

Federal Maritime Commission
Rachel Dickon
Commission Secretary
secretary@fmc.gov

Re: SUPPORT: Interpretive Rule on Detention and Demurrage under the Shipping Act

Honorable FMC Commissioners:

The purpose of this letter is to provide comments on the Detention and Demurrage Interpretive Rule.

The proposed rule provides important guidance to the Intermodal community and the Intermodal motor carriers regarding how the FMC will evaluate the reasonableness of port Demurrage and container charges. This guidance has been lacking to this point, and the IMCC strongly supports this effort by the FMC to address the serious concerns over ocean carrier and marine terminal Demurrage and Detention charges as demonstrated in the Fact-Finding Investigation and the Petition filed by the Coalition for Fair Port Practices.

The proposed interpretive rule identifies key 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, while providing the necessary flexibility to account for differing factual circumstances. This proposal will greatly benefit the US maritime industry and the Intermodal Motor Carriers through the promotion of efficient cargo handling and delivery, improved commercial fairness in the assessment of the charges and the reduction of confusion and potential disputes.

The Interpretive Rule seeks to align demurrage/detention rules and practices across the industry, further incentivizing efficient cargo handling and delivery. We concur that the Incentive Principle is supported by the law and Shipping Act policies; which are supposed to provide efficiency in the supply chain. The IMCC supports the suspension of charges or the extension of free time where efficiency incentives are not able to be achieved and are beyond the control of the intermodal motor carrier.

It is appropriate for the cargo interests, including the Intermodal Motor Carriers, 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. And furthermore, pre-payment should not apply to disputed charges.

The IMCC concurs that the FMC correctly applies the rule broadly to all charges regarding the use of marine terminal space or shipping containers, except freight, and to containerized freight only.

The IMCC strongly encourages notice of actual cargo availability, which will vastly improve port efficiencies and the US freight delivery system. Knowing when cargo is actually available will help ensure that pickup is timely scheduled; reducing idle time and wasted hours that truckers waste, waiting for containers to become available. Free time should be tied to actual cargo availability and not vessel arrival. It is impossible to incentivize efficient cargo pickup if the cargo may not yet be available. Motor

carriers who arrive at a closed yard or location at the terminal frequently, after they have been told the cargo is available, when it is in fact not available. To this end, free time should be paused if a container is no longer available.

The FMC correctly determined that the manner in which notice of cargo availability is communicated is a critical aspect of reasonableness. Notice must be timely and made readily accessible to the contracting party or its designee, and must provide clear information as to when and where cargo may be retrieved; to which "push notices" are favored and efficient. When there are government inspections, and a container is pulled for examination, an immediate waiver or extension of free time should apply to the affected parties.

The FMC has properly identified the types of policies and practices that would greatly improve dispute resolution processes. Defined time frames should apply to both filing and responding to claims, which must operate to facilitate resolution of disputes and not unreasonably cut off claims.

We agree with the FMC that demurrage/detention invoices must include adequate information to allow a shipper/trucker to audit, bill and contest the charges. We also favor invoicing that is tied to contractual relationships rather than ownership or control of the assets, i.e. ocean carriers should continue to bill their customers directly, rather than terminals billing for demurrage, since parties should be able to negotiate demurrage terms in their service contracts. In turn, ocean carriers on carrier haulage should bill their shippers for detention (per diem) directly, given motor carriers are not party to the service contract. Demurrage and detention terms are negotiated in ocean service contracts and ownership of billing belongs to parties tied to the contract.

We support the FMC proposal encouraging the identification of information that can facilitate dispute resolution, such as appointment logs and trouble tickets.

We also support the FMC proposal for the use of more consistent demurrage and detention terminology in carrier and terminal tariffs, including that the most common understanding of these terms is based on the source of the charge (land for demurrage) and (container for detention) as opposed to the location (inside or outside the terminal).

Lastly, we strongly recommend that FMC promptly proceeds with the adoption of its proposed interpretive rule. Thank you for the opportunity to comment on this interpretive rule and we congratulate the FMC for proposing this rule, hopefully in advance of implementation.

Sincerely

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Senior Vice President of Operations

The Evans Network of Companies

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