



August 18, 2022

TO: Federal Maritime Commission, sent via email to secretary@fmc.gov

FROM: Lisa Yakomin, President
Association of Bi-State Motor Carriers

RE: Docket No. 22-19, Request for Information

I am writing to share my feedback on Docket No. 22-19, which seeks comment on whether supply chain congestion has created conditions warranting the issuance of an emergency order requiring common carriers and MTOs to share key information with shippers, truckers, and railroads.

On behalf of the members of the Association of Bi-State Motor Carriers, who are responsible for moving a majority share of the freight at the Port of NY/NJ, I am writing to express strong support for the issuance of such an emergency order. The lack of adequate information sharing has created an emergency situation that is adversely affecting motor carriers' operations, impeding the efficient movement of freight. An emergency order issued by the Commission would help alleviate this situation.

This emergency order is necessary in order to address the following:

LACK OF TRANSPARENCY RE: NUMBER OF CONTAINERS ON LAST FREE DAY/POTENTIAL GATE DEMAND

As a matter of course, Ocean Carriers have access to accurate information regarding how many of their containers are on last free day before accruing per diem or demurrage. While not a precise predictor of how many containers will be picked up or returned on a given day, this information is certainly a helpful indicator of the *potential* number of containers that will be picked up or returned. OCs sharing this data at least 48 hours in advance would provide heightened visibility to MTOs, especially those terminals that require appointments. Providing this information to the MTOs will allow for more accurate planning in terms of labor and machinery, rather than relying on outdated algorithms that have proven to be an inaccurate method for predicting daily volume during this time of unprecedented surge. This data will also be useful for terminals that require appointments, to assess and prepare for the potential demand on their booking system. This type of information sharing on free time is the responsibility of the OC, because they are the entity contracting with the shipper and negotiating the amount of free time, which can vary widely.

LACK OF TRANSPARENCY RE: APPOINTMENT AVAILABILITY

Marine terminals that require appointments in order to gain entry do not currently provide enough information about the number and type of appointments made available on any given day. While one terminal does issue an Appointment Availability Dashboard, it is not specific to SSL or container size, and there is no indication from either of the appointment-mandatory terminals that the number of appointments being made available to motor carriers is anywhere close to adequate to meet potential demand.

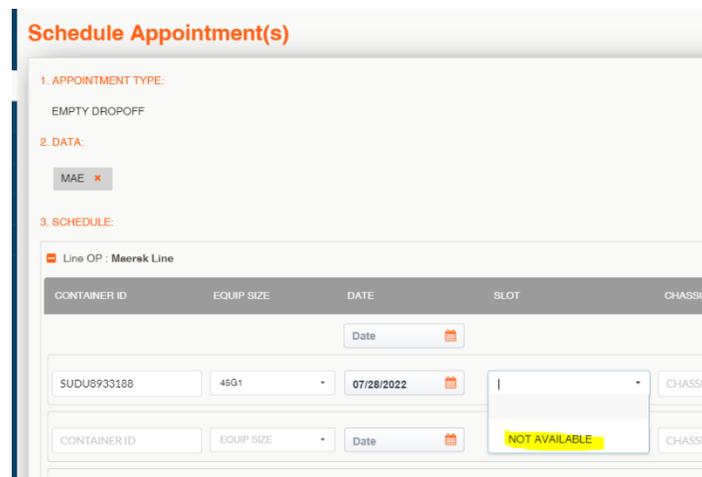
This often leads to the unfair assessment of fees, especially when the SSL billing department believes that a return location was made available, but in reality, the number of returns was strictly limited, and the majority of those who needed an appointment could not get one.

So, while the general public thinks there was a return location for empties, based on this:

EFFECTIVE THURSDAY 7/28/2022 FOR RETURN

	Shipping Line	20' Dry	20' Open Tops	20' Flat	20' Reefers	Hangers	40' Dry	40' Open Tops	40' Flat	40' High Cubes	40' High Cube Reefers
MORE	MSC	PNCT/APM/NYCT	PNCT	PNCT	PNCT	PNCT	PNCT/APM	APM	PNCT	PNCT/NYCT	PNCT/NYCT
MORE	MAERSK/SAF/SEA/HSD	APM	APM	APM	APM	APM	PNCT/APM ACCEPT @ 10:00AM	APM	APM	APM	APM
MORE	ZIM	APM	MAHER	MAHER	MAHER	MAHER	APM	MAHER	MAHER	PNCT	MAHER

The motor carrier is seeing this:



Another example of the need for greater transparency in the number of appointments vs. the demand for those appointments: if the only return location for a SSLs empty containers is an appointment-mandatory facility, and 1,100 of their empty containers are on last free day but only 300 appointments are being provided for that type, it is inevitable that 800 containers will be subject to per diem, no matter how desperately the trucker or shipper wants to return the container. In such instances, these fees are no longer “incentivizing,” they have become a revenue stream for the SSL.

