

SNND User Fee Questions & Answers

General Background on User Fee

What is the SNND User Fee?

Who is responsible for paying the User Fee?

Does the term “vessel” include her charterers or is “vessel” limited to the vessel *in rem*?

What is the geographic reach where the User Fee is assessed?

When will SNND implement the User Fee?

When does the User Fee expire?

Is there a limit on total User Fee payments that SNND will collect?

Assessment of the User Fee

What vessels will the User Fee will be assessed on?

Will Articulated Tug Barges be charged a User Fee?

What is the User Fee rate for hydrocarbon and non-hydrocarbon cargo?

What constitutes hydrocarbon cargos?

What constitutes non-hydrocarbon cargos?

Why do the hydrocarbon and non-hydrocarbon User Fee rates differ?

Is the User Fee a Worldscale item?

Why is the User Fee in short tons?

How will SNND identify the cargo and vessel owner(s) that are subject to the User Fee?

Scenarios for Identifying Responsible Cargo Owners

Remittance of User Fee Payments

How does the User Fee remittance process work?

What are the payment terms for User Fee invoices?

How are User Fee invoices generated?

What documents should be used to determine tonnages?

What is the role of the User Fee Portal in the User Fee remittance process?

How do I create a user account within the User Fee Portal?

Which terminals pay User Fees for vessel/cargo owners?

How is data privacy and security implemented for the User Fee Portal?

Enforcement of the User Fee

How will SNND enforce collection of the User Fee?

How will SNND address vessels that have outstanding User Fee payable account balances?

Will SNND exercise maritime liens to seize vessels?

Will SNND publish a list of vessels with overdue User Fee payable account balances?

Terminal Reports

What are the terminal reporting requirements?

What reports will terminals be required to submit to SNND?

Will the terminals obligations be governed exclusively by a Memorandum of Understanding?

Future Changes to the User Fee Rate

What criteria will SNND use when evaluating changes to the User Fee rate?

Will SNND provide advance notice prior to implementing changes to the User Fee rate?

How will SNND communicate changes to the User Fee rate?

Will there be an opportunity for public comment prior to User Fee rate changes?

General Background on User Fee

What is the purpose of the SNND User Fee?

The purpose of the User Fee is to finance SNND's cost share requirement associated with the US Army Corps of Engineers' Sabine-Neches Waterway Channel Improvement Project (Project).

Who is responsible for paying the User Fee?

The User Fee is assessed on vessels carrying cargo and the owner of the cargo carried by vessels. As such, the vessel and owner of the cargo are each jointly responsible for payment of the entire User Fee. Although the User Fee is assessed against both the vessel carrying the cargo and the owner of the cargo carried by a vessel, the User Fee will be collected only once on each cargo loaded or unloaded onto a vessel, but may be collected from either the vessel or the cargo owner.

Does the term "vessel" include her charterers or is "vessel" limited to the vessel *in rem*?

The vessel *in rem*.

What is the geographic reach where the User Fee is assessed?

The fee is assessed for vessels that transit any part of the Sabine-Neches Waterway federal channel.

When will SNND implement the User Fee?

May 1, 2021

When does the User Fee expire?

The User Fee will expire on January 1, 2049, or upon final payment of all construction and construction financing costs associated with the non-federal cost share of the Project, whichever occurs first.

Is there a limit on total User Fee payments that SNND will collect?

Total User Fee payments are limited to financing the non-Federal share of the Sabine-Neches Waterway Channel Improvement Project authorized by WRDA 2014.

Assessment of the User Fee

What vessels will the User Fee will be assessed on?

All vessels carrying cargo on the waterway whose design draft exceeds 20 feet will be subject to paying a user fee. The User Fee does not apply to:

1. vessels owned, chartered, or operated by the United States government, a foreign country, a state, or a political subdivision of a country or state, unless engaged in commercial services;
2. vessels engaged in towing, dredging or channel maintenance activities;
3. vessels engaged in intra-port movements; or
4. vessels with design drafts of 20 feet or less.

Will Articulated Tug Barges be charged a User Fee?

Yes. If their design draft exceeds 20 feet.

What is the User Fee rate for hydrocarbon and non-hydrocarbon cargo?

