



April 14, 2022

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

Re: Demurrage and Detention Billing Requirements ANPRM (Docket No. 22-04)

Dear Secretary Cody:

The Toy Association appreciates the opportunity to submit the comments below to the Federal Maritime Commission regarding the Advanced Notice of Proposed Rulemaking on Demurrage and Detention Billing Practices. The Toy Association strongly supports the Commission's ANPRM and encourages the agency to quickly move to a NPRM to finalize billing requirements.

The toy industry was severely harmed in recent years by the international shipping crisis of delays, container costs, and demurrage and detention fees (and a host of costly add-on charges) that was part of a systemic transportation breakdown, from factory loading dock to retailer receiving dock. The shipping crisis came along with rising costs across the supply chain and the need for toy companies to take offsetting price increases, all against a backdrop of continued evolution in retail and e-commerce driving low prices, as well as other concerns including COVID variants, which threatened many of our many and especially our small companies worrying about whether they could stay in business.

Many small- and mid-size toy companies are still in recovery mode after being shut out or shut down during the height of the pandemic. Their hopes were pinned on a successful 2021 holiday season, yet their products did not all arrive in time – or at a final cost that made the effort worthwhile. U.S.-based manufacturers are facing similar steep increases in the price of raw materials and our nation's ongoing worker shortage. What's more, consumers and kids who we exist to serve faced a holiday season with the potential of limited selection and disappointed kids who didn't get their favorite toy over the holidays.

Founded in 1916, The Toy Association™, Inc. is the not-for-profit trade association representing all businesses involved in creating and delivering toys and youth entertainment products for kids of all ages. The Toy Association leads the health and growth of the U.S. toy industry, which has an annual U.S. economic impact of \$98.6 billion, and represents hundreds of companies including manufacturers, retailers, licensors, and others who are involved in the youth entertainment industry. Its manufacturing members account for 93% of U.S. toy and game sales driving the annual \$38.2 billion U.S. domestic toy market. The Toy Association serves as the industry's voice on the developmental benefits of play and promotes play's positive impact on childhood development to consumers and media. The organization has a long history of leadership in toy safety, having helped develop the first comprehensive toy safety standard more than 40 years ago, and remains committed to working with medical experts, government, consumers, and industry on ongoing programs to ensure safe

and fun play. As a global leader, The Toy Association produces the world-renowned Toy Fair New York; advocates on behalf of members around the world; sustains the Canadian Toy Association; acts as secretariat for the International Council of Toy Industries and International Toy Industry CEO Roundtable; and chairs the committee that reviews and revises America's widely emulated ASTM F963 toy safety standard.

A. Scope.

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

Yes, both VOCC's and NVOCC's should be regulated as far as demurrage and detention billing. The charge per day needs to be lowered and the free time extended.

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

MTO's are a critical part of the process and should also be regulated as they are the carrier of the good throughout the transportation process. There would be no reason for demurrage accrual if they are responsible for the entire carriage.

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 and yes, as we feel it will help with management and transparency.

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

Most disputed information is the number of days that are claimed for demurrage/detention charges. 20-25% of days billed can be misreported. Other disputed charges resulted from appointment charges. We hope we can dispute charges that result from equipment shortages or port congestion.

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?

Information varies greatly from VOCC, NVOCC, MTO. It is very inconsistent and unclear.

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: **ALL of the below pieces of information should be included/required on billing relevant to import and/or export shipments.**

a. Bill of lading number

b. Container number

c. Billing date

d. Payment due date

e. Start/end of free time

- f. Start/end of demurrage/detention/per diem clock
- g. Demurrage/detention/per diem rate schedule
- h. Location of the notice of the charge (i.e., tariff, service contract number and section or MTO schedule)
- i. For import shipments:
 - i. Vessel arrival date
 - ii. Container availability date
- j. For export shipments:
 - i. Earliest return date, including identifying any modifications to the earliest return date
- k. Any intervening clock-stopping events, for example:
 - i. Unavailability of container / Unavailability of chassis
 - ii. Unavailability of pickup or return locations
 - iii. Unavailability of appointments (where applicable)
 - iv. Restrictions on chassis accepted
 - v. Force majeure-related events
- l. Please note if any portion of the charge is a pass-through of charges levied by the MTO or Port.

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?

The billing for detention/per diems should be done no more than 30 days after the empty container is returned to the port. It should not take 6 months for a VOCC to issue a detention/per diem bill or any charges for that matter. Requirements should be consistent between VOCC and NVOCC. Lastly, we seek more timely invoicing to avoid the undue burden of review and research on older container transactions.

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, absolutely they must. It is best practice for an accounting department to post an invoice billed directly to the payor for audits, payment tracking etc.

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, it provides more clarity if the billing party can identify it.

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.

Yes, and we are already in the practice of such a scenario. We normally pay demurrage to MTOs, and detention to SSLs. Direct billing would help avoid lengthy delays in billing and demurrages charges.

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?

It all depends on the carrier. Evergreen Lines takes a while (over 3 months) to send out a billing invoice. MSC takes weeks and so does CMA CGM. A member company also received additional demurrage invoices more than a year after their shipment arrived at the U.S. port.

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?

Billing should be issued 10 days after per diems/detention/demurrage stops accruing.

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, to all questions. Shipment specific information should be included on the invoice along with instructions on how to dispute charges and evidentiary requirements.

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?

We have found it very, very difficult to receive a refund of demurrage and detention bills. Carriers/ports often reject any claim as not having sufficient evidence. Approved claims should be refunded within 30 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)?

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.

- Per diems should not be charged on empties unable to be returned to the terminal due to lack of space. It is unethical that such charges are passed down to the consignee.

- Streamlining billing processes would be very helpful but is not the only action item needed to help this situation. MTO's should be required to allow additional free time on arrival or departure due to severe congestion at ports. Shippers/consignees are forced to pay demurrage/detention due to shortened windows to pick up/deliver at ports. Delays in payment processing of demurrage from the VOCC billing system to the port system often result in missed pick-ups and another day of demurrage fees. The process is cumbersome and has too many hands involved, which cost the shipper/consignee additional, unnecessary expense.
- In general, the FMC should regulate carriers and terminals to manage as well as set clear guidelines for all US terminals. Currently, the manner in which each port terminal, carrier, and various payment collection programs operate is all very confusing. As an importer and a member of the Toy Association, any change that they make will be beneficial to us. As of today, we are at the mercy of the carrier and terminal to pay first and request a refund later if possible. The bureaucracy to get the funds back if it deemed refundable takes months to happen.
- MTOs/VOCC should not charge demurrage if they have not made the containers available to the shipper. There should be an accurate system to accurately track all the events and timelines at the port to determine the appropriate responsible party for the charges.
- There should be a way to dispute charges that result from missed appointments due to equipment shortages and port congestion (main reasons for dem/det charges during peak times)
- There should be a better system of tracking appointment availability. (The terminals know when there are no appointments available, but it is still up to Drayage to prove they attempted to schedule an appointment). Drayage is required to take screenshots to prove nothing was available (on a daily basis, for multiple containers). MTOs should produce a better solution to this issue, possibly allowing the truckers log those attempts and make stop the clock requests in MTO's systems.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen Pasierb". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Stephen Pasierb
President & CEO
The Toy Association