



The Resource for Warehouse Logistics

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April 19, 2022

Daniel B. Maffei  
Chairman  
Federal Maritime Commission  
800 North Capitol Street NW  
Washington, D.C. 20573

Re: Docket No. 22-04; RIN 3072-AC90

Dear Chairman Maffei:

The International Warehouse Logistics Association (IWLA) submits the following comments to the Federal Maritime Commission (FMC) in response to the Advanced Notice of Proposed Rulemaking (ANPRM) on demurrage and detention billing requirements. The ANPRM seeks comment on whether the Commission should require certain minimum information with demurrage and detention billings and whether common carriers and marine terminal operators should be required to adhere to certain practices regarding timing of these billings.

Founded in 1891, IWLA is the trade association representing warehouse-based third-party logistics (3PL) providers across North America. Member companies range in size from 10,000 square foot single city warehouses to international companies with more than 25 million square feet of warehouse space, many of which are in the vicinity of the country's major ports, including California's San Pedro Bay and Inland Empire regions, which are heavily impacted by these ocean shipping issues.

### **General Comments**

- The import demurrage clock should only start when the terminal makes the container available, not before. For exports, if the carrier rolls the container, demurrage should not be billed to the shipper or NVOCC.
- Detention cannot be charged until there are delivery appointment windows available.
- Demurrage calculation and payment:
  - Demurrage should be a standard amount per port and per day.
  - Terminals must accept electronic funds transfers, credit cards (without fees), and the possibility of credit from/ with NVOCCs or the ultimate consignee.

- Charges should be fair and reasonable, with the principal goal of moving freight from the terminal. Amortized value of the equipment should be considered when setting detention rates.
- Terminals and carriers should be required to provide information on and justify detention and demurrage invoices, including:
  - How the charges are calculated - container availability date, last free day, etc.
  - Reason for demurrage
  - All parties receiving the invoice
- Invoices should be readily available (i.e. online) so NVOCCs can provide statements to their customers.
- Invoices should be issued within a set period of time (i.e. 30 days).
- Free time should be capped for all shippers. There is a legitimate need for some large shippers to have more free time. However, granting free time extensions may be prohibited under the Shipping Act provision that prohibits favoring some shippers and discriminating against others.

### **Responses to Questions Asked in the ANPRM**

#### Scope

1. Should the Commission include both vessel-operating common carriers (VOCCs) and non-vessel-operating common carriers (NVOCCs) in a proposed regulation on demurrage and detention billing?

Yes – both VOCCs and NVOCC’s are exposed to portions of the supply chain that will impact demurrage/ detention and have risk of accruing costs. If they issue detention and demurrage charges to shippers, then shippers see no reason to exclude them.

2. Should the Commission include marine terminal operators (MTOs) in a proposed demurrage billing regulation?

Yes, if the MTO is liable for detention/ demurrage charges assessed for not flowing containers in a timely manner. They are responsible for getting the containers from vessels to the driver, but they need the resources (chassis/ drivers) to flow product in a timely manner.

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, differentiating those would be preferable. Terms and conditions should be standardized in a similar manner to what the Surface Transportation Board requires of railroads.

4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed? Industry standardized reason codes for demurrage and detention would allow parties to pay or dispute charges.

Warehouses regularly dispute pick up/ delivery dates for demurrage charges, as well as load times used to calculate detention charges.

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 needs to be consistency between all services.

#### Minimum Billing Requirements

6. What type of information should be required on billings? Should the Commission require certain essential information be included on invoices?

IWLA members recommend the following information be included on invoices:

- Delivery dates
- LFD dates
- Pick up dates
- Delivery/ pickup times (arrival and departure)
- Container/ trailer number
- Purchase order information

#### 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 information or timeframes?

Warehouses recommend invoice/ notification of charge within 72 hours of occurrence.

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?

YES - transparency and better communication between all parties involved is necessary.

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.)

Yes!

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 current process is preferred.

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?

IWLA members report 1-3 months.

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?

Less time would be preferable, but no more than sixty (60) days is adequate.

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?

Yes! The Commission should identify factors for waiving demurrage charges such as chassis shortages, port congestion back log, truck shortages, late clearances, etc.

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 and what should that timeframe be?

Sixty (60) days is practical.

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)?

N/A

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 Commission should require per diem/ demurrage generators to file monthly reports, as the Surface Transportation Board requires of railroads, of total per diem/ demurrage invoiced and break down by recipients. This would identify bad actors and be a cause for investigative action by the Commission for abusive practices.

The International Warehouse Logistics Association appreciates your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve DeHaan', with a long horizontal stroke extending to the right.

Steve DeHaan  
President and CEO