



October 31, 2019

Ms. Rachel E. Dickon
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573-0001

RE: Interpretive Rule on Demurrage and Detention under the Shipping Act (FMC-2019-0052-0001)

Dear Secretary Dickon,

On behalf of the National Retail Federation (“NRF”), I am writing in strong support of the Interpretative Rule as developed by the Federal Maritime Commission (“FMC” or “Commission”). We applaud the efforts of the Commission, not only for the proposed rule, but for the inclusive and exhaustive process the FMC used to develop it.

NRF was one of the original members of the Coalition for Fair Port Practices (“Coalition”), which initiated Petition P4-16, seeking an interpretive rule on detention and demurrage practices. We applaud the efforts of the Commission, not only for the proposed rule, but for the inclusive and exhaustive process the FMC used to develop it. We believe the Commission has produced thoughtful guidance that will have a significant beneficial impact on the working relationships between and among cargo interests and will ultimately improve the flow of cargo at the nation’s ports.

The National Retail Federation, the world’s largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation’s largest private-sector employer, contributing \$2.6 trillion to annual GDP and supporting one in four U.S. jobs — 42 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

General incentive approach and cargo availability: We support the general incentive approach that the Commission has adopted in the proposed rule, as well as the rule’s focus on the concept of *actual* cargo availability. In the Coalition’s initial petition, the issue of cargo availability was front and center. Many of the disputes over detention and demurrage charges have hinged on the issue of cargo availability, and we believe the proposed rule will go a long way in helping carriers and marine terminal operators (“MTOs”) improve their policies and operations so that beneficial cargo owners and their brokers and truckers will know when cargo is truly available. As we have stated many times, the cargo interests represented by NRF are interested in

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moving cargo from source to store as quickly as possible. The retailers represented by NRF have a need for speed to market.

Notice of Cargo Availability: To this end, a key component of cargo availability is notice. In previous comments, the Coalition has provided detailed thoughts on what real notice of cargo availability might look like. While it isn't appropriate to provide a detailed regulatory framework for notice of cargo availability in an interpretive rule, we urge the Commission to continue to work informally with carriers, MTOs and cargo interests to build consensus around systems to provide *accurate* "push" notices to beneficial cargo owners ("BCOs") and their motor carriers and brokers. We believe the FMC has helped move such informal efforts forward through the port innovation teams approach. In the meantime, the interpretive rule is welcome because it helps to frame the need for policies that provide *accurate and meaningful* notice, even if BCOs and their truckers and brokers have to make phone calls or send email messages to obtain information.

Government Inspections: In response to the FMC's specific request for comment, NRF strongly supports the inclusion of government inspections within the scope of the proposed interpretive rule. Government inspections are usually beyond the control of the importers. Many of NRF's largest members participate in the Customs and Border Protection's ("CBP's") trusted importer programs. As well-known retail companies, they have a commercial interest in making sure their cargo is not stopped for inspection.

Nevertheless, random inspections happen, as do inspections of cargo coming from certain geographical locations. These inspections are beyond the control of the importer, and as the notice of proposed rulemaking indicates, the imposition of detention and demurrage charges on containers delayed by inspections do nothing to incentivize the movement of equipment.

NRF favor an approach that would mitigate detention and demurrage in instances where cargo is undergoing examination, through the extension or waiver of free time, since not all cargo interests face escalating fees during cargo inspections, and capping fees does not address the underlying fact that when cargo is pulled for inspection, it is not actually available.

Detention and Demurrage Policies: NRF strongly supports the proposed interpretive rule's focus on the clear communication of detention and demurrage policies. As evidenced during the hearings conducted on this issue, the lack of clear and transparent policies has contributed significantly to confusion among cargo interests. The rule will undoubtedly lead to the publication of clear and transparent policies and has already resulted efforts to create consensus model policies that could, over the long run, lead to more consistency between and among MTOs and carriers.

Billing: In its discussion of detention and demurrage policies, the Commission suggests that one way to improve transparency is to align billing relationships to control of the assets that are the source of the charges. NRF does not support this approach. Instead, we endorse the view, espoused by Coalition for Fair Port practices that disputes over detention and demurrage should be between the ocean carrier and the BCO, simply because the commercial relationship exists only between the BCO and the ocean carrier.

NRF's members do not have commercial relationships with MTOs. Therefore, policies that allow MTOs to in effect require contracted truckers to pay a ransom at the terminal gate, are problematic for NRF's members. In the real world, because of commercial relationships, we believe that policies where the ocean carrier bills the BCO for detention and demurrage are the most straightforward and least likely to become complicated and non-transparent, and the easiest to dispute because of the underlying relationships involved.

Evidence: The proposed rule correctly identifies the need for transparent policies that lay out the evidentiary requirements for settling disputes. However, we continue to be concerned that MTOs and carriers may develop transparent policies that place the evidentiary onus on cargo interests. While it might be helpful for a trucker to be able to use a camera or other device to record evidence, we continue to believe that MTOs and carriers should have an obligation to provide information in instances where a BCO or its agent attempts to make an appointment but is unable to, or where truckers arrive at the terminal only to discover that cargo is not available. The Coalition has suggested that terminals provide dated trouble tickets for truckers, as well as access to appointment system logs.

We urge the Commission to continue to work informally with stakeholder groups to develop model detention and demurrage policies that include ideas such as those suggested by the Coalition in previous comments to the Commission.

In closing, NRF reiterates its appreciation for effort the Commission has put into developing the proposed interpretive rule. We support this approach and welcome this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "David French". The signature is stylized and cursive.

David French
Senior Vice President
Government Relations