

October 31, 2019

secretary@fmc.gov

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

Re: Docket 19-05, Demurrage & Detention Comments
Comments of Walmart Inc. ("Walmart")

Madam Secretary:

Walmart respectfully requests that the Federal Maritime Commission ("FMC") take note of this timely filed comment in support of FMC's Notice of Proposed Rulemaking in Docket 19-05 regarding FMC's proposed Interpretive Rule on Demurrage and Detention under the Shipping Act. *Interpretive Rule on Demurrage and Detention Under the Shipping Act*, 84 Fed. Reg. 48850 (Sept. 17, 2019) (hereinafter, the "NPRM").

Walmart appreciates the FMC understanding the importance of demurrage and detention practices regarding ocean-borne cargo moving to and from the United States and writes in support of the rule and underlying justifications stated in the NPRM. Walmart agrees that, when appropriately applied, demurrage and detention charges are an appropriate mechanism for incentivizing efficient cargo movement and utilization of limited resources, such as intermodal equipment and real estate. Unfortunately, Walmart has also experienced abuse of such charges in ways that do not incentivize efficient movement and therefore applauds FMC's identification of efficient cargo movement as the key consideration in assessing reasonableness of demurrage and detention practices under 46 U.S.C. § 41102(c).

Without limiting Walmart's general support of the rule set forth in the NPRM and the underlying justifications, Walmart specifically agrees with the broad definition of demurrage and detention put forth by FMC, as well as with the following conclusions reached by FMC:

1. Demurrage and detention practices should be aimed at incentivizing cargo interests to move cargo promptly from ports and marine terminals, and when such practices do not incentive cargo movement, there is reason to question their reasonableness;
2. Supply chain participants benefit from transparent and consistent demurrage and detention practices;
3. It is proper to consider whether cargo is *actually* available, and whether and how actual notice of such availability is provided, when considering reasonableness of demurrage and detention practices;
4. Reasonable practices require clarity regarding demurrage and detention policies including, but not limited to, definition of charges, clarity regarding who is liable, notice (including that charges are accruing, of steps to be taken to terminate assessment of charges, and regarding resolution of disputes).

Because there are, as FMC has identified, legitimate ends to be served by assessment of demurrage and detention, Walmart understands and supports FMC's issuance of an interpretive rule that provides guidance to the industry without specifically banning or allowing specified conduct. By providing insight into FMC's interpretation of how the proposed rule should be applied (and would be applied by FMC) in practice, FMC is providing valuable insight to the industry. This insight should help ensure that demurrage and detention practices are reasonable—and should also help guide parties with respect to resolving disputes that may arise.

Again, we support the NPRM and thank the FMC for the opportunity to comment.

Sincerely,



WALMART INC.
Robert L. Sands
Senior Counsel