



**J. Christopher Lytle**  
Executive Director

August 18, 2015

**Via Electronic Mail**

Karen V. Gregory  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573  
secretary@fmc.gov

**Re: Comments in Connection With Oakland MTO Agreement and OakPass**

Dear Ms. Gregory:

The Port of Oakland welcomes the opportunity to submit comments in connection with the Commission's Notice of Agreement Filed, published in the Federal Register on August 7, 2015. This Notice relates to the Oakland MTO Agreement ("OAKMTOA"), Agreement No. 201202-006. OAKMTOA is an agreement among the marine terminal operators at the Port of Oakland. It grants the marine terminals broad authority to discuss and agree on financial and other conditions for cargo moving through the Port.

The proposed amendment would expand OAKMTOA's authority by permitting the terminals to agree on an expanded gate hours program ("OakPass"). Each terminal would be required to add at least one off-peak or weekend shift. The extra cost of providing the additional shift(s) would be offset by a fee assessed on some or all of the cargo moving through the terminals. The terminals would collectively establish the amount of the fee. The amendment proposes setting up a limited liability company, OAKPASS, LLC, to collect the fees and otherwise administer the program.

The Port strongly supports additional gate hours and has supported the development of the OakPass program as one way to improve terminal operating efficiencies and alleviate terminal congestion. Additional gate hours will cost the terminals money, and OakPass will help mitigate the additional cost burden on the terminals. There are, however, several points for the Commission to consider in reviewing the amendment to OAKMTOA.

**1. The importance of resolving underlying labor shortages.**

The benefits of the OakPass program will be diminished until the labor shortage issues discussed in our August 10, 2015 Comments in Connection With Pacific Ports Operational Improvements Agreement ("PPOIA") are remedied. Some of the terminals have experienced congestion and delays due to a shortage of tractor drivers. This problem is not related to the recent West Coast labor negotiations, and is unique to Oakland. OAKMTOA's members are in a position to address labor issues at the Port and help move the ongoing labor shortage toward a resolution. Until the labor shortage is resolved, there are limited benefits to extending gate hours and moving toward a six-day work week.

**2. The fees charged by OakPass should be reasonable and transparent.**

It is important that the fees paid by cargo owners through OakPass are and are seen to be, reasonable and transparent. Appropriate accounting and transparency measures should be put in place to ensure that cargo owners who are assessed the fee are confident that the revenue collected by OakPass is being used to fund the actual costs associated with extended gate hours and does not exceed the cost to the terminals of providing this expanded service. One needs look no further than the widespread criticism of PierPass by shippers and BCOs to see the importance of transparency. With PierPass' recent increase of its Traffic Mitigation Fee to \$69.17 per TEU, shippers and BCOs have questioned both the continued need for the fee and the underlying justification for repeated fee increases.

The transparency necessary for OakPass' viability and success may be fostered through periodic audits. Auditing is more than just ensuring that the fees collected are properly distributed to the terminals. Shippers and BCOs need reassurance that the money they pay into OakPass is no more than what is necessary to support the cost of additional gate hours. The parties to OAKMTOA may be reluctant to make public the financial and operational information necessary to confirm that fees are set at the appropriate level, as this terminal level information may include information of a proprietary and confidential nature. However, the parties should be able to reach agreement on the establishment of a confidential audit process where an independent third party auditor periodically confirms that the OakPass fee does not exceed what is needed to defray the cost of the additional shift(s).

Given the broad authority granted to Oakland's MTOs through OAKMTOA, it is important that the Commission carefully review and monitor OakPass to ensure that OakPass furthers the goals of the Shipping Act. Until OakPass has some operational experience, no one can predict how effective OakPass will be in easing congestion. Evidence of OakPass' effectiveness might be shown in various terminal operating metrics. Accordingly, it may be appropriate for the initial term of OakPass to be limited to a set period of time, for example – one year. As the end of the initial term approaches, the Commission could again seek public comment on the renewal of OakPass.

The Port of Oakland appreciates the Commission's consideration of these comments and concerns.

Sincerely,



J. Christopher Lytle  
Executive Director