



Freight Rail Customer Alliance

Precision Scheduled Railroading

FRCA Position

FRCA supports legislation that would examine how certain rail carrier operating practices, such as Precision Scheduled Railroading (PSR), are impacting freight rail shippers including their effect on demurrage and accessorial charges and overall service problems.

Issue Background

PSR is a railroad operating strategy that uses departure schedules and point-to-point delivery methods to achieve low operating ratios and consolidate railroad networks. PSR, initiated by the late Hunter Harrison, has grown in popularity and is being implemented by Canadian National Railway (CN), Canadian Pacific Railway Limited (CP), CSX Corporation, Norfolk Southern Corporation (NS), and Union Pacific Corporation (UP). BNSF has not adopted it formally, but may still be incorporating some aspects.

Freight rail shippers, notably rail-dependent shippers, continue to experience a wide array of service problems and increased costs ranging from missed switches, late deliveries, wrong cars being delivered, double stacking of cars, crew shortages, and unexpected and/or increased demurrage and accessorial charges.

During the last 116th Congress, the Surface Transportation Board (STB) and Capitol Hill began shedding a spotlight on the impacts of PSR.

STB

On November 6, 2019, FRCA submitted comments in response to three proceedings: Document No. EP 757, (Proposed) *Policy Statement on Demurrage and Accessorial Rules and Charges*, Document No. EP 759, [Notice of Proposed Rulemaking (NPM)] *Demurrage Billing Requirements*, and Document No. EP 760, (Notice of Proposed Rulemaking) *Exclusion of Demurrage Regulations from Certain Class Exemptions*. To read FRCA's comments go to: <http://railvoices.org/wp-content/uploads/FRCA-Comments-on-Accessorial-and-Demurrage-Charges-EP-760-SUBMITTED.pdf>

The comments were in response to the proposals included these three proceedings issued by the Board on October 7, 2019. Prior to these proceedings, the STB held a hearing, Ex Parte No. 754, *Oversight Hearing on Demurrage and Accessorial Charges*, on May 24, 2019. FRCA testified Charges, on and relayed problems being experienced by some of its members including:

- Being charged separately for additional amounts that were previously encompassed in the line-haul transportation.
- Substantial disruption and deterioration in service.
- There is an absence of fundamental fairness and basic reciprocity between shippers and railroads in the PSR world. Shippers are punished financially for not being able to receive a return train at the appointed time, or for taking too long to receive or unload a railcar. In contrast, railroads enjoy free

rein to supply reduced and inconsistent service, without any monetary consequences, other than the lower operating ratios that appear to be their governing objective.

Suggested FRCA recommendations for the Board to consider included:

- Rail carriers should not be allowed to establish new charges for services that were previously provided as part of the regular line-haul rate services, at least not without a showing that the line-haul rates have been reduced commensurately.
- Rail carriers should not be allowed to use demurrage and accessorial charges as a profit center.
- The principle of reciprocity should apply to rail carriers.
- Adopting the approach that the Federal Energy Regulatory Commission requires of jurisdictional public utilities and natural gas pipelines.

FRCA's written submitted testimony and oral remarks can be read here:

<https://railvoices.org/frca-vice-president-emily-regis-testifies-on-behalf-of-frca-and-aepco/>

Congress

During the previous 116th Congress, the House-passed *INVEST in America Act (MOVING FORWARD ACT)*, H.R. 2, included numerous other transportation-related provisions, included Section 9502 that would have required the General Accountability Office (GAO) to study changes in freight railroad operating and scheduling practices, notably the PSR model. This study was to have examined: (1) the impacts of the operation of longer trains; (2) safety impacts of reduction in workforce, including occupational injury rates, impacts to inspection frequencies and repair quality, and changes in workforce demands; (3) the elimination or downsizing of yards, repair facilities, and other operational facilities; (4) increases in demurrage or accessorial charges or other costs to shippers; (5) capital expenditures for rail infrastructure; and, (6) the effect of changes to dispatching practices and locations of dispatching centers on— (A) the on-time performance of passenger trains, and (B) the quality and reliability of service to freight shippers.

Not later than 1 year after the date of enactment of this Act, the GAO would have been required to submit to the House Transportation and Infrastructure (T&I) Committee and the Senate Commerce, Science, and Transportation (Commerce) Committee a report summarizing the study and the results of such study, including recommendations for addressing any negative impacts of precision scheduled railroading on freight shippers or passenger railroads.

[H.R. 2 – a *FAST Act* reauthorization and infrastructure package – passed the House on July 1, 2020.]

On June 25, 2019, FRCA participated in a House Railroad, Pipeline and Hazardous Materials Subcommittee Railroad Shipper's Roundtable. As relayed during the STB *Oversight Hearing on Demurrage and Accessorial Charges* a month earlier, FRCA again discussed problems being experienced by several FRCA members as a result of PSR. FRCA's informal oral remarks can be read here: <https://railvoices.org/frca-vice-president-emily-regis-participates-on-behalf-of-frca-and-aepco/>

In the Senate, the *Rail Shipper Fairness Act of 2020*, S. 4961, was introduced by Senator Tammy Baldwin (D-WI). It also included a provision for GAO to study changes in freight railroad operating and scheduling practices (Section 7).

It would have directed the GAO to take a holistic look at the impacts on freight rail shippers, Amtrak, commuter railroads, railroad employees and other stakeholders and submit a report to the Senate Commerce

Committee and the House T& Committee summarizing the results of the study, including recommendations for addressing any negative impacts of precision scheduled railroading on freight shippers or passenger railroads.

Status

On April 30, 2020 the Board issued a new *Policy Statement on Demurrage and Accessorial Charges*, Document No. EP 757. This policy became effective on May 30, 2020.

Also, on April 30, 2020, the Board issued a Supplemental Notice of Proposed Rulemaking, Document No. EP 759, Demurrage Billing Requirements following the comments received to its NPRM. Comments were June 5, 2020 and reply comments on July 6, 2020. Per the STB quarterly reports provided to Congress, the target date for STB's next action in this proceeding was to have happened in January 2021.

It is expected that House T&I Committee Chairman Peter DeFazio (D-OR-4) will start with the previous ***INVEST in America Act***, H.R. 2, when Congress focuses on an anticipated larger, infrastructure package later this Spring.

It is anticipated that Senator Baldwin will introduce a similar rail shipper fairness bill in 2021.