

**UNITED STATES
FEDERAL MARITIME COMMISSION**

**Advanced Notice of Proposed Rulemaking on Demurrage and Detention Billing
Requirements
Notice of proposed rulemaking.
Docket No. 22-04**

COMMENTS

SUBMITTED BY THE

TRANSPORTATION INTERMEDIARIES ASSOCIATION (TIA)



1625 Prince Street, Suite 200
Alexandria, Virginia 22314
703-299-5700
www.tianet.org

Anne C. Reinke
President & CEO

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The Transportation Intermediaries Association (TIA) submits these comments in response to the Federal Maritime Commission's (FMC) Federal Register notice published on February 15, 2022, seeking comments on a variety of issues, including whether the Commission should require common carriers and marine terminal operators to include certain minimum information on or with Demurrage and Detention (D&D) billings. Additionally, the Commission is interested in receiving comments on whether it should require common carriers and marine terminal operators to adhere to certain practices regarding the timing of D&D billings.

As the premier organization of the third-party logistics industry, TIA will focus these comments on how the proposed rulemaking will impact our membership.

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the \$232 billion third-party logistics industry. TIA is the only U.S. organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is the voice of transportation intermediaries to shippers, carriers, government officials, and international organizations.

TIA members include more than 1,800 motor carrier property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and NVOCCs), air forwarders, customs brokers, warehouse operators, logistics management companies, intermodal marketing companies, and motor carriers. TIA members handle the purchase of more than \$100 billion worth of transportation each year and employ more than 130,000 people across the country.

TIA is also the U.S. member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing approximately 50,000 companies in virtually every trading country.

Transportation intermediaries or third-party logistics professionals act somewhat as the "travel agents" for freight; however, given the wide varieties of freight, specific needs of each shipper, and the diverse issues applicable to anyone's load means that third-party logistics professionals must have expertise far beyond what a traditional "travel agent" must possess. These companies serve tens of thousands of shippers and carriers, bringing together the transportation needs of the cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers.

Transportation intermediaries are primarily non-asset-based companies whose expertise is in providing mode and carrier-neutral transportation arrangements for shippers with the underlying asset owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation, to meet those needs. Transportation intermediaries bring expertise to meet the shippers' transportation needs.

TIA GENERALLY SUPPORTS REQUIRING MINIMUM INFORMATION RELATING TO D&D BILLINGS

TIA, as part of the Coalition for Fair Port Practices, previously petitioned FMC in December 2016 to initiate a rulemaking to clarify what constitutes "just and reasonable rules and practices" with respect to the assessment of demurrage, detention, and per diem charges by ocean common carriers and marine terminal operators when ports are congested or otherwise inaccessible (Petition

No. P4-16). FMC similarly identified a need for such guidance to address concerns over D&D fees in Fact-Finding Investigation No. 28. TIA is glad to have seen that petition come to fruition.

TIA RESPONSE TO PROPOSED QUESTIONS BY FMC

SCOPE

1. Should the Commission include both VOCCs and NVOCCs in a proposed regulation on D&D billing?

The association believes that both Vessel Operating Common Carriers (VOCCs) and Non-Vessel Operating Common Carriers (NVOCCs) should be addressed in the regulation, however, they should be treated differently. VOCCs (that charge per diem for use of their equipment) and Marine Terminal Operators (MTOs) (who charge demurrage for containers that remain on the port property beyond free time) truly control these charges. Given the nature and business practices of NVOCCs and the role they play in the supply chain, they technically have no control of these detention/demurrage charges and are rather serving as an intermediary between two customers the shipper of the goods and the carrier that ultimately hauls them.

The main difference is in our membership, Ocean Transportation intermediaries (OTIs) from that of VOCCs and MTOs, are technically not the "carrier" or the one imposing these D&D fees. That responsibility falls on the terminal operators and vessel carriers. The responsibility as a third party is to bill these and all other charges timely to the shipper/customer. However, if the NVOCC is not billed these charges on a timely basis (which is addressed further in this document) we have no control or recourse other than to bill customers when our members receive a notification.

In summary, TIA believes that our members have a role to play in the detention and demurrage charges but should be refined to the role that they play in the supply chain and the transaction. The Department of Transportation (DOT) has been trying to deal with the issue of detention time for quite a while and has often put the onus on industry to find a solution that is favorable to all parties involved.

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

Due to the role and placement of NVOCCs in the supply chain, TIA members are external to the operating dynamic between MTOs and VOCCs. It is clear, however, that these two entities often work in a misaligned manner and the costs and inefficiencies are borne by NVOCCs, Importers, Motor Carriers, and other third parties, especially within the domestic supply chain. For instance, demurrage invoicing is often significantly delayed and riddled with error. If regulation can stipulate criteria and timeframes, it seems that would be helpful while still respecting free-market principles.

Our members often get bills from carriers that are up to 180 days past the incident date, leaving tracking down receipts and paperwork nearly impossible. VOCCs and MTO should be held to tighter stipulations on billing and charging and realistic timeframes should be implemented.

4. What percentage of D&D bills contain inaccurate information, and which information is most often disputed?

TIA members have told us their best estimate is around 30% is inaccurate. In pre-COVID-19 pandemic times, it was far lower than that. Now that extended free time for importers has been almost entirely removed by ocean carriers, it has created or expanded the problem of inaccuracies. These have become almost impossible to dispute, even when you can prove the billing is incorrect. These inaccuracies are not willful but a byproduct of the current supply chain crisis our members and country are facing. One of the main issues is the timeliness of the billing. Receiving a bill for D&D 90 days after an incident is very hard to dispute because of how much happens day to day between the incident and the bill.

