

Corporate Headquarters  
799 Cromwell Park Drive, Suite A  
Glen Burnie, MD 21061



Phone: 410-863-0211  
Fax: 410-863-1377  
www.jscconnor.com

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**ANPRM**

**Docket No. 22-04**

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**Demurrage & Detention Billing Requirements**

**Comments of Paul F. Connor, Jr.**

I, Paul F. Connor, Jr., am employed as Vice President at John S. Connor, Inc., OTI No. 00496NF, headquartered in Glen Burnie, MD. We operate eight branch locations in Maryland, Virginia, Kentucky, Pennsylvania, New Jersey, South Carolina and Georgia.

John S. Connor is a member of the NCBFAA where I serve on the Transportation Committee and the NVOCC Sub-Committee. These committees and my industry experience make me very familiar with Demurrage and Detention (D&D) practices and the problems and costs involved when they are applied inequitably.

The submission of these comments recorded here are my own, and reflective of my opinions, and those of John S. Connor.

I participated in the Commission's initial Innovation Teams that were part of bringing about the Interpretive Rule of 2020. Overall, the rulemaking was a positive move in the right direction but fell short when the Interpretive Rule failed to mandate D&D should not be applicable in cases of government holds.

I do want to state that there is a proper place for D&D charges. Demurrage serves to incentivize the timely removal of cargo from marine or rail terminals and Detention helps ensure the timely return of equipment back to these terminals. The D&D charges help to alleviate the equipment remaining at the terminals and empty equipment not being returned in a timely fashion. In effect, they support the flow of commerce.

My responses will be numbered in the same order as the questions presented:

A: Scope.

1. From my experience, it is rather uncommon for NVOCCs to file D&D schedules in their tariffs. The NVOCCs do not generate D&D charges on their own as they are generated by VOCCs and MTOs. These charges are passed through by NVOCCs as part of the transaction. merely mark up the D&D charges. The Commission should not include NVOCCs in the proposed regulations unless the NVOCC is marking up the D&D charges.
2. The Commission should include MTOs in the proposed regulation because they are originators of demurrage charges and must be held accountable for such charges. They maintain records of the various events that determine when demurrage starts, any possible stops, and total amount to be collected based on gate-out time and date.
3. The Commission should develop regulations that distinguish between demurrage that MTOs charge to shippers and demurrage that MTOs charge to VOCCs. The Commission should regulate this format and going further they should investigate the extent that VOCCs mark up MTO demurrage when passing through to shippers. Marking up such charges is a practice that adds a greater cost burden to the shipping public. It also makes it more difficult for shippers to dispute and seek resolution on these charges as neither the VOCCs nor MTOs will take ownership and will instead point to the other party as the decision maker.
4. There are various reasons for D&D bills to contain inaccurate information. By in large, most bills are accurate but may be scarce in providing all necessary information to identify the charges. Most of the issues of dispute arise due to lack of availability, lack of appointments, or where charges were assessed for cargo on government hold. In addition for exports, carriers altering their port schedules shift the Early Return Date (ERD) and then apply demurrage charges when the ERD is pushed further out while shippers have already delivered based on the initial port schedule.

5. It is the MTO that charges demurrage for containers that dwell on terminals, or railroads that charge storage for containers that dwell on their terminals. VOCCs can charge detention, per diem, and even demurrage for the time that containers are held pre or post-delivery. These charges are confusing as to the actual event they are charging for. VOCCs may also charge demurrage in place of the MTO for container dwell time on dock, even when demurrage is being paid directly to the MTO. This is a confusing practice, that appears to be double invoicing of demurrage, rarely spelled out on the VOCCs invoice as to what the charges are truly for.

#### B. Minimum billing information.

6. I agree that all the items listed in Section 6a through 6l should be required on D&D invoices in order to provide the most clarity of the charges being assessed. One item to add is a certification that the invoice is in compliance with the Shipping Act.

