



**Before the
Federal Maritime Commission
Docket No. 22-04**

The **Agriculture Transportation Coalition** (AGTC), on behalf of our membership representing all US agriculture and forest products commodities, found in every state of the union, submits these **Comments regarding the Federal Maritime Commissions Advance Notice of Proposed Rulemaking on Demurrage and Detention Billing Requirements Docket**.

The Impact of Uncontrolled Detention and Demurrage Practices

For several years, the AgTC, on behalf of exporters, their forwarders and truckers, together with other associations on behalf of importers, etc., has actively pursued Federal intervention concerning a number of ocean carrier practices, including detention and demurrage. Such charges have, collectively, imposed hundreds of millions of dollars of additional transportation cost on US agriculture products exporters and on our overseas customers. This comes at a time when the supply chain is in crisis, when port congestion, domestic transport challenges, has led to lack of scheduling integrity and availability of equipment. In turn, ocean carriers have canceled or delayed sailings and declined export bookings. When they do sail, the dramatic freight rate increases, and the detention/demurrage charges, combined with additional storage, trucking and rerouting costs have rendered many of exporters to be undependable and unaffordable suppliers to the global markets.

The impact of the ocean carrier practices, including detention and demurrage, have been aggregated in the AgTC Ag Exporter Supply Chain Impact Survey conducted over the full year 2021. The Survey provides data provides insight into the impacts of the carrier practices and detention and demurrage in particular. It is included here:

[2021 AgTC Ag Exporter-Carrier Service Impact Survey](#)

The detention and demurrage charges have dramatically increased international ocean shipping costs. Even while freight rates have been skyrocketing over these past two years for both imports and exports, in many cases, detention and demurrage charges have even eclipsed those rate increases. These increased costs have driven some of our agriculture exporters out of the market. In some instances they have been forced to abandon foreign sales, to turn to the domestic market, which is already fully supplied and not as accessible to the agriculture grower or processor which in producing for particular foreign market demands. The increased cost of transportation has also resulted in increased costs of imported items in the US marketplace and has been a significant engine for inflation.

Diversity of Ocean Carrier Detention and Demurrage Practices

It is important to note that there is significant diversity among the ocean carriers in their demurrage and detention practices. Some carriers impose significant charges without any explanation or detail, without providing any contact or process by which the customer can request a waiver of the charge. And when challenged or at least questioned, the carrier does not respond at all and or delays responses for many months, while requiring the customer to provide detail as to the circumstances of the delayed container pick-up or return which the carrier already has or has much better ability to obtain. Frequently the response is a blanket refusal review or waive, requiring multiple attempts by the customer. In fact, for some carriers the general reputation among customers is “why bother”.

On the other hand, there are a few (too few) ocean carriers which accept questions and request for waivers, and act promptly upon them, issuing refunds or waivers as appropriate in a timely fashion. Proving that reasonable demurrage and detention practices are possible. Had all carriers comported themselves in this manner, the original Interpretive Rule may not have been necessary and certainly OSRA legislation might not have had the level of support that will shortly result in their enactment into law.

AgTC and Industry Efforts to Gain Federal Intervention

The AgTC joined with other organizations to petition for and support the Commission’s issuance of the Interpretive Rule on Detention and Demurrage adopted in final form in April 2020. That excellent Interpretive Rule provided ocean carriers with guidance as to what would constitute reasonable or unreasonable ‘D&D’ practices. Unfortunately, those practices continued unabated, and in terms of the actual charges, often increased. Despite efforts by importers and exporters to gain FMC enforcement of its own Rule, none was forthcoming.

Therefore, exporters and importers sought Congressional intervention; in short order, the House of Representatives passed the Ocean Shipping Reform Act of 2021 (OSRA) and then again as OSRA 2022 (HR 4996); the Senate unanimously passed OSRA 2022 (S.3580) this Spring.

Based upon the statements of the sponsors of the legislation, a primary motivation was to provide an ocean transportation system that serves the interest of US exports and, according to those Members of Congress and express statements in both the House and Senate bill, US agriculture exports in particular. The OSRA bills include measures to increase ocean carriage of exports, to increase carrier acceptance of export bookings.

Anticipated Statutory Detention and Demurrage Invoice Information

At the same time, the OSRA bills contain specific language addressing the unrestricted imposition of often draconian demurrage and detention charges, and carrier practices which the Commission's Interpretive Rule already declared to be unreasonable. Both the Senate and House bills provide very specific informational requirements for detention and demurrage invoices. They are found in Section 7 of S.3580

“(d) DETENTION AND DEMURRAGE INVOICE INFORMATION.—

“(1) INACCURATE INVOICE.—If the Commission determines, after an investigation in response to a submission under section 41310, that an invoice under subsection (a)(15) was inaccurate or false, penalties or refunds under section 41107 shall be applied.