The User Fee Ordinance establishes an initial fee rate of \$0.20 per short ton for hydrocarbon cargo, and \$0.02 per short ton for non-hydrocarbon cargo. For the purposes of the user fee, hydrocarbon is defined

as oil, gas, ethanol, methanol, a commodity or product made or manufactured – in whole or part – from oil or gas, and derivatives or byproducts or fractions of oil or gas all regardless of their physical form and including mixtures of any or all of the above. The fee rate will be reviewed by SNND at 12-month intervals and can be adjusted to a maximum fee rate of \$0.35 per short ton for hydrocarbon cargo, and \$0.035 per short ton for non-hydrocarbon cargo.

What constitutes hydrocarbon cargos?

For the purposes of the User Fee, “hydrocarbon” cargo means oil, gas, ethanol, methanol, a commodity or thing made or manufactured-in whole or part-from oil or gas, and derivatives or by-products or fractions of oil or gas all regardless of their physical form and including mixtures of any or all of the above.

What constitutes non-hydrocarbon cargos?

For the purposes of the User Fee, “non-hydrocarbon” cargo means anything that is not a hydrocarbon cargo.

Why do the hydrocarbon and non-hydrocarbon User Fee rates differ?

Consideration included evaluating the value of the project to the vessels and cargos that transit the Waterway as mandated by 33 U.S.C. §2236(a)(4).

Is the User Fee a Worldscale item?

Yes.

Why is the User Fee in short tons?

33 U.S.C. § 2236 specifies that harbor dues be in the form of tonnage duties or fees.

How will SNND identify the cargo and vessel owner(s) that are subject to the User Fee?

SNND will not identify the cargo owner. The cargo owner or vessel owner (through their agents, if applicable) will self-report, thus identifying themselves to SNND. Terminals also are required to report cargo and vessel data to SNND.

Scenarios for Identifying Responsible Cargo Owners

1. **FOB Outbound Scenario: Vessel loads cargo at a terminal on the Waterway. Seller transfers title to Buyer while the vessel is moored to the terminal, as the cargo passes the loading vessel’s permanent manifold. Buyer has time or voyage chartered the vessel. Who is the responsible cargo owner?**

The Buyer. The owner of the cargo when the vessel enters the Sabine-Neches federal navigation channel (the dock at a terminal is not part of the federal channel) is the responsible party.

2. **FOB Outbound with Flash Sales: Vessel loads cargo at a terminal on the Waterway. Seller transfers title to Buyer 1 while the vessel is moored to the terminal, as the cargo passes the loading vessel’s permanent manifold. Buyer 1 flash sells the cargo to Buyer 2 at the same point, i.e. as the cargo crosses the loading vessel’s manifold while moored to the terminal. Buyer 2 flash sells to Buyer 3 at the same point. Buyer 3 retains title to cargo until vessel reaches foreign discharge port. Who is the responsible cargo owner?**

Buyer 3. The owner of the cargo when the vessel enters the Sabine-Neches federal navigation channel (the dock at a terminal is not part of the federal channel) is the responsible party.

3. **CIF/CFR Outbound Scenario: Vessel loads cargo at a terminal on the Waterway. Seller transfers title and risk of loss to Buyer while the vessel is moored to the terminal, as the cargo**

passes the loading vessel's permanent manifold. But, Seller charters the vessel (not Buyer).
Who is the responsible cargo owner?

The Buyer. The owner of the cargo when the vessel enters the Sabine-Neches federal navigation channel (the dock at a terminal is not part of the federal channel) is the responsible party.

4. **CIF/CFR Outbound International Waters Scenario: Vessel loads cargo at a terminal on the Waterway. Vessel is chartered by Seller. Seller retains title after cargo is loaded onto the vessel. Vessel sails into international waters. After vessel reaches international waters, Seller transfers title to Buyer. Who is the responsible cargo owner?**

The Seller. The owner of the cargo when the vessel enters the Sabine-Neches federal navigation channel (the dock at a terminal is not part of the federal channel) is the responsible party.

5. **DES Inbound Scenario: Vessel loads cargo at international port. Vessel is chartered by Seller. Seller owns title to cargo as vessel navigates the Waterway. Vessel berths at a terminal on the Waterway. Title is transferred from Seller to Buyer as the cargo passes the vessels permanent manifold during discharge. Who is the responsible cargo owner?**

The Seller. The owner of the cargo when the vessel enters the Sabine-Neches federal navigation channel (the dock at a terminal is not part of the federal channel) is the responsible party.

