

# FMC refuses to comment on contradictory D&D rules claim

April 23, 2024



The Federal Maritime Commission (FMC) has refused to comment on claims by the World Shipping Council (WSC) that its interpretive rule on detention and demurrage (D&D) charges is contradictory.

On 18 April, the WSC filed a petition with the United States Court of Appeals for the District of Columbia Circuit seeking to have the FMC correct what it said is “an internal contradiction in its new rule on detention and demurrage.”

The WSC wanted to alter the wording of the rule that defined the “billed party” to include trucking companies that control containers to account for situations where vessel operators enter directly into written contracts with truckers that use containers in freight movements.

The dispute comes from the wording of the finalised interpretive rule on D&D charges, which WSC President & CEO John Butler argues: "Contains a significant internal contradiction regarding the billing of motor carriers for detention and demurrage. That inconsistency is already creating substantial confusion and uncertainty for ocean carriers and other industry participants."

He added the preamble to the rule states that an ocean carrier may invoice a motor carrier with which it holds a contract.

"The language of the rule itself, however, appears to prohibit such billing," said Butler.

However, in a Preamble Text the FMC responded to this question raised in the comments pages of its proposed rule.

"There seems to be a misunderstanding on the commenter's part about the rule's applicability. As discussed in the NPRM [Notice to Proposed Rulemaking], a primary purpose of this rule is to stop demurrage and detention invoices from being sent to parties who did not negotiate contract terms with the billing party."

An FMC spokesman told *Container News*: "Since this is an ongoing case there are limitations that can be discussed."

Nevertheless, the WSC asked the FMC to fix this inconsistency, and the carrier representative said, it has, so far not done so, and as a result, WSC has petitioned the court to correct the rule "in order to ensure regulatory clarity for ocean carriers, their customers and business partners."

Industry sources, however, have claimed that the carriers, who almost exclusively opposed the D&D rule in the Federal Register's comments, simply do not like paying.

One source said that the WSC is overstepping its authority, and another said that nobody likes paying charges. "My dog ate stones last week, I can't tell you how much I had to pay for ultrasound and the like, I didn't like it at all," the source pointed out.

A third source argued that the carriers need to be more politically savvy, "We are in an election year there is nothing that Congress would like more than to take on a bunch of foreign carriers to show that they are supporting American industry."

According to the Federal Register when collecting comments on the D&D rules "VOCCs [vessel operating common carriers] overwhelmingly questioned or did not support the rule."

The three issues raised by commenters most often were: "(1) concerns with the prohibition on billing other parties that are not contractually connected, (2) concerns with additional information the Commission proposed to require in addition to the OSRA 2022 mandated information, and (3) concerns with the time periods for billing."

---

Mary Ann Evans  
Correspondent at Large