

DOCKET NO. 22-04, Comments provided on Demurrage and Detention Billing Requirements ANPRM

A. Scope.

1. Should the Commission include both VOCCs and NVOCCs in a proposed regulation on demurrage and detention billing? **Yes, both should be included because the VOCC will bill the NVOCC, and the NVOCC should also be held to a regulation stating they only have x amount of time to bill the charges out and that these charges should be pass thru charges.**
2. Should the Commission include MTOs in a proposed demurrage billing regulation? **Yes because they are the ones assessing a lot of the charges.**
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, terminals may charge \$30 per day demurrage yet the carriers bill shippers \$150 or more per day. They should not be allowed to make profit on these demurrage fees. The demurrage should be a pass through with small admin fee of \$50 or so added onto the invoice. There is no reason carriers should be profiting from demurrage.**
4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed? **No comment provided**
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? **There is no uniformity across these carriers / terminals. Even the rates they charge are different. There needs to be a standard USA tariff for demurrage at all US ports and also uniformed billing and parameters.**

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 b. Container number c. Billing date 11 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 number and 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. **All charges should be pass thru. They should not be able to profit off demurrage / detention. At a very minimum all bills should contain the following for importers: Bill of lading number, container number, Billing Date, Payment Due Date, Port of Departure, Port of Arrival, numerical bill amount.**

Demurrage bills should also include: Date of container availability, last free day, date container was picked up from port. Any intervening clock stopping events for example: unavailability of container due to it being in a closed off area or CUSTOMS EXAMS or no available terminal appointments, unavailability of carrier owned chassis if the carrier forces you to utilize their chassis.

Detention bills should also include: Date container was picked up from port, Last Free day off port, and empty return date. Any intervening clock stopping events for example: no return locations or no return appointments or no return appointments that are single transaction. Some terminals require a dual transaction for return, but the importer may not have another box to pick up that is the same size from that exact terminal. Why should the importer have to pay detention on a box that they want to return but cannot due to terminal / carrier imposed restrictions. The purpose of a detention charge is to incentivize the return of the container. You can have incentive and no options for return.

Currently if there are no return appointments or return locations, the carrier's state they will waive detention charges but the administrative burden falls on the importer to provide proof over a substantial period of time often. We, as the shipper, are required to e-mail the carrier with a request for detention waiver and provide days / sometime weeks of screen shots showing no availability for return, etc. This is a very large administrative burden on importers for every single container imported.

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 12 information or timeframes? **Demurrage and Detention should be billed within 30 days. This should be a requirement for both VOCC and NVOCC. Otherwise, VOCC could do it timely and NVOCCs may not. Currently there is no timeframe for this, and carriers often bill months after the fact. This tends to be excessive averaging around 6-8 months. This puts the administrative burden on the importer receiving bills to process this far out and also verifying their accuracy, etc.**

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? **There should be a uniform rule on who is charged demurrage and detention. Carriers should not be allowed to bill NVOCC while others bill the trucker. All charges should go to the ocean contract holder who is represented in the contract of carriage (bill of lading).**

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.) ? **There should be a uniform rule on who is charged demurrage and detention. Some carriers should not be allowed to bill NVOCC while others bill the trucker. All charges should go to the ocean contract holder who is represented in the contract of carriage (bill of lading).**

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. **The bill should go to the person who has entered the master contract of carriage. The bill should be sent to the consignee on the bill of lading. If the consignee is an NVOCC then it should be billed to the NVOCC. If the consignee on a BL is a BCO then it should be billed directly to the beneficial cargo owner. A BCO/ Shipper should not be billed directly for something where they are not a party to**

the master contract. If the master bill of lading is consigned to an NVOCC, NVOCC should still receive the invoices.

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? **We are not able to provide a true summation of all of our demurrage / detention bills, but I can say we have seen bills show up 6-12 months after the fact from an NVOCC.**

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 issuance within 30 days.**

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 bill should include the email / contact information to dispute a charge and this information should be required to be passed along to a BCO / Shipper if they have utilized an NVOCC and NVOCC chooses to bill the fees out on their own invoice.**

13 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 carrier should be required to submit a refund within 14 days. The carrier requires payment of demurrage before they will release our cargo for pickup. They hold cargo without payment of demurrage fees. If this is going to continue to be the case, then they should also be required to refund charges within 14 days. Otherwise they hold money not belonging to them and collect interest while shippers are not compensated fairly for payment overages. Carrier should be required to pay interest on refunds issued after a 14 day period.**

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)? **No comment provided**

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

The USA needs a uniformed fee schedule for demurrage / detention charges. Currently ports in the USA and different VCOs have different tariffs. There should be a cap on how much these charges are per day. These charges should also be pass thru charges from the terminals to the shippers, and the VCOs or NVOCCs should not be able to profit off of demurrage / detention. Also, there are some VOCs who charge demurrage on top of the demurrage charged by the terminal where the BCO ends up having to pay twice. This should not be allowed. Demurrage should only be charged by the terminals / ports.

The USA needs a uniformed schedule for free time across all USA Ports/ Carriers calling USA Ports. Every port and carrier is different and this causes too much administrative burden and confusion and makes doing business difficult. The standard uniform free time should be established. Also, some carriers charge based on calendar days while some charge based on working days. They should all be required to charge based on working days. Shippers / BCOs should not be penalized when the cargo is unretrievable

which is exactly what happens when ports or rails are closed on weekends. Our recommendation is a uniform policy of free time for all US ports to 7 calendar working days Rail ramps 5 calendar working days.

VCOs / NVOCCs should be required to provide the last free day at terminal / port within 24 hours after arrival. Sometimes we are not notified until the day before the last free day. This is unacceptable. If they want to charge then they need to provide the information timely and provide the importer / trucker the opportunity to plan to pull the cargo in a timely manner.

Currently the demurrage clock keeps ticking for US Customs holds / examinations. This should stop. The BCO/ shipper should not be penalized with demurrage charges when the cargo is unretrievable since the purpose of demurrage is to incentivize movement of cargo. During a customs hold / examination you cannot access your cargo. Therefore, demurrage should not be accrued since cargo is unretrievable.