6. **CIF/CFR Inbound Scenario: Vessel loads cargo at international port. Vessel is chartered by Seller. Buyer acquires title to cargo prior to vessel's entry into the Waterway (Buyer could acquire title at foreign port, in international waters, or any other point prior to vessel's entry into Waterway). Buyer owns title to cargo while the Seller-chartered vessel is in Waterway. Vessel discharges cargo at a terminal on the Waterway. Who is the responsible cargo owner?**

The Buyer. The owner of the cargo when the vessel enters the Sabine-Neches federal navigation channel (the dock at a terminal is not part of the federal channel) is the responsible party.

7. **Floating Storage: If a foreign vessel is used for floating storage and such vessel loads cargo at a terminal along the Waterway and subsequently discharges the same cargo at the same terminal) will a User Fee be assessed against such movement?**

If the vessel transits the waterway with the explicit intent to engage in floating storage in the Gulf of Mexico, SNND must be notified of such intent in advance of the vessel leaving the terminal. In the case above, SNND would not charge a User Fee.

8. **Lightering: If a vessel lighters cargo into barges while on the Waterway, but the vessel itself never berths at a terminal on the Waterway, will such cargo be subject to the User Fee?**

Yes. Vessels entering the Waterway for the purpose of discharging cargo are subject to the User Fee.

9. **Part Cargo: If a vessel arrives partially loaded from a different port (e.g., Houston) and then loads additional cargo at a terminal on the Waterway, will the User Fee be assessed against the Houston-loaded volume or only the Waterway-loaded volume?**

The additional cargo loaded at a terminal on the Waterway will be assessed the User Fee. In this case, it is assumed that the partially loaded cargo from a different port is not unloaded at a terminal on the waterway.

Remittance of User Fee Payments

How does the User Fee remittance process work?

The vessel and cargo owner (or their assigned agent) are responsible for providing appropriate information through the SNND User Fee Portal (snnd.org), and submitting the fee to SNND. However, some terminals may have entered into a Memorandum of Understanding with SNND to pay the fee for the vessel/cargo owner.

What are the payment terms for User Fee invoices?

Payment is due on the 15th of the month following loading/unloading of the subject cargo, unless a different due date is specified in an individual terminal's Memorandum of Understanding.

How are User Fee invoices generated?

Invoice generation at the User Fee Portal (snnd.org) is driven by the user. Based on the inputs provided, a pdf of a Draft invoice (presumably based on nominated tonnages) is created by the user. Once certified tonnages are available, the user updates/certifies the tonnages, and the invoice is finalized and filed with SNND.

What documents should be used to determine tonnages?

Short tons of cargo will be based on the vessel cargo certified tonnage loaded or discharged at Sabine-Neches Waterway terminals or anchorages. Certified tonnages will be reported on the Final invoice generated through the User Fee Portal (snnd.org) and on the monthly terminal report.

What is the role of the User Fee Portal in the User Fee remittance process?

The User Fee Portal (snnd.org) provides account and ACH/wire transfer information on Final User Fee Invoices. The User Fee Portal (snnd.org) will not manage financial transactions for payment of the User Fee.

How do I create a user account within the User Fee Portal?

The SNND User Fee Portal (snnd.org) allows users to register freely. See the User Fee Portal Guide for further information.

Which terminals pay User Fees for vessel/cargo owners?

A list of terminals whose Memorandum of Understanding specifies that the terminal will pay the user fee for cargo/vessel owners is provided on the "Create Invoice" page of the User Fee Portal (snnd.org).

How is data privacy and security implemented for the User Fee Portal?

Security for the User Fee Portal (snnd.org) is implemented as follows:

1. Website traffic is encrypted using Secure Sockets Layer
2. Google's reCaptcha is implemented to prevent brute-force attacks commonly used by web bots to crack a user's password.
3. User accounts are only activated when a user responds to an email sent to the submitted email account.
4. All user data entry is sanitized before entry to thwart SQL injection attacks.
5. Passwords are saved in an encrypted format.
6. User data is partitioned so that users only have access to their own data and invoices.
7. Password resets require the activation of a hyperlink emailed to the user's email on record.

8. Passwords carry several criteria to meet acceptable complexity (eight characters: numbers, upper and lowercase letters, special characters).
9. Server-side session variables carry no personally identifying information.

Enforcement of the User Fee

How will SNND enforce collection of the User Fee?

The enabling statute 33 USC §2236 provides that the User Fee constitutes “a lien against the cargo that may be recovered in an action in the district court of the United States for the district in which the cargo is . . . found.” SNND will use all commercially reasonable methods to recover delinquent User Fees.

How will SNND address vessels that have outstanding User Fee payable account balances?

