

## An Exclusive CIAA Member Update



## FMC Seeks Comment on Proposed Rule for Detention and Demurrage Invoices and Billing Practices

The Federal Maritime Commission (FMC) is soliciting comments on its proposed rulemaking to expand and clarify the required information common carriers and Marine Terminals (MTOs) must include in invoices for detention and demurrage, and to determine what parties must receive invoices for detention and demurrage and the timeframes to issue the invoices, dispute the charges, and resolve disputes.

For importers, this proposed rule would expand the ability of importers to contest detention and demurrage charges by requiring billing parties to provide additional information in invoices about the detention and demurrage charges. These disputes could relate to the reasonableness of the charges and the basis for the charge.

The proposed rule would:

1. Adopt minimum information requirements that common carriers and MTOs must include in detention and demurrage invoices (including information in addition to the 13 data points required by OSRA 2022).
2. Specify timelines and practices for issuing and disputing invoices.
3. Clarify which parties appropriately may be billed for detention and demurrage charges.

### **New Invoice Requirements**

The Ocean Shipping Reform Act (OSRA) 2022 became law in June 2022. (46 U.S.C. § 41104(d)). OSRA 2022 mandates that invoices contain thirteen pieces of identifying information relating to the dates that the container is at ports, the free time timelines, the amounts due, and whether the common carrier caused underlying charges. In the FMC's proposed rule, it seeks to expand on this required information to include the following:

1. The bill of lading number.
2. The basis for why the billing party was invoiced.
3. The dates for which detention and/or demurrage charges accrued.
4. The billing date.
5. The billing due date.
6. A URL address where billed parties can obtain a detailed description of the information or documentation that must be provided with a request for fee mitigation, refunds, or waivers.
7. Defined timeframes by which the billed party must request fee mitigation, refunds, or waivers, and the timeframe by which the billing party would resolve requests. Those timeframes must comply with proposed billing practices discussed in §§ 541.7 and 541.8.

### **Clarification of Existing Invoice Requirements**

The FMC has also proposed to clarify and modify the original thirteen components, as noted below:

1. Date that container is made available.
2. The proposed rule would require an availability date only for import shipments.
3. The port of discharge.
4. The proposed rule would require a port of discharge only for import shipments.
5. The container number or numbers.
6. For exported shipments, the earliest return date.
7. The allowed free time in days.
8. The start date of free time.
9. The end date of free time.
10. The applicable detention or demurrage rule on which the daily rate is based.
11. The proposed rule clarifies that when billing parties provide the applicable detention or demurrage rule on which the daily rate is based, the billing party should provide information necessary to ascertain the rate that the billing party applied, grounds for applying that rate, dates for which the billing party is applying that rate, and the total amount due.
12. The applicable rate or rates per the applicable rule.
13. The total amount due.
14. The email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees.
15. A statement that the charges are consistent with any of Federal Maritime Commission rules with respect to detention and demurrage.
16. The proposed rule clarifies that the FMC's rules related to detention and demurrage include the proposed rule and the interpretive rule on demurrage and detention at 46 CFR 545.5.
17. A statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges (i.e., to the Non-Vessel-Operating Common Carriers' (NVOCC's) conduct did not cause the demurrage/detention charges).

### **New Billing and Dispute Practices**

After the FMC issued an Advance Notice of Proposed Rulemaking (ANPRM) in February 2022, commenters expressed concern that billing parties were sending invoices to multiple parties, most of whom were not the recipient of the service giving rise to the proposed charge. The proposed rule would prohibit billing parties from issuing demurrage and detention invoices to persons other than the person for whose account the billing party provided ocean transportation, equipment or storage.

The FMC is seeking comment on whether it would be appropriate to also include the consignee named on the bill of lading as a person who may be invoiced for

demurrage or detention.

Finally, the FMC is proposing three separate 30-day timeframes for billing and related disputes:

1. Billing parties must issue demurrage or detention invoices to billed parties within 30 days from the date charges stop accruing. Billed parties not invoiced within 30 days are excused from paying the assessed charges. This 30-day timeframe would apply to Vessel-Operating Common Carriers (VOCCs), MTOs, and NVOCCs.
2. Billed parties must submit any requests for mitigation, refund, or waiver to billing parties within 30 days of receiving a demurrage or detention invoice.
3. Billing parties must resolve the billed party's request within 30 days. Resolution of a request includes determining whether to grant or deny that request, and also includes billing parties to mitigate, refund, or waive a charge, if appropriate.

The proposed rule would apply to VOCCs, NVOCCs, and MTOs, but would not regulate the billing arrangements between VOCCs and MTOs.

Comments are due to the FMC on December 13, 2022 and can be submitted via [www.regulations.gov](http://www.regulations.gov) under Docket # FMC-2022-0066-0090.

The CIAA is closely reviewing the proposed rule and developing comments to submit to the FMC.

CIAA members that have comments or questions regarding the proposed rule can reach out to the CIAA legal team at [CIAAGeneralCounsel@huschblackwell.com](mailto:CIAAGeneralCounsel@huschblackwell.com).



## DATES TO REMEMBER

### OCTOBER 31, 2022

Exporting countries that are designating U.S. importers for calendar year 2023 must submit their designations to FAS by this date.

### NOVEMBER 10, 2022

CIAA Member Meeting  
9:30am – 11:30am  
Saddle Brook Marriot  
Saddle Brook, NJ

### DECEMBER 20, 2022 (approximately)

FAS issues first notice of calendar year 2023 licenses to licensees.

### DECEMBER 31, 2022

Last day for licensees to make entries to fulfill the requirement to use 85% of their calendar year 2022 license amount. Last day for which calendar year 2022 licenses are valid. or "only 7 remaining"!

### JANUARY 15, 2023

Winter Fancy Food Show Reception  
5:00 pm -- 7:30 pm  
Gordon Biersch Restaurant  
Las Vegas, NV

*Ralph Hoffman \* CIAA President \* 202-547-0899*



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