

BEFORE THE
FEDERAL MARITIME COMMISSION

**Comments on Advanced Notice of Proposed Rulemaking regarding Demurrage and
Detention Billing Requirements**

Docket No. 22-04; RIN 3072-AC90

Dated March 17, 2022

April 15, 2022

I. Introductory Comments on the FMC’s Advanced Notice of Proposed Rulemaking

The National Customs Brokers & Forwarders Association of America, Inc. (“NCBFAA” or the “Association”) submits the following comments to the Federal Maritime Commission (“FMC” or “Commission”) in response to the FMC’s Advanced Notice of Proposed Rulemaking (“ANPRM”), published in the Federal Register at 87 Fed. Reg. 8,506 (Feb. 15, 2022).¹ The ANPRM seeks comments on whether the Commission should require certain minimum information on or 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.

NCBFAA represents more than 1,000 member companies, consisting of the nation’s leading freight forwarders and customs brokers. As intermediaries facilitating the movement of goods throughout the country, freight forwarders and customs brokers are privy to the billing practices

¹ On March 17, 2022, the FMC issued a Federal Register notice granting a 30-day extension to the comment period, from the original deadline of March 17, 2022 to the extended deadline of April 16, 2022. *See* 87 Fed. Reg. 15,179 (March 17, 2022). As a result, these comments are timely submitted.

and fees of ocean common carriers and marine terminal operators (“MTO[s]”). Given this breadth of experience and insight, the Association reviewed the following matters with respect to demurrage and detention billing practices:

- Timing for demurrage and detention charges
- Calculation and payment for demurrage and detention
- Minimum information required for demurrage and detention
- Invoice availability and timing
- Free Time caps
- Abandoned Shipments

Given the Association’s industry experience with ocean common carrier business practices, the NCBFAA welcomes the opportunity to submit comments on these topics in response to the Commission’s request for the submission of written commentary on the proposed regulatory amendments.

II. Support for Reforming Ocean Common Carrier Billing Practices for Demurrage and Detention

Below, the Association describes the most concerning aspects of current demurrage and detention billing practices and respectfully submits proposals to the Commission to help reform these issues.

A. Timing for Demurrage and Detention Charges

In the current environment, there is very little consistency for the timing of when demurrage and detention charges are calculated to begin or end. In some cases, a shipper (or a non-vessel-operating common carrier (“NVOCC”)) is assessed charges even before it is possible for the shipper to pick up or drop off a container through no fault of the shipper. In such cases,

the charges do not serve the intended purpose of incentivizing cargo flows but rather just impose additional costs on the shipper unfairly.

In order to calculate demurrage and detention charges, the Association recommends the FMC should impose additional regulations or guidelines on when the charges may begin accruing for inbound and outbound shipments – and when such charges are inapplicable. On the import side, the clock for demurrage fees should only start once an MTO makes the container available, rather than before the container has reached the terminal. For the export side, in situations where an ocean common carrier has rolled a container, demurrage should not be billed to the shipper or the NVOCC. Further, detention fees should not be charged until delivery appointment windows are actually available to shippers to drop off containers.

By adjusting the timeframes for when demurrage and detention charges begin to accrue, the charges would actually maintain the intended purpose of incentivizing expeditious container flow without unduly penalizing U.S. shippers for factors beyond their control or for situations where container movement is impractical.

B. Calculation and Payment for Demurrage and Detention Fees

Currently the rates for demurrage fees assessed against shippers (and NVOCCs) vary widely from port to port, which creates an uneven and unpredictable financial impact on industry. To address this issue, the Association recommends the FMC standardize demurrage fees across all ports, with a set amount for each port and each day. In addition, when establishing a standardized detention rate, the amortized value of the equipment should be considered as a part of the calculation.

In addition to making demurrage and detention fees uniform across the United States, thereby ensuring more consistency and transparency, payment options should be modernized.

The Association recommends the FMC should require terminals to accept other forms of payments such as electronic funds transfers and credit cards (without fees). Another possibility is establishing credit from or with the NVOCC or the ultimate consignee. Providing greater payment options would lend to greater market efficiencies and facilitate payments by shippers of any owed charges.

C. Minimum Information Required for Demurrage and Detention Invoices

In the current environment, there is no clear or standardized information that ocean common carriers and MTOs are required to include on their demurrage and detention invoices. Ocean common carriers and MTOs should be required to provide a consistent set of data points on their invoices about the calculation of the demurrage and detention charges billed to the customer, the rationale for these charges, and the identity of all parties receiving the invoice. For example, requiring ocean common carriers and MTOs to include information on the invoices such as the container availability date, the last free day, and other factors relevant to calculating the demurrage and detention fees would provide transparency to the invoice recipients and establish a justified basis for the charged amount.

D. Invoice Availability and Timing of Issuance

Much more could be done to ensure that invoices are more readily available to the shippers and NVOCCs for which the invoices are intended. One way to make invoices more accessible is to provide recipients with a digital copy of the invoice (for example, through an electronic portal or online source) rather than solely by hardcopy. If the FMC required ocean common carriers and MTOs to make invoices available online, NVOCCs would be able to more timely access the document and more promptly pass along the information to their customers. In addition to making the invoices more accessible, online access promotes efficient

communications between the parties for business purposes or, in the event that the charges are disagreeable, enables customers to quickly raise any concerns with the biller. Further, it mitigates the risk of any loss or damage of these important documents.

The Association also recommends the FMC require ocean common carriers and MTOs to issue invoices within a set period of time (*i.e.*, 30-day periods). This will provide the industry with greater certainty as to when invoices should be received and alert recipients to a potential issue if the issuance time period expires and no invoice has been received. Currently, it is often inconsistent and unclear when a late payment penalty may apply. For example, some NCBFAA Members have been charged with late payment penalties merely 14 days following the issued invoice during pending charge disputes. Because carriers generally take a significant amount of time to process any replies or dispute for invoices, U.S. shippers are often forced to just pay the invoice in full in order to avoid any further demurrage or detention fees, rather than await a resolution or response from the ocean common carrier.

Free Time Caps

There is an imbalance in how ocean common carriers and MTOs provide additional free time to some large shippers and not other shippers. While there is a legitimate need for some large shippers to have additional free time, providing the shippers with very generous free time favors those shippers over others and therefore may be contrary to the prohibitions outlined in the Shipping Act of 1984, as amended. As such, the Association recommends that the Commission consider establishing a cap on free time permitted for all shippers across the board to balance the impact of assessed detention and demurrage charges.

Abandoned Shipments

Finally, the Association recommends the Commission consider creating a regulatory framework for NVOCCs to abandon shipments.

III. Conclusion

In conclusion, the NCBFAA supports the FMC's efforts to address current ocean common carrier billing practices regarding demurrage and detention charges to make these charges more equitable, transparent, and fair. The proposed changes to the regulations would help ensure that ocean common carriers are still able to incentivize the efficient flow of containers—the objective of these charges recognized by the FMC's Interpretive Rule on Demurrage and Detention under the Shipping Act—without unduly or unfairly punishing shippers and NVOCCs for events outside of their control.

The NCBFAA appreciates the opportunity to provide the FMC with its thoughts and opinions on these regulations. Please do not hesitate to contact the undersigned if the Commission has any questions on these comments.

Respectfully submitted,

Jan Fields

Jan Fields, *President of NCBFAA*