

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 22, 2022

Established in 1949, the Los Angeles Customs Brokers and Freight Forwarders Association (LACBFFA) is a premier organization in Southern California for International Trade. We represent common business interests of Customs Brokers, Freight Forwarders and Non-Vessel Ocean Common Carriers located in the LAX and Port of LA/Long Beach region. LACBFFA collaborates with government, carriers, industry, and one another. Licensed U.S. Customs Brokers and Freight Forwarders are responsible for facilitating goods moving through the Ports of LA/Long Beach and LAX. The LACBFFA has reviewed the following matters with respect to demurrage and detention billing practices:

Knowing firsthand the challenges and cost of doing business in the Los Angeles and Long Beach region during the current global trade disruption, the LACBFFA supports Reforming Ocean Common Carrier Billing Practices for Demurrage and Detention. Below, the LACBFFA describes the most concerning aspects of current demurrage and detention billing practices and respectfully submits proposals to the Commission to help reform these issues.

1. Timing for Demurrage and Detention Charges

There is little consistency for the timing of when demurrage and detention charges are calculated to begin or end. In some cases, a Beneficial Cargo Owner (BCO) or a non-vessel-operating common carrier (NVOCC) is assessed charges even before it is possible for the BCO's to pick up or drop off a container through no fault of the BCO's. In such cases, the charges do not serve the intended purpose of incentivizing cargo flows but rather just impose additional costs on the BCO's unfairly.

In order to calculate demurrage and detention charges, the LACBFFA 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 Marine Terminal Operator (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 BCO's nor the NVOCC as this was not in their

control. Further, detention fees should not be charged until delivery appointment windows are actually available to BCO's to drop off containers. Under Section IV (B) (k) FMC lists some intervening clock-stopping events. We would like to emphasize that "*shipments held from delivery by any government agency*" **must** be included on the list.

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

2. Timely Application of Payment to Carriers to Ease the Movement of Cargo

Currently we experience delays by carriers in applying payment resulting in additional days of demurrage due. Payments should be applied immediately which would allow the movement of cargo without further assessment of demurrage. Providing greater payment options would lend to greater market efficiencies and facilitate payments by the BCO's of any owed charges.

3. Minimum Information Required for Demurrage, Detention and Chassis Invoices

There is no clear or standardized information that ocean common carriers and MTO's are required to include on their demurrage, detention, and carrier chassis invoices. Ocean common carriers and MTO's 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 MTO's to include information on the invoices such as the container availability date, the last free day, empty return appointment availability and other factors relevant to calculating the demurrage and detention fees would give transparency to the invoice recipients and establish a justified basis for the charged amount.

4. Invoice Availability and Timing of Issuance

Much more could be done to ensure that invoices are available in a more timely manner to the BCO's and NVOCC's for which the invoices are intended. If the FMC would require ocean common carriers and MTO's to make invoices available timely, NVOCC's would be able to more promptly pass along the information to their customers. In the event that charges are disputed, having detailed invoices available would enable customers to quickly raise any concerns with the biller.

The LACBFFA also recommends the FMC require ocean common carriers and MTO's 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. Some LACBFFA Members have had experience with unrelated cargo

being put on hold for payment of disputed charges tied to another shipment. Because carriers generally take a significant amount of time to process any replies or dispute for invoices, U.S. BCO's 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. Carriers and terminals hold cargo for payment of demurrage before releasing the cargo, though the charges are paid, there should be a requirement that an invoice should still be issued following these proposed requirements and that the invoice may be eligible for resolution review if there is a disagreement. When using a third-party payment platform to pay demurrage the invoice with details should be made available to payee upon request.

5. Multiple Parties and Invoiced Party Identity

The parties that are included in the Ocean common Carriers' "Merchant Clause" in their Bills of Lading are placed there arbitrarily. The BCO's often names the customs broker as the "notify party" for Customs purposes. However, we find we have been included, even though we have no part in the transportation negotiation, handling, either on the seas, or at the marine terminals, or inland transport (unless a CBP exam is required). We have no relationship with the carrier. We haven't known, accepted, or even known about responsibility to pay detention/demurrage bills on behalf of BCO's. We recommend that the FMC issue a rule *prohibiting* carriers from adding a party on the B/L unless that party understands and accepts (in writing) such responsibility.

Carriers bill charges to brokers/NVOCC who have no physical control of the movement of the container. The incorrect party being billed, and lack of information is what is mostly being disputed. In fact, we have been billed even on carrier "Store Door" delivery where the carrier (under Bill of Lading terms) assumes full logistic delivery responsibility. The billing party should indicate all parties being invoiced and furnish backup documentation to invoiced party. The Customs broker is not a party to the carrier's contract of carriage. We never take title of the cargo, have any contractual agreement with the carrier, shipper, or ultimate consignee, to have any actual or implied responsibility for payment of any charges. There is no written or implied responsibility with carriers or terminal operators to be responsible for the collection of any charges against the cargo. The FMC should issue a rule prohibiting carrier's and terminal operators from billing parties only shown as a notify party on the Bill of Lading without a written agreement for payment. The FMC should restrict the "Merchant Clause" to the Beneficial Cargo Owner, the Shipper, and the Ultimate Consignee receiving the physical cargo. The billing party should direct invoicing to the proper party of interest in the movement of the Cargo. The "Beneficial Cargo Owner" and the "Shipper" are the two parties who have a financial interest in the actual cargo movement and have contractual obligation with the carrier in its movement. Carriers have knowledge of who the responsible parties are by either the original

Bill of Lading shipper designation or the title endorsement on the Bill of Lading as required for release of the cargo from the carrier's custody.

Conclusion

In conclusion, the LACBFFA 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 without unduly or unfairly punishing BCO's and NVOCC's for events outside of their control.

The LACBFFA 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,

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