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RE: Docket No. 22-19, Comments on Request for Information for OSRA 2022 Emergency Order [FR Doc. 2022-17582]; Emergency Order is the Wrong Solution at the Wrong Time

Dear Mr. Cody,

The American Association of Port Authorities (AAPA) is the unified voice of the seaport industry in the United States. AAPA represents ports in the nation's capital regarding issues facing the maritime industry, promotes the common interests of the port community, and provides industry leadership on security, trade, transportation, infrastructure, and other issues related to port development and operations. The port industry thanks the Federal Maritime Commission (FMC) for its solicitation of comments regarding the declaration of an emergency related to port congestion. AAPA respectfully submits these comments on behalf of the U.S. port members of the Association.

Intro & Summary – The FMC's RFI Lacks Information as to What Data Should Be Shared; Data Would Have No Effect on Reducing Congestion

Port congestion has been caused by circumstances beyond the scope of data-sharing. U.S. ports are subject to countless exogenous factors that affect the supply chain. Recent examples include the Great Resignation, ice storms, and compulsive consumer buying habits in connection with the COVID-19 pandemic. Each of these examples has contributed to prior congestion beyond the control of ports. There are no data points that could be shared as part of an emergency order that would address any of these issues, as not even the ports themselves can address them. An emergency mandate to share data would do little more than delay processes at ports and contribute to additional slowdowns.

Moreover, this RFI is unworkably vague at this point as to which data would be affected by a sharing mandate. Port authorities do not track all the data points potentially related to "cargo throughput and availability." Data sharing initiatives are complex operations, and our members see their value and have begun to institute and create them. However, an emergency order is not the right format to promote the adoption of such initiatives. Rather, they must be carefully designed and planned to ensure usefulness and best practices.



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Additionally, this request for information is derived from language in the FREIGHT Act, a bill introduced in the Senate in November 2021 during a time of much more intense congestion at U.S. ports and in the global supply chain. Since that time, port authorities have been working tirelessly to help clear through the backlog of containers and ships causing supply chain slowdowns.

The data are clear in affirming that the degree of congestion experienced at some U.S. seaports has decreased significantly. Improvements have been made in key metrics such as vessel wait time and traffic, all while moving record numbers of TEUs.¹ The country's busiest port has reduced the queue of vessels waiting for berth by 80% since the beginning of 2022.² The National Economic Council noted earlier this year that major west coast U.S. ports had reduced containers experiencing extremely long dwell times by 60%.³ These metrics demonstrate an improving situation at U.S. ports, not an emergency.

Finally, the crux of the proposed emergency order is data sharing in the interest of protecting competitiveness. AAPA sees no indication that the supply chain is not currently competitive. If such an emergency order intends to ensure competitiveness among ocean carriers in relation to rates and fees, then a data-sharing order targeted at U.S. ports is the wrong vehicle to bring about change in this regard.

A. Emergency Order Would Not Alleviate Congestion

Data Sharing Systems Are in Their Infancy and Not Widespread

Instituting the data sharing mandates attached to an emergency order from FMC would do little more in the immediate than require ports to dedicate staff time and resources to purchasing and configuring software and hardware to track and share the required data. These systems will require time to organize and create, likely exceeding even the 60-day period that the emergency order would be in effect. Unless the Commission expects that the emergency period will be continuously renewed, the emergency period is too short to reasonably initiate data-sharing efforts, by which point an emergency for which the data is aimed to improve may have already been resolved through shifts in the shipping market.

U.S. ports have made clear that data sharing is an important effort for visibility and efficiency across the supply chain *when such a system is thoughtfully planned and executed*. To ensure the best outcomes, such a data-sharing operation should be crafted carefully and over time, with input from all relevant stakeholders, including ports, freight operators, and ocean shipping companies. An emergency order rushes this process and *places an undue burden on ports to organize and aggregate data that is potentially not currently tracked or readily*

¹ "West Coast Ports Reduce Idling Vessels as Container Supply Increases," CNBC (CNBC, July 26, 2022), <https://www.cnbc.com/2022/07/22/west-coast-ports-reduce-idling-vessels-as-container-supply-increases.html>.

² Id.

³ "A Record Year for America's Ports and a Look to the Year Ahead," The White House (The United States Government, January 20, 2022), <https://www.whitehouse.gov/nec/briefing-room/2022/01/20/a-record-year-for-americas-ports-and-a-look-to-the-year-ahead/>.



available. Rather than trying to alleviate supply chain delays through emergency orders, FMC should support the continued collaboration of the maritime shipping industry as new data-sharing initiatives take shape.

