

BEFORE THE
SURFACE TRANSPORTATION BOARD

300710

Docket No. EP 759
DEMURRAGE BILLING REQUIREMENTS

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COMMENTS

submitted by

NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS (NACD)

Dated: June 5, 2020

The National Association of Chemical Distributors (NACD) respectfully submits these comments in response to the Surface Transportation Board's Supplemental Notice of Proposed Rulemaking (SNPRM) on Demurrage Billing Requirements, Docket No. EP 759. NACD appreciates the Board's willingness to consider additional issues and concerns raised in comments submitted in response to the October 7, 2019, notice of proposed rulemaking (NPRM).

Identity and Interest of the National Association of Chemical Distributors

The National Association of Chemical Distributors is the premier trade association for the U.S. chemical distribution industry, representing nearly 430 chemical distributors and their supply chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 90 percent of the industry's gross revenue. NACD members blend, re-package, warehouse, transport, and market chemical products made

by large-quantity manufacturers to 750,000 end-users in nearly every industry sector, from cosmetics to automotive and from paints and coatings to food and water treatment. NACD members operate in nearly every U.S. state through more than 3,000 facilities and are responsible for more than 75,000 direct and indirect jobs in the nation. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

Transportation is an integral part of the chemical distribution business. In 2018, NACD members made 4.6 million shipments, were responsible for 30.6 million tons of product, and drove more than 404 million miles while safely making deliveries to customers every 6.9 seconds. Over the past eight years, NACD members averaged just one incident for every 9,091 shipments. A substantial percentage of NACD members receive products via rail cars and greatly depend on reliable and affordable rail service to meet the needs of their customers and remain competitive in the global market.

NACD Recommendations on the Additional Billing Requirement Proposals in the SNPRM

NACD strongly supported the Board's original proposed changes to the demurrage liability regulations to require Class I railroads to include certain information on or with all demurrage invoices as outlined in the October 7, 2019, NPRM. NACD also supports the additional changes proposed in the April 30, 2020, SNPRM. These proposed changes, along with

the measures in the October NPRM, would significantly increase transparency and facilitate the efficient resolution of billing disputes. More comprehensive invoices would allow rail customers, including the many NACD members who depend on rail service, to evaluate invoices without being forced to spend excessive time and resources to ensure the accuracy of the charges.

As the Board recognizes, demurrage is intended to serve the public interest by facilitating the flow of commerce through the prompt loading and unloading of cargo and the efficient use of rail cars and track. An important element of demurrage is to hold the party that caused the delay accountable. A clear billing system is essential for rail shippers and receivers to verify the charges easily and to dispute them if they are incorrect.

In the SNPRM, the Board is proposing to require Class I rail carriers to include certain additional information on or with demurrage invoices beyond the elements proposed in the October NPRM. These additions would include:

- The date range/billing cycle covered by the invoice
- The original estimated time of arrival (ETA) for each car and the date and time each car was received at interchange (if applicable)
- The date and time of each car ordered in (if applicable)
- Access to demurrage invoicing data in machine-readable format

The Board also seeks additional input on its earlier proposed requirement for Class I carriers to take appropriate action to ensure demurrage charges are accurate and warranted before sending invoices.

NACD supports the proposal to require invoices to include billing cycle information. This would allow rail customers to identify the periods covered by the invoices immediately. This readily available information would assist rail customers in comparing the timing of the charges with their own records of service, which would help in evaluating the validity of the charges.

NACD also supports the proposed requirement to include the original ETA and the time of receipt for each car on or with invoices. This information would allow rail customers to determine better if rail carrier issues such as bunching may have impacted the timing of car placement. Further, having the date and time of the carriers' receipt of the rail cars at interchange would help customers to identify upstream carrier-caused bunching. This information is essential for rail customers to dispute effectively unwarranted charges for delays that were no fault of their own but caused by issues on the rail carrier side.

In addition, NACD strongly supports the proposal to require the rail carrier to specify, if applicable, the date and time cars were ordered onto a rail customer's facility. At least one NACD member has had an instance of being billed for demurrage after rail cars were ordered onto their facility, which resulted in a lengthy dispute of the charges. Having ready access to rail carriers' accounts of the dates and times cars were ordered in would allow rail customers to compare this information quickly to their own records, identify discrepancies, verify the information on the invoices, and dispute erroneous charges.

The Board is also considering requiring Class I railroads to provide access to demurrage invoicing data in machine-readable format. While some rail customers may prefer to receive this information in machine-readable format, others, particularly small businesses, would experience complications in analyzing and comparing the data. Rail customers would need to enter all transactional data on their side and obtain software to process the data. This would require resources to find and purchase the software, adopt new procedures for entering transactional data, and conduct training on the new software and procedures. For rail customers, especially smaller operations, these costs could easily outweigh any benefit of having the invoice data in machine-readable format. NACD appreciates the Board's statement that it is not the intention for

invoice data to only be available to rail users in a machine-readable format that would make it inaccessible without coding and other upfront costs. In order to address the needs of smaller rail customers whose operations are not set up to process machine-readable data, invoices should continue to be available in standard format.

NACD expressed strong support for the provision in the October NPRM for Class I carriers to ensure the accuracy and justification of demurrage charges before issuing invoices. NACD continues to believe the Board should adopt this measure in the final rule. As the Board heard during the May 2019 Oversight Hearing on Demurrage & Accessorial Charges and in the response comments to the October NPRM, it is not uncommon for rail customers to receive demurrage invoices for delays for which the railroads were responsible. Even if rail customers are ultimately able to have the erroneous charges waived, valuable staff time is spent in researching and disputing the charges. This situation is exacerbated when invoices do not include clear and complete information about the rail shipments. While the additional invoice elements the Board proposes in the SNPRM would provide more transparency for rail customers to help verify charges, the railroads should also be responsible for making sure the data is accurate. This could be accomplished with a brief explanation for each charge stating the reason for the charge and how the charge was calculated.

Conclusion

NACD commends the Board for addressing the problems with demurrage billing by soliciting input from stakeholders and proposing the new requirements for the Class I railroads to provide additional information to customers. Adoption of the new requirements would increase efficiencies for shippers and receivers by reducing valuable staff time needed to confirm the

accuracy of the charges. This is particularly important for small businesses such as chemical distributors that have limited staff.

NACD encourages the Board to adopt these proposals in the final rule. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name "Jennifer" written in a larger, more prominent script than the last name "Gibson".

Jennifer C. Gibson
Vice President, Regulatory Affairs