



# Preparing for STB's Hearing on Rail Demurrage & Accessorial Charges







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# Welcome from the Transportation Team

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# Webinar Notes

- All attendees are muted
- Ask questions at any time using questions pane on your screen
- Q&A at conclusion of remarks

# Agenda

- Overview of demurrage and accessorial charges
- Recent railroad changes affecting demurrage and accessorial charges
- Preparing for STB hearing
- Potential outcomes of STB hearing
- Q&A

# Demurrage and Accessorial Charges

- Demurrage: charge for railroad provided cars detained beyond a free time period (i.e., specified period of time for loading or unloading)
- Storage: charge on private cars when held on railroad property beyond a free time period (i.e., specified period of time for delivery)
- Accessorial: charge for a service apart from linehaul transportation service (e.g., weighing a rail car, intraplant switching charges)

# Demurrage and Accessorial Principles

- STB has jurisdiction over demurrage and accessorial rules and charges, unless agreed upon in a contract
- Statute requires demurrage and accessorial practices to be just and reasonable
- Functions of demurrage and storage
  - Compensate the railroad for use of its equipment and infrastructure
  - Penalty to incentivize efficient use of rail cars and railroad infrastructure
- Cannot be used by carriers principally as a revenue source

# Changes to Rules and Charges

- Free time reductions
  - Free time is the time before accrual of demurrage or storage charges
  - Reduced from 2 days to between zero days and 24 hours, depending on railroad, car ownership, and commodity
  - Greatest impact for closed-gate facilities and facilities that do not operate 24/7
- NS Congestion Charge
  - Applies when NS deems, in its “**sole**” discretion, that cars for consignee causing congestion
  - \$100 charge on each inbound car exceeding 2x average daily cars that consignee received in past 2 weeks

# Changes to Rules and Charges

- Increased switch charges
  - Impacts facilities that use remote storage locations
  - Increased reliance on remote locations are necessary to avoid charges under reduced free-time
- UP charge: “Not Prepared for Service”
  - Charge on cars that shipper releases for pickup, but are not ready when UP arrives
  - Applies even if UP is picking up or dropping off other cars
- Mexico Cross Border moves on UP



# Operational Changes and Impacts

- Precision Scheduled Railroading
- Local service reductions
- Bunching
- Large transit time variability
- Railroads cancelling storage track leases or raising storage rates

# Enforcement Changes

- Some railroads have begun enforcing demurrage and accessorial rules they historically ignored
- Example: Enforcing certain switch charges

# STB Hearing: Approach to Testimony

- Topics
  - Provide background about your company and its use of rail service
  - Provide overview of your experience with recent changes impacting demurrage and accessorial charges
  - Identify the key changes that have increased your exposure to demurrage and accessorial charges
  - Identify reciprocal railroad obligations that would enhance commercial fairness of charges
- Provide specific examples

# Experience with Recent Changes

- Identify the extent to which railroads implemented changes faster than you could respond
- Describe inadequacy of transition assistance from railroads
- Describe railroads' failure to collaborate with you on avoiding charges
- Describe the extent to which railroads are not willing to enter contracts to address demurrage issues
- Identify what additional supply chain visibility would help avoid the charges
- Identify how railroad customer service tools are inadequate to manage events leading to demurrage or accessorial charges

# Experience with Recent Changes

- Identify issues with dispute process, including availability and timeliness
- Describe the extent to which railroad data are insufficient to validate charges or credits
- Provide examples of problems obtaining credits or disputing charges
- Identify railroad refusals to participate in STB dispute resolution processes

# Key Changes

- Explain why it is difficult or impossible for you to address charges
  - Bunching
  - Reduced rail service
  - Rail service failures
  - Difficulty acquiring storage (cost and availability)
- Identify reasonable operational changes that railroads could make to mitigate impacts

# Lack of Reciprocity

- Railroads only provide reciprocal obligations for certain service and weather-related issues
- Provide examples of railroad acts or omissions that adversely impacted your operations, but for which railroad did not provide compensation
  - Missed, early, or late switches
  - Failure to deliver cars when ordered
  - Railroad holding cars for delivery
  - Bunching on connecting carrier
- Identify suggested reciprocal obligations and railroad actions they address
  - Credits for bunched cars, regardless of where bunching occurred
  - Waiver of charges while shipper is making infrastructure investments
  - Additional free time for facilities that do not receive daily switches

# Potential Hearing Outcomes

- STB investigation of specific demurrage and accessorial charge practices
- Rulemaking to adopt rules to address standards for resolving disputed charges or data railroads must provide to validate charges
- Adopt a policy statement that establishes guidelines to assess “reasonableness” and which would be applied on a case-by-case basis
- STB will not order railroads to provide refunds or pay compensation
  - Only available to rail customers who file a formal complaint against railroad



# STB Hearing

- When: May 22, 2019 at 9:30am
- Where: Hearing Room  
U.S. International Trade Commission  
500 E St SW  
Washington, DC
- Deadlines:
  - April 24, 2019: Notice of Intent to Participate due for all persons who wish to speak at hearing (must identify company, witness and requested speaking time)
  - May 8, 2019:
    - Written testimony due for speakers
    - Written submission due for persons who do not wish to speak

# Q & A

# Thank You!