



October 31, 2019

Federal Maritime Commission

Re: Docket No. 19-05

Dear Addressee,

In response to the request for comments on NPRM, Interpretive Rule on Demurrage and Detention under the Shipping Act, Docket No, 19-05 RIN: 3072-AC76.

Under the section on Cargo Availability - Making cargo available is the not the responsibility of the 3PL, forwarder, nor the consignee. To be "Available for pickup" and for "Free Time" to commence the following activities/notification must occur.

- Cargo released from government agencies
- Container grounded and in a location available for pickup (Not simply vessel arrived)
- Chassis available to allow for pickup
- Pickup appointment time slots available for pickup

If the governmental entries (CBP, FDA, etc...) are all made timely (5 days prior to arrival except for "Live" entries which should be date of arrival) then there should be no demurrage/detention charges allowed.

If the next 3 items above are not documented and communicated to the cargo owners or the cargo owner's agent then no demurrage/detention charges should be permitted.

Ideally electronic messages would be sent showing each prerequisite for Cargo Availability.

- Vessel Scheduled Arrival & Actual Arrival
- Container Grounded
- Container in available space/area
- Freight Release in place (Bills surrendered & charges paid)
- Regulatory release (CBP, APHIS, etc...)
- Cargo Available
- Appointment Set (Date & time for setting appointment as well as scheduled pickup appointment time and date)
- Gate In date & time
- Container Received/Picked Up
- Gate Out date and time



Continued...

While the FMC does an admirable job in making sure that regulated entities do not overcharge American customers – we still have this gaping hole in the protection whereby thousands of dollars can be charged to the American customer due to demurrage and detention that is outside of the cargo owner’s control.

In cases where containers are readily available, and that availability properly communicated, of course demurrage should be chargeable. The whole purpose (Stated purpose) of demurrage is to encourage timely pick up of cargo – and we fully agree with that premise.

Under “Government Inspections” – we feel that the second bullet point would be the preferred method of defining the interpretive rule. As long as the various entries (CBP, FDA, USDA, etc...) were filed timely demurrage or detention fees should be waived for those days that the cargo is subject to a pending inspection and the free time clock set to a reasonable amount of time (Extension) to allow for pick up once the cargo becomes available. The combination of a waiver coupled with an extension would serve the purpose of incentivizing the rapid removal of cargo once fully released from inspection.

Under “Policies” “Billing” – we feel that it is essential that cargoes not be “Held Hostage” for the immediate payment of demurrage or detention charges. Billing such charges gives cargo owners the ability to dispute charges in a proactive manner. As mentioned in the NPRM it is important that policies AND PROCEDURES to dispute demurrage or detention charges be clearly worded, published in an easy to access manner, and consistently applied across all customers.

There should be a separate – defined- escalation process for cases where either party is not satisfied with the outcome of a dispute. Clear cargo availability requirements and documentation should reduce the need for disputes and would allow for disputed to be quickly decided.

Sincerely,

Jerry L. Storey
Managing Director Regulatory Affairs & Compliance
FedEx Trade Networks Transport & Brokerage Inc.