads to handle Private Railcars more efficiently should mitigate or even solve the issue of car shortages caused by inefficient railroad operations and service deficiencies. If railroads face monetary penalties similar to the charges

they assess their customers for the purpose of creating incentives to improve behavior and ensure that the railroad has a sufficient supply of its own cars on its system, the same result should be expected for Private Railcar shippers: Private Railcars returned more quickly, thereby alleviating the need to acquire additional Private Railcars to attempt to maintain production in the face of poor rail service.

F. The Proposed Regulations Would Not Adversely Affect the Use of Railroad-Owned Cars

In the *April 1 Decision* the Board noted that CSXT, UP, and AAR asserted that the proposed regulations “would create incentives for carriers to prioritize private freight cars to the disadvantage of rail users that use railroad-owned freight cars.”²⁰ and asked “How would Petitioners’ proposed regulations affect rail users that do not use private freight cars?”²¹ The carriers’ rationale seems to be to imply that (1) there are at present no incentives that encourage carrier-owned cars to move without delays, and (2) carriers face no penalties when they delay shipments of their cars to their customers.²² As to the first category, the railroads downplay their well-established demurrage and accessorial programs ostensibly designed to create incentives for the efficient movement of carrier-owned cars (and Private Cars on carrier property) through the use of sometimes severe penalties associated with delay beyond established time periods. The standards applied by those carrier regimes are significantly more stringent than what Petitioners have proposed in this proceeding for Private Railcars. The railroads also have a well-established system of *per diem* payments and other procedures governing the use of each other’s railcars to incentivize the movement of the railcars on and through their respective systems.

²⁰ *Id.* at 6-7.

²¹ *Id.* at 6.

²² CSX Transportation Inc. Reply to Petition for Rulemaking, August 30, 2021, at 2; AAR Reply to Petition for Rulemaking, August 30, 2021 at 16.

If anything, the fact that there are existing incentives/penalties that discourage delays in transporting carrier-owned cars while there are at present none for Private Cars indicates that there may currently be a preference to transport carrier-owned cars over Private Cars. Be that as it may, the intent of Petitioners' proposal is to achieve better balance, so *all* railcars are transported efficiently regardless of ownership. The proposal seeks to level the playing field so that there is no priority for either Private Railcars or railroad-provided railcars. Accomplishing this result will require taking into account the current incentives that apply to the movement of carrier-owned railcars that may favor their use over the use of Private Railcars.

The accompanying implication by the railroad parties that the Class I carriers currently face no penalties for delaying shipments of their railcars to their customers is revealing. In the first place, it confirms that any assertion or inference by a Class I carrier that service standards which penalize a carrier for poor service are part of most rail transportation contracts is false. Second, it confirms that customers of Class I railroads do not have the market power to otherwise commercially impose a penalty on their carrier for service delays or failures when shipping their own railcars. Finally, it confirms that the Class I carriers fail to acknowledge that their service is subject to their common carrier obligation under 49 U.S.C. § 11101, and that violations of that obligation are potentially subject to monetary penalties.

G. Questions About the Details of the Proposed Regulations

1. In what kinds of circumstances should carriers be able to show that they were not “a cause” of the 72 hours being exceeded?

The first sentence of proposed Section 1334.2 states: “If the allowable transit idle time for a private railcar is exceeded, the private railcar provider may assess the rail carrier a private railcar delay charge unless the rail carrier demonstrates that it was not a cause of the allowable transit idle time being exceeded despite exercising due diligence.” Once a Private Railcar is tendered to the

transporting railroad, the provider of the railcar loses the ability to control the movement of that car, and it becomes the responsibility of the carrier. It is, therefore, a reasonable presumption that the carrier is the cause of excessive delays in transporting the Private Railcar. To be excused from paying the private railcar delay charge, a rail carrier should have to show that it was entirely free from fault for the delay. This would typically require a showing that the delay was caused by an Act of God, flood, strike, tornado, governmental action or derailment of the train that the Private Railcar was a part of, or, if the delay was entirely the fault of a third-party.

2. What kind of actions should constitute “due diligence”?

Petitioners anticipate and expect that a railroad will seek to avoid delays and overcome the potential causes of delays exercising normal and prudent operating practices. In contrast, a railroad that does not seek to overcome the potential causes of delays, or engages in operating practices that contribute to delays, should not be excused from paying the private car delay charge.

