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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 759

DEMURRAGE BILLING REQUIREMENTS

**COMMENTS OF
THE CORN REFINERS ASSOCIATION**

On October 7, 2019, the Surface Transportation Board (“STB” or “Board”) issued the Notice of Proposed Rulemaking regarding Demurrage Billing Requirements in the above-captioned docket.¹ Pursuant to the Proposed Rules, the Corn Refiners Association (“CRA”) hereby submits its comments. As the various testimony in the oversight hearing on demurrage and accessorial rules and practices demonstrates, inadequate billing standards have been a widespread concern in the rail industry, and CRA commends the Board for addressing this issue.²

CRA is the national trade association representing the corn refining industry of the United States. CRA and its predecessors have served this important segment of American agribusiness since 1913. CRA is comprised of six member companies, including Archer Daniels Midland Company, Cargill, Grain Processing Corporation, Ingredion Incorporated, Roquette America, Inc. and Tate & Lyle Americas. For decades, corn refiners have been perfecting the process of separating corn into its component parts to create a myriad of value-added products. Our member companies accomplish all of this with more than 8,000 hardworking employees and one and a half billion bushels of corn, or about ten percent of America's corn crop. Together, our industry

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).

supports an additional quarter-million American jobs and has an annual economic impact of \$54 billion.

Corn refining is a value-added agricultural process during which kernels are separated into their principal parts (starch, germ, fiber, and protein). These ingredients are then utilized in thousands of different consumer products and industrial goods used every day all around the world. Corn refiners manufacture sweeteners, starch, advanced bioproducts, corn oil, and feed products from corn components such as starch, oil, protein, and fiber. For more than 150 years, our corn-related innovations in chemistry and technology have made food taste better, cosmetics last longer, pharmaceuticals easier to swallow, and plastics more environmentally friendly. And now, corn products are used in 3-D printing inks and studied by nanotechnology scientists as a method for delivering cancer treatments.

CRA members are highly dependent upon reliable and economic rail transportation for their products, both for inbound shipments of raw materials and outbound shipments of finished products. Rail service issues, especially with the recent implementation of the Precision Scheduled Railroading (“PSR”), have disrupted the business of CRA members, resulting in additional costs, threatening our members’ production, and jeopardizing their customer relationships. CRA participated in the oversight hearing held before the Board on May 22-23, 2019, in STB Docket No. EP 754.³ Therefore, CRA has a strong interest in this proceeding.

CRA commends the Board for issuing the Proposed Rules. The Board proposes changes to two main areas in its existing demurrage regulations. First, the Board proposes to impose certain requirements on Class I railroads’ demurrage invoices.⁴ These include minimum information

³ Written Testimony of the Corn Refiners Association, STB Docket No. EP 754 (May 8, 2019) (“CRA Testimony”).

⁴ Proposed Rules at 8.

requirements, as well as a requirement on Class I carriers to ensure that the demurrage bills are accurate and warranted before sending them to their customers. Second, the Board proposes to require Class I carriers to send the demurrage invoices directly to shippers, if they are given notice of an agreement between the warehousemen and the shipper in connection with shippers' responsibility to pay demurrage invoices.⁵ CRA hereby provides comments on the Board's Proposed Rules.

I. Requirements for Demurrage Invoices

In the Proposed Rules, the Board states that the purpose of demurrage charges may not be fulfilled if "the demurrage invoices are so vague that they effectively preclude shippers from determining what happened," thus impeding their ability to challenge the invoices, or adjust their behavior to avoid future demurrage charges.⁶ CRA praises the Board for recognizing this important aspect of demurrage invoices, and strongly agrees with the Board.

The Board also proposes to impose a requirement applicable to Class I railroads to include the following minimum information on or 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

⁵ *Id.*

⁶ *Id.*

- The number of credits and debits attributable to each car (if applicable).⁷

CRA commends the Board for setting forth these minimum information requirements. As demonstrated during the oversight hearing on demurrage and accessorial rules and practices, the rail industry lacks any uniform standard for demurrage invoices, and this creates significant problems for shippers and receivers.⁸ CRA strongly believes that imposing these minimum information standards for demurrage invoices will alleviate many of these problems, and will help the shippers and receivers to review, audit and challenge them when appropriate. Thus, CRA strongly supports the promulgation of minimum information standards as set forth in the Proposed Rules.

The Board also proposes to require Class I railroads to “take appropriate action to ensure that the demurrage charges are accurate and warranted,” before sending them to their customers.⁹ Invoices that include inaccurate and erroneous information were among the many concerns expressed by many shippers and receivers during the oversight hearing.¹⁰ CRA strongly believes that the Board’s proposal will resolve these issues, and ensure that the railroads adjust their behavior per the Board’s requirements. Thus, CRA strongly supports this proposal.

II. Issuing Demurrage Invoices Directly to Shippers Instead of Warehousemen

CRA takes no position on the Board’s proposed rule for issuing demurrage invoices directly to shippers as opposed to warehousemen. CRA’s primary interest is that the Board continue to permit shippers and warehousemen to address demurrage in their contracts. The

⁷ *Id.* at 9.

⁸ *Id.* at 5-6.

⁹ *Id.* at 10.

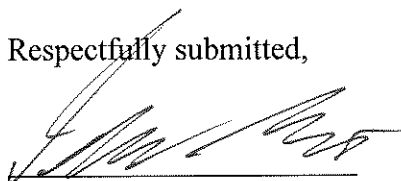
¹⁰ *Id.* at n. 14.

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.

III. Conclusion

CRA commends the Board for issuing the Proposed Rules, which address many of the shippers' and receivers' concerns related to demurrage billing. CRA is confident that the Proposed Rules, if promulgated, will ensure that the shippers and receivers receive accurate and warranted demurrage invoices with adequate information that would enable them to challenge, or adjust their future behavior. CRA strongly supports the Board to promulgate the Proposed Rules, and thanks the Board for taking this strong action by setting these valuable standards.

Respectfully submitted,



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