



## Comments of the American Chemistry Council

Federal Maritime Commission  
Demurrage and Detention Billing Requirements (ANPRM)  
Docket No. 22-04

April 15, 2022

The American Chemistry Council (ACC) is pleased to provide comments to the Federal Maritime Commission (FMC) on its Advance Notice of Proposed Rulemaking (ANPRM) regarding demurrage and detention billing practices. As discussed below, ACC believes the FMC should adopt rules to regulate the demurrage and detention billing practices of common carriers and marine terminal operators.

ACC represents more than 190 of America's leading chemical companies. Our members produce and manufacture a wide variety of chemicals, polymers, and related products that make our lives and our world healthier, safer, more sustainable, and more productive. The business of chemistry supports over 25% of the U.S. Gross Domestic Product and directly touches nearly all manufactured goods. Our industry is among the largest exporters in the U.S., accounting for 9% of all U.S. goods exports.

ACC members rely on ocean shipping for both receiving materials and exporting products. Recent supply chain and freight transportation challenges have impacted member operations and heightened concerns about ocean carrier and port operator practices. In a recent survey of ACC members, 78% reported they had experienced increases in detention and demurrage charges. These experiences reinforce the need for active FMC oversight over detention and demurrage charges and billing practices for ocean shipping.

Below are ACC's responses to specific questions that FMC posed in the ANPRM.

*1. Should the Commission include both VOCCs [Vessel Operating Common Carriers] and NVOCCs [Non-Vessel Operating Common Carriers] in a proposed regulation on demurrage and detention billing?*

Yes. ACC supports including both VOCCs and NVOCCs in the proposed regulations.

*2. Should the Commission include MTOs [Marine Terminal Operators] in a proposed demurrage billing regulation?*

Yes. The FMC should adopt appropriate billing requirements for both MTOs and carriers. Some ACC members are billed by both MTOs and carriers. Including MTOs will help provide consistent practices and prevent improper charges, regardless of which entity is issuing the invoice. One concern is that the MTO may bill for "storage charges" after a free time has been exceeded at the terminal while the VOCC also bills for "demurrage" for the same freight container.

In addition, the MTO typically has data that would allow the shipper to understand the charges for specific containers and to validate if the charges are applicable (e.g., container unavailability, lack of return locations, appointments, other force-majeure reasons).

*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. FMC's proposed billing regulations should distinguish between the terminal operators' charges to shippers and charges to carriers. FMC should recognize that, in some circumstances, terminal operators bill freight forwarders (who then bill the shipper) rather than billing shippers directly. Ultimately, the shipper is responsible for the demurrage and would have more confidence in paying a bill if the MTO were required to comply with the billing regulations.

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

ACC does not have specific data on the percentage of demurrage and detention bills that contain inaccurate information.

Below are some examples of commonly disputed billing information:

- Failure to account for late arrival of vessel: The ocean carrier vessel is late arriving to the port. However, the VOCC bills for demurrage on outbound cargo, even though the carrier created the delay.
- Inaccurate free time granted: The VOCC applies demurrage charges before the expiration of the free time established in the contract.
- Improper entity billed: Product is shipped from a foreign location directly to a U.S. customer and the container is consigned to the U.S. customer. The VOCC improperly bills the shipper for demurrage in lieu of charging it directly to the U.S. customer.

*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?*

There is little standardization on the type of information provided on billing. ACC believes that FMC regulations should push carriers and MTO's to adopt standardized data protocols (e.g., Electronic Data Interchange messaging, reason codes for detention and demurrage charges).

*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*
- b. Container number*
- c. Billing date*

- d. Payment due date
- e. Start/end of free time
- f. Start/end of demurrage/detention/per diem clock
- g. Demurrage/detention/per diem rate schedule
- h. Location of the notice of the charge (i.e., tariff, service contract number and section or MTO schedule)
- i. For import shipments:
  - i. Vessel arrival date
  - ii. Container availability date
- j. For export shipments:
  - i. Earliest return date, including identifying any modifications to the earliest return date
  - k. Any intervening clock-stopping events, for example:
    - i. Unavailability of container
    - ii. Unavailability of pickup or return locations
    - iii. Unavailability of appointments (where applicable)
    - iv. Restrictions on chassis accepted
    - v. Force majeure-related events

Yes. The Commission should require that essential information be included on invoices. ACC agrees with the minimum billing information outlined above. Invoices should also include the purchase order or shipment number (BOL number), container number, and number of days in storage.