3. How would this standard account for the possibility raised by AAR that carriers may hold private freight cars longer than 72 consecutive hours to improve the overall efficiency of the rail network (i.e., to prevent congestion at terminals during times of peak demand or to recover from network disruptions caused by weather events)?

Petitioners fail to see any justification for a carrier to intentionally hold Private Railcars for 72 or more hours to improve “overall efficiency” without being penalized for it. In the first place, as with UP’s unsupported (and incorrect) assertion that shippers who provide Private Railcars are protected by rail transportation contracts that contain enforceable service standards, AAR provides no specific examples of when holding a Private Railcar would improve “overall efficiency.” This is because, as the Board has become acutely aware in the months since the *April 1 Decision*, the phenomenon of Class I railroads unilaterally holding Private Railcars for lengthy periods, stretching the limits of the rules for embargos to purportedly resolve yard “congestion,” and

refusing to accept Private Railcars into service, are all actions that are being taken unilaterally by the Class I railroads to try to address problems caused by their business decisions and operating plans.

In all cases, a railroad is choosing to hold onto the assets of its customers to try to resolve a problem that the railroad caused. These actions not be without consequences to the railroad. Arguably, the “congestion” would not have occurred in the first instance had sufficient incentives been in place for the railroads to use the Private Railcars more efficiently. The presumption should be that such actions are an inefficient use of the Private Railcars which the railroad may attempt to overcome based on the facts and circumstances. In any event, the proposed regulations would enable railroads to attempt to demonstrate that the private car use charge should not be assessed because the delay of 72 hours or more was the result of network disruptions caused by weather events or other events beyond the control of the railroad and that the railroad was not a cause of the delay. Finally, Petitioners maintain that establishing a rebuttable presumption that such actions are inefficient is more appropriate than allowing railroads to avoid paying private railcar use charges by blaming delays on vague claims of “overall efficiency” which would be virtually impossible for a Private Railcar provider to disprove.

4. How would this standard account for rail users’ own car supply decisions? For example, UP argues that Petitioners’ proposed regulations would “incentivize shippers to acquire additional freight cars and deploy them during service disruptions, despite their potential to contribute to congestion problems.”

If the proposed standard is effective in increasing the railroads’ efficient use of Private Railcars in their possession and control, the result will be that rail users will acquire fewer railcars, not more. Creating incentives for rail carriers to use Private Railcars more efficiently should enhance the ability of shippers to “right-size” their fleets and not have to expend significant costs

to acquire additional railcars to create unnecessarily large buffers against the harm caused by undependable rail service. As stated previously, creating proper incentives so that the Class I railroads to use Private Railcars more efficiently should result in fewer service disruptions and less “congestion” of the type to which UP is referring.

The idea that the Petitioners’ proposal would create incentives for shippers to stockpile railcars and use them as a revenue source during service disruptions is absurd. A shipper’s priority or goal is to provide products to its customers. A shipper makes money by selling products, not monetizing charges that are there to create incentives to encourage the carriers to use the shipper’s assets more efficiently. Moreover, a single Private Railcar – depending on the car type – currently costs between \$80,000 and \$180,000 to buy and anywhere from \$500 - \$1500 per month to lease for what is typically a minimum of 36 to 60 months. The systemic inefficient use of Private Railcars by the Class I railroads has driven rail users to spend considerable sums of money to acquire and maintain fleets of railcars which are often more than the amount that should be needed for their business uses. Acquiring even more Private Railcars because the Class I railroads would have incentives to use them more efficiently would make no sense.

Similarly nonsensical is the notion that the Petitioners’ proposal would create incentives for Class I carriers to make potentially inefficient movements solely to avoid charges.²³ Stated simply, if the Class I railroads are irresponsible enough to operate inefficiently solely to avoid charges for inefficiently using Private Railcars, thereby negatively impacting their customers and the economy as a whole, this would be a strong indicator of the degree to which the Class I carriers possess monopolistic market power that needs to be reined in by the Board.

²³ *April 1 Decision* at 7.

