

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Docket No. EP 759

DEMURRAGE BILLING REQUIREMENTS  
Supplemental Notice of Proposed Rulemaking

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**Comments of American Fuel & Petrochemical Manufacturers**

**I. INTRODUCTION**

The American Fuel & Petrochemical Manufacturers (“AFPM”) is pleased to provide comments on the Surface Transportation Board’s (“STB” or “the Board”) Supplemental Notice of Proposed Rulemaking (“SNPRM”) on Demurrage Billing Requirements.<sup>1</sup> In response to comments received on the Board’s October 2019 Notice of Proposed Rulemaking (“NPRM”)<sup>2</sup> on billing requirements in Docket EP 759, the Board is inviting parties, through this SNPRM, to comment on the five specific modifications to the minimum information requirements proposed in the October 2019 NPRM.

AFPM is a national trade association whose members comprise most U.S. refining and petrochemical manufacturing capacity. Our members produce the fuels that drive the U.S. economy and the chemical building blocks integral to millions of products that make modern life possible. To produce essential goods, AFPM members rely on a safe, reliable, and efficient rail system to move materials to and from refineries and petrochemical facilities.

AFPM applauds STB’s work to date, including most recently the finalization of STB’s Demurrage Policy Statement,<sup>3</sup> as well as STB’s thoughtful consideration of comments related to STB’s October NPRM on Demurrage Billing Requirements and STB’s “Oversight Hearing on

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<sup>1</sup> See 85 *Fed. Reg.* 26915, “Demurrage Billing Requirements.” Supplemental Notice of Proposed Rulemaking, Docket No. FD EP 759 proposed May 6, 2020, <https://www.federalregister.gov/documents/2020/05/06/2020-09684/demurrage-billing-requirements>

<sup>2</sup> See 84 *Fed. Reg.* 55114, “Demurrage Billing Requirements.” Notice of Proposed Rulemaking, Docket No. FD EP 759 proposed October 15, 2019, <https://www.federalregister.gov/documents/2019/10/15/2019-22202/demurrage-billing-requirements>. See AFPM Comments on Demurrage Billing Requirements (Docket No. EP 759), submitted October 31, 2019, [https://www.afpm.org/sites/default/files/issue\\_resources/AFPM-Demurrage-Billing-Comments.pdf](https://www.afpm.org/sites/default/files/issue_resources/AFPM-Demurrage-Billing-Comments.pdf).

<sup>3</sup> See 85 *Fed. Reg.* 26866, “Policy Statement on Demurrage and Accessorial Rules and Charges” Statement of Board Policy, Docket No. FD EP 757 published May 6, 2020, <https://www.federalregister.gov/documents/2020/05/06/2020-09682/policy-statement-on-demurrage-and-accessorial-rules-and-charges>

Demurrage & Accessorial Charges” (Docket No. EP 754 or the “May 2019 Hearing”).<sup>4</sup> As the hearing and comments to the dockets (both EPs 754, 757, and 759) readily demonstrated, demurrage and accessorial charges, and recent changes to those charges, are a major concern for rail shippers, including AFPM members.

It seems appropriate to reemphasize the need for STB to take a fresh look at demurrage in the context of bulk liquid shippers who own or lease nearly all the tank cars they use.<sup>5</sup> STB must recognize that the Interstate Commerce Commission Termination Act (ICCTA) requires rail carriers to provide tank cars or compensate the shippers for the use of shipper-supplied tank cars.<sup>6</sup> This real-world fact requires a different perspective on demurrage as applied to these shippers. In this context, demurrage must be viewed as a two way street. Shippers should pay appropriate demurrage fees to railroads, where delay is the fault of the shipper. Similarly, where the railroad does not meet its scheduled delivery time through no fault of the shipper, it is the tank car owner who has been deprived of use of its asset and equity demands that the railroad pay demurrage to the shipper.

