



February 2024 - Info Expeditior

What's New?

- [A Word from CBFANC President](#)
- [CBFANC Sponsors, Absolutely the Best!](#)
- [National Organic Program \(NOP\) Final Rule Process Flow](#)
- [A reflection on PCC Mission to Washington, DC 2024](#)
- [Final Rule on Detention and Demurrage Billing Practices](#)
- [FDA-CBFANC 2024 Programs](#)
- [Peter Friedmann's View from Washington DC – February 2024](#)
- [CBFANC Social Media](#)

CBFANC Social Media

Please connect with us!

Twitter - [@cbfanc](#)

LinkedIn - [CBFANC](#)

Facebook - [CBFANC](#)

Events Around the Bay

- [P.A.E.I.](#) - Professional Association of Exporters and Importers
www.paei.org.
- [OWIT NC](#) - Organization of Women in International Trade Check website for updates
- [Monterey Bay International Trade Association \(MBITA\)](#) - Monterey Bay International Trade Association
Check Website for updates
- [Norcal W.T.C.](#) - The Northern California World Trade Center
Check Website for updates
- [PTA](#) - Pacific Transportation Association
Check Website for updates

A Word from CBFANC President

Sung Wook (John) Lee, CBFANC President



Sung Wook (John) Lee, SW Logistics, CBFANC Presidents

Hello CBFANC Members,

I wanted to thank all members and sponsors for attending the 2024 State of the Port on January 26, 2024. It was wonderful to see everyone from the trade community at the annual Customs Brokers and Freight Forwarders Association of Northern California event.



2024 CBFANC Board of Directors

From left to right: [Peter Gong](#), [Chris Ramos](#), [Liz Chapman](#), [Felicia Addison](#), [Chris Kammer](#), [Mindy Li](#), [Chris Garcez](#), [Lori Azzopardi](#), [Sung Lee](#), [Evey Hwang](#).



From left to right: Oakland City Council Candidate Warren Logan, Commerce DIR/OAK Rod Hirsch, FMC Gabe Padilla, APD Bruce Murley, DFO David Salazar



Mike Jacob from PMSA spoke about Port of Oakland and our joint efforts to lock out the Oakland A's from developing a baseball stadium there.



Port of San Francisco Area Port Director Bruce Murley spoke about CBP activities in 2023. Kinds of inspections and holds going on in our SF region was discussed during the presentation.

In 2024 look out for FDA product code seminars, CBP regulatory updates and NVOCC tariff filing seminars for education.
Sincerely,

Sung Wook Lee, President CBFANC

CBFANC Sponsors, Absolutely the Best!

Evey Hwang, CBFANC Board Chair



Evey Hwang, CBFANC Board Chair

On behalf of CBFANC Board Members, we would like to thank everyone who attended our CBFANC 2024 Annual State of the Port Dinner on January 25, 2024. We are grateful for SF Area Port Director Bruce Murley and Pacific Merchant Shipping Association VP President MIke Jacob for their engagement message with our membership and port community..

CBFANC again gives thanks to our generous sponsors who helped make our annual event a success.

2024 State of the Port Event Sponsors

Platinum Sponsor

PCC Logistics

Diamond Sponsor

Custom Goods

Table Wine Sponsor

Avalon Risk Management

Reception Entertainment Sponsor

FBB Federal Relations, PC Counsel to PCC

Centerpiece Sponsor

MegaBrokers Inc

Silver Sponsor

Forward Logistics

KYG Trade

Roanoke Insurance Group

Parking Sponsor

Watchpoint Logistics Inc

Emerald Sponsor

EPIC Insurance Brokers & Consultants

Tuttle Law Group

Bronze Sponsor

Boomerang Carnets

Law Office Of Gary C Cooper

TLR-Total Logistics Resource Inc

Signage Sponsor

RSC Consulting LLC

With two sponsors being our Port's Customs Examination Stations, we are providing current contact information for your reference.



FIRMS Code: Z910 **2498 W. 16th St. Bldg**
803 Oakland, CA 94607
Office Phone#: 510-663-5000

CES Contacts

Front Window:

Terry Brown – Tbrown@pcclogistics.com

Dispatcher:

Mariaelena Gil – Mariaelena@pcclogistics.com

Agriculture:

Stacey Hong – Stacey@pcclogistics.com

Trade and CET:

Isabel Salinas – Isabel@pcclogistics.com

Manipulations and Seizures for all 3 agencies:

Fatima Cornejo – Fatima@pcclogistics.com

Supervisor:

Ramona Alegado – Ramona@pcclogistics.com Cell# 510-853-3569

CFS Contacts

Office Phone#: 510-433-1005

Freight Cashier:

Luis Estrada – Freightcashier@pcclogistics.com

CFS Customer Service Rep:

Anita Ferrer – Anita@pcclogistics.com

CFS Lead:

Catherine Leal – Catherine@pcclogistics.com

Supervisor:

Thomas Winthrop – Thomas@pcclogistics.com Cell# 510-514-1462



FIRMS Code: WBW4

2001 Maritime

Street – Oakland, CA 94607

Custom Goods Cargo Examinations Contacts:

