

September 12, 2022

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

MITRE Comments for Federal Maritime Commission (FMC) Supply Chain Declaration of an Emergency

1.0 Introduction:

The MITRE Corporation operates Federally Funded Research and Development Centers in the public interest. We apply systems thinking across Government, industry, and academia to solve whole-of-nation challenges. We provide objective, evidence-based, nonpartisan insights to inform public policy that is effective, equitable, and technically sound. The MITRE Corporation appreciates this opportunity to provide FMC with comments supporting the issuance of an emergency order.

On June 16, 2022, President Biden signed the Ocean Shipping Reform Act of 2022 into law authorizing the FMC to issue an emergency order if they determine that congestion of the carriage of goods has created an emergency situation. As specified in the OSRA, this order would require any common carrier or maritime terminal operator to share certain information with shippers and other specified entities.

Congestion of the carriage of goods has created an emergency situation causing adverse effects on the competitiveness and reliability of the international ocean transportation supply system. Some of the symptoms causing supply chain adverse effects are:

- There is a lack of seamless coordination across ocean carriers, ports, terminals, and drayage operators for returning empty containers.
- Detention charges are not aligned with available container return space which leads to drayage operators and ocean carriers wasting time contesting the charges.
- The container return spaces are so full on the east coast that some are even being railed across the continent to be returned to ocean carriers.¹
- Traffic flow around ports can be very congested with awaiting trucks.
- Warehouse capacity is at record lows, and many Beneficial Cargo Owners (BCOs) have resorted to storing goods in containers and truck trailers², which further constrains the supply of available equipment.
- Carriers are either crossing the ocean at a slower rate or anchoring off the coast awaiting an open berth, with over 100 vessels waiting as recently as June 2022.³

This shifts the timing that commodities can be available in stores and causes retailers to leave the product in warehouses. Also, delayed ships make up time by skipping ports, thereby stalling cargo that was waiting to be exported. Lastly, pressure in the U.S. supply chain rises for every hour that containers are delayed. Figure 1 shows the dramatic increase to the overall delays in the system, measured across 14 key U.S. ports. The east and west coasts have seen this metric increase 172% and 76%, respectively, between June 2020 and August 2022.

¹ Port of New York & New Jersey Council on Port Performance, *Council on Port Performance Meeting Minutes*, June 2022

² Young, Liz. "Retailers Scrambling to Stow Inventories Are Turning to Transport Equipment." *The Wall Street Journal*, 23 Aug. 2022, www.wsj.com/articles/retailers-scrambling-to-stow-inventories-are-turning-to-transport-equipment-11661279345

³ Miller, Greg. "Record container ship traffic jam as backlog continues to build." *American Shipper*, 28 Jul. 2022, www.freightwaves.com/news/traffic-jam-of-waiting-container-ships-is-now-as-bad-as-ever

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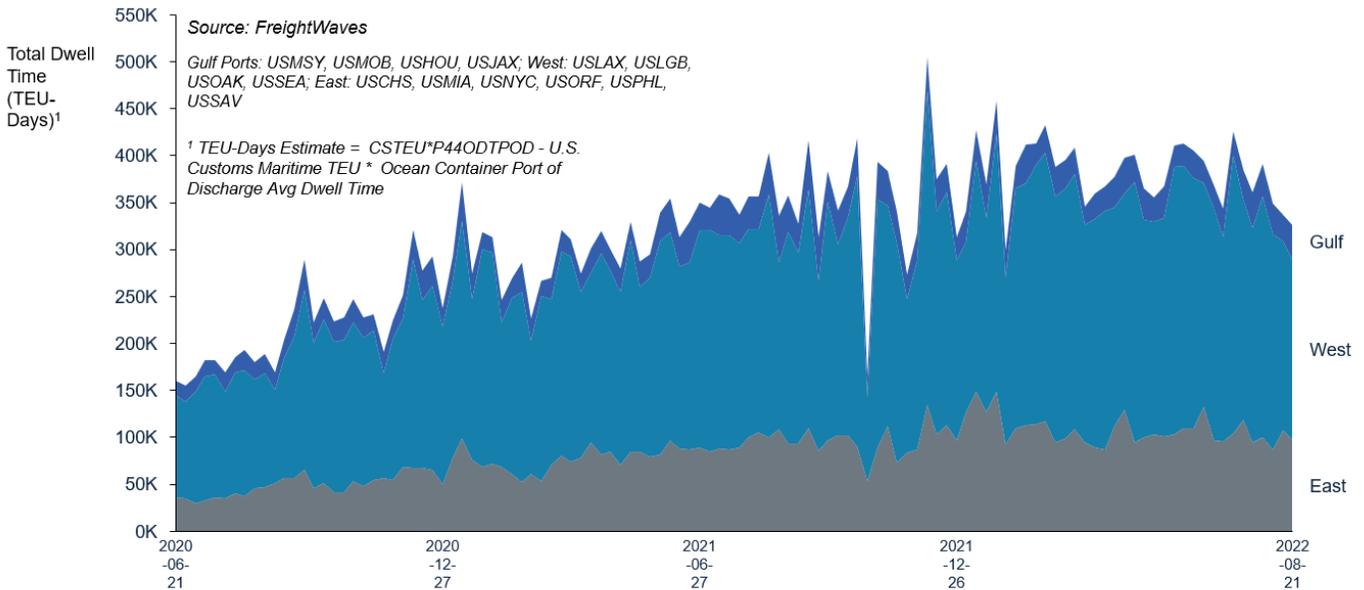


