

April 15, 2022

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

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

Dear Mr. Cody:

The Consumer Technology Association (CTA) welcomes the opportunity to submit comments to the Federal Maritime Commission (“the Commission”) in response to its Advance Notice of Proposed Rulemaking (ANPRM) on demurrage and detention billing requirements.¹ CTA is the trade association representing the \$505 billion U.S. consumer technology industry, which supports more than 18 million U.S. jobs. With over 1,500 members, most of which are small and medium-sized enterprises (SMEs), CTA educates U.S. policymakers to ensure that laws and regulations promote the innovation economy and encourage the development of technologies in all sectors.

CTA members, from the largest household brands to the smallest family-run businesses, are intensely active in global trade and are heavy users of vessel operating common carriers (VOCCs), non-vessel operating common carriers (NVOCCs), and marine terminal operators (MTOs). Because of our members’ experiences in their dealings with VOCCs, NVOCCs, and MTOs, in which they have identified many of the same concerns as the Commission itself, CTA supports the Commission’s proposed rulemaking effort. We also urge the Congress to pass the Ocean Shipping Reform Act as soon as possible and advocate for the removal of ocean shipper anti-trust immunity as critical steps in resolving our collective supply chain challenges as a country and combating increasingly high inflation.

Overall, CTA members have said that the lack of billing transparency by carriers and MTOs, as well as the lack of regulation imposing even basic requirements on carriers and MTOs, has created a “free for all” attitude in the industry at the expense of shippers and consumers. Regulation by the Commission is needed to address this profiteering and unacceptable scenario. The remainder of this comment provides CTA’s high-level perspective on the key themes implicated by the Commission’s proposal. Annex 1 then provides answers to select questions posed by the Commission in its notice requesting comments.

¹ Demurrage and Detention Billing Requirements, 87 Fed. Reg. 8,506 (Feb. 15, 2022).

First, **CTA urges the Commission to require minimum information on demurrage and detention billings.** Doing so will promote transparency for all parties involved in shipping transactions, help ensure accountability, and deter unfair business practices by VOCCs, NVOCCs, and MTOs. Rulemaking by the Commission is of particular importance at a time of dramatically inflated shipping costs and severe supply chain backlogs. Importers are now footing shipping bills that have quadrupled in cost from just two years ago. These shipping costs, which can be further compounded by demurrage and detention fees due to backlogs at ports, are a significant burden on our members' businesses. They have been forced to pass down these costs to American consumers in the form of price increases. Given that consumer prices have already increased significantly (and show no signs of decreasing soon), holding common carriers and MTOs accountable on appropriate billing practices will prevent unnecessary costs that American businesses and consumers will ultimately pay.

In that regard, **CTA encourages the Commission to impose the same requirements as to minimum billing information on VOCCs, NVOCCs and MTOs to facilitate industry-wide transparency.** The Commission's ANPRM identified several proposed elements of bills, and CTA believes all of those elements the Commission identified should be included in bills pursuant to a final rule. CTA members have reported that they routinely receive inaccurate billings and that missing information hinders their ability to dispute inaccuracies and calculate the correct charges. Critical for transparency in billing practices are elements such as the bill of lading number, container number, billing date, payment due date, information about free time, per diem rates, and the per diem clock, and the location of the notice of the charge. Other proposed elements, such as the vessel arrival and container availability dates for import shipments, as well as return dates, container, location, and appointment availability information, restrictions on chassis accepted, and force majeure requirements for export shipments, will provide better visibility for all parties to the transaction and facilitate improved coordination such that shipments can clear ports faster and more efficiently.

Additionally, CTA suggests that the Commission consider methods to ease the difficulties shippers experience when attempting to pay demurrage and detention billings. For example, CTA members have shared that some carriers and ports only offer limited payment methods that may not be readily available to some businesses. Collectively, these actions by the Commission will help alleviate some of the factors that have led to port congestion and will allow importers to more easily confirm their bills, dispute inaccurate charges, make payments, and seek refunds to the extent necessary in a timely manner.

Lastly, **CTA encourages the Commission to impose required timelines on the issuance of demurrage and detention billings.** While some CTA members report that they typically receive billings within 30 days after the charges stop accruing, other members have reported that they frequently receive billings 60 or more days afterwards, a delay that can take them by surprise and make it difficult to confirm the accuracy of the bills. The unexpected and seemingly random receipt of (inaccurate) demurrage and detention bills makes it difficult for CTA members to make reliable and timely business decisions, particularly at a time when shipping costs account for an increasing overall percentage of business expenses. By contrast, imposing a required timeline by which VOCCs, NVOCCs, and MTOs must issue bills will enable transparency and reduce uncertainty by increasing predictability and ensuring that the information required to confirm the accuracy of charges is readily available to all parties.

CTA thanks the Commission for its review of this important issue impacting American businesses and consumers, as well as the efficient operation of U.S. ports vital to U.S. commerce. CTA's detailed suggestions in response to the Commission's questions may be found in Annex 1 below.

Annex 1: Answers to Select Questions Posed by the Commission

A. Scope.

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

Yes, the Commission should include both VOCCs and NVOCCs within the scope of the proposed regulation. This would create industry-wide best practices and transparency. There is no reason to treat VOCCs and NVOCCs differently from the perspective of those using their services, particularly when CTA members report experiencing the same concerning billing practices with both VOCCs and NVOCCs.