Under Docket EP 759, rail shippers asked the Board to establish minimum information requirements that enable shippers to audit (and assess) demurrage and storage charges, and while the October NPRM attempted to do that, this SNPRM goes a step further and opens for comment requirements that are needed to ensure the transparency of demurrage billing. This action demonstrates STB’s commitment to thoughtfully addressing this important issue and properly considers additional billing requirements meant to ensure that demurrage charges are used appropriately and fairly.

AFPM looks forward to working with the Board to ensure demurrage is used as it was intended, which is to promote an efficient rail network and not as a revenue generator for the railroads. AFPM appreciates the consideration of written comments from all impacted stakeholders.

## **II. BACKGROUND**

The principle underlying demurrage is straightforward - when a person or entity holds someone else’s assets (*i.e.*, a rail car) beyond a reasonable time, it is using that asset for which the owner of that asset should be compensated. At the same time, when a person or entity holds someone else’s assets beyond a reasonable time, it negatively impacts the fluidity of the rail network and the broader supply chain and manufacturing operations. Demurrage has evolved, and now “[d]emurrage charges serve two purposes: (1) to compensate the railroad for added costs (e.g., for the car-hire charges it pays to the carrier owning the equipment being held) or loss

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<sup>4</sup> See 84 *Fed. Reg.* 15662, “Oversight Hearing on Demurrage & Accessorial Charges.” Notice of Hearing, Docket No. EP 754 published April 16, 2019, <https://www.federalregister.gov/documents/2019/04/16/2019-07522/oversight-hearing-on-demurrage-and-accessorial-charges>. The Board received over 90 pre-hearing submissions from interested parties; heard testimony over a two-day period from 12 panels composed of, collectively, over 50 participants; and received 36 post-hearing comments.

<sup>5</sup> Demurrage charges were developed in a time when the railroads owned the rail tank cars. Now, however, most tank cars are owned by rail shippers or rail lessors, not railroads. That said, rail carriers are the only entities charging demurrage, shippers are not compensated for their assets should they be delayed.

<sup>6</sup> See *e.g.*, 49 U.S.C. §§ 11101, 11121.

of the use of assets; and (2) to encourage shippers to return freight cars to the system, thereby making the entire system more efficient.”<sup>7</sup> Moreover, “when a shipper’s privately-owned rail cars are idled on the railroad’s tracks, it is depriving the railroad of the use of that track.”<sup>8</sup> An efficient rail network is in the best interests of both carriers and shippers; therefore, a reasonable and workable demurrage system has the potential to benefit all parties.

Demurrage is subject to Board regulation under 49 U.S.C. 10702 and 49 U.S.C. 10746.<sup>9</sup> These regulations require railroads to establish reasonable rates and transportation-related rules and practices, and mandates that railroads determine demurrage charges alongside rules related to those charges, in a way that will fulfill national needs relating to freight car use, distribution, and maintenance of an adequate car supply.

Rail shippers are often saddled with burdensome demurrage tariff charges that are easily triggered; whereas rail carriers face limited to no penalties should they not provide an adequate level of service or delayed return of a shippers asset (the rail car). This situation is inherently unreasonable and one-sided, particularly with ownership of rail assets now the responsibility of rail shippers and lessors. In many of our members’ experience, demurrage is nothing more than a storage charge for their cars sitting idling in rail yards while the railroads miss switches or delivery windows. With many refiners and petrochemical manufacturers “captive” to a single rail carrier, there is no practical ability to negotiate service, rate determinations, or demurrage fees. AFPM members frequently face late or partial rail shipments in direct conflict with agreed-upon service agreements. The result is lost profits, angry customers, and partial orders that disrupt the supply chain and goods delivered to the American consumer. In addition, delayed shipments cause refineries and petrochemical manufacturers to incur overtime or trucking costs to make up for a missed railcar. Indeed, when storage for AFPM members’ products ran low, such as during the COVID-19 crisis, AFPM members have frequently been unable to turn to using their own railcars for storage due to the railroads’ failure.

