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**Comments of the International Association of Refrigerated Warehouses
on
Demurrage Billing Requirements
Surface Transportation Board
Docket No. EP 759**

November 6, 2019

I am pleased to provide comments on behalf of the International Association of Refrigerated Warehouses (IARW) in support of Proposed Rule EP 759. The IARW is a 501(c) (6) non-profit trade association representing the temperature controlled third-party logistics industry. Rail carriers' demurrage policies have a significant impact on our member companies. Thank you for recognizing the importance of reviewing current demurrage policies and holding the "Oversight Hearing on Demurrage and Accessorial Charges" on May 22, 2019. IARW is encouraged that the hearing has resulted in Board actions 757, 759 and 760.

IARW strongly supports the Proposed Rule and believes that the changes will help improve the current challenges our members face with demurrage. IARW appreciates the proposal to require Class I carriers to send invoices directly to the shipper, when notified that the shipper and warehouse have agreed that the shipper should be responsible for demurrage invoices. As articulated during the May 22 hearing and in the Proposed Rule, this change would help reverse some of the unintended consequences resulting from the 2014 rulemaking on demurrage.

The relationship between the public warehouse operator and its customer (the shipper and/or consignee) is often governed by a non-negotiable warehouse receipt. The public warehouse operator and its customer can also address their respective responsibilities for demurrage charges in the storage agreement. In fact, the standard terms and conditions for storage approved by the IARW for its members addresses the circumstances under which the warehouse will be liable to the customer for demurrage charges. Therefore, if the shipper or consignee becomes liable to the rail carrier for demurrage charges under the contract of carriage due to the actions of the public warehouse operator, the shipper or consignee will have a remedy against the public warehouse operator under the terms of the storage agreement between the public warehouse operator and the shipper/consignee. We believe that this process is more appropriate than the current policy of directly charging the warehouse, irrespective of the agreements in place between the warehouse and the shipper.

While we believe that the proposed changes are a positive step, a full return to the pre-2014 policy would be preferable. IARW also suggests that additional clarification on the notification policy would be helpful in the Final Rule. For example, it is not always practical to share contracts in their entirety if they contain confidential business information, so excerpts or redacted version should be sufficient for notification. A letter from the shipper to the carrier acknowledging demurrage responsibility, or providing a copy of standard terms and conditions for storage are other appropriate options.

IARW also supports the requirement for additional information in demurrage invoices. Under the current situation our members routinely receive demurrage invoices with insufficient information to assess whether the demurrage charges are valid. This lack of transparency, coupled with varying dispute resolution policies used by Class I carriers, makes it very difficult for our members to challenge inappropriate demurrage charges. We suggest that further improvements are needed to address the dispute resolution process and timelines. Some carriers currently require extremely short timelines to dispute charges, making it almost impossible in some cases to file a timely dispute with all of the necessary information about the situation. In addition, while some carriers have short timelines for filing, they have virtually no restrictions on the time they can take to respond to disputed charges. This imbalance creates an unlevel playing field for those disputing charges. A more standardized and transparent approach is needed.

I would again like to thank the Board for its attention to the critically import issue of demurrage. We appreciate your efforts to improve these policies and look forward to working with you as the process moves forward.

Sincerely,

A handwritten signature in cursive script that reads "Lowell Randel". The signature is fluid and elegant, with a large initial 'L' and a long, sweeping underline.

Lowell Randel
Vice President, Government and Legal Affairs