

Stafford Act. 42 U.S.C. 5170(a), (b); 44 CFR 206.36(a).

The Public Assistance program is one of the programs that may be authorized by a declaration, which provides a broad range of assistance to State, Tribal, Territorial and local governments. It provides assistance for emergency protective measures, such as emergency evacuation, sheltering, and debris removal, as well as financial assistance for the permanent restoration of facilities. In addition, the Stafford Act authorizes Community Disaster Loans for any local or Tribal government that has suffered a substantial loss of tax and other revenues as a result of a major disaster, and that demonstrates a need for financial assistance to perform its governmental functions. 42 U.S.C. 5184.

In “Update of FEMA’s Public Assistance Regulations,” FEMA proposes to amend its Public Assistance and Community Disaster Loan program regulations to both improve program administration and incorporate statutory changes relating to Public Assistance and Community Disaster Loans. These include the Post Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109–308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114–111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster Recovery Reform Act of 2018 (DRRA), Public Law 115–254, 132 Stat. 3438.

On September 3, 2024, FEMA received a request to reopen and extend the public comment period in Docket ID FEMA–2023–0005. FEMA–2023–0005–0119; FEMA–2023–0005–0138. To provide additional time for interested parties to consider and comment on any implications of the “Update of FEMA’s Public Assistance Regulations,” FEMA reopens and extends the comment period from September 4, 2024, to October 18, 2024.

FEMA will consider comments received from July 2, 2024 to October 18, 2024. Please visit www.regulations.gov to view the

proposed rule, comments received, and all supporting documents.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

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FEDERAL MARITIME COMMISSION

46 CFR Part 541

[Docket No. FMC–2024–0010]

Ocean Carrier Equipment Management Association; Denial of Petition for Delay of Effective Date of the Demurrage and Detention Billing Requirements Final Rule

AGENCY: Federal Maritime Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Federal Maritime Commission (FMC) is denying a petition submitted by the Ocean Carrier Equipment Management Association requesting that FMC delay the effective date of the agency’s “Demurrage and Detention Billing Requirements” final rule. This document includes the contents of the actual denial with minor modifications to meet publication requirements for the **Federal Register**.

DATES: The Commission served an order denying the petition on September 17, 2024.

ADDRESSES: To view background documents or comments received, you may use the Federal eRulemaking Portal at www.regulations.gov under Docket No. FMC–2023–0010.

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

SUPPLEMENTARY INFORMATION: On May 28, 2024, the date the Federal Maritime Commission’s (Commission or FMC) “Demurrage and Detention Billing Requirements” final rule, 89 FR 14330 (February 26, 2024), went into effect, the Ocean Carrier Equipment Management Association (OCEMA) filed with the Commission a petition under 46 CFR 502.51(a) for an extension of the effective date of the rule by at least 90 days. On September 17, 2024, the Commission denied the petition for the reasons below.

I. Background

On June 16, 2022, the Ocean Shipping Reform Act of 2022 (OSRA 2022) was enacted into law.¹ Section 7 of the Act

prohibits common carriers from issuing an invoice for demurrage or detention charges unless the invoice includes specific information required by the statute, and any additional information required by the Commission through regulation. OSRA 2022 mandated that the Commission, by June 16, 2023, issue a final rule “further defining prohibited practices by common carriers, marine terminal operators, shippers, and ocean transportation intermediaries under [46 U.S.C. 41102(c)] regarding the assessment of demurrage or detention charges.”²

On February 26, 2024, the Commission published the Demurrage and Detention Billing Requirements final rule in the **Federal Register**, 89 FR 14330. With certain limited exceptions, the Administrative Procedure Act (APA) requires rules to have an effective date no sooner than 30 days after publication in the **Federal Register**, 5 U.S.C. 553(d). The rule had an effective date of May 28, 2024, 90 days after publication, except for 46 CFR 541.6 and 541.99.³ The effective date of those two provisions was delayed pending approval of the associated Collection of Information by the Office of Management and Budget (OMB) as the Paperwork Reduction Act requires OMB to approve collections of information before an agency can enforce collection requirements.⁴

On May 9, 2024, the Commission issued a Correction to the preamble, 89 FR 39569. At page 14336 in the preamble to the February 26, 2024, final rule, the Commission responded to a comment requesting that the FMC revise 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. The supporting discussion explaining why the request was denied was intended to explain that the rule only addresses carrier-trucker relationships on through

² Section 7, codified at 46 U.S.C. 41102.

