



April 15, 2022

Mr. William Cody
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W
Washington, D.C. 20573

Re: Demurrage and Detention Billing Requirements ANPRM (Docket No. 22-04)

Dear Secretary Cody:

The National Retail Federation (NRF) appreciates the opportunity to submit comments to the Federal Maritime Commission regarding the Advanced Notice of Proposed Rulemaking on Demurrage and Detention Billing Practices. NRF strongly supports the Commission's ANPRM and encourages the agency to quickly move to a NPRM to finalize billing requirements.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

The ongoing supply chain crisis has led to significant increases in demurrage and detention costs for NRF members, as well as other industries and stakeholders. While we have long supported the concept of demurrage and detention as a tool to improve throughput, the ongoing port congestion issues and inability to move cargo in a timely manner has only resulted in demurrage and detention becoming additional revenue for carriers and terminals. We strongly supported the Interpretive Rule on Demurrage and Detention as issued by the Commission and look forward to that rule becoming finalized under the Ocean Shipping Reform Act.

We have heard from many NRF members about skyrocketing costs from demurrage and detention. Even though they want to get the cargo, they are unable to retrieve it because of issues beyond their control or the control of their drayage provider. Yet, under these circumstances, they are still being charged unreasonable demurrage and detention charges. Many have indicated that these charges have increased in the millions of dollars where they paid little to no charges prior to the pandemic. They also indicate that carriers have levied charges and in some cases, amended the way they process these charges with limited to no prior notice during the pandemic.

We certainly believe that accurate and timely billing is important, but so is additional clarity on when charges should be applied as defined by the Interpretive Rule. Below please find specific feedback from NRF members on the ANPRM.

A. Scope

1. **Should the Commission include both VOCCs and NVOCCs in a proposed regulation on demurrage and detention billing?**

Yes. Overwhelmingly, NRF members support the Commission including both VOCCs and NVOCCs in a proposed regulation. A high degree of anomalies and disputed charges come from the NVOCCs who fault the carriers and the terminal operators for those charges. Most NVOCCs levied charges come months later (causing freight spend accrual issues) and take longer to resolve as well.

2. **Should the Commission include MTOs in a proposed demurrage billing regulation?**

Yes. Overwhelmingly, NRF members support the Commission including MTOs in a proposed regulation.

3. **Should a proposed demurrage billing regulation distinguish between the demurrage MTOs charge to shippers and the demurrage MTOs charge to VOCCs? That is, should the Commission regulate the format in which MTOs bill VOCCs?**

Yes. NRF members support this distinction between demurrage charges and the format that the MTOs bill VOCCs. Multiple terminals from the same port billing shippers differently causes complexities in auditing, paying and resolving issues.

4. **What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed?**

Based upon survey results, NRF members believe between 25-50 percent of demurrage and detention bills contain inaccurate information. The inaccurate information includes free time start/stop, per dollar amount and the contracted number of free days allowed, whether the container was really available for all of the days being charged and time stamps on returns. Members note conflicting information between the carrier, the terminal, and the drayage trucker. Members have also noted lack of information on container numbers and lump sum amounts when multiple containers are involved.

In some cases, members noted that carriers did not honor contract agreements, for example reducing free days or charging a per diem higher than agreed upon. Invoices should be aligned with pre-existing agreements between shippers and VOCC/NVOCC in terms of billing and payment terms.

5. How much does the type of information included on or with demurrage and detention billings vary among common carriers, among marine terminal operators, and between VOCCs and NVOCCs?

NRF members believe that the type of information included with the billings vary a lot among the parties identified in the question. Every carrier is unique, every MTO is unique and information availability is different across bills.

B. Minimum billing information.

6. What type of information should be required on billings. Should the Commission require certain essential information included on invoices such as:

- a. Bill of lading number **Yes**
- b. Container number **Yes**
- c. Billing date **Yes**
- d. Payment due date **Yes**
- e. Start/end of free time **Yes**
- f. Start/end of demurrage/detention/per diem clock **Yes**
- g. Demurrage/detention/per diem rate schedule **Yes**
- h. Location of the notice of the charge (*i.e.*, tariff, service contract number and section or MTO schedule) – **Yes**, but not a priority.
- i. For import shipments:
 - i. Vessel arrival date **Yes**
 - ii. Container availability date **Yes**
- j. For export shipments:
 - i. Earliest return date, including identifying any modifications to the earliest return date - **Yes**
- k. Any intervening clock-stopping events, for example:
 - i. Unavailability of container **Yes**
 - ii. Unavailability of pickup or return locations - **Yes**
 - iii. Unavailability of appointments (where applicable) - **Yes**
 - iv. Restrictions on chassis accepted - **Yes**
 - v. Force majeure-related events - **Yes**
- l. Please note if any portion of the charge is a pass-through of charges levied by the MTO or Port - **Yes**

NRF members also indicated the following information should also be included - Ocean Carrier Name, Drayage Carrier Name and Equipment Type on Unit (Chassis).

