

Detention and Demurrage Through the Lens of FF-28

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FMC Jurisdiction Over Detention, Demurrage, and Port Charges

- 46 U.S.C. § 40101
 - Stated goal of FMC to provide an efficient and economic transportation system
- 46 U.S.C. § 41102(c)
 - Requires MTOs and common carriers to adopt just and reasonable practices relating to handling and delivery of property

Fact Finding Investigation No. 28

- Fact Finding = non-adjudicatory investigation
- Commissioner Dye designated as Fact Finding Officer
- Purpose of FF-28: Collect and analyze information regarding demurrage and detention practices of shipping companies, ports, and marine terminals

Coalition for Fair Port Practices

- December 2016 Petition for Rulemaking (P4-16)
- Request for an interpretative rule to clarify what constitutes “just and reasonable rules and practices” with respect to demurrage, detention, and per diem charges

FF-28: The Process

- March 2018: following hearings on P4-16, FMC orders FF-28
- Information demands issued shortly thereafter
 - 23 ocean carriers; 44 MTOs and operating ports
 - Requested information and documents relating to detention and demurrage charges, free time, cargo availability, and billing practices
 - Sought statistics regarding the frequency and amount of charges
- Solicited information from other stakeholders
 - Shippers, drayage providers, OTIs

Interim Report

- Issued September 4, 2018
- Identified various areas of concern, including:
 - Standardized definitions of detention and demurrage
 - Simplification of billing practices and dispute resolution procedure
 - Consistency of notice to shippers of container availability

Same Terms, Two Approaches

1. Based on whether container is on-terminal or off-terminal
 - Demurrage – charge for exceeding free time on the terminal
 - Could be either for use of terminal space (terminal demurrage) or use of equipment (carrier or line demurrage)
 - Detention – charge for use of equipment beyond allotted time outside the port
 - After full container has left, until empty returned

2. Based on whether container is being charged for use of terminal space or use of carrier equipment
 - Demurrage – MTO charge for exceeding free time on terminal
 - Detention – charge for use of equipment beyond allotted time, whether at terminal or outside port

Varied Billing Practices

- Three broad approaches to demurrage billing:
 1. MTO bills for demurrage (both terminal and line) from cargo interest or drayage provider
 2. MTO collects demurrage from cargo interest or drayage provider; carrier collects its demurrage independently
 3. MTO collects terminal demurrage by billing carrier; carrier bills customer for both MTO and carrier demurrage
- 34 of the surveyed MTOs followed first two approaches
- Detention typically billed directly without any MTO involvement or knowledge

Container Availability

- Two-thirds of carriers reported providing cargo interests with notice of vessel arrival, but NOT notice that container is available for retrieval
- One-third reported providing notice of both vessel arrival and container availability
- “Impediments” to retrieval
 - Customs holds
 - Driver or chassis availability
 - Congestion
 - Unavailability of appointments

Phase Two

- In-person and telephonic meetings conducted in October and November 2018
- Locations:
 - Port Everglades, Port of Miami, Port of New York and New Jersey; Port of Long Beach; Port of Los Angeles
- Focus on areas identified in Interim Report and how those ideas could be implemented

Final Report: December 3, 2018

- Core Findings:
 - Value of demurrage and detention in incentivizing prompt movement of cargo
 - Industry would benefit from standardized terminology and practices
 - Focus on actual cargo availability would improve supply chain performance
- Recommendation that Innovation Teams be formed to refine commercially viable approaches
 - FF-28 continued until September 3, 2019

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