

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DEMURRAGE BILLING REQUIREMENTS**Docket No. EP 759**

**COMMENTS OF
ARCELORMITTAL USA LLC**

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ArcelorMittal USA LLC (“AM”) submits these Comments in response to the Surface Transportation Board’s (“Board”) Notice of Proposed Rulemaking served on October 7, 2019 (“NPRM”).

IDENTITY OF INTEREST AND CONCERN

AM is part of ArcelorMittal, the world’s leading steel and mining company. Guided by a philosophy to produce safe, sustainable steel, AM is a leading supplier of quality steel products in major North American markets, including automotive, construction, pipe and tube, appliance, container, energy and machinery.

AM operates 26 facilities in 12 states, employing more than 18,000 people. AM’s non-industrial presence extends to 14 states and the District of Columbia. In 2017, AM produced more than 15 million tons of raw steel and shipped a broad range of steel products to the automotive, construction, pipe and tube, appliance, container, energy and machinery markets.

AM’s operations are made up of facilities owned and operated by various predecessor companies, all joining together as AM following the merger of Arcelor and

Mittal in 2006, then the world's largest and second largest steel companies, respectively, by production volume. The map appended to these Comments details the locations and functions of each of these facilities and offices. AM participated in the Board's EP 754 proceeding addressing demurrage and accessorial charges,¹ and AM appreciates the opportunity to present these Comments to the Board.

AM supports the Board's proposed new amendment to 49 C.F.R. § 1333.3 governing third-party intermediary agreements, so long as nothing in the proposal is construed as requiring shippers to pay detention charges incurred at third-party intermediary facilities absent an agreement between the shipper and the carrier, or the shipper and the third-party intermediary, that calls for the shipper to pay these charges.

AM also supports the Board's proposed new rules, to be codified at 49 C.F.R. § 1333.4, governing the contents of Class I carrier demurrage invoices. AM suggests, however, that the Board amend its proposed rule by adding a provision that expressly states that carriers are required to provide the party receiving the invoice with sufficient additional information, on a timely basis, to allow the invoiced party to determine whether it owes the asserted charges.

Finally, AM recommends that the Board's proposed new part 1333 rules apply to all classes of regulated common carriers that seek to collect detention charges, not just Class I carriers. All regulated common carriers, including Class II and Class III

¹ *Oversight Hearing on Demurrage & Accessorial Charges*, Docket No. EP 754 ("EP 754"). In EP 754, the Board received written comments and conducted a two-day public hearing on May 22-23, 2019. AM filed its Written Comments in EP 754 on May 8, 2019.

carriers, that seek to collect detention charges can, and should, be subject to reasonable detention rules, including those proposed by the Board in this proceeding.

I.
DEMURRAGE ASSESSED AGAINST THIRD-PARTY INTERMEDIARIES

In its NPRM, the Board proposes, *inter alia*, to amend 49 C.F.R. § 1333.3 by adding a new subsection (b):

§ 1333.3 Who Is Subject to Demurrage

(a) 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 carrier has provided that person with actual notice of the demurrage tariff providing for such liability prior to the placement of the rail cars. The notice required by this section shall be in in written or electronic form.

(b) If the rail cars are delivered to a third-party intermediary that has reached an agreement with a shipper (or consignee) that the shipper (or consignee) shall be liable for demurrage, then the serving Class I carrier shall, after being notified of the agreement by the shipper, consignee, or third-party intermediary, bill the shipper (or consignee) for demurrage charges without requiring the third-party intermediary to act as a guarantor, unless and until a party to the agreement notifies the serving Class I carrier that the agreement is no longer in force.

NPRM at 14.

As AM understands the Board's proposal, railroads are generally required to impose demurrage charges on "the party responsible for the delay." *Id.* at 11. Thus, if the third-party intermediary is responsible for the delay, then the third-party intermediary is responsible for paying the demurrage charges under the charging carrier's tariffs, absent a contract between the shipper and the carrier to the contrary. *See* 49 C.F.R. §

1333.2 (“A serving carrier and its customers . . . may enter into contracts pertaining to demurrage”).

