

1. Should the Commission include both VOCCs and NVOCCs in a proposed regulation on demurrage and detention billing?
 - a. Yes, however, there are disparate interests which must be considered for each.
2. Should the Commission include MTOs in a proposed demurrage billing regulation?
 - a. Absolutely, without including MTOs, any such rulemaking will have a significant enforcement gap in which all parties of interest are not subject to the same rules/regulations.
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. Yes, there should be different treatment depending upon the situation and contractual relationships. For instance, carrier haulage arrangements should automatically be billed to the consignee by the MTO. A carrier haulage arrangement is a situation in which the motor carrier is completely without a business relationship to the consignee. So to force a motor carrier to track down demurrage reimbursements from a consignee for whom they do not have a business relationship does not make any sense and only further strains a motor carrier's resources.
4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed?
 - a. We would estimate that 30-40% of demurrage and detention invoices received contain inaccurate information which must be disputed. Some of those frequently disputed items include:
 - i. In-gate or out-gate dates incorrect
 - ii. No Record of usage
 - iii. No in-gate appointments / Port/Rail/Depot closed for in-gating specific equipment
 - iv. Customer should have been billed directly per actual contract with the SSL.
 - v. Customer wishes to pay the SSL directly.
 1. Customer is not contractually setup to receive the bill directly, but wishes to pay the SSL directly for Per Diem (often this is done to avoid motor carrier admin fees)
 2. In this scenario, we are still the ones under threat of shutout / payment hold until the payment is made by the customer and applied by the SSL. This is an unfair practice that demonstrates the asymmetric power an SSL/MTO holds over motor carriers.
 - b. The information most frequently disputed with either demurrage or detention bills relates to allotted free time for equipment. This seemingly minor issue creates massive problems for our company as we are forced into the middle of a dispute between the MTO/Steam Ship Line ("SSL") and the ultimate end customer.

For example, we receive an invoice from an MTO for detention—most likely we receive this invoice at least 30-60 days after a move. We then turn around and pass

through this invoice to the end customer, who may not review the charge for at least another 30-60 days. Thereafter, the customer comes back to us to claim that the demurrage invoice is inaccurate because their contract with the MTO/SSL provides for more free time than what is provided for on the invoice. Our company, as the party in-between these two companies, is not privy to the contractual allowance because we are not a party to the contract. Therefore, we are left to take the claim from the customer and go back to the MTO/SSL to communicate this supposed discrepancy; however, because of the time lag in communication, we might be disputing such invoice after the arbitrary dispute period enforced by the MTO. After coordinating numerous back-and-forth correspondence between all parties involved, the invoice might be: (1) fixed to reflect the agreed-upon free time; (2) refused to be corrected by the MTO due to the time delay; or (3) the MTO finally provides enough information for the customer to realize that this shipment was actually made under a different contract and therefore extended free time is not applicable. In all of the foregoing resulting scenarios, we as the motor carrier have expended a significant amount of time sorting out a dispute which we technically do not have an interest in—either financially or contractually.

5. How much does the type of information included on or with demurrage and detention billings vary among Motor Carriers, among marine terminal operators, and between VOCCs and NVOCCs?
 - a. There is significant variance in the information that is included. Certain MTOs/VOCC/NVOCCs provide an invoice that is nearly perfect; however, there are plenty that limit the amount of information which is provided and this only serves to confuse and obfuscate validation. The biggest issue is that SSL/MTO's have included charges for more than one container on an invoice and meanwhile the motor carrier must sort through each charge individually. We might get one container cleared earlier than some of the others, so we pay it but then you run into the problem with the SSL/MTO not properly applying payments to the right container. Again, this results in a tremendous amount of wasted time and resources.
6. What type of information should be required on billings?
 - a. At a minimum, we believe each PD invoice should include the following:
 - i. Container Number
 1. Size/Type
 - ii. Chassis Number
 - iii. BOL # / Booking #
 - iv. Outgate Date
 - v. Ingate Date
 - vi. Free Time
 1. Total Free Days
 2. Total Billable Days
 - vii. Tiered (if applicable) Billing Rate
 - viii. Customer's Name
 - ix. Customer's Contract # that should apply
 - x. Specify Standard Free time vs. Customer Exception Free time

xi. Specify Door Move vs. Merchant Move

Moreover, all PD Invoices should be One container per invoice to reduce cash application issues on the SSL side. Frequently, SSLs will aggregate equipment on a single invoice which only further causes delays and confusion as the motor carrier is left to sort things out.

