

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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Docket No. 19-05

**INTERPRETIVE RULE ON DEMURRAGE AND DETENTION UNDER  
THE SHIPPING ACT**

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**COMMENTS OF  
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE**

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Dated: October 31, 2019

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The National Industrial Transportation League ("League") hereby submits its comments in response to the interpretive rule on port demurrage and container detention practices issued by the Federal Maritime Commission ("FMC" or "Commission") on September 17, 2019 in a Notice of Proposed Rulemaking (NPRM) ("Interpretive Rule").<sup>1</sup> The FMC's proposed Interpretive Rule provides important guidance on the FMC's interpretation of Section 10(d) of the Shipping Act which expressly prohibits marine terminals and ocean carriers from failing "to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property"<sup>2</sup> and has been applied to demurrage and detention practices. The proposed Interpretive Rule clarifies key principles and practices that the FMC will consider when adjudicating whether specific port demurrage or container rules or practices of a common carrier, marine terminal operator ("MTO") or ocean transportation intermediary ("OTT") are unjust or unreasonable under the Shipping Act.

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<sup>1</sup> Notice of Proposed Rulemaking on Interpretive Rule on Demurrage and Detention under the Shipping Act, 84 Fed. Reg. 48850 (September 17, 2019).

<sup>2</sup> See 46 U.S.C. § 41102(c).

The proposed Interpretive Rule was developed by the Commission after a thorough investigation of existing demurrage and detention rules and practices pursuant to its Fact-Finding Investigation No. 28, including the impacts of such rules and practices on importers, exporters, truckers, 3PLs and others. The Interpretive Rule is intended to “promote the fluidity in the U.S. freight delivery system by ensuring that demurrage and detention serve their purpose of incentivizing cargo and equipment velocity” and “mitigate confusion, reduce and streamline disputes, and enhance competition and innovation in business operations and policies.”<sup>3</sup> Specifically, the proposed rule addresses “financial incentives, particularly with respect to cargo availability, empty container return, notice of cargo availability, and government inspections; accessible and user-friendly demurrage and detention policies; and transparent, consistent terminology.”<sup>4</sup>

The League strongly commends and thanks the Commission for initiating the above-captioned proceeding, which stems from the Petition for Rulemaking filed at the Commission by the Coalition for Fair Port Practices (“Coalition”) on December 7, 2016, the agency’s hearings on demurrage and detention practices, and its Fact-Finding Investigation.<sup>5</sup> The League applauds the efforts and leadership of Commissioner Dye, who served the Fact-Finding Officer, in carefully evaluating demurrage and detention practices at U.S. ports through broad outreach to all stakeholders in the industry. The League strongly supports the Commission in promulgating the proposed Interpretive Rule, which it believes will facilitate greater efficiencies in cargo delivery at our nation’s seaports through appropriate financial incentives that are implemented through reasonable demurrage and detention practices to the benefit of marine terminals, carriers,

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<sup>3</sup> NPRM 84 Fed. Reg. at 48851.

<sup>4</sup> *Id.*

<sup>5</sup> Petition for Rulemaking of Coalition for Fair Port Practices (December 7, 2016) (“Petition”).

shippers, receivers, truckers and others alike. It will also clarify rules and practices that may be found to be “unreasonable” and facilitate efficient dispute resolution when demurrage and detention disputes arise. Thus, the League strongly supports adoption of the proposed Interpretive Rule and appreciates the opportunity to comment on the NPRM.

## **I. IDENTITY AND INTEREST OF THE LEAGUE**

The League is one of the oldest national associations representing companies who ship and receive goods, or are involved in transportation, in both domestic and international commerce. The League was founded in 1907 and its members range from some of the largest users of the nation’s transportation system to smaller companies engaged in the shipment and receipt of goods, however, third-party intermediaries, logistics companies, and other entities involved in the transportation of goods are also members of the League. Competitive and efficient ocean transportation is vitally important to League members, and League members appreciate the efforts of the Commission to ensure that cargo delivery services at our nation’s seaports are governed by reasonable rules and practices. As an active and leading member of the Coalition for Fair Port Practices, which requested a rulemaking to clarify the agency’s interpretation of 46 U.S.C. § 41102(c) as applied to demurrage and detention, the League has a very strong interest in the final outcome of this proceeding.

