

October 8, 2024

The Honorable Dan Maffei
Chairman
Federal Maritime Commission
800 North Capitol Street NW
Washington, D.C. 20573

Re: Request for Oversight Review of PierPass Program

Dear Chairman Maffei,

On behalf of the National Retail Federation, we are writing to you today to request the Federal Maritime Commission (the Commission) officially launch an oversight review of the PierPass program at the Ports of Los Angeles and Long Beach. We appreciate the efforts of the Commission to monitor and oversee the program, which was established in 2005 to reduce congestion and pollution at the ports by shifting truck traffic to off-peak hours. However, we are concerned that the changes to the program in 2018 to PierPass 2.0 have strayed away from the program's original intent and have created challenges and costs for the industry.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail succeed. NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$5.3 trillion to annual GDP and supporting more than one in four U.S. jobs — 55 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

As the Commission is aware, NRF and its members worked with the interested stakeholders in the initial development of the PierPass Program. We supported the effort to create the program to incentivize the move of cargo to nighttime gates to alleviate the ongoing congestion and traffic that was occurring during the daytime hours at the ports. NRF provided comments to the Commission in 2018 as the West Coast Marine Terminal Operators Agreement (WCMTOA) proposed an amendment to replace the PierPass Traffic Mitigation Fee with a flat-rate container fee for the purpose of developing an appointment system at the Ports of Los Angeles and Long Beach, Calif. We raised concerns and objections to the amendment at that time and many of our concerns remain today.

We are especially concerned that the Traffic Mitigation Fee continues to increase without any transparency into the costs that are being covered and without any consultation with affected industries. A new 6% increase took effect on Sept. 1¹. When the PierPass program was first

¹ [TMF at Ports of Los Angeles and Long Beach to Increase 6.0% on September 1, 2024](#), August 1, 2024

established, a shipper advisory group was also created to provide shipper input on the program. That advisory group has been non-existent for years. With the ongoing supply chain challenges that the industry continues to face, it is important for such a group to be reconstituted to talk through ongoing issues with the program and develop implementable solutions.

With more than five years having passed since the PierPass changes went into effect, we urge the Commission to conduct a comprehensive review of the program, as required by the Shipping Act of 1984, and to address the ongoing challenges that NRF members and others face with the program. Specifically, we request that the Commission examine the following issues:

- The effectiveness and fairness of the Traffic Mitigation Fee (TMF), which is now charged to shippers that move containers at any time of day. The TMF is supposed to cover the costs of operating the terminals during off-peak hours, but now it is applied to all hours. There is a lack of transparency and accountability regarding how the fee is calculated, how the revenue is being used and the costs of operating the off-peak gates.
- The efficiency and reliability of the terminal operations during off-peak hours. The PierPass program is supposed to improve the flow of cargo and reduce wait times for trucks, but we often experience delays, congestion and service disruptions at the terminals during off-peak hours. The terminals also frequently change their operating hours and availability, making it difficult for shippers to plan and schedule their shipments.
- The environmental and social impacts of the PierPass program. The PierPass program was successful when first implemented as there was a significant shift of cargo to the off-peak times. With the change in the program to apply the TMF to all container moves, there is no longer an incentive for importers and drayage companies to pursue off-peak container moves. As a result, we have seen a shift of cargo moves back to the daytime. Does the program still support the intended goal of reducing congestion and emissions, or is it now just a revenue stream?
- Has there been a recent traffic study conducted that evaluates new infrastructure investments and impacts on traffic mitigation? Have new traffic patterns and infrastructure improved congestion to a point that the fee is no longer needed? Also, what has been the impact on terminal appointments? Have mandatory appointments also improved the situation?

We believe that the PierPass program needs a thorough and independent evaluation to determine its costs, benefits and impacts, and to identify potential alternatives or improvements. Are the fees collected being used solely for labor for extended gates or are terminal operators using the proceeds from the fees to pay for other expenses such as EV or low emission infrastructure investment? The most recent PierPass annual report indicates that there has been a shift in cargo moves with over 60% of cargo moving during the daytime and less than 40% that moves during the OffPeak gates. This is a drastic shift from the 50-50 split that was occurring when the TMF was only applied to daytime moves. Again, this is another reason to reevaluate the need and purpose of the TMF.

National Retail Federation

October 8, 2024

Page | 3

We ask the Commission to exercise its authority and responsibility under the Shipping Act of 1984, and to initiate a review of the program as soon as possible. NRF and its members are ready to cooperate and provide any information or data that the Commission may need for the review.

Thank you for your attention and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Hodel". The signature is fluid and cursive, with a large initial "J" and a distinct "Hodel" at the end.

Vice President, Supply Chain and Customs Policy

CC: Commissioner Rebecca Dye
Commissioner Carl Bentzel
Commissioner Louis Sola
Commissioner Max Vekich