#### C. Billing practices.

7. Across the board, the billing practices of VOCCs have been terrible. We continue to receive D&D bills months after-the-fact. This hinders our ability to collect from our clients and greatly impacts our operations based on limited time and resources in pursuing the disputes on these bills. Most demurrage payments are required (cargo held hostage) in advance of cargo release. There can be other types of D&D charges not involving cargo release. The carriers can invoice these charges at thirty days, sixty days and longer. There is no consistency. It impacts the NVOs ability to collect as most clients have settled/closed their books on the transactions. The Commission should adopt a timeframe for D&D invoicing (possibly in line with UIIA) that offers a best business practice of fifteen days (thirty at most) for invoicing with a cut-off of sixty days.

8. In our experience, VOCCs do invoice identical D&D charges to multiple parties. We do not know if they collect from more than one party, which is an unreasonable practice. We have determined from shippers/importers that they have paid the same charges we are being billed for. More importantly, we have been presented by a carrier large credit amounts on our account. Upon investigation, we did not duplicate payment to them for specific charges. Our analysis is that a

separate party paid the charges before we did resulting in a credit on our account. Therefore, if VOCCs invoice more than one party, they should at the very least, be compelled to list all others who were invoiced at the same time, or prior.

9. The merchant clause is very broadly defined so that anyone in connection with the transaction can be held liable for the charges. As a result of the merchant language, carriers have at times claimed – and collected – freight, charges, surcharges and other costs due from third-parties that have no interest in the underlying transaction and/or cargo being shipped. Transportation intermediaries (e.g., NVOCCs, freight forwarders, Customs brokers), that have key roles in the supply chain, assisting shippers and others, but which have no interest in the goods, have been held accountable for charges due, while the actual parties (e.g., shipper, consignee) do not satisfy their obligations to the carrier. The billing party should be required to identify who the proper party(ies) for collection is and disclose if they are issuing the invoice to other parties, and if so, why.

10. We feel it is most beneficial that MTOs invoice demurrage and VOCCs invoice detention. We are based in the Baltimore area and have found that the demurrage tariff posted by the MTO may be only twenty-five percent of the VOCCs charge for the same time on dock. The additional difficulty is the difference in free times listed by the MTO versus the ocean carrier. The MTO may have seven days free time while the ocean carrier allows for five days free. As presented, VOCCs are generating revenue well beyond their costs, a process that the shipping public would receive benefit through new regulation.

11. As noted earlier, payments for demurrage are normally required in advance of freight release. Though there may be a dispute of the charges, we have to pay upfront to stop the clock, and hope to argue our case after-the-fact through dispute resolution. With detention, it may take as long as thirty to sixty days and beyond to receive the bills.

12. The Commission should require D&D invoicing to be more timely. A range of fifteen to thirty days would be best. They should not be allowed to invoice after sixty days.

13. I agree that the Commission should require specific information on every invoice as to how to proceed in disputing a charge. It should include the following:

- An email address
- Links to any form(s) that must be completed.
- A direct telephone number
- Upfront, discussion of case specifics so as to eliminate the payment in advance and avoid going to dispute later.

It would also be beneficial if the Commission would require demurrage not be charged at all for cases in dispute. When the case is resolved the payment would be required in a specified number of days. It would be beneficial for the Commission to identify the billing parties' evidentiary requirements sufficient to support a waiver of the charges.

14. The Commission should require that dispute refunds be paid within ten business days. In cases of demurrage, payment was likely made in advance of freight release, so a short turnaround for refund or credit should be made. Unfortunately, we especially see disputed charges given as credits on our account carried from month to month, even after resolution. In the case of some carriers, this may impact credit for other parts of the business, such as exports.

15. The UIIA is separate and not involving shippers and NVOs. Any changes may be better kept separate from this proposed regulation.

16. There are so many variables that impact the movement of cargo. The carriers' practice of D&D billings do not sync with these many variables. It is very difficult to overturn D&D charges once they have been invoiced. Dispute resolution protocol is different from carrier to carrier and some do not post any process even though suggested by the Interpretive Rule. There are very limited avenues to dispute charges. CADRS has proven to have little clout and carriers walk away with no adjudication or arbitration available. A revamp of the dispute and complaint processes is required. As noted earlier, the Commission should investigate the application of D&D charges during periods of government holds on cargo. These holds support our national security, and are done in the interest of all, at the expense of a few.

Respectfully Submitted,



Paul F. Connor, Jr.

Vice President

Dated: April 16, 2022