## II. COMMENTS OF THE LEAGUE

### A. The League Strongly Supports Adoption of the Proposed Interpretive Rule

As demonstrated in the Coalition's Petition, and the agency's Fact-Finding Investigation No. 28 Final Report,<sup>6</sup> there is a need for the Commission's guidance as to how it will address serious concerns over common carrier and marine terminal rules and practices involving demurrage and detention charges. As the Fact-Finding Officer set forth in the Final Report, these concerns "go beyond a few severe episodes of inclement weather or labor-related port congestion problems," and they are "relevant to more than just a small subset of major ports."<sup>7</sup> The League commends the Commission for addressing these challenges through issuance of the proposed Interpretive Rule.

The League believes that the proposed Interpretive Rule strikes the right balance in outlining key principles and examples of reasonable practices that will be considered by the Commission in the context of a Section 10(d) claim involving demurrage and/or detention, while providing flexibility to account for differing factual circumstances inherent in the receipt and shipment of containerized cargo throughout the nation. The non-binding nature of the Interpretive Rule accounts for the fact-specific circumstances that the Commission may have to adjudicate, but the order proposing the Interpretive Rule clarifies the Commission's clear stance by providing a non-exhaustive list of principles that would constitute unreasonable and unjust practices as applied to demurrage and detention. The League strongly believes that the proposed Interpretive rule, if promulgated, will greatly benefit the U.S. maritime industry by promoting efficient cargo handling and delivery, improving commercial fairness in the assessment of the

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<sup>6</sup> Fact Finding Investigation No. 28 Final Report, Federal Maritime Commission (December 3, 2018) at 1-2 ("Final Report").

<sup>7</sup> Final Report at 1.

charges, while also reducing confusion and disputes. Furthermore, the proposal can be expected to positively influence common carriers and MTO tariff rules and practices and to potentially impact service contract terms addressing free time, demurrage and detention by promoting clarity and efficiency.

B. The Interpretive Rule Correlates Demurrage and Detention Rules and Charges with their Intended Purpose

The League strongly believes that the proposed Interpretive Rule is soundly designed to better correlate demurrage and detention rules and charges with their intended purpose. As the Fact-Finding Officer found in her Final Report, “the primary purpose of demurrage and detention is to establish a financial incentive to encourage the productive use of assets (containers and terminal space) and promote optimal velocity of cargo flow across the terminal and out of the port.”<sup>8</sup>

The League strongly supports the incentive principles set out in the proposed Interpretive Rule.<sup>9</sup> Demurrage and detention practices should be applied to serve their intended purpose, with correct financial incentives to promote freight fluidity. They should not be applied unfairly or inconsistently such that they result in a revenue stream for terminals and ocean carriers absent efficiency benefits.<sup>10</sup> Furthermore, as the Commission recognized, these principles are supported by the law, Shipping Act policies and Commission precedent.<sup>11</sup>

In the NPRM, the Commission explained that demurrage does not serve its purpose if “a cargo interest or its trucker cannot retrieve cargo from a marine terminal because the cargo is not available for retrieval due to circumstances such as weather, port or terminal closures, the

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<sup>8</sup> Final Report at 28.

<sup>9</sup> NPRM 84 Fed. Reg. at 48852-48853.

<sup>10</sup> Id.

<sup>11</sup> Id. at n. 11.

container is in a closed area, or government inspections of the cargo.”<sup>12</sup> The League strongly supports the Commission’s findings that in such circumstances, absent extenuating circumstances, demurrage and detention regulations and practices should provide for an extension of free time or the suspension of collection of the charges where efficiency incentives are not able to be achieved.

The Commission further explained that the extenuating circumstances include “whether a cargo interest has complied with its customary responsibilities, especially regarding cargo retrieval (e.g., making appointments, paying freight, submitting required paperwork, retaining a trucker).”<sup>13</sup> The League agrees with the Commission that cargo interests also play an important role in facilitating efficient cargo deliveries and that compliance with their customary responsibilities is a relevant consideration when evaluating reasonableness. However, the League notes that cargo interests regularly enter into credit agreements with the ocean carriers which may modify the timing and manner of freight payments. Thus, the League asks the Commission to tailor the definition of “extenuating circumstances” to clarify that not making an advance payment of freight charges, where the parties have a credit arrangement in place, should not be viewed as a failure to comply with customary cargo interest responsibilities. Additionally, requiring advance payment of demurrage and detention charges (rather than the line haul freight) prior to the release of cargo would not necessarily be reasonable when such charges may be in dispute.