³ Section 541.6 sets out substantive requirements for what billing parties must include in their demurrage and detention invoices. It added several provisions in addition to those required by OSRA 2022. While the statutory invoice elements are self-implementing and immediately became effective upon passage of OSRA 2022, regulated entities were not required to comply with the additional elements imposed by the Commission until 46 CFR 541.6 went into effect. Section 541.99 is an administrative provision that provides additional public notice of OMB approval of the collection of information; it does not impose requirements on the public.

⁴ Paperwork Reduction Act (44 U.S.C. 3501–3521).

¹ Public Law 117–146, 136 Stat. 1272 (2022).

bills of lading. The Commission meant this to be understood in the context of its statement in the final rule 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.” The Correction amended the preamble accordingly. The Correction did not amend any of the regulatory text of the final rule.

On May 14, 2024, following approval of the Collection of Information by OMB, the Commission announced in the **Federal Register** that 46 CFR 541.6 and 541.99 would become effective on May 28, 2024, the same date as the other provisions of the rule.⁵

II. Petition for Delayed Effective Date

On May 28, 2024, the date the final rule went into effect, the Commission accepted for filing a petition from OCEMA requesting an extension of the effective date of the rule by at least 90 days.⁶ Petitioner argues that the requested extension is necessary “to allow time for stakeholders to revise their practices based on the revised guidance provided in the [May 9, 2024] Correction and to address questions raised by the Correction.” Petitioner asserts that “as a result of an apparent reversal in the FMC’s position with regard to the assessment of detention and demurrage to motor carriers, VOCCs are now put in a position of needing to unwind and/or further revise the arrangements they made based on the FMC’s previous guidance.” OCEMA claims that as a result of the Correction, VOCCs only had 19 days to prepare to come into compliance with the rule and that they need more time. It further asserts that the Correction did not fully clarify the FMC’s position with respect to invoicing motor carriers and that additional time is needed to understand the rule’s requirements.

III. Responses and Public Comment to the Petition

A petitioner seeking the amendment or repeal of an FMC rule must provide

⁵ 89 FR 41895 (When processing the document, the Office of the Federal Register incorrectly specified the effective date in the **DATES** section. As a result, the **DATES** section read that the “correction is effective May 14, 2024”, even though the body of the document itself correctly stated that the provisions would be effective May 28, 2024. The Office of the Federal Register issued a correction on May 24, 2024, 89 FR 45772, stating that the **DATES** section should have read that the rule was effective on May 28, 2024. The Commission did not receive any questions from the public concerning this error.).

⁶ 89 FR 14330.

proof of service on all persons named in/that participated in such a rule,⁷ and those served have the opportunity to respond.⁸ OCEMA provided such proof of service. No replies were filed.

On June 10, 2024, the Commission published a notice of filing of the petition in the **Federal Register** and solicited comments from the interested public.⁹ The comment period closed on July 1, 2024. Seventeen comments were submitted. Sixteen of the commenters said that the petition should be denied. One commenter, the National Customs Brokers and Forwarders Association of America (FMC–2024–0010–0018), proposed that, rather than an extension, the FMC should implement an interim period of “informed compliance,” which would allow all ocean industry stakeholders to work toward full compliance and assess the practical applications of these new demurrage and detention billing requirements. The association noted that such “informed compliance” period would mirror U.S. Customs and Border Protection practice with respect to new Customs regulations. Commenters supporting denial of the petition cited concerns about an extension leading to massive confusion and a high administrative burden given that the rule has already gone into effect. Some commenters also said that an extension is not necessary because carriers are already complying with the rule.

IV. Analysis

Delay of an effective date of a rule is itself a substantive rulemaking action that is subject to the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.¹⁰ This includes the requirement that an agency must engage in the notice and comment process in accordance with 5 U.S.C. 553(b)(B) prior to delaying a rule’s effective date unless it finds good cause not to do so.¹¹

⁷ 46 CFR 502.51(a) and 502.115.

⁸ 46 CFR 502.21(a).

⁹ 89 FR 48865.