Most relevant to this docket, the communication of what fees are charged and why they are charged is lacking or non-existent. The one-sidedness of the demurrage system is demonstrated with the process of challenging a demurrage fee. Under Docket EP 759, rail shippers stated repeatedly that invoices from rail carriers often lack the basic information needed to assess the validity of demurrage charges. This dearth of information increases the burden on shippers to document and track all possible situations that might result in charges as a means to

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<sup>7</sup> *NAFCA*, slip op. at 8. *See also* 49 CFR § 1331.1.

<sup>8</sup> *R.R. Salvage & Restoration, Inc. – Pet. for Decl. Order – Reasonableness of Demurrage Charges*, STB Docket No. NOR 42102, slip op. at 4 (STB served July 20, 2010).

<sup>9</sup> Pursuant to 49 U.S.C. § 10702(2), the Interstate Commerce Commission Termination Act (“ICCTA”), requires that a railroad “establish reasonable...practices” related to “transportation and service.” This broad discretion applies to STB’s handling and oversight of demurrage charges issued by rail carriers. Under 49 U.S.C. § 10746, “[a] rail carrier providing transportation subject to the jurisdiction of the Board under this part shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to: 1) freight car use and distribution; and 2) maintenance of an adequate supply of freight cars to be available for transportation of property.”

identifying and disputing charges applied at a later date. Further, a lack of uniformity or detail leads to a situation where rail shippers are disadvantaged when challenging such fees.

With respect to demurrage charges, the Board has looked at the policy behind these tariffs several times over the last decades to see if railroads are being reasonable in their application. Now, more than ever, the levying of demurrage charges and the practices used to calculate and communicate those charges require revision. Recent rail carriers' changes to demurrage tariffs do not appear to promote the stated purpose of demurrage, to improve network fluidity, rather these changes appear to only be for revenue producing purposes. In this regard, AFPM is encouraged by the Board's action to seek out and consider additional billing information related to demurrage charges. In addition, the Board should consider rethinking the existing demurrage system so that it ensures that the *asset owner* is compensated with demurrage—here, AFPM members, who own the railcars—rather than the railroads reaping the benefits of the asset without the costs.”

### **III. AFPM COMMENTS ON DEMURRAGE BILLING REQUIREMENTS**

AFPM's comments focus on the specific elements included in the billing statements, supporting documentation that should be required, and issuance of billing to relevant parties. In the Appendix, AFPM also provides recommended updates to the proposed regulatory text that are reflective of our comments.

#### **A. GENERAL REQUIREMENTS FOR DEMURRAGE INVOICES**

Per STB, the “overarching purpose of demurrage is to encourage the efficient use of rail assets (both equipment and track) by holding rail users accountable when their actions or operations use those resources beyond a specified period of time.”<sup>10</sup> STB continues that “[i]f demurrage invoices are so vague that they effectively preclude shippers from determining what happened, then shippers are unable to challenge the invoices if they believe the demurrage charges were improper or to take appropriate actions to avoid future demurrage charges if they were responsible for the delays.”<sup>11</sup>

To alleviate these concerns the Board has proposed requirements applicable to Class I carriers that establish a minimum amount of information to be included in STB invoices as well as a requirement to ensure accuracy of such information. AFPM believes the proposals in the original NPRM and this SNPRM support the stated purpose of demurrage and have the potential to vastly improve the status quo. AFPM members are not opposed to appropriate demurrage charges where their conduct causes delays preventing the railroad from using its equipment. AFPM supports the concept of a uniform set of minimum information being required with all demurrage invoices. This process will likely alleviate some of the uncertainty surrounding demurrage charges assessed against rail shippers. Specifically, a defined set of information can improve the dispute resolution process should a shipper wish to dispute a charge.

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<sup>10</sup> See, e.g., *Pa. R.R. v. Kittanning Iron & Steel Mfg. Co.*, 253 U.S. 319, 323 (1920) (“The purpose of demurrage charges is to promote car efficiency by penalizing undue detention of cars.”)

<sup>11</sup> *Ibid.*

AFPM also believes such information should be documented (e.g., signed and certified documents, photos, etc.) to help verify the accuracy of the data and thus the charges levied.

