

September 13, 2022

William Cody
Secretary
Federal Maritime Commission
Secretary@fmc.gov

Attn: Docket No. 22-19, Request for Information

These comments are submitted on behalf of the Pacific Merchant Shipping Association (PMSA). PMSA is a non-profit regional trade association whose members, including ocean carriers and marine terminal operators, conduct business at the public ports of California and Washington. We appreciate the opportunity to comment on Docket No. 22-19, a Request For Information, in which the Federal Maritime Commission is seeking public comment.

Acknowledging that the Request For Information is required under the Ocean Shipping Reform Act (OSRA), and absent the ability to review an actual order, it is difficult to provide comments and analysis. That said, we have a number of questions and concerns about the public notice. The first would be the lack of definition and specificity of various terms. For example, how does the FMC define “emergency situation of a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international transportation supply system”? How is that measured? Is it limited to a specific port or geographic area or is it regional, national or internationally focused? Does it mean that the “emergency situation” impacts all segments of the supply chain or individual elements of it? Is it measured in terms of time – a week, month, year? Is it measured in cost, delays, productivity or dwell time?

With regard to the information that is to be “shared directly with relevant shippers, rail carriers, or motor carriers...”, how is this information different than what is currently collected and provided to the trade community and public agencies? Is it information that if provided is actionable in terms of facilitating the movement of cargo? How will private company data be protected or consolidated so it does not disclose competitive information?

As the Commission is already aware, marine terminals and ocean carriers provide information with regard to a number of factors. This includes but is not limited to: cargo availability; government holds; appointment availability; truck turn times; gate camera’s showing marine terminal in/out gates (available on both terminal/industry websites and port websites); gate hours, vessel arrival data, including that shared, emailed or posted by local marine exchanges and port authorities; a weekly update of on-street dwell time for chassis in Southern California; daily and monthly data for local import and rail dwell time; cargo volume projections posted on port websites are a few examples. In addition, ocean carriers and marine terminal operators are working with multiple entities ranging from the US Department of Transportation Freight Logistics Optimization Works (FLOW), the FMC’s Maritime Data Sharing

Initiative, to individual port authority information systems, all looking to improve data availability.

There is a lot of data that is produced by marine terminals and ocean carriers, both for commercial purposes and as required or at the request of various government agencies. The availability of data, however, diminishes rapidly as you move away from the waterfront. While there are surrogates to the lack of some information, like warehouse vacancy rates, such data does not inform one as to how much or fast cargo is being processed within warehouses and distribution centers nor does it provide helpful information as to how other downstream elements of the supply chain are operating. Operational delays and backlogs further down the supply chain negatively impact terminal and vessel operations. Rail congestion is one such example, which has resulted in the railroads metering cargo volume from West Coast ports to inland destinations. But how additional terminal or ocean carrier information would resolve current issues such as rail delays, distribution center usage and velocity is uncertain.

To illustrate that problem, please see the following from the August 22, 2022 Wall Street Journal entitled: **Warehouse Bottlenecks Are Snarling U.S. Supply Chains**

Logistics executives say sea containers and the steel trailers needed to ferry goods on trucks are being tied up for weeks at a time while companies store goods on the equipment because warehouses are brimming to capacity.

The practice is triggering lengthy backups at inland distribution hubs including Chicago and Kansas City, Mo., that officials say are as bad now as at any time during the Covid-19 pandemic.

“Right now the backup goes right to the warehouse and distribution center where those facilities are chock-a-block,” said Mike Wilson, chief executive of Consolidated Chassis Management. CCM, based in Budd Lake, N.J., manages about 80,000 chassis, the steel trailers used by truckers to pull containers between ports, rail yards and warehouses.

According to company data, CCM’s trailers earlier this month around Kansas City and St. Louis were tied up under equipment for an average of almost 33 days, up from about 20 days at the start of the summer and about 10 days before the pandemic.

As to how “emergency situation” is defined, it should be noted that every month, ports in the United States proudly announce record amounts of cargo. Cargo volumes are at an all-time high. Throughput and velocity must be viewed holistically and are a function of the physical constraints of marine terminals, railyards, rail equipment, inland storage capacity, warehouse capacity and the like. Compounding this problem are the actions of cargo interests who have exceeded their storage capacity, overordered or mis-judged consumer demand. On August 16th, the CFO of Walmart was quoted on CNBC and their website, stating:

“Rainey told CNBC that 40% of the \$11 billion of higher inventory reflects increased costs of goods from inflation. About \$1.5 billion is the amount that Walmart would like to “wave a magic wand” to make disappear, he said.

Walmart is selling through that excess merchandise with markdowns and has “canceled billions of dollars in order to help align inventory levels with expected demand,” Rainey said on an earnings

call. He estimated that about 15% of the company's inventory growth is above the levels that it wants."

The excess inventory experienced by Walmart is not an isolated situation and being experienced by other retail importers – and is negatively impacting supply chain segments and other users of the supply chain.

Related, at the August 25, 2022 Port of Los Angeles Harbor Commission meeting, following a briefing by the Executive Director of the Port, Harbor Commissioner Ed Renwick made the following comment:

"A year ago we had just an outrageous amount of congestion. And that was driven primarily by the fact that we got 10 years of container growth in one year. Normally we grow 2% a year and suddenly we grew 20%. And now we are in the situation where we basically have the same volume but we are processing it incredibly efficiently and I really think that Gene and the team and all of our partners, the ILWU, the terminal operators, the shipping lines, the truck drivers, the ability for industry to adapt in such a remarkable short period of time is remarkable. Well done."

Over the past few years, with extreme fluctuations in cargo volumes and a world grappling with a pandemic, the ocean carrier and marine terminal operator members of PMSA delivered enormous volumes of cargo through difficult circumstances. Ocean carriers secured (and are building) more ships, purchased more containers, voluntarily instituted a container vessel queuing system to better organize the flow of ships and reduce vessel emissions, and as requested by the Biden Administration, used sweeper ships to collect empty containers to clear off marine terminals. Marine terminals and ocean carriers also acquired and utilized hundreds of acres of off-port land to store containers and relieve congestion inside the terminals, made late gates available at marine terminals to provide more time for pick-up and return of containers, and in California added approximately 1,500 ILWU workers. In addition, in the middle of the pandemic, before vaccines and treatments, the marine terminal operators, ILWU workforce, truck drivers and warehouse personnel kept the economy moving while putting their own health at risk. These are just some of the examples of an industry trying to meet the widely diverse needs of customers and priorities of policy makers.

All of which leads back to our question of the inquiry of the Docket notice regarding the possible need of additional information: to what purpose; how will it be used to be actionable; will it be a national requirement or more localized; and what is currently not provided, or perhaps more importantly, what information is available and not being used? Will the responsibility of the data requirements be equally shared across the supply chain and not just focused on port operations?

The request for information in Docket No. 22-19 is not only ill-defined with regard to articulating an "emergency" and where and how it would be of assistance, but it is also narrowly focused on singular elements of the supply chain that needs to be viewed holistically and in its entirety. That requires far more clarity and specificity than is currently sought in Docket No. 22-19. In addition, without the ability to review a draft emergency order, which would allow the trade community the opportunity to evaluate whether specified information would provide congestion relief within the 60-day period required by OSRA, the full benefits or burdens are difficult to determine.

Given the ambiguity, lack of definition and uncertainty as to what information is being requested and how it will be utilized to resolve a situation which is undefined, we are opposed to the issuance of an emergency order.

Sincerely,

A handwritten signature in blue ink, appearing to read "John R. McLaurin". The signature is stylized and cursive.

John R. McLaurin
President