

A wireframe globe is centered in the background, rendered in a light blue color against a dark blue background. The globe's grid lines are visible, creating a spherical shape. The globe is partially obscured by a white horizontal band that contains the text.

# **Fees & Surcharges**

Subcom Report Q2 2023

# Incentive Principle

**Demurrage and Detention** are valuable charges when applied in ways that incentivize cargo interests to move cargo promptly from ports and marine terminals...

...and “when incentives such as demurrage and detention no longer function because shippers are prevented from picking up cargo or returning containers within time allotted,” [absent extenuating circumstances], “charges should be suspended.”

# NPRM on D&D Billing

- Detention billing
- Early Return Date (ERD) changes\*
- Amended D&D invoices
- Customs Holds\*
- 30/30/30 Rule

\* NSAC Recommendations Submitted

# Rail Storage Jurisdiction

## Commission Response

“Any expansion of the FMC’s jurisdiction must be legislated by Congress. The Commission has direct jurisdiction over common carriers, marine terminal operators (MTO), and ocean transportation intermediaries (OTI). This includes jurisdiction over ‘through transportation.’ ”

# Rail Storage Jurisdiction – Gray Area

- STB has no authority over contract carriage per Staggers Act
- STB has intermodal exemption per USC 10501 and 10502
- FMC claims jurisdiction on through bills to inland destinations over Common Carriers, MTOs, and OTIs but no operational authority over other unregulated entities (rail)

# Rail Storage Actions

- **NCBFAA / NITL / NRF multi-association letter to House Transportation and Infrastructure Committee**
  - Asks Congress to have FMC change invoice structure for rail storage billing back to the ocean carrier that contracted for it.
- **Proposed NSAC Comments to D&D Billing NPRM**
  - Tweaks the definition of demurrage to include all land storage
  - Compels rail operators to invoice ocean carriers directly as the properly contracted party

# NSAC Proposed Comments

**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;

# NSAC Proposed Comments

**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;

# NSAC Proposed Comments

**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;

# NSAC Proposed Comments

**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.

# NSAC Proposed Comments

**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.

Discussion ?

**Thank you!**

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