

WESCCON 2024

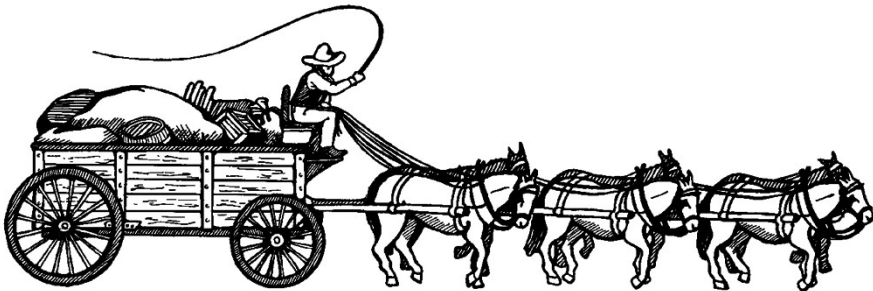
FMC Final Rule and D&D Billing

Moderator:

- Allison Brady, Export Department Manager, Geo. S. Bush & Co.

Panelists:

- Rich Roche, Vice President, Mohawk Global Logistics
- Cameron Roberts, Managing Partner, Roberts & Kehagiaras LLP
- Peter Schneider, President, T.G.S. Logistics, Inc. & T.G.S. Transportation, Inc.



Saturday October 19, 2024

D&D Billing Best Practices for NVOCCs

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.

- Issue invoice within 30 days of VOCC/MTO bill received
- Issue to contracted party (Shipper or Consignee)
- Include FMC's 20 data elements (included on or with)



W
E
S
T
C
O
A
S
T
2
0
2
4

20 Required Data Elements for Invoice

1. Date container is made available
2. For Imports, the port of discharge
3. The container number(s)
4. Early receiving date (for exports only)
5. The allowed time in free days
6. The start date of free time
7. The end date of free time
8. Applicable D&D rule number for charge
9. Specific rate per tariff or contract
10. The total amount due

NVOCC data points that may be different

11. Contact info for mitigation
12. Statement: ...consistent w/ FMC rules
13. Statement: ... CC did not contribute
14. The bill of lading number
15. Basis for why billed party is proper
16. The invoice date
17. The invoice due date
18. Specific dates D&D was charged
19. Digital link to website for disputes
20. Defined timeframes for dispute



D&D Billing: 30 – 30 – 30 Rule

§ 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.

- Issue invoice within 30 days of VOCC/MTO bill received
- Disputes must be lodged within 30 days of NVO invoice
- NVO and VOCC/MTO must attempt to resolve in 30 days



Dispute Processes

- Work directly with VOCC or MTO first
- FMC Dispute processes:
 - CADRS – informal dialogue forum
 - Charge Complaints – against common carriers only
 - Small Claims Process – up to \$ 50K – limited discovery
 - Formal Complaint Process – attorney recommended
- Federal Court – attorney required



