CLIENT ALERTS & INSIGHTS

Demurrage and Detention Billing After WSC v. FMC

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Key Takeaways:

- The U.S. Court of Appeals for the D.C. Circuit vacated a key provision of the Federal Maritime Commission's (FMC) Final Rule on Demurrage and Detention Billing, finding the FMC's approach to who can be billed for these charges was arbitrary. This leaves the question of which parties may lawfully be invoiced for demurrage and detention charges unsettled.
- The decision creates significant uncertainty and risk for all parties in the ocean shipping supply chain. This commercial confusion is likely to lead to increased billing disputes among ocean carriers, motor carriers, intermediaries, and shippers.
- Stakeholders should review and update their contracts, bills of lading, and internal procedures to clearly define responsibility for demurrage and detention charges. All parties should closely monitor further FMC rulemaking and be prepared to adapt to new requirements.

On September 23, 2025, the U.S. Court of Appeals for the D.C. Circuit issued its decision in *World Shipping Council v. Federal Maritime Commission*,[1] vacating a key provision of the Final Rule on Demurrage and Detention Billing Requirements issued by the Federal Maritime Commission ("FMC") at 46 C.F.R. Part 541 ("D&D Rule") 89 Fed. Reg. 14330. In short, the Court vacated part of the D&D Rule on the basis that the FMC's treatment of motor carriers under 46 C.F.R. § 541.4 was internally inconsistent and arbitrary.

Regulatory and Statutory Background

Under the Ocean Shipping Reform Act of 2022 ("OSRA 2022"), Congress charged the FMC to promulgate regulations to determine permissible practices in connection with demurrage and detention charges ("D&D Charges") under the Shipping Act OSRA 2022 at § 7(b). Indeed, Congress instructed the FMC to address issues identified in the May 18, 2020, Interpretive Rule on Demurrage and Detention Under the Shipping Act at 46 C.F.R. § 545.5, including "a determination of which parties may be appropriately billed for any demurrage, detention or other similar per-container charges." OSRA 2022 at § 7(b)(2).

After completing its rulemaking process, the FMC published the D&D Rule on February 26, 2024, which took effect on May 28, 2024. Among other things, the D&D Rule at 46 C.F.R. § 541.4(a) determined that "[a] properly issued invoice is a demurrage or detention invoice issued by a billing party to: (1) The person for whose account the billing party provided ocean transportation or storage of cargo and who contracted with the billing party for the ocean transportation or storage of cargo;

or (2) The consignee." Indeed, the FMC further determined that "[a] billing party cannot issue an invoice to any other person." 46 C.F.R. § 541.4(c).

Challenge by the World Shipping Council

On April 18, 2024, before the D&D Rule became effective, the WSC filed a lawsuit against the FMC, arguing that the agency exceeded its authority under OSRA 2022, acted arbitrarily and capriciously, and abused its discretion by promulgating 46 C.F.R. § 541.4. The thrust of the WSC's claims focused on the treatment of motor carriers. In its Preamble to the D&D Rule, the FMC noted that a motor carrier could be a billed party if it was in a contractual relationship with the billing party but the FMC later issued a Correction on May 9, 2024, stating that motor carriers could *not* be billed under any circumstance. 89 Fed. Reg. 39569-70.

The D.C. Circuit Decision

In its ruling, the Court vacated 46 C.F.R. § 541.4 and held the FMC did not adequately justify its billing restrictions. The Court emphasized that the D&D Rule's "central organizing principle" was to limit charges to parties that are in contractual privity with the ocean carrier. By excluding motor carriers from the definition of a billed party (even if they have a contract with the ocean carrier), while allowing consignees to be a billed party despite having no contractual privity with an ocean carrier, the FMC adopted an internally inconsistent framework. The Court severed the vacated language from the rest of the D&D Rule, leaving the balance of the D&D Rule intact. At present, the issue of which parties may be lawfully invoiced for D&D Charges - Congress' express concern in OSRA 2022 - remains unsettled.

