

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. EP 759

DEMURRAGE BILLING REQUIREMENTS
SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING

REPLY COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

ASLRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 47,500 miles of track in 49 states, or approximately 29% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. Short lines provide 100% of freight transportation in four states, and more than 25% in thirty-six states, keeping small town and rural America connected to the U.S. economy and beyond. Class II and III railroads play a vital role in maintaining rail service over hundreds of miles of light density lines throughout the country that in many cases were candidates for abandonment by their former Class I owners. These small railroads have short lengths of haul, high fixed costs, and large capital needs for infrastructure investment, including the task of upgrading bridges and track to handle heavier freight cars. They also face pervasive competition from trucks, barges, and transloading operations for freight traffic.

On October 7, 2019, the Surface Transportation Board (“STB”) issued a notice of proposed rulemaking (“NPRM”) proposing changes to its existing demurrage regulations to address several items regarding carriers’ demurrage billing practices. ASLRRA filed comments in the NPRM

proceeding, stating that the proposed rules should not apply to Class II and Class III railroads. The Board agreed with ASLRRA's comments, and declined to extend the requirements to Class II and Class III railroads in the final rule, promulgated on April 30, 2020. In addition to the final rule, on April 30, 2020, the STB issued supplemental notice of proposed rulemaking ("SNPRM") inviting public comment on certain modifications and additions to the proposed requirements for minimum information to be included on or with Class I carriers' demurrage invoices.

The SNPRM proposes additions to the requirements contained in the NPRM. These would include: (1) the date range (i.e., the billing cycle) covered by the invoice; (2) the original estimated date and time of arrival of each car (as established by the origin carrier) and the date and time each car was received at interchange (if applicable), either on or with each invoice or, alternatively, upon reasonable request from the invoiced party; and (3) the date and time of each car ordered in (if applicable). Additionally, the Board is considering requiring that Class I carriers provide access to demurrage data in machine-readable format.

In the SNPRM, the Board invited comments on each of these proposed additional requirements. On page 12 of the SNRPM, the STB stated, "In the NPRM, the Board limited its proposal to Class I carriers and does not modify that proposal here," and said that arguments that the Board should require Class II and III carriers to comply with the proposed § 1333.4 will be addressed in a future decision and carries forward that position in footnote 25 on page 13. Thus, the STB did not specifically ask for comments from the parties on whether to include Class II and III carriers regarding the proposed demurrage requirements.

However, of the seventeen commenters that filed in support of the SNPRM provisions, four said that Class II and III carriers should be required to submit all the same information on their demurrage invoices. These four were the International Warehouse Logistics Association ("IWLA"), San Jose Distribution Services (it simply concurred with the IWLA), the International Liquid Terminals Association ("ILTA"), and The Institute of Scrap Recycling Industries, Inc. ("ISRI"). ILWA said that short line railroads should be included because "[s]ome short lines do not communicate railcar activity with other railroads...", IWLA Comments, p. 2 and further,

“While we understand the argument that Class I carriers have the most resources to meet these needs, demurrage charges are levied by smaller carriers on our members and their shippers, many of which are also small businesses, if a carrier is to be allowed to invoice rail users for demurrage charges, it must be able to produce sufficient information to support those charges.” IWLA, p.3.

ILTA used exactly the same language in its comments as the IWLA did in its comments to support including short lines in the proposed rules. ILTA Comments, pp. 2 and 4. ISRI asserts that Class II and III railroads should be subject to the demurrage invoicing rules, notwithstanding the Board’s repeated statements in both the NPRM and SNPRM that it did not intend to change its position that the proposed rules were limited to Class I railroads. It based its view on two points: (1) that many Class II and III railroads mimic the rules adopted by Class Is, so compliance by them would not be too burdensome, especially for Class II carriers and (2) applying a uniform standard for all railroads would promote efficiency in demurrage payments and dispute resolution.

As ASLRRA stated in comments to the NPRM in this Docket, the proposed demurrage requirements should not be extended to Class II and Class III railroads. Small railroad do not possess anything close to the data processing capabilities of the Class Is nor do they have the resources, large IT departments or technical capabilities to provide all the information proposed by the SNPRM. Further, while some small railroads use the RMI revenue database for revenue and car reporting purposes, many do not. Even those that have RMI do not have a sophisticated means to translate from that database to demurrage billing processes. For a small railroad, to undertake equipping themselves to provide this information would be prohibitively expensive and divert precious resources better used on improving their infrastructure and serving their customers.

More than half of all small railroads in the United States currently operate as handling line carriers. As such, they operate on a handling line basis in their interchange of traffic with the connecting Class I railroads. In this arrangement, oftentimes the small railroad providing the direct service to the destination customer is not provided all the information included in the STB’s proposed format. Imposing the requirement that the serving Class I railroads send demurrage invoices directly to the shipper instead of to the warehouseman when the shipper and

warehouseman agree to such an arrangement and notify the Class I of the agreement on small railroads would adversely affect small railroads as they do not possess the staff, expertise or resources to ensure this requirement is met. They also would not have a way to easily determine if the shipper and warehouseman have the necessary agreement in place much less whether the Class I has been notified of an agreement.

For all of these reasons, the STB should continue to exclude Class II and Class III railroads from the proposed demurrage requirements in this proceeding.

Respectively submitted,

A handwritten signature in cursive script that reads "Sarah Yurasko".

Sarah Yurasko
General Counsel
American Short Line and Regional Railroad Association
50 F Street, Suite 500
Washington, DC 20001
Telephone: (202) 585-3448
Email: syurasko@aslrra.org

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