W
E
S
T
C
O
N
2
0
2
4

Thank you

Rich Roche
Senior Vice President
Mohawk Global



MOHAWK[®]
G L O B A L



WESCCON 2024

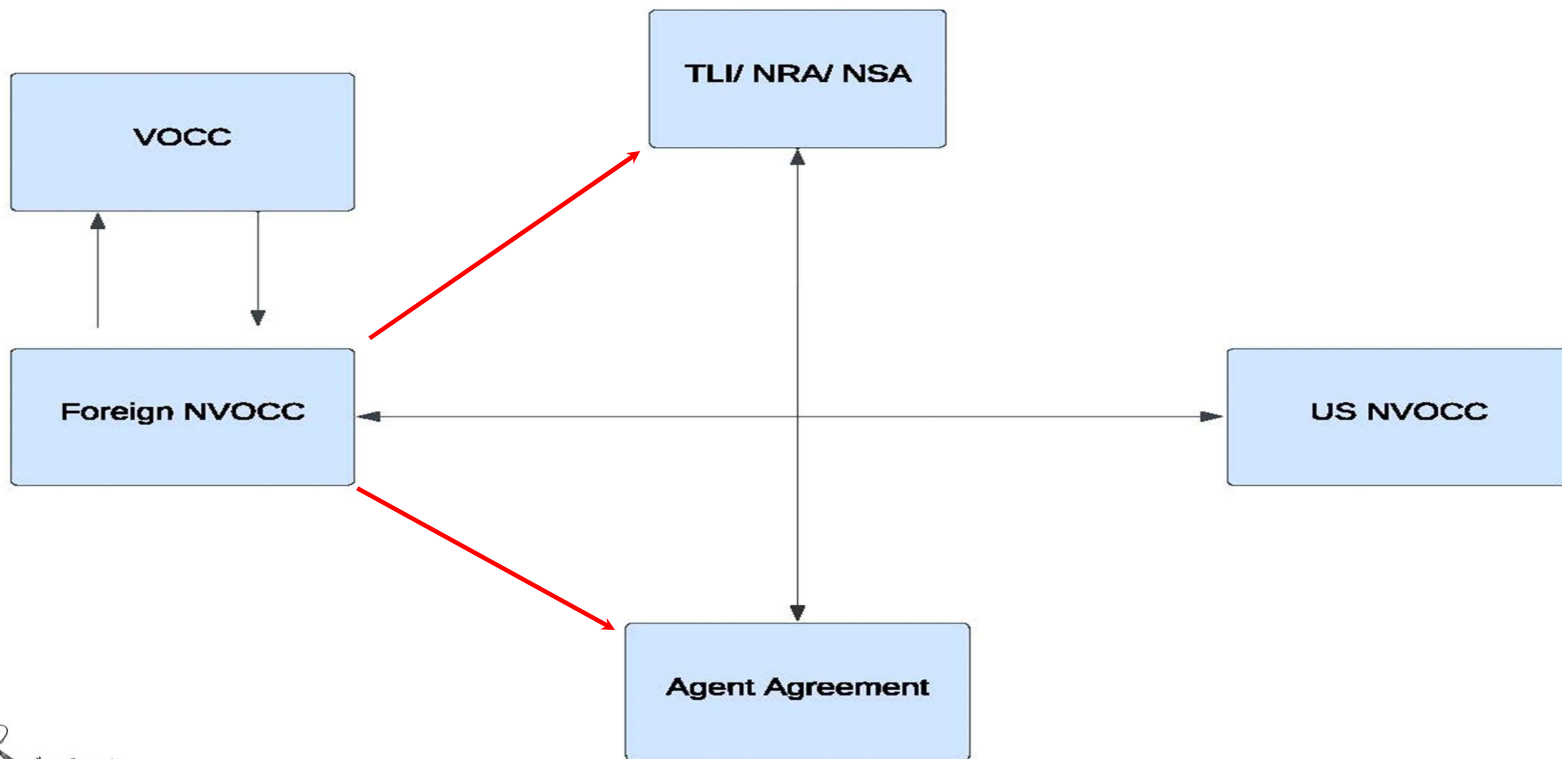


ROBERTS & KEHAGIARAS LLP
ATTORNEYS AND COUNSELORS AT LAW

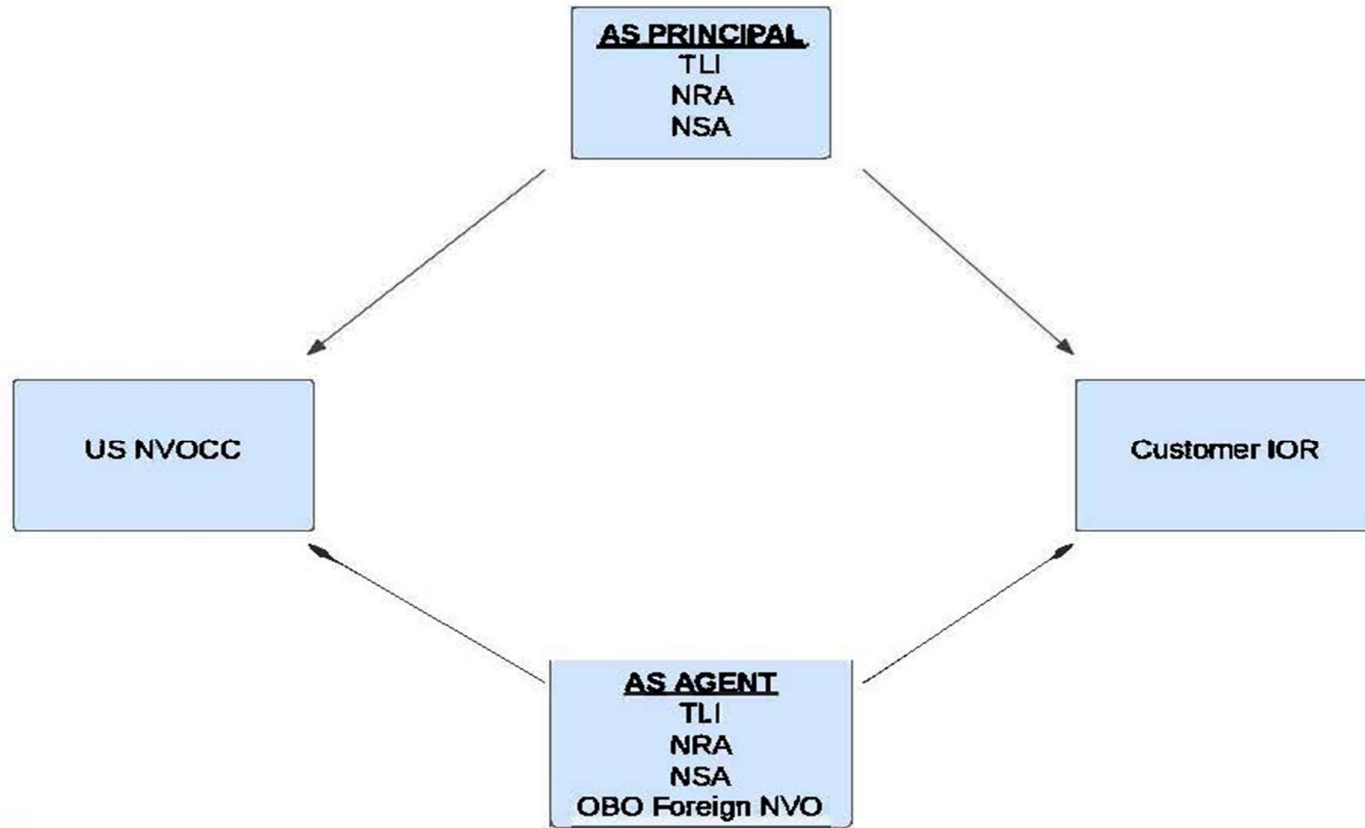
Roberts & Kehagiaras LLP
Cameron W. Roberts
cwr@tradeandcargo.com
TRADEANDCARGO.COM



AGENT OF FOREIGN NVOCC OR NVOCC?



AGENT OF FOREIGN NVOCC OR NVOCC?



ADVANCE PAYMENT OF D&D

QUESTION: Parties are often required to pay demurrage charges before cargo release.

FMC response to NCBFAA: “A billing party must *issue the invoice* before the billed party is required to pay it.”

The final rule required the billing party to issue an invoice “rather than on the billed party to demand one.”

- D&D invoices on MTO websites?
- D&D invoices on Paycargo and other 3rd party websites?



D&D – FINAL RULE – SAFE HARBOR

46 U.S.C. § 41104(e) states:

SAFE HARBOR.-If a non-vessel operating common carrier passes through to the relevant shipper an invoice made by the ocean common carrier, and the Commission finds that the non-vessel operating common carrier is not otherwise responsible for the charge, then the ocean common carrier shall be subject to refunds or penalties pursuant to subsection (d)(1).



