

## THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: MAY 29, 2024

### Services

Intermediaries

International Trade &amp; Supply Chain

Maritime &amp; Ocean Law

### Industry

Transportation

### Professionals

JULIE E. MAURER

PHOENIX:

480.824.7883

JULIE.MAURER@

HUSCHBLACKWELL.COM

JOSEPH T. BARATTA

PHOENIX:

480.824.7893

JOSEPH.BARATTA@

HUSCHBLACKWELL.COM

# New FMC D&D Invoicing Rules Are Officially in Effect

The Federal Maritime Commission's (FMC) Final Rule on Demurrage and Detention Invoicing (Final Rule) is in effect. The Final Rule requires certain minimum information for demurrage and detention (D&D) invoices and provides procedures for disputing charges. D&D invoices have created a host of issues throughout port congestion, especially as they relate to the lack of information provided on the invoices.

Failure to include the required information on a D&D invoice eliminates any obligation of the billed party to pay the applicable charge. Most importantly, the Final Rule outlines who can be billed D&D charges, the timeframe within which bills must be issued, and the process for disputing bills.

The invoices must be issued to “[t]he 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 the consignee—but not both. Note that this party should not be the Customs Broker or the Notify Party if those parties are not the persons described above. 46 C.F.R. § 541.4.

If the invoice does not contain the required information, it does not have to be paid. 46 C.F.R. § 541.5.

Ocean carriers must invoice within 30 days from when demurrage or detention is incurred. 46 C.F.R. § 541.7.

Non-Vessel Operating Common Carriers (NVOCCs) have 30 days to invoice D&D from the date of the invoice received from the ocean carrier. 46 C.F.R. § 541.7.

Billing parties are not permitted a grace period to cure defective invoices that fail to meet statutory requirements. While there is no obligation on the billed party to advise of a defective invoice, a carrier may reissue the charges on a new invoice/bill that meets the statutory requirements. 46 C.F.R. § 541.6.

Billed parties have 30 days from the invoice issuance to request mitigation, refund, or waiver, and billing parties have 30 days from the date of the request to resolve the request. 46 C.F.R. § 541.8.

### **Updates to initial notice**

Notably, the Contents of Invoice requirements in Section 541.6 are also in effect. The FMC originally delayed the promulgation of this Section, but later updated the Rule to include 541.6.

These requirements include:

Identifying information

The Bill of Lading number(s);

The container number(s);

For imports, the port(s) of discharge; and

The basis for why the billed party is the proper party of interest and thus liable for the charge.

Timing information

The invoice date;

The invoice due date;

The allowed free time in days;

The start date of free time;

The end date of free time;

For imports, the container availability date;

For exports, the earliest return date (ERD); and

The specific date(s) for which demurrage and/or detention were charged.

Rate information

The total amount due;

The applicable detention or demurrage rule (e.g., the tariff name and rule number, terminal schedule, applicable service contract number and section, or applicable NRA) on which the daily rate is based; and

The specific rate or rates per the applicable tariff rule, NRA, or service contract.

**Dispute information**

The email, telephone number, or other appropriate contact information for questions or request for fee mitigation, refund, or waiver;

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

Defined timeframes that comply with the billing practices in this part, during which the billed party must request a fee mitigation, refund, or waiver and within which the billing party will resolve such requests.

**Certifications**

The charges are consistent with any of the FMC's rules related to demurrage and detention, including, but not limited to, this part and 46 C.F.R. § 545.5; and

The billing party's performance did not cause or contribute to the underlying invoiced charges.

**What this means to you**

Updates to your Rules Tariff, Bill of Lading terms and conditions, or NRA rate quotation will be required to maintain compliance with the new rules.

**Contact us**

If you need assistance updating your Rules Tariff, Bill of Lading terms and conditions, or NRA rate quotation, contact Julie Maurer, Carlos Rodriguez, Julia Bonestroo Banegas, Joseph Baratta, or your Husch Blackwell attorney.