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The FMC recommendations reflect an agency seeking to encourage commercially driven solutions and firm up how such disputes are reviewed without plunging into a complex tangle of business agreements. Photo credit: Shutterstock.com.

The top United States maritime regulatory agency on Friday unanimously approved interpretive rulemaking recommendations aimed at helping it gauge whether levied demurrage and detention fees truly incentivize the retrieval of cargo and return of containers.

The Federal Maritime Commission agreed to the recommendations stemming from a year-and-a-half effort led by commissioner Rebecca Dye to address complaints from cargo owners and drayage drivers over what they considered unfair fees for failing to pick up cargo and return equipment in a timely manner.

The recommendations reflect an agency seeking to encourage commercially driven solutions and firm up how such disputes are reviewed without plunging into a complex tangle of business

agreements.

"Our approach from the beginning has been to enhance the competitiveness of the US freight delivery system," Dye said.

In an interview, Dye said the agency isn't seeking to determine "fault" or whether the factors of calculating detention and demurrage fees are fair. Instead, she said the recommendations will focus on how the agency considers whether the fees are reasonable in terms of encouraging better cargo flow — whether that be the timely pickup of cargo or return of marine containers.

In short, a Dye-led innovation team recommended promoting standardized definitions of detention and demurrage, simplifying dispute resolutions and fee billing practices, providing guidance on what evidence is needed for dispute resolution, and keeping the industry informed on container availability and equipment returns.

Shippers and truckers, some of whom have accused marine terminals and carriers of using demurrage and detention fees as revenue generators, argue they shouldn't have to pay the fees if factors out of their control prevented the pickup of cargo or return of equipment. Marine terminals and carriers counter that the fees are meant to encourage better cargo flow and that too much rigidity will only further complicate commercial disputes.

In April, carriers published a list of four best practices to resolve detention and demurrage disputes, which Dye said informed her own recommendations. Those received a mixed response from cargo owners, including those involved in the petitioning coalition.

Dye also recommended the agency create a shipper advisory board and support the work of a coalition of beneficial cargo owners (BCOs) and truckers tackling chassis problems in Memphis. The Memphis Supply Chain Innovation Team in late May presented a white paper highlighting its findings to the US Surface Transportation Agency, encouraging the top US rail agency to address chassis woes in the region.

The Agriculture Transportation Coalition welcomed the FMC's vote to agree to recommendations, although executive director Peter Friedmann said Friday it was clear that all the commissioners understand the damage caused by unfair detention and demurrage fees, which range from \$125 to \$325 per container a day. In a notice to AgTC's membership of importers, exporters, forwarders, and truckers, Friedman said, "the time has come for the FMC to fulfill its statutory responsibility to protect the interests of the US shipping public. (Otherwise, why should the FMC continue to exist?)."

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