



The Bottom Line

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DEMURRAGE, DETENTION, PER DIEM...OH, MY!

Summary

The Federal Maritime Commission is proposing a new rule that seeks to bring more clarity, structure, and punctuality to the demurrage and detention billing practices of vessel-operating common carriers (VOCCs), non-vessel-operating common carriers (NVOCCs), and marine terminal operators (MTOs).

Background

Many beneficial cargo owners have struggled with additional charges issued by steamship lines and terminal operators. These charges result from the difficulties many have experienced trying to recover or return containers to port facilities. Depending on the circumstances, the amounts can be significant.

Demurrage refers to the charges assessed after the discharge of an import container, after the expiration of free time, and before the container is recovered from the port. For export containers, the charges would apply after the in-gate of the full load, after the expiration of free time, and before the container is loaded on the outbound vessel. Demurrage charges represent the space occupied by the container on the port facility and are usually billed by the port. For import containers, demurrage charges must be paid for a full container to be recovered from the port terminal. For export containers, demurrage charges would be added to a freight invoice. The freight forwarder usually pays them on behalf of the beneficial cargo owner.

Per Diem generally refers to the charges assessed after a container is recovered from the port, after the expiration of free

time, and before the container is returned to the care of the steamship line at the port (similar to an overdue book fine issued by a library). Per Diem charges are calculated by the steamship line and billed after the container is returned to the port. They are billed initially to the trucking company that pulled the container from the port and passed on to the freight forwarder or beneficial cargo owner. Depending on the efficiency of the steamship line, invoices could be issued weeks after delivery is complete.

Detention charges often refer to waiting time. Time expended by a driver waiting to get a container pulled from the port or while a container is loaded or unloaded at a warehouse facility may be billable. The trucking company would bill detention charges as part of their delivery fees.

Initially adopted to incentivize cargo owners in the efficient collection and return of containers, these fees have been the target of significant displeasure in recent years.

The Federal Maritime Commission's (FMC) investigation into port demurrage and detention practices originated in December 2016, when a petition requested that the FMC adopt rules pertaining to billing practices following significant port disruption in 2015. Most recently, the FMC investigation has resulted in regulations included in the Ocean Shipping Reform Act of 2022 (OSRA). The Act followed years of complaints from U.S. importers, exporters, transportation intermediaries, and drayage truckers that ocean carrier and marine terminal operator demurrage and detention practices unfairly penalized shippers, intermediaries, and truckers for circumstances outside their control. Within the context of this rule, the Commission broadly defines the terms "demurrage or detention" to include any charge assessed by common carriers and marine terminal operators related to the use of marine terminal space or shipping containers.



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Current Status

Beneficial cargo owners *should* understand the various circumstances surrounding the movement of international cargo and be aware of situations that can result in demurrage, detention, and per diem charges.

Demurrage charges are the port's means of keeping containers from occupying terminal space longer than necessary. Demurrage charges can continue to accrue if a container is on a Customs hold.

Per Diem charges are the steamship line's way to ensure that containers (loaned out for loading or unloading) are returned timely. Both demurrage and per diem rates can increase incrementally if accrued for several days. FMC rules are focused on ensuring that cargo owners understand what they are being billed.

Specifically, the Commission is proposing the following actions:

- Adopting a list of minimum information common carriers must include in demurrage or detention invoices as mandated in OSRA.
- Defining prohibited practices by clarifying which parties may be billed for demurrage or detention charges.
- Establishing billing practices (including timelines) that billing parties must follow when invoicing for demurrage or detention charges.

Even if an invoice is issued in compliance with the new FMC standard, a beneficial cargo owner is not without recourse. If charges are deemed unfair or contrary to the intentions of the Ocean Shipping Reform Act, the FMC Office of Consumer Affairs and Dispute Resolution Services (CADRS) can receive petitions for relief.

Proceedings before the Commission are commenced by filing a complaint, or by order of the Commission upon petition, or upon its own motion. Types of docketed proceedings include:

Formal Proceedings: Any person may file a formal complaint to allege violations of specific sections of the Shipping Act found at 46 USC Chapter 411. The complaint must be sworn and verified, and if seeking reparations, be filed within three years of the claimed violation. Formal complaints are generally heard by an Administrative Law Judge and are reviewed by the Commission.

Small Claims Proceedings: For claims of \$50,000 or less, an informal complaint may be filed. A settlement officer will handle the complaint for resolution using informal procedures (46 CFR Part 502 Subpart S).

Investigative Proceedings: The Commission may investigate the activities of ocean common carriers, ocean transportation intermediaries (OTIs), shippers, marine terminal operators, and other persons to ensure effective compliance with the statutes and regulations administered by the Commission.

Petitioning the Commission: Any person may file a petition asking for relief or other affirmative action by the Commission (46 CFR § 502.74-76). This could include an appeal from Commission staff action unrelated to formal proceedings.

Impact

Demurrage and detention are understandable charges when applied in ways that incentivize cargo interests to move cargo promptly through ports and marine terminals. However, the best way for cargo owners to control these costs is to be aware of the inventory in their supply line and schedule container movement to maximize efficiency. Cargo owners must also support any petition of unfair charges with supporting documentation.

[FMC Proposing New Demurrage & Detention Billing Requirements \(FMC\)](#)
[Ocean Shipping Reform Act of 2022 \(Congress.gov\)](#)
[Demurrage and Detention Billing Requirements \(Regulations.gov\)](#)
[Filing a Shipping Complaint \(FMC\)](#)