ACC appreciates Maersk’s process for displaying charges which includes days of free time (start to end) and days in demurrage. Maersk also outlays the charges per day (see example below).

Origin	Destination	Vessel	Voyage				
Place of Receipt: Barcelona ETD: 26-Nov-2021	Place of Delivery: Charleston ETA: 02-Jan-2022	MSC VITTORIA	146W				
Description	Container	Type	Start	End	Qty	UoM	ROE Total(USD)
Freetime			01-03-2022	01-06-2022	4	DAY	
Demurrage Fee	MRKU5593366	40 HDRY	01-07-2022	01-22-2022	16	DAY	1.00000 4,775.00
Activity Location: USCHSTM							
4 DAY(s) / 245.00 USD per DAY							
5 DAY(s) / 290.00 USD per DAY							
7 DAY(s) / 335.00 USD per DAY							

The Commission should also consider requiring invoices to state the reason for the charge (beyond simply listing “demurrage” or “detention”). This would help the shipper identify the root cause for the charges.

ACC also supports requiring invoice data to be provided in a spreadsheet or other computer-readable format. Auditing demurrage invoices that are not machine-readable requires a significant commitment of resources. The manual nature of these audits increases the chance of errors that lengthen the audit task. Providing computer-readable data with invoices would facilitate analysis of demurrage charges and associated data.

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?*

The information should be available as soon as possible after the container has been returned to the VOCC. Verification will be more difficult the older the data is. ACC members report that they have sometimes received demurrage invoices that are 6-12 months old.

FMC should also consider reasonable timeframes for confirming invoice payments. Terminals typically require payment before releasing goods. However, payment confirmation can take up to two days, creating unnecessary delays and adding to port congestion.

*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?*

ACC is uncertain how carriers handle this process. The shipper (contracting party) is often approached even if they are not the responsible party (e.g., destination demurrage with a C-term is for customers). If the consignee is unwilling to pay, the shipper is held responsible. It is not clear if carriers issue parallel invoices, or invoice the contracting party only if the liable party does not pay.

*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.)*

Invoices should identify the billing recipient's role in the shipment (i.e. Party-Of-Interest definition) and the basis for responsibility for charges. Invoices should also identify the Tariff number or other source of the daily demurrage/detention rate.

*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.*

ACC does not support a requiring MTO's to bill demurrage directly to shippers. Without a contractual connection between the MTO and the shipper, such a requirement would be unworkable. The Commission should not force a shipper to have a contractual agreement with an MTO.

*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?*

This differs from carrier to carrier. The time period can range from two days to six 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, the Commission should require invoices to be issued within 60 days, or a shorter period if feasible. Timely billing would reduce or eliminate costly and time-consuming research for “automated” bills that may be received months after the fact. It would also facilitate consideration of current operational information relevant to ascertaining the root cause of delays that trigger demurrage and detention charges.

Another concern is ensuring a reasonable time-period for payment. ACC members have reported that they have received invoices indicating “0” day payment terms, which is patently unreasonable.

*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, ACC agrees that the Commission should require specific information on the invoice regarding how to dispute a charge. This information should include contact information for disputing charges, circumstances for when a charge may be waived, and the the billing parties’ evidentiary requirements sufficient to support a waiver of the charges.

*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?*

ACC is uncertain of the typical time period for receiving refunds. However, it would be reasonable to require carriers to issue refunds for dismissed demurrage and detention charges within 30 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)*

ACC is not aware of any conflicts with other applicable laws or regulations.

*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.*

In the current environment, shippers have limited ability to evaluate practices on demurrage and detention among carriers and terminal operators. FMC regulation would improve visibility and allow shippers to benchmark performance on factors such as billing accuracy and timing of refunds. This would further drive innovation and adoption of best practices.

ACC appreciates the opportunity to provide comments on potential FMC regulation of demurrage and detention billing practices. We urge the Commission to move forward expeditiously with a Notice of Proposed Rulemaking.

For questions or additional information regarding this submission, please contact Jeffrey Sloan, Senior Director of Regulatory Affairs, at (202) 249-6710 or [jeffrey\\_sloan@americanchemistry.com](mailto:jeffrey_sloan@americanchemistry.com).