

National Shipper Advisory Committee (NSAC)

Comment to Federal Maritime Commission (FMC) Docket No. 2022-0066-0090

NPRM Demurrage and Detention Billing Practices

Whereas, NSAC previously corresponded with FMC on the topic of rail storage charges (a form of demurrage) by NSAC Recommendation dated 5/6/2022, and;

Whereas, the FMC responded to NSAC Recommendation on 6/30/2022 acknowledging: “The Commission has direct jurisdiction over common carriers, marine terminal operators (MTO), and ocean transportation intermediaries (OTI). This includes jurisdiction over “through transportation.”, and;

Whereas, the FMC further responded with an example: “An ocean carrier that provides a shipper with a through transportation rate from Asia to an inland destination in the United States will be subject to Commission jurisdiction for the entire through transportation...” and;

Whereas, railroad terminal operators act as agents for (emphasizing on behalf of) the ocean carriers who resell their services to provide transportation to an inland destination in the United States on through-bills of lading, and;

Whereas, through transportation is not completed until the container is made available and/or delivered to the motor carrier or the store door delivery location, and;

Whereas, Rail Storage charges are sometimes unreasonably assessed to the ocean carrier’s customer directly by rail terminal operators, prior to delivery of the container, and without benefit of a contract, nor regulatory authority over such rail charges, and;

Whereas, proposed section 541.4 defines a properly issued invoice: “...is a demurrage or detention invoice issued by a billing party to the person for whose account the billing party provided ocean transportation or storage.

(a) This person must have contracted with the billing party for the carriage or storage of goods and is therefore responsible for the payment of any incurred demurrage or detention charge.

(b) A billing party cannot issue an invoice to any other person.

Therefore, We, the National Shipper Advisory Committee, recommend the final rule issued under § 541.3 for Demurrage and Detention expands the definition of demurrage or detention to mean “...any charges, including “per diem” charges, assessed by or on behalf of ocean common carriers, marine terminal operators, or non-vessel operating common carriers related to the use of ~~marine~~ terminal space (e.g., land) or shipping containers, but not including freight charges”. Recommended text changes for § 541.3 are the insertion of: ‘*or on behalf of*’, and, striking the word ‘*marine*’ as above.

Respectfully Submitted,

National Shipper Advisory Committee

Full Committee Vote:

Yea: 16

Nay: 0

Full Committee Signatory,

Mr. Michael Symonanis, Chair

Date:

National Shipper Advisory Committee to Federal Maritime Commission (FMC)

Sub-Committee: Data & Visibility

Opening: Reduce data complexity and opacity within the supply chain by requiring consistent data points, processes and practices between Ocean Carriers, and Marine Terminal Operators (MTOs).

Purpose: Consistency and alignment of data between Ocean Carriers, and MTOs, especially as pertains to milestones on the pick-up and return of containers both loaded and empty.

Part of the complexity is currently witnessed in the misalignment of Alliances and VSA members' data when calling a US port. Most times, a vessel calling the same port will have two, three or four different Early Return Dates, and Documentation and Physical Cutoff Dates, depending on the carrier that issues the booking confirmation. Alliances and VSAs members communicate different dates for the same vessel calling the same port. Moreover, these data points are different both upstream and downstream to the MTOs in the network.

This recommendation serves to expand on the previously submitted recommendations: Shipment Level Data Alignment, Container Level Data Alignment, Intermodal Level Data Alignment submitted on December 8, 2022, the ERD Recommendation discussed on August 10, 2022.

Recommendation: Require Ocean Carriers and their subcontracted parties, i.e., MTOs, rail carriers, chassis providers, container depots, etc. to publish consistent, aligned, and timely data on the following data elements:

Export Cargo:

- Empty pickup container yard location
- Empty pickup date
- Documentation Cutoff
- Physical Cutoff

- Loaded container location and earliest return date
- Loaded container ingate return

Import Cargo:

- Container pickup available date
- Container last free port demurrage date
- Container last free equipment detention date
- Empty container return yard location options

Respectfully Submitted,
National Shipper Advisory Committee

Full Committee Vote:

Yea: 16

Nay: 0

Mr. Michael Symonanis, Chair

Date: