

**NARRATIVE SUPPORTING STATEMENT FOR
46 CFR PART 541 – DEMURRAGE AND DETENTION
SUBPART A – BILLING REQUIREMENTS AND PRACTICES**

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.

Section 7(a)(1)(G) of the Ocean Shipping Reform Act of 2022 (OSRA 2022) (codified at 46 U.S.C. § 41104(a)(15)) requires common carriers, including vessel-operating common carriers (VOCCs) and non-vessel-operating common carriers (NVOCCs), to include minimum billing information on demurrage and detention invoices. Specifically, common carriers must include: (A) date that container is made available; (B) the port of discharge; (C) the container number or numbers; (D) for exported shipments, the earliest return date; (E) the allowed free time in days; (F) the start date of free time; (G) the end date of free time; (H) the applicable detention or demurrage rule on which the daily rate is based; (I) the applicable rate or rates per the applicable rule; (J) the total amount due; (K) the email, telephone number, or other appropriate contact information for questions or requests for mitigation of fees; (L) a statement that the charges are consistent with any of Federal Maritime Commission (Commission) rules with respect to detention and demurrage; and (M) a statement that the common carrier's performance did not cause or contribute to the underlying invoiced charges. 46 U.S.C. § 41104(d)(2). In addition, OSRA 2022 authorized the Commission to require additional minimum information by subsequent rulemaking. *Id.*

In this rulemaking, the Commission is extending the billing requirements to marine terminal operators (MTOs) because these entities also issue demurrage and detention invoices. The rule also requires billing parties (common carriers and MTOs) to include all the information identified in 46 U.S.C. § 41104(d)(2) and additional information on demurrage and detention invoices not currently required by statute. For example, the rule requires that invoices include: (A) the bill of lading number; (B) the basis for why the invoiced party is the proper party of interest and thus liable for the charge; (C) the invoice issuance date; (D) the invoice due date; (E) the specific dates for which demurrage and/or detention were charged; (F) digital means (such as a URL address, QR code, or digital watermark, that directs the billed party to a detailed description of information or documentation that the billed party must provide to successfully request fee mitigation, refund, or waiver; and (G) defined timeframes for the billed party to request a fee mitigation, refund, or waiver, and for the billing party to resolve such requests.

Requiring billing parties to include the above information on demurrage and detention invoices will promote transparency to billed parties so they can identify the relevant container, the applicable charges, and the dates for which they are charged demurrage and detention, so that they can verify the accuracy of the charges or assess the reasonableness of the charges. In addition, the proposed rule requires billing parties to provide basic information to billed parties regarding the steps necessary to request fee mitigation, refunds, or waivers.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

Billed parties, such as beneficial cargo owners (BCOs), other shippers, and motor carriers can use this information to verify the accuracy of their demurrage and detention charges. Correspondingly, billed parties will be able to assess the reasonableness of the charges. It is also likely that the billed party will submit demurrage and detention invoices when they request fee mitigation, refunds, or waivers. In addition, if the billed party files a charge complaint under 46 U.S.C. § 41310, they must submit the invoice at issue. We expect that after receiving a section 41310 charge complaint, the Commission will use the invoice during its investigation of the contested charge.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Commission anticipates that the billing parties will use automated, electronic, mechanical, or other technological collection techniques to obtain a majority, if not all, of the minimum billing information required in Part 541. The Commission received comments to its Advanced Notice of Proposed Rulemaking and NPRM that indicated that most of the billing is automated. In addition, although some billing parties issue paper invoices, it is understood that many billing parties issue demurrage and detention invoices electronically.

4. Describe efforts to identify duplication.

This collection would not duplicate any information already available to the agency or other approved Collection of Information.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The Commission treats NVOCCs as small businesses when conducting the impact on small business entities. This rule requires that any NVOCC invoice with demurrage or detention charges contain certain minimum information. However, in most, if not all, cases, the NVOCCs are passing through charges billed to them by VOCCs or MTOs. Accordingly, the NVOCC should have the minimum information required in the proposed regulations on the demurrage and detention invoices they received. As a result, there should be minimum additional burden on NVOCCs to provide the required information on their demurrage and detention invoices.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

As discussed above, 46 U.S.C. § 41104(a)(15) and (d)(2) requires common carriers to provide certain minimum information on demurrage and detention invoices. Current billing

practices and the lack of transparency in those practices have raised concerns about whether current practices allow for a competitive and reliable American freight delivery system. The changes to current detention and demurrage billing practices this rule requires are meant to change the settled practices that do not ensure accuracy, clarity, and visibility of charges.

