



October 31, 2019

Federal Maritime Commission
Rachel Dickon
Commission Secretary
secretary@fmc.gov

Re: "Docket 19-05, Demurrage & Detention Comments"

Secretary Dickon,

On behalf of IMC Companies and the eight regional marine drayage motor carriers that we own and operate throughout the United States, we want to extend our support and gratitude for the FMC's investigation, report, and proposed interpretive rule on detention and demurrage. We support the incentivized principles the FMC has outlined in this interpretive rule as a guide to the reasonableness in assessing detention and demurrage. We believe it offers our stakeholders a clear opportunity to improve fluidity in the movement of containerized freight. IMC Companies and the motor carrier industry is most appreciative of the leadership of the Federal Maritime Commission (FMC) on this important issue, and we strongly urge you to move forward with adopting the interpretive rule to help end the current abuses that result from antiquated rules regarding detention and demurrage.

As a motor carrier, we are the first and last leg of this challenging supply chain, and we welcome the clarity these rules provide on detention and demurrage. Our job is to keep our drivers moving and to deliver our nation's marine containerized freight successfully and expeditiously. There is a great need for the guidance this rule brings to all stakeholders.

- A. The Interpretive Rule seeks to align demurrage/detention rules and practices with their intended purpose of incentivizing efficient cargo handling and delivery. IMC Companies specifically supports the scope of the rule as it pertains to:
- **Cargo Availability:** IMC Companies and our 2000 drivers encounter inaccessibility of containerized cargo. Cargo is inaccessible because the terminal has kept it in a "closed area." In the more modern terminal operations, the container often does not have an available appointment. Cargo is rarely, if ever, available when the free-time clock starts. IMC Companies welcomes the FMC Interpretive Rule, which acknowledges cargo availability and accessibility of a shipper and motor carrier to actually green light ready retrieve cargo. This will ensure pick-up is timely, and reduce idle, wasted hours truckers spend waiting for containers to become available. Free time should be tied to actual cargo availability and not vessel arrival. You cannot incentivize efficient cargo pickup if the cargo may not yet be available

(i.e. held in a closed yard or location at the terminal). Free time should be stopped if container is no longer available. It is important to consider the workings of terminal appointment systems in evaluating reasonableness. There should be some minimum period of appointment availability.

- Empty return/Export load return: IMC Companies also supports the recognition that a trucker cannot be incented to return empty equipment if a terminal is closed. *We suggest that the rule be extended to include the same incentivized principles for **the return of loaded export containers** and the unreasonableness of applying detention and demurrage if the loaded export container is rejected at the terminal due to congestion. We, as motor carriers, are asked to bring the export load back to our depots and store until the terminals open up. Cargo is not incentivized to return promptly, and the motor carrier is often stuck in the middle. The free-time clock should stop when cargo in good faith is attempted to deliver to the terminal by the motor carrier.
- Notice of Cargo Availability: We support the FMC Interpretation of aligning cargo retrieval around true cargo accessibility and timely notification. Push notices are favorable. Cargo availability also requires the motor carrier to have access to a chassis in order to “retrieve” cargo promptly. For this reason, IMC Companies applauds and supports ***the FMC continued work with the Memphis Supply Chain Innovation team*** as it promotes increased fluidity in intermodal marine commerce supporting enhanced container availability with an appeal for a single gray chassis pool in Memphis and the Mid-South. Intermodal marine freight moving into *mounted* rail facilities requires a chassis for equipment availability for true availability and green light accessibility to retrieve the cargo. In the spirit of incenting shippers and motor carriers to retrieve cargo, a gray chassis pool creates greater supply and fair CHOICE (access) to chassis and continued support for this initiative.

