

FEDERAL MARITIME COMMISSION
46 CFR Subchapter B
[Docket No. 22-04] RIN: 3072-AC90
Demurrage and Detention Billing Requirements

February 28, 2022

Comments by J. Peter HINGE – Madison, NJ

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

A: While is it true that NVOCCs are customers of VOCCs, the parties are also potential competitors. It is, therefore, entirely reasonable that in the context of this matter they be treated equally.

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

A: No. The issue is encumbered enough with FMC regulations. There is no practical need to include MTOs since VOCCs' contracts with MTOs are inclusive of demurrage charges in one way or another. There would not normally be any need for direct MTO to shipper demurrage billing relationship.

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?

A: No. See answer #3

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

A: My past experience is that disputes are not over the accuracy of billing information, but rather over the billing itself.

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? B. Minimum billing information.

A: I have no specifics to share about this.

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.

A: Generally agree, but re 'g' and 'h', If the location is a public tariff, it could be listed. However, any reference to service contract numbers would be an issue for some customers who wish to keep that information confidential.

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? 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?

A: No. This is neither practical nor does it serve any practical purpose. Two different parties should not be billed for the same service.

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.)

A: For demurrage import and export containers, the consignee (receiver if 'order' B/L) and shipper, respectively should be the billing party.

For detention, merchant-haulage import containers the billing party should be the B/L consignee (or the identified and declared consignee if an order B/L). If the B/L consignee is an NVOCC, the billing party should be the NVOCC with whom the carrier has a contractual relationship. This eliminates any ambiguity over who shot John. For carrier-haulage import containers the carrier's trucker would normally be responsible for any detention. However, if the B/L consignee does not make the empty container available within the free time, the B/L consignee is the correct billing party. This presumes the B/L consignee has the ability to 'stop the clock' and advise the carrier that an empty container is available for pick-up.

Example 1: B/L consignee advises the carrier that a carrier haulage container is available for pick-up at their facility within the detention free time, there will be no billable detention to the consignee. Any billable detention would be a matter between the carrier and the trucker.

Example 2: The container is made available for pick-up by the carrier's trucker 3 days after the free time expired, the consignee would be responsible for 3 days of detention charges. Any further delay in returning the container to the carrier's depot would be a matter between the carrier and the trucker.

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.

A: No. Please see answer #2.

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?

A: Import demurrage is billed upon container release. Export demurrage is billed within 30 days. Import and export detention is billed within 60 days.

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?

A: For detention, yes. That would reinforce the UIIA. – For import demurrage, this is not an issue as it is paid before cargo release. For export demurrage 60 days is more than enough time for a carrier to issue a bill.

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?

A: Any such information should be available on the carrier's website.

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?

A: If the Commission finds it necessary to also regulate this aspect of a commercial relationship, 90 days would seem to be a reasonable 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)?

A: ANY regulation has the potential to complicate matters and increase costs.

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.

A: It is this writer's opinion that less or no regulation is better than more regulation. In this particular matter the FMC is setting itself up for an increased workload as the shipping community twists and turns in the wind of carriers trying to avoid violating regulations and shipper and truckers trying to avoid cost and then draws the Commission into dispute resolution.