



**Comments of the Intermodal Motor Carriers Conference on the Federal Maritime Commission
Advanced Notice of Proposed Rulemaking Regarding Demurrage and Detention Billing Requirements
Docket No. 22-04**

The Intermodal Motor Carriers Conference (IMCC) is pleased to provide comments outlining member company views regarding the Federal Maritime Commission's Advanced Notice of Proposed Rulemaking on Detention and Demurrage Billing Requirements. The IMCC is an affiliated conference of the American Trucking Associations (ATA), representing the subset of ATA members who operate at our nation's ports and inland intermodal facilities. Members of the IMCC have a vital interest in the issues outlined in the ANPRM.

Overview

Detention and demurrage charges levied by ocean carriers and marine terminal operators remain a major point of contention for motor carriers. This has been amplified by the increased cargo volume over the last year. As ports and other intermodal facilities have struggled to handle this increase in freight, these charges have escalated dramatically, adding significant costs to shippers and motor carriers.

The FMC's Interpretive Rule on Detention and Demurrage represented a strong first step to ensuring that these charges are serving their true purpose of creating an incentive for the movement of freight. Unfortunately, the rule has not had the impact that the IMCC, our motor carrier members and many others in the supply chain would have hoped. Ocean carriers continue to levy unfair and incorrect charges on truckers and shippers often in violation of the regulation. Detention is often levied for days when empty returns are unavailable or when ports are closed. These charges do not represent an effort to incentivize activity but rather have often become a simple revenue raiser for ocean carriers. As a result, motor carriers, shippers and American consumers are facing increased costs that serve little purpose other than adding to the profits of foreign-owned ocean carriers.

In the ANPRM, FMC is seeking information around issues of detention and demurrage billing to determine if additional regulation is required. The IMCC strongly supports an additional FMC rulemaking in this area to address issues that were not adequately resolved by the interpretive rule. FMC is the only agency with regulatory authority in the maritime freight marketplace and has a responsibility to ensure that all parties in the supply chain operate fairly and in compliance with the law. Addressing the ongoing abuse of detention and demurrage charges by ocean carriers and marine terminal operators is well within FMC's jurisdiction and the Commission must act.

For motor carriers, the primary concern regarding the billing of detention and demurrage focuses on the contractual relationships between the parties. Motor carriers do not contract with ocean carriers yet receive detention and demurrage invoices from them. In the IMCC's comments on the NPRM regarding the interpretive rule, we stated our view that these charges should be invoiced to the party with whom the ocean carrier has a contractual relationship. Others such as the Agriculture Transportation Coalition shared this view. We were disappointed that FMC chose not to include this requirement in the interpretive rule. As FMC considers an additional rulemaking around detention and demurrage billing, we would renew our view that these charges should be billed based on contractual relationships as

these contracts may include terms that motor carriers are not privy to such as additional free time. As motor carriers are not aware of negotiated terms, they often are unable to determine whether detention and demurrage charges have been properly assessed. In any subsequent rule, FMC should require that these charges be billed only to parties with a contractual relationship.

Comments on the ANPRM

The ANPRM asks a series of 16 questions and the IMCC will try to respond to them with examples and additional information where possible.

The IMCC believes that a regulation dealing with billing issues around detention and demurrage must be comprehensive and include all such billings and any entities that may be a party to these charges. This must include both VOCC's and NVOCC's as well as marine terminal operators. FMC is the only agency with regulatory authority in this area and should cast a wide net to ensure that all participants in the supply chain have a clear understanding of what is permitted and who can be billed. The IMCC believes ocean carriers and/or marine terminal operators should bill these charges to the entity paying them for their services. Free time, rates and other issues are established in the agreements between these parties and would therefore be the proper place to resolve any disputes. MTO's assess charges to VOCC's according to their port tariff. VOCC's then assess BCO's or motor carriers at a much higher rate. Including MTO's in a billing regulation would result in increased transparency and the potential for reducing the overall cost and exposure for detention and demurrage charges. We would strongly urge FMC to regulate how MTO's bill VOCC's and consider placing a limitation on what VOCC's can then bill BCO's and motor carriers above the MTO tariff.

The requirement that demurrage charges be paid prior to picking up a container does reduce issues around invoicing for these charges. While this is the case, issues regarding payment of demurrage charges can create additional efficiency issues at ports. Having these charges billed to the shipper rather than requiring payment up front would help with cargo fluidity. Detention charges (also known as per diem) are more likely to have problems and members of the IMCC indicate that at least 15-20% and sometimes up to 50% or more of received per diem invoices can be incorrect. This is primarily due to contractual agreements that allow for additional free time. This issue would be resolved by sending invoices directly to shippers rather than motor carriers who are not aware of separate contractual arrangements. While generally the processes to dispute these charges work well, delays by any of the multiple parties involved can result in invoices being outside of the dispute resolution timeframe. Motor carriers must then pay these bills or face the prospect of being prevented from accessing additional containers from that ocean carrier.

