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Sent via e-mail to [secretary@fmc.gov](mailto:secretary@fmc.gov)

April 14, 2022

Mr. William Cody  
Secretary  
Federal Maritime Commission  
800 North Capitol Street N.W.  
Washington, D.C. 20573

Re: Docket No. 22-04, Comments on Demurrage and Detention Billing Requirements  
ANPRM  
Comments of LG Electronics USA, Inc.

Dear Mr. Cody:

These comments are submitted on behalf of LG Electronics USA, Inc. (LGEUS) in response to the above-referenced Advance Notice of Proposed Rulemaking (ANPRM) published by the Commission on February 15, 2022.

A subsidiary of global manufacturer LG Electronics, Inc., LGEUS is a leading U.S. seller of consumer products, including a range of stylish and innovative home entertainment products, home appliances, commercial displays, air conditioning systems and energy systems.

LGEUS is compelled to comment on the ANPRM because of unprecedented ocean transportation cost increases during the last two years. Among these rising costs are ever-escalating demurrage and detention amounts that further drive up the prices that U.S. consumers must bear, contribute to ongoing inflationary pressures, and thwart their purported goal of promoting supply chain fluidity. Rather, these charges are applied unfairly and arbitrarily in circumstances when shippers and beneficial cargo owners (BCOs) are, despite their efforts, unable to access and return the equipment subject to the charges.

LGEUS believes that the FMC's ANPRM is a step in the right direction because current billing practices often obscure unreasonable detention and demurrage charges and thus fail to serve their incentive function. Greater transparency and consistency around invoicing and payment would help address the problem and contribute toward the reduction of mounting costs.

With the above as background, LGEUS appreciates the opportunity to offer our views on the questions posed by the Commission in the Information Requested section of the ANPRM.



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## A. Scope

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

Yes.

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

Yes, all parties in possession of information related to demurrage and detention charges should be included. The proposed billing regulation should ensure that duplicative billing by multiple parties does not occur.

### **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, charges should be properly distinguished and itemized so that each charge can be assessed and, if warranted, disputed by the billed party based on the applicability and reasonableness of the individual charge.

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

To answer completely, LGEUS requires more time to review bills and calculate the percentage of inaccurate information, as well as to identify information that is most frequently disputed.

### **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?**

In most cases, the information is similar.

## **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 [list omitted]:**

LGEUS supports requiring all of the listed items on invoices. In item (k) (which covers any intervening clock-stopping events), the ANPRM provides five examples. LGEUS advocates that the rulemaking expand this list of examples based on comments received and otherwise elicited in Commission proceedings to date which demonstrate that there are a host of unreasonable



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charges being assessed notwithstanding the inability to pick up and return equipment to the ports in a timely fashion. In addition to the first five examples from the ANPRM, there are other circumstances or events (including unavailability of chassis, dual transaction requirements that prevent container return, and return location changes issued after the trucker has already undertaken delivery to a previously designated return location and cannot successfully reroute) that should stop the free-time clock. For the sake of clarity, we also note that the free-time clock should toll and invoices should reflect when ports are closed (*i.e.*, weekends, holidays and temporary port closures).

### 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 information or timeframes?**

Bills should be issued within a specified number of days after the occurrence of the event that triggers the charge (*i.e.*, after the last free day). Most importantly, the billed party should be allowed adequate time to review the invoice in order to assess whether the charge is proper. It is important to note that frequently parties are coerced into premature payment of demurrage charges when terminal operators refuse to allow gate-out from the port unless demurrage payment is tendered on the spot; this practice is fundamentally unreasonable and is also contrary to the Uniform Intermodal Interchange Agreement (UIIA) cited in the ANPRM. Section H of the UIIA provides that the invoiced party have 30 days from receipt of invoices to dispute items thereon: "The Invoiced Party will have 15 days from the date of the Invoicing Party's response to either pay the claim(s) or seek arbitration." Clearly, the UIIA contemplates that payment cannot be required as a condition to pull containers from a port. The practice of requiring such payments must be prohibited, especially when it comes to invoiced parties whose accounts are in good standing.

#### **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. Only one party should be issued an invoice in order to avoid confusion.

#### **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.



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**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.**

This question presumes that the fluidity incentive is properly directed at shippers whenever demurrage applies. However, this is not self-evident and in the current environment the demurrage bill should be ultimately directed to the VOCCs to incentivize them to make containers available.

**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?**

Usually, this happens within a month.

**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?**

Yes.

**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. With regard to the last two questions, the circumstances justifying waiver and the evidentiary requirements sufficient to support a waiver should not be left to the arbitrary decision of the invoicing party but should be in accordance with the Shipping Act and Commission rules and interpretations.

**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?**

Refunds should be issued in a timely manner, certainly within a specified number of days.

**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)?**



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We note that the invoiced party (e.g., BCO) is not necessarily a party to the UIIA and does not have recourse under its arrangements. Shippers and BCOs need laws and regulations that protect them against the avalanche of unreasonable charges now being invoiced or passed through to them.

**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.**

Detention and demurrage charges that do not serve the fluidity incentive should not be assessed. Currently, these charges have become a fluidity *disincentive* because they are a source of significant income to invoicing parties. In addition, a large percentage of these charges are highly unreasonable and plainly unfair. We submit that the system is broken and the Commission must promulgate rules to restore reasonableness and efficiency. For this reason, LGEUS supports new invoicing requirements, as stated above.

We thank the Commission for the opportunity to submit these comments and look forward to an expeditious rulemaking process that will provide much-needed relief to shippers and BCOs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John I. Taylor', written in a cursive style.

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