5. Why is 72 hours an appropriate timeframe and not, for example, 48 hours or 96 hours?

As stated in the Petition: “The allowable transit idle time of 72 hours is far in excess of the time railroads allow for their customers to hold onto railroad and Private Railcars in order to allow for a reasonable level of service variability.”²⁴ The Class I railroads have generally established a time frame of 24 hours (or less) as the maximum amount of time a railroad-owned railcar may be in the hands of a rail customer before the use of that railcar is deemed inefficient, and they assess penalties and take other measures ostensibly designed to create incentives for parties to meet that time frame. In addition, typical railroad-provided trip plans do not entail more than 24 hours of idle time during transit (*i.e.*, at classification yards, interchange yards etc.). Accordingly, true “reciprocity” of comparable incentives for railroads to use Private Railcars more efficiently would entail holding railroads to a 24-hour time frame as well. However, the Petitioners do not advocate that level of reciprocity for the railroads’ use of Private Railcars because some level of service variability is inherent in their operations and rail networks. Recognizing that exact “reciprocity” is not realistic, particularly in the context of establishing industrywide regulations which must be able to be applied to a broad set of potential circumstances, Petitioners have stated the overall goal of their proposal “is to maximize the Class I railroads’ efficient use of Private Railcars without unduly infringing upon the railroads’ freight operations over their respective systems, recognizing that some level of service variability is inherent in any railroad’s operations.”²⁵

By the Class I railroads’ own standards, establishing a threshold of 72 hours before charges may be assessed means that the Private Railcar would still not be used in the most efficient manner

²⁴ Petition at 18.

²⁵ *Id.* at 2.

by a railroad, but it would begin to correct the current imbalance by creating an incentive for a railroad to use a Private Railcar more efficiently while allowing some service variability to occur.²⁶ Petitioners therefore believe the 72 hours as a starting point that is amenable to be included in an industry-wide regulation to create incentives to encourage more efficient use and protect private railcar providers. The CLM data analysis included with these Opening Comments demonstrates that the 72-hour time frame is also reasonable because it would apply to a realistic percentage of Private Railcar movements. As the CLM data analysis shows, over 31% of private railcars transported between July 1, 2021 and April 30, 2022 were held for more than 72 hours while in transit from their release point to final destination.

As stated previously applying a lower idle time threshold, such as 48 hours, would translate to 526,537 movements (55% of the total) which had at least one instance where the Private Railcar was held for more than 48 hours, and a total number of 854,499 Events. The analysis reveals that 55% of the Trips experienced an average of 1.6 instances where the Private Railcar was held for more than 48 hours, which is twice the threshold generally set by the Class I railroads. At a minimum this statistic demonstrates the current imbalance between the railroads' use of Private Railcars and what the railroads demand from their customers. It also highlights and reinforces that there are systemic inefficiencies with how the Class I railroads' use Private Railcars today and that there is a real need to create incentives to reduce the delays while they are in the carriers' possession and control. Indeed, the data produced by the Alltrantek analysis could lead to the conclusion that a time limit closer to 48 hours might result in more appropriate incentives and a

²⁶ For example, in the 24-hour period allowed by railroads before charges are assessed a shipper will typically move a railroad car from within its yard to spot it at load out, inspect -- and many times clean -- the car, weigh the car empty car, load the car, weigh the car loaded, seal the car, get lab analysis or grade the material in the car, bill the car and then switch the car to an outbound track. Asking the Class I railroad to simply move the cars within a 72-hour time period pales in comparison.

better industry solution than the 72 hours Petitioners have originally proposed.

In contrast, Petitioners assert that the data they have provided demonstrates that a trigger time of 96 hours would not be reasonable because it would not create sufficient incentives to make a meaningful change to the current industry practices.

6. “Why should charges be based on when cars are idle for more than 72 consecutive hours, as opposed to, for example, overall transit idle times for the entire trip or when the placement of private freight cars exceeds projected transit times?”

Structuring a rule around CLM data for Private Railcar movements as opposed to overall transit idle times for an entire trip is critical for two primary reasons. First, Petitioners believe that the rules governing Private Railcar use should be grounded in the rules and policies governing demurrage, which are based on the location of a railcar or train of railcars in a point in time, not on the overall transit time. Second, projected transit times are developed by the railroad, and they are therefore susceptible to the railroad skewing or manipulating the data. Typically, a railroad can try to cover its poor service by changing the expected arrival time for a Private Railcar two to three times per trip and still consider the Private Railcar to be on time. In short, railroad data entries on overall transit times cannot be trusted based on what is now reported. In the experience of Petitioners’ members, the railroads will simply game the new regulatory regime if the rules are based on overall transit times.

7. Are CLM Event Sighting Codes a practical way to measure idle time? If not, what metric, if any, would be more useful as the basis for assessing delay charges?

Petitioners believe that CLM codes are the most practical and accurate way to measure idle time because they are used universally by carriers and shippers alike. Moreover, the railroads use CLM event codes to measure and assess demurrage their demurrage programs. The data are also easily accessible.