B. Demurrage and Detention Policies

1. Dispute Resolution. FMC has properly identified the types of policies, rules, and practices that would greatly improve dispute resolution processes, specifically noting, “The efficacy (and reasonableness) of dispute resolution policies also depends on demurrage and detention bills having enough information to allow cargo interests to meaningfully contest the charges. Sufficient timeframes should apply to both filings and responding to claims. The process must operate to facilitate resolution of disputes without punishing motor carriers with insufficient cut off claims. OCEMA's best practices guidelines need greater clarity on how detention is disputed. Per the OCEMA website, some ocean carriers are encouraging links for detention and direct billing. Other OCEMA carriers are just defaulting to the UIIA billing process on detention/per diem billing. This often creates conflicts in service contract language, which need to be addressed. This is specifically true for ocean carriers filing UIIA addendums placing the motor

carrier in the middle of billing between carrier and their shipper on carrier haulage and service contract exceptions.

2. Billing. We agree with FMC that demurrage/detention invoices must include adequate information to allow a shipper and trucker to audit, bill, and contest the charges. IMC Companies strongly support invoicing that is tied to contractual relationships rather than ownership or control of the assets. Ocean carriers should continue to bill their customers directly for demurrage, rather than terminals billing for demurrage. In turn, ocean carriers on carrier haulage should bill their shippers for detention /per diem directly given motor carriers are not party to the service contract. Motor carriers are also not party to service contract exceptions on merchant haulage moves, and therefore any exceptions under service contract should require billing by ocean carrier directly to their shipper.
 - Motor carriers have been unfairly burdened by addendums filed with the UIIA that hold the motor carrier responsible for billing per diem when a motor carrier is not privy to service contract exceptions or in the case of carrier haulage is not a party to the contract. Motor carriers are given shut out notices if per diem is not paid on SDD moves where we have no recourse to bill the shipper on record.
3. Evidentiary guidance. IMC Companies support the FMC proposal encouraging the identification of information that can facilitate dispute resolution, adequate notification by ocean carrier on chassis agreements, terminal identification of appointment logs, and trouble tickets.

C. Transparent Terminology:

- IMC Companies supports the FMC proposal for the use of more consistent demurrage and detention terminology in carrier and terminal tariffs. This includes that the most common understanding of these terms is based on the source of the charge (land for demurrage) and (container for detention) as opposed to the location (inside or outside the terminal). Further support for consistent industry adoption of global terminology and practices as it pertains to merchant haulage where shipper is responsible for drayage on-carriage and should be able to choose the motor carrier and all components of the move when paying the bill.
- Global consistent terminology under service contracts is critical for marine shipments moving inland in the United States to inland ports/rails/points. We ask the FMC to extend their interpretive rule to include consistent ocean transportation terminology to port and IPI shipments moving on a through bill of lading. The language that has been shared with us as motor carriers to bill per diem based on vessel discharge, where vessel discharge was used synonymously, as rail discharge.

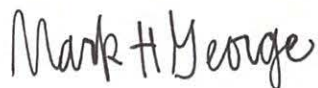
*Suggestion for extension of FMC Interpretive rule to intermodal, international container cargo and greater clarity:

This gray area of jurisdiction in intermodal cargo is concerning, and IMC Companies appeals to the FMC to assist in greater clarity directed to ocean carriers intermodal shipments moving on a through bill of lading with regard to application of the incentive principles the FMC has outlined. FMC Commissioner' Rebecca Dye's testimony to the STB in May of 2019 on detention and demurrage Fact-Finding 28, the work of the Memphis Supply Chain team, and the need to improve fluidity were most appreciated by all stakeholders moving maritime freight to inland rail and inland port locations. The Surface Transportation Board's recent statement, which embraced the FMC proposed interpretive rule and incentive principles for rail detention and demurrage reasonable practices, is so important. We ask for continued collaboration with both agencies to understand the need to include intermodal maritime container shipments as part of this rule.

In final, we urge the FMC to please proceed to adopt its proposed interpretive rule promptly.

In gratitude and support of the FMC interpretive rule.

Sincerely,

A handwritten signature in black ink that reads "Mark H. George". The signature is written in a cursive, slightly slanted style.

Mark H. George
Chairman of IMC Companies