C. Comments on Specific Aspects of the Proposed Interpretive Rule

The League thanks the Commission for carefully considering the information gathered in its fact-finding investigation and developing a thoughtful approach for evaluating the

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<sup>12</sup> Id. at 48852.

<sup>13</sup> Id.

reasonableness of demurrage and detention rules and practices on a case-by-case basis. The League submits the following comments in response to specific aspects of the Interpretive Rule.

(i) Purpose and Scope of the Proposed Rule:

The Commission's proposed Interpretive Rule states that the purpose of the rule is "to provide guidance about how the Commission will interpret 46 U.S.C. § 41102(c) and § 545.4(d) in the context of demurrage and detention,"<sup>14</sup> and that the rule will be applicable to containerized cargo for "any charges, including 'per diem,' assessed by ocean common carriers, marine terminal operators, or ocean transportation intermediaries .... related to the use of marine terminal space (e.g., land) or shipping containers, not including freight charges."<sup>15</sup>

The League strongly supports the broad application of the Interpretive Rule to all charges related to the use of terminal space or shipping containers, except for freight charges. The League believes that the rule's expansive scope will reduce confusion that results from the use of different terminology and types of charges in ocean carrier and terminal tariffs that are designed for the same purpose and, thus, avoids the risk of "double-dipping" in a situation where multiple charges could be applied to a shipment that are designed for the same purpose. The League further supports limiting the scope of the rule to containerized trade (including reefer containers) and "to charges related to shipping containers, not other equipment, such as chassis,"<sup>16</sup> since this is consistent with current industry practices.

(ii) Cargo Availability:

A fundamental principle underlying the Commission's guidance on reasonable demurrage practices concerns the concept of "actual cargo availability." The Commission's

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<sup>14</sup> Id. at 48855.

<sup>15</sup> Id.

<sup>16</sup> Id. at 48852.



proposed Interpretive Rule states that it “may consider in the reasonableness analysis the extent to which demurrage practices and regulations relate demurrage or free time to cargo availability for retrieval.”<sup>17</sup> The Commission further explains that demurrage cannot serve its purpose, if the cargo interests or truckers cannot pick up their cargo within free time and, therefore, “cargo availability” refers to the “actual ability of a cargo interest or trucker to retrieve cargo.”<sup>18</sup> Cargo will be deemed unavailable if it cannot be picked up because it is in a closed area of a terminal, or if the port is closed.<sup>19</sup> The Commission also exemplified circumstances that it would favor in the reasonableness analysis. These include: “(a) starting the free time clock upon container availability as opposed to container discharge from a vessel; (b) public notice of terminal yard closures; and (c) suspending demurrage or stopping the free time clock when a container is rendered unavailable, such as upon notice of a yard or terminal closure or when a trucker cannot get an appointment within a reasonable time of it becoming available.”<sup>20</sup>

The League agrees wholeheartedly that the reasonableness of demurrage practices and charges, including free time rules, should be related to actual physical availability of the cargo. This is because the underlying purpose of demurrage, i.e. to incentivize efficient cargo delivery, is far more likely to be optimized if cargo is actually available for pick up. In contrast, assessing demurrage when cargo is not actually available for pick up raises serious commercial fairness and reasonableness concerns. Accordingly, to be deemed “available”, cargo must be (a) discharged from the vessel, (b) in an open area of the terminal (“accessible”), (c) free of Customs or other government holds, (d) line released (paperwork and/or due freight charges having been received) and (e) the port must be open and operational. Free time should commence when

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<sup>17</sup> Id. at 48855.

<sup>18</sup> Id. at 48852.

<sup>19</sup> Id.

<sup>20</sup> Id.

cargo is physically available for pick up and all such obstacles are satisfied, except for those items which are the responsibility of the receiver such as line release, customs entry, and notice to the cargo interest has been communicated.

Thus, the League strongly agrees with the Commission that the free time clock should not be triggered by the discharge of cargo from a vessel. Starting free time upon cargo discharge will not necessarily incentivize efficient cargo pickup if, for example, the cargo is held in a closed location and still not actually available. In such a case, demurrage cannot serve its intended purpose of efficient cargo delivery. Similarly, as explained in subsection (iv) below, the League agrees that free time should be suspended when cargo is rendered unavailable. The League strongly supports the Commission's intent to favor this approach in its reasonableness analysis.

