

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

<b>REQUEST FOR INFORMATION</b>	)	<b>DOCKET NO. 22-19</b>
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**RESPONSE OF THE  
PORT OF NY/NJ SUSTAINABLE SERVICES AGREEMENT**

The Port of NY/NJ Sustainable Services Agreement (“PONYNJSSA”), FMC Agreement No. 201175, submits this response to the Federal Maritime Commission’s (“FMC’s”) Request for Information (“RFI”) published in the Federal Register. *See* 87 Fed. Reg. 50085 (August 15, 2022).

**I**

**Interest of the Agreement  
and  
Preliminary Statement**

The PONYNJSSA became effective on December 6, 2007, and its purpose 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 Port of New York and New Jersey (“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. In its 15-year history the members have used the discussion agreement forum provided under the Shipping Act to address matters related to environment issues including the idling of cargo handling equipment, security matters including the identification of trucks seeking facility access, and most recently supply chain efficiency and transparency.

The PONYNJSSA compliments the FMC on its proactive approach in seeking to address supply chain challenges that might have root causes in the waterborne transportation of cargo in international commerce. In the Federal Register notice, the agency states that it has been authorized under Section 18 of the Ocean Shipping Reform Act of 2022, Public Law 117-146 (June 16, 2022) (“OSRA 2022”) “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 there exists a substantial adverse effect on the competitiveness or reliability of international transportation supply system” and is seeking information in response to three questions it has posed. *See* 87 Fed. Reg. 50086; *see also*, OSRA 2022, sec. 18(c)-(d).

For the reasons stated herein, despite certain supply chain challenges experienced at our Nation’s ports, our ports, particularly the PONYNJ, are resilient and are handling record cargo volumes efficiently and reliably. At present, an emergency contemplated by Section 18 of OSRA 2022, does not exist and the FMC should not be issuing an order under Section 18. Moreover, even if such an emergency existed, any emergency order issued that would require a common carrier or marine terminal operator to share directly with relevant shippers, rail carriers, or motor carrier information relating to cargo throughput and availability would not alleviate or improve such an emergency. In addition, when and if such an emergency emerges, any order issued under the authority of Section 18 should be limited in temporal and geographic scope to the specific port area in crisis.

The intensive examination of these issues by the FMC has already fostered and encouraged commercial solutions with respect to needed transparency in supply chain

information, which can only effectively occur through commercial solutions such as those implemented by the members of the PONYNJSSA, which will be discussed herein. Moreover, the recent challenges that we have witnessed in supply chain fluidity is not driven by a lack of readily available cargo information, but by infrastructure bottlenecks, limited hours of warehouse operation, and shipper and motor carrier behavior. These factors are inhibiting the efficient evacuation of import cargo at marine terminals. However, certain actors in these congestion scenarios are outside the jurisdiction of the FMC.

## II.

### **Technology and Commercial Solutions May Address Many but Not All Supply Chain Challenges**

What is imperative for the FMC and the freight movement community to remember is that, at essence, cargo transportation is a low-tech business. Cargo transportation involves the actual, not virtual, movement of goods from one place to another via land, sea, and/or rail. Whether it be aboard a vessel, on rail, at a marine terminal, or at warehouse or cargo storage facility, this cargo takes up space. What we are witnessing now are supply chain chokepoints created by a lack of space to either transport cargo or store it once it arrives at its destination port. Vessel, terminal, and rail capacities are limited. New marine terminal space available for container cargo operations is unlikely to become available in the short term, if ever. Vessel and rail capacity will be difficult to increase in the short term. This current capacity challenge is one that primarily needs to be addressed by encouraging cargo interests to expeditiously retrieve import cargoes from marine terminals for transfer to depots, warehouses, or other off-terminal storage options. Empty containers must be efficiently removed from marine terminals to provide space for incoming cargo to be discharged from vessels. The creation of new warehouse and other off terminal cargo storage facilities as well extending the hours of operation of these

facilities should be encouraged. While information technology may facilitate cargo movement and reduce unnecessary terminal visits or trouble ticket transactions, it cannot create the space needed to maintain the record-breaking cargo volumes we have witnessed, particularly in the PONYNJ.

