

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**Docket No. EP 759
Demurrage Billing Requirements**

**OPENING COMMENTS OF
THE NORTH AMERICA FREIGHT CAR ASSOCIATION**

Pursuant to the Notice of Proposed Rulemaking served by the Surface Transportation Board's ("STB" or "Board") in this docket on October 7, 2019 ("NPRM"), the North America Freight Car Association ("NAFCA") hereby submits these opening comments on two aspects of the rules proposed by the Board concerning billing for demurrage charges. NAFCA has been authorized by the National Grain and Feed Association ("NGFA") to inform the Board that the NGFA supports the positions set forth herein.

I. Identity and Interest of NAFCA

As stated in NAFCA's opening and supplemental comments in EP 754, *Oversight Hearing on Demurrage and Accessorial Charges* ("Oversight Hearing Proceeding"), NAFCA is an organization made up of private (non-railroad owned) rail car manufacturers, owner/lessors, owner/lessees, lessees, other rail shippers and entities that support the railcar industry. NAFCA's members include some of the largest railcar manufacturers and lessors in the industry as well as rail shippers who collectively lease and/or own and maintain hundreds of thousands of railcars that are furnished to the Class I railroads in order to receive rail transportation service.¹ Combined, NAFCA's members own and/or lease in excess of 700,000 private railcars, which constitutes

¹ <http://www.nafcahq.com/home>.

approximately 60% of the entire national private railcar fleet of approximately 1,200,000 cars.² NAFCA is dedicated to promoting the safe, efficient and economical ownership and use of private railcars. To achieve these goals, NAFCA and its members rely on their extensive collective knowledge of the railcar industry to investigate relevant issues and to educate public policy makers, regulators and the media regarding operational, regulatory, economic, and legal matters that affect private railcars. NAFCA also strives to ensure its members and all private car owners and operators are subject to reasonable, equitable and lawful practices and rules affecting the use, repair, and principles of compensation for private railcars.

II. NAFCA's Comments on the Proposed Regulations

As an overall comment, which NAFCA has also included in its Opening Comments in EP 757, *Policy Statement on Demurrage and Accessorial Rules*, NAFCA believes that the STB's salutary policies and rules that would require Class I demurrage billing practices to be clear, sufficiently informative to enable the recipient to assess the validity of the charge, and also accurately apply the applicable formulas and terms, should also apply with equal force to accessorial charge billing practices. The Board should accomplish this objective by either proposing similar regulations that apply to accessorial charge invoicing, or by including clear guidelines on such practices in the final version of the proposed Policy Statement issued in EP 757.

As to the specific regulations proposed in this docket, NAFCA wholeheartedly concurs that the current practice of Class I carriers issuing invoices for demurrage and accessorial charges without making any attempt to ensure that the invoices are accurate and consistent with the carrier's rules, the applicable circumstances, and reasonable industry practices must be halted. As

² NAFCA Written Submission in *Oversight Hearing Proceeding*, dated May 8, 2019 at 2.

the Board learned from the written and oral testimony in the *Oversight Hearing Proceeding*, demurrage and accessorial charge invoices are often generated electronically based on car and train movement data and sent to rail customers without any prior review by actual railroad employees. In other cases, invoices are generated without any attempt to determine if the charges are accurately calculated or otherwise supported by the railroad's rules. Such practices, combined with unreasonable dispute resolution procedures, have greatly added to the frustration of shippers and receivers regarding demurrage and accessorial charges they believe are neither warranted nor appropriate.

Apparently to address these issues, the Board has proposed 49 C.F.R. §1113.4(b), which states simply "(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 15. NAFCA suggests that this proposed provision begs several questions that the Board should address in the final rules. First, what is "appropriate action?" Second, what does it mean to "ensure" the charges are "accurate and warranted?" Finally, what recourse does the recipient of the invoice have at the Board if it believes this regulation has been violated? NAFCA suggests that in addition to (or in lieu of) providing answers to these questions in the decision accompanying the final regulations, the Board should consider modifying subsection §1113.4(b) to read as follows:

(b) Prior to issuing an invoice for demurrage in any form, a Class I carrier shall take appropriate action to ensure that the charges are accurate, supported by the factual circumstances, and are consistent with the carrier's applicable demurrage rules. Each issued invoice shall contain a concise explanation of how the charge was calculated and the carrier's reasons for the charge being assessed. Violations of the requirements of this subsection may be alleged by petition to the Board for which expedited consideration may be requested. If a violation of this subsection is found payment of the assessed charges shall be excused, in addition to such other relief as the Board may deem necessary and appropriate.

NAFCA asserts that this modification would provide more direction and clarity to Class I carriers and their customers about this important aspect of demurrage charges and practices.

Respectfully submitted,



Thomas W. Wilcox
GKG Law, P.C.
1055 Thomas Jefferson St., NW
Suite 500
Washington, D.C. 20007
202-342-5248

*Attorney for the North America Freight Car
Association*

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