The League adds that the Commission should also consider the workings of terminal appointment systems in evaluating the reasonableness of demurrage rules and practices. The League strongly believes that there should be a minimum period of appointment availability for cargo interests to pick up their cargo. Otherwise, they may be assessed demurrage charges where cargo may not be picked up due to lack of available appointments, which is beyond a cargo interest's or trucker's control. Commissioner Dye also recognized this as part of the problem in her Final Report.<sup>21</sup>

(iii) Notice of Cargo Availability:

One of the key findings in the fact-finding investigation was that port and marine terminal operations should focus on **consistent notice** of actual cargo availability.<sup>22</sup> The Commission addressed the efficiencies that could be generated from improved practices

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<sup>21</sup> Final Report at 22-23.

<sup>22</sup> Id. at 3 and 32.

regarding notice of cargo availability, and provided that in evaluating “reasonableness” it may consider “the type of notice, to whom notice is provided, the format of notice, method of distribution of notice, the timing of notice, and the effect of the notice” in its reasonableness analysis.<sup>23</sup>

The League believes that the Commission’s focus on “notice of actual cargo availability” will vastly improve port efficiencies and the U.S. freight delivery system. By devising this strong correlation between prompt and consistent notice of cargo availability and the actual ability to retrieve the cargo, the Commission’s guidance will help to ensure that pickup is scheduled more timely, and thus will reduce congestion and inefficiencies caused by the idle and wasted hours for truckers spent waiting for containers to become actually available.

The League also agrees that the manner in which notice of cargo availability is communicated is a critical aspect of reasonableness. The notice of cargo availability must be timely and readily accessible to the contracting party or its designee and must provide clear information as to when and where cargo may be retrieved, and identification of last free day. The notice should provide as much information as is commercially feasible, including cargo holds and appointment access/availability. The League believes that providing more information in the notices will promote efficiency and align demurrage and detention practices better with their purported objectives.

Finally, the League favors “push notifications” and agrees with the Commission that they have superior merits related to cargo availability. The League believes that “push notifications” will reduce the inefficiencies associated with repeatedly having to check on container status on

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<sup>23</sup> NPRM 84 Fed. Reg. at 48855.

either or both carrier or terminal web sites to inquire as to status, even when the cargo is not yet available.

(iv) Interruption of Cargo Availability:

Reasonable demurrage and detention practices and regulations should also address circumstances involving an interruption to availability during the free time period that is caused by an event beyond the control of the cargo interests, by providing for the suspension of charges or extension of free time. Following an interruption to availability during the free time period, tariffs must provide for some reasonable additional amount of time to provide an updated notification as to the status of the cargo and scheduling the collection and delivery. In the case of an unexpected interruption to availability, the timing of availability is significantly less predictable and therefore an importer should not be penalized through the loss of free time. Clearly, any shipment that has already been delayed will have a degree of priority for the importer and does not need further incentive.

Additionally, subsequent to any cargo availability notice, a lack of terminal appointments during the free time period should be viewed like any other interruption of cargo availability. Just as a driver might lodge a trouble ticket at the terminal if a container is unexpectedly unavailable at the pier, a record of appointment shortages should be generated if a reasonable selection of appointments is not available within the free time period. In both of these instances, the terminal is granted some opportunity to immediately intervene and resolve but, barring that being accomplished, these instances would require free time to be extended.

Therefore, the interpretive rule should acknowledge that, following an interruption to cargo availability during the free time period, free time should be extended to account for the

period of time that the cargo was not available, so that the total free period provided will be not less than that which was originally authorized.

(v) Empty Container Return:

The League strongly agrees with the Commission that, similar to cargo availability, regulations and practices that result in detention charges imposed on customers when a container cannot be returned is blatantly unreasonable. Absent an actual ability of a cargo interest or a trucker to return a container, the assessment of detention charges will not promote efficiency of the U.S. freight delivery system, and thus should be viewed as an unreasonable practice. Further, when a terminal interrupts or restricts acceptance of empties, (including through a requirement of “dual transaction only” returns), this not only interferes with efficient operations for the importer and their trucker, it can also result in significant expenses such as storage and chassis use. The Interpretive Rule should therefore also consider that reasonable detention free time will begin upon notification of terminal’s elimination of impediments for the empty return or at least should be extended to account for the period of the existence of the impediments.

