



Surface Transportation Board
Washington, D.C. 20423-0001

Small Entity Compliance Guide

Docket No. EP 707

Demurrage Liability

April 11, 2014

This guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced Surface Transportation Board rulemaking. This guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This guide may not apply in a particular situation based upon the circumstances, and the Board retains the discretion to adopt approaches on a case-by-case basis that may differ from this guide, where appropriate. The Board may decide to revise this guide without public notice to reflect changes in the Board's approach to implementing a rule, or to clarify or update the text of the guide. For further assistance, contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0238 or stbhelp@stb.dot.gov. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

Purpose of this Guide

This guide was created to inform small rail carriers about the new Board regulations adopted in Demurrage Liability, Docket No. EP 707, which are effective July 15, 2014.

Introduction

Demurrage is a charge for detaining rail cars for loading or unloading beyond a specified amount of time called “free time.” Demurrage compensates rail carriers for the use of railroad equipment and assets. Also, by penalizing those who detain rail cars for too long, it encourages prompt return of rail cars into the transportation network. Because of these roles, demurrage is statutorily recognized as an important tool in ensuring the smooth functioning of the rail system.

The Interstate Commerce Act, as amended by the ICC Termination Act of 1995, provides that demurrage is subject to Board regulation, and the Board has long been involved in resolving demurrage disputes. The disputes between railroads and parties that originate or terminate rail cars can involve relatively straightforward application of the carrier’s tariffs to the circumstances of the case.

Complications can arise, however, in cases involving warehousemen or other third-party intermediaries who handle the goods but have no property interest in them. Under the legal principles that developed over time, in order for a warehouseman to be subject to demurrage or detention charges, there had to be some other basis for liability beyond the mere fact of handling the goods shipped. What became the most important factor under judicial and agency precedent was whether the warehouseman was named the consignee on the bill of lading.

In recent years, however, a question arose as to who should bear liability when an intermediary that accepts rail cars and detains them too long is named as consignee in the bill of lading, but asserts either that it did not know of its consignee status or that it affirmatively asked the shipper not to name it consignee. This question resulted in legal debate and conflicting opinions from the United States courts of appeals, which prompted the Board to reexamine its existing policy and to assist in providing clarification.

Objectives of the Rulemaking

The objectives of the Demurrage Liability rulemaking are to update our policies regarding responsibility for demurrage liability and to promote uniformity in the area by defining who is subject to demurrage.

Rules Approved by the Board

The Board adopted Part 1333 of its regulations, which provides default rules that govern demurrage in the absence of privately negotiated contracts between a rail carrier and its customers. In the absence of such private contracts, the rules provide that any person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond the period of free time set forth in the governing demurrage tariff may be held liable for demurrage if the rail carrier has provided that person with actual notice of the demurrage tariff prior to the placement of the rail cars. The rules state that such notice shall be in written or electronic form.

As the Board described in the decision adopting these rules, the written or electronic notice need not include the full terms of the demurrage tariff in order to satisfy the notice requirement, and a link to the full tariff could suffice. Additionally, the Board clarified that it is not necessary for a rail carrier to provide actual notice with each and every shipment to the same customer, and that a one-time “blanket notice” would satisfy the notice requirement. The Board also clarified that, if, after providing a blanket notice, a carrier makes material changes to its demurrage tariff, the carrier must provide actual notice of those changes to the receiving party in order to hold that party liable for demurrage charges under the changed tariff.

Impact on Small Entities

The rules require that, in order for a rail carrier to hold a party liable for demurrage, the rail carrier must provide that party with notice of its demurrage tariff, either electronically or in writing. To provide this initial notice, a rail carrier wishing to collect demurrage from a party may need to update its demurrage practices to conform to the rules to the extent that its existing practices conflict with the rules. To the extent that a rail carrier wishes to hold a party liable for demurrage and is currently unable to provide written or electronic notice to that party, the rail carrier may need to hire or equip personnel to undertake the task of providing the initial notice to its customers. Additionally, to the extent that a small rail carrier serves as a handling carrier and receives rail cars from Class I carriers without knowing the receiving party’s identity, if the small carrier wishes to hold the party liable for demurrage charges, the carrier may need to contact the Class I carrier to receive information on the identity of the recipient of the cars.

Additional Information

For additional information, please see the Board’s decision adopting the final rules in [Demurrage Liability](#), Docket No. EP 707, issued on April 11, 2014. The decision is available on the Board’s website at www.stb.dot.gov.