## **B. SUPPLEMENTAL DEMURRAGE INVOICE DATA ELEMENTS UNDER CONSIDERATION**

In the October NPRM, STB proposed that each Class I railroad provides the unique identifying information (e.g., reporting marks and number) of each car involved in the demurrage charges. AFPM sees this information as fundamental to establish demurrage charges. In addition to identifying tank car information, STB proposed certain shipment specific information must be included where applicable.

### ***Billing Cycle***

In the SNPRM, the Board invites comment on requiring Class I carriers to include on or with all demurrage invoices the billing period covered by the invoice. Commenters to the NPRM noted that this information is standard invoice information that would allow recipients to easily identify the period covered by the invoice. To assess the validity of demurrage charges, recipients of demurrage invoices may need to evaluate the timing of the charges with their own record of events, and clearer information on the billing cycle would assist in this assessment. Given the basic nature of the information, which may already be provided by some carriers, including such information on or with demurrage invoices would not be burdensome and would improve and potentially reduce the dispute process.

AFPM supports including billing cycle information on demurrage invoices as it is a matter of good practice that will provide needed transparency and consistency in demurrage invoicing. Further, this may assist in discussions and disputes about demurrage charges as well as credits.

### ***Original ETA and Date and Time Cars Received at Interchange***

As discussed in the NPRM, the purpose of the Board's proposed rule is to ensure that the recipients of demurrage invoices will be provided sufficient information in demurrage invoicing so that they can determine the cause of demurrage charges, verify the validity of those charges, properly allocate demurrage responsibility, and modify their behavior if their own actions led to the demurrage charges. To this end, several NPRM commenters, including AFPM, identified the original Estimated Time of Arrival (“ETA”) and the date and time that cars are received at interchange, as information that would give rail users greater visibility into how carrier-caused bunching, which has been of concern to the Board, and other delays relate to demurrage charges.

Based on these comments and replies received in response to the NPRM, the Board noted “it appears that the inclusion of the original ETA of each car (as established by the invoicing carrier) and the date and time at which cars are received at interchange, if applicable, on or with invoices may further these objectives by helping recipients identify sources of delay and carrier-caused bunching and assess the validity of any resulting demurrage charges.”<sup>12</sup> Furthermore, as

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<sup>12</sup> See SNPRM at 26917.

many commenters noted, this information appears to be readily available to carriers as it is used in the ordinary course of business to track car movement and place cars and thus would not be burdensome.

Accordingly, in the SNPRM the Board invites comments on revisions to proposed section 1333.4 that would require Class I carriers to provide on or with their demurrage invoices: (1) the original ETA of each car (as established by the invoicing carrier); and (2) the date and time at which each car was received at interchange, if applicable. The Board also appears interested in exploring the possibility of these requirements being conditional on a reasonable request. Specifically, the board invites comment on whether Class I carriers should instead only be required to provide these items to the invoiced party upon reasonable request, but not include them on or with every invoice.

AFPM is pleased that the Board is considering the inclusion of the original ETA of each car (as established by the invoicing carrier); and the date and time at which each car was received at interchange as this is consistent with our previous comments and provides much needed transparency on demurrage billing. The burden of proof must be shifted to the carrier to prove that the shipper caused the demurrage-inducing delay rather than requiring the shipper to expend time and resources. Moreover, AFPM believes this requirement should be mandated for all demurrage bills and not limited to “reasonable requests.”

The inclusion of this information on demurrage billing is essential for several reasons. If the original ETA were included on carriers' demurrage invoices, rail shippers could compare that ETA to the car placement information to better recognize if carrier-caused problems, including bunching, may have impacted the timing of a car's placement. This aligns directly with the STB's goal of ensuring rail shippers are not punished with demurrage charges for carrier-caused delays beyond the shippers' control. With this information, shippers would know when to dispute demurrage charges attributable to carriers' actions and could verify credits when applicable. This would also serve as an added check and balance on these charges and should be required on all bills, not just when requested.