The enabling statute 33 USC §2236 provides that the User Fee constitutes “a maritime lien against the vessel . . . that may be recovered in an action in the district court of the United States for the district in which the vessel . . . is found.” SNND will use all commercially reasonable methods to recover delinquent User Fees.

Will SNND exercise maritime liens to seize vessels?

The maritime lien on the vessel arises as a matter of law under 33 USC §2236. SNND reserves the right to use all remedies available to it under the Ordinance, 33 USC §2236, and otherwise to collect delinquent User Fees.

Will SNND publish a list of vessels with overdue User Fee payable account balances?

Yes, on its official website, navigationdistrict.org. The list will be updated monthly and will be based on data submitted under the Ordinance and under Memoranda of Understanding.

Terminal Reports

What are the terminal reporting requirements?

Terminal operators having custody of any cargo to be loaded on board a vessel while the vessel is on the Waterway shall, within forty-eight hours before departure of that vessel, deliver to the appropriate appointed authorized representative an export declaration specifying the cargo to be loaded on board each such vessel. Upon the arrival of a vessel on the Waterway, which the vessel may be subject to the levy of port or harbor dues under this Ordinance, the master of that vessel shall, within forty-eight hours after arrival and before any cargo is unloaded from that vessel, deliver to the appropriate appointed authorized representative a tonnage certificate for the vessel and a manifest of the cargo aboard that vessel or, if the vessel is in ballast, a declaration to that effect. The Navigation District may enter into Memoranda of Understanding with terminal operators or others individually or collectively to facilitate the efficacious provision of records and to modify these requirements as deemed appropriate by the Navigation District.

What reports will terminals be required to submit to SNND?

For terminals that pay the User Fee, the monthly report will include Vessel Data (Dock Name, Vessel Name, IMO, Vessel Type, Date of Berthing) and Cargo Data (Cargo Type, Hydrocarbon Indicator, Total Certified Volume, Volume Units, Density (BRL/Short Ton), Short Tons).

For terminals that do not pay the User Fee (a third party takes responsibility – typically an agent), the monthly report will include Vessel Data (Dock Name, Vessel Name, IMO, Vessel Type, Owner or Lessee, Agent, Date of Berthing, Order Number) and Cargo Data (Cargo Owner, Cargo Agent, Cargo Agent

Responsible Party, Cargo Type, Hydrocarbon Indicator, Total Certified Volume, Volume Units, Density (BRL/Short Ton), Short Tons).

Will the terminals obligations be governed exclusively by a Memorandum of Understanding?

No. Terminals are subject to and must comply with all applicable provisions of the Ordinance; however, the requirements and obligations of the “Provision of Records” and “Payment Procedure” sections of the Ordinance may be modified by a Memorandum of Understanding (MOU) entered between the SNND and the terminal. A terminal’s compliance with the terms of the MOU between that terminal and the SNND would satisfy that terminal’s requirements and obligations under the “Provision of Records” and “Payment Procedure” sections of the Ordinance.

Future Changes to the User Fee Rate

What criteria will SNND use when evaluating changes to the User Fee rate?

Changes to the User Fee rate will be based on Project expenditure schedules and cash needs. Of particular importance will be the need for SNND to maintain revenues-to-debt service ratio covenants in Project debt agreements. As project expenditures increase, borrowing needs to finance project expenditures will increase in turn. Projected revenues (based entirely on User Fee projected receipts) must be of adequate levels in order maintain compliance with revenues-to-debt service ratio covenants.

Will SNND provide advance notice prior to implementing changes to the User Fee rate?

SNND will review the performance of the User Fee rate at 12-month intervals. If the SNND Board determines that the User Fee rate should be increased from its current level and within the range specified in the Ordinance at any review, the increase would go into effect the following January 1. If the SNND Board determines a decrease in the User Fee is warranted, the decrease could, subject to the discretion of the Board be implemented more quickly.

How will SNND communicate changes to the User Fee rate?

SNND will provide notice of any changes in the User Fee through its official website, through email to identified contacts, through a notice in the newspaper, and through a notice provided to Worldscale.

Will there be an opportunity for public comment prior to User Fee rate changes?

Yes; because the SNND Board will consider the amount of the User Fee rate at twelve-month intervals, industry is on notice and can provide written and oral comments to the SNND Board in the 11th month of each interval. There is an opportunity for oral public comment as an agenda item at every regular SNND Board meeting. Industry can use that opportunity in the 10th or 11th month of each interval. Industry can also submit written comments to the SNND toward the end of each interval and before the SNND Board takes up the issue.