



United States Department of Agriculture

Office of the Secretary  
Washington, D.C. 20250

December 13, 2022

Hon. Daniel B. Maffei  
Chairman  
Federal Maritime Commission

Hon. Rebecca F. Dye  
Commissioner  
Federal Maritime Commission

Hon. Louis E. Sola  
Commissioner  
Federal Maritime Commission

Hon. Carl W. Bentzel  
Commissioner  
Federal Maritime Commission

Hon. Max Vekich  
Commissioner  
Federal Maritime Commission

**RE: FMC Notice of Proposed Rulemaking, Docket No. FMC-2022-0066, Demurrage and Detention Billing Requirements**

Dear Chairman Maffei and Commissioners Bentzel, Dye, Sola, and Vekich:

The U.S. Department of Agriculture (USDA) writes to commend the Federal Maritime Commission (Commission or FMC) for its actions in implementing the Ocean Shipping Reform Act of 2022 (OSRA). USDA strongly supports the Commission's proposed rulemaking on demurrage and detention billing requirements and offers a few recommendations to make the rule more effective. USDA agrees with the Commission's proposal to apply the proposed rules to non-vessel-operating common carriers and marine terminal operators. USDA also strongly supports both the proposed billing information requirements and the proposed timelines for disputing and resolving an invoice. However, USDA recommends adding the shipment's transport history to the required billing information. The Commission should also and specify that an invoice is due to be paid within 30 days of delivery, unless it is disputed. When an invoice is disputed, payment can be deferred until the dispute window has closed.

USDA recognizes the importance of demurrage and detention charges in incentivizing efficient use of transportation resources. However, USDA strongly believes these charges should be billed in an honest, fair, and transparent manner. Agricultural shippers have long expressed concerns over unfair and incorrect demurrage and detention charges—charges often billed in error or when delays were the carrier's fault. Shippers have also decried the poor dispute resolution services offered by billing carriers. Exacerbated by the Nation's supply chain issues of the past 2 years, these issues require urgent action by the Commission, and USDA appreciates the steps the Commission is taking with this proposed rule.

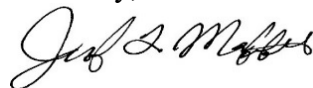
USDA agrees with the additions and adjustments the Commission made to the OSRA-mandated billing information. However, the Commission should go one step further and require billing parties to include additional shipping information on the invoice. Billing parties should be required to provide transport history information akin to the shipment tracking information that is ubiquitous in modern, consumer shipping. That is, billed parties should have access to such basic facts as the date and time a container was loaded on (or off) a vessel and the date and time the vessel left (or arrived at) the port. This information would provide a more complete picture, enhance transparency, and help shippers verify the free time, availability, and earliest-return-date information in the current proposed rulemaking.

USDA also strongly supports the Commission's proposed invoicing and dispute resolution timeline, including 30 days to issue an invoice, 30 days to file a dispute, and 30 days for the billing party to resolve the dispute. However, the proposed rule can be improved in 2 ways. First, the Commission should specify the timeline for when payment is due. A shipper should not have to pay an invoice until any disputes are resolved. Routinely, an invoice should be due within 30 days of delivery to give the shipper adequate time to dispute any errors. If a shipper disputes the charge, the due date should be extended until those disputes are resolved.

Second, USDA agrees with the Commission's assessment that the longer the period between the shipment and the invoice, the more costly it is for the shipper to validate those charges. Therefore, USDA agrees with the Commission's proposal to require that the invoice be issued within 30 days of when charges stop accruing. However, in the case of an incorrectly billed party, the Commission proposed that the correctly billed party must receive an invoice 30 days after the incorrectly billed party files a dispute. USDA encourages the Commission to remove this aspect of the proposal. The carrier should, in all circumstances, have 30 days from the date charges stop accruing to bill the correct party. The shipper should not incur additional costs of unexpected and harder-to-verify charges due to the carrier's error in billing the wrong party.

To summarize, USDA appreciates the Commission's efforts in its various proceedings to implement OSRA. USDA strongly supports the proposed rule on demurrage and detention billing requirements. USDA believes that, with a few modifications, the proposed rule would improve existing billing practices even more significantly than it would in its present form.

Sincerely,



Jennifer Moffitt  
Under Secretary  
Marketing and Regulatory Programs