D&D – FINAL RULE – SAFE HARBOR

Omni passed-through charges from other entities, such as Maher Terminals, and Epic marked up those charges.

“As the entity that passed through charges from common carriers and terminals, Respondents could only pass through information they received from those entities.”

“NVOCCs passing through charges are **not** required to provide more than what they received from the underlying carrier.” *TPG v. Omni Logistics LLC AND Epic Freight Solutions LLC,, et al.* Docket 22-31, page 48.



D&D – FINAL RULE – SAFE HARBOR

Charges must be reflected in a tariff, and there is no evidence that Epic’s tariff was updated to include these charges. Early on, TPG specifically objected to a ten percent markup admin fee, stating, “I don’t believe your proposal, and T&Cs specify potential per diem charges.” Therefore, these additional fees and markups, not published in the tariff, are unreasonable. *TPG v. Omni Logistics LLC and Epic Freight Solutions LLC, et al.* Docket 22-31, page 35.



D&D – FINAL RULE – 46 C.F.R. § 541.6

Contents of invoice.

- The Bill of Lading number(s);
- The container number(s);
- For imports, the port(s) of discharge;
- The basis for why the billed party is the proper party of interest;
- 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;
- The specific date(s) for which demurrage and/or detention were charged;
- The total amount due;
- The applicable detention or demurrage rule;
- The specific rate or rates per the applicable tariff rule or service contract;
- Contact information for questions or requests for fee mitigation, refund, or waiver;
- Link 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;
- 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;
- Certification that the charges are consistent with FMC rules related to demurrage and detention; and
- Certification that the billing party's performance did not cause or contribute to the underlying invoiced charges.



Evergreen Shipping Agency (Am.) Corp. v. FMC, 2024 U.S. App. LEXIS 16457 (D.C. Cir. July 5, 2024)

Evergreen had invoiced trucking company TCW for the late return of a container and vehicle chassis used to deliver a container of motorcycles shipping from Japan, offloading in Savannah, Georgia, and being trucked to Yamaha Motor Company's warehouse. Due to a COVID-related closure of Yamaha's warehouse and then days when the Port of Savannah was closed, after free time from the carrier, the container was deemed to be four days late, and the chassis was 22 days late when it reached Savannah on May 26, 2020.

TCW was billed \$1,490 in detention charges but objected to \$510 for the days when the port was closed.

The assessed detention charges for the days that the port was closed were unreasonable because the FMC's application of the incentive principle as a bright line rule rather than considering all relevant facts and circumstances, was arbitrary and capricious.

“Detention charges during port closures can heighten incentives to return equipment timely.”





ATTORNEYS AND COUNSELORS AT LAW

- The information in this PowerPoint presentation does not, and is not intended to, constitute legal advice. Roberts & Kehagiaras LLP provides all information, content, and materials in this presentation only for general informational purposes. Information in this PowerPoint presentation may not constitute the most up-to-date legal or other information. This PowerPoint presentation contains links to third-party websites. Such links are only for the convenience of the reader and Roberts & Kehagiaras LLP does not recommend or endorse the contents of the third-party sites.
- Readers of this PowerPoint presentation should contact their retained attorney to obtain legal advice as to any pending legal issue. No reader should act or refrain from acting because of information in this PowerPoint presentation without first seeking legal advice from counsel in the relevant jurisdiction. Only one's retained attorney can provide legal advice as to whether that the information in this PowerPoint presentation, and your interpretation of it, is applicable or appropriate to your situation.
- One's use of and access to this PowerPoint presentation or any of the links or resources in it does not create an attorney-client relationship between such person and Roberts & Kehagiaras LLP, which requires a written and signed attorney-client retention agreement.
- Roberts & Kehagiaras LLP disclaims all liability as to actions one chooses to take or not to take based on the contents of this PowerPoint presentation. Roberts & Kehagiaras LLP provides this PowerPoint presentation on an "as is" basis and makes no representation that the content is error-free.





