



Freight Rail Customer Alliance

Thank You

The Freight Rail Customer Alliance (FRCA) appreciates the willingness of the Surface Transportation Board (STB or Board) to engage at great length and depth with the demurrage and accessorial charges and service issues that shippers have been confronting, especially in connection with the adoption of Precision Scheduled Railroading (PSR) by many of the Class 1 Railroads.

Last year's STB *Oversight Hearing on Demurrage and Accessorial Charges*, the *Railroad Shippers Roundtable* held by the House Railroad, Pipelines, and Hazardous Materials Subcommittee, the current FY 2020 appropriations and related report language in S. 2520 (S. Rpt. 116-109) that carried over into the final package, and the Board's notices of proposed rulemaking for a policy statement, demurrage billing requirements, and associated commodity exemptions, combined with the interest and engagement of your Members and you, have provided valuable public forums and shed needed light on the freight rail service and fee practices at issue. Questions have been raised, data and other information compiled, presented, and considered, and the dialogue continues – all important actions that have been long overdue.

STB's Policy Guidance and Demurrage Billing Decisions

The STB's final Statement of Board Policy in Docket No. EP 757, *Policy Statement on Demurrage and Accessorial Rules and Charges*, and its accompanying Final Rule in Docket No. EP 759, *Demurrage Billing Requirements*, issued April 30, 2020, show little departure from the STB's original proposals in its notices. As such, they provide and ratify a vitally-needed foundation for the resolution of these very important issues for the benefit of all stakeholders. However, there is little in these Decisions that is self-enforcing, with the significant exception of the treatment of warehousemen and their customers.

The STB expresses optimism that these Decisions will be enough to cause parties to resolve potential disputes among themselves without the need for further agency intervention, and lays out important policies and principles to that end. FRCA sincerely hopes that the STB's aspirations will be realized. Yet, in virtually every instance, the policies and principles are to be applied or fleshed out on a case-by-case basis, which allows room for the possibility of differing interpretations and applications. The reluctance for the Board to go further, while perhaps understandable in some respects, has the unfortunate potential to invite dispute and delay, both of which fall to the railroads' benefit in the real world. Simply stated, FRCA is concerned that more specificity, certainty, and penalties would be very useful to realize STB's aspirations for voluntary collaboration and resolution without individual disputes materializing before the Board.

Demurrage Billing Requirements SNPR

FRCA recognizes that the STB's Supplemental Notice of Proposed Rulemaking (SNPR) in Docket No. EP 759, *Demurrage Billing Requirements*, also issued April 30, 2020, proposes some of that additional specificity, particularly in enabling shippers to receive the minimum information needed to review claimed demurrage and accessorial service charges. FRCA looks forward to submitting comments in response.

Class I Carriers to Report Demurrage and Accessorial Revenue thru 2020

FRCA is encouraged that when STB Chair Begeman wrote to the individual Class I carriers on May 7, 2020, regarding their service recovery plans and capabilities, she also asked that they continue to report their demurrage and accessorial charge revenue through 2020. That reporting was previously requested only through 2019. This continued information is important, particularly as shippers seek to cope with additional challenges, and the Board continues to monitor the fluidity of the rail network.

About FRCA

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