

**From:** [Cary Davis](#)  
**To:** [Secretary](#)  
**Cc:** [Chris Connor](#)  
**Subject:** Docket 19-05  
**Date:** Friday, April 24, 2020 9:48:33 AM

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April 24, 2020

Ms. Rachel E. Dickon  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.,  
Washington, D.C. 20573-0001

Dear Ms. Dickon,

I write to respectfully reiterate the American Association of Port Authorities' ("AAPA") position on the proposed rule in light of the current global pandemic. The current circumstances *bolster* AAPA's position, and indeed our comments of October 2019 even contemplated events beyond the parties' control.

As a reminder, in this matter, AAPA represents the 78 largest public seaports in the United States, including operating and landlord ports. We are honored to represent the women and men at the front lines of dealing with this pandemic, alongside all our maritime and supply chain partners.

Reading some of the recent comments of those supply chain partners who would have the FMC suspend all private contractual arrangements, we see they start off their pleas by noting issues with their employment and retail but do not and cannot cite specific logistical issues with ports. All players in the supply chain are dealing with market shocks to demand, yet,

- a) supply and transport contracts have provisions for such emergencies,
- b) parties can and are renegotiating their terms,
- c) contract law has equitable remedies even if no contract provisions address the circumstances, and
- d) fundamentally, port capacity remains open and fluid.

Hand-waiving away one of the most important tools for efficient cargo movement would drastically *exacerbate* the supply chains challenges that our member ports are facing; challenges which may get far worse if there is a supply surge before the American economy 'reopens.'

Container back ups can occur for multiple reasons, but even using the proposed 'incentive principle' for cargo fluidity, suspending detention and demurrage would further grind things to

a halt. Shippers would use terminal space as free warehousing.

The uncertainty around demand is actually hastening industry trends, with some transport and distribution firms increasing warehousing options for shippers. Moreover, as mentioned above, there is *always* the option of renegotiating of private contracts in light of changed circumstances.

Suspension of detention and demurrage would stymie these solutions.

While we respect our supply chain partners, the plea to suspend all detention and demurrage is not only unwise policy, it's a bold hail mary play. We respectfully urge the FMC to rebuff this design.

Very Respectfully,  
Cary Davis

*On behalf of the American public seaports*



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