



**BEFORE THE
FEDERAL MARITIME COMMISSION**

**Comments on Advanced Notice of Proposed Rulemaking regarding
Demurrage and Detention Billing Requirements**

Docket No. 22-04; RIN 3072-AC90

Dated March 17, 2022

April 15, 2022

This response to the above noted ANPRM is submitted by Gabriel Rodriguez, President of A Custom Brokerage, Inc (ACB) OTI 17899NF, located in Doral, Fl.

ACB is a member of the National Customs Brokers and Forwarders Associations of America (NCBFAA), the Florida Customs Brokers & Forwarders Association, Inc. and I personally serve ACB as a representative of the National Shipper Advisory Committee as chair of the Data Subcommittee.

I would like to commend the Commission for all recent and ongoing initiatives to address the various demurrage and detention issues contributing to the current gridlock in our US supply chain. This rulemaking is of extreme importance as there should in fact be certain requirements and information related to D&D as current practices are not in line with the primary purpose of incentivizing the movement of cargo and promoting freight fluidity. On the contrary many current practices are contributing to the increase of D&D allowing the trade limited recourse in avoiding these escalating costs. D&D, when properly applied, serve their purpose of contributing to the proper flow of cargo and as such are supported but by means of this rulemaking will ensure that certain requirements are met to ensure they are not unnecessarily penalizing cargo owners rather contributing to fair commerce.

The below will follow the same outline under section IV. Information Requested, and responses to those applicable to our business model and that of the clients we represent.

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

No, the Commission should not NVOCC's as we are only intermediaries to obtain bills from VOCCs'/MTO's and either advance payment or present to our clients and have them paid in a timely fashion to obtain release of containers. We do not file a D&D tariff and do not mark up D&D fees. D&D is simply a pass through to the client.

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

Yes, VOCC's and MTO's work directly through direct contract to obtain timeframes of arrival, discharge/loading, availability, and days in and out for the containers. Thus, MTO's are responsible that VOCC's have the right details to invoice their fee's. As MTO's also file D&D charges in their tariff and currently collect these fee's, they should be held to the same requirements as the VOCC's.

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 commission should regulate the format in which MTO's invoice VOCC's. Further, only one demurrage invoice should be issued -coming directly from the MTO. At the MTO level, they have the physical control of the containers for which dealing with one entity, will help avoid the delays of billing, paying, and releases that are needed to be able to provide quick turn arounds on all containers. Many MTO's already provide for online platforms that provide full detail of MTO and VOCC D&D charges and allow for online payment exponentially increasing the fluidity of the transaction and efficiency of the process.

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

In most of the cases, the bills do come with accurate information directly from the MTO's and VOCCs showing demurrage and the time frame that it's being charged. We estimate 10-15% of invoices contain inaccurate dates due to issues at discharge, government holds or other factors.

Our current situation in addition to inaccurate information and what we regularly dispute are the additional payments that must be made due to lack of response from the VOCCs in providing a timely invoice to pay and apply payments within a particular day. In many cases, bills are not received timely from the VOCCs causing additional days of demurrage charges to pay to coordinate the pick-up of containers. Disputes on applicable dates with both MTO's and VOCC's further causes delays resorting in our having to pay and dispute after the fact generally leading to either no activity or outright refusal leaving us with no recourse on disputes.

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?

NVOCC's in general and in our case, we do not file a tariff for D&D and simply pass on MTO and VOCC charges direct to the cargo owner. The actual information on MTO and VOCC D&D billings can vary on dates applicable, applicable rates and total due. For instance, we could receive an

invoice from a carrier advising about “detention” and the MTO charging separately on their side for “demurrage.” In another case, we would receive notification from the MTO the demurrage from the port and line demurrage that needs to be paid to the port. There is no consistency of whether the line will provide their bill on their end or if it will all come from the MTO. Aside from that, as well as the terminology used between per diem and detention and line and port demurrage. In which case, questioning having both line and port demurrage or is it just a double charge for the same concept.

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 if payment is applied and cargo released immediately upon payment
- 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) – Not necessary but should be readily available upon request.

i. For import shipments:

- i. Vessel arrival date - Yes
- ii. Container availability date – Yes but a date should not be listed until the container is fully available. Some MTO’s list a date and roll the date until the container is available. This causes confusion and errors and causes the trade to monitor and document daily until the actual available date is set. We must argue to move the date based upon true availability.

