



Association of California Recycling Industries

March 15, 2022

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

RE: Docket No. 22-04, Comments on Demurrage and Detention Billing Requirements ANPRM

Dear Mr. Cody,

On behalf of the Association of California Recycling Industries (ACRI), I would like to thank the Federal Maritime Commission (Commission) for seeking industry input on whether the Commission should regulate the demurrage and detention billing practices of common carrier and marine terminal operators (MTO).

Below please find our Comments to Docket #22-04:

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

**Yes.** Both parties should comply with the same regulations.

2. Should the Commission include Marine Terminal Operators (MTOs) in a proposed demurrage billing regulation? **Yes.** The terms must however, remain exclusively between MTO and VOCC-NVOCC. The MTO must coordinate with the VOCC-NVOCC to ensure only legitimate demurrage charges are invoiced one time to the Beneficial Cargo Owner (BCO) or Shipper, and that those invoices are accurate, complete, and submitted in a timely manner.

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.** The MTO should coordinate with VOCC-NVOCC directly, so that BCO and Shippers only receive charges directly from the VOCC-NVOCC. There should never be demurrage charges from the MTO directly to the BCO or Shipper.

4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed? **10% - 20%** The detention disputes typically involve coastal schedule changes after initial ERD posting, lack of appointments preventing shipper

from accessing the port, VOCC billing errors, etc. Demurrage disputes involve delays in getting appointments, containers being stacked in such a way that BCO is not granted access to the port, etc.

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 seems to be quite a bit of variance, but the common problem is **lack of accurate and complete 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) **No**
- i. For import shipments:
  - i. Vessel arrival date **Yes**
  - ii. Container availability date **Yes** and include port appointment log during timeframe
- j. For export shipments: **Yes**
  - 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**

I. Please note if any portion of the charge is a pass-through of charges levied by the MTO or Port. **Yes**

7. What information or timeframes should be required for VOCC and NVOCC demurrage and detention bills? **Bills must be presented to Shipper or BCO within fifteen (15) days of occurrence.** The occurrence timeline is established by: detention is the first billable day based on the date when shipper delivered the container; demurrage is the first billable day based on the date the BCO retrieved the container.

Should the Commission require different types of information or timeframes? **No.**

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? **There should only be one party receiving an invoice.** If there is more than one party then this will create confusion add unnecessary administrative work to the parties to the transaction.

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, and it should include a breakdown of timeframe of total days and billable days.**

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. **No. Shippers and BCO's must only receive bills directly from either the VOCC or the NVOCC, depending on which one is providing the service.**

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? **Charges are accrued as soon as the free day period passes but ACRI members do not receive any invoices until the container is returned. At that point, the invoice is received within a week.**

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? **No, the time should be fifteen (15) days.**

13. Should the Commission require specific information be included on the invoice regarding how to dispute a charge? **Yes.** 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, contact information and a simple explanation of the dispute resolution method should be provided on the invoice. This must include a reference or link to complete information on a website, along with a telephone number for customer service support.**

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? **Yes, fifteen (15) 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)? **We are not aware of any conflict related to the BCO or the Shipper.**

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. **The current system is out of control, and the sooner it is resolved the more fluidity returns to the ports. Shippers and BCO's are burdened with excessive and incomplete detention and demurrage charges, many of which should not have been billed in the first place. In many cases, those charges themselves are not related to port fluidity. Please review the attached Simplified Overview for the parties involved with detention and demurrage. It is imperative that the three parties involved with providing ocean transport services (port, MTO, VOCC-NVOCC) are responsible to manage their relationships and only charge detention or demurrage that (a) are billed once through the VOCC/NVOCC, and (b) are directly related to port fluidity.**

Again, we thank you for the opportunity to provide these comments and, as always, do not hesitate to contact Melinda Andrade at (949) 378-8174 or [melinda@toddpriest.com](mailto:melinda@toddpriest.com) if we can be of any assistance.

# Simplified Overview

**Vessel Operating Common Carrier (VOCC) – NonVessel Operating Common Carrier (NVOCC)**  
*(The ship – usually thought of as the carrier or steamship line, often with “shared space”)*

**Marine Terminal Operators (MTO)**  
*(The port – usually the terminal operator or stevedoring company, may use multiple berths)*

*Note – the VOCC and MTO have commercial relations with each other which involve the ports. Together the VOCC, NVOCC, MTO, and the Ports are required to establish service levels so that the VOCC/NVOCC can provide transport services to Shippers and Beneficial Cargo Owners:*

**Beneficial Cargo Owner (BCO)**  
*(the importer, receives cargo)*

**Shipper**  
*(the exporter, sends cargo overseas)*

**Storage if delayed pick up at MTO** < **DEMURRAGE** >  
*(normal and routine)*

**Storage for cargo returned to MTO**  
*(rarely happens)*

**Equipment delayed return** < **DETENTION** >  
*(rarely happens)*

**Equipment delayed return**  
*(normal and routine)*

**THE BCO AND SHIPPER SHOULD ONLY RECEIVE DETENTION AND DEMURRAGE CHARGES FROM THE VOCC/NVOCC AFTER THEY COORDINATE WITH THE MTO AND THE PORTS**