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FMC Final Rule on Detention & Demurrage: An Overview

In accordance with the Ocean Shipping Reform Act of 2022 [OSRA22], the Federal Maritime Commission issued its final rule specifying the proper procedures for the billing of Detention and Demurrage. The new rule takes effect on May 28, 2024.

This final rule requires common carriers and marine terminal operators to include specific minimum information on demurrage and detention invoices, outlines certain detention and demurrage billing practices, and sets timeframes for issuing invoices, disputing charges with the billing party, and resolving such disputes.

New Billing Requirements Previously Put in Place by OSRA22

There were already some new billing requirements set forth by OSRA22, which took effect as of June 16, 2022. As of that date, common carriers were required to include the following information on demurrage and detention invoices: the date that the container is made available; the port of discharge; the container number or numbers; for exported shipments, the earliest return date; the allowed free time in days; the start date of free time; the end date of free time; the applicable detention or demurrage rule on which the daily rate is based; the applicable rate or rates per the applicable rule; the total amount due; the email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees; a statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage; and a statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges. Billed parties who received invoices on or after June 16, 2022 that did not include this minimum required information are not obligated to pay the applicable charges.

OSRA22 also tasked the FMC to issue specific regulations governing the billing of detention and demurrage, including a determination on which parties may appropriately be billed, timeframes for issuing invoices, as well as time frames for disputing charges and resolving those disputes. After years of investigation, research, proposals, and public comments, the FMC released its final rulemaking.

New Billing Requirements and Practices Under the New Rule Issued by the FMC

The new rule establishes the minimum information that must be included on or with demurrage and detention invoices, and the procedures that must be followed when invoicing. As with the billing requirements announced in OSRA22, the new rule stipulates that the failure to include any of the required minimum information "eliminates any obligation of the billed party to pay the applicable charge."

Who Gets the Invoice?

According to the new rule, a properly issued invoice is one that is sent to either:

- The person for whose account the billing party provided ocean transportation or storage of cargo, and who contracted with the billing party for the ocean transportation or storage of cargo, OR:
- the Consignee

The rule also states that the invoice can only be billed to one of the entities specified above, not both, and it cannot be issued to any other person. (This is a provision that motor carriers advocated strongly for, after enduring years of shutout threats over billing disputes in which they were not a contracted party.)

Billing Time Frame Requirements

A billing party must issue a demurrage or detention invoice within 30 calendar days from the date on which the charge was last incurred. If the bill is not issued within this time frame, the billed party is not required to pay the charge.

If the billing party is a non-vessel-operating common carrier (NVOCC), it must issue a demurrage or detention invoice within 30 calendar days from the issuance date of the D&D invoice it received. If this time frame is not adhered to, the billed party is not required to pay the charge.

If the billing party issued an invoice to the wrong person, they may issue a new invoice to the correct billed party as long as it is issued within 30 calendar days from the date on which the charge was last incurred. If a corrected invoice is not issued within this time frame, the billed party is not required to pay the charge.

Billing Disputes & Resolution

The billing party must allow the billed party at least 30 calendar days from the day the invoice is issued to request mitigation, refund, or waiver of the fees from the billing party. In these cases, the billing party must attempt to resolve the request within 30 calendar days of receiving such a request, or a later date as agreed upon by both parties.

Required Information for Invoices

All detention and demurrage invoices must contain the following information:

(a) *Identifying information.* A demurrage or detention invoice must be accurate and contain sufficient information to enable the billed party to identify the container(s) to which the charges apply and at a minimum must include:

- (1) The Bill of Lading number(s);
- (2) The container number(s);
- (3) For imports, the port(s) of discharge; and
- (4) The basis for why the billed party is the proper party of interest and thus liable for the charge.

(b) *Timing information.* A demurrage or detention invoice must be accurate and contain sufficient information to enable the billed party to identify the relevant time for which the charges apply and the applicable due date for invoiced charges and at a minimum must include:

- (1) The invoice date;
- (2) The invoice due date;
- (3) The allowed free time in days;
- (4) The start date of free time;
- (5) The end date of free time;
- (6) For imports, the container availability date;
- (7) For exports, the earliest return date; and
- (8) The specific date(s) for which demurrage and/or detention were charged.

(c) *Rate information.* A demurrage or detention invoice must be accurate and contain sufficient information to enable the billed party to identify the amount due and readily ascertain how that amount was calculated and must include at a minimum:

- (1) The total amount due;
- (2) The applicable detention or demurrage rule (*e.g.*, the tariff name and rule number, terminal schedule, applicable service contract number and section, or applicable negotiated arrangement) on which the daily rate is based; and
- (3) The specific rate or rates per the applicable tariff rule or service contract.

(d) *Dispute information.* A demurrage or detention invoice must be accurate and contain sufficient information to enable the billed party to readily identify a contact to whom they may direct questions or concerns related to the invoice and understand the process to request fee mitigation, refund, or waiver, and at a minimum must include:

- (1) The email, telephone number, or other appropriate contact information for questions or request for fee mitigation, refund, or waiver;
- (2) Digital means, such as a URL address, QR code, or digital watermark, that directs the billed party to a publicly accessible website that provides a detailed description of information or documentation that the billed party must provide to successfully request fee mitigation, refund, or waiver; and
- (3) Defined timeframes that comply with the billing practices in this part, during which the billed party must request a fee mitigation, refund, or waiver and within which the billing party will resolve such requests.

(e) *Certifications.* A demurrage or detention invoice must be accurate and contain statements from the billing party that:

- (1) The charges are consistent with any of the Federal Maritime Commission's rules related to demurrage and detention, including, but not limited to, this part and [46 CFR 545.5](#); and
- (2) The billing party's performance did not cause or contribute to the underlying invoiced charges.

Charge Complaints & Dispute Resolution

In addition to the new rulemaking, the FMC has created a number of resources designed to assist with billing disputes and resolution:

FMC Webinar on How to File Charge Complaints: <https://www.youtube.com/watch?v=f-ymv2VfVVo>

FMC Guidance on Filing a Charge Complaint: <https://www.fmc.gov/osra-2022-implementation/charge-complaint-interim-procedure/>

FMC Dispute Resolution Services: <https://www.fmc.gov/resources-services/filing-a-shipping-act-complaint/>