

FEDERAL MARITIME COMMISSION

PETITION NO. P4-16

PETITION OF THE COALITION FOR FAIR PORT PRACTICES FOR RULEMAKING

QUESTIONS FOR THE RECORD

The Commission held public hearings on January 16 and 17, 2018, to receive oral testimony concerning the Petition of the Coalition for Fair Port Practices for Rulemaking.

Commissioners Dye and Maffei have determined to ask additional questions of certain hearing participants for the record in the proceeding. Replies to these questions should be submitted to secretary@fmc.gov as a PDF file by January 31, 2018. Copies of all written submissions will be posted to the Commission's website, <https://www.fmc.gov/p4-16/>, and will be available in the Commission's Office of the Secretary.

The Commission will treat information confidentially to the extent allowed by law. Confidential responses should be submitted in accordance with the requirements of 46 C.F.R. §502.5. Also, pursuant to 46 C.F.R. §502.115, all submissions must be served on all prior participants in the petition proceeding.

Questions from Commissioner Rebecca F. Dye

World Shipping Council member lines participant in the hearing are requested to answer the following questions:

1. For each line in 2017, approximately what percentage of (1) total containerized US import moves, and (2) total containerized US export moves handled by your line incurred detention or demurrage charges? Of that amount, what percentage were mitigated or cancelled?

2. What are your lines' current business processes for charging, collecting, negotiating and mitigating detention and demurrage in the U.S. trades? Are these

processes in-house activities or conducted by others on your lines' behalf?

3. When detention or demurrage charges in the U.S. are disputed, what is your line's current business process for resolving them? How long do such disputes typically take to resolve? Could employees closer to the customer be empowered to resolve disputes promptly?
4. Does your line have formal policies for detention and demurrage disputation and refunding? If so, what are they? Are they publicly available to the shipping public/your customers? Do they vary as between beneficial cargo owner customers and NVOCC customers?
5. If the petition request for FMC guidance were adopted, what practical impact (e.g., operational changes) would be required to your carrier current business practices or operational processes?

Coalition for Fair Port Practices is requested to answer the following questions:

1. The petition proposes policy guidance in terms of *"any event or circumstance that is beyond the control of the shipper, receiver or motor carrier."* The commercial practices cited in the petitioners' handout are presented in terms of *"the carrier is for any reason unable to deliver/tender cargo."* In your view, are these concepts essentially similar/close substitutes? Please explain.
2. If the petition request for FMC guidance that failure to extend free time when a carrier or MTO is unable to tender cargo or receive equipment would constitute an unreasonable practice were adopted, what practical impact (e.g., operational changes) would that require of BCO or drayage current business practices or operational processes?
3. What rail demurrage practices are relevant to the practices involving international ocean transportation?
4. If free time is extended, what commercial practices, including service contracting approaches, would U.S. shippers make to assure that cargo moves promptly through U.S. ports to final destination? (For example, not using terminals for cargo storage.)

5. Please explain the legal responsibility to tender cargo and how that is discharged in U.S. ports today?

Questions from Commissioner Daniel B. Maffei

Ocean Carrier participants in the hearing are requested to answer the following:

1. In the last few months we have heard about carriers introducing a service where, for an increased fee, they would guarantee the date of delivery. Would it be possible for ocean carriers to offer an increased rate that would also guarantee unlimited free time and that no demurrage would be charged?

Port and Marine Terminal Operator participants in the hearing are requested to answer the following:

1. As appointment systems become more common, what would your policy be when a vessel arrives with more containers than there are available appointments during the standard free time? (i.e. if a vessel arrives with 4,000 containers to be picked up within 4 days of free time and there are at maximum only 3,000 appointments available.)

By the Commission.

Rachel E. Dickon
Assistant Secretary