



August 10, 2022

Daniel Maffei, Chairman
Federal Maritime Commission
800 North Capitol Street, NW, Suite 1000
Washington DC 20573
(Via Email)

Dear Chairman Maffei;

The Harbor Trucking Association (HTA) is reaching out regarding your recent statements concerning compensation for motor carriers who are forced to store empty containers that are unable to be returned.

We truly appreciate you taking a direct interest in this issue.

The ongoing and persistent impacts of empty container return restrictions have been felt on the West Coast (WC) for many years. Unfortunately, these same issues are now having acute impacts on port operations in New York and neighboring New Jersey.

While our organization has been very vocal regarding challenges that motor carriers experience daily at WC ports, one major issue has been persistent; empty container return restrictions and the operational and administrative impacts they create.

When the motor carrier is forced to hold onto empty containers because of no valid return locations, lack of available appointments, and/or empty return restrictions, the chassis the containers are sitting on are unable to be used to move other loaded containers into or out of marine terminals.

This in turn causes other boxes to sit and wait on dock for a chassis to become available for pick up while simultaneously accruing demurrage. Per diem/detention is also accruing for the empty boxes "on the street" that can't be returned into marine terminals.

Leading up to and throughout the supply chain backup, motor carriers (and their customers) have been absorbing the daily costs of per diem, chassis and storage while waiting to return empty containers.

In a perfect world, motor carriers would be reimbursed for the chassis usage and storage by the parties that are directly responsible for the return restrictions. These parties should also suspend any per diem collection during the same period.

The parties being described above are the Ocean Carriers (OCs) or “Equipment Providers” (EPs) - as referred to under the Intermodal Association of North America (IANA) Uniform Intermodal Interchange Agreement (UIIA). Over the years, these parties have consistently billed per diem on containers that have had no valid return locations, no available appointments and/or prohibitive restrictions preventing container return all the while refusing to compensate motor carriers for storage and chassis costs.

While the OC/EP parties do not directly run the marine terminals their containers must be returned to, the OCs/EPs are directly involved in the overall direction for receiving decisions of the containers they control. The daily operational reality and common practice for marine terminal operators (MTOs) is to shut out receiving for specific OCs/EPs. This is primarily by direction of the OCs/EPs who have directly informed MTOs to restrict empty receiving of their boxes.

Although the OC/EP is directly responsible for imposing the return restrictions, invoices payable to the OCs/EPs for per diem or detention for those same periods of time are still sent to motor carriers and BCOs. OCs/EPs respond to our challenges of this practice by blaming MTOs for the return restrictions.

Nevertheless, it is regular practice for OCs/EPs to invoice motor carriers for days where no valid return locations were available, either by virtue of no appointments, and/or prohibitive restrictions that prevented the return of the equipment.

For motor carriers, once the invoices are received, it is then up to them to expend resources in order to challenge per diem invoices through available channels, including a formal complaint through the FMC.

In the instances where restrictions prevent returns, there should be an easy mechanism to “stop the clock” on per diem/detention when restrictions are imposed by the OC/EP or when their designated MTO prevents container return for whatever reason.

This should be something the FMC can not only investigate but also solve when considering additional rulemakings on billing and storage/usage charges.

Currently, motor carriers have no recourse to recoup any of the losses or expenses related to the storage of containers that are unable to be returned. There has not been any successful billing to an OCs/EPs for container storage services and chassis usage. Any bills sent to OCs/EPs have either been ignored or rejected through email correspondence.

The HTA has taken exception to this practice for many years. During our 2021 meeting at the Port of Long Beach with you and your staff member, Katherine Primosch, we brought

this issue of storage and compensation along with the multitude of other challenges we were experiencing with empty container returns on the West Coast.

After much discussion with you and your fellow colleagues at the FMC as well as other supply chain actors, including the former Port Envoy, John Porcari, the empty container issue was partially addressed on the WC through dispatch of extra loader or “sweeper” vessels by OCs/EPs in order to retrieve empty containers.

This effort was coupled with the deployment of limited near dock return locations that OCs/EPs designated as official interchange termination or “stop the clock” points.

While a portion of the empty return issues in mid to late 2021 and early 2022 were related to new entrants into the Trans-Pacific market, traditional OCs/EPs were not immune to the empty backup challenges. The robust sweeper deployment by OCs/EPs may have potentially been motivated by the threat of an empty container fee by the Ports of LA/LB as opposed to operational goodwill. While the fee never materialized, the ultimate intention of motivating OCs/EPs was achieved.

Nevertheless, despite the lack of return locations, available appointments, and numerous restrictions that prevented container return during the supply chain back up, motor carriers were still charged per diem.

Adding insult and further injury was the fact that no compensation for storage or chassis usage was offered or provided by the OCs/EPs, regardless of storage time or motor carrier expense. And as described above, any attempts to bill the OCs/EPs for container storage or chassis usage have been ignored.

Historically, the onus has always been placed on motor carriers to absorb the many costs associated with the container storage, including land, equipment, labor, and chassis usage as well as administrative and legal costs needed to challenge the unjust per diem charges levied by the OCs/EPs.

This practice has been an unfortunate reality of WC Drayage operations for many years especially since the OC/EP alliances began. These issues have merely been exacerbated by the pandemic and the post-pandemic effects on the supply chain.

The issues described above are why we wholeheartedly agree with your quote from the August 4th Journal of Commerce article - *FMC wants ocean carriers to pay for container storage*, where you were quoted saying, “If it can be shown that a shipper or a trucker is not allowed to return a container, then not only should they not be charged per diem, but the carrier should compensate that trucker for the space it takes up.”

From our perspective, the OCs/EPs already pay the MTOs for space on terminal, why should they get “free” space and chassis equipment from a trucker or BCO?

To this end, our HTA members have the capability to provide you and your staff with hard evidence and backup documentation on expenses related to empty container storage and subsequent chassis fees for boxes that have had no available return locations, lack of available appointments, and/or prohibitive restrictions that prevented the return of containers.

We have information going back well over a year.

Please let us know what specific information we can provide to help facilitate further dialogue for a potential rulemaking on per diem/detention reform as well as the issue of motor carrier compensation for empty container storage and chassis usage when return locations are unavailable.

We appreciate the opportunity to further engage on this issue and look forward to helping however we can.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Schrap', with a large, sweeping flourish underneath.

Matt Schrap
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Cc: Gen. Stephen Lyons, Department of Transportation
Commissioner Rebecca Dye, Federal Maritime Commission
Commissioner Carl Bentzel, Federal Maritime Commission