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December 8, 2017

Ms. Rachel Dickon  
Assistant Secretary  
Federal Maritime Commission  
800 North Capitol Street, NW, Room 1046  
Washington, D.C. 20573-0001

**Re: Petition No. P4-16 - Notice of Public Hearing - Request to Participate  
Petition of the Coalition for Fair Port Practices for Rulemaking**

The New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. (NYNJFFF&BA) respectfully requests to participate in the Commission's hearings concerning issues raised by the petition of the Coalition for Fair Port Practices Act. The membership of our Association comprising over 100 licensed freight forwarders, NVOCCs, and Customs brokers plus 25 industry-related affiliated members are directly involved in detention and demurrage situations on behalf of their import and export clients. The NYNJFFF&BA is a member of the Coalition and had in February 2017 expressed its support for a clarification of "just and reasonable rules and practices" with respect to the assessment of demurrage, detention, and per diem charges in response to the Commission's Notice of Filing and Request for Comments.

It is extremely concerning to the NYNJFFF&BA that the current system does not have sufficient checks and balances to ensure that demurrage and detention are properly assessed. Cargo is not released until payment is made. This is a powerful tool that enables the collection of demurrage and inhibits incentives for carrier or terminal efficiency. FMC guidance on what is unreasonable would assist in providing some check to a system that is functioning in an oligopolistic environment. Attached is a summary of our intended testimony to be presented by the following representatives:

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Thank you for your consideration.

Respectfully,

William B. Skinner, President

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## **Petition No. P4-16 Public Hearing**

### **NYNJFF&BA Summary of Intended Testimony**

Testimony will provide a brief statement in support of the FMC establishing a rule to help clarify when the assessment of demurrage and / or detention would be considered unreasonable in circumstances beyond the control of shippers, receivers, motor carriers and preventing them from picking up or delivering cargo from terminals. The NYNJFF&BA has polled its members and have found strong approval of the need to clarify what could be considered unreasonable assessment. This support for clarification was evident even among members that have not experienced problems with being unfairly charged demurrage / detention in the Port of NY/NJ. In the exceptional instance of a response not in favor of FMC guidance on this issue, it was notable that the respondent was working for a top-ten global logistics company, who was finding flexibility in solving these issues with terminals.

Our membership has experienced instances where vessel ocean common carriers (VOCC) and marine terminal operators (MTO) assess detention, demurrage, and per diem charges when neither our membership nor its customers have been at fault or able to pick up or deliver cargo. This has occurred due to:

- port congestion created by extraordinary events, e.g. weather, labor issues, computer failure;
- governmental action, e.g. Customs examinations;
- lack of equipment (e.g., trucker not being able to pick up due to lack of terminal supplied gensets during free time and cargo owner was still charged when picked up after free time had expired);
- steamship line delayed or changed action causing demurrage at inland rail yard or arrival terminal. (This is particularly a problem on steamship line inland port or door routed shipments.)

NYNJFF&BA would like to supply the Commission with additional examples of unreasonable assessment of demurrage / detention in situations beyond the control of the cargo owner.

Testimony will reflect the concern that the current oligopolistic system operating in the port builds in a rigidity in the collection of demurrage / detention that ignores circumstances normally providing relief in a more competitive environment. It also leads to unfair treatment of all industry participants. Smaller companies end up paying disproportionately more without the leverage to negotiate with the terminals or carriers or the resources for an extended fight. The pressing need to move the cargo forces payment. In theory, when demurrage / detention is wrongly assessed those paying it have tools to remedy this, either through commercial pressure on the line or terminal, CADRS at the FMC, or legal action. The reality is that these options take time to produce results and daily demurrage is a punishing cost that must be resolved quickly for cargo release. Carriers/ terminals will not release freight unless they have been paid. This is a powerful tool that enables the collection of demurrage and inhibits incentives for carrier or terminal efficiency. Once payment is made leverage to resolve the situation and even obtain refunds is greatly diminished. As one of our members stated, these funds are extorted simply because they can be. This has fostered a business practice that appears to be uncontrollable and created an environment that can be susceptible to abuse.

Our membership has noted that the problem of unreasonable assessment of demurrage / detention in the Port of NY/NJ has lessened in 2017 and believes in part that it is a direct reflection of the very existence of the petition submitted by the Coalition of Fair Port Practices. Members have commented that the terminals are showing more flexibility. The current system does not have sufficient checks and balances to ensure that demurrage and detention are properly assessed. FMC guidance on what is unreasonable would assist in providing such a check.