

UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL MARITIME COMMISSION

INTERPRETIVE RULE ON DEMURRAGE AND DETENTION UNDER THE SHIPPING ACT

Notice or proposed rulemaking.

Docket No. 19-05

COMMENTS

SUBMITTED BY THE

TRANSPORTATION INTERMEDIARIES ASSOCIATION (TIA)



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The Transportation Intermediaries Association (TIA) submits these comments in response to the Federal Maritime Commission's (FMC) Federal Register notice published on September 17, 2019. The Commission proposed interpretive guidance on how it would evaluate the reasonableness of port demurrage and detention charges. TIA applauds FMC's efforts to bring greater clarity, transparency, and consistency to demurrage and detention policies and encourages FMC to adopt the proposed interpretive rule promptly.

As the premier organization of the third-party logistics industry, TIA will focus these comments on how the interpretive rule will help promote freight fluidity and bring commercial fairness in the assessment of charges.

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the \$214 billion third-party logistics industry. TIA is the only U.S. organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is the voice of transportation intermediaries for shippers, carriers, government officials, and international organizations.

TIA members include approximately 1,800 property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and non-vessel-operating common carriers), air forwarders, customs brokers, warehouse operators, logistics management companies, intermodal marketing companies, and motor carriers.

TIA is also the U.S. member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing more than 40,000 companies in every trading country.

Transportation intermediaries or third-party logistics professionals act as the "travel agents" for freight. They serve tens of thousands of shippers and carriers, bringing together the transportation needs of the cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers.

Transportation intermediaries are primarily non-asset-based companies whose expertise is providing mode and carrier neutral transportation arrangements for shippers with the underlying asset owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation, to meet those needs.

Transportation intermediaries bring expertise to meet the shippers' transportation needs.

3PLS SUPPORT ENCOURAGING FREIGHT FLUIDITY, STREAMLINING DISPUTE RESOLUTIONS

TIA, as part of the Coalition for Fair Port Practices, previously petitioned FMC in December 2016 to initiate a rulemaking to clarify what constitutes "just and reasonable rules and practices" with respect to the assessment of demurrage, detention, and per diem charges by ocean common carriers and marine terminal operators when ports are congested or otherwise inaccessible (Petition No. P4-16). FMC similarly identified a need for such guidance to address concerns over demurrage and detention fees in Fact Finding Investigation No. 28.

The proposed interpretive rule identifies key principles and examples of reasonable practices that FMC will consider in the context of a demurrage or detention claim under 46 CRF 545.4(d), while providing the necessary flexibility to account for extenuating circumstances. TIA recognizes that cargo interests need to fulfill their responsibilities to receive and pick up their cargo and equipment in a timely fashion. Detention and demurrage charges are helpful tools to ensure the efficient and timely movement of cargo to and from the ports. However, we remain concerned that these charges are levied even when the event

preventing cargo interests from picking up or returning containers is outside of their control. Therefore, we applaud FMC's efforts to bring more fairness to the assessment of the charges.

The Incentive Principle outlined in FMC's interpretive rule would help align demurrage and detention rules and practices with their original intended purpose: to provide a financial incentive to move cargo promptly. TIA agrees with FMC that the primary value of demurrage and detention are their ability to incentivize freight fluidity. For this reason, TIA supports the suspension of such charges, or at least an extension of free time, in situations where demurrage and detention would not provide that incentive, such as when the cargo is not available or the terminal in question is not accepting empty containers. Detention/demurrage should not be used as an unfair revenue enhancement device during times of port congestion or other extenuating circumstances.

FMC proposes considering the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability. TIA agrees that encouraging notice of cargo availability will improve efficiencies at our ports and across the U.S. freight delivery system: knowing when cargo is actually available will help ensure that pickup is timely scheduled, reducing the idle and wasted hours truckers spend waiting for containers to become available. TIA supports tying free time to actual cargo availability, and not to vessel arrival: as FMC points out, demurrage cannot incentivize efficient cargo pickup if the cargo is not truly available yet.

The manner in which notice of cargo availability is communicated is also a critical aspect of determining whether demurrage or detention charges are reasonable. Notice should be timely and readily accessible to the contracting party or its designee, and it should provide clear information as to when and where cargo may be retrieved. Again, this will help reduce wait times and congestion at our marine terminals.

Finally, we support FMC's efforts to improve dispute resolution by considering the existence and accessibility of dispute resolution policies in its assessment of reasonableness. TIA supports encouraging the inclusion in these policies of points of contact, time frames for raising and responding to disputes, and guidance on what relevant evidence to include. TIA also agrees with FMC that invoices should include adequate information to allow a shipper or trucker to audit and contest the charges. Further, payment of disputed charges should be held in abeyance pending resolution of the dispute. Combined, these improvements will help streamline dispute resolutions and bring more transparency to these processes, helping companies avoid the lengthy and costly process of having to file and litigate a complaint at FMC.

CONCLUSION

TIA commends FMC for clarifying how the Commission will evaluate the reasonableness of port demurrage and detention charges, and specifically for its efforts to re-align demurrage and detention policies with their intended purpose of incentivizing efficient cargo handling and movement. TIA encourages FMC to move forward with the interpretive rule promptly and looks forward to continuing to work with the Commission on improving the productivity and efficiency of our nation's ports and freight delivery system.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert A. Voltmann", followed by a horizontal line.

Robert A. Voltmann
President & CEO