8. Which party would be responsible for tracking the CLM Event Sighting Codes for private freight cars and invoicing in accordance with the proposed regulations?

Petitioners believe that the tracking and invoicing could and should be administered by the rail shipper, because shippers have an interest in ensuring their Private Railcars are moved efficiently and their investment protected. Because both shippers and carriers would have access to the data, the Board may presume that the railroads would monitor and check the invoices they received, much as rail shippers do with demurrage bills they receive from their carrying railroad. The proposed rule could be supplemented with a provision providing a process whereby the railroad would have 30 days to dispute the CLM data utilized by the shipper to generate the invoice.

9. At what point should the time frame begin (i.e., as soon as a rail user releases a private freight car, when the carrier picks up the private freight car, or some other point)? And if the 72-hour time frame begins when private freight cars are released, how would this time frame apply to rail users that receive service only once or twice per week?

Petitioners' proposed time frame begins on loaded billing (release) or empty billing (release) from the industry. Starting the incentives to move the Private Railcar when it is released for pick up is important because Private Railcars sitting at an industry site for more than 72 hours waiting to be pulled is just as harmful to shippers as cars sitting along the transit route. For rail users who receive service only once or twice per week, it is critical for the Board to remember that, typically, such reduced frequency of service is not a mutual decision, but rather it is a unilateral decision made by the serving railroad based on what the railroad believes is in its best economic interests. Oftentimes, a shipper will have Private Railcars ready to be released and transported each day, and so the railroad's business decision to only provide service one, two or three days per week is an inefficient use of those Private Railcars and hurts the associated investment in them. Accordingly, a railroad that chooses to serve an industry only on certain days

of the week over the shipper's objection should be subject to the private car delay charge. This is consistent with the overall objective of the proposed rules, which is to correct the current imbalance between the relative incentives railroads and private car owners have to be more efficient and protect their respective investments. The assessment of the private car delay charge will provide a disincentive for a railroad to meter service for its own economic interests.

10. Is it appropriate for the Board to equate the amount of the “private railcar delay charge” to a demurrage or storage charge in most cases?

The Class I railroads have asserted on numerous occasions in numerous Board proceedings, most notably Docket No. EP 754, *Oversight Hearing on Demurrage and Accessorial Charges*, that the charges they assess for demurrage and other charges such as accessorial charges are all established at reasonable levels to meet the policy goal of providing sufficient incentives to parties to use cars supplied by the railroads more efficiently.²⁷ They also insist that none of the charges they have imposed is for the purpose of increasing the railroads' profits.²⁸ Thus, it is entirely appropriate for the private car delay charge to be assessed at the same level the railroad charges its customers, subject to the railroad

²⁷ See e.g., Oral Argument Exhibits of Norfolk Southern Railway filed May 19, 2019 at 1-2 (stating that demurrage and storage charge tariffs should “fulfill[] the mutual goal of Norfolk Southern and our customers of creating a more fluid rail network that turns equipment faster and provides our customers with consistent service and a platform for growth.”; and Oral Argument Exhibits of CSX Transportation Inc., filed May 8, 2019 at 5 (“The changes to CSX’s tariffs in 2017 and 2018 properly incentivized customers to manage their pipelines more efficiently and turn cars faster. This helped spur improvements in operational performance, network fluidity, and capacity, which in turn has led to more efficient service for CSX customers.”)

²⁸ See e.g., Testimony of Mike Naatz, Executive Vice President and Chief Marketing Officer for Kansas City Southern Railroad at the May 23, 2019 hearing in EP 754 (“We do not view demurrage and accessorial charges as a primary revenue stream, nor as a mechanism to produce profit.”) Tr. at 628; Testimony of Jill Mulligan, counsel for BNSF Railway Company (“Demurrage is not treated as a revenue generating opportunity at BNSF, simply put, our goal is to collect less demurrage from our customers.”) Tr. at 808; and Testimony of Pam Arpin, Assistant VP for Canadian Pacific Railway (“Demurrage and accessorial charge revenue does not drive CP’s financial performance”) Tr. at 821.

demonstrating that being assessed a charge it has determined is reasonable to assess its customers somehow does not provide appropriate incentives to the railroad while protecting the investment of the shipper that provided it the Private Railcar.

