

National Shipper Advisory Committee to the Federal Maritime Commission (FMC)
Subcommittee: Fees and Surcharges

Recommendation

Expanding the Scope of the Federal Maritime Commission to Include Oversight of Rail Carriage and Related Charges for Through Bills of Lading

Purpose. The purpose of this recommendation is to offer ample justification to expand the scope of the Federal Maritime Commission.

Definition. The term “through Bill of Lading” refers to any Bill of Lading including rail carriage as an extension to marine carriage.

Applicability and Scope. This recommendation, if accepted and implemented, would expand the scope of the Federal Maritime Commission to have oversight over (1) all rail carriage, (2) demurrage (including any charges labeled “rail storage”) and detention (including any charges labeled “per diem”) at rail ramps, and (3) commercial terms and conditions as they apply to shippers and carriers (ocean, rail, and motor) for all shipments with an ocean Bill of Lading including rail transportation until the final destination defined within the Bill of Lading. This would be the case for both import and export shipments.

Justification. Currently, the Federal Maritime Commission (hereafter, “FMC”) has oversight over ocean transportation, related parties, and related terms and conditions per the Shipping Act of 1984. Moreover, the FMC has assumed oversight of demurrage and detention at marine terminals per the interpretive rule outlined in 46 U.S.C. 41102(c) and §545.5, but this oversight is specifically outlined to be at “marine terminals”.

Many shippers, both importers and exporters, tender cargo to ocean carriers from inland points against rates inclusive of rail and/or motor carriage which are quoted by the ocean carriers and subsequently filed with the FMC.

There is currently no adequate dispute resolution process available to shippers when disputes involving the rail portion of cargo movement, including demurrage/rail storage and detention/per diem at rail ramps, invariably arise. More importantly, there is currently no direct governmental oversight over the rail portion of these shipments nor over their operational execution.

Without governmental oversight, and specifically oversight by the Federal Maritime Commission, the interpretive rule outlined in §545.5 is not applied to any demurrage/rail storage or detention/per diem assessed at rail ramps by rail operators, terminal operators, and/or ocean carriers against through Bills of Lading.

As the United States Congress is considering an update to the Shipping Act of 1984 with the current draft of the Ocean Shipping Reform Act and the FMC is evaluating an evolution of language in the interpretive

rule with the recently announced advanced notice of proposed rulemaking, we must also consider this current gap of oversight involving rail.

The spirit of the FMC's oversight should be founded at the Bill of Lading level through to the final destination defined by the shipment parties within the Bill of Lading and not solely focused on the marine portion of cargo movement and fee structures. The Bill of Lading issued by ocean carriers is the contract of international carriage. As such, if the FMC has oversight over the parties to the Bill of Lading, it should also have oversight over the entirety of terms and conditions to the Bill of Lading. Indeed, the FMC currently has oversight over all rates filed by ocean carriers and NVOCCs including rates that have rail carriage in their composition.

Moreover, rail operators are not direct vendors to shippers. Instead, they act as subcontractors to ocean carriers and facilitate non-marine carriage *on behalf of* ocean carriers against through rates *offered* by the ocean carriers and against through Bills of Lading *issued* by the ocean carriers. Consequently, equitable protection of shippers across all Bill of Lading terms can only be assured under the direct oversight by the Federal Maritime Commission.

To further complicate matters, the National Shipper Advisory Committee has been provided with multiple examples of carriers discharging cargo at a different import port of entry than listed on the Bill of Lading. While this practice is acceptable in certain circumstances (i.e., force majeure, congestion avoidance, etc.), the change is not always communicated to the shippers or their nominated forwarders and/or brokers. Consequently, a customs broker can file an entry at the original port of discharge, but this entry is nullified if the cargo discharges elsewhere. Per the examples provided to this Committee, this scenario has resulted in demurrage for the importer even on carrier door moves as the carrier cannot pull the cargo until the original entry is withdrawn and the new entry is submitted.

For these reasons, we, as the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission be given oversight over all carriers, subcontractors, rates, demurrage, detention, storage under any other name, terms and conditions, and modes reflected on any Bill of Lading issued by an ocean carrier. Additionally, we recommend that the FMC begins mandating the provision of accurate transit, cargo location, and container pickup/return locations by carriers to shippers and their nominated forwarders and/or brokers. Finally, in the event of a conflict between the terms of the Uniform Intermodal Interchange Access Agreement (UIIA) and the FMC's oversight and Interpretive Rule, it is the recommendation of this Committee that the terms of the FMC shall prevail.