¹⁰ See, e.g., *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017) (“EPA’s stay, in other words, is essentially an order delaying the rule’s effective date, and this court has held that such orders are tantamount to amending or revoking a rule.”); see also *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) (“The [APA] makes no distinction, however, between initial agency action and subsequent agency action undoing or revising that action.”).

¹¹ E.g., *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 113 (2d Cir. 2018) (“Under the APA, before promulgating a rule an agency must publish ‘[g]eneral notice of proposed rule making . . . in the **Federal Register**,’ as well as ‘an opportunity to participate in the rule making through submission of written data, views, or arguments.’ These requirements apply with the same force when an agency seeks to delay or repeal a previously promulgated final rule. A basic

Section 705 of the Administrative Procedure Act permits an agency to “postpone the effective date” of a rule, without providing notice-and-comment, if the agency “finds that justice so requires.” However, 5 U.S.C. 705 does not permit an agency to suspend, without notice-and-comment, a rule that is already in effect.¹²

After thorough review of the petition requesting that the Demurrage and Detention Billing Requirements final rule’s effective date be delayed, the Commission denies the petition for the following reasons.

1. Delaying the effective date of the Demurrage and Detention Billing Requirements final rule, as requested by the Petitioner, would directly impede the explicit instructions of Congress. OSRA 2022 mandated that the Commission issue a final rule “further defining prohibited practices by common carriers, marine terminal operators, shippers, and ocean transportation intermediaries under [46 U.S.C. 41102(c)] regarding the assessment of demurrage or detention charges . . . not later than [June 16, 2023].” Despite best efforts, the

principle of administrative law is that ‘an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked.’ Similarly an agency “may not alter such a rule without notice and comment,” nor does the agency have any inherent power to stay a final rule . . . A significant body of authority reinforces this proposition.” citations omitted); *NRDC v. EPA*, 683 F.2d 752, 761–62 (3d Cir. 1982) (“[S]uspension or delayed implementation of a final regulation normally constitutes substantive rulemaking under APA § 553.”); See also *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“The [APA] makes no distinction . . . between initial agency action and subsequent agency action undoing or revising that action.”).

¹² *Ctr. for Biological Diversity v. Regan*, 691 F. Supp. 3d 1, 8 (D.D.C. 2023), judgment entered, No. CV 21–119 (RDM), 2024 WL 1591671 (D.D.C. Apr. 12, 2024) (“The Court has also previously suggested—and now holds—that section 705 permits an agency to ‘postpone the effective date’ of a rule that has not yet taken effect, but does not permit an agency to suspend, without notice and comment, a rule that is already in effect. As the Court explained in *CBDI*, that understanding of Section 705 comports with: (1) the D.C. Circuit’s non-precedential decision in *Safety-Kleen Corp. v. EPA*, 1996 U.S. App. LEXIS 2324, at 2–3 (D.C. Cir. Jan. 19, 1996); (2) the usual APA rule, which ‘mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance;’ and (3) the plain language of Section 705, which does not grant agencies the same broad equitable authority vested in courts but, rather, merely permits agencies to ‘postpone’—that is, ‘put off for a later time’—agency action that is subject to judicial review. *CBDI*, 597 F. Supp. 3d at 204–05 (first quoting *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 101, 135 S.Ct. 1199, 191 L.Ed. 2d 186 (2015); and then quoting *Postpone*, Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/postpone> (last visited Mar. 28, 2022)) . . . Court now holds that an agency’s authority to ‘postpone the effective date’ of a rule ends when the rule takes legal effect.”).

Commission was unable to issue the Demurrage and Detention Billing Requirements final rule until February 26, 2024. This was in large part because the agency needed the time, as required by the Administrative Procedure Act, to carefully analyze and respond to the 191 public comments submitted on the proposed rule. In the interest of fairness, based on those public comments, the agency granted an additional 60 days beyond the required 30-day period before the final rule became effective, with the final rule having an effective date of May 28, 2024. Granting the Petitioner's request—which was not effectively filed with the Commission until the day the rule went into effect—would result in pushing the rule's effective date even further beyond the explicit statutory deadline. **Federal Register** documents would need to be drafted, and comments analyzed and responded to. If, after analyzing comments on a notice of proposed rulemaking, the agency was to move forward with a final rule to temporarily delay the effective date, the final, permanent effective date of the rule would most likely be at least two years past the specified Congressional deadline. Courts have found that granting significant extensions to rules in direct contradiction to clear statutory deadlines is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” under 5 U.S.C. 706(2)(C). For example, in *Sierra Club v. Pruitt*, the court found that the Environmental Protection Agency violated the Formaldehyde Act by extending a rule's compliance deadline well beyond the deadline set out in the statute.¹³

