

BEFORE THE
FEDERAL MARITIME COMMISSION

Comments on Request for Information Regarding Federal Maritime Commission Emergency Order

Docket No. 22-19; Document No. 2022-17582

Dated August 15, 2022

September 13, 2022

I. Introductory Comments on the FMC’s Request for Information

The National Customs Brokers & Forwarders Association of America, Inc. (“NCBFAA” or the “Association”) submits the following comments to the Federal Maritime Commission (“FMC” or “Commission”) in response to the FMC’s Request for Information published in the Federal Register at 87 Fed. Reg. 50,085 (Aug. 15, 2022). The Request for Information seeks comments on whether “congestion of the carriage of goods has created an emergency situation causing a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system.” Upon a determination of an emergency situation, the Commission may issue an emergency order requiring any common carrier or marine terminal operator to share information related to cargo throughput and availability directly with relevant shippers, rail carriers, or motor carriers.

The NCBFAA represents more than 1,000 member companies, consisting of the nation’s leading freight forwarders and customs brokers. As intermediaries facilitating the movement of goods throughout the country, freight forwarders and customs brokers are familiar with the ongoing congestion and fragility of the international transportation supply system.

Given the Association's industry experience with the conditions of the global supply chain and the effect of lacking data transparency in the industry, the NCBFAA welcomes the opportunity to submit comments on these topics in response to the Commission's request for the submission of written commentary.

II. Comments on Scope of Emergency Order

Below, the Association submits comments to the Commission in support of the issuance of an emergency order and underscores the adverse impact that inadequate information sharing has had on freight fluidity.

In particular, the NCBFAA respectfully asserts that greater data transparency is needed from vessel-operating common carriers and marine terminal operators with regards to the following data elements:

- **Number of Containers on Last Free Day.** Information from vessel-operating common carriers regarding how many containers are on their last free day would be useful data to project a more accurate estimate of the number of containers that may be picked up or returned at a given terminal. If vessel-operating common carriers share such data with terminals in advance, terminals may more effectively plan the allocation of labor and equipment in anticipation to these projected returns. The Association notes that vessel-operating common carriers would be privy to such information because they negotiate and contract with shippers regarding the amount of free time and must track the containers to assess charges when free time has elapsed.
- **Appointment Availability.** Marine terminal operators requiring appointments for truckers to gain entry for pick up or drop off of containers should provide greater information on the amount and types of appointment available on each day and clearly relay to shippers and other parties when appointments are no longer available for the day. Currently, some terminals lack

specific information that would be helpful to parties coordinating the movement of containers to or from the terminals (*e.g.*, container size, relevant vessel-operating common carrier, time slots, number of appointments available, *etc.*). Due to lack of specific information, marine terminal operators and other parties disagree as to whether the containers were truly available for pick up or return and whether any assessed detention or demurrage charges were appropriate. Further, if the Commission requires marine terminal operators to share more precise appointment availability information, that information would help shippers and other parties to better document any alleged violations of the Shipping Act of 1984, as amended. For example, if a party cannot feasibly pick up or return a container due to the inaccessibility of equipment or unavailability of appointments, parties would be more easily able to provide evidence of such.

- **Earliest Return Date.** Vessel-operating common carriers should convey, in advance, the actual first day that a container may be returned to the terminal and timely relay any changes to these return dates. The Association notes that some vessel-operating common carriers fail to timely communicate date changes and, in some cases, change the earliest return date on the same day, impacting cargo already in motion. In other cases, the earliest return date is changed retroactively, thereby rendering a previously announced delivery window as already expired. Further, the earliest return date on a container terminal's website may not match up with the date on the booking information from the vessel-operating common carriers. Due to these discrepancies and last-minute changes, shippers, freight forwarders, motor carriers, and other parties attempting to timely return containers must incur additional costs and suffer from business disruptions.
- **Empty Container Return Capacity.** Terminals or depots designated as an Empty Container Return location should provide information on the total number of containers accepted during

the relevant dates and specific to the vessel-operating common carrier and container size.

Currently, the lack of transparency on these data elements has led to scenarios where parties coordinate to return empty containers to a designated location only to learn that no more containers would be accepted. As such, shippers are unable to return their containers to the designated location, motor carriers are stuck holding the containers for an unknown period of time, and congestion further builds at these points in the supply chain. The Association encourages vessel-operating common carriers and marine terminal operators to expand the number of accepted returns or designate additional return locations to accommodate freight fluidity to the extent feasible.

- **Barriers to Terminal Entry.** Marine terminal operators with restrictions on empty container returns should clearly document and convey all restriction and requirements limiting the movement of freight, including temporary gate restrictions, to all relevant parties. Without this data transparency, vessel-operating common carriers may be unaware of the inability of parties to return the empty containers due to the terminal's restrictions and unduly assess fees due to the expiration of free time. Further, parties would be unable to provide adequate documentation of these terminal restrictions to the vessel-operating common carrier in support of their request for fee waivers. Parties may also attempt to return empty containers only to be informed at the terminal that they cannot enter due to these unknown restrictions.
- **Historical Documentation.** Generally, the Association supports a recordkeeping requirement for data shared pursuant to any emergency order issued by the Commission under Section 18 of the Ocean Shipping Reform Act of 2022. Archival of these data elements would especially be beneficial to the Commission in reviewing the record for any alleged violations of the Shipping Act of 1984 in relation to detention or demurrage.

III. Conclusion

In conclusion, the NCBFAA respectfully asserts that an emergency situation exists, and the reliability of the ocean transportation system would be improved with greater data transparency as described above. As such, the Commission may appropriately issue an emergency order provision calling upon entities, especially vessel-operating common carriers and marine terminal operators, to directly share information related to containers, appointments and more to the relevant parties. Data sharing would alleviate the existing emergency situation and enhance the fluidity of freight movement.

The NCBFAA appreciates the opportunity to provide the FMC with its thoughts and opinions on the matter. Please do not hesitate to contact the undersigned if the Commission has any questions on these comments.

Respectfully submitted,



Jose D. Gonzalez, *President of NCBFAA*
Tel: (956) 235-4037
Email: jose@jdgonzalez.com