



FMC'S NEW DEMURRAGE AND DETENTION REGULATIONS BECOME EFFECTIVE MAY 2024

The US Federal Maritime Commission (FMC) recently published its final rule on demurrage and detention billing requirements. It becomes effective May 28, 2024, except for two provisions that are delayed.

See 89 Fed. Reg. 14330 and 46 CFR Part 541. The 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 those disputes. The new regulation applies to ocean common carriers trading to or from the US, including vessel-operating common carriers (**VOCCs**) and non-vessel-operating common carriers (**NVOCCs**), and to marine terminal operators (**MTOs**).

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Time is Money

This topic is worth a lot of money—about US\$7 billion to US\$9 billion—to cargo shippers, ocean carriers, and MTOs. The FMC notes that “over a two-year period between 2020 and 2022, nine of the largest carriers serving the U.S. liner trades individually charged a total of approximately \$8.9 billion in demurrage and detention charges and collected roughly \$6.9 billion.” Demurrage and Detention Billing Requirements, 89 Fed. Reg. 14330 (Feb. 26, 2024).

For context, this kind of demurrage and detention refers to charges assessed by ocean carriers and terminals for use of shipping containers and for use of marine terminal space. These charges are in addition to agreed, and thus expected, freight charges. During pandemic supply chain delays, many cargo shippers became surprised by large demurrage and detention bills, fostering a number of complaints filed by shippers with the FMC contesting carrier and terminal demurrage and detention practices.

This final rule follows the FMC’s notice of proposed rulemaking published on October 14, 2022. It makes a few

changes based on many comments FMC received from shipping industry stakeholders. The FMC has been considering these rules since at least 2021, when its Fact Finding Investigation No. 29 recommended that FMC seek industry input on whether VOCCs, NVOCCs, and MTOs should be required to adhere to certain minimum requirements for demurrage and detention billings and practices.

The US Congress addressed this topic in the Ocean Shipping Reform Act of 2022 (**OSRA 2022**), which enacted, among other things, a list of minimum information that common carriers must include in a demurrage or detention invoice. OSRA 2022 authorized the FMC to revise these minimum information requirements, and it required the FMC to initiate rulemaking further defining practices for assessing demurrage and detention charges. The final rule announced on February 26, 2024 implements these provisions in OSRA 2022.

The new regulation will appear in the Code of Federal Regulations at 46 CFR Part 541—Demurrage and Detention. For now, it is published in the Federal Register at 89 Fed. Reg. 14362-14363 (Feb. 26, 2024).

Be Mindful of the Regulations and Calendar Those Deadlines

The new regulations may impact many entities in the supply chain. Following are some highlights of what the new rule requires.

- It applies to any invoice issued by a VOCC, MTO, or NVOCC for demurrage or detention charges, but it does not govern the billing relationship between MTOs and VOCCs. [46 CFR § 541.2]
- “Demurrage or detention” mean any charges “related to the use of marine terminal space . . . or shipping containers, but not including freight charges.” [46 CFR § 541.3]
- The new rule sets out who can issue a demurrage or detention invoice (VOCC, NVOCC, and MTO) and to whom the invoice can be sent (consignee, or person who contracted for the cargo transportation or storage). [46 CFR § 541.4]
- If the invoice fails to include all the required information, the billed party does not have to pay it. [46 CFR § 541.5]

- The list of required information in an invoice will be set out in 46 CFR § 541.6, but that provision is not effective yet. FMC will publish a notice in the Federal Register announcing when this provision becomes effective. The proposed content of this provision is currently available in the Federal Register at 89 Fed. Reg. 14363 (Feb. 26, 2024). It specifies the detailed information that must be included in any demurrage or detention invoice, including:

- Identifying information (Bill of Lading number, container number, etc.)
- Timing information (allowed free time, invoice date, due date, etc.)
- Rate information (the tariff name and rule number, terminal schedule, service contract number and section, applicable negotiated arrangement, and generally showing how the amount due was calculated)
- Dispute information (details for how the billed party can dispute the invoice and the timing for doing so)
- Certifications (billing party's statement that the charges are consistent with FMC regulations, and that the billing party's performance did not cause or contribute to the invoiced charges)

- Invoices must be issued within **30 days** from the date on which the charge was last incurred. If the invoice is issued later than that, the billed party is not required to pay it. [46 CFR § 541.7(a)]
- NVOCCs may be a billed party for invoices they receive from VOCCs or MTOs, and then NVOCCs may be a billing party for passing those invoices on to their customers. NVOCCs must issue invoices within **30 days** from the issuance date of

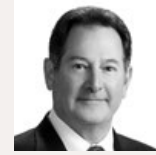
the invoice it received. The time for disputing such invoices can be extended in certain circumstances. [46 CFR § 541.7(b) and (c)]

- In general, if invoices are issued after the required deadlines, the billed party does not have to pay them.
- The billed party has **30 days** to contest the charges, and the billing party must attempt to resolve disputes within **30 days** after a charge is contested. [46 CFR § 541.8]

FMC says a primary purpose of the new regulation is transparency, to allow billed parties to understand the demurrage or detention invoices they receive and to verify the accuracy of charges and with whom the charges originate. See 89 Fed. Reg. 14340, 14357 (Feb. 26, 2024).

It will be important for ocean common carriers, NVOCCs, marine terminal operators, shippers, and consignees to be aware of this new regulation coming into effect on May 28, 2024 and to track carefully the specific deadlines it creates.

This briefing is provided to clients and friends of the firm. It is not legal advice, nor does it address any specific situation. Should you have any questions about this topic, or about FMC regulations in general, please feel free to contact the authors of this briefing.



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