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?
 - a. The same expectations should be set for each equipment provider.
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. Yes, in our experience multiple invoices will be circulated concerning the same piece of equipment. This will frequently create confusion and duplicative work for all parties involved. As described above in a previous answer, requiring an invoice to list who the invoice is being sent to and which shipping contract it concerns will greatly alleviate unnecessary work for many parties involved.
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 Motor Carrier's merchant clause in its bill of lading.)
 - a. If all of the information which has been requested to be included on a Uniform Invoice above were provided, then this would not be necessary.
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. It is undeniable that this would be the most efficient and effective system possible. As articulated above, a significant amount of resources is expended by Motor Carriers in reviewing these invoices, billing customers, reviewing discrepancies, and then passing along discrepancies to MTOs. By going this route instead, Motor Carriers would no longer be placed in the middle of MTO and their Customers. Rather, this would drastically reduce the amount of time Carriers spend with invoices which ultimately do not benefit or directly impact their services.

Moreover, this would also stop the practice of causing Motor Carriers to act as the financial intermediary in this relationship. MTOs and any other invoicing party like the ability to 'Shut Out' a carrier from operation until an invoice is paid—that is the leverage MTOs hold in order to receive payment. Thus, Motor Carriers are effectively forced into paying invoices, regardless of whether there is a viable reason for a dispute or delay. Ultimately, this practice forces Motor Carriers into a situation where it is pay-to-play even though these bills are being paid on behalf of Customers. So in effect, the Motor Carrier is being forced to finance large sums of

money in order to keep goods moving. This is both an inefficient and unfair practice, as the party who is least financially able to absorb significant cash outlays—the Motor Carrier—is forced to finance charges for much larger Customers who will ultimately pay the bill 60 or maybe even 120 days later. This practice penalizes small carriers and in no way benefits the efficient flow of goods in interstate commerce. Finally, it should be noted that forcing a 3rd party into the financial intermediary position only further enforces inflationary pressures in supply chains. For example, Motor Carriers frequently assess an ‘Administrative Fee’ to their Customer to cover the cost of the protracted process described above, which is ultimately passed on to the end consumer. By forcing MTOs to simply circulate invoices to the ‘end user’ this eliminates a layer of unnecessary bureaucracy and cost.

If the current system is maintained, then it should be required for all SSL/MTOs to extend credit to the motor carrier for these charges and provide 60-day terms. Paying the demurrage is the first step in delivering a load, so it will be 60 days at the earliest that the motor carrier will see the money from their customer. This would shift the financial burden and properly incentivize SSL/MTOs to work toward more efficient and effective operations.

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?

For Per Diem specifically, motor carrier must be billed within 60 days of ingate date (90 days if they bill the wrong party first).

Demurrage in most cases is due up front before the container is released to the motor carrier. As mentioned above, this practice places a significant strain on Motor Carriers’ cash flow when they must pay up front, especially for 2020 and 2021 with the volumes of demurrage in the market.

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. Yes, although ideally it should be within 30 days. As described above, extended lag times create issues. Current demurrage is paid in advance and detention (per diem) has 30-day terms. The SSL/MTO has 60 days to bill the motor carrier and the UIIA allows for several exceptions that allow the SSL/MTO to abuse this.

The motor carrier has contact information on file with the UIIA and all notifications and invoices are supposed to come to that address. We have seen issues where the SSL/MTO will bill to an address that is not on file with the UIIA and once they discover their error, the clock is reset.

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. **At a bare minimum, contact information should be required.**
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. **The negotiation with the SSL is typically the most time-consuming part of this process which can extend weeks or months. Once an SSL finally does agree that a credit is due, they are typically generated quickly. This is yet another instance in which an asymmetric balance of power harms motor carriers. The motor carrier remains out of pocket all the time that they must sit and negotiate with the SSL.**
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. **FMC regulations on demurrage and detention practices should preempt any applicable laws, agreements, or arrangements by MTO's and SSLs. Existing agreements, including the UIIA, allow for the Motor Carrier to be unfairly burdened because they are not a party to the contract—only the MTO and SSL are privy to the contractual arrangements. One such agreement that would immediately be impacted is the UIIA, which would have to acknowledge FMC fair practices and be revised to embrace these regulations and reasonable billing requirements.**
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. **There needs to be rules in place that are fair to all parties involved and not in the favor of the SSL/MTO. U.S. Motor Carriers are in desperate need of support from regulators and governmental bodies to provide a fair and level playing field. Motor Carriers are left to navigate between foreign flag SSLs that have no incentive to make things easier because their obstinance drives their profit.**
 - b. **Finally, as briefly mentioned above, there needs to be a standardized system to deal with the 'Shut Out' process if it isn't completely overhauled. Currently, SSLs handle a shut out and receipt of payment in any of the following ways:**
 - i. **Proof of payment / remit is supplied and accepted to remove shutout**
 - ii. **Payment must arrive to the company to remove shutout**
 - iii. **Payment must be fully applied and all invoices over 30 closed before shutout is removed**
 - iv. **Entire account including items under 30 days must be paid to release shutout**
 - v. **Re-instatement fee must be paid along with outstanding invoices to have the shutout removed.**

This is yet another issue where disparate treatment by each of the SSLs only confuses an expedited resolution for a Motor Carrier. The lack of uniformity

hinders the efficient flow of goods and allows SSLs to exert anti-competitive and monopolistic practices.