H. Creating Incentivizes for Class I Railroads to Use Private Railcars More Efficiently by Definition Will Improve Overall Network Efficiency

As stated throughout these Opening Comments, more efficient use of Private Railcars will translate into a more rationally sized National railcar fleet. It is not disputed that inefficient and sporadic Private Railcar service causes shippers to acquire additional railcars, which clog up the railroad networks. There also is no dispute that reducing the delays in using Private Railcars and increasing system velocity will make the overall rail network more efficient. Consequently, potential penalties to discourage long dwell times (which lead to decreased velocities) would create a more efficient network.

The Board has also asked how would a more rationally sized freight railcar fleet ensure an adequate supply of freight cars? The answer is that more efficient use of Private Railcars would increase their velocity and utilization, which would decrease the number of Private Railcars needed to transport the shipper's products or inbound raw materials. For example, a 10% increase in utilization of a 1000 Private Railcar fleet would reduce the needed fleet size by 100 cars. Applying that increased utilization rate to the total Private Railcar fleet of approximately 1,200,000 railcars would translate into 120,000 railcars that would be available for other shippers to acquire or lease.

I. The Impact on Class II and Class III railroads

In general, Petitioners believe that Class II and Class III railroads operate more efficiently than do the Class I railroads, and thus, the Class II and Class III railroads would not typically be subject to penalties for holding Private Railcars longer than 72 hours.

III. CONCLUSION

Petitioners appreciate the opportunity to provide these additional, Opening Comments on their Petition and proposal, and to provide answers to questions posed in the *April 1 Decision*. They look forward to reviewing and responding to the comments of other stakeholders in the reply phase of this proceeding.

Respectfully submitted,

/ss/ Thomas W. Wilcox
THOMAS W. WILCOX
Law Office of Thomas W. Wilcox, LLC
1629 K Street NW, Suite 300
Washington D.C. 20006
(202) 508-1065
tom@twilcoxlaw.com

Attorney for the North America Freight Car Association, The National Grain and Feed Association, and The National Oilseed Processors Association

/ss/ Michael F. McBride
MICHAEL F. McBRIDE
Van Ness Feldman LLP
1050 Thomas Jefferson Street, NW, Suite 700
Washington, D.C. 20007
(202) 298-1800
mfm@vnf.com

Attorney for The Chlorine Institute

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 768

**PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS**

VERIFIED STATEMENT OF MATHEW R. JOHNSON

My name is Matt Johnson. I am Vice President of Technology and Information Services of AllTranstek. AllTranstek is one of North America's largest and most comprehensive rail transportation management and consulting companies, with core competencies that include railcar fleet management and strategic market consulting services. In my role of Vice President of Technology and Information Services I oversee AllTranstek's systems development and data analytics initiatives.

I was asked by the North American Freight Car Association, the National Grain and Feed Association, The Chlorine Institute, and the National Oilseed Processors Association (the Petitioners) to conduct an analysis of a sampling of Car Location Message ("CLM") Event Sighting Codes as part of their submittal in response to the questions posed by the Surface Transportation Board in the Decision served in this proceeding on April 1, 2022. This verified statement describes the reason for the analysis, the methodology I used, and the output the analysis produced.

A. Purpose of Analysis

AllTranstek collected sighting data based on railroad-generated CLM messaging for the Private Railcars of fifteen (15) different companies who participated in the study. Most of the companies are members of the Petitioner associations. AllTranstek collects and manages the CLM data for many other members of the Petitioner associations and other companies, and many of those companies were contacted. However, those companies declined to participate for various reasons, including their concern about the effect of their participation on their relationship with the Class I railroads that provide them service.

The participating companies represent numerous industries which are collectively served by all of the Class I railroads. While railcar type is not included in the analysis, the railcar types represented are primarily privately owned open-top hoppers, covered hoppers, and tank cars. This sighting data was compiled through a processor utilizing an algorithm which associates consecutive sightings with applicable codes into cohesive series of data under a common “Trip”. The analysis was then performed by evaluating specific sighting data under collective trips. This data represents 89,851 distinct Private Railcars which collectively made 956,811 complete origin-to-destination trips within the July 1, 2022 to April 30, 2022 timeframe.