- Our office email is:
(ces.oak@customspecializedservices.com) This email goes to our distribution list and will reach all necessary staff to help with your order. Please include the CBP department that requested your exam, i.e.: MET, AQI, CET along with all relevant information.
- Our office phone number is: 510-550-8450 opt-1 for customer service
- You can check the status of your container on our website: ([CES exam status link](#))
 - Near the top there is an option called: "Quick Search" that will allow you to search for individual containers by container number, Master BOL number, entry number or CSS number.
 - There is also an option to register and check multiple containers in our system, receive email updates for status updates.
- We value clear and timely communication. You'll receive updates on the examination progress and estimated completion time.
- If any issues arise during the examination, we'll inform you immediately and work collaboratively to find a solution.

The Custom Goods Team

Our email: ces.oak@customspecializedservices.com

Our phone number: 510-550-8450 opt-1 for Customer Service

National Organic Program (NOP) Final Rule Process Flow

Chris Garcez, CBFANC Secretary and Board Member



Chris Garcez, TLR-Total Logistics Resource Inc, CBFANC Secretary and Board Member

NOP import Certificates will be required for any commodity imported into the United States that is being manifested, sold, marketed, or labeled organic.

Effective date is 3/19/24.

There is no de minimis for imports, but a very limited number of exemptions will be granted for, but not limited to, food donations, non-retail samples, and humanitarian efforts.

Exporter operation is entered into the Organic Integrity Database (OID) by the exporter's Certified Agent. Agent is accredited either by USDA Agricultural Marketing Service (AMS) or the foreign country that has an agreement with the US.

Exporter requests NOP Import Certificate from their Certifying Agent.

Certifying Agent verifies organic product and amount and enters into USDA's Organic Integrity Database which generates the NOP Import Certificate. The certificate can cover a transaction or a time frame, probably not to exceed one year.

Certifying Agent sends NOP Import Certificate to exporter. The certificate must reference the lot numbers being shipped.

Exporter sends NOP Import Certificate to importer, who then forwards to their customs broker as applicable. The Certificate need not physically accompany the shipment, as the certificate is "associated" with the shipment(s) by the lot number(s).

Exporter ensures all export documents clearly state that the product is organic, including commercial invoice, packing list, bill of lading, and bill of sale (if any). This should be in English and according to the correct class of organic product, e.g., 100% organic, organic, made with organic (insert ingredients).

Exporter verifies that product is not exposed to radiation, fumigation or other prohibited substance during movements across country borders.

Importer or their Customs broker transmits NOP Import Certificate data to ACE along with the customs entry (see PGA message set requirements below).

Not all products have organic HTS breakouts. Disclaims are possible only for HTS numbers with no organic breakout.

AMS checks certifier's info with broker's and also checks that exporting operation is still certified. AMS computer will respond within the ten day entry summary payment window.

Broker's delivery order (if any) should specify organic according to the correct class.

Importer verifies product is not exposed to prohibited substances (e.g., pesticides and fumigants) at any point in the movement across borders.

Importer must have an Organic Control System (OCS). The OCS will be audited by the importer's certifying agent annually. 5% of a certified agent's annual audits must be unannounced.

Exporter and importer must maintain records of NOP Import Certificates and make available for inspection by the NOP and certifying agents.

Many parties in the supply chain are exempted from certification but most have recordkeeping requirements.

Source:

[Strengthening Organic Enforcement | Agricultural Marketing Service \(usda.gov\)](https://www.usda.gov/organic/organic-enforcement)

PGA Message Set

[USDA Agricultural Marketing Service PGA Message Set \(cbp.gov\)](https://www.cbp.gov/usa/organic/organic-enforcement)

6.4.3 Records Used in the OR2 Message Set

PG Record	Description
PG01	Designates AMS as the recipient, provides the AMS program message code (OR2), and provides the processing code (2). The "Y" at position 17 indicates that a digital copy of the certification document tagged with the entry number has been uploaded electronically to the ACE Document Image System. Only disclaimer code "A" can be used to indicate that the produce is not organic.
PG02	Designates information is provided at the Product level (P).
PG14	Provides the transaction type code (1), type code for organic certification (AM1), and the number of the import certificate issued (392-1234567890-230001). This is a numeric code with dashes. (NNN-NNNNNNNNNN-NNNNNN). Note that the PG14 record may repeat if there is more than one import certificate issued for the entered product. <i>For emergency certificates, a temporary code (9-digits with dashes) may be issued by USDA-NOP (i.e., 840-000-E). This will be NNN-NNN-A.</i>
PG25	Provides the lot numbers in the shipment for shipping identification.
PG29	Provides the unit of measure and net weight (60000 kg).

