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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 759

DEMURRAGE BILLING REQUIREMENTS

**COMMENTS OF
THE FERTILIZER INSTITUTE**

Pursuant to the Board's notice served on October 7, 2019, The Fertilizer Institute ("TFI") hereby submits its comments on the Notice of Proposed Rulemaking regarding Demurrage Billing Requirements issued by the Surface Transportation Board ("STB" or "Board") in the above-captioned docket.¹ TFI commends the Board for issuing the Proposed Rules, which relate to an important aspect of the demurrage and accessorial rules and practices. As discussed in many industry stakeholders' written comments and during the two-day oversight hearing before the Board, lack of adequate billing standards is a common concern across the board for all shippers and receivers of rail cars, and TFI thanks the Board for issuing the Proposed Rules to address these concerns.²

TFI represents the nation's fertilizer industry, which includes companies that are engaged in all aspects of the fertilizer supply chain. TFI's full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic information and public communication programs. TFI's members play a key role in producing and distributing vital crop nutrients, such as nitrogen, phosphorus and potassium. These products are used to replenish

¹ Demurrage Billing Requirements, STB Docket No. EP 759 (served October 7, 2019) ("Proposed Rules")

² Oversight Hearing on Demurrage and Accessorial Charges, STB Docket No. EP 754 (served April 8, 2019)

soils throughout the United States and elsewhere to facilitate the production of healthy and abundant supplies of food, fiber and fuel. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

Overall, the U.S. fertilizer industry generates more than \$154 billion in economic benefit annually and provides approximately 89,000 direct jobs and 406,000 indirect jobs for a total of 495,000 U.S. jobs. A reliable transportation network is vital to moving fertilizer around the nation, as a majority of all fertilizers (56 percent of ton-miles) move by rail throughout the year.

As part of the oversight hearing held before the Board on May 22-23, 2019, in STB Docket No. EP 754, TFI submitted written testimony,³ participated in the oversight hearing, and submitted post-hearing comments to the Board.⁴ Thus, TFI has a strong interest in this proceeding.

The Proposed Rules encompass two main areas of concern voiced by various parties during the oversight hearing on demurrage and accessorial rules and practices. First, the Board proposes to impose certain requirements on Class-I railroads pertaining to demurrage invoices.⁵ Second, the Board proposes to require Class-I railroads to send the invoices directly to shippers, and not require the warehouseman to guarantee the payment, if the carrier receives a notice of the agreement between the warehouseman and the shipper pertaining to shipper's responsibility for paying demurrage invoices.⁶

³ Written Testimony of The Fertilizer Institute Docket No. EP 754 (May 8, 2019) ("TFI Testimony").

⁴ Post-hearing comments of The Fertilizer Institute, Docket No. EP 754 (June 5, 2019) ("TFI Comments").

⁵ Proposed Rules at 8.

⁶ *Id.*

TFI hereby provides its comments on the Proposed Rules:

I. Requirements for Demurrage Invoices:

The Board's Proposed Rules include certain minimum information requirements for demurrage invoices applicable to Class-I railroads. Accordingly, the Board proposes to require carriers to provide the following minimum information with any demurrage invoices:

- The unique identifying information (e.g., reporting marks and number) of each car involved;
- The following shipment information, where applicable:
 - The date the waybill was created;
 - The status of each car as loaded or empty;
 - The commodity being shipped (if the car is loaded);
 - The identity of the shipper, consignee, and/or care-of party, as applicable;
 - The origin station and state of the shipment;
- The dates and times of (1) actual placement of each car, (2) constructive placement of each car (if applicable and different from actual placement), (3) notification of constructive placement to the shipper, consignee, or third-party intermediary (if applicable), and (4) release of each car; and
- The number of credits and debits attributable to each car (if applicable).⁷

TFI strongly supports the Board's proposal to impose the listed minimum information requirements, which will ensure that the recipients of demurrage invoices can review and audit such invoices more effectively. The lack of any standard on demurrage invoices sent by Class-I railroads has been a longtime concern for TFI members, as well as other shippers and receivers who expressed their concerns in STB Docket No. EP 754.⁸ The inadequacy of information on demurrage invoices imposes significant burdens on TFI members. It impedes their ability to review and audit the demurrage charges, and thus to challenge these invoices appropriately, and it also prevents TFI members to take action to avoid future demurrage charges, as they cannot

⁷ Id at 9.

⁸ Id at 5-6.

determine whether they are actually responsible for these charges due to lack of adequate information. TFI believes that the minimum information requirements contained in the Proposed Rules will facilitate the resolution of these issues. Thus, TFI urges the Board to promulgate all the components of the minimum information requirements, as listed in the Proposed Rules, and require Class-I railroads to include all of them, as applicable, in demurrage invoices.

The Board further proposes to require Class-I railroads to ensure that the demurrage charges are accurate and warranted before sending the invoices to their customers.⁹ TFI commends the Board for addressing this very important issue. Inaccurate or erroneous invoices have been prevalent in the rail industry. Lack of adequate action by Class-I railroads to ensure that demurrage bills are accurate and warranted cause TFI members to spend incredible amounts of time and energy to identify and challenge the errors. TFI believes that the Board's Proposed Rules will ensure that Class-I railroads create an internal mechanism to filter inaccurate or erroneous information in demurrage invoices. Thus, TFI strongly supports the Board's proposal.

II. Issuing Demurrage Invoices Directly to Shippers Instead of Warehousemen:

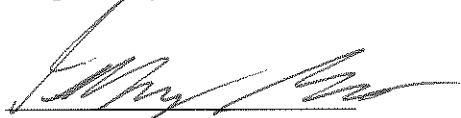
TFI takes no position on the Board's proposed rule for issuing demurrage invoices directly to shippers as opposed to warehousemen. TFI's primary interest is that the Board continue to permit shippers and warehousemen to address demurrage in their contracts. The proposed rule appears to adhere to this philosophy by directing railroads to invoice shippers directly for demurrage only when the shipper and warehouseman provide for the same in their contract.

⁹ Id at 10.

III. Conclusion

TFI commends the Board for addressing these important issues related to demurrage billing requirements. TFI strongly believes that having certain standards for demurrage invoices will facilitate the resolution of many of the issues the shippers and receivers of rail cars are experiencing with the rail carriers. TFI appreciates the opportunity given to comment on the Proposed Rules, and thanks the Board for taking this strong action addressing the shippers' and receivers' concerns expressed in STB Docket No. 754.

Respectfully submitted,



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