Re: Docket No. 22-04, Comments on Demurrage and Detention Billing Requirements ANPRM

We write in response to the Federal Maritime Commission's ("Commission") Advance Notice of Proposed Rulemaking (ANPRM) regarding new federal requirements to rein in the recent demurrage and detention ("D&D") practices of common carriers and marine terminal operators ("MTOs").

As the Commission is well aware, D&D charges imposed on importers and exporters have skyrocketed, globally, over the last year, negatively impacting companies of all sizes. According to the Commission's recent statistics, from July to September of 2021, eight of the largest common carriers charged customers fees totaling $2.2 billion—a 50% increase on the previous three-month period. While previously uncommon, D&D charges—which are intended to prompt the expedited movement of shipping containers—are being leveraged at unprecedented rates, despite the fact that shipping companies, in the vast majority of circumstances, are virtually unable to move shipping containers due to massive port and terminal congestion (caused, in large part, by the unique challenges posed by the global pandemic).

By taking advantage of these pressing circumstances—all of which were unforeseeable and/or beyond the control of shipping companies—carriers and MTOs are imposing steep costs on U.S. companies and, in effect, U.S. consumers, who are projected to face a 1 percent increase in consumer prices over the next year due to increases in shipping costs. Moreover, a continuation or escalation of current D&D practices could, in many cases, threaten the viability of numerous small and medium-sized U.S. businesses that are already reeling in the current environment.

As the Commission is also aware, the willingness of ocean carriers and MTOs to engage in predatory practices is nothing new. As early as 2014, U.S. importers, exporters, and transportation intermediaries have publicly advocated for enhanced restrictions on the ability of ocean carriers and MTOs to impose D&D charges. These complaints ultimately led to the establishment of multiple fact-finding investigations and the Commission's issuance of an Interpretive Rule on Demurrage and Detention (May 2020) that provided guidance on what constitutes "unjust and unreasonable" D&D practices under the Shipping Act of 1984 (Public Law 98-237). Unfortunately, such measures have not alleviated the problem, which has only become worse as numerous countries (including the U.S.) have experienced shortages of labor and available chassis, along with a surge in demand for durable goods that have contributed to shipping delays, port congestion, and, ultimately, record-setting increases in D&D charges.

Because of the challenges described above, the undersigned companies strongly support enhanced FMC rulemaking to rein in the D&D practices of common carriers and MTOs, including rules that would:

1. Prohibit the consumption of free time or collection of D&D charges when (a) obstacles to the cargo retrieval or return of equipment are within the scope of responsibility of the carrier or their agent and beyond the control of the invoiced or contracting party; (b) marine

terminal appointments are not available during the free time period; or (c) the marine terminal required for return is not open or available.

2. Require common carriers to provide timely notice of (a) cargo availability after vessel discharge; (b) container return locations; and (c) advance notice for container early return dates.

3. Establish minimum billing requirements, including timeliness and supporting information that shall be included in or with invoices for D&D charges that will allow the invoiced party to validate the charges. Supporting information should include, but not be limited to (a) how charges are calculated; (b) identification of any events to justify "stopping the clock" on charges (e.g., container unavailability, lack of return locations, appointments, or other force-majeure reasons); (c) explanation as to why the party receiving the bill is the proper party-in-interest; and (d) identification of the source of the charge (i.e., by tariff, service contract or MTO schedule).

We applaud the Biden administration's renewed focus on the issues described above, including, for example, its recent announcement of a new joint initiative between the Commission and the U.S. Department of Justice to promote competition in the ocean freight transportation system. As correctly noted by the White House, rapid consolidation among ocean carriers over the past decade has directly led to increasing shipping costs through rate increases and fees, including D&D charges.

We also share the Biden administration's call for prompt implementation of both legislative and regulatory measures to ensure that U.S. companies—and, ultimately, U.S. consumers—are not unfairly penalized due to the exceptional shipping challenges we face as a nation, and as a global trade community.

Thank you very much for your time and attention to these matters.

Sincerely,

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