USDA-AMS CATAIR

Page 154

DECEMBER 2023

4. Import Certificate Number: *Enter the unique identification number that you have assigned to the specific NOP Import Certificate you are completing. Each unique identification number may only be used once and must be maintained in a control log (paper-based or electronic) that records each export certificate that you create, including those issued, voided, or destroyed. Use PG14 to enter the Import Certificate Number with 1 (single use) or 2 (continuous use) for LPCO Transaction Type in position 5, AM1 (USDA NOP Organic Import Certificate) for LPCO Type starting in position 6, Import Certificate Number starting in position 9. The electronic NOP import certificate number must be at least 21 characters long (numeric plus dashes); emergency NOP import certificate must be 9 exactly characters long (alpha-numeric plus dashes).*
9. Total Net Weight: *Enter the total net weight of the shipment covered by this NOP Import Certificate. Use PG29 with Unit of Measure (PGA line - net) entered starting in position 15. Enter Commodity Net Quantity (PGA line - net) starting in position 8. KG should be entered.*
13. Shipping Identification: *Enter the identification information for how the produce covered by the NOP Import Certificate will travel from the exporting country to the U.S. This may include the flight number, vessel name or number, or container number. These numbers can be entered in PG25 starting in position 16.*



AMS Supplemental - Customs and Trade Automated Interface Requirements

REPRODUCE LOCALLY. Include form number and date on all reproductions. FORM APPROVED - OMB NO. 0581-0191

USDA U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE NATIONAL ORGANIC PROGRAM		A knowingly false entry or false alteration of any entry on this certificate may result in a fine of not more than \$11,000 or imprisonment for not more than five years or both (18 USC 1001).	
NOP IMPORT CERTIFICATE		1. CERTIFIED TO	ORGANIC STANDARDS
2. CITY AND STATE OF PRODUCT DESTINATION		3. DATE	4. IMPORT CERTIFICATE NUMBER PG14
5. EXPORTED BY (NAME AND ADDRESS)		6. PRODUCT EXPORTED FROM	
7. RECIPIENT IN THE U.S. (NAME AND ADDRESS)		8. CERTIFYING BODY ISSUING CERTIFICATE (NAME AND ADDRESS)	
9. TOTAL NET WEIGHT PG29	10. TOTAL CONTAINERS		
11. PRODUCT AS LABELED	12. HARMONIZED TARIFF CODE AS APPLICABLE	13. SHIPPING IDENTIFICATION PG25	14. FINAL HANDLER
			15. CERTIFYING BODY OF FINAL HANDLER

Q&A from NCBFAA

[NCBFAA Monday Morning eBriefing -- January 29, 2024](#)
[\(constantcontact.com\)](#)

ALERT: USDA Ready for Mandatory Electronic Organic Import Certificate March 19

USDA Agricultural Marketing Service (AMS) confirmed that the mandatory electronic Organics Import Certificate filing requirement will take place on March 19, as planned. There will not be a delay, even though some software vendors reportedly may not complete the necessary programming for the OR2 Message Set in time.

An NOP Import Certificate is required for any product that is described and labeled as organic. A message set will be required for all organic products.

Tariffs are flagged as either AM7 (an organic message set may be required) or AM8 (an organic message set is required). AM7 tariff subheadings include both organic and conventional products, while AM8 is a specific breakout for organic products only. Currently, there are more than 6,000 flagged tariffs. Over the next 6 months, AMS plans to reduce the number of flagged tariffs by 2,200.

Although AMS says they will do "soft enforcement" initially, they plan to monitor the filings and will follow-up with brokers/importers if a Message Set is not filed for organic imports.

The NCBFAA RAC provides the following Q&A to help you plan for the March 19 implementation.

Q: What if my software programming for OR2 is not complete?

A: If your programming is not complete, you will have the option of filing the OR1 Message Set, which accepts full information from an NOP Import Certificate. OR1 requires more manual data entry but is a useful stop-gap option until your OR2 programming is complete. Upload in DIS is not required.

Q: I received a paper Import Certificate from a supplier in Japan. It doesn't have the 21-character number that the OR2 Message Set requires. What should I do?

A: OR1 Message Set is also the option if you receive a paper certificate from an organic equivalent country, including the EU, Israel, Japan, New Zealand, South Korea, Switzerland, and Taiwan. Import Certificates from these countries will have a number with 4 or 5 characters, which will not be accepted in OR2.

Q: How can I tell if the Import Certificate is an electronic Certificate generated in the Integrity Database?

A: The electronic Import Certificate generated in the Integrity Database has 21 characters and should be filed using the OR2 Message Set.

Q: How do I file a disclaimer?

A: If the HTS is flagged AM7 and your product is not organic, file Disclaim Code A. If the HTS is flagged AM8, you must file a Message Set.

Q: What if the importer does not have an Organic Certificate but the invoice describes it as organic?

A: You need to go back to the importer to let them know the product cannot be sold, marketed, or labeled as organic without an NOP Certificate. Since you, the broker, will be filing a disclaimer for the AM7-flagged tariff, you want to make sure the importer understands this so that you are not in a position of filing a disclaimer to allow the entry of a product that is being falsely marketed as organic. [Note that if the product has an organic HTS breakout, disclaimer is not possible.]