(vi) Government Inspections:

In its NPRM, the Commission explained that it is considering three options as interpretive rules pertaining to demurrage for cargo that is subject to government inspections, and is requesting comments on such proposals. The proposals set forth in the Interpretive Rule are: “(i) In the absence of extenuating circumstances, demurrage and detention practices and regulations that provide for the escalation of demurrage or detention while cargo is undergoing government inspection are likely to be found unreasonable; (ii) In the absence of extenuating circumstances, demurrage and detention practices and regulations that do not provide for mitigation of demurrage or detention while cargo is undergoing government inspection, such as

by waiver or extension of free time, are likely to be found unreasonable; or (iii) In the absence of extenuating circumstances, demurrage and detention practices and regulations that lack a cap on the amount of demurrage or detention that may be imposed while cargo is undergoing government inspection are likely to be found unreasonable.”<sup>24</sup>

The League believes that the third proposal (i.e., a cap on charges), with the cap being akin to a compensatory component of a demurrage or detention charge that does not include the penal component of the charge, is the most appropriate approach in creating a sound rule that would balance the different interests with respect to cargo that is subject to government inspections, and to ensure that none of the industry stakeholders are unduly disadvantaged for demurrage and detention that results from delays that are beyond their reasonable control.

It is a well settled principle that demurrage and detention charges are comprised of two components (i.e., compensation and a penal incentive).<sup>25</sup> The compensatory component of the charge corresponds to the use of the terminal’s or ocean carrier’s assets, i.e. marine terminal space or equipment, beyond free time. Whereas, the penal component is intended to deter cargo interests and truckers from congesting the fluidity of the U.S. freight delivery system.

The League acknowledges that government inspections are typically not the fault of either the cargo interest or the terminals or carriers. Therefore, imposing the penal component of a demurrage or detention charge on cargo interests during a government inspection cannot be considered as reasonable, since during government inspections the cargo interests or truckers cannot be incentivized to pick up their cargo more efficiently. On the flip side, the marine terminal space and the equipment of the carriers will be used during the period of the

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<sup>24</sup> NPRM 84 Fed. Reg. at 48853.

<sup>25</sup> Final Report at n. 36-37 (explaining various FMC precedents distinguishing penal and compensatory purposes of the charges).

government inspection, and a waiver on these charges during this time period would deprive MTOs and common carriers of compensatory revenue.

Thus, the League supports an interpretive rule that would account for these diverging interests, by striking an appropriate balance between compensating the MTOs and common carriers for the use of their marine terminal space and equipment during government inspections, while simultaneously not unduly penalizing cargo interests and the truckers for not being able to pick up their cargo during government inspections. Containers are often transported off of the terminal facility for some period of time for the inspections and therefore time on the pier during which demurrage might accrue is highly dependent upon the speed of various actors, including terminal personnel, to facilitate the removal and return of the container between the pier and the CES. In any case, the one party who has no ability to directly influence the speed of the activity is the importer and therefore, the League agrees with the Commission that it would not be reasonable to bill them the full detention or demurrage charges, which would impose the incentive on the party who cannot influence the efficiencies in cargo delivery.

(vii) Dispute Resolution Policies:

The Commission's proposed rules provide that it "may consider in the reasonableness analysis the existence and accessibility of policies implementing demurrage and detention practices and regulations, including dispute resolution policies. In assessing dispute resolution policies, the Commission may further consider the extent to which they contain information about points of contact, timeframes, and corroboration requirements."<sup>26</sup>

The League strongly favors the adoption of more reasonable rules and practices that will facilitate the efficient resolution of demurrage and detention disputes. During the Commission's

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<sup>26</sup> NPRM 84 Fed. Reg. at 48856.

demurrage proceedings, strong fairness concerns were expressed by cargo interests, truckers, and 3PLs regarding demurrage and detention invoicing practices which require payments without an ability to audit the accuracy of the charges. Similarly, dispute resolution processes are inefficient and require parties disputing the charges to expend enormous resources to resolve disagreements over demurrage and detention charges. The League believes that the Commission has identified the types of policies, rules and practices that would greatly improve dispute resolution processes. The League further believes that reasonably defined time frames should apply to both filing and responding to claims, that the dispute resolution process must operate to facilitate the resolution of disputes timely and efficiently, and must not cut off claims unreasonably.

