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BEFORE THE
SURFACE TRANSPORTATION BOARD

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Docket No. EP 759

DEMURRAGE BILLING REQUIREMENTS

COMMENTS

submitted by

NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS (NACD)

Dated: November 6, 2019

The National Association of Chemical Distributors (NACD) respectfully submits these comments in response to the Surface Transportation Board's Notice of Proposed Rulemaking on Demurrage Billing Requirements, Docket No. EP 759. NACD is pleased that the Board clearly heard the concerns about excessive demurrage fees and billing procedures raised during the May 22-23 Oversight Hearing on Demurrage & Accessorial Charges and commends the Board for taking steps to address these concerns through this rulemaking.

Identity and Interest of the National Association of Chemical Distributors

The National Association of Chemical Distributors (NACD) is the premier trade association for the U.S. chemical distribution industry, representing nearly 430 chemical distributors and their supply chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 90 percent of the industry's gross

revenue. NACD members blend, re-package, warehouse, transport, and market chemical products made by large-quantity manufacturers to 750,000 end-users in nearly every industry sector, from cosmetics to automotive and from paints and coatings to food and water treatment. NACD members operate in nearly every U.S. state through more than 3,000 facilities and are responsible for more than 75,000 direct and indirect jobs in the nation. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

Transportation is an integral part of the chemical distribution business. In 2018, NACD members made 4.6 million shipments, were responsible for 30.6 million tons of product, and drove more than 404 million miles while safely making deliveries to customers every 6.9 seconds. Over the past eight years, NACD members averaged just one incident for every 9,091 shipments. A substantial percentage of NACD members receive products via rail cars and greatly depend on reliable and affordable rail service to meet the needs of their customers and remain competitive in the global market.

NACD Position on Proposed Changes

NACD strongly supports the Board's proposed changes to the regulations governing demurrage liability, particularly the proposed requirements regarding Class I carrier demurrage

invoices. The proposed changes would increase transparency and facilitate resolution of billing disputes.

As the Board recognizes, demurrage is intended to serve the public interest by facilitating the flow of commerce through the prompt loading and unloading of cargo and the efficient use of rail cars and track. An important element of demurrage is to hold the party that caused the delay accountable. A clear billing system is essential in order for rail shippers and receivers to verify the charges easily and to dispute them if they are incorrect.

The Board is proposing to require Class I rail carriers to include the following specific information on or with all demurrage invoices:

- Unique identifying information such as reporting marks and number of each rail car involved; and
- Shipment information, where applicable, including 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; and the shipment origin station and state; and
- The dates and times of 1) the actual placement of each car; 2) the constructive placement of each car if different from the actual placement; 3) notification of constructive placement to the shipper, consignee, or third-party intermediary; and 4) release of each car; and
- The number of credits and debits attributable to each car.

In addition, the Board proposes a requirement for Class I carriers to take appropriate action to ensure demurrage charges are accurate and warranted before sending invoices.

NACD strongly supports these proposed requirements and urges the Board to include them in the final rule. Inclusion of the listed information with demurrage invoices would increase efficiencies for shippers and receivers who would not be forced to spend valuable staff time working to confirm the accuracy of the charges. This is particularly important for small businesses such as chemical distributors that have limited staff.

NACD particularly appreciates the Board's proposal for Class I carriers to ensure the accuracy and justification of demurrage charges before issuing invoices. As the Board heard during the May 22-23 Oversight Hearing on Demurrage & Accessorial Charges, it is not uncommon for Class I rail customers to receive demurrage invoices for delays for which the railroads were responsible. As NACD member Mat Brainerd, Chairman of Brainerd Chemical Company, Inc., testified in May, even if rail customers are ultimately able to have the erroneous charges waived, valuable staff time is spent in researching and disputing the charges. This situation is exacerbated when invoices do not include clear and complete information about the rail shipments.

Conclusion

NACD commends the Board for holding the May Oversight Hearing on Demurrage & Accessorial Charges and for following up with these much-needed proposals. Clarity and accuracy of demurrage invoices is essential for the system to work as intended. NACD looks forward to providing additional input and working with the Board on these and future proposals. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer C. Gibson".

Jennifer C. Gibson
Vice President, Regulatory Affairs