



## PROPOSED REFORMS TO THE SHIPPING ACT OF 1984

### I. UNREASONABLE DEMURRAGE AND DETENTION PRACTICES AND CHARGES

(a) Within 60 days of enactment, the FMC shall initiate a rulemaking proceeding to establish rules prohibiting common carriers and marine terminal operators from adopting and applying unjust and unreasonable demurrage and detention rules and practices. The rulemaking shall address the issues identified in FMC Docket No. 19-05, *Interpretive Rule on Demurrage and Detention Under the Shipping Act,*" including but not limited to:

- i. Establishing clear and uniform definitions for demurrage, detention, cargo availability for retrieval and associated free time, and other terminology used in the rule. The definition for cargo availability for retrieval should account for government inspections.
- ii. Establishing that demurrage and detention rules are not independent revenue sources but should incentivize efficiencies in the ocean transportation network, including the retrieval of cargo and return of equipment.
- iii. Prohibiting the consumption of free time or collection of demurrage and detention charges when obstacles to the cargo retrieval or return of equipment are within the scope of responsibility of the carrier or their agent and beyond the control of the invoiced or contracting party.
- iv. Prohibiting the commencement or continuation of free time unless cargo is available for retrieval and timely notice of cargo availability has been provided.
- v. Prohibiting the consumption of free time or collection of demurrage charges when marine terminal appointments are not available during the free time period.
- vi. Prohibiting the consumption of free time or collection of detention charges on containers when the terminal required for return is not open or available.
- vii. Requiring common carriers to provide timely notice of (i) cargo availability after vessel discharge, (ii) container return locations, and (iii) advance notice for container early return dates.
- viii. Establishing minimum billing requirements, including timeliness and supporting information that shall be included in or with invoices for demurrage and detention charges that will allow the invoiced party to validate the charges.
- ix. Requiring common carriers and marine terminal operators to establish reasonable dispute resolution policies and practices.
- x. Establishing the responsibilities of shippers, receivers, and draymen with respect to cargo retrieval and equipment return.



(b) A common carrier or marine terminal that assesses demurrage or detention charges shall maintain all records supporting the assessment of the demurrage or detention charges for a period of 3 years and provide such records to the invoiced party on request.

(c) In any complaint proceeding challenging common carrier demurrage or detention charges as unjust and unreasonable, the common carrier shall bear the burden of establishing that the charges are just and reasonable and comply with the rules to be established under Section I.(a) above.

## II. PROHIBITED ACTS

The prohibited acts set forth at 46 U.S.C. § 41101(a) shall be modified as follows:

(a) IN GENERAL.—A common carrier, or ocean common carrier where specified, either alone or in conjunction with any other person, directly or indirectly, may not—

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*(14) fail to furnish or cause a contractor to furnish the facilities and instrumentalities needed to perform the transportation services, including containers;*

*(15) establish rules and practices for the allocation and interchange of containers, chassis or other equipment that unreasonably reduce accessibility to such equipment or efficiencies in performance of the transportation services;*

*(16) an ocean common carrier may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to the allocation of vessel space accommodations in consideration of foreseeable import and export demands.*

## III. COMMON CARRIER SERVICE OBLIGATIONS

A common carrier shall be obligated to adhere to minimum service standards that meet the public interest. The minimum service standards shall be developed in a rulemaking proceeding initiated by the FMC within 90 days of enactment of these amendments and shall include but not be limited to the following:

- i. The obligation to adopt reasonable rules and practices related to or connected with the furnishing and allocation of adequate and suitable equipment, vessel space accommodations, and other instrumentalities necessary for the receiving, loading, carriage, unloading and delivery of cargo.
- ii. The duty to perform the contract of carriage with reasonable dispatch.
- iii. The requirement of ocean common carriers to establish contingency service plans to address and mitigate service disruptions and inefficiencies during periods of port congestion and other market disruptions.



#### IV. COMPLAINTS AGAINST ANTICOMPETITIVE AGREEMENTS

(a) The provision governing Complaints filed with the Federal Maritime Commission set forth at 46 U.S.C. § 41301 shall be amended as follows to permit third party challenges to anticompetitive agreements:

46 U.S.C. § 41301

(a) IN GENERAL. —

A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, ~~except~~ **including** section 41307(b)(1) **governing anticompetitive agreements**. If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

(b) The provision governing Injunctive relief sought by the Commission against agreements that reduce competition, set forth at 46 U.S.C. § 41307(b)(3), shall be amended as follows to permit third party intervenors in court proceedings initiated by the Federal Maritime Commission:

46 U.S.C. § 41307

(b) REDUCTION IN COMPETITION. —

(3) BURDEN OF PROOF AND THIRD PARTIES. —

In an action under this subsection, the burden of proof is on the Commission. The court may ~~not~~ allow a third party to intervene.