

From: [DAVID DUNCAN](#)
To: [Secretary](#)
Subject: ALERT: STOP UNFAIR DETENTION & DEMURRAGE
Date: Tuesday, October 29, 2019 6:53:27 PM

Re: ALERT: STOP UNFAIR DETENTION & DEMURRAGE

Dear The Honorable Dickon,

Honorable Commissioners:

On behalf of Duncan and Sons Lines, a member of the Harbor Trucking Association, we first wanted to thank the commission for taking the time to address this critical issue. It has been a growing concern that we have been the victim of unreasonable business practices. These practices have undermined the once well-intended practice of using detention and demurrage to incentivize and expedient the movement of cargo. Now, we find ourselves subject to unreasonable charges and saddled with the expensive administrative burden of proving that we are not at fault; charges which were never agreed upon and we are not responsible for. These unreasonable practices have caused significant financial distress to my company while serving as a profit center for the entities who charge detention and demurrage. The motor carrier community greatly appreciates the leadership of this issue by the Federal Maritime Commission (FMC) on this vital issue. We strongly urge you to move forward with adopting the interpretive rule to help end the current abuses that result from antiquated rules regarding detention and demurrage.

1. The proposed rule provides essential guidance to the maritime industry regarding how the FMC will evaluate the reasonableness of port demurrage and container charges.

- There is a need for FMC guidance to address serious concerns over ocean carrier and marine terminal demurrage/detention charges, as demonstrated in the Fact-Finding Investigation and the Petition filed by the Coalition for Fair Port Practices.
- The proposal identifies fundamental principles and examples of reasonable practices that will be considered by the FMC in the context of a 10(d) claim as to demurrage/detention. At the same time, providing the necessary flexibility to account for differing factual circumstances (e.g., the rule provides a non-exhaustive list of principles but is non-binding).
- The proposal will significantly benefit the US maritime industry by promoting efficient cargo handling and delivery, improving commercial fairness in the assessment of the charges, while also reducing confusion and disputes.

2. The Interpretive Rule seeks to align demurrage/detention rules and practices with their intended purpose of incentivizing efficient cargo handling and delivery.

- The law and Shipping Act policies support the Incentive Principle.
- Support suspension of charges (or at least extension of free time) where efficiency incentives are not able to be achieved.
- Appropriate for cargo interests to fulfill their responsibilities to receive and pick up cargo but no need for advance payment of all charges where credit has been agreed to between shipper and ocean carrier. Also, pre-payment should not apply to disputed charges.

3. Comments on Specific Aspects of the Interpretive Rule

- **Scope of the Rule:** Rule broadly applies to all charges applied to the use of marine terminal space or shipping containers, except freight, and to containerized trade only.
- **Cargo Availability.** Under the current rules and the Shipping Act, cargo is deemed available when it is unloaded from the vessel. However, in this case, the load is never truly available until later. Cargo is being held for holds by customs, making it inaccessible because the terminal has kept the cargo in a “closed area.” In some modern terminal operations, when containers do not have an available appointment, the load is rarely, if ever, available when the free-time clock starts. Knowing when cargo is actually available will help ensure that pickup is timely scheduled—reducing idle and wasted hours truckers spend waiting for containers to become available. Free time should be tied to actual cargo availability and not vessel arrival since you cannot incentivize efficient cargo pickup if the cargo may not yet be available (i.e., held in a closed yard or location at the terminal). Free time should be stopped if the container is no longer available. Important to consider the workings of terminal appointment systems in evaluating reasonableness—should be some minimum period of appointment availability.
- **FMC correctly determined the manner in which notice of cargo availability is communicated;** it is a critical aspect of reasonableness. Notification must be timely and readily accessible to the contracting party or its designee, must provide clear information as to when and where cargo may be retrieved, and “push notices” are favored.
- **Government Inspections.** Need input here as to which of the three offered approaches makes the most sense: (1) waiver or extension of free time; (2) cap on the number of charges that may accrue; or (3) no escalation of demurrage/detention during inspections. Option 1 seems the most commercially-oriented but understands that parties may see benefits in the other proposals.
- **Dispute Resolution.** FMC has appropriately identified the types of policies, rules, and practices that would significantly improve dispute resolution processes. Defined time frames should apply to both filing and responding to claims that must operate to facilitate the resolution of disputes and not unreasonably cut off claims.
- **Billing.** Agree with FMC that demurrage/detention invoices must include adequate information to allow a shipper/trucker to audit and contest the charges. Preferential invoicing that is tied to contractual relationships rather than ownership or control of the assets is inequitable. Ocean carriers should continue to bill their customers directly, rather than terminals charging for demurrage. This will streamline the option for us to negotiate demurrage terms in their service contracts.
- **Evidentiary guidance.** Support the FMC proposal encouraging the identification of information that can facilitate dispute resolution, such as appointment logs and trouble tickets.
- **Terminology.** We support FMC's plan for the use of more consistent demurrage and detention terminology in carrier and terminal tariffs. Also, we recommend the inclusion of the most common understanding of these terms based on the source of the charges.

4. Below are some Examples of Unreasonable Business Practices that resulted in unfair detention or demurrage charges

- lines to get into the terminal are so many hours long as to render the trucker in violation of HOS, but terminal will not extend the free time even with trucker provider GPS showing trucker had arrived on time
- no terminal gate appointment was available or terminal was closed, so terminal will charge demurrage until your able to secure an appt and pull container out
- carrier and terminal refuse to accept empty container returns due to terminal congestion, but ocean carrier will not extend the free time
- container is in a closed area of the terminal, but terminal will not extend the free time

5. FMC should proceed to adopt its proposed interpretive rule promptly.

Should you have any questions, I can be reached at david@duncanandson.com

Respectfully,

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Sincerely,
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