

The PONYNJSSA compliments the FMC on the process it has undertaken to date to gather information and assess issues relating to demurrage and detention charges. The PONYNJSSA has participated in this process from filing its initial comments in response to the petition for rulemaking filed by the Coalition for Fair Port Practices on December 17, 2016. PONYNJSSA member company, GCT Bayonne LP, provided testimony at the public hearing on the petition conducted by the FMC held on January 18 and 19, 2018. Thereafter, each member of the PONYNJSSA individually submitted responses to the agency's Order of Investigation in Fact Finding Investigation No. 28 ("FF28"). At the request of the Fact-Finding Officer, PONYNJSSA member companies participated in field interviews in the PONYNJ. Most recently, certain PONYNJSSA member companies participated in the agency's sponsored Innovations Team meetings to further discuss the issues identified in the Final Report on FF28.

The members of the PONYNJSSA appreciate the agency's deliberative process and the time the agency has invested to fully understand the relevant issues as well as the opportunities the agency has provided stakeholders to come forward with relevant information. The intensive examination of the issues by the FMC has already fostered and encouraged commercial solutions and the dissemination of best practices to address areas where enhanced communication among relevant stakeholders was needed to clarify appropriate procedures for the assessment, collection, and dispute of demurrage and detention charges. That said, and for the reasons set forth in the comments submitted to the docket by NAWA, the members of the PONYNJSSA oppose the proposed regulations set forth as interpretative rules relating to demurrage and detention charges assessed by marine terminal operators and ocean carriers.

III.

Purpose of the PONYNJSSA

The PONYNJSSA became effective on December 6, 2007. The purpose of the PONYNJSSA is to permit its members to meet, discuss and agree on matters that relate to promoting environmentally-sensitive, efficient, and secure marine terminal operations in the PONYNJ. The members of the PONYNJSSA are the six container terminal operators in the PONYNJ including APM Terminals Elizabeth LLC, GCT Bayonne LP, GCT New York LP, Maher Terminals LLC, Port Newark Container Terminal LLC and Red Hook Container Terminal LLC.

IV.

Commercial Solutions Will Efficiently Address These Issues

The PONYNJSSA has long made available at their own cost commercial solutions to provide enhanced cargo information and transparency. As long ago as September of 2015, through a nonprofit corporation created under the authority of the PONYNJSSA, the members of the PONYNJSSA have provided a port-wide information portal system known commercially as the Terminal Information Portal System (“TIPS”). TIPS was made available to port stakeholders without cost to provide cargo interests and the motor carrier community a one-stop on-line tool to assist them in managing their business in the port.

The members of the PONYNJSSA are proud that TIPS was the first-of-its-kind information system in the Nation designed to enhance terminal efficiencies by reducing uncertainty regarding container availability and unnecessary “trouble ticket” transactions. In the four years since TIPS has been available, the PONYNJSSA has worked diligently to enhance its capabilities and ease-of-use. This was not an easy or inexpensive undertaking. The operation and

maintenance of TIPS requires on-going attention and funding. New innovations to the TIPS portal are expected in 2020, which shall provide even more information on this one-stop port-wide site. Cargo information portals like TIPS are proliferating as other ports deploy similar systems. We remind the agency about TIPS because TIPS was implemented not as the product of regulation but as a commercial solution created to enhance the satisfaction of cargo interests with services provided by MTOs in the PONYNJ.

The PONYNJSSA is troubled by the fact that despite the availability of enhanced cargo information made available by systems like TIPS, the NPRM suggests that if such a system does not “push” relevant cargo information, then such a system might not be considered a reasonable notice of cargo availability. The PONYNJSSA believes the approach of the NPRM invites the potential for the on-going assessment and reassessment of terminal-provided solutions. Taken to its logical conclusion the members of the PONYNJSSA note the fear of implementing a solution that may be adjudged as unreasonable will be a disincentive to implementing systems designed to enhance terminal velocity.

V.

Government Inspections

In the Port of New York and New Jersey, the vast majority of government inspections are undertaken at off-terminal facilities that are not even selected by the MTO. Such inspections are performed at third-party off-terminal facilities pursuant to contracts with the government. These third-party facilities are contractually responsible to meet performance standards set forth by the government for these inspections. Thus, to even consider MTOs in the PONYNJ in the equation for responsibility for a waiver or extension of free time in such circumstances does not make sense. MTOs cannot be responsible for holds put on cargo because of government inspections.

The current rules regarding detention and demurrage charges during delays caused by government inspections should be maintained.

VI.

Conclusion

Inasmuch as MTOs in the PONYNJ and across the Nation are exploring and implementing measures to increase transparency in the supply chain and to enhance operational efficiencies as recommended by the FMC, the agency should refrain from promulgating its suggested interpretive rules as published in the NPRM and instead continue to foster viable commercial solutions, many of which have been already been fostered in FMC-filed agreements.

Respectfully submitted,

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