In Most Current Forms, Cargo Location Data Has Limited Real-Time Use, is a Lagging Index

The FMC’s request for information is unworkably broad with respect to the types of data implicated by a proposed emergency order. “Information relating to cargo throughput and availability” potentially covers a massive and varied data universe. For example, if multiple shippers’ goods are in one container, the shippers themselves would have more information about location and availability than the port.

Any order to share data must be governed by a set of standards, enumerating which data should be shared and how it should be handled. It is unknown if our members even currently have access to the type of data being discussed as the potential data set is so broad. Many of our members who are landlord ports would not have access to cargo throughput and availability data at all.

Regardless, OSRA stipulates that this data should be shared with relevant shippers, rail carriers, or motor carriers. These applications can only best make use of this data if it were to be available to make real-time decisions on cargo operations. As it stands, this data would not be available quickly enough - or in a standardized form - to enable real-time freight decisions by shippers. Improving the real-time availability of this data would require investments in new and additional technologies, as well as increased data-sharing and cooperation between ports, MTOs, ocean carriers, and landside freight carriers, well beyond the proposed scope of the data sharing in the emergency order.

In addition, much of the data that would be most helpful to freight operators, like cargo space availability, is hampered by an information-sharing breakdown that *leaves ports blind in the middle*.⁴ Cargo owners avoid sharing data on cargo location as they attempt to leave cargo at ports to store items for extended periods of time. Ports are not the entities best suited to facilitate a system of data sharing as many ports themselves are left in the dark when it comes to cargo availability.

Forward-looking Investments Can Prevent Future Slowdowns

Even though the current scope of data that would be shared under an emergency order is not known, it is clear that the issues that have affected the supply chain in the past, and new issues that could arise, would not be solved through mandated data sharing. Expanding chassis fleets, protecting the supply chain from labor disruptions, and strengthening our country’s rail infrastructure are all actions that AAPA supports and believes would reduce the chance of future

⁴ Some of AAPA’s member ports have expressed that they need more data on container ownership to determine which carriers are contributing to congestion by allowing containers to dwell. This data would need to be shared by MTOs and ocean carriers to keep ports informed.



congestion. U.S. ports are making real investments in improving the systems that they *can* control, in order to protect the supply chain from factors *outside their control*. The effects of this investment can already be seen in the current improved supply chain situation.

B. Current Congestion Does Not Constitute an Emergency

Port Congestion Has Receded From Its Peak – Extreme Trade Imbalances are Improving

In response to increased shipping volumes and trade imbalances brought on by the COVID-19 pandemic, U.S. ports received and processed an unprecedented number of containers in late 2021 and early 2022. These shipping volumes represented a shock to the system, overloading port capacity. The country’s nine largest ports received 20% more loaded containers in 2021 than in 2019.⁵ This extraordinary volume, coupled with staffing issues and health and safety concerns related to the pandemic, contributed to supply chain congestion beginning in 2021.

A major U.S. seaport reported that vessel traffic peaked in July of 2022 and has since been dropping, while indicators in the Asian supply chain point to lower volumes and fewer containers in the future.⁶ In addition, normalization of cargo operations is expected this fall.⁷ It is clear that supply chain indicators point toward an improving situation in the marketplace and ocean shipping industry.

We respectfully urge this Commission to pause and to consider the unprecedented and transitory surge in container volumes at U.S. ports - made worse by panicked buying - that is in our rearview mirror currently. The volatility experienced 12-18 months ago is no longer the situation experienced at ports. Container volumes are becoming more stable, and the rate of port congestion is decreasing as cargo wait times and freight backups begin to ease. The original intention of an emergency order as stipulated in OSRA 2022 was to alleviate an extreme emergency with grave effects on the United States’ competitiveness in the global market, a situation that does not exist at present.

Throughput trendlines continue to be heartening; investments and ideas are taking root. “Emergencies” are when trends are headed in the *wrong* direction

U.S. ports experienced an acute spike in inbound container volume in early 2021. Since that time, the percentage change year-over-year has fallen back in line with pre-pandemic

⁵ “America’s Biggest Ports Handled a Record 50.5 Million Shipping Containers Last Year,” Hellenic Shipping News Worldwide, March 1, 2022, <https://www.hellenicshippingnews.com/americas-biggest-ports-handled-a-record-50-5-million-shipping-containers-last-year/>.

⁶ “We See Volumes Normalizing, Says Georgia Ports Authority Director,” CNBC (CNBC, August 31, 2022), <https://www.cnbc.com/video/2022/08/31/september-would-normally-be-our-peak-but-weve-been-there-the-last-2-point-5-years-says-gpa-executive-director.html>.

⁷ Id.



levels.⁸ Consumer demand is restabilizing, and ports are making investments to meet the needs of a steadily growing ocean-shipping industry.

