



AMERICAN COFFEE CORPORATION

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April 16, 2022

Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573
Attention: Mr. William Cody, Secretary

Email: secretary@fmc.gov

Re: FMC Docket No. 22-04
Comments on Demurrage and Detention Billing Requirements
Advanced Notice of Proposed Rulemaking

American Coffee Corporation is pleased to respond to the Federal Maritime Commission (FMC) Advance Notice of Proposed Rulemaking concerning Demurrage and Detention Billing Requirements.

A. Scope.

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

Yes. Since NVOCC's are for the most part assuming the role of a carrier in relation to the beneficial cargo owner (BCO), they should be included in the proposed regulation on demurrage and detention billing.

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

Yes, whether the MTO is billing demurrage or collecting on behalf of the carrier, it is essential that MTOs are included in the proposed demurrage billing 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. Although there are significant differences in the relationships between the MTO, VOCC, NVOCC and BCO, there should be no difference in the regulation as there is immense value in consistency.

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

While we often act to have our terminal free time adjusted to conform to the correct free time provided for in our carrier service contract, the demurrage bills are usually correct with less than 10% requiring adjustment. We see a much greater error rate in the container detention billing with approximately 30% of the free days incorrectly calculated and applied.



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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?

While the details may vary significantly between the VOCCs and MTOs, there is usually enough information to review and determine the accuracy of the demurrage and detention invoices. However, requiring specific minimum billing information would be a significant benefit to the industry.

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
- i. For import shipments:
 - i. Vessel arrival date No (discharge/availability is more relevant)
 - 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

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?



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The information suggested in item "B6" above should be required as indicated. Demurrage billing is usually immediately required as containers are usually held until the demurrage charges are satisfied. In instances where the container is not held, demurrage invoices should be issued within 10 days of the pickup or stop date. Detention invoices should be issued within 10 days of container return or stop date.

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?

We have not seen this to occur where a carrier would issue an invoice for the same charges to multiple parties. We certainly can see various problems that would arise if multiple parties were billed for the same charges, so we would be in favor of any restriction against this practice.

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.)

We have not seen this to be a problem so would not believe this to be necessary.

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 remain convinced that demurrage charges should be billed only by the VOCC to the BCO. In the overwhelming majority of cases, the BCO has no commercial relationship with the MTO and thus in a very difficult position to contest or dispute any demurrage charges levied by the 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?

Import Demurrage is usually billed prior to removal of the container, which is usually held until the demurrage charges are satisfied.

Detention charges may take up to 90 days to be issued, which of course presents problems in ascertaining the accuracy of the charges and determining whom may have been at fault incurring the charges reducing chances of recovery of the charges or any portion thereof.



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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?

We believe 60 days is far too long and such allowance is unwarranted. As indicated in "C7" above, we suggest that demurrage invoices should be issued, if not immediately, then within 10 days of the pickup or stop date. Detention invoices should be issued within 10 days of container return or stop date. Carriers should have sufficient means, infrastructure and resources dedicated to this function. It is hard to think of any other type of business not being able to bill their customer within 10 days of a service provided or product delivered.

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, we believe that demurrage and detention invoices should include information to dispute charges including contact person or department, telephone number and email address. We do not believe it necessary to identify specific circumstances or evidence as situations vary and VOCCs may use strict interpretations to refute any valid appeals for consideration.

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?

Our experience has been from fifteen (15) days up to six (6) months although the latter being the extreme. We would suggest that refunds should be issue within 30 days of agreement or determination.

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 do not believe that a regulation on demurrage and detention billing requirements would conflict with any other regulations or contractual arrangements.

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.



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We maintain that the commercial relationships are generally between the VOCC and MTO and between the VOCC and the BCO. In most cases, there is no commercial relationship between the BCO and the MTO. Therefore, all billing for demurrage and detention charges should be handled by the VOCC to the appropriate party; for demurrage to the BCO; and for detention to either the BCO or the draymen in accordance with the UIIA agreements.

We further maintain that demurrage and detention charges must be structured to incentivize the efficient movement of containers and must take into consideration circumstances which are beyond the control of the BCO or its drayman.

American Coffee Corporation appreciates the opportunity to provide the above comments. We are also grateful for the FMC's terrific efforts over the past few years in addressing the concerns expressed by small and large shippers alike on issues related to the fairness of demurrage and detention practices.

Sincerely,
AMERICAN COFFEE CORPORATION

Donald A. Pisano
President