



RETAIL INDUSTRY LEADERS ASSOCIATION

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October 31, 2019

Ms. Rachel E. Dickon
Secretary
Federal Maritime Commission
800 North Capitol Street NW
Washington, DC 20573
secretary@fmc.gov

Re: Docket 19-05; Interpretive Rule on Demurrage and Detention under the Shipping Act (84 Fed. Reg. 48850, September 17, 2019)

Dear Ms. Dickon,

The Retail Industry Leaders Association (RILA) commends the Federal Maritime Commission's efforts to address the detention and demurrage fee issues uncovered through its fact-finding investigation. We appreciate the Commission's willingness to examine the industry's existing approach in order to improve the performance of the U.S. freight delivery system. Below we detail the impact of the different aspects of the proposed rulemaking on the country's largest retailers, some of the largest customers of U.S. seaports.

RILA is the trade association of the world's largest, most innovative and recognizable retail companies and brands. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad.

RILA appreciates the Commission's lengthy and thorough work on this issue, led by Commissioner Dye, and commends the Commission's commitment to fairness, port productivity, and protection of U.S. interests. Through hearings, listening sessions, interviews, and other evidence gathering, the Commission showed its strong commitment to building a comprehensive understanding of a complex system, and understanding the needs, challenges, and goals of countless stakeholders.

Efficient port operations are vital to the overall growth of the U.S. economy and allow our members to ensure that Americans have access to the goods and services they rely on. As the fact-finding investigation clearly demonstrated, there is a crucial need across the industry for greater consistency and rationality in

the assessment of detention/demurrage charges. Supported by its jurisdiction as defined by the Shipping Act and other relevant law, the Commission's proposed rule will help facilitate a more fluid, transparent, and plannable environment for all stakeholders. In turn, this will improve commercial fairness in the assessment of the charges, while also reducing confusion and disputes.

The proposed interpretive rule's approach of identifying key principles and examples of reasonable practices for the FMC to consider when adjudicating claims, will help ensure that application of detention/demurrage charges is aligned with their intended purpose of incentivizing responsive, efficient movement of cargo. The incentive principle—not revenue generation—is the key underlying tenet that has the greatest impact on the fluidity of port operations. Accordingly, charges that do not contribute to achieving efficiency should be suspended, or operations should be otherwise adjusted to continue to align with the incentive principle (such as extending free time).

Transparent, standardized language for demurrage and detention practices

RILA is supportive of the Commission's proposal for more consistent and clear language around detention and demurrage practices. A standard definition and explicit guidelines on the purpose of detention and demurrage charges would mitigate miscommunications between parties. The language should emphasize that the objective of detention and demurrage charges is to increase cargo velocity, not to serve as a source of revenue.

Consistent notice to cargo interests of container availability

Technology has enabled great leaps forward in the maritime industry's ability to provide real-time visibility into the movement of cargo. Yet there is still much progress to be made. Timely and accurate notice of cargo availability is absolutely central to the efficient operation of seaports. Notifying shippers when the cargo is actually available will also reduce trucker idle hours and ensure that pickup is timely.

Additionally, free time should be tied to actual cargo availability rather than the arrival of a vessel, since vessel arrival frequently does not necessarily signify that the cargo is ready for pickup. Free time should be paused if cargo is not accessible. As the Commission's proposal recognizes, the objective of detention and demurrage charges should be to facilitate faster movement of cargo and equipment, and it serves no legitimate purpose to penalize shippers for delays beyond their control. More accurate notice of availability will not only improve the speed of cargo without unnecessary and unreasonable punitive fees, but will also contribute to greater throughput velocity, reduced traffic and wait times.

Similarly, the problems often created for shippers by the current environment of multiple terminals and carrier alliances and the resulting effect of various appointment systems cannot be discounted. A terminal's volume of appointment times and appointment availability are a critical component of cargo owners' ability to collect cargo. It is essential to consider the details of a terminal's appointment system, including availability and times frames of appointments, when assessing if fees are justified.



Lastly, the means of notifying cargo owners (and their contracted agents, such as truckers) of actual availability is an important consideration. Notification must be timely, accurate, and accessible to the relevant parties in order to be considered reasonably useful to facilitate fluid movement and retrieval of cargo.

Clear, simplified, and accessible demurrage and detention billing practices and dispute resolution processes

The implementation of a clear and simplified billing and dispute resolution process (one that outlines a point of contact and a clear time frame on when claims must be submitted and when a response should be expected) will accelerate the dispute resolution process and will avoid the unreasonable cut off of claims. We are also encouraged by the Commission's acknowledgement that extenuating circumstances such as government inspection must be considered, and urge the Commission to adopt its proposal that makes it presumptively unreasonable, in the absence of extenuating circumstances, to fail to provide for mitigation of demurrage or detention while cargo is undergoing government inspection, such as by a waiver or extension of free time.

Similarly, where shippers and carriers have agreed to credit terms as part of an existing, contracted business relationship, there is no basis for requiring advance payment of all charges prior to release of cargo. Furthermore, any pre-payment should not apply to disputed charges. Billing/invoicing should be conducted according to contractual relationships, rather than control of assets. This will allow contracted parties to negotiate demurrage terms in their service contracts, rather than cargo owners being subject to onsite "ransom" when attempting to retrieve cargo.

Explicit guidance regarding the types of evidence relevant to resolving demurrage and detention disputes

Explicit evidentiary guidance on what materials may be used when filing a dispute will expedite the claim submission process and facilitate a quicker response time. We agree that invoices should require detailed information so that shippers and truckers can audit and contest charges. Additionally, we welcome the Commission's guidance on what documents and information are most appropriate and impactful to facilitate dispute resolution. Likewise, defined time frames for both filing and responding to claims will help facilitate more efficient handling.

Establishment of an FMC Shipper Advisory Board

RILA supports the Commission's proposed establishment of a shipper advisory board. The Commission has historically been commendably receptive to the input and perspectives of all industry stakeholders, and we welcome the opportunity for shippers to have a role in advising the Commission on the pressing issues facing the U.S. freight delivery system. We encourage the Commission to include retail industry leaders on their board, as retailers are some of the largest customers of U.S. seaports, and are dependent on a



functional and efficient delivery system in order to supply American consumers with goods and services while minimizing costly and unnecessary overhead such as capricious detention/demurrage fees.

RILA applauds the Commission's proposed interpretive rule and encourages the Commission to adopt it swiftly. We believe that this much-needed guidance will contribute to more efficient port operations that will benefit all stakeholders, as well as consumers and the American economy. Please reach out with any questions or to further discuss our position.

Sincerely,



Jennifer M. Safavian
Executive Vice President, Government Affairs
Retail Industry Leaders Association

