



National Association of Waterfront Employers

8400 – WESTPARK DR • SECOND FLOOR • MCLEAN, VA 22102
202 587-4800 • www.nawe.us

January 31, 2018

VIA EMAIL AND MESSENGER

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

Re: FMC Docket No. P4-16

Dear Ms. Dickon:

NAWE, on behalf of itself and the other members of the marine terminal operator panel who testified on January 17 (each of which is a member of NAWA), hereby submits the attached response to the question directed to the panel members by Commissioner Maffei in the Commission's "Questions for the Record," served on January 18, 2018.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Crowley", is written over the typed name.

John E Crowley

**BEFORE THE
FEDERAL MARITIME COMMISSION**

**PETITION OF THE COALITION
FOR FAIR PORT PRACTICES
FOR RULEMAKING**

**DOCKET NO.
P4-16**

**RESPONSE OF MARINE TERMINAL OPERATOR WITNESS TO
QUESTIONS FOR THE RECORD**

On January 18, 2018, the Federal Maritime Commission served Questions For The Record directed as certain witness who testified at the January 16 and 17, 2018, hearings in the above-captioned proceeding. The port and marine terminal operator participants in the hearing were requested to answer the following question:

1. As appointment systems become more common, what would your policy be when a vessel arrives with more containers than there are available appointments during the standard free time? (i.e., if a vessel arrives with 4,000 containers to be picked up within 4 days of free time and there are at maximum only 3,000 appointments available.)

The response of the port and marine terminal operator participants is set forth below.

As an initial matter, this question needs to be put in proper perspective with regard to discharging containers from a vessel. Experience tells us that it is highly-unlikely that such a large volume of containers would be in a position to have appointments scheduled within an identical short free-time period. SSA, for example, has never encountered a situation in Oakland where container volume exceeds available appointments during free time. Similarly, GCT Bayonne has never experienced an appointment shortage. Commercial considerations influence carrier port calls, including the capability of the terminal to efficiently manage volume from larger vessels. Carriers and terminals share a mutual goal, expedited container throughput. In other words, terminal saturation as described in the question, is unlikely to occur given general stevedoring practices in most ports.

For clarification, not all containers discharged from a vessel follow a similar departure scenario, because:

- even on the largest container vessels, containers discharged from a vessel are not subject to the same free-time provisions.

- at most terminals when a container is discharged from a vessel free-time starts to run after a prescribed period of time. Accordingly, containers later discharged from the same vessel would have staggered free-time starts.
- the vast majority of containers are subject to service contracts between the carrier and the MTO that call for varying amounts of extended free-time.
- a high percentage of containers discharged from a vessel are intermodal cargo, meaning that the containers go from the vessel to the rail yard for in-land distribution by rail. Port drayman do not pick-up these containers under appointment systems, so demurrage is not an issue. At some ports the amount of intermodal cargo is as high as 50%.
- a large number of containers are refrigerated, open-top, and flat-rack containers, which may have different free-time arrangements.
- a large number of containers go into immediate Customs holds upon discharge.
- in general, appointments are only available for containers that have cleared Customs holds.

In addition to the factors noted above, the appointment system as described at the hearing by John Atkins of GCT Bayonne LP further protects cargo interests by providing a significant amount of time during terminal hours when appointments are not required. Accordingly, we do not believe that the scenario described in the question realistically depicts a situation involving a MTO-implemented truck reservation system and the availability of appointments within free-time. In the unlikely event the volume of cargo exceeded the number of available appointments during free time, the MTO would take action to address the situation and, in the case of SSA, they would not charge demurrage for those containers that could not be removed due to lack of appointments. SSA terminal managers have the authority to waive demurrage when a container cannot be made available to the motor carrier due to terminal operations, e.g., if an SSA terminal is unable to access the container for operational reasons.

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