



May 1, 2020

### FMC Going Forward With Final Rule on Detention and Demurrage Charges

The Federal Maritime Commission will adopt a [final rule](#) to give industry guidance on how it assesses the “reasonableness” of detention and demurrage charges, the agency [said](#) on April 28. The rule has garnered new attention due to charges caused by COVID-19-related shipping delays and is meant to give industry clarity on how FMC will consider whether detention and demurrage policies incentivize the movement of cargo or whether they are unjustified. The rule will become effective upon its publication in the Federal Register.

The interpretive rule was proposed in September. “This guidance for industry stakeholders will hopefully result in revised and reformed business practice that, in turn, will lead to improved freight fluidity,” Chairman Michael Khouri said in a [news release](#). “As the Commission moves forward in this area, future actions may include Notices of Inquiry (NOIs) into various focused fact scenarios. These NOIs will be designed to bring public awareness to problematic business practices and provide further clarity to potential applications of the Interpretive Rule.”

Two “minor changes” were included in the final rule that weren't in the proposal, the FMC said. “The first clarifies that the guidance in the rule is applicable in the context of government inspections,” the FMC said. “The second clarifies that the rule does not preclude the Commission from considering additional factors, arguments, and evidence outside those specifically listed.”

### USMCA To Enter Into Force July 1

U.S. Trade Representative Robert Lighthizer notified Congress April 24 that the United States–Mexico–Canada Agreement will enter into force on July 1, 2020. Following that notification to Congress, the U.S. certified to Mexico and Canada that it's ready for the NAFTA replacement to take effect, USTR said in a [press release](#). CBP released interim [implementation instructions](#) for USMCA on April 20 “to provide guidance with respect to preferential tariff claims under the USMCA,” it said

### CBP Won't Shift CTPAT MSC Implementation Deadline but Will Allow More Validation Discretion

CBP won't be delaying dates around implementation of the updated Minimum Security Criteria for the Customs-Trade Partnership Against Terrorism program, but it will allow for more discretion in the validations, said Thomas Overacker, CBP executive director, Cargo and Conveyance Security. Overacker addressed concerns about the requirements during the April 15 Commercial Customs Operations Advisory Committee (COAC) meeting. Compliance with the MSC was required as of Jan. 1, 2020, and “I understand the desire to have that deadline moved,” Overacker said. But, “instead of officially moving the deadline,” as CBP “begins to go out and work with our membership to validate what work has been done, we will convey to our supply chain security specialists to exercise discretion, to be flexible and to take into account the totality of the circumstances regarding how much of the MSC any individual member has been able to input,” he said. “That is my commitment to you.”

### Brazil, US Discussing Trade Agreement

The U.S. trade representative and Brazil's Foreign Affairs minister discussed ways to deepen discussions under the Agreement on Trade and Economic Cooperation, the Office of the U.S. Trade Representative [said](#) April 10. Another call is to take place next week, to both flesh out areas of agreement and tackle irritants. USTR will consult with Congress, as well, on “how best to expand trade and develop our economic relationship.”

### USTR Seeks Comments on Extending Section 301 Exclusions

The Office of the U.S. Trade Representative is requesting comments on whether to extend List 1 Section 301 tariff [exclusions](#) due to expire July 9, as well as List 2 [exclusions](#) set to expire July 31. Comments are due by June 1, it said. Each exclusion will be evaluated independently. The focus of the evaluation will be whether, despite the imposition of these additional duties, the particular product remains available only from China.

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## Substantial Transformation Key to Avoiding Section 301 Tariffs, but Achieving It Tricky, Lawyer Says

Increased CBP scrutiny on valuation, changes in tariff classification, and country of origin for products targeted in the U.S.-China trade war means companies need to be extra careful when doing tariff engineering or shifts in assembly locations, Sandler Travis lawyer Paula Connelly said, speaking on an April 28 webinar offered by the Coalition of New England Companies for Trade. “One of the things I want to stress is: country of export and country of origin aren’t always the same,” Connelly said. Connelly said that if you’re moving assembly of a good subject to Section 301 tariffs, but keeping all the component production in China, “Customs will likely take the position you had a simple assembly.” And simple assembly does not change the origin, according to how CBP evaluates substantial transformation. They look at the level of degree of skill and technology required, she said. Connelly said substantial transformation is not a black-and-white rule. “You should not be leaving that determination to your supplier in China,” she said.

## No Imminent Plans to Extend Duty Deferrals, CBP Says

CBP is not currently planning to extend the 90-day customs duty deferral option beyond April, a CBP official said during an April 30 conference call. CBP lacks the authority to grant additional days for payment of duties, taxes and fees and the agency hasn’t received instructions from the White House to indicate an extension of the program, she said. President Donald Trump authorized the Treasury Department to defer collections of customs duties during the COVID-19 national emergency. While the Executive Order authorizing the deferral doesn’t mention a time frame, Treasury and CBP limited the program to March and April.

## FDA Again Extends Comment Period on Proposal to Require Testing of Food by Accredited Labs

The Food and Drug Administration is again [extending](#) the comment period on its proposal for a new accreditation scheme for food testing laboratories that would require importers to use accredited laboratories in some circumstances, including getting food they import off import alerts and proving admissibility of food that is initially refused admission. FDA says the extension is “in response to a request from several food industry associations to extend open comment periods while their members focus on” responding to COVID-19 pandemic. Comments are now due July 6.

## Unclear Benefits, High Costs Drive Early Lack of Interest in FDA's VQIP Trusted Trader Program

As this year’s deadline for applications for the Voluntary Qualified Importer Program approaches, formal interest in the Food and Drug Administration’s trusted trader scheme for food importers is nearly non-existent, despite high hopes from the agency when it was announced several years ago. Unclear benefits, a high cost of participation and a multitude of barriers to entry are among several issues keeping importers away, experts on importing food say.

FDA recently [announced](#) the approval of Costco as VQIP’s first participant, for the fiscal year 2020 program year. But a Freedom of Information Act request submitted by International Trade Today revealed that FDA only received one other application to participate in FY20, and that, as of early March, no importers had applied to participate in FY21.

The application deadline for FY21 is still some ways off at the end of May, and FDA remains hopeful participation in the program will increase. “While FDA cannot forecast participation in the VQIP at this time, the agency expects to see continual, growing interest in the program as benefits are realized across the food industry,” an FDA spokeswoman said. But current levels are far from the 200-applications FDA said it expected to approve in the program’s first year when it issued the guidance document outlining VQIP in 2016.

## TTB Amends Labeling Rules for Alcoholic Beverages

The Alcohol and Tobacco Tax and Trade Bureau is finalizing changes to its regulations on labeling and advertising of wine, distilled spirits and malt beverages. The agency’s [final rule](#) adopts “certain liberalizing and clarifying changes that were proposed, and that could be implemented quickly to provide industry members greater flexibility,” it said. The final rule takes effect May 4.

## FDA Provides Update on Filing for PPE, Devices

The Food and Drug Administration on April 21 provided [updated information](#) on import filing for personal protective equipment and medical devices during the COVID-19 pandemic. The update includes information on filing for non-FDA regulated general purpose PPE, as well as on products authorized for emergency use and products regulated by FDA as a device where an enforcement discretion policy has been published.

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