

Date: September 14, 2022

To: Federal Maritime Commission (Via Email to secretary@fmc.gov)

From: Matt Schrap, CEO Harbor Trucking Association

RE: Docket No. 22-19 Request for Information Regarding Emergency Situation Determination

The Harbor Trucking Association is a non-profit association representing drayage motor carriers doing business on the West Coast of the United States (USWC). Our members range from the single truck operator based solely in California to the largest motor carriers operating across these great United States. While HTA currently focuses on USWC issues, our members have business presence throughout all major seaports and intermodal gateways across the US. HTA appreciates the opportunity to provide comments on the latest Federal Maritime Commission (FMC) request for information regarding the need for an emergency situation determination.

Section 18 of the Ocean Shipping Reform Act of 2022 authorizes the Federal Maritime Commission to issue an emergency order requiring any common carrier or marine terminal operator to share certain information with shippers and other specified entities when the Commission unanimously determines that congestion of the carriage of goods has created an emergency situation of a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international transportation supply system.

Specifically, the Commission is seeking information regarding, (1) whether congestion of the carriage of goods has created an emergency situation of a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system, (2) whether an emergency order under Section 18 would alleviate such an emergency situation, and (3) the appropriate scope of such an emergency order, if applicable.

While some of the most recent congestion challenges have been concentrated on the East Coast of the US, over the past 18 months, the same congestion issues and subsequent impacts have been experienced on the USWC and in fact continue to impact motor carrier operations today. Because of this, it is our opinion that an emergency determination around information sharing will have a positive impact in overall efficiency and operational throughput by forcing key participants to provide accurate and timely information that will ultimately facilitate overall container movement and flow.

One major on-going issue is the return of empty containers as well as pick up availability of loaded imports on dock. Understanding that FMC is no doubt familiar with the continuing challenges surrounding the unfair assessment of Demurrage, Detention or Per Diem when an empty cannot be returned, or when a loaded import cannot be picked up off the terminal, what would be tremendously helpful is the timely sharing of accurate information on empty return restrictions and

a clarification on what actually constitutes “availability” for loaded import pick up. The lack of timely and accurate information from equipment providers and marine terminals only exacerbates operational inefficiencies and subsequent congestion as motor carriers must react to last minute information that sometimes is not obtained until they show up to return the empty or pick up the loaded import.

When speaking about marine terminals it has been said that not one is alike and no two are the same. There are in fact some marine terminal operators who endeavor to share information and work with the drayage community to address issues as they arise. Unfortunately, this practice is the exception and not the rule. Many marine terminal operators have repeatedly demonstrated an unwillingness or inability to share information in a timely fashion, especially when they themselves have fallen victim to bad (or lack of) information coming from their equipment provide/Ocean Carrier partners and sometimes vice versa.

One way to alleviate this issue would be to require consistent, timely and accurate information sharing by marine terminals, which would force both marine terminals and their equipment provider/ocean carrier partners to act accordingly. It is our perspective that a determination of an emergency situation would ultimately help ensure that both marine terminals and equipment providers share this information with the motor carrier community in a timely fashion. These requirements would surely result in increased efficiency in overall operations as the right information would be in the hands of all parties involved for efficient movement of the containers, both empty and full.

There is a tremendous amount of motor carrier frustration with the lack of timely communication from equipment providers/ocean carriers and marine terminal operators around empty return locations and restrictions as well as overall availability of appointments for empty returns, import pick-ups as well as container accessibility. Addressing these needs in an emergency situation determination would be a step in a right direction toward permanent information sharing requirements. To this end, we respectfully share the following recommendations.

Specifically:

- Total number of empty returns being accepted each day at a location sorted by ocean carrier, equipment size and type with 24-hour notice
- Total number of containers on last free day sorted by ocean carrier at each terminal
- Total number of chassis available to the trucking community by size and pool
- Number of appointments available with ongoing notification as appointments are no longer available for both empty in, exports and full or empty out
- Immediate notification when all appointments are booked for a particular day or time slot
- 24-hour notice regarding changes to empty return locations or other restrictions including dual transaction requirements or all out closure of receiving for a particular equipment provider

The above data points are critical for motor carriers to maximize capacity utilization. This information would also allow for greater visibility into key chokepoints at terminals and provide a far clearer picture of the current state of cargo movement. Motor carriers need real time access to notifications regarding appointment availability and timely notification of any receiving or pick up restrictions to deploy capacity and assets as efficiently as possible.

Furthermore, FMC should require that equipment providers/ocean carriers and marine terminals provide push notifications of all notices to motor carriers and all such notices should be required to be archived and accessible at later dates if necessary for dispute resolution. OSRA places the burden of proof for charge complaints on the common carrier, therefore, requiring the archiving of notices regarding return availability is in line with this new mandate.

Additional information that should be required:

- Marine terminals must provide timely notice when they are temporarily closed or unable to process trucks during normal business hours due to issues such as congestion, traffic control or other reasons
- Marine terminals must provide estimated time for container availability out of closed yard locations
- Marine terminals must provide advanced notice of container location changes

In conclusion, HTA is respectfully requesting that FMC declare an emergency situation and require the timely and accurate sharing of the abovementioned data by marine terminals and their equipment provider partners. This will no doubt facilitate the movement of good in a safe, efficient, and effective manner.

We look forward to on-going dialogue on this and other issues our industry is facing.

Sincerely,

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