



The US FMC Final Rule on Demurrage and Detention Billing Practices

Quick guide for freight forwarders on key rule items

Key Takeaways:

- Requirement of specific information to be included in the demurrage or detention invoices.
- Clarification on the possible billed parties.
- Clear procedure for NVOCCs transmitting demurrage or detention invoices received to their customers.
- Timeframe for demurrage or detention invoices to be issued, contested, and disputed.
- No obligation to pay in case of lack of minimum required information or disregard of applicable timeframe for issuing the demurrage or detention invoice.

Introduction

On 28 May 2024, the United States (US) Federal Maritime Commission (FMC) [Final Rule on Demurrage and Detention Billing Practices¹](#), which adopts the FMC proposed rulemaking on 'Detention and Demurrage Billing practices' from 14 October 2022 with changes, came into effect.

The Final Rule was developed in the context of [significant increases in demurrage and detention charges](#) in the maritime supply chain, following extensive investigations by the FMC which shed light on the urge to ensure clarity regarding the imposed charges. In this vein, the FMC Final Rule on Demurrage and Detention Billing Practices provides the industry with guidelines aimed at ensuring transparency and fairness in billing procedures and dispute resolution regarding demurrage and detention charges².

Both the FMC proposed rulemaking from October 2022 and its subsequent Final Rule were developed in line with the inputs provided by FIATA e.g. in its '[FMC Final Rule on Demurrage and Detention Toolkit³](#)', which outlines FIATA's position on the topic, and provided the FMC with insightful commentaries and recommendations regarding the FMC's proposed rulemaking.

The Final Rule applies to any demurrage or detention invoice related to containers moving through US ports and issued by an ocean common carrier, marine terminal operator, or non-vessel-operating

¹ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements

² FIATA, 28 February 2024, <[US FMC brings transparency and fairness in the supply chain with Final Rule on Demurrage and Detention](#)>

³ FIATA, 6 October 2020, <[FMC Final Rule on Demurrage and Detention Toolkit by FIATA](#)>



common carrier (NVOCC). It therefore applies also to freight forwarders when acting as NVOCCs. This practical guide provides information for freight forwarders on the new provisions, which outline key requirements for the issuance and contents of demurrage and detention invoices.

What must be included in a demurrage and detention invoice?⁴

The Final Rule establishes minimum required information requirements to be included in the invoice. Such information must be provided in an accurate and sufficient manner. **In case the minimum required information listed below is not included in the invoice, the billed party is not obliged to pay the applicable charge⁵. All the below minimum required information must be included to enable the billed party to:**

1. Identify the container(s) to which the charges apply⁶:

- a. The Bill of Lading number(s);
- b. the container number(s);
- c. for imports, the port(s) of discharge; and
- d. the basis for why the billed party is the proper party of interest and thus liable for the charge.

2. Identify the relevant time for which the charges apply and the applicable due date for the invoiced charges⁷:

- a. The invoice date;
- b. the invoice due date;
- c. the allowed free time in days;
- d. the start date of free time;
- e. the end date of free time;
- f. for imports, the container availability date;
- g. for exports, the earliest return date; and
- h. the specific date(s) for which demurrage and/or detention were charged.

3. Identify the amount charged and how that amount was determined⁸:

- a. The total amount due;
- b. 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

⁴ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.6 Contents of Invoice

⁵ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.5 Failure to include required information

⁶ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.6 (a) Identifying information

⁷ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.6 (b) Timing information

⁸ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.6 (c) Rate Information



- c. the specific rate or rates per the applicable tariff rule or service contract.
- 4. Identify a contact person for questions or concerns, and understand how to request fee mitigation, refund, or waiver⁹:**
- a. The email, telephone number, or other appropriate contact information for questions or request for fee mitigation, refund, or waiver;
 - b. 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
 - c. defined timeframes in compliance with the billing practices under the Final Rule, during which the billed party must request a fee mitigation, refund, or waiver and within which the billing party will resolve such requests.

Additionally, a demurrage or detention invoice must contain statements from the billing party that 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 that the billing party's performance did not cause or contribute to the underlying invoiced charges¹⁰.

How must a demurrage or detention invoice be issued?

1. The invoice must be properly issued by a billing party to¹¹:

- a. The person who contracted with the billing party for the ocean transportation or storage of cargo and whose account was used for these services; or
- b. the consignee.

The invoice must be addressed to just one of the possible recipients listed above. However, the regulation does not prohibit third parties from voluntarily paying the invoice.

2. The invoice must be issued to the correct party within thirty (30) calendar days¹²

The invoice must be issued to the correct party in accordance with point 1 above within thirty (30) calendar days from the date the charge was last incurred. If the billing party is an NVOCC, it must issue the invoice within thirty (30) calendar days from the issuance date of the demurrage or detention invoice received.

In case the invoice is issued to the wrong person, the billing party can correct it within thirty (30) calendar days from the date on which the charge was last incurred.

⁹ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.6 (d) Dispute information

¹⁰ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.6 (e) Certifications

¹¹ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.4 Properly issued invoices

¹² Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.7 Issuance of demurrage and detention invoices



If the above time periods are not complied with, the billed party is not required to pay the charge.

Requesting mitigation, refund or waiver of fees from the billing party¹³

The billed party has at least thirty (30) calendar days from the invoice issuance to request mitigation, refund, or waiver of fees from the billing party. When the NVOCC transmits the demurrage or detention invoice received to its customer and the charge is disputed by such a customer, the NVOCC can inform the billing party about the dispute, and the billing party must provide an additional thirty (30) calendar days for the charge to be disputed.

After receiving a fee mitigation, refund, or waiver request from a billed party, the billing party must attempt to resolve the request within thirty (30) calendar days from the receipt of the request. The parties can agree on a later date for the request to be addressed.

Conclusion

The US FMC Final Rule on Demurrage and Detention Billing Practices marks a significant advancement in promoting transparency and fairness in maritime transport operations, in line with FIATA's longstanding advocacy on the topic. The rule items help to enhance supply chain efficiency and address unjust and unreasonable maritime billing practices. Taking into consideration the global character of the issues related to demurrage and detention billing practices, FIATA encourages its worldwide membership to embrace the FMC Final Rule as a standard for best practices, fostering certainty and a fairer playing field throughout the entire supply chain.

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¹³ Federal Maritime Commission, 26 February 2024, Final Rule on Demurrage and Detention Billing Requirements, § 541.8 Request for fee mitigation, refund, or waiver