

Federal Maritime Commission Orders Formal Investigation in Detention & Demurrage Case

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On March 5, 2018, the Federal Maritime Commission voted to launch an investigation into the detention, demurrage, and per diem charges of vessel operating common carriers and marine terminal operators. The investigation will be headed by Commissioner Rebecca Dye, who will have broad authority to issue subpoenas, hold public and non-public inquiries, and require reports.

The key issues Commissioner Dye will investigate are:

1. Whether the alignment of commercial, contractual, and cargo interests enhances or aggravates the ability of cargo to move efficiently through U.S. ports;
2. "When has the carrier or [Marine Terminal Operator] tendered cargo to the shipper and consignee";
3. "What are the billing practices for invoicing demurrage or detention";
4. "What are the practices with respect to delays caused by various outside or intervening events"; and
5. "What are the practices for resolution of demurrage and detention disputes between carriers and shippers."

The investigation stems from a petition filed at the Commission by the Coalition for Fair Port Practices calling for a Commission intervention to help rein in demurrage and detention practices. In the original Petition, the Coalition called upon the Commission to promulgate a rule providing more regulatory structure and to effectively shift the burden of some detention and demurrage risks from shippers, consignees, and drayage providers to carriers and marine terminal operators. The Commission issued a request for comments and opened a docket, receiving hundreds of comments expressing widely divergent views. The World Shipping Council, which represents international liner operators, submitted comments opposing the rule, stating: "Free time practices and detention and demurrage charges provide incentives for the expeditious movement of cargoes over ports and for the prompt return of equipment. By limiting the situations in which detention may be collected, a rule of the sort requested by the petition may cause carriers and MTOs to limit free time in order to reduce the commercial exposure artificially imposed by a rigid rule." The Port of Houston Authority and the American Association of Port Authorities opined that the proposed rule would "deprive terminal operators of compensation, almost always in circumstances over which they have no control" and that "... the parties who should bear these costs and negotiate the allocation of these

costs should be the parties to the transportation contracts; that is, the carrier and the shipper.” Senator Maria Cantwell (D-WA) submitted a comment questioning the Commission’s authority to promulgate such a rule.

The petition and resulting investigation were spurred by the extensive port congestion experienced particularly on the West Coast in recent years, and several years of increased Commission scrutiny with respect to the demurrage, detention, and per diem charges, which have caused an outcry among U.S. shipper and trucker interests. Should the Commission decide to go forward with a rule resembling that requested by the Coalition and a number of shipper interests, it will have wide-reaching implications for the industry.

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