With that background in mind, AM understands the Board is adding new subsection (b) to expressly provide that if a shipper and a third-party intermediary enter into an agreement calling for the shipper to be responsible for demurrage occurring at the third-party intermediary’s facilities, and the carrier is informed of this agreement, the carrier (if it is a Class I carrier) is required to invoice the shipper, not the third-party intermediary, for the demurrage charges. *See* NPRM at 11 (“The Board . . . proposes a requirement that serving Class I carriers send demurrage invoices directly to the shipper instead of the warehouseman if the shipper and warehouseman agree to such an arrangement and notify the rail carrier of the agreement.”).

AM supports the Board’s proposed amendment to 49 C.F.R. § 1333.3, so long as nothing in the proposed new rule is construed as requiring shippers to pay detention charges incurred at third-party intermediaries’ facilities in the absence of a carrier/shipper or shipper/intermediary contract to the contrary. In addition, as AM has emphasized in its comments in EP 757, *Policy Statement on Demurrage and Accessorial Rules and Charges*, carriers should not, under any circumstances, be permitted to collect detention charges for circumstances beyond the shipper’s (or intermediary’s) reasonable control.

II. DEMURRAGE INVOICES

The Board proposes to add a new demurrage invoice rule, to be codified at 49 C.F.R. § 1333.4:

§ 1333.4 Requirements for Demurrage Invoices

(a) The following information shall be provided on or with any demurrage invoices issued by Class I carriers:

- (1) The unique identifying information (e.g., reporting marks and number) of each car involved;
- (2) The following information, where applicable:
 - (i) The date the waybill was created;
 - (ii) The status of each car as loaded or empty;
 - (iii) The commodity being shipped (if the car is loaded);
 - (iv) The identity of the shipper, consignee, and/or care-of party, as applicable; and
 - (v) The origin station and state of the shipment;
- (3) The dates and times of:
 - (i) actual placement of each car,
 - (ii) constructive placement of each car (if applicable and different from actual placement),
 - (iii) notification of constructive placement to the shipper or third-party intermediary (if applicable); and
 - (iv) release of each car; and
- (4) The number of credits and debits attributable to each car (if applicable).

(b) Prior to sending a demurrage invoice, Class I carriers shall take appropriate action to ensure that the demurrage charges are accurate and warranted.

NPRM at 14-15.

AM supports the Board's adoption of this proposed new rule, but also requests that the Board add a new subsection (c):

(c) After sending a demurrage invoice, Class I carriers shall, upon request from the party to whom the invoice is sent, provide the requesting party sufficient supporting information to ensure the demurrage charges are accurate and warranted.

The Board's proposal, as drafted, requires a carrier to "take appropriate action to ensure that the demurrage charges are accurate and warranted." *Id.* at 15 (proposed subsection (b)). However, the proposed rule does not expressly provide that carriers are required to provide the shipper (or other party to whom the invoice is sent) with sufficient supporting information (in addition to the required information set forth in the proposed rule) for the shipper (or other receiving party) to determine whether the demurrage charges are "accurate and warranted." AM's proposed addition fills this gap in the Board's proposal.

For example, a carrier's invoice may provide the date and time when the carrier claims rail cars were constructively placed, but it may have been the case that the rail cars in question were bunched through no fault of the party receiving the invoice and, therefore, no constructive placement should have occurred. Under AM's proposal, Class I carriers would be required, upon request, to provide car bunching information.

III. APPLICATION

The Board has also requested comments on whether its proposed invoicing and third-party intermediary rules should apply to Class II and Class III carriers. AM believes it is appropriate for all carriers that seek to collect detention charges, including Class II and Class III carriers, to provide the parties to whom they send the detention invoices with sufficient information to determine the validity of the asserted charges.

AM also believes that Class II and Class III carriers should be subject to the same third-party intermediary rules in order to promote consistent application of these rules across all carriers providing service to and from third-party intermediary facilities. Thus, AM supports expanding the scope of the Board's proposed new part 1333 rules to apply to all classes of regulated common carriers.²

CONCLUSION

AM respectfully requests that the Board take actions in this proceeding consistent with these Comments.

Respectfully submitted,

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² The Board should also clarify, or add text stating, that its proposed rules encompass all forms of detention charges, including what carriers may characterize as "accessorial charges," for train or rail car delays.

ArcelorMittal in the United States