The members of the PONYNJSSA have long made available, at their own cost, a commercial solution to provide enhanced cargo information and transparency on a port wide basis. As long ago as September of 2015, through a nonprofit corporation (Sustainable Terminal Services, Inc. “STS”) created under the authority of the PONYNJSSA, STS has provided a port-wide information portal system known commercially as the Terminal Information Portal System (“TIPS”). TIPS is available to port stakeholders without cost to provide cargo interests and the motor community enhanced cargo information on a port-wide basis. Commissioners Maffei and Bentzel were favorably impressed with TIPS and its potential for further information enhancements when they received a demonstration and briefing about the system at informational meetings held in the Port of New York and New Jersey on June 9 and 10, 2021. TIPS is also consistent with the notion of a nationwide information portal considered by Supply Chain Innovations Teams project authorized by the Commission.

The members of the PONYNJSSA are working on enhancing TIPS to include enhanced rail, chassis, and empty container information. This is not easy to accomplish, it is time consuming work for marine terminal operators that are otherwise fully engaged in seeking to stay ahead of increasing cargo volumes and other operational challenges. These marine terminal operators generously provide their time, expertise, and money to keep STS afloat to enhance the quality of service throughout the PONYNJ.

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 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 have been implemented to 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 Commission about TIPS because TIPS was implemented not as the product of regulation or an emergency order but as a commercial solution created to enhance the satisfaction of cargo interests with services provided by MTOs in the PONYNJ.

Notwithstanding the information that the individual members of the PONYNJSSA provide on their respective websites, TIPS also provides the following information:

**Port & Terminal Information**

- Port/Terminal news, announcements, traffic info

**Import Container Availability**

- Container status
- Terminal appointments
- Fees due
- Free time

**Export Booking Inquiries**

- Quantities booked, received, outstanding,
- Return info

**Vessel Schedules**

- Terminal website links

**Empty Container Information**

- Empty return instructions
- Terminal website links

The PONYNJSSA is troubled by the fact that despite the availability of enhanced cargo information made available by systems like TIPS, TIPS utilization is well below what it should be. The failure to utilize TIPS results in higher than necessary trouble ticket transactions. The high volume of trouble tickets demonstrates a waste of limited motor carrier resources, unnecessary contributions to wait time, congestion, and increased idling emissions. Many of these inefficiencies can be avoided by accessing TIPS before dispatching a driver. It is hoped that enhancements to TIPS that will be available shortly that will provide the ability to “push” relevant cargo information through Application Programming Interface (API) information transfers will encourage more users. More TIPS users will certainly facilitate cargo movement through the PONYNJ and resolve many of the issues that the FMC would be seeking to address in an emergency order issued under the authority of Section 18.

## VI.

### **Responses to the FMC’s Questions**

#### **Question 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?

#### **RESPONSE:**

The PONYNJSSA does not believe that there is an emergency of a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system. In fact, the PONYNJ has proven remarkably resilient in performing during the worst days of the pandemic and now through current supply chain challenges. According to the Port Authority of New York and Jersey (PANYNJ), the PONYNJ has been handling record cargo volumes throughout 2022. The PANYNJ reports that in July 2022, the PONYNJ handled 776,167 TEUs, a 17.1% increase compared to pre-pandemic July 2019 levels. This marks a two-year streak of consecutive monthly record high activity. In addition, May 2022 and June 2022 remain the first- and second-busiest months of cargo activity ever at the PONYNJ, respectively.

Chairman Maffei has recognized the fact that despite certain challenges, “America’s ports are not broken or, by any historical measure, inefficient.” Remarks of Daniel B. Maffei, Chairman, Federal Maritime Commission to the American Association of Port Authorities (March 30, 2022). In addition, Chairman Maffei has also stated, “it would be wrong not to acknowledge the fact that it has been truly remarkable how productive our ports have been.” Statement of Daniel Maffei, Chairman, Federal Maritime Commission, Before the U.S. Senate Committee on Commerce, Science, and Transportation (March 3, 2022).

