

EST. 1957



Generations of Excellence
Through Service

929 Bransten Road • San Carlos, CA 94070
(800) 479-0997 Toll-free • (650) 595-3600 Main
(650) 595-2094 Fax • www.vivioninc.com

Federal Maritime Commission
Attention: Docket No. 22-04
Secretary William Cody
800 North Capitol Street, N.W.
Washington, DC 20573
via email: secretary@fmc.gov

Vivion, Inc. submits the following comments in response to the Federal Maritime Commission (FMC) Advance Notice of Proposed Rulemaking regarding Docket No. 22-04, Demurrage and Detention Billing Requirements, published in the *Federal Register* February 15, 2022. Vivion, Inc. commends the FMC for addressing this important issue.

About Vivion, Inc.

Vivion, Inc. is a chemical distributor that specializes in quality ingredients for the Nutritional, Pharmaceutical, Food & Beverage, Cosmetics, Personal Care, Agricultural and Industrial markets. We import critical products that are necessary to manufacture tablets, capsules, soft gels, hair care, skin care, color cosmetics, baking goods, confections, ice cream, adhesives and more. These chemical products, among many others, are not readily available in the United States, and this country relies on these imports to supplement its raw material needs. Vivion, Inc. is a member of the National Association of Chemical Distributors (NACD), whose members are a critical component of American infrastructure and the economy but are suffering under the strain of the supply chain crisis, including excessive detention and demurrage fees imposed by ocean carries. These detention and demurrage fees are intended to incentivize the fast movement of containers through ports; however, they have failed to achieve this objective, with substantial bottlenecks continuing at the ports. The fees are only increasing the burden on companies like mine that are trying to get products essential to the economy into the United States. In 2021 alone, our business has been charged about \$53,000 in detention and demurrage fees. These fees are ultimately passed on to the consumer and add unnecessary administrative burden on to our company, further delaying the supply chain.

Scope

Vessel-operating common carriers (VOCCs), non-vessel-operating common carriers (NVOCCs) and marine terminal operators (MTOs) all charge detention and demurrage fees, and Vivion, Inc. strongly recommends that each be included in any proposed detention and demurrage billing regulation. Every link in this process needs to be accountable in order to improve the administration of these charges.



When receiving these detention and demurrage bills, roughly 33% contain inaccurate information. This places additional strain on our company as we must investigate and dispute these inaccuracies.

The type of information in detention and demurrage fees varies widely among VOCCs, NVOCCs, and MTOs. These inconsistencies make it more difficult to contest charges or even understand why we are being charged. Standardizing what information is included by each entity levying these charges will streamline the detention and demurrage process and give shippers a fair opportunity to dispute charges when there is reason to do so.

Minimum Billing Information

When receiving detention and demurrage fees basic information, such as reasons for the charges do not accurately reflect what happened. Without this information, it is extremely difficult to assess which shipment is being charged and whether the fee is accurate. A requirement for all relevant information, including the billing date, payment due date, bill of lading number, and/or container number, to be clearly marked on invoices would hold the billing parties more accountable, preventing them from charging erroneous fees that shippers have little or no opportunity to contest.

Beyond basic information, it is also crucial that details informing shippers of how their fee is calculated be included in the bill. In circumstances where it can be proven that detention or demurrage fees are appropriate, it is equally important to prove the correct amount is being charged. Currently, it is not uncommon for VOCCs, NVOCCs, and/or MTOs to levy charges without the start/end free time, start/end of demurrage/detention/per diem clock, demurrage/detention/per diem rate schedule, vessel arrival date, container availability date, and/or earliest return date. The omission of this information from invoices by the billing parties makes it extremely difficult for shippers to be able to verify the amounts charged are correct. Additional details often missing from detention and demurrage invoices are events that should stop the clock such as unavailability of containers, unavailability of pick up/return locations, unavailability of appointments, restrictions on chassis accepted, and/or force majeure-related events. While these events should stop the period covered by detention or demurrage fees, their omission from invoices makes it impossible for shippers to verify whether they are actually accounted for when the final total is calculated.

Billing Practices

In addition to the need for more information in detention and demurrage fees, there is also a need for the standardization of basic billing practices. For example, the amount of time between the actual detention or demurrage and when the invoice is received is not consistent. A requirement for VOCCs and NVOCCs to issue invoices within a set timeframe would improve shippers' ability to verify charges.

Typically, it takes about 7-10 days to receive a detention or demurrage invoice; however, this varies widely. Our company has been assessed fees as late as 3-4 weeks after the detention or demurrage. This adds to the administrative burden of companies like mine and makes the charges

EST. 1957



Generations of Excellence
Through Service

929 Bransten Road • San Carlos, CA 94070
(800) 479-0997 Toll-free • (650) 595-3600 Main
(650) 595-2094 Fax • www.vivioninc.com

more challenging to verify. The suggested requirement that invoices be issued within 60 days would provide more certainty and efficiency by ensuring that shippers will have their information readily available and more quickly be able to verify the accuracy of the charges.

Similarly, the timeline of receiving refunds for inaccurate charges is often inconsistent. Typically, it takes about 2 months to receive a refund; however, we have had refunds take as long as 90+ days. Standardizing this timeframe would provide additional certainty to shippers in getting the funds they are due. Also, beyond timeframes, the process for disputing a charge is often very convoluted and inconsistent among the various VOCCs and NVOCCs. Adding a requirement for standardized information on how to dispute charges would be an important step in ensuring shippers have an adequate opportunity to make those disputes.

Furthermore, which parties are being assessed fees can be unclear. There are times when detention and demurrage fees are charged to multiple parties but that is not made clear on the invoice. Requiring those who levy the charges to identify clearly who is being charged, and why, would add important clarification. This would streamline the process and reduce unnecessary time spent by those who are charged looking for information already known by those charging the fees.

Conclusion

Vivion, Inc. appreciates the opportunity to provide its input as the FMC decides whether to add requirements on detention and demurrage billing. Improving the process of how these fees are assessed is crucial in expediting the movement of goods through ports. We look forward to FMC's final decision.

Sincerely,

A handwritten signature in black ink that reads "Michael E. Poleselli". The signature is written in a cursive style with a prominent initial "M".

Michael Poleselli
President
Vivion, Inc.

