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Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Re: Regarding requiring common carriers and marine terminal operators to include certain minimum information on or with demurrage and detention billings.

Dear Chairman Maffei,

On behalf of the American Association of Exporters and Importers ("AAEI") and its members, we are submitting our comments regarding the requirement of common carriers and marine terminal operators including certain minimum information on or with demurrage and detention billings.



AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers, and service providers to the industry, which is comprised of customs brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and other trade facilitation issues.

At issue are the current business practices at U.S. ports of excessive service charges, equipment shortages, old infrastructure, and non-automated systems combined with other factors, including the increase in volume because of the global pandemic. We support the Federal Maritime Commission's current efforts to investigate these reports and call on the Commission to quickly resolve this critical issue.

Ocean carriers are charging truckers, importers, and exporters daily fees, known as "detention" or "per diem", when they do not return the carrier's container to the terminal within the time allotted under the contract of carriage. The carriers and marine terminals also charge "demurrage" when the trucker or shipper does not remove an import container from a terminal quick enough or returns the container to the terminals before the terminal wants it. These charges are now, in aggregate, in the hundreds of millions of dollars. Most disconcerting, the carriers and terminals are charging these fees even when it is not possible for the truckers or shipper to access the terminal to return or retrieve the container. These fees are jeopardizing the financial viability of exporters and importers.

AAEI would like to provide the following responses to help inform the Commission whether rulemaking or other Commission action is necessary.



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1. Should the Commission include both vessel-operating common carriers (VOCCs) and non-vessel-operating common carriers (NVOCCs) in a proposed regulation on demurrage and detention billing? Yes, AAEI members reported that NVOCC's are offering ocean freight services to companies just like the VOCC and, if they issue detention and demurrage charges to shippers, then shippers see no reason to exclude them.

2. Should the Commission include marine terminal operators (MTOs) in a proposed demurrage billing regulation? AAEI members reported that the MTO has data that allows the shipper to verify validity of bills, and if making that data available requires the MTO to be included in the regulation, then yes. If the shipper has a contract with the MTO and is billed directly by the MTO, this is an even more resounding yes. AAEI members would like visibility for specific containers to validate the charges, but also to validate if the charges are applicable (e.g., container unavailability, lack of return locations, appointments, other force-majeure reasons). If the shipper is billed for poor terminal handling, then it would be nice to understand the reason why.

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. AAEI members reported MTOs should issue bills that have all required information also, and so in this respect they need to be treated the same as VOCC and NVOCC upon issuing demurrage bills. Ultimately, the shipper ends up paying demurrage and would have more confidence in paying a bill if the MTO had to comply with the proposed demurrage billing regulation (also, sometimes the VOCC owns/operates the terminal). The Commission should have a role in ensuring that operations are not intentionally inefficient.

4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed? Industry standardized reason codes for demurrage and detention would allow parties to pay or dispute charges.



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? AAEI members reported, yes, shippers agree with the minimum billing information. The purchase order (for raw materials) or shipment number (BOL number), container number, days in storage, and amount should always be included. Shippers need the correct bill-to entity on the invoice as well. Shippers appreciate a process that displays charges as they include days of free time (start to end) and days in demurrage. Some processes outlay the charges per day. AAEI members reported that it would also be helpful to have the reason for the charge besides listing “demurrage” or “detention” to identify the root cause instead versus someone having to investigate the root cause, which can be very time consuming. Shippers need to be able to validate accuracy of the data. If the data cannot be validated, the billing party can make the data match the numbers. So merely providing the data may not be enough, but also certify it.

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? AAEI members reported that the information should be available as soon as possible after the container has been handed in again, because verification will be more difficult the older the data is.

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? AAEI members reported they are not sure how this is done. AAEI members reported that they know the shipper (e.g., contracting party) gets approached even if they are not liable for the costs (e.g., destination demurrage with a C-term is for customers). If the consignee is unwilling to pay, the shipper is on the hook. AAEI members reported that they are not sure if they do this in parallel or one after the other.



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? AAEI members reported that this is captured in the contract of carriage, so shippers are not sure this information adds much. A shipper should know when they are not liable and respond accordingly if they receive a bill.

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. Without a contractual connection between the MTO and the shipper, AAEI members don't see how this would work, and forcing shippers to have a contractual agreement with an MTO is not a good idea.

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? AAEI members reported that it differs by carrier, from 2 days to 3 months.

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, AAEI members reported that the Commission should consider requiring invoices be issued even more timely.

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? Yes, in response to all questions, and additionally an expectation for timely dispute response. AAEI recommends that a standard templet be developed and must be used by all billing parties so that we all can develop processes that will allow a quicker review of all billings, which should include the ability to dispute all charges that the shipper feels are unwarranted or non-reasonable.



In other financial industries the billing party has the right to review and dispute charges in an automated process (Eg Credit card). AAEI feels that an updated system needs to be executed to achieve a more modern approach, which should reduce costs for all parties involved.

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 and what should that timeframe be? AAEI members reported that they do not know.

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)? Shippers negotiate the free day timing so if shippers don't influence our ability to negotiate free days, shippers don't really see any issues.

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. Carrier ratings on timing of refunds, demurrage accuracy - other industry benchmarks that forces innovation and best practices. Also allows us to evaluate for tenders. AAEI members reported that taking an approach stating that these charges are billed when goods are not being moved "efficiently." AAEI members reported that what they have experienced over the past several years has not been efficient cargo movement, but rather other issues that created port congestion and as we know caused a ripple effect. The intention of detention and demurrage charges should have then been "paused" until things worked out, however carriers used the charges as additional revenues streams.

Conclusion

AAEI understands that current resources that support the process are extremely limited due to the lack of automation that is needed. We know that importers and exporters pay extra days to cover the extra time needed to pull or deliver container due to the lack of appointments that are available at the port as well as the limited amount of trucker that are available.



We support a process by which issues that impact these charges (weather related, port congestion, strikes at the ports) will also impact the movement of goods in and out of the ports are accounted for when assessing the billing charges.

Charges that are assessed for services in many other industries are all billed in a timely manner (with 30 days) allowing the receiver of these charges to review, accept and possibly dispute any of the fees that appear, the maritime industry needs to modernize all practices and process to achieve an efficient and effective program that benefits all parties.

The need is urgent, especially with record container volumes at the nation's major ports. These volumes, and the resulting congestion, will only grow as the global economy recovers from the coronavirus pandemic. Port problems will continue due to the broad and systemic issues causing this congestion, some of which are operational in nature. Producers rely on competitive access to foreign markets, and reported excessive service charges, equipment shortages, old infrastructure, and non-automated systems combined with other factors pose significant consequences for exporters and the trade industry at large.

We look forward to your review of the trade community's comments and to working with the Commission to address this growing problem.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eugene C. Laney', written in a cursive style.

Eugene C. Laney
American Association of Exporters and Importers
President and CEO