

October 15, 2019

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

Via E-Mail: secretary@fmc.gov

Docket No. 19-05, Demurrage & Detention Comments

Dear Secretary Dickon:

The purpose of this letter is to provide comments on the Detention and Demurrage Interpretive Rule.

The Tea Association of the U.S.A., Inc., was founded in 1899 to promote and protect the interests of the tea trade in the United States and is the recognized independent authority on tea. Our members span the full tea supply chain from growers to packers. Presently, the Tea Association consists of approximately 100 members representing about 85 - 90% of all the tea that is imported and traded within the United States.

The primary goal of the Tea Association is to represent the interests of its members on all matters of potential concern.

FMC Detention & Demurrage Interpretive Rule

1. The proposed rule provides important guidance to the maritime industry regarding how the FMC will evaluate the reasonableness of port demurrage and container charges.

- There is a need for FMC guidance to address serious concerns over ocean carrier and marine terminal demurrage/detention charges as demonstrated in the Fact-Finding Investigation and the Petition filed by the Coalition for Fair Port Practices.
- The proposal identifies key principles and examples of reasonable practices that will be considered by the FMC in the context of a 10(d) claim as to demurrage/detention, while providing the necessary flexibility to account for differing factual circumstances (e.g. rule provides a non-exhaustive list of principles but is non-binding).
- The proposal will greatly benefit the US maritime industry and the Tea Industry through the promotion of efficient cargo handling and delivery, improved commercial fairness in the assessment of the charges and reduction of confusion and potential disputes.

2. The Interpretive Rule seeks to align demurrage/detention rules and practices with their intended purpose of incentivizing efficient cargo handling and delivery.

- We concur that the Incentive Principle is supported by the law and Shipping Act policies.
- We support the suspension of charges (or at least extension of free time) where efficiency incentives are not able to be achieved.
- It is appropriate for cargo interests to fulfill their responsibilities to receive and pick up cargo but no need for advance payment of all charges where credit has been agreed to between shipper and ocean carrier. Also pre-payment should not apply to disputed charges.

3. Comments on Specific Aspects of the Interpretive Rule

- **Scope of the Rule:** We concur that the FMC correctly applies the rule broadly to all charges regarding the use of marine terminal space or shipping containers, except freight, and to containerized trade only.
- **Cargo Availability:** The Tea Association strongly encourages notice of actual cargo availability. This will serve to vastly improve port efficiencies and the US freight delivery system. Knowing when cargo is actually available will help ensure that pickup is timely scheduled—reducing idle time and wasted hours that truckers waste, waiting for containers to become available. Free time should be tied to actual cargo availability and **not** vessel arrival since you cannot incentivize efficient cargo pickup if the cargo may not yet be available (i.e. held in a closed yard or location at the terminal). Free time should be paused if a container is no longer available.
- **Communication of Cargo Availability:** FMC correctly determined that the manner in which notice of cargo availability is communicated is a critical aspect of reasonableness. Notice must be timely and made readily accessible to the contracting party or its designee, and must provide clear information as to when and where cargo may be retrieved; “push notices” are favored.
- **Government Inspections:** In the case of government inspections, any time a container is pulled for examination, an immediate waiver or extension of free time should apply.
- **Dispute Resolution:** FMC has properly identified the types of policies, rules and practices that would greatly improve dispute resolution processes. Defined time frames should apply to both filing and responding to claims must operate to facilitate resolution of disputes and not unreasonably cut off claims.
- **Billing:** We agree with FMC that demurrage/detention invoices must include adequate information to allow a shipper/trucker to audit and contest the charges. The Tea Association of the U.S.A. favors invoicing that is tied to contractual relationships rather than ownership or control of the assets, i.e. ocean carriers should continue to bill their customers directly, rather than terminals billing for demurrage, since parties should be able to negotiate demurrage terms in their service contracts.
- **Evidentiary Guidance:** The Tea Association of the U.S.A. supports the FMC proposal encouraging the identification of information that can facilitate dispute resolution, such as appointment logs and trouble tickets.
- **Terminology:** We support the FMC proposal for the use of more consistent demurrage and detention terminology in carrier and terminal tariffs, including that the most common understanding of these terms is based on the source of the charge (land for demurrage) and (container for detention) as opposed to the location (inside or outside the terminal).

We strongly recommend that FMC promptly proceeds with the adoption of its proposed interpretive rule.

Thank you for the opportunity to comment on this interpretive rule and we congratulate the FMC for its balanced approach in this area.

Sincerely,



President