



October 31, 2019

Federal Maritime Commission
800 North Capitol Street N.W.
Washington, D.C. 20573

RE: Comments on Notice of Proposed Rulemaking - FMC Docket 19-05 - Interpretive Rule on Demurrage and Detention under the Shipping Act

Dear Commissioners,

Thank you for taking the time to conduct a thorough review of demurrage and detention (D/D) practices. CV International, Inc. (CVI) deals with these issues on a daily basis. They are primary cause of disputes between our company and industry partners. We strongly agree that improvements to communication and transparency are needed in this area.

Availability of cargo is one major area of concern. CVI believes there should be a clear definition of availability, and that cargo must meet all criteria before the D/D clock starts running. We frequently encounter situations where D/D time has begun but cargo is not actually available on terminal or available to be delivered to terminal due to congestion. Container availability should be defined as a container that is off the vessel, in an assigned and open area of the terminal, with an available appointment to pick up or deliver, and with no holds. Further, all containers on a bill of lading should be available under those guidelines before D/D begins for any single container on the BL. Where chassis pools are managed by the terminals (such as Port of Virginia / HRCP), chassis availability should be considered as a requirement for overall cargo availability.

There should also be a defined method for calculating D/D free days. For example, if a container becomes available ten minutes prior to close of the terminal, that day should not count toward the overall free time. All D/D should be offered as a specific number of days *plus* the day of interchange. Carriers should not be permitted to charge detention and demurrage for the same container on the same day. We have seen certain carriers charge both storage/demurrage and detention for the same calendar day, essentially double-dipping on those fees.

The issue of early receiving dates at terminals can also be problematic when a vessel schedule changes at the last minute. With US exports, we have many examples of incurring extra charges for containers that were picked up empty for loading based on the earliest in-gate date, only to later learn that the vessel and earliest in-gate dates have slipped. If a vessel slips and the early return date is delayed after containers are already picked up, shippers are left with no recourse. We either incur demurrage charges for in-gating early, or we incur pre-pull, storage, and potential detention charges for holding the loaded containers until the new earliest return date. There should be a defined process for this situation that outlines the responsibility of each party when a schedule changes due to vessel or terminal delays.

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Further, if the carrier rolls cargo to a later vessel after containers have already picked up, extended D/D free time should be offered automatically.

For US imports, a notice of availability confirming that the container is actually available for pick up should be required. The carrier issuing the BL should be responsible for providing a formal notice of availability to the consignee and notify parties. The notice could be communicated online, as an official status update for the shipment.

The issue of government holds must also be considered. Containers on government hold may sit for weeks at a time. The wait times for holds are out of the consignee's control. Containers on government hold are not available for pick up, so they should not accrue unlimited D/D charges. There should be a cap to the potential D/D charges resulting from government holds; perhaps a level that corresponds clearly to the true cost or income lost on the container or storage space during the hold period. Accelerated D/D charges should not be permitted for cargo under government hold.

Disputes related to D/D are time consuming and difficult to manage through the current channels. We often spend weeks, even months, chasing carriers for review and decisions on disputes. Carriers need to publish specific dispute resolution policies in their rules tariffs. The process should define a clear channel and timeline for resolving disputes. While D/D disputes are under review, containers should not be held pending payment. Requiring D/D payment prior to release of cargo for which D/D is in dispute puts the customer (NVO, BCO, trucker) in an unfair position, almost as if the cargo has been taken hostage. As an NVO, we often feel forced to pay unjust D/D charges simply to avoid additional delays, fees, and unhappy customers.

CVI appreciates your consideration of these comments. We hope they will be helpful in your review of current D/D practices.

Sincerely,

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