

November 22, 2022

National Shipper Advisory Committee to Federal Maritime Commission (FMC)  
Sub-Committee: Demurrage, Detention and Freight Charges – Government Holds

### Recommendation

*Seeking consideration into practice of liner and terminal demurrage imposed on containers that have been held, delayed, or otherwise detained outside the control of the Account of the cargo.*

**Purpose.** One aspect of international containerized shipping is the chance that containers, either for imports or exports, will be randomly flagged and held for release by U.S. Customs & Border Patrol (CBP) or other government agency (including DEA, FDA, USDA, etc.) for screening, sampling, or intensive inspection for the purposes of national security. While shippers are understanding of the need for such scrutiny, there is a resultant conflict between storage/demurrage/detention that is consequential to government holds and the spirit of the Interpretive Rule of the Federal Maritime Commission (FMC).

Therefore, the purpose of this recommendation is to address this conflict and better marry the reality, and necessity, of government holds with the Interpretive Rule.

**Applicability and Scope.** This recommendation, if accepted and implemented, would apply the terms of the Interpretive Rule to all containers, both import and export, that are subject to any type of government hold.

**Justification.** As all parties involved in international trade understand, and support, the necessity of cargo inspections for the purposes of national security, they must approach this issue with objectivity.

More often than not, government holds do result in storage, demurrage, and/or detention charges being levied against the shipper. Moreover, these charges are multiplied for shipments with multiple containers on a bill of lading as all linked containers are held even if only one container is flagged.

Historically, these charges are passed to the shipper in full and rationalized as a “cost of doing business” in international trade. This statement, however, conflicts with the Interpretive Rule which outlines storage, demurrage, and detention as charge schedules to incentivize the movement of goods and not a punitive measure. The spirit of maritime law has always protected carriers from such financial risk as their vessel movement only happens per contract with, and instruction by, shippers. Nevertheless, this same protection is not in place for shippers or terminals. As neither the shipper nor the terminal is at fault for random government holds, the FMC’s Interpretive Rule does not directly address who should bear costs associated with such events.

Complicating the situation is the absence of control that shippers have over the length of time required by government agencies to complete their inspections of cargo. While a hold and inspection that takes just one day to complete is benign, some cases can drag on for weeks or months depending on the intensity of inspection and government resources available to complete the work. Certainly, the argument that consequential storage, demurrage, and/or detention are merely a “cost of doing business” for shippers begins to fall apart as costs increase exponentially with government productivity slowed by budget constraints, health concerns, large waves of cargo throughput, or any other factor impacting government operations. As shippers have no control over the speed of hold resolution, the

application of storage, demurrage, and detention charges is therefore not to incentivize the movement of cargo but instead to penalize the shipper and **generate** opportunity cost for the terminal.

Every type of government hold and inspection will result in fees to the shipper unrelated to storage. These fees are not directly charged by the government and are instead paid to a number of third parties including, but not limited to, the following:

- **The Centralized Examination Station (CES)**, which is a private facility that CBP uses to inspect shipments. The staff at the CES will take care of the logistics of your inspection, such as loading and unloading your shipments, and you'll pay for that service. They may also charge you storage fees for holding your shipment in their warehouse.
- **The ocean carrier**, who may charge you for things like detention and demurrage because you're using their container for longer than expected. If needed, they may also charge storage fees, depending on your particular situation.
- **The drayage carrier**, who moves your shipment to and from the CES. You'll see these on your invoice as drayage charges.

Even though government agencies are the parties requiring holds and inspections, federal law requires that the shipper is to pay all associated fees. These costs certainly fall into the "cost of doing business" argument and are both widely accepted by shippers and not within the scope of this recommendation.

In regards to storage related charges, however, the Interpretive Rule must be applied uniformly and without prejudice if the rule is going to command respect from all shippers, terminals, and carriers. Therefore, we must find a way to apply the spirit of the Rule to the arena of government holds while also maintaining objectivity and consideration for terminals' opportunity costs, shippers' delivered product costs, and the efficiency of cargo flow in the United States.

**Recommendation.** We, as the unified National Shipper Advisory Committee, hereby recommend that the Federal Maritime Commission codify regulation that fees related to random Government inspections **be charged on a reduced scale to shippers**. We recommend that the following structure be the foundation for such action.

- Terminals **and/or VOCCs** agree to invoice, and shippers agree to pay, **25% of the base tariff demurrage, detention, or storage** amount for any storage days required by ~~random~~ government holds and/or inspections. **No dwell fees or tiered structure allowed. Alternatively a universal flat fee for government hold demurrage or detention. Could be considered..**
- Should a carrier or terminal be able to provide proof that a shipper tendered inaccurate, incomplete, or untimely documents in relation to a shipment which subsequently triggers a government hold and/or inspection, no protection as outlined in this recommendation should be applied and all charges, including terminal storage at full tariff amounts, should be levied to the shipper.
- Free time should not start until a government hold is removed.

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Subcommittee Vote:

Yea: \_\_\_\_\_

Nay: \_\_\_\_\_

Subcommittee Signatory:

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Mr. Rich Roche, Chair

Date

Full Committee Vote:

Yea: \_\_\_\_\_

Nay: \_\_\_\_\_

Full Committee Signatory:

\_\_\_\_\_

Mr. Brian Bumpass, Chair

Date