



The Bottom Line

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FEDERAL MARITIME COMMISSION (FMC) APPROVES FINAL REPORT ON DEMURRAGE AND DETENTION

Summary

On September 6, 2019, the Federal Maritime Commission (FMC) approved Commissioner Rebecca Dye's final recommendations on demurrage and detention, culminating an 18-month investigation into alleged usurious practices.

Background

Demurrage refers to the charges assessed after discharge of an import container, after the expiration of free time, and before the container is recovered from the port. For export containers, the charges would apply after the in-gate of the full load, after the expiration of free time, and before the container is loaded on the outbound vessel. Detention, or Per Diem, refers to the charges assessed after a container is recovered from the port, after the expiration of free time, and before the container is returned to the care of the steamship line at the port. Initially adopted to incentivize cargo owners in the efficient collection and return of containers, these fees have been the target of significant displeasure in recent years. The FMC's investigation into port demurrage and detention practices originated with the filing of a formal petition on December 7, 2016, by the Coalition for Fair Port Practices. The petition requested that the FMC adopt an interpretative rule pertaining to demurrage and detention practices following significant port disruption in 2015. The FMC received more than 110 comments to the petition and held public hearings. On March 5, 2018, the FMC voted to commence a fact-finding regarding demurrage and detention practices, selecting Commissioner Dye to lead the study. The FMC issued questions and requests for documents to 23 ocean carriers and 44 marine terminal operators (MTOs) concerning demurrage and detention practices. Commissioner Dye issued an interim report on September 5, 2018, detailing preliminary findings. The Interim Report focused on billing practices, cargo retrieval notification, and terminology.

Current Status

The Final Report focused on important areas of change that the investigators believe would not cause major disruption to maritime commerce, including: notice of cargo availability, billing practices, dispute resolution processes, and procedures/terminology. The Final Report encourages MTOs to establish notification policies that tailor the demurrage and detention practices to the particular circumstances of each cargo interest or trucker, and provides crucial points for carriers and MTOs to consider, including: (a) whether carriers and MTOs gave reasonable opportunity to make an appointment to pick up cargo following notice of availability; (b) whether carriers and MTOs extended free time when shipments were subjected to government inspections and holds; and (c) whether carriers and MTOs took into account terminal closures after notice of availability was given. The final report recommends "Innovation Teams" composed of industry leaders to refine commercially viable demurrage and detention approaches and a "Shipper Advisory Board" to offer information and insights to the Commission on emerging maritime issues.

Impact

Demurrage and detention are understandable charges when applied in ways that incentivize cargo interests to move cargo promptly through ports and marine terminals. The best way for cargo owners to control these costs is to be aware of the inventory in their supply line and to schedule movement of containers to maximize efficiency. While no proposed rule-making is evident at this stage, the response of the steamship lines and maritime terminal operators will drive the conversation going forward.

You can read the FMC Final Report by [clicking here](#).