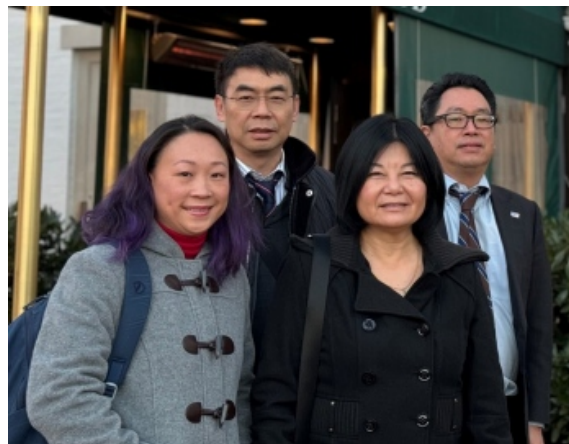
When Is a Product "Organic" for Purposes of the NOP Organic Certificate?

To use the organic seal or make an organic claim, a final product must meet strict standards and go through the organic certification process. USDA defines four distinct labeling categories. An NOP Import Certificate is required for the first three categories, as shown below.

100% Organic	Organic	Made with Organic _____ (Specific ingredients)	Made With Organic Ingredients (less than 70%)
Must be made of 100% organic ingredients.	95% of ingredients must be certified organic	70% of ingredients must be certified organic	Cannot be described as organic anywhere on the front panel display
May display organic seal and/or "100% organic" claim	May display organic seal and/or "organic" claim on the front panel	No organic seal allowed Up to 3 ingredients or ingredient categories can be identified as organic on front panel	No organic seal allowed Can list specific certified organic ingredients on the ingredients list
Certification required	Certification required	Certification required	No certification required
Label must show name of certifying agent	Label must show name of certifying agent	Label must show name of certifying agent	No certifying agent required
IMPORT CERTIFICATE REQUIRED	IMPORT CERTIFICATE REQUIRED	IMPORT CERTIFICATE REQUIRED	No Import Certificate Required
			

A reflection on PCC Mission to Washington, DC 2024

Lydia Luk



Front left to right: [Lydia Luk](#), [Evey Hwang](#)
Back left to right: [Peter Gong](#), [Sung Wook "John" Lee](#)

This year, I had the privilege of joining CBFANC and PCC on their Mission in Washington, DC. Little did I realize that this journey would evolve into an unforgettable experience filled with camaraderie with fellow professionals along the West Coast, an immense amount of knowledge, and advocacy for significant issues affecting the trade industry.

The adventure began with a brisk walk from the hotel to Peter Friedmann's home for a warm gathering of all the missionaries. I was welcomed with open arms, greeted with

tons of “nice to meet you’s” and received words of encouragement from the experienced missionaries. The next day, accompanied by a delicious breakfast, we started the Board Meeting and Mission Briefings at our beautiful hotel conference room overlooking The Wharf. I was surprised by the amount of insightful information shared from each port and realizing that we all faced similar challenges. Each committee shared updates, offering me an invaluable insight into each particular focus areas. It was a nice surprise to learn that PCC wasn’t just all about work! That evening, we gathered at a charming spot called “Puttery” (highly recommend) where good laughs and drinks were shared along with a couple of friendly mini-golf competitions.

The Monday meeting at the Ronald Reagan Building was packed with updates and information from various CBP departments directly impacting the trade industry. We covered a range of topics, including De Minimis, 21 CCFs, ongoing ACE portal changes, future for ACE 2.0, clarifications to 19 CFR 111, Broker Compliance Plan updates, discussions on AD/CVD, Forced Labor (UFLPA), updates from the Office of Finance, CTPAT updates, general trade enforcement updates, USDA APHIS updates, and much more. The day was long, but we managed to share a lot of insights among the top government officials. One of my main takeaways from the day was that several issues aren’t being addressed due to government budget constraints, though all departments seemed to acknowledge some of the most pressing challenges currently affecting our industry. And if they weren’t aware, we made sure to raise the issue.

Being able to participate in these discussions was invaluable and it was a privilege to be part of it all!

That evening, we had the pleasure of participating in a truly remarkable event (one of the highlights, in my opinion) where we had the opportunity to meet and converse with several distinguished government officials, including FMC Commissioner Max Vekich, CBP Acting Deputy Commissioner Pete Flores, and CBP Deputy Executive Director, Office of Trade Relations Valarie Neuhart. It was a genuine delight to be in their presence and engage in conversation with them!

The last day of the Mission felt a bit like a real-life game of “Where’s Waldo? – Capitol Hill Edition” (in the best way). Bouncing from one office to another, I had the pleasure of participating in numerous meetings with staff members of senators and congressmen representing various districts, alongside my fellow CBFANC missionaries, to highlight the importance of the trade industry. Being able to share our thoughts and concerns on trade with all these offices was incredibly special and meaningful. Oh, and Nancy Pelosi said “hi” to me, so that was a nice surprise. J

Last, but certainly not least, earlier in the day, we had the privilege of meeting with South Dakota Congressman, Dusty Johnson during our morning session at the Capitol Hill Club. His dedication and support for the trade industry continues to drive our initiatives forward. His 2021 Ocean Shipping Reform Act, co-introduced with Congressman John Garamendi from California and the other ongoing trade issues he’s bringing attention to in DC, demonstrate his continued support for the trade community. We appreciated his time and valuable insights.