Furthermore, as stated in our previous comments, requiring carriers to provide original ETA information on demurrage invoices would encourage them to apply increased scrutiny to demurrage invoices before sending them. AFPM agrees with Dow that this additional requirement would not be unreasonably burdensome for carriers because they already generate this information in the normal course of business to account for delays when assessing demurrage.

Like ETA, AFPM believes identifying the date and time at which a delivering carrier received rail cars at interchange, if applicable, would also be useful information that would help rail shippers identify upstream carrier-caused bunching and help rail carriers to properly identify and rectify bottlenecks thus fostering a more efficient network. In both comments to the NPRM and testimony at the May 2019 hearings, rail shippers frequently noted instances where bunching, including bunching that was attributable to upstream rail carriers, resulted in demurrage fees being unfairly levied. This frustrates rail shippers because rail carriers control service schedules and can make changes to those schedules with little to no notice or

collaboration with rail shippers. This creates a system where demurrage is almost predestined to occur.

For example, one AFPM member recently experienced a rail carrier abruptly dropping service from a three-day schedule (Monday, Wednesday, Friday) to two-day schedule (Tuesday, Thursday) with little notice and poor communication. The bunching that occurs automatically with the new 5-day gap in service is ripe for demurrage charges. This has little to do with the use of efficient use of railroad equipment. Similar to ETA times, requiring interchange information would not be unreasonably burdensome for carriers since they must generate this information already to account for delays on joint-line shipments.

The addition of ETA and interchange information is consistent with the Board's recently released "Policy Statement on Demurrage & Accessorial Rules & Charges," EP 757 (STB served Apr. 30, 2020). Specifically, the Board lists bunching, including those that involve claims of carrier-caused bunching, as an area it expects to consider when evaluating the reasonableness of demurrage and accessorial rules and charges in future cases. The Board noted:

*"The Board encourages all rail carriers to take these considerations into account in their administration of demurrage rules and charges, particularly in evaluating whether their automatic billing processes sufficiently account for carrier-caused bunching (especially for cars that originate on their network or bunching attributable to missed switches), and in resolving bunching disputes."*<sup>13</sup>

To this end, AFPM strongly supports the inclusion of ETA and interchange information on all demurrage invoices. Limiting the inclusion of this data to specific instances in which a shipper makes a "reasonable request" would be inconsistent with the above statement, which encourages incorporating checks and balances to account for carrier-caused bunching into automatic billing processes.

### ***Ordered-In Date and Time***

The date and time that cars were ordered into a rail user's facility is an incredibly important factor related to how demurrage charges are levied as well as how credit hours are calculated. As other commenters noted, at closed-gate facilities, including refineries or petrochemical plants, carriers cannot place cars until they receive approval from those facilities, at which time demurrage stops accruing. In the SNPRM, the Board acknowledges that "[b]ecause the ordered-in date and time is essential to the calculation of demurrage at closed-gate facilities, such information would be valuable on or with demurrage invoices for both demurrage accrual and verification purposes."<sup>14</sup>

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<sup>13</sup> See 85 Fed. Reg. 26866, "Policy Statement on Demurrage & Accessorial Rules & Charges," EP 757 (STB served Apr. 30, 2020) <https://www.federalregister.gov/documents/2020/05/06/2020-09682/policy-statement-on-demurrage-and-accessorial-rules-and-charges>

<sup>14</sup> See 85 Fed. Reg. 26918, "Demurrage Billing Requirements." Supplemental Notice of Proposed Rulemaking, Docket No. FD EP 759 proposed May 6, 2020, <https://www.federalregister.gov/documents/2020/05/06/2020-09684/demurrage-billing-requirements>

If rail users have easy access to the carriers' ordered-in date and time to compare against their own records, then they may be better equipped to verify demurrage invoices and spot any discrepancies. Since rail carriers use this information in the ordinary course of business to compute demurrage invoices, providing this information with demurrage invoices would not be burdensome. Given the value this data provides and the ease with which it can be accessed and shared by rail carriers, AFPM supports the Board's modification to proposed section 1333.4 that would require Class I carriers to provide the ordered-in date and time on or with demurrage invoices.