(viii) Billing:

In the NPRM, the Commission explained that “demurrage and detention bills having enough information to allow cargo interests to meaningfully contest the charges” is an important component of the reasonableness of dispute resolution policies.<sup>27</sup> The League strongly agrees with the Commission, and it believes that this will promote the ability of the shippers to contest the charges more efficiently, without spending an unreasonable amount of time and resources contesting these charges, and thus it would make the current demurrage and detention policies of regulated entities more reasonable.

Furthermore, the Commission sought comments on whether tying billing relationships to ownership or control of the assets that are the source of the charges would be a viable alternative to the current contractual billing model.<sup>28</sup> The League does not support the alternative billing model. The League believes that the current practice, i.e. where common carriers bill demurrage and detention charges directly to their customers (or their designated agent), is a viable model

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<sup>27</sup> Id. at 48854.

<sup>28</sup> Id.



that accounts for existing contractual relationships that predominantly exist in the industry. Under the current business model, typically, there is no direct commercial mechanism for shippers to negotiate demurrage provisions/rules directly with the MTOs, since they contract directly with the common carriers. Therefore, the League believes that changing the current billing model without addressing the lack of commercial mechanisms between the shippers and MTOs would create commercial and potentially legal challenges for the industry, and the League does not see a justifying basis for changing this model.

(ix) Guidance on Evidence:

The League commends the Commission for addressing the challenges that occur in resolving demurrage and detention disputes by providing guidance on the evidentiary factors that would weigh positively in its reasonableness analysis.<sup>29</sup> The League agrees with the Commission's findings that carriers and terminals should identify the types of information that can be reasonably developed and is readily available (i.e., trouble tickets and log records) that would prove helpful in facilitating efficient dispute resolution. The League, however, notes that the tariff rules of ocean carriers and terminals should allow for some flexibility on what type of evidence can be admitted in demurrage and detention disputes that would account for varying factual circumstances.

(x) Transparent Terminology:

The Commission's proposed rules include a provision that states that it "may consider in the reasonableness analysis the extent to which regulated entities have defined the terms used in demurrage and detention practices and regulations, the accessibility of definitions, and the extent

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<sup>29</sup> Id.

to which the definitions differ from how the terms are used in other contexts.”<sup>30</sup> The Commission further provided that it supports defining demurrage and detention based on the source of the charge (i.e., land or container) as opposed to the location of a container (i.e., inside or outside a terminal).<sup>31</sup>

The League strongly supports the use of more consistent demurrage and detention terminology in carrier and terminal tariffs. The League further agrees that the most common understanding of these terms is based on the source of the charge, as opposed to the location of a container. The League believes that the industry will benefit greatly if carriers and terminals adopt more uniform terminology for demurrage and detention charges as this would reduce confusion that results from the use of varied terms and definitions.

(xi) Shipper Advisory Board:

Finally, the League believes that the industry would greatly benefit from the Commissioner’s formation of a Shipper Advisory Board that would provide the Commission with continual input on issues affecting the international freight delivery system.<sup>32</sup> As the Fact-Finding Officer set forth in her Final Report, “the complexity of port operations and the wide variation in port procedures and practices”<sup>33</sup> deem it necessary for the establishment of the Shipper Advisory Board, and the League urges the Commission to proceed with the creation of this Board in its final proposal or promptly thereafter.

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<sup>30</sup> Id. at 48855.

<sup>31</sup> Id. at 48554.

<sup>32</sup> Final Report at 31.

<sup>33</sup> Id.

### III. CONCLUSION

For the foregoing reasons, the League strongly supports adoption of the Commission's proposed Interpretive Rule on demurrage and detention regulations and practices, taking into consideration the comments provided herein. The League believes that the proposed Interpretive Rule strikes the correct balance between providing key principles and examples of reasonable regulations and practices, and providing the necessary flexibility to account for differing factual circumstances. The League greatly appreciates the efforts of Commissioner Dye and the Commission on this important issue and for the opportunity to comment on the NPRM.

Respectfully submitted,

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