

## Federal Maritime Commission Charges Forward with Interim Procedures for OSRA 22 Complaints

On December 1, 2022, the Federal Maritime Commission (FMC or the Commission) released “Interim Procedures for Processing Charge Complaints” filed with the Commission under the Ocean Shipping Reform Act of 2022 (OSRA 22). In OSRA 22, Congress created a process by which shippers or other affected parties may challenge fees and charges assessed by a common carrier, such as detention and demurrage charges (46 U.S.C. § 41310). Pursuant to this statutory provision, the FMC must consider complaints from a shipper when it provides certain information relating to the fees/charges and then requires common carriers to establish the reasonableness of certain charges.

In its announcement, the FMC commented that shippers have filed over 175 charge complaints since OSRA 22’s enactment in June and that the Interim Procedures clarify the Commission’s processing of such charge complaints. The FMC also noted it intends to adopt a permanent procedure following formal rulemaking and after gaining experience from these first proceedings.

The steps outlined by the FMC in the Interim Procedures provide the following:

1. The charge complaint must be “perfected” with the following information:
  - a. Identity of the common carrier;
  - b. Description of how the charge at issue violated certain provisions of the Shipping Act (46 U.S.C. §§ 41102 and 41104(a));
  - c. Supporting documentation such as invoices, bills of lading, denial of appointments for returning equipment, etc.
2. FMC staff initiate an investigation and contact the common carrier with a request for justification of the charge. The common carrier bears the burden of proof in justifying detention and demurrage charges specifically.
3. If the investigation supports a finding of noncompliance, then the FMC’s Office of Enforcement will recommend that the Commission (by majority vote of the Commissioners) initiate a formal adjudication via an Order to Show Cause (SCO). The complainant is not required to provide additional information or testify at this stage. If the investigation does not support a finding, the complainant may still file a small claims or formal complaint with the Commission.
4. If the FMC issues the SCO, then the carrier must respond as to why it should not be ordered to refund and/or waive the charges at issue.
5. The FMC issues a decision on the SCO, which may include an order for refund or waiver if charges are noncompliant with the Shipping Act. The Commission may also institute a separate proceeding for civil penalties against the carrier if circumstances warrant such a decision.

In light of the Interim Procedures and the significant number of Charge Complaints being filed with the FMC, common carriers should consistently review current policies and practices regarding fee/charge assessments.

Cozen O’Connor’s *Transportation & Trade Group* continues to monitor actions at the FMC on a variety of regulatory fronts, including charge complaints. It stands ready to advise clients as they continue navigating a shifting regulatory landscape.



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