

Federal Regulator to Accept Comments on Proposed Curbs to Late Charges for Containers

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Practices: Commercial, Competition & Trade

Less than a year after the West Coast ports of the United States recovered from labor disputes that resulted in significant transportation delays, the 2016 Hanjin Shipping bankruptcy created still more issues with late charges on delayed cargo containers in U.S. ports. Now the Federal Maritime Commission (FMC), which regulates ocean carriers, marine terminals, and ocean transportation intermediaries who do business in the U.S., is allowing concerned parties to comment on a proposed new rule on late charges. The Coalition for Fair Port Practices, an industry group led by the National Retail Federation and a number of retail, shipper, and trucking groups, filed a petition for a new regulation in early December 2016. The U.S. Shipping Acts have required carriers, terminal operators, and transportation intermediaries to use "just and reasonable" practices in the handling of cargo since 1916. The Coalition now wants a clearer regulation on what constitutes "just and reasonable" in the context of late charges on containers.

The proposed new regulation would create a "force majeure" type exception to the accrual of late charges. If adopted, the regulation would prevent carriers, terminal operators, and intermediaries from levying late charges if certain events beyond the parties' control, including labor disputes or port congestion, prevent the flow of cargo, as long as those events occurred prior to the expiration of free time for the cargo. Cargo will have a certain number of days' worth of "free time" during which it is free from late charges, while sitting on a dock, in a terminal, or on a truck. The late charges, which are typically referred to as demurrage, detention, or per diem, depending upon who has to pay them, start to accrue once the late time expires. The Coalition is essentially proposing a regulation that would force operators within the ports to extend free time on cargo to account for events beyond the parties' control.

The FMC is accepting written comments and responses to the proposed regulation until February 28, 2017.