Practical Effects for Stakeholders

The FMC will presumably return to the drawing board and initiate new rulemaking to address, in a more reasoned fashion, what parties constitute properly billed parties. After all, Congress commanded the FMC engage in such rulemaking in OSRA 2022. Moreover, the Court noted in its decision that it was not holding definitively that the FMC would never be able to give a satisfactory explanation for categorically excluding motor carriers from the field of parties that may be assessed D&D Charges. Rather, it was simply holding that, if the FMC desires to keep that policy, it had failed to provide an adequate explanation.

In the meantime, the *WSC v. FMC* decision introduces significant uncertainty into the ocean shipping supply chain. With the billing provisions of the FMC's D&D Rule vacated, stakeholders face a regulatory gap that invites aggressive and inconsistent billing practices. In this environment where regulatory guidance is now absent, billing parties may test the boundaries of billing practices, making contractual precision essential. The impact of the *WSC v. FMC* ruling will differ across stakeholder groups:

- **Ocean Carriers.** With the billing restrictions vacated, ocean carriers once again have broad discretion about which parties they can invoice for D&D Charges. That discretion, however, brings increased legal and compliance risk, such as disputes over improper billing, invoice requirements under OSRA 2022 and the D&D Rule, double recovery or violations of the Shipping Act's prohibitions on unreasonable practices. Additionally, ocean carriers may not wish to bear the expense of retooling their billing departments, particularly if the FMC commences new rulemaking promptly. Ultimately, ocean carriers can manage these risks for the time being by ensuring that their service contracts, bills of lading and billing procedures clearly identify the responsible payor, that invoices are supported by contemporaneous documentation satisfying FMC evidentiary standards for D&D Charges and that billing practices are consistent and transparent, capable of withstanding audit, complaint or enforcement scrutiny.
- **Motor Carriers.** Depending on the manner in which ocean carriers react to the Court's decision, motor carriers may once again find themselves the target of D&D billing, particularly where a direct contractual link to a vessel-operating common carrier exists by virtue of an equipment interchange agreement, a carrier haulage agreement or even a bill of lading. Motor carriers should closely monitor emerging invoicing practices with their counterparties, ensure that all shipping documents accurately reflect their contractual roles and responsibilities, confirm that invoices comply with the requirements of the surviving provisions of the D&D Rule and be prepared to contest any D&D Charges that violate these requirements.
- **Intermediaries.** Transportation intermediaries (e.g., ocean freight forwarders, non-vessel-operating common carriers and freight brokers) may also be on the receiving end of invoices for D&D Charges, particularly if their shippers delay or refuse payment. Freight forwarders and Non-Vessel Owning Common Carriers should revisit their bill of lading terms and conditions, and all intermediaries should consider how the risk for such charges is allocated in their shipper-customer agreements. Express contractual language that allocates responsibility for D&D Charges, including pass-through rights, payment obligations, and indemnification obligations, will help ensure these costs are managed as intended, both up and down the supply chain.
- **Shippers.** The payment of invoices for D&D Charges is required as a condition precedent to the timely release of cargo, thereby intensifying commercial pressure on shippers to remit payment without delay. Where immediate payment is unavoidable, shippers should consider remitting payments under a reservation of rights to preserve their ability to contest or recover disputed charges. This evolving landscape introduces operational complexity, including documentation requirements, internal controls and administrative burdens necessary to ensure that invoices are accurate and costs are properly allocated. To mitigate exposure, shippers should implement internal protocols for charge verification, timely dispute resolution and coordinated stakeholder engagement. Communication will be essential to prevent the assessment of duplicative or erroneous D&D Charges. Additionally, as the ocean contract bid season approaches, shippers should consider proactive enhancements to contract language that clearly delineate liability for D&D Charges, clarify billing triggers, and incorporate dispute resolution mechanisms to better manage these emerging risks.

Benesch's Transportation & Logistics Practice Group has a history of counseling and representing all participants in the global ocean shipping market. Our team is available to assist all stakeholders in developing practical approaches to address the business and regulatory impacts of the changes arising from the WSC v. FMC decision and the practical effects it will have on billing for demurrage and detention.

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[1] *WSC v. FMC*, No. 24-1088, 2025 WL 2698837 (D.C. Cir. Sept. 23, 2025).