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

Yes, MTOs should also be included within the scope of the proposed regulation. As with VOCCs and NVOCCs discussed above, doing so would create industry-wide best practices and transparency, and CTA is unaware of a reason that MTOs should be subject to different requirements (or no requirements) when they also engage in billing practices that are of concern to CTA members.

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?*

The Commission should regulate the format of MTO demurrage billing to the extent necessary to ensure transparency about charges to shippers versus VOCCs and clarity about which party is responsible for paying the charges.

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

Of member companies that CTA surveyed, 75 percent reported receiving inaccurate demurrage and detention bills. Critically, **one-third of respondents indicated that “most or all” of the bills they receive contain inaccurate information.** Members report that the relevant dates used to calculate charges are often inaccurate, as well as purchase order information. Members have also reported receiving demurrage bills even though the containers were unavailable for pick-up and detention bills even though terminals refused to accept empty container returns.

This level of inaccuracy is simply unacceptable. Not only does this unfair business practice increase costs, but it also saddles importers with the administrative burden of reviewing records, disputing incorrect charges, and attempting to obtain refunds.

Additionally, CTA members have shared that it can be difficult to discern from billings whether the port or the carrier is at fault for excess time containers spend at the port or excess charges. Lack of (accurate) information in bills regarding relevant dates and times of container arrival, availability, and return therefore stifle transparency and undermine competition for improved service.

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?*

CTA members report that the information included on billings can vary widely and that they have routinely received billings that lack many of the data elements that the Commission's proposal would require. CTA members emphasize that all of these data points would better facilitate their own recordkeeping and accounting and greatly improve transparency in the industry.

B. Minimum billing information.

6. *What type of information should be required on billings?*

The Commission's question identified numerous proposed elements on billings. CTA encourages the Commission to require all of those proposed elements on billings as part of this regulatory effort. This will ensure transparency and fairness for businesses using the services of VOCCs, NVOCCs, and MTOs. This is particularly true for elements such as the bill of lading number, container number, billing date, payment due date, information about free time, per diem rates, and the per diem clock, and the location of the notice of the charge. Requiring other proposed elements, such as the vessel arrival and container availability dates for import shipments, as well as return dates, container, location, and appointment availability information, restrictions on chassis accepted, and force majeure requirements for export shipments, will also provide better visibility for all parties to the transaction and facilitate improved coordination such that shipments can clear ports faster and more efficiently. This will help alleviate some of the factors that have led to port congestion.

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 Commission should require the information identified in Question 6 above. Requiring bills to be issued no later than 60 days after the applicable charge stops accruing is necessary, but a shorter time frame, such as 30 days, would be preferred by importers and shippers, allowing them to make timely business decisions based on current rates and information.

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?*

CTA members have experienced instances in which common carriers have invoiced multiple parties for demurrage and detention charges. **Members have also, on occasion, received bills for the same charges from both carriers and MTOs or received inconsistent descriptions for the same charges.** These practices can create significant confusion about the responsibility for and status of payment. Thus, the Commission should require the billing party to identify all parties receiving an invoice for the charges and to indicate which party is responsible for paying which charges. The Commission should also impose requirements to prevent double-billing of the same charges by multiple entities. This will ensure that all parties can make reliable and timely business decisions and ensure that importers are not being over-charged for services.

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, the billing party should be required to identify why the invoiced party is the proper party liable for the charges. This will allow importers to determine whether they have been accurately billed and provide grounds for seeking a refund if they were not accurately billed.

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.*

As noted above in response to Question 8, some CTA members have reported receiving bills for the same charges from both common carriers and marine terminal operators. **It was the unanimous opinion of these companies that only one bill should be issued for any given charge.** Some would prefer direct billing by MTOs of demurrage, others would prefer to receive one bill for both demurrage and detention charges from carriers, and others had no preference. In light of these comments, CTA suggests that the Commission consider imposing a requirement that prevents both MTOs and carriers from issuing more than one bill for the same charges to improve clarity and accountability in billing practices.

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?*

Some CTA members report that they typically receive billings within 30 days after the charges stop accruing; however, **others report that they frequently receive billings 60 or more days afterwards.** These later billings can take importers by surprise and cause undue financial stress. The lack of a standard timeframe for the receipt of billings can also create recordkeeping issues for companies and increases their administrative burden in tracking and managing shipping costs.

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 issuance of demurrage and detention invoices no later than 60 days of the date when the charges stop accruing. However, the Commission should also consider whether a shorter timeframe is more appropriate given that many carriers and MTOs are able to issue billings within 30 days after the charges stop accruing. Importers would generally prefer a shorter time period to facilitate their own recordkeeping and business planning. Any standardized requirement will enhance transparency in billing practices and ensure that records relevant to confirming bill amounts are still within the possession of all interested parties.

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, the Commission should require invoices to include information about how to dispute a charge. This information can otherwise be difficult to locate, particularly for importers who may rely on the services of multiple VOCCs, NVOCCs, or MTOs.

In addition to contact information, circumstances for charge waivers, and relevant evidentiary requirements, the Commission should also require the inclusion of relevant timelines by which a bill recipient must dispute a charge. Any timeline should offer the bill recipient sufficient time to review its records after receiving a bill and engage with the billing party.

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, the Commission should require that refunds be issued in a timely manner, ideally no more than 60 days after a shipper submits an eligible refund request. As above, this would allow both importers and VOCCs, NVOCCs, and MTOs to make reliable and timely business decisions and would ensure improved liquidity for importers.