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**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 19-05**

**INTERPRETIVE RULE ON DEMURRAGE AND DETENTION UNDER THE  
SHIPPING ACT**

**COMMENTS OF PAUL F. CONNOR, JR.**

I, Paul F. Connor, Jr., am employed as Vice President at John S. Connor, Inc., OTI No. 496NF, headquartered in Glen Burnie, MD. We operate five other branch locations in Maryland, Virginia, New Jersey and Kentucky. I am a member of Commissioner Dye's Innovation Teams.

John S. Connor is very appreciative of the FMC addressing these longstanding and pervasive issues. We recognize that demurrage and detention are both needed as an incentive to move cargo and maintain the flow of commerce. Unfortunately, it has been misused by various parties over many, many years and has become a primarily punitive measure with no regard to fair business practices. There are many important points that this NPRM addresses and I am providing my comments.

## **Cargo Availability**

In order for carriers or marine terminal operators (MTOs) to commence the start of free time, the cargo must actually be available for a trucker to pick-up; if it isn't, the proposed rule would conclude that application of demurrage and/or detention prior to availability may be an unreasonable practice. By the same token, it would be an unreasonable practice not to suspend existing demurrage charges or the running of free time if the situation in the yard changes so that the trucker cannot get access to the container at this time. Similarly, detention charges should not be applicable if a terminal is closed to the return of empty containers.

In our estimation, the cargo availability can commence once the following conditions exist:

- 1- The container is off the vessel.
- 2- The container has a location on the terminal.
- 3- The location is in an "open" area.
- 4- An appointment has been made available and the appointment is set.
- 5- There are no Holds on the container.

One more additional condition that is not addressed in the NPRM but is a major factor is chassis availability. There is clearly a need to address this as it is a significant issue that impacts

the ability to pick up a container and thus the application of demurrage charges.

Further to the understanding of availability, there must be a clear and consistent method for calculating Free Time. The Free Time should be addressed in terms of full days, a complete 24 hours. Not a partial amount of a day based on the time the container is made available. All parties (carriers, MTOs, rail operators) that provide Free Time should be utilizing the same method of calculation.

John S. Connor provides the following example of the above cargo availability concern. During and after Hurricane Harvey hit Houston in August 2017, a client of ours had reefer containers on the terminal and many more arriving weekly. Sufficient access to the containers was not available initially, free time was not extended and chassis were in short supply for weeks.

The carrier required our client's trucker to only pull chassis from a specific chassis pool. There were limited chassis available prior to the hurricane, many damaged from the storm and therefore a serious shortage after the hurricane. The carrier was aware of the chassis situation and made no attempt to suspend or make any reasonable adjustments to demurrage charges.

After many weeks, the results were our client paying over \$100,000 in demurrage charges.

### **Notice of Cargo Availability**

This raises the issue of how one is to know if cargo is actually available. We believe the

carriers should be required to issue a formal Notice of Availability that would be sufficient to apprise the cargo interests that the container is actually available. This will enable the involved parties to all get the same notice and have the understanding of their responsibilities to pick up the container when the five (5) conditions listed above are met. If the carrier doesn't issue a formal Notice of Availability, should the carrier practice necessarily be deemed to be unreasonable and in violation of the Shipping Act?

The Notice of Availability should have a format that could include, at a minimum, the following pieces of information:

- 1- Bill of Lading Number
- 2- Consignee and Notify Party(s)
- 3- Container No.(s)
- 4- Location(s) on the terminal
- 5- Last Free Day

It would be most beneficial if the notices were “push notifications” that can alert cargo interests and related parties to any change in the status of the container. These notifications can be established as electronic data exchanges in formats such as EDI, XML, etc.

### **Government Inspections**

The NPRM addresses the issue of government inspections of cargo and the propriety of assessing demurrage and detention during those holds. While the NRPM does not go so far as to

suggest that any assessment of demurrage or detention during these holds might be unreasonable, we do not believe it is appropriate for the carriers and/or MTO operators to escalate charges (i.e., impose penalty demurrage) in these situations. Similarly, we believe the carriers should be required to provide for mitigation of those charges below their tariff levels during government holds or even whether the failure to have maximum caps on demurrage and detention during government holds is itself an unreasonable practice. The Port of Long Beach has a policy that no charges apply when cargo is on government holds. Why is this not consistently applied across US ports?

### **Dispute Resolution**

The NPRM also focuses on the current lack of clear carrier policies for addressing complaints about the assessment of the demurrage and detention charges. We believe the carriers and NVOs should have published dispute resolution policies. Even better would be for these policies to be implemented into their Rules Tariff. We agree with the suggestions that the dispute resolution policies should at least cover the following points:

- Having points of contact for disputing charges
- Providing clear time frames for raising, responding to and resolving disputes
- Clearly explaining the process for disputing these charges
- Having a dedicated dispute resolution staff
- Allowing priority appointments when free time has expired

- Having a mechanism to ensure that responses are made in response to requests for free time extensions or waiver of these charges
- Having a process for elevating disputes after the carrier's initial response
- Allowing a trucker and NVO to do business with a carrier during the pendency of a dispute

In recognition that evidence will be required during the dispute resolution process, we present possible information that could apply:

- 1- Trucker having any geo-fencing data (electronic records) available in order to demonstrate their attempts (including wait times) to retrieve cargo
- 2- Trucker required to have log records (maybe screenshots) of attempts to make appointments
- 3- Notice of Availability

### **Terminology**

We urge the Commission to require the carriers and MTO tariffs to have clear and uniform terminology defining what is demurrage and what is detention. Typically, demurrage is a charge for use of the MTO's property compared to detention which is a charge for use of the carrier's container. There continues to be a lack of consistency or understanding in the industry as to what is being assessed and whether there are duplicative charges from the carriers and MTOs for the same cost.

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Additionally, when discussing the demurrage and detention issues most of the conversation is directed to imports. We need to keep in mind these costs can impact exports as well. One example can be if equipment is pulled on an export and the carrier changes the cutoff date at the terminal. This can easily create a situation where the exporter is assessed these charges.

Lastly, we strongly urge the Commission to vote to accept this Interpretive Rule on Demurrage and Detention Under the Shipping Act. This step is well overdue in our industry. Though the methods of demurrage and detention are well intended, the carriers and MTOs have applied them in an abusive manner for decades. There must be some accountability and measure put in place to reasonably support cargo parties' interests.

DATED: October 30, 2019

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Paul F. Connor, Jr.

Vice President

filed electronically with [Secretary@fmc.gov](mailto:Secretary@fmc.gov).