### ***Machine Readable Data***

Per the SNPRM, "machine readable data" would include structured data file formats that are open and capable of being easily processed by a computer. Examples of such formats include Comma Separated Values ("CSV"), Office Open XML ("XLSX"), and OpenDocument Spreadsheet ("ODS"). These file formats provide users the ability to easily analyze and search data. AFPM agrees with many other commenters who have expressed a preference for "machine-readable" data as a mechanism to decrease erroneous and non-meritorious demurrage charges.

It is AFPM members' experience that most railroads currently provide invoices in PDF or paper format, requiring manual and resource-intensive review and handling by the rail shipper. Given the burdensome format of the data and large amount of analysis and conversion of the data, rail shippers often may overlook or miss errors and end up paying large amounts in erroneous charges that are difficult to detect. Machine readable data would allow users to audit the invoices efficiently and avoid errors and erroneous charges.

While Class I carriers are quick to tout their web-based billing platforms, these systems generally do not allow access to machine-readable data and, to the extent that carriers do allow such access, this information is not easily accessible, cumbersome to download, or only available for a limited time. Machine-readable invoicing could make the process of verifying demurrage charges less burdensome for invoice recipients and further the Board's objective to make demurrage invoices more transparent and information related to demurrage charges more accessible.

While some commenters noted that electronic auditing may involve coding and require upfront costs, the Board appears to be willing to offer a number of options to comply with such requirements. Specifically, the Board invited comments on matters that may be associated with modifying section 1333.4 to require Class I carriers to provide machine-readable data. In doing so the Board suggested this could be achieved by a machine-readable invoice, a separate electronic file containing machine-readable data, or a customized link so the rail user could directly download the data in a machine-readable format. The Board continues that it would be at each rail carrier's discretion to select how to provide rail users access to the machine-readable data.

AFPM supports the proposal to require machine readable data and believes the flexibility in compliance options would relieve any burdens on the rail carriers associated with potential



changes to internal invoices systems. AFPM also notes that such changes would relieve some of the heavy burden now on rail shippers under the current system. Further, any such cost would be far outweighed by the more accurate billing systems machine readable data would provide.

### ***Appropriate Action to Ensure Demurrage Charges Are Accurate and Warranted***

In the NPRM, the Board proposed that section 1333.4(b) require Class I carriers take appropriate action to ensure that the demurrage charges are accurate and warranted, consistent with the purpose of demurrage, prior to sending a demurrage invoice. However, the methods to ensure such accuracy are largely left undiscussed in the NPRM. In response to this proposal, most commenters expressed support for this provision, but some, including AFPM, expressed concern that as written it could create more uncertainty and potential litigation over its meaning of appropriate actions. To be clear, AFPM is supportive of the provision but requests the Board take further action to ensure Class I carriers are being diligent in providing accurate information.

As stated in our comments to the NPRM, AFPM supports the intent of this proposal, but notes that the STB fails to define what would be considered “appropriate actions” or how the Board would determine whether a rail carrier is conducting due diligence with respect to accuracy in reporting. To clarify this procedure, AFPM suggested that STB define specific methods or types of documentation that a rail carrier must furnish to ensure the charges are accurate. AFPM notes other suggestions provided by commenters could achieve the desired outcome, such as requiring Class I carriers to provide “a concise explanation of how the charge was calculated and the carrier’s reasons for the charge being assessed” would also be an appropriate way to ensure accuracy.<sup>15</sup>

In response to comments, STB stressed that since Class I carriers utilize different invoicing systems, one carrier may be able to ensure accuracy in its invoicing system by different methods than another, suggesting a prescriptive standard is not possible. The Board also agrees that such information would be useful in its consideration of proposed section 1333.4(b) and, accordingly, invites further comments from the Class I carriers regarding what actions they currently take, and from all stakeholders on what actions Class I carriers reasonably should be required to take, to ensure that demurrage invoices are accurate and warranted.