LOGISTICS, Inc.

The Service You've Come to Depend On

Presentation for

FMC Panel:

Final Rule & D&D Billing

COMMITMENT TO SERVICE • SAFETY • SECURITY •
TECHNOLOGY

W
E
S
C
C
O
N

2
0
2
4

California & Nevada Drayage Services



International Drayage

TGS services the Ports of Los Angeles, Long Beach & Oakland daily with over 150 trucks serving southern, central and northern California as well as northern Nevada.

Domestic Intermodal Drayage

TGS services all the rail ramps in northern California (Lathrop, Stockton and Oakland) as well as the ramp in Sparks, NV.

Transload Services

TGS has several transload partners in both the Oakland and LA/LB markets to meet your needs. Dry or perishable goods; palletized, loose cartons or slip-sheeted; we have your cargo covered.

LCL Service

Our LCL service runs to/from the ports of Oakland and LA/Long Beach with empty containers daily.

TGS handles both dry and refrigerated cargo. We are also a bonded & hazmat carrier. Of course, all trucks are CARB compliant.

THE SERVICE YOU'VE COME TO DEPEND ON



US Customs Bonded



Certified Hazmat Carrier



CARB Certified Trucks





AHFA Conference 2024



THE SERVICE YOU'VE COME TO DEPEND ON

FMC – DnD Rule

- In effect from OSRA rule
- Effective 5/28/24
- Forces Steamship lines to bill BCOs, not truckers
- Truckers cannot be locked out due to non-payment

The screenshot shows the Federal Register website interface. At the top, there are navigation links for Sections, Browse, Search, Reader Aids, and My FR. The main header reads 'FEDERAL REGISTER - The Daily Journal of the United States Government'. Below this, a blue bar indicates 'Rule'. The title of the document is 'Demurrage and Detention Billing Requirements', published on 02/26/2024. The document details include:

- AGENCY:** Federal Maritime Commission.
- ACTION:** Final rule.
- SUMMARY:** In accordance with the Ocean Shipping Reform Act of 2022, the Federal Maritime Commission (the Commission or FMC) is issuing regulations governing demurrage and detention billing requirements. This final rule requires common carriers and marine terminal operators to include specific minimum information on demurrage and detention invoices, outlines certain detention and demurrage billing practices, such as determination of which parties may appropriately be billed for demurrage or detention charges, and sets timeframes for issuing invoices, disputing charges with the billing party, and resolving such disputes. It adopts with changes the notice of proposed rulemaking published on October 14,

Document details on the right side of the page include:

- Printed version:** PDF
- Publication Date:** 02/26/2024
- Agency:** Federal Maritime Commission
- Dates:** This final rule is effective on May 28, 2024, except for instruction 2 adding Sec. 541.6, and instruction 3 adding Sec. 541.99, which are delayed. The Commission will publish a document in the Federal Register announcing the effective date of these amendments.
- Effective Date:** 05/28/2024
- Document Type:** Rule
- Document Citation:**

AHFA Conference 2024



THE SERVICE YOU'VE COME TO DEPEND ON

FMC – DnD Rule – Invoicing Requirements

§ 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.



AHFA Conference 2024

THE SERVICE YOU'VE COME TO DEPEND ON

FMC – DnD Rule vs. current UIIA rules

Invoice Procedures

	UIIA	FMC
Receive Invoice	60 days from last transaction	30 days from last transaction
Mitigate/Fight Invoice	30 days from invoice date	30 days from invoice date
Response to Mitigation	30 days from mitigation	30 days from mitigation
Fighting Invoices	DRP - Dispute Resolution Process Two person team from IIEC Made up of 1 MC, 1 EP	Filing Shipping Complaint Dispute Resolution Services Filing Small Claims Complaint Filing Formal Claims Complaint



WESCCON 2024



Peter Schneider
President

pschneider@tgstrans.com



Robert Loya
COO

rloya@tgstrans.com

Thank you