



SHIPPING | OCTOBER 2021

## FEDERAL MARITIME COMMISSION ANNOUNCES DEMURRAGE AND DETENTION INITIATIVE

The Federal Maritime Commission (**FMC**) recently announced that it is moving forward with two demurrage and detention related initiatives. Both initiatives are a result of the FMC's Fact Finding 29 entitled International Ocean Transportation Chain Engagement, which focused on COVID-19 cargo delivery system challenges. The current demurrage and detention initiative follows an [August 2021 FMC Enforcement Inquiry](#)<sup>1</sup> into the legality and timing of ocean carrier surcharges.

### Shipping Act Anti Retaliation Police Announcement

The first initiative focuses on protecting private parties who report violations of the Shipping Act of 1984, which was recommended in Fact Finding 29. The FMC is expected to issue a policy statement on the Shipping Act's anti-retaliation provisions<sup>2</sup> and will address the ability of shippers, truckers, and others to obtain reparations for conduct that violates the Shipping Act.

The policy statement will provide guidance on:

- The scope of the prohibition against ocean carrier retaliation,
- When attorney fees may be imposed on a non-prevailing party, and
- Who may file a complaint with the Commission alleging unreasonable conduct.

### Proposed Rulemaking on Demurrage and Detention Issues

The second initiative concerns the issuance of an Advance Notice of Proposed Rulemaking (**ANPRM**) for a proposed final rule that will address specific demurrage and detention issues. When the ANPRM is published, it is expected that the FMC will solicit public comments on the following two questions:

- Whether the FMC should require ocean common carriers and marine terminal operators to include certain minimum information on or with demurrage and detention billings; and
- Whether the FMC should require ocean carriers and marine terminal operators to adhere to certain practices regarding the timing of demurrage and detention billings.

The FMC's demurrage and detention initiative indicates that: (1) the FMC will continue to implement the various recommendations set forth in Fact Finding 29; and (2) the FMC will increase its focus on demurrage and detention practices. Given the current focus on pandemic related supply chain issues, interested stakeholders should consider the FMC policy statements and closely monitor developments.

For more information, please contact the author(s) of this alert



**MICHAEL WRAY**

Partner, Houston

T +1 (713) 706 4905 (ext 5122)

E michael.wray@hfw.com



**CHRIS HART**

Of Counsel, Houston

T +1 (713) 706 1958

E chris.hart@hfw.com



**MELANIE FRIDGANT**

Associate, Houston

T +1 (281) 305 5154

E melanie.fridgant@hfw.com

<sup>1</sup> See <https://www.hfw.com/downloads/003233-HFW-FMC-Enforcement-Inquiry-Signals-Increased-Scrutiny-for-Shipping-Industry-Aug-2021.pdf>

<sup>2</sup> See [Executive Summary of Fact Finding 29](#) Presented as part of the record submitted by Commissioner Dye to the Subcommittee on Coast Guard & Maritime Transportation June 15, 2021.

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