This type of situation has also become a revenue generator for the MTOs and other SSLs, as the ongoing lack of chassis availability makes it necessary to return an empty container first to free up the equipment that is needed to pick up an import. When empties are shut out due to lack of appointment availability, motor carriers cannot pick up imports that are on last free day, which leads to detention and demurrage billing. While this scenario has become all-too-common, it is one of the most difficult situations to document, due to the lack of information sharing that currently exists.

We are already seeing many instances where SSLs are billing for days when cargo was not accessible, and when an attempt is made to dispute the charges, the SSL is demanding documentation on lack of appointment availability. It is unreasonable to expect motor carriers to provide screenshots to shippers for every container move they handle, and presents a significant burden on daily operations. Increasing the level of transparency and information sharing for shippers will reduce the amount of billing errors and disputes, allowing SSLs and BCOs to communicate directly on billing without involving the motor carrier, who is not a party to the contractual agreement between the ocean carrier and shipper.

Proposed action: Marine Terminals that require appointments for movement of freight must clearly indicate the number of appointments available for each type of move (specific to time slot, SSL, and container size), and must document when those appointment slots are fully booked/no longer available by notifying shippers, motor carriers and ocean carriers.

LACK OF TRANSPARENCY ON EMPTY CONTAINER RETURN CAPACITY

When a terminal or depot is designated as an Empty Container Return location, information must be provided on the total number of containers being accepted (specific to SSL and container size).

Due to the current lack of transparency on the potential number of Empty Container Returns as described above, and the increasingly common practice of making only one location available for Empty Container Returns, motor carriers have encountered situations where the designated location reaches capacity within a few hours, and returns are suddenly shut out. This leads to extreme congestion, not only for that terminal, but for all terminals in the area. Unless and until SSLs consistently designate multiple return locations for their empty containers, the lack of adequate return capacity will continue to be direct contributor to the supply chain crisis.

It is essential to the efficient flow of cargo that when a location is designated as a place to return empties, that location must continue to accept those empties *for the entire day, without restriction*. In order to ensure this, locations that accept empties must clearly indicate what their return capacity is, and SSLs must cross check that number with the potential number of containers to be returned, so that all stakeholders can be fully aware if an imbalance exists, and take the steps necessary to address it. Ideally, SSLs should be required to open up additional return locations during periods of high demand.

SSLs must provide adequate return capacity for their empties, and when they cannot, motor carriers who are forced to hold those containers should be compensated accordingly. Documentation of these instances will be helpful for all stakeholders in ensuring accurate billing.

LACK OF VISIBILITY ON MTO RESTRICTIONS/OTHER BARRIERS TO TERMINAL ENTRY

Marine Terminal Operators are increasingly placing restrictions on the free flow of Empty Container Returns (e.g. requiring double moves only, restricting returns for a specific SSL to certain time windows, etc.), but this information is not being as clearly documented as it could be with all parties.

For example, when empty restrictions are distributed by GCT Bayonne, the notification email looks like this:



Restricted Empties

Date: 8/18/2022	
HLC	(20GP / 40GP / 40HQ @ 1pm) / 20OT / 20RF / 40OT / 40RQ
HMM	(20GP / 40HQ @ 1pm)
ONE	No Restrictions
YML	(20GP / 40GP / 40HQ @ 1pm)

According to this chart, ONE empties can be returned with “No Restrictions.”

However, GCT Bayonne mandates appointments prior to 1pm, and the terminal also implemented a new policy on July 25, 2022 that restricts the return of containers after 1pm to double moves for lines that are unrestricted.

Here is GCT’s Appointment Availability Dashboard, sent at 1:42pm on August 17th:

GCT Bayonne- Remaining Availability Dashboard for Thursday, August 18th

 Joseph Brescia <jbrescia@globalterminals.com>
To Samantha Garrison; Michael Verney; 'Dick Jones'; 'Lisa Yakomin'

As of 1:40 PM today, please note our remaining appointment availability for the following locations/move types for Thursday, August 18th.