In conclusion, as an immigrant, the opportunity to sit in the same room with government officials and discuss matters that affects my work is a testament to the democratic principles that define this nation. I truly appreciated the generosity of the CBP officials with their time and valuable insights. This experience showed me of how deeply the trade professionals care for their industry and the collective commitment to achieve a common purpose. I left this Mission with the feeling of gratitude, accomplishment, and optimism for the future of trade advocacy. This memorable experience will be with me for a long time, and I hope to be invited back again in the future. Thank you again to CBFANC and PCC for inviting me to this year’s Mission!

Final Rule on Detention and Demurrage Billing Practices

Peter Friedmann, Our Man in DC

**Pacific Coast Council of Customs Brokers and Freight Forwarders Association (the PCC)
Background to today's FMC Rule Detention & Demurrage Reform**

Specific Provisions impacting customs brokers and freight forwarders

Today's Federal Maritime Commission [Final Rule on Detention and Demurrage Billing Practices](#) includes a long-sought objective of the Pacific Coast Council, to protect shippers, truckers and specifically notify parties such as customs brokers from abusive Detention and Demurrage practices.

The Final Rule makes clear: the shipper or consignee may retain third parties such as truckers, customs brokers, etc. to process D & D invoices, to review, and even to pay the carrier, on behalf of the invoiced shipper. **But in no case, may the carrier hold the customs broker liable for payment of the charges, if the shipper fails or refuses to pay those charges.**

Following are provisions of the Rule which address the carrier practices of holding customs brokers liable for the D & D charges:

Request for Definitions of Responsibility for Payment for Billed Party (Page 23)
Responsibility for payment Issue: One commenter requested that the definition of "billed party" be amended by replacing "is responsible for the payment of any incurred demurrage or detention charge" with "has contracted with the billing party for the ocean carriage or storage of good."66 They were concerned that the language "responsible for the payment" "reads as a legal conclusion" and did not comport with the Commission's goal that demurrage and detention invoices be billed to persons having a contractual relationship with the billing party for the carriage or storage of goods. Another commenter requested that the Commission amend the definition of "billed party" to include motor carriers that control containers to account for situations where VOCCs enter directly into written contracts with motor carriers that use containers in the transportation of goods.

FMC response: The Commission declines to make the requested changes. With respect to the first comment, the definition of "billed party" is simply to clarify the rights and responsibilities of the party receiving the bill. It is a fact-based definition centered on who the party is to whom the billing party issues the invoice. The definition is not the basis of an assessment of whether the billed party properly received the invoice, which is governed by § 541.4. Nothing in this rule prohibits third parties from receiving copies of invoices or voluntarily paying demurrage or detention charges on behalf of the shipper/consignee.

In regard to the second comment, there seems to be a misunderstanding on the commenter's part about the rule's applicability. As discussed in the NPRM, a primary purpose of this rule is to stop demurrage and detention invoices from being sent to parties who did not negotiate contract terms with the billing party. That concern is not present where a motor carrier has directly contracted with a VOCC. Nothing in this rule, either in the proposed or final version, prohibits a VOCC from issuing a demurrage or detention invoice to a motor carrier when a contractual relationship exists between the VOCC and the motor carrier for the motor carrier to provide carriage or storage of goods to the VOCC. The definition of "billed party" is intentionally broad to capture any party to whom a detention or demurrage invoice is issued. When a VOCC issues a detention or demurrage invoice to a motor carrier, the VOCC must comply with the requirements of part 541.

The Commission has jurisdiction over common carriers, marine terminal operators (MTOs), and ocean transportation intermediaries (OTIs), including over through transportation. Without knowing the particulars of the hypothetical, in this situation, presumably the FMC's jurisdiction, and thus this rule, would apply only to cargo moved inland under a through bill of lading and contracts between a VOCC. A motor carrier not based on a through bill of lading would likely be outside

the scope of this rule.

Properly Issued Invoices to Appropriate Billing Parties (Page 33)

FMC response: After careful analysis, the Commission has determined that prohibiting billing parties from issuing demurrage and detention invoices to persons with whom they do not have a contractual relationship will best benefit the supply chain. If the billed party has firsthand knowledge of the terms of its contract, then they are in a better position to ensure that both they and the billing party are abiding by those terms. Although other parties may in some circumstances have more influence on whether demurrage or detention actually accrues, they are not the best party to understand the terms of the contract and dispute any charges.

FMC Summary of Changes for Properly Issued Invoices (Page 95)

If the billed party has firsthand knowledge of the terms of a service contract with a common carrier, then they are in a better position to ensure that both they and the carrier are abiding by those terms. When demurrage or detention invoice disputes do arise, the billed party is in a better position than third parties such as truckers and customs brokers to analyze the accuracy of the charge.

