

BEFORE THE
FEDERAL MARITIME COMMISSION

FMC DOCKET NO. 22-19

REQUEST FOR INFORMATION
OSRA 2022 – SECTION 18

COMMENTS OF DOLE OCEAN CARGO EXPRESS, LLC

Dole Ocean Cargo Express, LLC (“DOCE”) submit its comments on the Request for Information (“RFI”) issued by the Federal Maritime Commission (“FMC” or “Commission”) with respect to the possible issuance of an emergency order pursuant to Section 18 of the Ocean Shipping Reform Act of 2022 (“OSRA 2022”), which Request appeared in the *Federal Register* on August 15, 2022 (87 *Fed. Reg.* 50085).

For the reasons explained in greater detail below, DOCE opposes the issuance the issuance of an emergency order.

1. Interest of DOCE

DOCE is an ocean common carrier that transports containerized cargo in the foreign commerce of the United States. DOCE serves the U.S. ports of Wilmington, DE; Tampa, FL; Gulfport, MS; Freeport, TX; and San Diego, CA. As an ocean common carrier, DOCE is potentially subject to any emergency order that might be issued by the Commission, and thus could be directly and substantially affected by such an order.

2. DOCE's Response To The Commission's Questions

DOCE's responses to each of the three specific questions posed by the RFI are set forth below.

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. If so, please explain why and provide examples or data to support your view. If not, please explain why and provide examples or data to support your view.

This question assumes that congestion exists in most if not all places. The ports DOCE serves have either not been impacted by the congestion experienced by other ports or have been impacted to a much lesser extent. Therefore, DOCE has not noticed any adverse effect on its competitiveness with other ocean carriers, or on the competitiveness of other ocean carriers with DOCE.

Similarly, the reliability of DOCE's service to its customers has not been significantly impacted by congestion. In fact, the main impact on DOCE of the spike in cargo demand experienced during the Covid-19 pandemic has been dramatically higher trucking costs in the United States.

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.

Because DOCE has not experienced an emergency situation, it believes there is no need for an emergency order to alleviate or improve the situation.

DOCE also has concerns about the potential impact of an emergency order. It is not clear from the statute or the RFI precisely what information relating to cargo throughput and availability DOCE might be required to provide directly to relevant



shippers, rail carriers, or motor carriers. It is also unclear what format this information might have to be in, the means by which it would have to be shared, and when/how often it would need to be shared. DOCE is concerned that a requirement to provide data imposed by an emergency order could constitute a significant administrative burden. DOCE is also concerned about the potential consequences to it if it is required to provide data but unable to do so. DOCE would not want to be in a situation where it might be subject to claims by customers or others and/or penalties imposed by the Commission if it were unable to comply with an order to provide certain information.

Given the lack of detail about the sharing of information, DOCE is also unable to conclude that an emergency order would be of any benefit. Unless there is clear evidence that a lack of information sharing is causing congestion (and DOCE is not aware of any such evidence), the issuance of an emergency order would not appear to be a meaningful step in attempting to address congestion in those locations where congestion is an issue.

DOCE's experience indicates that no emergency order is necessary. Moreover, in light of the uncertainties surrounding the issues outlined above, DOCE opposes the issuance of an emergency order.

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.

It is difficult for DOCE to comment specifically on this issue because, as noted above, the ports it serves have not been impacted by congestion. If the Commission decides to issue an emergency order (which DOCE opposes), the geographic scope of

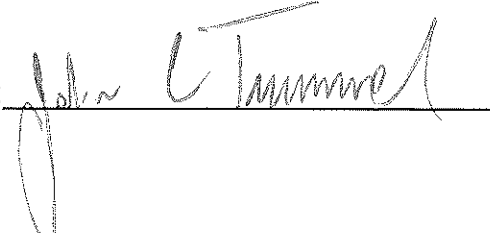


the order should be as narrow as possible, so that only those specific locations that are clearly impacted to a significant extent by congestion are covered. DOCE also believes that the duration of any order should be kept as short as possible.

Respectfully submitted,

DOLE OCEAN CARGO EXPRESS, LLC
John C. Trummel Vice President

By: _____

A handwritten signature in black ink, appearing to read "John C. Trummel", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J".

September 14, 2022