Common issues include the bill of lading, problems with the freight description, and contact information. Again, TIA believes that emerging technology around billing could be utilized here to further expedite and ensure accuracy in billing. Timeliness matters here, a bill received 30 days following a container being returned to the port is much easier to track than a bill 180 days later.

5. How much does the type of information included on or with D&D billings vary among common carriers, among marine terminal operators, and between VOCCs and NVOCCs?

It is very common for each carrier to have its own billing process and pricing schedules. The system is de-standardized in how it operates. Each company may have different rate schedules, different day calculations, and methods of payment (who or how to pay). Our members have reported that the major marine terminals are pretty straightforward and generally easier to deal with. It's a known number of free days and they use the day in, and day out multiplied by a flat and known rate. Carriers seem to assess all different rates and the application of days can be less than accurate.

TIA opposes a standardization of **rates**. However, supports a process of finding industry best practices to find common ground in the process surrounding rates process. This will help all parties involved in the supply chain to have a better understanding of the stipulations and terms while supporting free-market principles.

Minimum billing information.

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

TIA supports all of the aforementioned items issued in the NPRM and thinks each of these points is a critical piece of information that should be included on invoices. The goal should be to provide all the facts or data that a party needs to accurately understand and validate the reason for the invoice. TIA would support an abundance of information versus the shielding of certain facts.

The invoice should also clearly and accurately show the contractual free time allowance specific to each shipper or NVOCC for that particular contract if it is different from the tariff or standard free time. A major problem that our members have flagged is the lack of carrier-wide visibility that creates confusion, and it seems to always fall on the shipper or NVOCC to "prove" they were granted additional free time by the carrier.

In terms of clock-stopping events, this has become a normal course of action for the current supply chain. The swings in the market, global disruptions in the oil and gas market, and a pandemic that has not spared any region have created reasonable time-stopping events. This needs to be accounted for and standardized while offering a level of flexibility to ensure that it meets market demands.

It is a universally good thing for motor carriers to pick up their cargo effectively, and quickly. If they do not, the free clock continues to run and carriers are hurt by this, having a direct impact on highway safety.

Billing practices.

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?

It is very common to invoice and bill multiple parties for these charges. The drayage truck will be charged and simply pass the bill along to the third-party logistics company, who will pass it along to the customer. The billing of multiple parties depends on the product, end-user, and other variables. The current status quo results in multiple layers of pass-through billing, this results in appeals and questions about originating fees and the merit behind them

Many times, the carrier will have to front money to have the freight released, putting a personal burden on the truck driver. Additionally, our members have seen multiple invoices sent to different parties relating to a single container.

Lastly, more and more these bills seem to be a de facto offsetting revenue generator versus an incentive mechanism, this creates a conflict in the motivation to fix the system.

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, TIA supports more direct, robust, and comprehensive billing practices to ensure the correct party is receiving the final bill. TIA notes that this is another area in which emerging technology can play a crucial aspect. For example: right now our members tell us that the MTO will not clear a container for release until all outstanding charges are paid: this is completed through the website/app, on-site, not invoicing days later but immediately upon arrival from the carrier. Technology can speed up this process by having the fines and outstanding debts paid for before the carrier arrives, therefore speeding up the pick-up process. This is a more effective and expedited way of clearing freight for the next steps in the supply chain without having to wait for a physical invoice from the MTO. This charge is paid on-site, at the port. It is passed through to brokers and then the broker's customers. Lastly, the carrier clears the charges, this bill must not come at the personal expense of the carrier.

Clarity also is a good thing to have when appealing lawful D&D charges. This gives all actors involved more information to make the best decision for their business.

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.

In port/terminal situations, the ocean carrier will often quickly hide behind “it’s the terminal who charges us, so we are passing the charges to you”. Again, TIA members are held hostage to pay, with no control. Additionally, in this current congested environment, they are commonly charged D&D for inefficiencies or operational failures at the port or terminals, sometimes at no fault of their own given the skyrocketing demand. A truck driver sitting in line on the last free day to pick up and ultimately be turned away (for various terminal operational excuses) and yet D&D will start accruing the next day. TIA strongly supports direct, standardized automated billing to a single-payer to cut out multiple layers of third-party pass-through billing. This saves time, and money and can take out levels of confusion that can result in inaccurate billing.

12. Should the Commission require D&D invoices to be issued within 60 days of the date when the detention/demurrage/per diem stops accruing?

TIA suggests a 60-day maximum window provide any billing or invoices and the attached documentation. Any more than 60 days results in wasted time trying to secure records to confirm or dispute. TIA would also ask FMC to consider the 30/60 days to be the timeframe before charges become invalid, this would incentivize the timeliness of any paperwork.

TIA members have received bills 180 days after a transaction took place, making it nearly impossible to locate all the paperwork and support material needed to review the charges and possibly appeal.

13. Should the Commission require specific information to 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, there should be very clear instructions noted on the invoice with specifically “how” to dispute these types of charges. TIA would like to see a minimum standard questionnaire and information section on all invoices relating to charges but also relating to the appeal process. There should also be a required minimum response time once all process steps have been submitted. Consider a system like the IT system combined with a standardized credit card bill. This system has in place a ticket number, one can track the progress of the claim and can quickly relay new information or inquire about the status. The credit card bill has the contact information and the process the customer has in place to dispute charges.

CONCLUSION

TIA commends FMC for clarifying how the Commission will evaluate the reasonableness of port D&D charges, and specifically for its efforts to re-align D&D policies with their intended purpose of incentivizing efficient cargo handling and movement. TIA encourages the FMC to consider the feedback presented in this document. TIA members play a unique role in the supply chain, placed between the business community and the carrier community, our members are well-positioned to give feedback on these issues.

Respectfully submitted,

TIA
1625 Prince Street, Suite 200
Alexandria, VA 22314
703-299-5700
www.tianet.org



Anne Reinke
President & CEO