



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

A. Scope.

1. Should the Commission include both VOCCs and NVOCCs in a proposed regulation on demurrage and detention billing? Yes, the need for greater transparency applies to all detention and demurrage billing, and must include all entities that charge these fees.

2. Should the Commission include MTOs in a proposed demurrage billing regulation? Yes, the Marine Terminal Operators should be included in the regulations, which will provide them with direction on best practices for demurrage billing, in order to reduce errors and disputes.

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, additional transparency and clarity is needed in order to differentiate these charges. Motor carriers are not party to any of the BCO contracts that provide for free time, which it makes it difficult to resolve incorrect invoicing.

4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed? I am unsure of the exact percentage, but the information I see disputed the most centers around the days that these charges are being billed, and whether or not port conditions allowed for the container to be returned within the free time allotted. I have seen bills on empty containers that include days when there was no Empty Return Location available, or days when the pickup or dropoff location was a Marine Terminal where appointments are mandatory, yet there were no appointments available. In these types of situations, it is unfair to expect the customer to pay these fees. Members have suggested that the billing party should provide one invoice per container in order to reduce confusion. Currently, VOCCs submit their invoices weekly or monthly for multiple containers, without clearly identifying the reason for the charges, or the BCO 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?

BiState Members report that the type of information varies widely. Having a set of consistent billing standards would make the process easier and more transparent for all parties. Members feel strongly that the VOCC should bill the customers directly, as they are the parties who formed the agreement. This would remove the drayage carrier from the equation, reduce confusion, and keep the business relationships clear.

B. Minimum billing information

6. **What type of information should be required on billings?** In addition to the essential information options listed below, Drayage carriers have suggested that bills include the Contract Agreement Number on the invoices, which would be a helpful reference for the billed party.

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 # & 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

l. Please note if any portion of the charge is a pass-through of charges levied by the MTO or Port. Most BiState Members say that they have no choice but to pass these charges on to their customers, but they also feel a sense of responsibility to assist their customers against the unfair assessment of these fees. Motor carriers are not privy to the specifics of the contract agreements between the shippers and the billing entities, and should not be dragged into billing disputes. Unfortunately, we have seen numerous instances where Ocean Carriers threaten the motor carrier with shutout due to dispute with one of the MCs customers. Motor Carriers find themselves forced to cover the dispute bills in order to avoid getting “banned” by the Ocean Carrier and unable to serve the rest of their customers.

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?** The FMC should require a common standard of information and timeframes, in order to achieve a level of consistency when it comes to the billing process.

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? All parties should be clearly identified. In addition, the billing party should include the customer information and contract/agreement number.

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 the billing party should include the contract or agreement number that clearly indicates who is responsible for the charges.

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)? The MTOs should bill the shippers directly, as they are the parties who entered a contractual agreement, which the drayage carrier is not privy to. The regulation should also acknowledge that motor carriers should not have their operations disrupted if and when MTOs and shippers have a billing dispute. **In that scenario, MTOs would bill shippers directly for demurrage, and carriers would continue to bill detention to shippers.** Yes, and it should be specified that if and when billing disputes occur between the MTOs and shippers and/or the Ocean Carriers and shippers, the VOCCs are not to be punished or threatened with shutout, as the dispute must be settled with the shipper directly.

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? Bi-State Members typically receive bills 30 to 40 days afterwards.

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 time frame seems less important than the need for transparency and the lack of information that is provided when bills are issued. The burden of proof is placed upon the person receiving the bill, and by the time the bill arrives, that information is no longer listed on the MTO or Ocean Carrier websites. In order to audit detention and demurrage bills, motor carriers have started taking daily screenshots of empty return location restrictions, screenshots that prove lack of appointment availability, etc.

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? The Commission should require specific information that makes it easier for those being billed to contact someone who is available during normal business hours in their time zone—too often, I have seen billing disputes drag on unnecessarily for several days simply because there is such a lag in the response time due to the billing department being on a completely different time zone schedule. There needs to be better alignment with Ocean Carrier Customer Service availability and the hours of operation at U.S. ports. When a bill is disputed, the burden of proof should be on the billing party to produce backup documentation to justify the charges. Billing parties also need to improve their internal communications between their Equipment Management Department and the Billing Department. I have often seen billing disputes based on errors that could have been easily rectified—or avoided altogether—if only the Billing Department had better visibility with their own Equipment Management Department as to days when per diem was waived.

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? Just as bills must be paid within a certain amount of time, it seems only fair that refunds should be issued within a set time frame.

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)? The regulations set forth by the FMC will help clarify the rules set forth in the UIIA, and make the entire billing process more fair and equitable for all parties. Members express a significant level of dissatisfaction with the UIIA dispute process, finding it cumbersome and confusing.

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.

Put simply: the assessment of Detention and Demurrage has gotten out of control, and must be addressed. We need the FMC to step in and set clear ground rules for all parties to follow in order to put a stop to unfair business practices surrounding the assessment of Detention and Demurrage, and standardize billing procedures so that they are fully transparent and fair. Motor carriers are experiencing extreme congestion and burdensome restrictions (no empty return locations, not enough appointments, lack of consistent and timely communications) that make it impossible to move containers efficiently, resulting in detention and demurrage bills. These extreme conditions are a direct result of inefficiencies and conditions created by the very same entities that reaping the financial benefits of these charges. Motor carriers are doing everything they can to keep the supply chain moving, and we do not require fees in order to feel "incentivized" to move containers. These charges continue to be used in a punitive and revenue-generating way, which goes counter to the FMC's prior determination on the purpose of these fees.

*Comments submitted by Lisa Yakomin, President
Association of Bi-State Motor Carriers
263-D Distribution Street, Port Newark, NJ 07114*