B. Methodology

Sighting (CLM) data that was collected was sequenced into Trips after being collected by AllTranstek. A Trip is a collection of sighting data points that are sorted and organized in order from the origin to the destination of the railcar. Each individual CLM record remains unique, but an element is added to the record to indicate the sequence number to indicate order, and a Trip counter. As an example, if 100 CLMs were collected for a given railcar, they would be placed in chronological order and given a SEQUENCE_NUMBER index in order from 1 to 100. The

processing application that AllTranstek uses then works to identify when each trip started and ended, which is done through looking at changes such as LOAD_STATUS_CODE which shows changes to Load/Empty status and the CURRENT_CODE which gives the status of the railcar in transit, as well as through evaluating the locations in the sighting lines. In this example, if the first 35 lines were determined to be Trip 1, then those lines each had a TRIP_NUMBER field that was updated to 1. If the next 28 lines were determined to be Trip 2, then the TRIP_NUMBER field for those lines was set to 2, and then if the next 25 lines were determined to be Trip 3 then TRIP_NUMBER was set to 3 for those records. If the remaining 12 lines did not comprise a full Trip, then these records were disregarded as only complete Trips were included in the analysis.

The CURRENT_CODE elements in the CLM data are a critical part of the process, and the codes provided on the data collected included the following:

- A: Arrival
- B: Bad Order
- D: Arrival Destin
- G: B/O Release
- H: Hold
- J: Jct Delivery
- P: Departure
- R: Jct Recv
- S: Storage
- W: Released
- X: Pull
- Y: Const Place
- Z: Actual Place

Once the trips were assembled, the codes from the prior and following records in the sequence for the railcar were populated onto each line of data into the corresponding PREVIOUS_CODE and NEXT_CODE fields. AllTranstek also populated a new data element titled DWELL which was based on the time between the prior sighting record and the current one and is measured in days. If sighting 1 was on March 4, 2022 at 7:52 am and sighting 2 was on

March 4, 2022 at 9.26am, then this equated to 94 minutes, which would be 0.065278 of a day. Any DWELL values greater than 48 hours but less than 240 hours were initially of interest and these Trips were flagged.

As previously stated, some extended dwell times are legitimate, and so flags were removed from trips where the DWELL time exceeded 48 hours but had a CURRENT_CODE value of one of the following: “G” (Bad Order Release), “H” (Hold), and “S” (Storage). Flags were also removed from records with DWELL time over 48 hours where the PREVIOUS_CODE was either “Y” (Constructively Place) or “Z” (Actual Place) as these may have been extraneous records that resulted in double-reporting the placement of the railcar by the railroad, and which otherwise would incorrectly inflate the DWELL time calculation.

Any Trips with a flag remaining on them were included in the study and counted as having an event. The summaries compiled in this analysis include periods of idle time that a.) are greater than 48 hours but are less than 240 hours, and b.) are greater than 72 hours but are less than 240 hours. These periods of idle time are classified as “Events”. The 240+ hour cap, reflective of 10+ days, was applied because delays beyond 10+ days could be indicative of extraneous events that require more situational review and analysis and should not necessarily be included without such justification/consideration.

Review of the Events has been leveraged in two ways:

- 1.) Trips with Events: Trips are classified as either a.) not having an Event, or as b.) having one or more Events. This is a binary consideration, and the number of Events above the first one, if present, does not impact the trip classification.
- 2.) Number of Events (categorized into 24-hour increment windows): Events have been categorized into 24-hour increments starting at 48 hours and ending at 240 hours. This reflects the actual number of times railcars sat idle in qualifying Events during trips, and in this instance if more than one Event occurred in a single trip, each Event is counted individually.

A data file with a sample of the data after analysis will be made available accompanying this summary subject to the Protective Order in this proceeding. The data file is based on actual data collected but has had identifying characteristics removed from it as part of the confidentiality agreements established with the parties sharing the data for the study. Railcar marks and numbers have been replaced with “dummy” values, and elements such as LOCATION, STATE, RAIL_COMPANY, and TRAIN_ID have all had their actual values masked with indexes. Analysis of the data in this format is still possible as none of these elements were relevant to the focus of the study. The data sample pulled is focused on Trips which were categorized as having at least one Event lasting between 72 and 96 hours. There were nearly 59.2 million CLM records used in this analysis, and this sample adequately represents the process and the data used.

Notes:

- A.) The CLM data used in this study was initially generated by readers that are the possession of the railroads, and the data is collected by the railroads and made available (either directly or indirectly) via Railinc, who performs numerous IT related functions for the AAR. All data leveraged in this study was sourced from the railroads, and anyone with access to the data could duplicate these methods and replicate the results, including the railroads or Railinc.
- B.) Sighting data was limited to that within Trips that both started and ended within the July 1, 2021 to April 30, 2022 window. Trips that started prior or ended after were omitted from the analysis, so no partial trips were included.
- C.) Sighting data does not include car type; therefore, car type classifications were not included in the analysis.
- D.) Sighting data leveraged was sourced from several companies based on CLM data which originated with the railroads.
- E.) CLM data, as noted in the Petition, is also available to the railroads, and would readily be accessible by them to audit any claims submitted by shippers.
- F.) Waybill data, which lends a higher degree of accuracy to the formation of trips based on sighting data, was not leveraged in this analysis. This was due to the fact that waybill data is not part of the Petitioners proposed regulations.
- G.) Any anomalies in the sighting data that were not able to be aggregated into Trips were omitted

from the analysis.

