



FEDERAL MARITIME COMMISSION

46 CFR Part 541

[Docket No. FMC-2022-0066]

RIN 3072-AC90

Demurrage and Detention Billing Requirements; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the preamble to a final rule published in the **Federal Register** on February 26, 2024, concerning demurrage and detention billing requirements. This correction provides information regarding situations in which vessel-operating common carriers (VOCCs) enter into written contracts with motor carriers that use containers in the transportation of goods.

DATES: This action is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: To view background documents or comments received, you may use the Federal eRulemaking Portal at *www.regulations.gov* under Docket No. FMC-2022-0066.

FOR FURTHER INFORMATION CONTACT: David Eng, Secretary; Phone: (202) 523-5725; Email: *secretary@fmc.gov*.

SUPPLEMENTARY INFORMATION: The Commission notes that it has received several inquiries concerning a possible discrepancy between the rule text and one paragraph in the preamble, found at page 14336.¹ The Commission appreciates these

¹ “In regard to the second comment, there seems to be a misunderstanding on the commenter's part about the rule's applicability. As discussed in the NPRM, a primary purpose of this rule is to stop demurrage and detention invoices from being sent to parties who did not negotiate contract terms with the billing party. That concern is not present where a motor carrier has directly contracted with a VOCC. Nothing in this rule, either in the proposed or final version, prohibits a VOCC from issuing a demurrage or detention invoice to a motor carrier when a contractual relationship exists between the VOCC and the motor carrier

inquiries as they reflect the strong interest within the shipping industry in ensuring compliance with applicable regulations. These inquiries have helped this clarification issue well before the rule goes into effect on May 28, 2024.

In the preamble, the Commission responded to a comment requesting that we amend the definition of “billed party” to address situations in which vessel-operating common carriers (VOCCs) enter into written contracts with motor carriers that use containers in the transportation of goods. The Commission responded by declining to adopt this proposed change, and we now reiterate that conclusion – demurrage and detention should be billed to either 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 the consignee.

The Commission’s explanation in the preamble was intended to further explain that the rule only addresses carrier-trucker relationships on through bills of lading. The Commission meant this to be understood in the context of its statement that “the FMC’s jurisdiction, and thus this rule, would apply only to cargo moved inland under a through bill of lading and contracts between a VOCC [and] a motor carrier not based on a through bill of lading would likely be outside the scope of this rule.” We further did not intend the paragraph to suggest that there is an exception to the rule’s clear direction regarding who may be a “billed party”. However, we now see that the inadvertent inclusion of certain language renders this comment response ambiguous, and we take this opportunity to clarify our intention by correcting the language in the preamble.

for the motor carrier to provide carriage or storage of goods to the VOCC. The definition of “billed party” is intentionally broad to capture any party to whom a detention or demurrage invoice is issued. When a VOCC issues a detention or demurrage invoice to a motor carrier, the VOCC must comply with the requirements of part 541. The Commission has jurisdiction over common carriers, marine terminal operators (MTOs), and ocean transportation intermediaries (OTIs), including over through transportation. Without knowing the particulars of the hypothetical, in this situation, presumably the FMC’s jurisdiction, and thus this rule, would apply only to cargo moved inland under a through bill of lading and contracts between a VOCC. A motor carrier not based on a through bill of lading would likely be outside the scope of this rule.”

Accordingly, in FR Doc. 2024-02926, on page 14336, in the third column, the paragraph beginning with “In regard to...” is corrected to read as follows:

“In regard to the second comment, the rule makes clear that demurrage and detention invoices can only be issued to either 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 the consignee. As discussed in the NPRM, a primary purpose of this rule is to stop demurrage and detention invoices from being sent to parties who did not negotiate contract terms for ocean transportation or storage of cargo with the billing party. When a VOCC issues a detention or demurrage invoice, the VOCC must comply with the requirements of part 541. However, in our response to this specific comment, we presume that the FMC's jurisdiction would apply only to cargo moved inland under a through bill of lading, and that contracts between a VOCC and a motor carrier not based on a through bill of lading would likely be outside the scope of this rule.”

By the Commission.

Dated: May 3, 2024.

David Eng,

Secretary.

[FR Doc. 2024-10136 Filed: 5/8/2024 8:45 am; Publication Date: 5/9/2024]