

**BEFORE THE SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

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**DOCKET NO. EP 759
DEMURRAGE BILLING REQUIREMENTS**

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NOTICE OF PROPOSED RULEMAKING

**COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

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The American Short Line and Regional Railroad Association (“ASLRRA”) is a non-profit trade association representing the interests of approximately 500 small railroads and 500 railroad supply company members in legislative and regulatory matters. Small railroads operate 50,000 miles of track in 49 states, or approximately 38% of the national railroad network, originating or terminating one out of every four railcars moving on the national railroad network, serving customers who otherwise would be cut off from the network.

Background

On October 7, 2019, the STB issued a Notice of Proposed Rulemaking in Docket No. EP 759, Demurrage Billing Requirements, (“Demurrage NPRM”), in which it proposed certain requirements regarding Class I carriers’ demurrage invoices and a requirement that a Class I directly bill the shipper if the shipper and warehouseman agree to that arrangement and have notified the railroad. This Demurrage NPRM is a companion proceeding with the STB’s decision in Docket No. EP 757, Policy Statement on Demurrage and Accessorial Rules and Charges, that was served on the same day as this notice.

In this proceeding the Board said that it issued the Demurrage NPRM as a result of the testimony and comments in the Oversight Hearing on Demurrage & Accessorial Charges, Docket No. EP 754. The Board states that it had invited participants in the oversight hearing to comment on whether the tools available to manage demurrage and accessorial charges provide adequate data for rail users to evaluate whether charges are being properly assessed and to dispute the charges when necessary. In response, both at the hearing and before and after it, the STB said many shippers and warehousemen expressed dissatisfaction with their experiences regarding demurrage

and accessorial charges, raising concerns about demurrage billing practices, including invoices with insufficient information on them. Additionally, representatives from warehousemen raised issues about their experiences.

Proposed Changes

In the Demurrage NPRM, the Board proposes to address “(1) certain requirements regarding Class I carriers’ invoices, including what information should be included in demurrage invoices and (2) a requirement that Class I carriers send any invoices related to transportation involving a warehouseman to the shipper if the shipper and warehouseman have agreed to that arrangement and have notified the rail carrier.” Demurrage NPRM at 2. It also invited parties to comment on any other measures that might be appropriate to help further clarify demurrage billing practices, to ensure the party causing delays resulting in demurrage charges pays for the charges, and to promote timely resolution of demurrage disputes.

Regarding the requirements for demurrage invoices, the Board proposes a requirement that all Class I railroad provide at a minimum the following information on any demurrage invoices:

- The unique identifying information (e.g., reporting marks and number) of each car involved;
- The following shipment information, where applicable:
 - The date the waybill was created;
 - The status of each car as loaded or empty;
 - The commodity being shipped (if the car is loaded);
 - The identity of the shipper, consignee, and/or care-of party, as applicable;
 - The origin station and state of the shipment;
- The dates and times of (1) actual placement of each car, (2) constructive placement of each car (if applicable and different from actual placement), (3) notification of constructive placement to the shipper, consignee, or third-party intermediary (if applicable), and (4) release of each car; and
- The number of credits and debits attributable to each car (if applicable).

Demurrage NPRM at 9 -10.

In addition, the Board proposed that prior to sending a demurrage invoice, the Class I carriers must take appropriate action to ensure that the demurrage charges are accurate and warranted consistent with the purpose of demurrage.

ASLRRRA Comments

ASLRRRA has simultaneously submitted Comments in Docket No. EP 757, Policy Statement on Demurrage and Accessorial Rules and Charges, and to the extent those Comments

address the proposals contained in the Demurrage NPRM, adopts them in this proceeding. Regarding the specific proposals in this notice, ASLRRA offers the following Comments.

Comments on the Proposed Requirements for Demurrage Invoices

Although the Demurrage NPRM focuses on Class I railroads, the proposed rule could adversely affect small railroads if the rule were to be extended to encompass those small railroads. Even some of the Class I railroads do not have the current technology to provide all the information the STB proposes to require be on invoices. *See*, Demurrage NPRM at 6. It is safe to state that no small railroad possesses the anything close to the data processing capabilities of the Class I railroads nor do they have the resources, large IT departments or technical capabilities to provide all the information the proposed rule requires. While some small railroads utilize the RMI revenue database for revenue and car reporting purposes, some do not and even those that do, do not have a sophisticated means to translate from that database to demurrage bills processes. To undertake equipping themselves to provide this information would be prohibitively expensive and divert precious resources better used on improving their infrastructure and serving their customers.

Further, more than half of all small railroads in the United States currently operate as handling line carriers. As such, they operate on a handling line basis in their interchange of traffic with the connecting Class I railroads. In this arrangement, oftentimes the small railroad providing the direct service to the destination customer is not provided all the information included in the STB proposed format.

While ASLRRA agrees that small railroads should provide accurate demurrage statements with as much information as reasonably possible, there are both structural and technical reasons detailed demurrage billings as proposed by the STB simply may not be reasonable or possible for small railroads. Small railroads will certainly try to comply with the requirements to the extent they are capable of doing so and regardless will maintain a focus on open, productive, friendly, and communicative relationships with their customers, which is the lifeblood of the small railroad businesses.

Comments on the Proposed Rule on Issuing Invoices Directly to Shippers Instead of Warehousemen

The Board proposes to require that serving Class I railroads send demurrage invoices directly to the shipper instead of to the warehouseman. This would be required when the shipper

and warehouseman agree to such an arrangement and notify the Class I of the agreement. Again, the STB does not propose to require Class II and III railroads to comply with this requirement.

As is the case with the proposed rule on invoice requirements, to impose this requirement on small railroads would adversely affect small railroads if they were to be extended to encompass them. They do not possess the staff, expertise or resources to ensure this requirement is met and would not have a way to easily determine if the shipper and warehouseman have the necessary agreement in place much less whether the Class I has been notified of an agreement.

Moreover, if invoicing of demurrage charge is to be made to a party different than the consignee designated on the waybill for the shipment, then the shipper and consignee must provide clear instructions and a binding concurrence for such a change to the serving railroad. Additionally, the party to be billed must apply for credit with the serving railroad. This is especially important for small railroads that may operate without full access to the shipping instructions such as with handling carriers as noted above. If such accommodations require additional expenses upon the serving carrier, STB should make allowances for the pass-through of such expenses.

Comments on the Paperwork Reduction Act

The STB only addresses the burden placed on Class I railroads and estimates that the cost of implementing the proposed rules would be negligible. Except for a table on Appendix B to the Demurrage NPRM, it does not address the cost to small railroads if the proposed rules are extended to them. Without any analysis, the STB cites a figure of 677 hours as the burden on non-Class I railroads. There is no explanation regarding the source of this figure and therefore does not fulfill the obligation of the Board to make findings under the Paperwork Reduction Act concerning small railroads.

For the reasons stated above, ASLRRRA agrees with the STB that Class II and III railroads be exempted from the requirements of these proposed rules. Keeping in place the proposed exemption of Class II and III railroads from new demurrage billing requirements is very important. Placing global demands on the entire freight railroad industry for demurrage billing requirements would likely create financial stress on those small railroads least able to comply with the new regulatory demand.

Respectfully submitted,

A handwritten signature in cursive script that reads "Keith T. Borman".

Keith T. Borman
Senior Vice President and General Counsel
American Short Line and Regional Railroad Association