



April 8, 2022

To: Federal Maritime Commission

Re: **Docket No. 22-04, Comments on Demurrage and Detention Billing Requirements ANPRM**

As referenced above, Suntreat Packing & Shipping Co., (Suntreat) is submitting comments, identified by Docket No. 22-04. Suntreat is an established grower/shipper of fresh citrus with operations in California and Australia. We import and export citrus around the globe via refrigerated ocean containers. These comments address why Suntreat believes common carriers and marine terminal operators must be required to include certain minimum information when billing detention and demurrage, which is billed after the fact and outside the “normal” planned costs. Facts are needed to verify and validate the accuracy of the charges. In addition, because refrigerated containers are charged more (demurrage at \$400/500 per day for reefers as opposed to \$200/300 per day for dry) and given less free time (2 days average for reefers as opposed to 4 days for dry), Suntreat believes the steamship lines and terminals must be held accountable to expedite the availability of refrigerated containers. As mentioned in the proposed rule, the primary purpose of demurrage and detention charges is to incentivize the movement of cargo and promote fluidity, which is redundant for fresh produce. The longer the fresh produce remains in the container, the lower the quality and condition, meaning a lower price for the produce. It is essential that fresh produce importers have the ability to pick up their containers as soon as possible after discharge so that the produce can be sold when it has the best quality and condition. Many times, containers are marked as available but in reality, cannot be picked up for reasons beyond the importers’ or truckers’ control (listed in Number 4 below). We have also experienced detention and demurrage charges when the steamship line has refused for weeks to give an appointment time to RETURN an empty container. The steamship line is creating new revenue by refusing to provide service to the shipper/consignee.

1. **Should the Commission include both VOCCs and NVOCCs in the proposed regulation on demurrage and detention billing?** Yes, there must be uniformity (One rule for demurrage and detention billing, no matter who bills it.)
2. **Should the Commission include MTOs in a proposed demurrage billing regulation?** Definitely, again for uniformity
3. **Should a proposed demurrage billing regulation distinguish between the demurrage MTOs charge to shippers and the demurrage MTOs charge to VOCCs? That is should the Commission regulate the format in which MTOs bill VOCCs?** The regulation should





apply to all demurrage and detention billing. There is a need for timeliness and accuracy across the board.

4. **What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed?** Although it is difficult to provide an exact percentage, I would estimate that over half of the invoices are incomplete or contain fallacious information. The majority of the disputes revolve around “*real-time*” *availability*. In other words, the container is off the vessel and shown in the system as available for pick-up. However, the cargo is not available, examples below.

Demurrage:

- a. The terminal has no appointments available. (Note: Appointments cannot be made until the cargo is available. The call for appointment is made as soon as it is available. The trucker is advised that there are no appointments for two days; and reefer containers only have two free days.
- b. The trucker arrives as instructed for pick-up; but there are no chassis available.
- c. The container is in a “closed” area or buried in a stack where it cannot be pulled (even though it was marked available in the system). Again, available in the system, but not actually available for pick-up when the trucker arrives.

NOTE: Both b & c above could involve “dry” runs for the trucker as the trucker is told the cargo is available in the system, dispatches a truck, and then when the truck arrives, the facts are that the container is not available. It should also be mentioned that many times the trucker has waited in a line at the gate (sometimes for hours) before learning that it is not available.

- d. At the Ports of Los Angeles and Long Beach, there are random closings of terminals. If the terminal is closed, the container is not available.
- e. Government “Holds” are beyond the importers’ control; they are a requirement to import. U.S. Customs and Border Protection (CBP) may place an NII or x-ray hold on a container. CBP coordinates this inspection directly with the terminal operator. The Port of Long Beach does not charge demurrage while the container is “on hold”, waiting for the exam. However, the Port of Los Angeles does. It is not equitable to be charged for a required examination which is **not** controlled or arranged by the importer.

Currently the fresh Chilean grape importers are facing a financial crisis at the Port of Philadelphia. USDA requires all Chilean table grapes to be fumigated as a *condition of entry*. CBP places a “hold” on the cargo, which is removed after



fumigation is complete. For a variety of supply chain issues this season there is three times more containerized volume in the Port of Philadelphia. Even with utilizing all fumigation providers, there is not enough capacity. There is an estimate of 10-15 days dwell time, which will result in thousands of dollars in demurrage per container. These current conditions and challenges were discussed with the carriers, who stated there would be no consideration of the situation; demurrage would be charged. It is not reasonable that there is no consideration given to the situation. The fumigation backlog is being created by the increased volume (which means increased profits for the steamship lines); and the importers are being penalized for meeting the USDA Import requirements.

