

Federal Maritime Commission Issues Proposed Rule on Demurrage and Detention

SEPTEMBER 17, 2019

On September 17, 2019, the U.S. Federal Maritime Commission issued a Notice of Proposed Rule-Making and Request for Comments concerning a proposed interpretive rule on how the Commission will interpret the Shipping Act's requirement that ocean transportation entities maintain "just and reasonable regulations and practices" in connection with demurrage and detention charges. Marine terminals and ocean carriers impose demurrage charges for delays in retrieving loaded cargo containers, and ocean carriers may impose detention charges for delays in returning the ocean shipping container back to the carrier. Incidents of port congestion, labor disputes, and severe weather can cause delays at marine terminals, leading to high demurrage and detention charges imposed on shippers and consignees.

Commission regulations permit a party that has been the victim of unreasonable regulations or practices related to or connected with receiving, handling, storing, or delivering property to bring a complaint seeking restitution against the offending party before the FMC. The proposed interpretive rule would provide some guidance on the standards the FMC would apply in evaluating the reasonableness, or lack thereof, of the regulations or practices at issue in such a complaint.

The focus of the proposed interpretive rule is on the "incentive principle" – the extent to which demurrage and detention charges are serving their intended purpose of promoting freight fluidity, meaning the timely retrieval of cargo from terminals and ocean carriers. The proposed rule would have the Commission consider the extent to which demurrage practices relate to the actual availability of cargo for retrieval, the accessibility of demurrage and detention policies, and the transparency of terminology, among other factors.

A copy of the NPRM is available [here](#). The Commission is inviting public comment on the proposed rule, with comments due by October 31, 2019.

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