Federal grant programs like the Port Infrastructure Development Program (PIDP) and the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) program have supplied ports with millions of dollars for port improvements. Bolstered by additional funding from the Infrastructure Investment and Jobs Act (IIJA), ports have begun countless projects to decrease overall congestion and prepare for increased shipping volumes for years to come.

Infrastructure improvements and investments in process modernization are methods of addressing port congestion, not just through a 60-day emergency period, but for the broader future. Saddling U.S. ports with data reporting requirements during a time when they are focused on expanding capacity and building modern facilities does little more than hinder larger enhancements.

AAPA has proposed a framework for the continued modernization and improvement of ports and the supply chain as a whole. This framework, *Incent and Invest*, includes numerous suggestions for actions that policymakers can take to promote supply chain readiness. Funding additional resources for U.S. Customs and Border Protection (CBP), promoting general collaboration across supply chain players, enhancing fluidity through the recalibration of supply chain fee structures, and even strengthening the FMC are all meaningful actions that should be considered for the long term, rather than a short-term emergency.⁹

In addition, *Incent and Invest* includes a call for digital infrastructure advancements, like data sharing platforms, as a key management and visibility tool in a modern supply chain.¹⁰ Tools like this should be developed over time, and require input from shippers, ocean carriers, freight carriers, and ports. Every stakeholder should have input related to data sharing among supply chain partners. The 60-day emergency period does not allow for this type of well-rounded feedback.

The Federal Government also has taken a role in promoting long-term data-sharing strategies. U.S. ports are heartened by the creation of the U.S. Department of Transportation's Freight Logistics Optimization Works (FLOW) initiative. This program is a measured and calculated system to promote collaboration and data sharing across the supply chain. This type of cooperation is the correct format for encouraging data sharing, not short emergency orders. Moreover, the products of FLOW are *aggregated, anonymized, and predictive indices* that allow for equipment deployment while lights 'flash yellow' in advance of a cargo deluge (rather than micro-level data about specific cargoes that may not be retrievable anyway). Additionally, several U.S. ports have begun their own tests and use cases of Port Community Systems to encourage data sharing with their customers, *when possible*. The LA Port Optimizer and Long Beach Supply Chain Information Highway are examples of programs that U.S. seaports have

⁸ "The McCown Report" August 18, 2022.

⁹ "Incent and Invest" (American Association of Port Authorities, March 11, 2022), <https://aapa.cms-plus.com/files/AAPA%20-%20Incent%20and%20Invest%20-%202003-11-2022.pdf>.

¹⁰ Id.



deployed to encourage data sharing, and many other ports plan to follow suit. The seaport industry needs the time to establish and test these programs to ensure they are valuable and useful.

C. Market Forces are Fluid, a Putative Emergency Order is Extreme and Does Not Address that Fluidity

Ports Are Focused On Throughput

The data sharing efforts required by an emergency order from FMC would detract from current efforts to alleviate congestion at U.S. ports. Instead of deploying all available resources to reduce backlogs and ensure smooth operations, ports would be forced to dedicate staff and funds to establishing data-sharing operations. This places an undue burden on U.S. ports, despite the fact that overall congestion has improved over the past year.

Data Collection and National Security Impacts

The Commission should consider that with respect to more detailed information on cargo movements and availability, care must be taken with how this data is collected, aggregated, and stored. If ports are required to include extensive and detailed information on every billing, there is a national security risk that the aggregated data can be exploited by bad actors or competitors. Further, sharing information regarding ports and terminal pricing, dwell times, and maritime practices risks the disclosure of business-sensitive proprietary information. U.S. ports should not have to threaten their ability to compete within the market as part of an emergency declaration aimed at removing threats to competitiveness.



Conclusion

In summary, AAPA thanks the FMC for its solicitation of comments and urges the Commission to consider that the end goal of alleviating congestion and strengthening supply chain resilience is better served by allowing all stakeholders the time necessary to assemble data-sharing systems collaboratively and safely. A rushed solution is best for nobody, especially U.S. ports who need feedback and information from ocean carriers and freight operators to ensure that a data sharing system is robust and useful. In addition, an emergency order is not the right format for proposing improvements to the supply chain. U.S. ports want to be participants in data sharing systems, but it can't be done in 60 days. Care needs to be taken to ensure that data potentially sensitive to national security and supply chain operations is taken care of safely and that any eventual solution focuses on ensuring the data shared between relevant parties is timely, useful, and relevant. Finally, recent improvements in shipping congestion when contemplating an emergency order. An emergency order at this time is simply not the correct solution.

Respectfully Submitted,



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