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PART 541—DEMURRAGE AND DETENTION

Subpart A—Billing Requirements and Practices

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Subpart B [Reserved]

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 40101, 40102, 40307, 40501–40503, 41101–41106, 40901–40904, and 46105; and 46 CFR 515.23.

SOURCE: 89 FR 14362, Feb. 26, 2024, unless otherwise noted.

Subpart A—Billing Requirements and Practices

§ 541.1 Purpose.

This part establishes the minimum information that must be included on or with demurrage and detention invoices. It also establishes procedures that must be adhered to when invoicing for demurrage or detention.

§ 541.2 Scope and applicability.

(a) This part sets forth regulations governing any invoice issued by an ocean common carrier, marine terminal operator, or non-vessel-operating common carrier for the collection of demurrage or detention charges.

(b) This part does not govern the billing relationships among and between ocean common carriers and marine terminal operators.

§ 541.3 Definitions.

In addition to the definitions set forth in 46 U.S.C. 40102, when used in this part:

Billed party means the person receiving the demurrage or detention invoice and who is responsible for the payment of any incurred demurrage or detention charge.

Billing party means the ocean common carrier, marine terminal operator, or non-vessel-operating common carrier who issues a demurrage or detention invoice.

Consignee means the ultimate recipient of the cargo; the person to whom final delivery of the cargo is to be made.

Demurrage or detention mean any charges, including ''per diem'' charges, assessed by ocean common carriers, marine terminal operators, or non-vessel-operating common carriers related to the use of marine terminal space (*e.g.*, land) or shipping containers, but not including freight charges.

Demurrage or detention invoice means any statement of charges printed, written, or accessible online that documents an assessment of demurrage or detention charges.

Person means an individual, corporation, or company, including a limited liability company, association, firm, partnership, society, or joint stock company existing under or authorized by the laws of the United States or of a foreign country.

§ 541.4 Properly issued invoices.

(a) 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.

(b) If a billing party issues a demurrage or detention invoice to the person identified in paragraph (a)(1) of this section, it cannot also issue a demurrage or detention invoice to the person identified in paragraph (a)(2) of this section.

(c) A billing party cannot issue an invoice to any other person.

§ 541.5 Failure to include required information.

Failure to include any of the required minimum information in this part in a demurrage or detention invoice eliminates any obligation of the billed party to pay the applicable charge.

§ 541.6 Contents of invoice.

(a) *Identifying information.* A demurrage or detention invoice must be accurate and contain sufficient information to enable the billed party to identify the container(s) to which the charges apply and at a minimum must include:

(1) The Bill of Lading number(s);

(2) The container number(s);

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

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

(b) *Timing information.* A demurrage or detention invoice must be accurate and contain sufficient information to enable the billed party to identify the relevant time for which the charges apply and the applicable due date for invoiced charges and at a minimum must include:

(1) The invoice date;

(2) The invoice due date;

(3) The allowed free time in days;

(4) The start date of free time;

(5) The end date of free time;

(6) For imports, the container availability date;

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

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

(c) *Rate information.* A demurrage or detention invoice must be accurate and contain sufficient information to enable the billed party to identify the amount due and readily ascertain how that amount was calculated and must include at a minimum:

(1) The total amount due;

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

(3) The specific rate or rates per the applicable tariff rule or service contract.

(d) *Dispute information.* A demurrage or detention invoice must be accurate and contain sufficient information to enable the billed party to readily identify a contact to whom they may direct questions or concerns related to the invoice and understand the process to request fee mitigation, refund, or waiver, and at a minimum must include:

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

(2) 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

(3) 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.

(e) *Certifications.* A demurrage or detention invoice must be accurate and contain statements from the billing party that:

(1) The charges are consistent with any of the Federal Maritime Commission's rules related to demurrage and detention, including, but not limited to, this part and 46 CFR 545.5; and

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

[89 FR 14363, Feb. 26, 2024]

§ 541.7 Issuance of demurrage and detention invoices.

(a) A billing party must issue a demurrage or detention invoice within thirty (30) calendar days from the date on which the charge was last incurred. If the billing party does not issue a demurrage or detention invoice within thirty (30) calendar days from the date on which the charge was last incurred, then the billed party is not required to pay the charge.

(b) If the billing party is a non-vessel-operating common carrier, then it must issue a demurrage or detention

invoice within thirty (30) calendar days from the issuance date of the demurrage or detention invoice it received. If such a billing party does not issue a demurrage or detention invoice within thirty (30) calendar days from the issuance date of the demurrage or detention invoice it received, then the billed party is not required to pay the charge.

(c) A non-vessel-operating common carrier (NVOCC) can be both a billing and billed party in relation to the same charge. When an NVOCC is acting in both roles, it can inform its billing party that the charge has been disputed by the NVOCC's billed party. The NVOCC's billing party must then provide an additional thirty (30) calendar days for the NVOCC to dispute the charge upon this notice.

(d) If the billing party invoices an incorrect person, the billing party may issue an invoice to the correct billed party provided that such issuance is within thirty (30) calendar days from the date on which the charge was last incurred. If the billing party does not issue this corrected demurrage or detention invoice within thirty (30) calendar days from the date on which the charge was last incurred, then the billed party is not required to pay the charge.

§ 541.8 Requests for fee mitigation, refund, or waiver.

(a) The billing party must allow the billed party at least thirty (30) calendar days from the invoice issuance date to request mitigation, refund, or waiver of fees from the billing party.

(b) If a billing party receives a fee mitigation, refund, or waiver request from a billed party, the billing party must attempt to resolve the request within thirty (30) calendar days of receiving such a request or at a later date as agreed upon by both parties.

§ 541.9–541.98 [Reserved]

§ 541.99 OMB control number assigned pursuant to the Paperwork Reduction Act.

The Commission has received Office of Management and Budget approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. The valid control number for this collection of information is 3072–0073.

[89 FR 41895, May 14, 2024]

Subpart B [Reserved]

PART 542—COMMON CARRIER PROHIBITIONS

Sec.

542.1 Definition of unreasonable refusal of cargo space accommodations when available and unreasonable refusal to deal or negotiate with respect to vessel space provided by an ocean common carrier.
542.2–542.98 [Reserved]
542.99 OMB control number assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 553; and 46 U.S.C. 40104, 46105, 40307, 40501–40503, 40901–40904, 41101–41106.

SOURCE: 89 FR 59671, July 23, 2024, unless otherwise noted.

§ 542.1 Definition of unreasonable refusal of cargo space accommodations when available and unreasonable refusal to deal or negotiate with respect to vessel space provided by an ocean common carrier.

(a) *Purpose.* This part establishes the elements and definitions necessary for the Federal Maritime Commission (Commission) to apply 46 U.S.C. 41104(a)(3) with respect to refusals of cargo space accommodations when available for containerized cargo and to apply 46 U.S.C. 41104(a)(10) with respect to refusals of vessel space accommodations provided by an ocean common carrier with respect to containerized cargo. This part applies to complaints brought before the Commission by a private party and enforcement cases brought by the Commission.

(b) *Definitions.* For the purposes of this section:

Blank sailing means a sailing skipping one or more specific port(s) while still traversing the rest of the scheduled route or the entire sailing being canceled.

Cargo space accommodations means space which has been negotiated for or confirmed aboard the vessel of an ocean common carrier for laden containers being imported to or exported from the United States. Cargo space accommodations includes the services