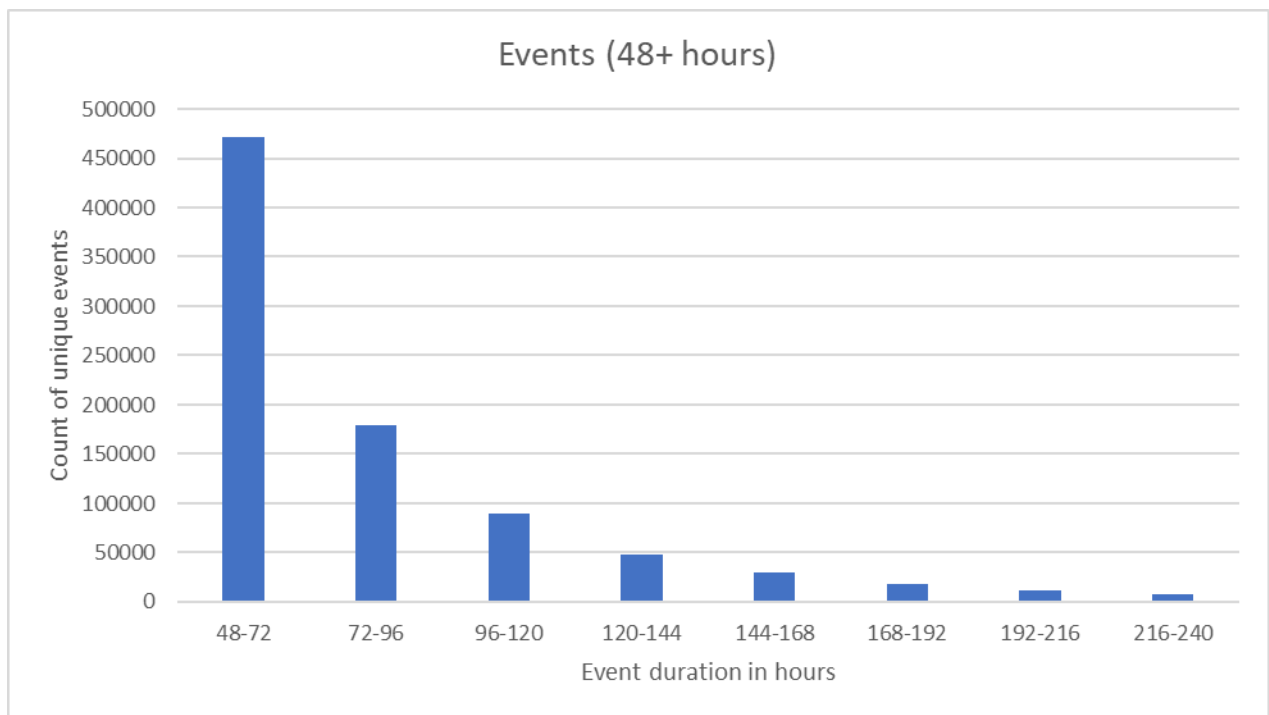
C. Results

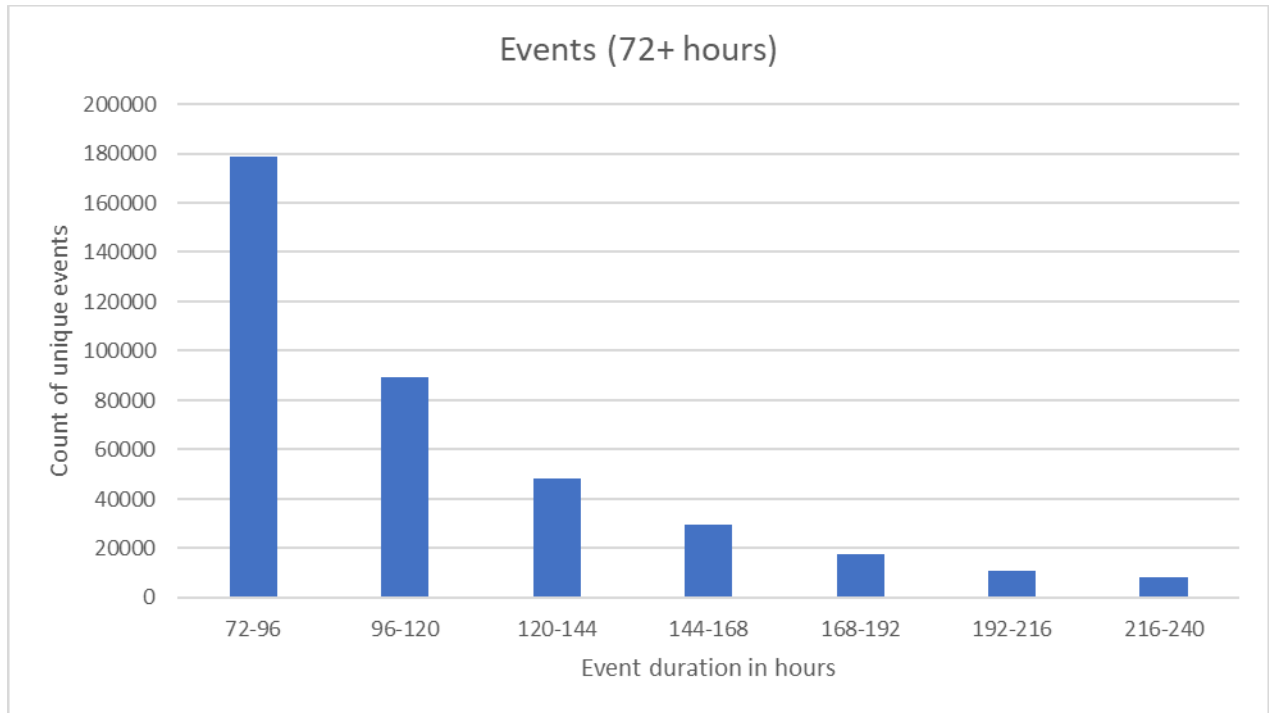
1. Number of companies participating in study: 15
2. Individual CLM sighting records leveraged: 59,186,977
3. Number of distinct Private Railcars included in the study: 89,851
4. Total trips collected: 956,811
5. Trips with at least one Event* in excess of 48 hours:
 - a. Count: 526,537 (55.03% of all trips)
 - b. Per participating company:
 - Minimum percentage of trips with an Event*: 46.37%
 - Maximum percentage of trips with an Event*: 71.03%
 - Average percentage of trips with an Event*: 56.37%
 - Standard Deviation: 7.57%
6. Trips with at least one Event* in excess of 72 hours:
 - a. Count: 297,889 (31.13% of all trips)
 - b. Per participating company:
 - Minimum percentage of trips with an Event*: 20.15%
 - Maximum percentage of trips with an Event*: 48.33%
 - Average percentage of trips with an Event*: 31.32%
 - Standard Deviation: 6.99%

* Events are idle times omitting CLMs that meet specific criteria.

7. Breakdown of Total Events
 - a. Events between 48-72 hrs.: 471,753

- b. Events between 72-96 hrs.: 178,792
- c. Events between 96-120 hrs.: 89,244
- d. Events between 120-144 hrs.: 48,133
- e. Events between 144-168 hrs.: 29,697
- f. Events between 168-192 hrs.: 17,532
- g. Events between 192-216 hrs.: 11,130
- h. Events between 216-240 hrs.: 8,218





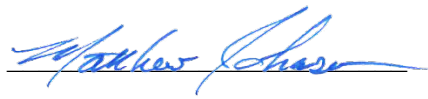
8. Analysis

The data and results for this study have been aggregated, except for the individual percentages of trips with Events. The railcars included represent multiple railcar types in multiple industries. In addition, the sighting data is inclusive of a vast number of locations on all of the Class I railroads. Despite this variance, the curves resulting from the bar charts as modeled above, when prepared for each individual study participant, are nearly identical. This supports the position that the number of idle time Events are significant, and that they are consistent, independent of railcar type, industry, location, or servicing Class I railroad.

VERIFICATION

I, Mathew R. Johnson, verify under penalty of perjury that the foregoing Verified Statement is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed: June 30, 2022

A handwritten signature in blue ink, appearing to read "Mathew Johnson", is written over a horizontal line.

Mathew R. Johnson