Further, when the billed party disputes a charge, they have an existing commercial relationship with the billing party and are in a better position to resolve the dispute. Therefore, under this final rule, a properly issued invoice is an invoice that is issued to: (1) the person that has contracted with the billing party for the ocean transportation or storage of cargo, or (2) the consignee (when in contractual privity with the carrier).

Payment by Third Parties Generally (Page 39)

Issue: The Commission received four comments regarding allowing payment of invoices by third parties.

The Agriculture Transportation Coalition and the Pacific Coast Council of Customs Brokers and Freight Forwarders Association requested that the rule include a clear mandate that the delegation payment authority is allowed but must be based on actual acceptance of such responsibility by the third party, such as a written or digital signature evidencing acceptance. FedEx Trade Networks and John S. Connor, Inc. requested that the rule specify that third parties may only receive copies of invoices and pay them with the billed party's knowledge and consent (but did not say that such consent should be required to be in writing). FedEx Trade Networks and John S. Connor, Inc. also requested that the regulation contain an explicit statement that if a third party receives a copy of the invoice that the third party itself is not accountable for the payment.

FMC response: The Commission does not believe that the suggested changes are necessary. The rule is clear in its direction that, with a limited exception for consignees, demurrage and detention invoices must be issued to the person for whose account the billing party provided ocean transportation or storage and who contracted with the billing party for the carriage or storage of goods. This will often, but not always, be the shipper of record. Outside of the exception for consignees, billing parties must not send invoices to third parties. The rule only mandates to whom the invoice can be issued and therefore who has legal liability to pay it. It is purposefully silent on third parties voluntarily paying an invoice—thus allowing the practice by declining to prohibit it. The Commission does not believe it is necessary to require such agreements to be in writing or otherwise memorialized between the billed party and the third party. The Commission does not believe it is the agency's place to dictate a third party's business liability decision in this scenario. A third party will either: (1) pay the invoice on behalf of the billed party based on a previous guarantee by the billed party that they will be reimbursed; or (2) pay the invoice without such an agreement in place and assume the risk that they potentially may not be reimbursed.

BACKGROUND

Pursuit of reform of D & D practices began before, but accelerated during the pandemic supply chain crisis. Those practices contributed to massive financial injury to US shippers, from small 'main street' businesses to the nation's

very largest ag exporters and retailers (and literally billions of dollars of profits to the ocean carriers). Such abusive practices included billing D & D without informing the shipper what or when or where the detention/demurrage occurred, waiting months (in some cases years) to impose the charges, refusing to accept or act upon requests for explanation, imposing the charges on 'notify parties' such as customs brokers, who had no role in booking the cargo or relationship with the carrier, locking out truckers with whom neither carrier or terminal had any contractual relationship, etc.

This has been a long struggle. It is, on one hand, the culmination of years of effort by the US exporters and importers and intermediaries, initiated and led by Commissioner Dye, leading to the Commission's adoption of Commissioner Dye's draft of the "Interpretive Rule on Detention and Demurrage", providing the basis for Congressional intervention in the form of the Ocean Shipping Reform Act of 2022.

The Commission is to be recognized for its prompt implementation of OSRA thus far. Applying the provisions of OSRA on the date of the President's White House signing ceremony – June 16, 2022, and promptly issuing Proposed Rules. The PCC and the entire US shipping public is grateful to all Commissioners for their advocacy of D & D reform and perseverance despite vigorous (but ultimately unsuccessful) opposition by the ocean carrier and marine terminal organizations.

The Commission's "Interpretive Rule on Detention and Demurrage" is never to be underestimated, as it formed the basis of Congressional initiatives to respond their constituents pleas for relief from ongoing carrier and MTO D&D abuse. Much of the Interpretive Rule was found in both the House of Representatives and Senate drafts of the Ocean Shipping Reform Act of 2022.

The unity of the Commission, combined with White House support for reform, and the bipartisan nature of the Act's authors and legislative managers of the original drafts in the House, Congressmen John Garamendi (D-CA) and Rusty Johnson (R-SD), and of the Senate version by Senator Maria Cantwell in the Senate, demonstrates that the Commission is "on the right side of history".

The challenges to the prior Proposed Rule, as enumerated in today's [Federal Register notice](#) accompanying the Final Rule, have been effectively addressed by the Commission, consistent with Congressional intent. **The PCC and other shipper advocates will work to assure that should such challenges continue or others arise, they will not derail the vital objective of OSRA and this Final Rule.**

An important lesson should be learned: had the ocean carriers taken the Interpretive Rule seriously and given even the slightest indication they were changing their practices (such as billing D & D to customs brokers) to conform, there may not have been the need for the AgTC and the US shipping public to seek Congressional intervention. There may never have been OSRA, revisions to the long-standing Shipping Acts of 1984 and 1998, new Rules from the Commission.

Carriers were ill-advised to ignore the Interpretive Rule. Wiser would have been for carriers to work with organizations representing their customer shippers, to learn what was transpiring with Detention and Demurrage billing 'in the field', and fixing those. We have found that once informed of some of the realities of the billing, at the AgTC's Ag Shipper Workshops with individual ocean carriers, most ocean carriers were grateful to be informed, and expressed the desire to address them.