C. Billing practices.

7. What information or timeframes should be required for VOCC and NVOCC demurrage and detention bills? Should the Commission require different types of information or timeframes?

NRF members believe that the information and timeframes should be the same for both. For imports, it is critical that the ingate/outgate information and when the container was available for drayage should be included. When the clock starts should be standardized across all carriers. Invoices should be received immediately if container is being held, 7 to 14 days after occurrence if not

8. Do common carriers invoice multiple parties for demurrage and/or detention charges? If multiple parties are invoiced for charges, should the billing party be required to identify all such parties receiving an invoice for the charges at issue?

Unfortunately, yes, common carriers bill multiple parties for these charges. This often results in disputes among the parties and difficulty in providing accurate evidence in a timely manner. If multiple billing parties are receiving the same invoice, they should all be identified on the invoice.

9. Should the billing party be required to identify the basis of why the invoiced party is the proper party in interest and therefore liable for the charges? (i.e., as shipper, consignee, beneficial cargo owner, motor carrier or an agent, or as a party acting on behalf of another party pursuant to the common carrier's merchant clause in its bill of lading.)

Yes.

10. Should the Commission, for purposes of clarity and visibility of charges, require MTOs to bill demurrage directly to shippers (rather than billing VOCCs who then bill shippers for demurrage)? In that scenario, MTOs would bill shippers directly for demurrage, and carriers would continue to bill detention to shippers.

While this may be ideal for clarity/visibility purposes, it would be difficult to achieve since the shipper does not have a contractual relationship with the MTOs. Their contracts are with the VOCCs, NVOCCs, broker and dray providers.

That said, this would help avoid carriers/VOCCs charging more than MTOs are charging them upfront.

11. How long from the point of accrual of a demurrage or detention charge does it typically take to receive a demurrage or detention invoice or billing?

While some members indicated that they received invoices in less than 15 days, a majority said that they received invoices within 60-90 days. Some noted that they are still receiving invoices in April 2022 for reported incidents in August 2021 – 8 months later.

12. Should the Commission require demurrage and detention invoices to be issued within 60 days of date when the detention/demurrage/per diem stops accruing?

Yes. NRF members agree that invoices should be issued within 60 days of date when the detention/demurrage/per diem stops accruing.

Long delays in invoicing have added significant burden in the review and research of older past container transaction details.

13. Should the Commission require specific information be included on the invoice regarding how to dispute a charge? If so, what information should be required? For example, should the Commission require invoices to include contact information for disputing charges, identify circumstances for when a charge may be waived, or identify the billing parties' evidentiary requirements sufficient to support a waiver of the charges?

NRF members strongly agree on the need to include information on an invoice regarding how to dispute a charge. The information should include key contact information such as email and phone number and a contact person. The Commission should require that the charge meet the requirements under the Interpretive Rule on Detention and Demurrage. Clear evidentiary requirements should be included as well.

14. How long from the point of dismissal of a charge does it typically take to receive a refund? Should the Commission require that refunds of demurrage or detention bills be issued within a certain time period and what should that timeframe be?

Members have indicated that they would like to see refunds be issued within 60 days.

15. How would a regulation on demurrage and detention billing requirements impact, conflict with, or preempt any other applicable laws, regulations, or arrangements (such as the UIIA)?

NRF members do not believe a regulation on demurrage and detention requirements would have an impact. They believe that the demurrage and detention regulation would be treated and applied like any other typical business requirement within a contract. Referencing a ruling will simplify and clarify the terms and conditions on contract.

16. Please provide any other views or data you believe would help inform the Commission's decision whether to pursue a proposed regulation on demurrage and detention billing information and practices.

Below is some additional feedback from NRF members:

- The biggest issue we have is not receiving notice of an invoice timely. It is not out of the ordinary to receive this type of invoice 9 months after the container is returned empty. This makes research and accruing for the expense difficult.
- D&D is necessary for smooth flow of containers; however, it should not be used as a competitive advantage nor a revenue generating channel, rather be levied under clearly applicable circumstances across all carriers.
- Free time/detention charges should be as per commercial terms with the shipper, but the applicability of those and the necessary procedures to levy and process these charges should be uniform and under purview of regulation.
- D&D should not be charged for dates where terminals or depots require matches but do not have available chassis. D&D should not be charged when terminals and depots have limited time slots in a day (5 hours or less).

We appreciate the FMC issuing the ANPRM and look forward to working with the Commission as it moves towards a rulemaking. The ongoing challenges with demurrage and detention are not new and existed well before the current supply chain crisis and the pandemic. Now is the time to address these issues and provide more clarity for all parties involved.

Sincerely,



David French
Senior Vice President
Government Relations