Detention:

Truckers want to return empty containers as soon as possible. They do not want to store them in their yard. However, many times they are advised that the yard is full, and they cannot be returned. In addition, the terminals prefer dual transactions (bring an empty in and pick-up another shipment). The truckers would prefer that as well. However, they must consider their obligation to all their clients, as well as run a profitable business. Plus they may not have another load at that specific location. Still, they still need to return the container (but are refused).

5. No comment.
6. **Minimum Billing Requirements:** Of course, the pertinent information, bill of lading and container numbers, as well as dates need to be included for tracking. Intervening clock-stopping events (no appointments, no chassis, closed area/stacked, or government holds) should be listed. Demurrage should never be billed just because it is available in the system. It must be available to load with the necessary equipment. For detention, the terminals must be required to accept the empty containers in a timely manner. Terminals should not bill for detention when they are unable to accept the empty. Maybe there should be consideration given to the truckers being able to charge the terminal for storing their empty containers (due to the terminal refusing to accept the empty in a timely manner).
7. **Do common carriers invoice multiple parties for demurrage and/or detention charges? If multiple parties are invoiced for charges, should the billing party be required to identify all parties receiving the invoice for the charges?** If multiple parties are invoiced, all should be identified on the invoice.



8. **Should the billing party be required to identify the basis of why the invoice party is the proper party in interest and therefore liable for the charges?** Yes
9. No comment.
10. **How long from the point of accrual of a demurrage or detention charge does it typically take to receive a demurrage or detention invoice billing?** Demurrage is billed and paid immediately. The MTO will not release the container for pick-up until it is paid. The detention bills are issued to the shipper/consignee. Sometimes it is months after shipment arrival before an invoice magically appears without notice, which is not acceptable as explained in #11 next.
11. **Should the Commission require demurrage and detention invoices be issued with 60 days of the date when the detention/demurrage/per diem stops accruing?** 60 days is too long. With automated systems being utilized, 10 days should be more than adequate, especially for refrigerated containers. The produce industry standard is to sell the fruit at the best possible market price and liquidate or finalize the shipment, including profit and loss. This standard produce accounting methodology does not accommodate late billing, meaning that late billing is absorbed by the US importer, many times creating a loss. Both the container tracking and billing system is automated. It is not only reasonable, but also an industry standard for the perishable produce industry to have immediate billing.
12. **Should the Commission require specific information be included on the invoice regarding how to dispute a charge?** Definitely, contact information, as well as instructions should be provided. The line should also be required to provide confirmation that the dispute has been received and they will respond within a specific timeline.
13. No comment
14. No comment
15. **Please provide any other views/data you believe would help inform the Commission's decision whether to pursue a proposed regulation on demurrage and detention billing information and practices.** The way demurrage and detention is assessed and collected needs to be adjusted to meet the current shipping environment. The supply chain breakdown has freight rates at their highest; and vessels are filled to capacity. Freight is being unloaded at terminals that are straining with the volume and struggling to keep up. Even though it is impossible to work the current volumes as efficiently as the volumes of a few years ago, there has been no consideration for today's supply chain reality with the demurrage and detention protocol. Demurrage and detention was implemented to incentivize efficient cargo movement and freight fluidity. Perhaps the



steamship lines and terminals need to be incentivized. Importers, especially those of fresh produce, need to have access to their produce as soon as possible. Refrigerated perishable cargo must be expedited and made available; and importers should never be penalized with demurrage or detention charges when the inability to pick up the cargo or return the empty is due to issues outside their control. Steamship lines take no responsibility for anything but rather they simply refer to "Back of the Bill of Lading" language to state their complete lack of responsibility.

Suntreat thanks The Commission for looking into this very important issue, as well as for taking our comments into consideration.

Sincerely,

A handwritten signature in black ink that reads "Daniel Kass". The signature is written in a cursive style and is positioned above the printed name.

Daniel Kass

Director Export/Import Sales & Marketing
Chairman – California Citrus Quality Council