Rail carriers should furnish documentation demonstrating that charges are accurate. While we acknowledge that Class I carriers may use different invoicing systems, we do not believe this disparity absolves them of their responsibility to charge customers accurately and explain what precautions are taken to do so.

Providing this supporting documentation on the front end of a charge would lead to a more efficient overall demurrage process and a reduction in unnecessary or wrongly cited charges, without undue burden. AFPM supports the approach that was proposed by North American Freight Car Association requiring “a concise explanation of how the charge was calculated and the carrier’s reasons for the charge being assessed” provided that statement is

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<sup>15</sup> See Opening Comments of the North America Freight Car Association, Docket No. EP 759 Demurrage Billing Requirements, <https://dcms-external.s3.amazonaws.com/MPD/70247/8AB50E4E2A436C69852584AC00188C9F/248831.pdf>.

more than just boilerplate language and could be used to assuage concerns that demurrage charges have not been given the appropriate scrutiny prior to issuance.

By properly documenting and supporting the invoices, all parties are likely to experience a reduction in the number of, and time to resolve, disputes on demurrage charges. This could lead to reduced litigation and an improved relationship between rail shippers and carriers.

#### **IV. CONCLUSION**

AFPM shares STB's goal of ensuring the efficient flow of commerce on our nation's rail system and thanks the Board for its consideration of our comments relating to demurrage charges and billing requirements. AFPM underscores the importance of a fair and competitive rail market to the energy industry and, more broadly, the U.S. economy. Reasonable demurrage charges and practices are essential, and requiring information and data is critical to ensuring such charges are fair and levied only as warranted. Please contact me at (202) 457-0480 or [rbenedict@afpm.org](mailto:rbenedict@afpm.org) if you wish to discuss these issues further.

Sincerely,

A handwritten signature in blue ink that reads "Rob Benedict". The signature is written in a cursive, slightly slanted style.

Rob Benedict,  
Senior Director, Transportation and Infrastructure  
American Fuel & Petrochemical Manufacturers

## V. APPENDIX – PROPOSED REVISIONS TO REGULATORY TEXT

AFPM provides suggested edits to the regulatory text based on, and supporting, our comments in redline format to ease STB's review.

### § 1333.4 Requirements for Demurrage Invoices

(a) The following information shall be provided on or with any demurrage invoices issued by Class I carriers:

(1) The unique identifying information (e.g., reporting marks and number) of each car involved;

(2) The following information, where applicable:

(i) The date the waybill was created;

(ii) The status of each car as loaded or empty;

(iii) The commodity being shipped (if the car is loaded);

(iv) The identity of the shipper, consignee, and/or care-of party, as applicable; ~~and~~

(v) The origin ~~and destination~~ station and state of the shipment;

(vi) Railroad service events and associated log numbers and,

(vii) Billing Cycle

(3) The dates and times of:

(i) actual placement of each car,

(ii) constructive placement of each car (if applicable and different from actual placement),

(iii) notification of constructive placement to the shipper or third-party intermediary (if applicable);

(iv) release of each car; ~~and~~

(v) Original estimated time of arrival

(vi) Cars received for interchange (if applicable)

(vii) Order in, and

(ix) The actual days of dwell.

(4) The number of credits and debits attributable to each car (if applicable).

(b) Prior to sending a demurrage invoice, Class I carriers shall take appropriate action to ensure that the demurrage charges are accurate and warranted. Class I carriers must provide:

(1) A concise explanation of how the charges was calculated,

(2) Rationale for the unique charges being assessed; and,

(3) Certified statements that the charges are accurate and warranted.

(c) The Demurrage Invoices must be provided by the Class I carrier to the rail user being invoiced in a Machine-Readable Format, such as Comma Separated Values (CSV), Office Open XML ([XLSX]), and OpenDocument Spreadsheet (ODS). Class I carriers may transmit these invoices by:

(1) A machine-readable invoice,

(2) A separate electronic file containing machine-readable data,

(3) a customized link unique to the rail user that is enabled to directly download the data in a machine-readable format, or

(4) Another analogous format.