Form to Submit Demurrage, Detention and Export Restriction Information

The **Agriculture Transportation Coalition** provides this form to assist all exporters, importers, forwarders, truckers, customs brokers, NVO's respond to the Federal Maritime Commission's investigation of carrier and marine terminals practices.
Questions? Email info@agtrans.org

- Federal Maritime Commissioners are concerned: ocean carriers and terminals are not following the guidance provided in the *Interpretive Rule on Demurrage and Detention Under the Shipping Act*.[1]

- In addition, they are concerned with ocean carrier and marine terminal behavior that impedes empty container return and carriage of US exports.[2]

- The Commission invites shippers and truckers with specific allegations of carrier/terminal behavior that violates the Guidelines and impedes exports, to submit descriptions and supporting evidence to the FMC's Bureau of Enforcement.[3]

[1] 46 USC 41102(c)
[2] https://www2.fmc.gov/readingroom/docs/FFno29/FF29_41102(c)_%20Supplemental_Order.pdf/
[3] https://www.fmc.gov/fact-finding-29-advice-to-the-trade/

Instructions:

1. Complete this form for each occurrence of unreasonable carrier or terminal detention or demurrage charge, or export impediment. You can simply click on the appropriate boxes within this Word document, and type in your descriptions where requested.
2. Check all boxes that apply, and where asked on this form, provide descriptions and attach any documentation, invoices, communications that illustrate the unfair practices.
3. Email to Director, FMC Bureau of Enforcement BTrogdon@fmc.gov; copy rdye@fmc.gov and info@agtrans.org

Questions:

1) Your Role:

☐Importer
☐Exporter
☐Transportation Intermediary
☐Freight Forwarder
☐NVO
☐Drayage trucker
☐Other person [*Enter your role here*]

2) Your name and contact information

Type your answer here:

3) Name of Carrier or Marine Terminal

Type your answer here:

4) Issues. Check ALL that apply to your complaint. NOTE: Many of the scenarios below may appear duplicative. Each has been discussed by the FMC in past cases, investigations, and/or the recent interpretive rule on detention and demurrage; if you have encountered them, it is important that you check them. [FYI: The numbers following each scenario refer to previous FMC discussion of that scenario. They are listed on the last page.]

General Reasonableness 46 CFR 545.5(c)(1)

☐Free time provided was not reasonable[4]
☐a free time practice does not provide a shipper a reasonable opportunity to retrieve its cargo[5]
☐free time started prior to container availability[6]
☐free time not directly linked to container availability[7]

[4] See Final Report at 27 (citing Port of San Diego, 9 F.M.C. at 539, and Boston Shipping Ass'n, 10 F.M.C. at 416, wherein established that even during a strike initiated during free time, terminal costs cannot be transferred to shipper, but remain with carrier.
[5] 85 FR at 29654
[6] 85 FR at 29654
[7] 85 FR at 29656

☐trucker unable to get a terminal appointment within free time[8]

☐trucker appointments are not guaranteed by terminal[9]

☐trucker unable to get an appointment or access for any reason outside their control, including but not limited to poor appointment systems or port congestion[10]

☐Failure to provide reasonable notice of Earliest Return Date, and/or changes thereto

Cargo Availability 46 CFR 545.5(c)(2)(i)

☐Container was in a closed area during free time[11]

☐Port was shut down during free time [12]

☐Terminal was closed -- due to a storm or any other factor -- during free time [13]

☐Container otherwise unavailable during free time:[14]

☐Not yet discharged from vessel

☐Not yet assigned a location at terminal for pick up

☐Consignees, through reasons beyond their control, are unable to remove cargo still on the terminal after free time expired, and the demurrage charged went beyond fair compensation for sheltering and protecting the cargo (i.e. covering terminal charges), which makes the demurrage charge penal (punitive/profiteering) in nature.[15]

Chassis availability

☐Action(s) by the ocean carrier or terminal prevented access to chassis, leading to demurrage and/or detention charges.[16]

Empty Container Return 46 CFR 545.5(c)(2)(ii)

☐Container cannot be returned for a reason outside the control of the trucker/shipper[17]

☐Container cannot be returned because terminal refuses to accept it[18]

[8] 85 FR at 29654
[9] 85 FR at 29656
[10] 84 FR at 48852–53; id. at 48852 n.16; Final Report at 20
[11] 84 FR at 48852
[12] 84 FR at 48852
[13] 85 FR at 29653
[14] 84 FR at 48853; Final Report at 20.
[15] See 85 FR at 29653, referencing NYI, 3 U.S.M.C. at 107 and 9 S.R.R. at 875
[16] 85 FR at 29655
[17] 85 FR at 29655; 85 FR at 29638
[18] 85 FR at 29655

☐Uncommunicated or untimely communicated changes in container return[19]

☐Uncommunicated or untimely communicated notice of terminal closures for empty containers[20]

☐Terminal mandates change in return location or dual move, including when accompanied by communication failure, and unanticipated additional time.[21]

Notice of Cargo Availability 46 CFR 545.5(c)(2)(iii)

☐Failure of importers to be notified when their cargo is actually available for retrieval[22]

☐The format of notice, or method of distribution of notice, or timing of notice, contributed to lack of a reasonable opportunity to retrieve cargo[23]

☐Lack of notice of a change in availability[24]

Government Inspections 46 CFR 545.5(c)(2)(iv)

☐Cargo unavailable due to inspections by government agencies, third-parties, and off-terminal facilities, such as centralized examination stations[25]

Demurrage and Detention Policies 46 CFR 545.5(d)

☐lack of timely and fair complaint and dispute resolution process.[26]

☐clear and concise carrier and/or terminal demurrage and detention policies are unavailable and/or difficult to obtain.[27]

Transparent Terminology 46 CFR 545.5(e)

☐Material terms of carrier's demurrage and detention practices contain changing, inconsistent, or unclear terminology[28]

Other Factors, Arguments, and Evidence 46 CFR 545.5(f)

☐Additional factors outside those specifically listed can be submitted if believed to be unreasonable[29]

☐It was unreasonable to bill the invoiced party (for example, the trucker) because the terminal or carrier had no contractual relationship with that party[30]

[19] 85 FR at 29655
[20] 85 FR at 29655
[21] 85 FR at 29655
[22] 85 FR at 29638
[23] 85 FR at 29656
[24] 85 FR at 29656
[25] 85 FR at 29657
[26] 85 FR at 29659
[27] 85 FR at 29659
[28] 85 FR at 29663
[29] 85 FR at 29639
[30] 85 FR at 29662

5) Provide a description of the occurrence (and why it was unjust or unreasonable).
Type your answer here (provide as much detail as you would like):

6) Attach any documentation, record, or other materials showing the described unreasonable practice/occurrence.
Attach any supporting documents when you email in this form.

7) Exports

☐Carrier cancels export booking
☐Carrier declines export bookings for cargo within the contract MQC.
☐Carrier communicates policy to reduce/decline export bookings
☐Carrier reduces container allocation for exports below the normal number that has been provided to that shipper/forwarder/NVO
☐Carrier measures which restrict export cargo.

Describe the way the carrier(s) restricted your exports, and how they communicated the restrictions to you. Attach any documentation
Type your answer here:

8) Email this completed form and attachments to (Benjamin Trogdon, Director, Federal Maritime Commission's Bureau of Enforcement BTrogdon@fmc.gov). **Copy** RDye@FMC.gov and info@agtrans.org