This is a critical concern as motor carriers are unfairly forced to become the party responsible for resolving discrepancies between ocean carriers, MTO's and their end customers. Motor carriers are not a party to contracts and may not be aware of contractual allowances for free time. Yet motor carriers receive these invoices and are then responsible for working with ocean carriers and shippers to determine which contract the shipment was under and whether it allowed for additional free time beyond what has been billed. Invoices for these charges may take as long as 60 days to be received from ocean carriers and then customers may take additional time for their own review which can then extend beyond the arbitrary dispute timeframe allowed by the ocean carrier. The time and expense motor carriers must expend in working to resolve these disputes is considerable and should not be their responsibility. These issues could be resolved more quickly and efficiently by requiring that these invoices be sent directly to the contracting party rather than the motor carrier.

The information provided by ocean carriers on invoices varies greatly. Requiring standard information including all the data points contained in the ANPRM would assist the invoiced party in determining if the fees have been assessed correctly. Additional information related to the customer contract number and any terms contained in the contract would also be beneficial. Ocean carriers also often aggregate equipment onto a single invoice, a practice that can make it more difficult to determine which equipment is covered. Requiring a single invoice for each container would reduce delays and confusion by allowing invoiced parties to match fees more easily to the right containers. Requiring the inclusion of information regarding intervening clock-stopping events would be particularly helpful in ensuring that invoices are correct. In today's high volume environment, empty returns are a particular flashpoint, as return locations are often closed entirely or open for only short periods of time. Motor carriers are being assessed detention charges even if returns are closed and then must document these closures using screenshots of MTO websites or other similar mechanisms. Requiring that detention and demurrage invoices include information about clock stopping events such as empty return closures would provide considerable clarity regarding whether invoices are correct. VOCC and NVOCC invoices should be required to include the same information.

Motor carriers do report instances where multiple invoices have been sent for the same equipment creating significant confusion and adding to administrative costs. Requiring that invoices identify all parties that have received bills would eliminate this duplicative effort. The billing party should also be required to identify why the invoiced party has been billed and is liable for charges.

As has been stated throughout these comments, the IMCC believes that detention and demurrage charges should be billed directly to the contracting party. Since that is the case, we would support any requirement to have MTO's bill demurrage directly to shippers. We would point out that MTO's may not always be aware of or connected directly to the shipper so this could be impractical. If FMC determines that is the case, an alternative would be to require ocean carriers to bill the shipper directly for all charges and require that all invoices include a breakout of the demurrage imposed by MTO's. Today, motor carriers must pay demurrage charges prior to picking up a container. They generally then bill the shipper for these charges creating additional processes and costs. Requiring direct billing of these charges to shippers would eliminate this issue and remove motor carriers from involvement in this process. This would result in more efficient movement of cargo as well as reducing overall shipping costs. Motor carriers often charge fees to their customers to offset the costs of the administrative burden of paying these fees in advance. Having bills sent directly to shippers would also save these costs and increase efficiency and accuracy.

We would also urge shorter timeframes for the billing of invoices. Motor carriers often must pay these charges and then seek reimbursement from shippers. This can create cash flow issues, especially with the current 60-day timeframes. We would urge that invoices be issued within 30 days. We would discourage requiring invoices to identify circumstances when charges may be waived. It would not be possible to properly identify all situations that could lead to waivers and requiring the inclusion of such a list would create an incentive for ocean carriers to implement charges for reasons outside of those identified.

Ocean carriers generally issue credits for dismissed charges and do so in a timely fashion once they have agreed to do so. The dispute process created under the UIAA generally allows motor carriers to dispute charges without first having to pay them. Unfortunately, motor carriers must expend time and resources disputing these charges and negotiating with ocean carriers. The need for refunds can arise if

a BCO also pays a charge after it has been paid by a motor carrier. This would be lessened significantly if not completely by a requirement that shippers be billed for these charges.

While UIAA and other agreements can and do outline important issues such as dispute resolution procedures, they cannot supersede government policies. Once a detention and demurrage billing rule is issued, the UIAA can be updated to comply with its terms. Agreements such as the UIAA must comply with all applicable federal and state regulations.

In conclusion, the IMCC believes a new regulation governing terms and conditions around the billing of detention and demurrage is critically important. Today, motor carriers find themselves in the position of having to pay for these charges despite not being the contracting entity with any party that assesses them. This makes truckers responsible for negotiating with foreign-owned ocean carriers for whom these charges represent a significant revenue source and who lack the incentive to make any changes to the current system. This makes little sense. While the FMC sought to address ocean carrier detention and demurrage practices in the interpretive rule on detention and demurrage, it is clear additional regulation is necessary. FMC should issue a Notice of Proposed Rulemaking on this issue as soon as possible that outlines that all detention and demurrage billings should be sent to the parties with a contractual relationship.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Eisen". The signature is fluid and cursive, with the first name "Jonathan" and last name "Eisen" clearly distinguishable.

Jonathan Eisen
Director, Intermodal Motor Carriers Conference.