### **Proactive Use of FMC-Filed Discussion Agreement**

To address ever increasing cargo volumes at the PONYNJ, for over the past six months, the members of the PONYNJSSA and the PANYNJ have been meeting weekly under their FMC-filed discussion agreement (FMC Agreement No. 201210) to discuss supply chain challenges in the PONYNJ, and to identify and implement potential solutions when possible. During these discussions, the PANYNJ has identified and facilitated the opening of new depots for the receipt of empty and long-dwell containers. In addition, the PANYNJ has introduced initiatives that seek to determine local warehouse capacity as well and match shippers in need of trucking services with motor carriers with capacity. The members have also created an information placard for truckers and discussed other measures designed to enhance the trucker experience in the PONYNJ. This group has also been active in updating the PANYNJ’s dashboard of key performance indicators that would provide historical port performance information.

One of the most troubling aspects of recent supply chain challenges that has been a topic of discussion is stakeholder behaviors that are exacerbating these challenges. For example, in the PONYNJ over the past year, MTOs have witness a phenomenon whereby truckers are queuing outside facilities and along public streets in violation of traffic laws in the early AM hours. This is so they can access terminals as soon as possible after a terminal’s opening. This has caused traffic jams that have posed a threat to life as terminal access roads have been blocked. This queuing has made it difficult to labor to report to work, which in turn causes delays in ramping up daily operations causing a cascading effect of unnecessary congestion. In response, the PANYNJ had to implement a special enforcement program, whereby repeat offenders faced the potential of a revocation of their credentials to work in the PONYNJ.

Another disturbing behavior has been demonstrated by cargo interests that have determined that it is cost effective to have their containers aboard vessels at anchorage or stored in excess of free time at marine terminals rather than pay the costs of warehousing or other off-terminal storage. While cargo interests complain of terminal demurrage, up until approximately 2 weeks after free-time, terminal storage is cheaper than off terminal storage. This has encouraged cargo interests to allow containers to dwell longer than necessary creating congestion at the terminals.

Moreover, motor carrier and shipper behavior do not encourage the utilization of extended weekday and Saturday gate hours provided by the MTOs in the PONYNJ. The MTOs in the PONYNJ are particularly frustrated by the fact that extended weekday and Saturday gate hours are poorly utilized. The MTOs provide these hours at considerable expense to normalize demand over the course of a day and week. An analysis of Saturday gate utilization reveals a range from a low of 1.2% to a high of 8% utilization. The highs generally occur during weeks with bad weather or a holiday. When motor carriers were presented with this information and asked for

suggestions on how Saturday and extended gate hours could be better utilized. It was suggested that the warehouses and distribution centers need to be open during these hours and days to accept containers.

These behaviors coupled with the need for ocean carriers to expedite the evacuation of empty containers from the port, are causing unnecessary port congestion, which cannot be solved through an FMC emergency order requiring non-specified data sharing.

**Question 2.**

Whether an emergency order pursuant to Section 18 of OSRA 2022 would alleviate or improve such an emergency situation – and if so, why, and if not, why not?

**RESPONSE:**

No. Notwithstanding the fact that the RFI does not identify what information would need to be shared, what entities would be required to receive such information, the time frame when such information would need to be provided, or the method and manner of such an information transfer, there is no evidence that the information already provided individually by the members of the PONYNJSSA and collectively through TIPS could address could create more terminal space for the storage of empty and long-dwell containers, encourage cargo interests to retrieve cargo within free-time and to refrain from utilizing marine terminals as a lower cost alternative to warehouse or other off-terminal storage options, or create more rail capacity. In addition, as stated above, an emergency order requiring the provision of non-specified data will not encourage cargo interests or motor carriers to access marine terminals during extended weekday or Saturday hours.

The current challenges at the PONYNJ are low-tech issues related to constraints of space and capacity and the behaviors of port users. They are not related to a lack of relevant or easily accessible cargo information.

**Question 3.**

The appropriate scope (duration and geographic) of such an emergency order, if the Commission were to issue such an order and the basis for that scope.

**RESPONSE:**

While the PONYNJSSA does not believe such an emergency order is warranted, when and if such an emergency emerges, any order issued under the authority of Section 18 should be limited in temporal and geographic scope to the specific port area in crisis. Moreover, the FMC should indicate in advance what information would need to be provided in such an emergency.

## **Conclusion**

Inasmuch as MTOs in the PONYNJ and across the Nation are exploring and implementing measures to increase transparency in the supply chain through information sharing and that there is no current emergency of a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system, the FMC should not issue an order as contemplated by Section 18 of OSRA 2022.

Respectfully submitted,

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