The rule requires common carriers and MTOs to include certain additional information on such invoices. The requirement to provide such information on the invoices promotes transparency. Commenters asserted that including such minimum information will reduce the time and effort spent by billed parties to verify the charges. Accordingly, including such information would permit billed parties to pay the charges or request fee mitigation, refunds, or waivers in a timelier manner. The proposed rule would also extend the requirement to MTOs and the Commission anticipates similar benefits from requiring MTOs to provide such information on their demurrage and detention invoices.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The proposed rule does not require the collection to be conducted in a manner inconsistent with OMB guidelines.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside FMC to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.

The 60-day Federal Register Notice was included in the Notice of Proposed Rulemaking (NPRM) published October 14, 2022, at 87 Fed. Reg. 62341.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not applicable – The Commission does not provide any payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The rule requires VOCCs, NVOCCs, and MTOs to provide certain minimum information when issuing demurrage or detention invoices. Billing parties may only issue demurrage or detentions invoices to person who have with a contractual privity with the billing party for the carriage of goods parties or space to store goods. The contract's terms and applicable law provides respondents assurances of confidentiality. In addition, if a party submits a demurrage and detention invoice to the Commission, then the Commission will provide confidential treatment for identified confidential information to the extent allowed by law.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the Commission considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, the Commission should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

The Commission anticipates the actual respondent universe will be the 354 VOCCs and MTOs currently registered with the Commission. The Commission estimates the total hour burden for issuing demurrage and detention invoices with the minimum billing information to be 113,500-227,000 (see below).

The Commission estimates an annualized cost to respondents for information collection as \$6,339,020-\$12,678,040. This includes overhead and benefits. (See Attachment 1.)

Requirement	Annual Respondents	Annual Instances	Average Hours Per Response	Total Hours
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Provide amended invoices and review accuracy	354	1,135,000-2,270,000	0.1	113,500-227,000
TOTALS				113,500-227,000

The Commission offers the following descriptions of the information collection requirements shown in the above table:

Provide amended invoices: It is estimated that between five and ten percent of all containers moving in U.S.-foreign trade will receive a demurrage and/or detention bill. This number translates to an estimated range of between 1,135,000 and 2,270,000 invoices issued annually. An estimate of 6 minutes per response includes providing the invoice and ensuring the accuracy of the newly required information.

It should be noted that the burden submitted to ROCIS with the NRPM contained an error and was estimated as \$126,788,500. The calculation of burden in the initial draft supporting statement was \$12,678,040 and it is unchanged for the final estimate.

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

*** The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

*** If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

*** Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to**

provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

In addition to the cost burdens described in item 12, the Commission estimates that the time burden for adding the required elements to the respondents' current invoicing systems is 25 hours per respondent. This results in a one-time cost to respondents of \$882,522 to update their IT systems so that their invoices will provide the required minimum information. Assuming a 3 percent annual interest rate and a lifecycle of 5 years, the annual cost is \$198,657.

14. Provide estimates of annualized cost to the Federal government.

There is no cost to the Federal Government associated with this rulemaking.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

Not applicable – The Commission does not report any program changes or adjustments.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Not applicable – The Commission does not plan to publish any information.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable – The Commission is not seeking approval to exclude the display of the expiration date for OMB approval of this information collection.

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

Not applicable -- The Commission proposes no exception to the certification statement on OMB Form 83-I.

B. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.

Attachment 1

12. Estimated Burden and Costs, Including Overhead, to Respondents

We estimate that respondents will spend a total of 113,500-227,000 hours to provide invoices and to ensure accuracy. This estimated hourly burden is split 80 percent to billing and posting clerks (90,800-181,600 hours) and 20 percent to managers (22,700 – 45,400 hours).

The salary for the Manager was calculated using SOC code 11-1021, and the salary for the Billing and Posting Clerk was calculated using SOC code 43-3021. The salary data are from the 2021 Occupational Employment and Wage Statistics published by the Bureau of Labor Statistics. Overhead of 102.93% has been added to the basic salary. The overhead rates and the adjusted annual salaries included below are rounded to the nearest cent.

Formula: hourly salary + overhead rate = adjusted hourly salary

Manager adjusted hourly salary: \$55.41 (basic hourly rate) + \$57.03 (overhead) = \$112.44

Billing and Posting Clerk adjusted hourly salary: \$20.55(basic hourly rate) + \$21.15 (overhead) = \$41.70

Employee	Adjusted Hourly Salary	Number of Hours	Total ^a
Manager	\$112.44 ^b	22,700-45,400	\$2,552,468-5,104,935
Billing and Posting Clerk	\$41.70 ^c	90,800-181,600	\$3,786,552-7,573,104
TOTALS			\$6,339,020-\$12,678,040

^a The Commission rounded the total to the nearest dollar.

^b The adjusted hourly salary used to calculate the total is \$112.443513.

^c The adjusted hourly salary used to calculate the total is \$41.702115.

Submitted into ROCIS: