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April 15, 2022

Mr. William Cody
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573

RE: Docket No. 22-04, Comments on Demurrage and Detention Billing Requirements ANPRM

The National Association of Manufacturers (NAM), the largest manufacturing association in the United States representing 14,000 manufacturers in every industrial sector and in all 50 states, respectfully submits these comments for consideration by the Federal Maritime Commission (FMC) regarding the Advance Notice of Proposed Rulemaking (ANPRM) on Demurrage and Detention Billing Requirements, Docket No. 22-04. The NAM appreciates the opportunity to comment in advance of the rulemaking.

Manufacturers in America have spent the past two years finding innovative measures to counter pandemic-related slowdowns in our national shipping supply chain. Over the course of the pandemic, manufacturers have been instrumental to the economic rebound and increased commercial activity providing essential goods to American consumers. Faced with ever-evolving circumstances, unreliable delays in delivery schedules and skyrocketing shipping cost increases, manufacturers strongly encourage the FMC to advance a rulemaking related to detention and demurrage billing that will increase billing transparency by standardizing reporting requirements for assessed fees and ensure that bills are invoiced within a reasonable window of time. As the FMC considers the focal issues related to detention and demurrage fees, the agency should further review the underlying causes resulting in historic container dwell times, port congestion and associated systematic delays under all available authorities.

Standardizing Bill Information

Current demurrage and detention billing practices vary widely between the different vessel-operating common carriers (VOCCs), non-vessel-operating common carriers (NVOCCs) and marine terminal operators (MTOs). A shipper or beneficial cargo owner (BCO) may receive multiple or variable bills from the different parties involved in container movement because there are no required reporting standards, no consistent presentation of facts, data and related information necessary for verification and no commonly understood dispute resolution mechanism. The result for manufacturers is all too often an assessment of fees without basic or industry-recognized supporting evidence and a convoluted, inconsistent dispute resolution process with no clear guidance or consumer-driven oversight.

The NAM would encourage the FMC to pursue the standardization of reporting requirements in all demurrage and detention billing processes to ensure assessments are appropriately levied and to provide as transparent a procedure for disputing charges. These requirements should apply to all parties that may be involved in submitting demurrage and

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detention bills to shippers and BCOs, including VOCCs, NVOCCs and MTOs. Billing parties should be required to provide, at a minimum, the basic information to include billing date, due date, bill of lading and container numbers, and demurrage/detention rate schedules. Shippers and BCOs should receive information declaring vessel arrival and departure dates, container pickup and return availability dates and locations, and information related to intervening events including equipment and appointment availability. Without clear and prescriptive reporting requirements, shippers and BCOs cannot currently verify demurrage and detention charges are valid. Eliminating the need for redundant review of bills and for time-consuming scrutiny to locate existing information about past shipments will increase systematic efficiency. Further, the FMC should consider mechanisms to facilitate or encourage electronic exchange and processing of billing information. Expanding the prevalence of electronic interactions between billing parties will expedite invoice payments and audits.

By standardizing information requirements, the FMC can also enhance dispute resolution fairness and efficiency. With all parties aware of relevant identifying information and affiliated data about shipment times, dates and locations, shippers will be able to review fee assessments more appropriately and accurately contest those that have been levied in error. All parts of our domestic shipping industry should work in concert to encourage efficient time management across the entire supply chain. Transparency and consistency in the above-mentioned manner would productively impact overall schedules and collective efforts.

Billing Process Timelines

In addition to requiring the inclusion of basic and consistent information on demurrage and detention bills, the FMC should pursue a standardization of billing deadlines and timeframes. NAM members consistently report a wide range of billing invoice delivery times, from as short as 30 days to as long as nearly 24 months. The ANPRM proposes a potential 60-day timeframe for demurrage and detention bill issuance. The NAM strongly agrees that a timely deadline for fee assessment should be a necessary provision of any rulemaking.

Manufacturing operations have been interrupted and significantly challenged as a result of supply chain disruptions since the pandemic began. Businesses have developed measures to affect their production and inject necessarily flexibility into their operations to counter these impacts. Under the present lack of an established, regulated deadline for demurrage and detention invoicing, shippers and BCOs regularly receive surprise costly bills lacking pertinent identifying information for a shipment that may have been received and processed months prior. Responding to these bills can not only mean significant financial impacts, but a time-consuming allocation of staff hours and effort that could otherwise remain focused on cargo delivery and efficient logistics operations.

By instituting a billing deadline, the FMC can ensure that shippers and BCOs will be able to accurately maintain shipping information and records to validate any demurrage or detention bills in an appropriate time frame. Further, establishing transactional timelines should also include provisions related to refunding fees that have been overcharged, overturned through a dispute process, or charged in error. Collectively, FMC regulation of billing deadlines and

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timelines for response will streamline the process for all parties and build foundational structures that better protect business operations across the overall supply chain.

Additional Policy Considerations

The ANPRM presents a number of questions for consideration related to the scope of a potential rulemaking on demurrage and detention fees. The NAM believes the above-mentioned recommendations will significantly improve the overall fee and billing system, but further encourages the agency to vigorously pursue policies to address underlying causes of delayed equipment and cargo dwell time in America's shipping supply chain.

Establishing a regulation to improve the parameters of demurrage and detention billing will simplify an often complicated, costly and inefficient process. Utilizing FMC authority to impact the fundamental reasons many American ports are currently operating at or above 100% facility container capacity would present greater benefit for all operatives in the supply chain. Additional policy related to the prohibition of blank sailings, in which empty containers occupy valuable export cargo space aboard transocean ships, service denial for outgoing container bookings, and simplifying dispute resolution procedures would result in more efficient equipment movement and streamline systematic operations.

Manufacturers appreciate the FMC's focus on making necessary updates to the rules governing demurrage and detention fee assessments and seeking public engagement in that endeavor to improve efficiency at the ports and support a consumer-driven approach for manufacturers utilizing ocean shipping. The NAM looks forward to working with the agency as this potential rulemaking advances. This is a unique opportunity for the FMC and manufacturers to approach a rulemaking collaboratively in order to identify additional fixes to support efficient equipment and cargo movement that will more accurately reflect responsibilities of all parties impacted by demurrage and detention.

Comments submitted electronically by:

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