“(2) CONTENTS OF INVOICE.—An invoice under subsection (a)(15), unless otherwise determined by subsequent Commission rulemaking, shall include accurate information on each of the following, as well as minimum information as determined by the Commission:

“(A) Date that container is made available.

“(B) The port of discharge.

“(C) The container number or numbers.

“(D) For exported shipments, the earliest return date.

“(E) The allowed free time in days.

“(F) The start date of free time.

“(G) The end date of free time.

“(H) The applicable detention or demurrage rule on which the daily rate is based.

“(I) The applicable rate or rates per the applicable rule.

“(J) The total amount due.

“(K) The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.

“(L) A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.

“(M) A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges.

In other words, Congress is no longer waiting; it has moved forward to enforce the Commission's own Rule, now two years old. The President has stated his intent to sign OSRA2022 including the specific detention and demurrage mandates, into law immediately upon final Congressional passage, which may be soon. This will likely happen even as the Commission is now determining how to enforce its Interpretive Rule. OSRA2022 will statutorily mandate the information to be included with D&D invoices. Failure to include it, according to the legislation, would relieve the shipper from the obligation to pay that invoice. And if inaccurate information is included, Shipping Act penalties could apply. The Commission should consider this legislative activity.

Benefits of the Current ANPRM

The AgTC believes the current ANPRM has utility, in guiding the FMC as it implements OSRA2022. This ANPRM can provide additional information, helpful to ensure that OSRA's informational mandates are efficiently implemented. In addition, this ANPRM can lead to increased responsiveness by carriers to their customers' needs for prompt invoicing, timely review of waiver or refund requests, and clarity as to the parties being invoiced.

We hope this ANPRM indicates the Commission's willingness to move forward with similar initiatives to enforce other reasonable ocean practices upon which US agriculture exporters, and all importers, exporters, forwarders, truckers, depend.

Following are responses to various questions in the ANPRM:

1. Commission should include both VOCC's and NVOCC's
2. Only need to regulate the MTO billing, when billing the BCO directly. However the MTO's demurrage rates must continue to be required to be filed, or shown on the website.
3. Depending on the carrier, the D&D billing errors can be as high as 90%, particularly on the days of "free time". It appears clear that the carriers really do not know, with the precision that a D & D invoice requires, where and when its containers are.
4. We are not in favor of a mandatory invoicing format, carriers which wish to innovate to make user-friendly changes, should be encouraged to do so. We are concerned the uniformity could lead to 'lowest common denominator'
5. Minimum billing information – everything in the OSRA bills, and all in the ANPRM. In addition:
 - a. certification that the invoice is compliant with the Interpretive Rule (46 CFR 545.5)
 - b. specific daily billing rates, in cases (which is typical) that the rate increases as additional days pass
 - c. Booking Number
 - d. ERD is critical, and must not be a date communicated after the empty container is collected.
 - e. Specific instances that 'stop the clock' such as shuttered terminal, no appointments, CBP inspection
6. Deadlines. Invoices for D&D should be tendered no later than 30 days. And the deadlines for BCO or other party to dispute or seek waiver should be no less than 30 days. Some carriers wait many months to invoice; this is not acceptable,

making visibility into the basis of the charges, impossible, for both shipper and carrier. The Commission rule should excuse the shipper from obligation to pay any invoice over 30 days after the detention or demurrage event.

7. Carrier must identify any and all parties being invoiced, if more than one is invoiced for the same detention or demurrage.
8. The BCO must be the party invoiced. The carrier may not invoice a party merely because the carrier has expanded the list of parties which it includes as a merchant in its B/L. Carriers have invoice US customs brokers who have no role in booking, facilitating, transporting, receiving, handling cargo/container. This must be prohibited. The invoiced party must be a party to the transportation transaction, the transportation contract, or the booking party.
9. No need to have MTO's invoice the BCO's directly for demurrage. Although the rate the MTO charges the Carrier, and the rate the Carrier then charges the BCO, should be made available, so that the BCO can have visibility as to the 'spread'.
10. Incredible that it takes a Rule to require a Carrier to provide contact persons and information to a party, right on the invoice. It is standard practice for all transportation or any consumer invoicing.
11. Upon determination by carrier that the charge was unwarranted, the refund should be within 7 calendar days. And must be refunded, not credited against a future or other current charge.

Understanding that the Commission may close the Docket at any time, It is hoped that the should compelling information become available, that Commission will consider accepting it.

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