2. Petitioner asserts that the Correction created confusion about what the rule requires of regulated parties, but that claim is unpersuasive. While

¹³ 293 F. Supp. 3d 1050, 1060 (N.D. Cal. 2018) (“The clear purpose of the Act and the plain meaning of its core provisions was to set expeditious emission compliance standards (not to exceed 180 days past the promulgation of implementing regulations) and to allow the sell off or use of preexisting noncompliant inventory but to prohibit stockpiling. This clear purpose and plain meaning cannot be reconciled with the EPA's suggestion that a year-long extension of the designated date of manufacture in the sell-through provisions permissibly leads to a commensurate year-long extension of the mandatory compliance deadlines. The EPA's interpretation creates inconsistency within the full text of the Act, renders the 180-day compliance deadline superfluous, leads to the absurd result of permitting the perpetual delay of the effectiveness of the Formaldehyde Rule, and fails to satisfy the stated purpose of the Act.”); cf. *Pennsylvania v. DeVos*, 480 F. Supp. 3d 47, 66 (D.D.C. 2020) (“And ‘when the statute authorizing agency action fails to specify a timetable for effectiveness of decisions, the agency normally retains considerable discretion to choose an effective date.’” (internal citations omitted)).

the Commission acknowledged in the Correction that the original preamble language was *potentially* “ambiguous”, the Correction was not a “reversal” of position. The Correction was for the preamble language only; it did not change any of the regulatory text. The regulatory text is clear and unambiguous: “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.” 46 CFR 541.4(a). A rule's preamble cannot be used to create ambiguity and contradict regulatory text.¹⁴ As summarized by the U.S. District Court for the District of Columbia in *Texas Children's Hosp. v. Azar*: “To be clear, the preamble to a statute or rule may be used to help inform the proper interpretation of an ambiguous text. The preamble cannot, however, be used to contradict the text of the statute or rule at issue.”¹⁵ Furthermore, the comments submitted in response to this petition are counterweights to Petitioner's claims. Sixteen of the seventeen comments that were submitted in response to the **Federal Register** notice of the filing petition argued that the petition should be denied and that billing parties are largely in compliance with the rule.

3. Granting the requested delay would lead to greater confusion in the regulated community than what the Petitioner claims was caused by the Correction. Because the rule would have to continue in effect until such time as a delay could be effectuated by rulemaking, the rule would be in effect at least six months, then be temporarily stayed, and then go back into effect. As commenters discussed in their submissions, this has the potential for massive disruption and confusion, as billing parties switch between systems, and would likely raise questions about what rules apply to any given transaction.¹⁶

4. By the time such a delay could take effect, after completion of the required administrative procedures, the Petitioner's justification for delay would no longer be present, as the Petitioner

¹⁴ *Texas Children's Hosp. v. Azar*, 315 F. Supp. 3d 322, 334 (D.D.C. 2018).

¹⁵ *Id.* (citations omitted).

¹⁶ E.g., comments of the Shippers Coalition (FMC-2024-0010-0001), ContainerPort Group Inc. (FMC-2024-0010-0002), Agriculture Transportation Coalition (FMC-2024-0010-0011), Intermodal Motor Carriers Conference (FMC-2024-0010-0012).

would have had ample time to make any necessary adjustments to their practices.

V. Conclusion

For the reasons explained above, the Commission *denies* the petition filed by the Ocean Carrier Equipment Management Association for a delay of the effective date of the Demurrage and Detention Billing Requirements final rule.

By the Commission.

David Eng,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 240911-0235]

RIN 0648-BM91

Marine Mammal Protection Act List of Fisheries for 2025

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS is publishing its proposed List of Fisheries (LOF) for 2025, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2025 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based on the level of mortality and serious injury (M/SI) of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as those regarding registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: Comments must be received by October 24, 2024.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0037>. You may submit comments on this document, identified by NOAA-NMFS-2024-0037, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the