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SERVICE DATE – LATE RELEASE APRIL 8, 2019

SURFACE TRANSPORTATION BOARD

NOTICE

Docket No. EP 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

Decided: April 8, 2019

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on May 22, 2019, on railroad demurrage and accessorial charges. The hearing will be held in the Main Hearing Room of the U.S. International Trade Commission, located at 500 E Street, S.W., Washington, DC, near the Board's headquarters building. Representatives of Class I carriers are directed to appear at the hearing, and other interested parties, including shippers, receivers, third-party logistics providers, and representatives of shortline railroads, are invited to appear.

DATES: The hearing will be held on May 22, 2019, beginning at 9:30 a.m., in the Main Hearing Room (Room 101) of the U.S. International Trade Commission and will be open for public observation. Any person wishing to speak at the hearing should file with the Board a notice of intent to participate (identifying the party, proposed speaker, and time requested) as soon as possible but no later than April 24, 2019. Class I carriers are directed to file with the Board the information specified below by May 1, 2019. All hearing participants are required to submit written testimony by May 8, 2019. Written submissions by interested persons who will not appear at the hearing should also be filed by May 8, 2019.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-filing link on the Board's website at [www.stb.gov](http://www.stb.gov). Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 754, 395 E Street, S.W., Washington, DC 20423-0001.

Filings will be posted to the Board's website and need not be served on the other hearing participants or written commenters. Copies of the filings will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245-0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing on May 22, 2019, to receive information from railroads, shippers, receivers, third-party logistics providers, and other interested parties about their recent experiences with demurrage and accessorial charges, including matters such as reciprocity, commercial fairness, the impact of operational changes on such charges, capacity issues, and effects on network fluidity.<sup>1</sup> This hearing arises from concerns expressed by users of the freight rail network and other stakeholders about changes to demurrage and accessorial tariffs being implemented by various Class I carriers, and follows related letter inquiries to Class I carriers, including requests for information on quarterly revenue from demurrage and accessorial charges for 2018 and 2019. This correspondence, the quarterly revenue information reported by the Class I carriers to date, and written communications received by the Board about demurrage and accessorial charges can be found on the Board's website under E-Library / Correspondence / Non-Docketed Public Correspondence.

The Board will hold a public hearing to further examine current demurrage and accessorial practices. Representatives of Class I carriers are directed to appear at the hearing through company officials knowledgeable about the information and topics specified below. To facilitate the Board's review, Class I carriers are directed to file the following information with the Board by May 1, 2019:

1. Provide a list of all material changes to your demurrage and accessorial tariffs since January 1, 2016, including but not limited to changes pertaining to (i) the amount of free time allowed for loading and unloading rail cars; (ii) rates for demurrage and

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<sup>1</sup> Demurrage is subject to Board regulation under 49 U.S.C. § 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and under 49 U.S.C. § 10746, which requires railroads to compute demurrage charges, and establish rules related to those charges, in a way that will fulfill national needs related to freight car use and distribution and maintenance of an adequate car supply. Demurrage charges have both compensatory and punitive aspects and are intended to promote efficient use of rail resources. Demurrage Liability, EP 707, slip op. at 2 (STB served April 11, 2014); 49 C.F.R. § 1333.1. As used herein, the term "demurrage charges" corresponds to the definition of demurrage used for purposes of the R-1 Annual Report (see 49 C.F.R. § 1201, category 106).

Accessorial charges are not specifically defined by statute or regulation but are generally understood to include charges other than line-haul and demurrage charges. See Revisions to Arbitration Procedures, EP 730, slip op. at 7-8 (STB served Sept. 30, 2016) (describing a variety of charges that are considered accessorial charges). As used herein, the term "accessorial charges" includes, without limitation, charges for things such as diverting a shipment in transit, ordering a railcar but releasing it empty, weighing a railcar, tendering one railroad's car to another railroad without a line-haul move, special train or additional switching services, or releasing a railcar with incomplete or incorrect shipping instructions.

- accessorial charges; (iii) the nature and availability of credits or other relief, including for railroad errors and service failures; and (iv) procedures and time periods applicable to the process for raising and resolving disputed charges. For each such tariff change, please also specify (a) when notice of the change was given; (b) when the change became effective; and (c) the reason(s) for the change. The Board requests that this information be presented in a table.
2. Provide, for each of the past three calendar years, the total dollar amounts of charges billed and charges collected pursuant to (i) all demurrage tariffs combined and (ii) all accessorial tariffs combined.<sup>2</sup>
  3. Provide a detailed explanation of the current process by which shippers, receivers, and other parties may dispute demurrage and accessorial charges. To the extent readily available, please also provide, for all demurrage tariff charges combined and all accessorial tariff charges combined, the percentage of charges, by dollar amount, that have been contested in the first quarter of 2019 and each of the past three calendar years.
  4. Provide a detailed explanation of any system or practice under which credits or debits have been issued in connection with the assessment of demurrage or accessorial charges since January 1, 2016, and any changes thereto. Describe how credits and debits are calculated and any limits on the amount of credits or debits that may be available or incurred.

All hearing participants are required to submit written testimony by May 8, 2019.

Written submissions by interested persons who will not appear at the hearing should also be filed by May 8, 2019. All participants and interested persons are invited and encouraged to address the following topics in their written testimony or submissions and at the hearing:

- Recent experience with demurrage and accessorial charges, including (i) the largest drivers of demurrage and accessorial charges; (ii) supply chain visibility; (iii) the availability, effectiveness, and usability of online customer service tools that manage car orders, car supply, and demurrage and accessorial charges, including whether these tools make available adequate data to evaluate whether demurrage is being assessed properly and to dispute the charges when necessary; (iv) bunching, including bunching that occurs upstream; and (v) the ability to address demurrage through commercial arrangements.

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<sup>2</sup> Although the carriers have provided a subset of this data in response to the letter inquiries referenced above, for completeness, carriers should nonetheless provide a full dataset in response to this item.

- Impacts on shippers, receivers, third-party logistics providers, and shortline railroads flowing from recent (i) changes in Class I carrier demurrage and accessorial tariffs; (ii) changes in Class I carriers' enforcement policies for these tariffs; and (iii) operational changes implemented by Class I carriers including, in particular, changes in the frequency and timing of local service and/or shortline interchanges.
- Perspectives on whether demurrage and accessorial tariffs in effect during the past three years have created balanced and appropriate incentives for both customers and railroads, including views on the extent to which reciprocity should be incorporated into demurrage and accessorial charges.

BOARD RELEASES AND TRANSCRIPT AVAILABILITY: Decisions and notices of the Board, including this notice, are available on the Board's website at [www.stb.gov](http://www.stb.gov). The Board will issue a separate notice containing instructions for attendance at the hearing and the schedule of appearances. **Please note that streaming and recording systems will not be available to the Board for this hearing.** As soon as a transcript is available, it will be posted on the Board's website.

It is ordered:

1. A public hearing will be held on May 22, 2019, at 9:30 a.m., in the Main Hearing Room (Room 101) of the U.S. International Trade Commission, located at 500 E Street, S.W., Washington, DC, near the Board's headquarters.
2. By April 24, 2019, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate identifying the party, the proposed speaker, and the time requested.
3. The Class I carriers are directed to file information by May 1, 2019, and to appear at the hearing through knowledgeable company officials, as specified above.
4. Written testimony by hearing participants, and written submissions by interested persons who will not appear at the hearing, shall be filed by May 8, 2019.
5. Filings will be posted to the Board's website and need not be served on any hearing participants or other commenters.
6. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.