



Federal Maritime Commission
Washington, D.C. 20573

Office of the Commissioner

August 27, 2019

Chairman Michael A. Khouri
Commissioner Daniel B. Maffei
Commissioner Louis E. Sola
U.S. Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Dear Colleagues:

It is my privilege to report on the last phase of Fact Finding Investigation No. 28 and to present my final recommendations as Fact Finding Officer. I recommend that the Commission issue an interpretive rule to implement the general guidance contained in my Final Report on the application of demurrage and detention charges. I also recommend that the Commission establish a Shipper Advisory Board and continue to support the work of the Supply Chain Innovation Team in Memphis.

Since January, we have worked with industry stakeholders to refine the findings and recommendations contained in the Final Report. Working with industry leaders representing major international ocean supply chain businesses has been a pleasure. Several of the most knowledgeable ocean carrier, seaport, and marine terminal officials have been especially helpful to me as we developed approaches to addressing demurrage and detention concerns, and I appreciate their cooperation and advice.

We also hosted two groups in Washington, D.C., representing ocean carriers, marine terminals, ocean transportation intermediaries, truckers, U.S. importers, and U.S. exporters to discuss the feasibility of implementing the recommendations in the Final Report. The valuable discussions with stakeholders during this phase of the investigation gave me confidence that Commission guidance, consistent with the Final Report's findings, is advantageous and workable.

I recommend that the Commission issue the attached Notice of Proposed Rulemaking, which proposes an *interpretive* rule that clarifies how the Commission will assess the reasonableness of demurrage and detention practices. The rule flows from the longstanding principle that practices imposed by tariffs, which are implied contracts by law, must be tailored to meet their intended purpose. In the case of demurrage and detention charges, the purpose is to act as financial incentives to cargo interests to retrieve cargo and return equipment.

These financial incentives operate to ensure that cargo interests do everything customarily required to be positioned to retrieve cargo and return equipment within the time allotted. Absent extenuating circumstances, however, when incentives no longer function because shippers are prevented from picking up cargo or returning containers within time allotted, charges should be suspended.

Focusing on this incentive principle and cargo availability, and supporting innovations such as a “push notice” of container availability, will improve port performance and overall freight delivery system effectiveness.

The interpretive rule also includes other factors that the Commission may consider as contributing to the reasonableness inquiry. These considerations include the existence, accessibility, and transparency of demurrage and detention policies, including dispute resolution policies (and related concepts such as clear bills and evidence guidelines), and clarified language.

Also, consistent with my Final Report, I recommend that the Commission establish a Shipper Advisory Board to allow us to evaluate the implementation of the Fact Finding No. 28 recommendations and to obtain the advice of American importers and exporters concerning other Commission matters.

I further recommend that the Commission continue to support the Memphis Supply Chain Innovation Team in its efforts to improve the performance of the international ocean container freight delivery system.

As I said at the beginning of the Commission’s investigation, my interest in demurrage and detention practices is to ensure that the charges are applied in a way that improves the fluidity and overall performance of the American freight delivery system. The proposed interpretive rule accomplishes this without inhibiting the industry’s ability to craft flexible commercial solutions to commercial problems.

In closing, I would like to thank the Commission staff members whose participation was essential to this project. Finally, thanks to you, my colleagues, for your support during this effort.

Sincerely,

Rebecca F. Dye
Commissioner