We are encouraged that even during the worst of the supply chain crisis, while carrier lawyers in DC were pursuing all means to derail reform, carrier executives and their shipper customers were meeting constructively to identify areas of friction and solutions. We appreciated those ocean carriers who engaged with the Pacific Coast Council of Customs Brokers and Freight Forwarders on the issue of billing 'notify parties.' We are eager to continue this productive engagement.

In addition to the provisions related to inappropriate third party invoicing, we are pleased to see in the Final Rule the initial implementation of OSRA's requirements that D & D invoices provide specific information as to the basis for an invoice, and that failure to provide such information voids the obligation to pay the invoice. This addresses one of the major motivations for OSRA –the shipper was not informed why and how it was being assessed these charges, and all too frequently, the ocean carrier wasn't able to provide this information either. It seemed "the computer" was to blame for spitting out these charges. Now, once OMB reviews and approves the Commission's specific requirements, all parties will know the basis for each charge, which will allow them to review and determine if justified.

The 30 day invoicing requirement is also a major improvement, and again, reflects a primary motivation for the US shipping public to pursue relief from the Commission, and subsequently from Congress. While it is unfortunate that it took an Act of Congress to gain this achieve this, but we are glad that thus far, most carriers say they are able to comply. We will be glad to share with the carriers those instances when our members receive 'out-dated' invoices, so they can be addressed consistent with this Final Rule.

The PCC reiterates our gratitude of Commissioner Dye and the entire Commission -- who as a group are the most dedicated to the interests of the US shipping public of any Commission since enactment of the 1984 Shipping Act. We recognize that without Congressmen Johnson and Garamendi there would be no OSRA.

Most fundamentally, and looking ahead, we are grateful to the ocean carrier executives who continue to work with PCC and others representing their shipper customers, to address new matters as they arise.

Questions? We can discuss on Tuesday's call, and if anyone wishes can call or email me before then.

Peter
Peter Friedmann
Pacific Coast Council of Customs Brokers and Freight
Forwarders Assoc. – The PCC
Washington, D.C.
202 329 7040
ourmanindc@federalrelations.com

FDA-CBFANC 2024 Programs

Evey Hwang, CBFANC Board Chair

On November 13, 2023, CBFANC board members and membership met with FDA Division of West Coast Imports (DWCI) leadership for an informative and substantive meeting. This in-person meeting was held at FDA's "new" Alameda location as well as FDA provided hybrid option for CBFANC members to participate online.

- Dr. Kathleen Turner, Program Division Director
- Carla Fernandez, Supervisory Consumer Safety Office
- Lawton Lum, Director of Compliance
- Gordon Chu, Director of Investigations
- Jessica Lee, SCSO DWCI
- Marissa Chan, SCSO DWCI
- Katherine Chan, Consumer Safety Officer
- Mark Flotte, Consumer Safety Officer

Dr. Kathleen Turner and Carla Fernandez gave opening remarks and welcomed in-person and online participants. Katherine Chan and Mark Flotte gave a presentation on FDA's VQIP program. The Voluntary Qualified Importer Program is a "voluntary, fee-based program for importers that will allow expedited review and importation of human and animal foods into the United States for approved applicants who achieve and maintain a high level of control over the safety and security of their supply chains." While the fee is not applied until approved, we gave feedback that the current annual fee of \$14975.00 per year would be prohibitive for most importers.

General discussion on FDA exams centered on communications. While there was general consensus on the "50 miles" radius for exams allowed at importer premises, Director of Investigations Gordon Chu asked for patience on appointments due to limitation on staff along with coverage region includes Stockton to Reno and Sacramento. Additionally, he requested understandings on the following:

- 1) Brokers caution importers not to pre-request appointments before goods are available. Should there be ship or logistics delay, the importer risks losing time with another appointment.
- 2) Coordinate with 3rd party warehouses especially cold storage as often authorization is needed upon exam officer arrival
- 3) Always provide additional point of contacts
- 4) Allow the 5 days for reviews however
- 5) If perishable, please indicate in transmissions either through correct product code indicators and/or description

FDA poses question to CBFANC after the meeting. Would brokers and/or importers have any objections to having Notices of Actions to be available on ITACS. CBFANC responded that this would be nice to have through ITACS. Anyone feeling differently, please let us know.

Lawton Lum, Director of Compliance, oversees three Supervisors and 18 Compliance Officers. He updated that FDA refusals would return to Compliance handling dispositions as of January 2024. Since the determination for refusals were made at Compliance, this would streamline the process which involves coordinating with CBP and on entry closures. Yes, FDA refusals remain unclosed entries until either re-exportation or destruction of goods are updated (between FDA and CBP).

This year has FDA busy with some re-alignments. As announced June 27, 2023 "Redesign of Human Foods Program to Enhance Coordinated Prevention and Response Activities" Proposed back on January 31, 2023, a statement from Robert Califf MD, MACC, Commissioner of Food and Drug Administration cited mission to advance food safety program.

