



## Unreasonable Practices Complaint Process 46 USC Chapter 41102(c) (replaces 10(d)1 provision)

**46 USC Chapter 41102(c)** states: A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

**FMC Docket 19-05 Interpretive Rule** provides: Demurrage and detention are valuable charges when applied in ways that incentivize cargo interests to move cargo promptly from ports and marine terminals - and - “when incentives such as demurrage and detention no longer function because shippers are prevented from picking up cargo or returning containers within time allotted,” [absent extenuating circumstances], “charges should be suspended.”

You may have a case if you could not be incentivized to pick up or return the container any sooner due one or more of the following (non-exclusive) list:

Container not available	Once in demurrage, always in demurrage
Terminal closed	Empty return yard closed
Closed area of terminal	No empty return appointments available
Denied free time	No single-move returns accepted
No appointments	Required/specified chassis not available
Government hold	Charged under Carrier Haulage
Communication Delays	Threats to stop doing business for nonpayment
ERD Change	Threat of Retribution
Involuntary rolled booking	Other unreasonable practice

Once it is determined that you have a grievance, the best place to start is with the carrier’s resolution process found at [www.OCEMA.org](http://www.OCEMA.org), or the terminal’s process per their website. Sometimes the invoice will include dispute instructions.

If the dispute cannot be settled with the carrier or terminal directly, you can proceed with Federal Maritime Commission assistance in any one of the four following ways:

1. **CADRS – Consumer Affairs and Dispute Resolution Service** is a voluntary and non-binding option that brings parties together for dialogue in an effort to promote negotiation through this FMC department. This is the most informal dispute option at FMC. More info at: <https://www.fmc.gov/databases-services/consumer-affairs-dispute-resolution-services/>
  
2. **Small Claims Process** – available for disputes up to \$ 50,000.00. This is considered an informal process that can be handled without the need for attorneys. There is a filing fee of \$ 112.00 and recommended format for filing can be found at [SmallClaimsComplaintFormat.pdf \(fmc.gov\)](#) . A small claims complaint must:
  - State a section of the Shipping Act found in 46 USC Chapter 411 you allege was violated
  - Be properly signed and sworn or verified by using a notary public or making one of the statements below and signing the name afterward:
    - If you are located in the United States: “I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.”
    - If you are located outside the United States: “I declare (or certify, verify or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.”
  - Be signed and dated
  - Include an original and two copies of the claim and supporting documentation (unless emailed)
  - Be filed within three years from the time the cause of action accrued (i.e., the date the Shipping Act violation occurred)
  - Be accompanied by a filing fee
  - May be emailed to [secretary@fmc.gov](mailto:secretary@fmc.gov) (email preferred to sending hardcopies)
  
3. **Formal Complaint Process** – may be filed with the FMC to allege violations of the Shipping Act and to seek reparations for damages. Filing rules can be reviewed at CFR 46 Part 502 Subpart E – Private Complaints and Commission Investigations. A formal complaint must:
  - Allege violations of specific sections of the Shipping Act, 46 U.S.C. Chapter 411
  - Be verified (sworn)
  - Be filed within three years of the violation, if seeking reparation
  - Include the name, address and email address of each complainant, the name, address and email address of each complainant’s attorney or agent, the name and address of each person against whom the complaint is made
  - Include concise statement of the cause of action and a request for relief or other affirmative action sought
  - Designate the place at which a hearing is desired
  - Include an original and 5 copies (unless emailed)
  - Be accompanied by a filing fee
  - May be filed by email to [secretary@fmc.gov](mailto:secretary@fmc.gov) (email preferred to sending hardcopies)

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4. **Charge Complaint** – as prescribed by OSRA, with effect June 16, 2022. Procedures can be found at this link: [www.fmc.gov/industry-advisory-interim-procedures-for-submitting-charge-complaints/](http://www.fmc.gov/industry-advisory-interim-procedures-for-submitting-charge-complaints/)

Charge Complaints can be filed with the Commission using these steps:

- Identifying the common carrier (only applicable to common carriers, not rails, ports, or terminals)
- Identifying the specific alleged violations of 46 U.S.C. §§ [41102](#) and/or [41104\(a\)](#)
- Gathering and submitting supporting documentation, as appropriate, including:
  - a. Invoices
  - b. Bill of Lading Numbers
  - c. Evidence of whether the charge(s) have been paid
- Confirming that the disputed charge was incurred on or after the enactment of P.L. 117-146
- Submitting all relevant materials in one email (if possible) to [chargecomplaints@fmc.gov](mailto:chargecomplaints@fmc.gov)

When the Commission receives sufficient information, it will promptly initiate an investigation, which could ultimately result in a civil penalty and order for a refund of charges paid.

Investigations by the Commission are for law enforcement purposes and do not constitute representation as attorney for the complainant or a guarantee of refunds.

If the filer chooses to pursue and control their own legal case, including with the assistance of their own attorney if desired, they may do so under 46 U.S.C. § 41301(a) and Part 502 of the Commission's regulations. To do so, filers must submit a formal or informal complaint. Persons may also seek alternative dispute resolution services by contacting the Office of Consumer Affairs and Dispute Resolution.

If none of these choices are workable using the FMC's process, there is always the option of filing a complaint in Federal Court.

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