MOVE TYPE / LOCATION	6AM	7AM	8AM	9am	10am	11am	12pm
7A IMPORT PICKUPS	●	●	●	●	●	●	●
8A IMPORT PICKUPS	●	●	●	●	●	●	●
9A IMPORT PICKUPS	●	●	●	●	●	●	●
10A IMPORT PICKUPS	●			●	●	●	●
11A IMPORT PICKUPS		●	●	●	●	●	●
12A IMPORT PICKUPS	●	●	●	●	●	●	●
13A IMPORT PICKUPS	●				●	●	●
14A IMPORT PICKUPS	●	●	●	●	●	●	●
15A IMPORT PICKUPS	●	●	●	●	●	●	●
16A IMPORT PICKUPS	●	●	●	●	●	●	●
IMPORT PICKUPS IN B...LOC	●	●	●	●	●	●	●
IMPORT PICKUPS IN C...LOC	●		●	●	●	●	●
IMPORT PICKUPS IN D...LOC	●	●	●	●	●	●	●
IMPORT PICKUPS E...LOC	●	●	●	●	●	●	●
EXPORTS IN		●	●	●	●	●	●
EMPTY OUT	●	●	●	●	●	●	●
EMPTY IN							

As indicated, all of the Empty In appointments are already gone for August 18. So, despite the “No Restrictions” indicated, in reality, there *are* restrictions in place: an appointment is mandatory for ONE empty returns prior to 1pm, and a double move is required after 1pm—hardly “unrestricted” access for motor carriers who were unable to book an appointment, and have empties to return but do not have an import to retrieve. This may lead to confusion for those who see the chart above indicating “No Restrictions” and take that to mean “unrestricted access”.

As previously mentioned, I have seen examples where SSLs are billing per diem on empties that were not returned within free time, in instances where the motor carrier was unable to get an appointment or did not have an import to retrieve. When the bill is disputed, the SSL asks for “proof” because their records indicate that a return location was available for the days billed, without any of the extenuating circumstances/restrictions noted. Enhanced information sharing with shippers on restrictions that affect access to the marine terminals would increase visibility and reduce billing errors. Motor carriers are not party to the details of the individual contractual agreements that exist between ocean carriers and shippers, and should not be involved in the billing process between the two.

As such, we are asking the FMC to create rulemaking indicating that Shippers, Ocean Carriers and Motor Carriers must be clearly notified of *all* restrictions and requirements implemented by MTOs that limit motor carriers’ ability to move freight, including instances where the demand for appointments exceeds availability.

In addition to the barriers listed above, instances where gate access is restricted—even temporarily—must also be documented and conveyed to Shippers, Ocean Carriers and Motor Carriers.

For example, when on-street congestion necessitates metering and/or putting traffic cones across the front of a terminal gate, denying access to truckers attempting to enter, each instance should be documented, including the date and time stamps that indicate when access was restricted, and date and time stamps when access was restored. This information is essential in determining actual freight container availability, something that is a key component of the FMC's efforts to address unfair billing practices. Port law enforcement agencies and port operations personnel may assist in this notification process as warranted.

Notification must also be provided by MTOs to Shippers, Ocean Carriers and Motor Carriers regarding any other disruptions that restrict gate access, including but not limited to gate processing issues, software system issues, inadequate labor availability, sudden weather-related closures, etc.

LACK OF HISTORICAL DOCUMENTATION OF CIRCUMSTANCES WHEN FREIGHT MOVEMENT IS RESTRICTED

All of the above notifications documenting instances where freight movement was restricted must be logged and archived on a platform that is accessible by Shippers, Motor Carriers and Ocean Carriers for later reference, in order to document any and all issues that have the potential to impact billing of detention, demurrage, or per diem.

Daily communications received from my motor carrier members clearly indicate that the lack of information sharing has adversely affected their ability to move freight efficiently, and that these conditions justify the issuance of an emergency order by the Federal Maritime Commission.

Thank you for the opportunity to share this feedback with you. I urge the FMC to consider the issues enumerated above, and take immediate action on an emergency order requiring information sharing, which will positively impact supply chain fluidity nationwide.

Sincerely,

Lisa Yakomin, President
Association of Bi-State Motor Carriers