[FDA Provides Update on Proposal for Unified Human Foods Program, including New Model for the Office of Regulatory Affairs | FDA](#)

For this focus on food safety and other re-alignments, CBFANC Agency committee will continue to work with FDA DWCI. We were able to confirm FDA DWCI will work with CBFANC for a spring program for FDA Product Code Training. Please stayed turned for date and details TBD. As well, please send your suggestions or concerns to agency@cbfanc.org

Peter Friedmann's View from Washington DC – February 2024

Peter Friedmann, OurManInDC, PCC



Peter Friedmann, OurManInDC

As the Pacific Coast Council customs brokers and forwarders descend on the Nation's Capitol for the Annual PCC Mission to DC, we provide a broad picture of the priorities during this election year.

The number one topic on every Member of Congress's mind right now, during this election year is whether he or she keeps his/her job come November 4 and if they do, what kind of job it will be. Every Member of the House and about a third of the Senators are up for election. While there are a few retirements, almost all are seeking re-election. They may publicly complain about the dysfunction on Capitol Hill, but they rarely actually want to leave.

The number two topic on every Member's mind, even those Senators who are not up for reelection, and even those who have 'safe' seats with no realistic challenge to their re-election, is whether they will be in the Majority or Minority. Currently the Republicans have a razor thin majority in the House, while the Democrats have a razor thin majority in the Senate. Just one or two Members of the House or Senate lose their re-election, and those majorities change. When the Majority changes, really everything changes. Committee and Subcommittee chairs are always Members of the Majority party. The Speaker of the House who determines what legislation will be considered (and what bills/amendments will not be voted on), is the leader of the Majority party. Similarly (although not precisely the same), the Majority Leader of the Senate has the power to decide what will be considered or not.

An example, particularly in Presidential election years, are impeachment inquiries and votes, of which we've seen several – Clinton, Trump, now Biden. The Speaker of the House and the Committee Chairs can either initiate or prevent any impeachment inquiries and votes. As we've seen, a Republican Majority has pursued impeachment vs Democratic Presidents (Clinton and currently Biden), while Democratic Majority has voted impeachment of Republican President (Trump). Particularly during a Presidential election year such as the one we are in now, impeachment becomes a tool campaign tool.

As example of the use of Select Committees to further partisan agendas: under Democratic Majority, the House established a Select Committee to investigate the invasion of the Capitol and the role of President Trump. As soon as the House Majority shifted to Republicans, that Select Committee was terminated. Replaced by the Select Committee on the Chinese Communist Party. In fact, the offices of the January 6 Committee were emptied, and entirely new staff of the "China Committee" moved in. The China Committee is leading inquiries into forced labor, trade practices, military and economic aggression, de minimis import processing, etc. While the Select Committees do not wield legislative authority, cannot advance legislation, they can and do conduct hearings, investigations which can lead to actual legislation advanced by the permanent or 'standing committees'. The attention to de minimis by the Select Committee is now motivating or supporting further scrutiny of de minimis by members of the relevant standing committee (Ways and Means) which has legislative jurisdiction over this topic.

Currently, after their focus on getting re-elected and keeping or gaining the Majority, a few issues have risen to the top. Consistent with the election year, the issues getting legislative attention are those which are perceived as impacting the election results. Chief among these is Southern Border immigration. While Republicans and Democrats have, broadly speaking, had opposite views – Republicans/Trump pursuing strict immigration controls, Democrats/Biden reluctant to do so – that had changed, rather dramatically, in recent weeks. President Biden announced a more aggressive position, very close to the Republican position on immigration. Why the sudden change – the polling on immigration is clear, both Republican and Democrats see the same data – voters are concerned, and all politicians want to be on the 'right side' of this issue. Even now, an immigration bill is being negotiated, between Senate, House and the White House. The objectives are to gain some control over the massive and unregulated flow across the southern border, and to gain political campaign advantage.

Another topic where the polling data determines a similar position of both R's and D's is trade. Namely, the Trump China Tariffs, which President Biden chose to retain. In the approximately 6 years since first imposed, not one Congressperson or Senator, neither R nor D has offered any legislation, resolution, amendment to rescind or even reduce those tariffs. Tariffs are popular and never more so, than in an election year. For PCC brokers and forwarders, whose livelihoods are dependent upon imports and exports, the popular attacks on the international trade, pose a threat.

Foreign policy can be tricky and during an election year, many Members of Congress hesitate to navigate, for fear of alienating various US constituent groups. For this reason, for

months, aid to Ukraine and Israel has been subject to these concerns, and stymied on Capitol Hill.

Today, the challenges by Iran to US forces, and US responses, and uncertainty as to possible spreading conflict, are capturing the press and public's attention. While there are a few members of Congress who are already vocal, how the majority (both R's and D's) engages on this conflict remains to be seen.

What an incredibly fascinating (and dangerous?) time in our Nation's history.

Peter Friedmann
OurManInDC@FederalRelations.com