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 – a date should not be listed until true and accurate
 - 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.

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?

VOCCs timeframes should not surpass 7-10 days. Anything longer than that delays the possibility of any NVOCC to collect from their client if need be. The Commission should require a uniform timeframe to ensure that billing is processed adequately and timely. NVOCC's should not have to

be begging VOCCs to provide an invoice for any demurrage or detention as it has happened many times in the past few weeks and months. When demurrage and detention are present, had our team not been on top constantly for an invoice we would have incurred more days of demurrage due to lack of response.

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?

I am not aware that VOCCs have duplicate invoices to additional parties. An invoice for any D&D charge should only be issued to the consignee on the BL and can be shared with the applicable party in the supply chain: Shipper, Consignee, Notify, Customs Broker. In the case that they do issue invoices to multiple parties, they need to disclose that information to all parties to avoid duplicate payments. Double or triple payments for the same invoice must be refunded immediately with proof of payment from any of the parties.

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.)

The billing party should be required to identify the basis of why the invoiced party is the proper party in interest. Shippers and consignees should be the proper party in interest for any shipments as they hold the financial interest in the cargo. Third parties such as customs brokers, freight forwarders and NVOCC's regularly obtain and pay for invoices on behalf of the party in interest but have no financial interest in the cargo or shipment.

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.

We do agree that MTO's invoice demurrage directly to shippers as opposed to VOCC's who then may mark up the final charges issued to shippers. As previously expressed in question / answer 3, an online platform providing for both terminal demurrage and VOCC demurrage provides for transparency of charges as well as expediency in payment providing for immediate releases thus expediting the flow of cargo exponentially. These platforms are in existence today at some terminals and can be easily replicated either through third-party software or proprietary software.

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?

Demurrage invoices can be delayed from 2-3 days or more causing additional charges. In many instances as mentioned in question 4 and 7, there are delays in receiving the bills and subsequent delays in posting payments causing interested parties to have to chase the MTO or VOCC for details or activity of posting payment providing for releases. This additional time complicates matters when considering drivers must make appt's to retrieve or deliver containers. We have resorted in some instances to paying 1-2 days in advance (additional unnecessary cost) to

compensate for MTO/VOCC service failures and ensure we have containers released. This unfair practice directly contradicts the premise of “incentivizing the rapid removal of cargo” and serves only to bolster the bottom line of the MTO/VOCC.

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?

The Commission should require D&D invoices to be issued at most 30 days and ideally within 7 days. Anything longer than that will be charges “hanging in the air” which are likely not be able to be collected from the proper party of interest in the shipment.

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?

It is imperative that the Commission require specific information to be included on the invoice regarding how to dispute a charge. Contact phone, email, website, any forms that may be needed to be able to open a dispute and have a quick turnaround (24 hours) as well of response to the dispute of whether charges could be waived or need to be paid. Not only will the MTO's and VOCCs benefit from a quick turnaround but the individual obtaining payment for the pertaining invoice won't be delayed.

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?

Currently, we have a refund in the works from an VOCC with a time frame of 9 weeks. The Commission should require that refunds of demurrage or detention bills be issued in a timelier fashion. If all the required documents and forms have been filled out to be able to open a dispute and obtain a refund, that process should be brought down to no more than 10 days of the confirmation of a refund to be put in place.

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)?

This regulation on demurrage and detention should not affect any arrangements such as that of the UIIA unless it is to improve the transparency of information and expedites the D&D process in a mutually compliant manner. The regulation should be separate from the above mentioned.

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.

It should have in consideration that government holds are also a cause of many D&D charges at which these holds are to help exam, validate goods if they are able to enter the commerce of the USA. The movement of containers to and from exams is under the control of the MTO in conjunction with the Agency requesting the exam. While the actual exam is a necessary event,



the additional charges incurred in government exams is generally due to lack of movement – due to space, equipment or labor and therefore a penalty on the shipper/consignee caused by the third party. In some cases, bills of lading with multiple containers are penalized due to one container that is on hold causing all of them to have D&D charges. The current D&D process of billing and posting payment is broken and very frustrating to the entire supply chain. Trying to claim or dispute a charge incurred due to lack of response or diligence from the VOCCs, usually draws no response. The time spent following up for invoices, payment application, releases or escalating to a proper party is an extremely inefficient process with the beneficiary as the MTO, the VOCC or both.

Respectfully Submitted,

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized name.

Gabriel Rodriguez
President