Figure 1: Container Dwell time (TEU-days) in select U.S. Ports

2021 was a record year for most of the nation’s ports. 2022 is shaping up to beat the record with full import TEUs 4% higher in ten select ports than 2021 volumes, See Table 1. Except for the Port of Long Beach, the fully loaded import TEUs declined for West Coast ports, however the full import TEUs among East Coast ports and the Port of Houston have increased, in line with congestion shifting east. This shifting of congestion demonstrates this is a national risk. Standardization and implementation of data sharing through an emergency order improves managing of these supply chain shifts.

Table 1. Full Import TEUs for select East Coast, Gulf Coast, and West Coast ports for Fiscal Year to Date (ending July)

Port	FY21 ⁴	FY22 ⁵	Change
Charleston	728,459	830,952	14.1%
NY/NJ	2,635,125	2,916,584	10.7%
Norfolk	935,687	1,031,876	10.3%
Houston	886,643	1,076,509	21.4%
Long Beach	3,889,267	3,942,661	1.4%
Los Angeles	3,303,573	3,233,238	-2.1%

⁴ January – July 2021

⁵ January – July 2022

Northwest Seaport Alliance ⁶	877,271	786,798	-10.3%
Oakland	639,386	611,501	-4.4%
Savannah	1,591,599	1,671,276	5.0%

2.0 Supply Chain Comments

The FMC should:

1. Facilitate standardized, direct, and live communication between carriers and shippers regarding the locations for empty container returns. In the FMC’s Fact Finding report 29 (FF29) it was observed that “there remains a disconnect over who is ultimately responsible for sharing the correct information and how timely the information is shared.” The Ocean carriers own the containers and direct their usage, so the Ocean carriers should be responsible for communicating changes of empty return locations. As such, the FMC should facilitate a set of standards to be imposed on the data published by Ocean Carriers. For one, the data that Ocean Carriers publish should be live, so that truckers have confidence when they arrive at a port that they will not be turned away. Independent of the medium a carrier chooses to publish the locations, be it a website, a terminal system, or a process like E-Modal or Pier PASS, the data should follow rules for ease of access by shippers. Ocean Carriers are already passing this information along to Terminals, but to improve efficiency and consistency, this information should be standardized. Convening the stakeholders and defining an initial standard should be accomplished in 60 days.
2. Ensure all participants submit data in a timely manner and keep data sharing systems updated. The FMC already knows how antiquated some systems can be, as their Maritime Transportation Data Initiative (MTDI)⁷ found some ports using emails to transfer most of their vessel information.⁸ As such, the MTDI should use the 60 days of an emergency order to ask every ocean carrier and Marine Terminal Operator (MTO) which medium they use to convey their data to shippers and in what format that data is conveyed. This will help the MTDI develop common data standards and will enable an enterprise understanding of supply chain risks.
3. Provide top-down strategy that guides seamless operations across ocean carriers, ports, terminals, chassis, trucks, and rail supported by effective policies and regulations. The existing infrastructure has been a bottoms-up implementation that lacks a cohesive strategy and planning for disruptive situations. Because container volumes are projected to double or triple by 2050,⁹ an FMC-led strategy can guide this growth while minimizing risks for disruptions and significant container cost fluctuations. Lesson learned from air traffic control can be leveraged in developing the strategy. To keep up with this projected growth, the rail system needs to be fully utilized, and a top-down strategy can allow direct comparisons between intermodal and truck-only transport.¹⁰ Convening the stakeholders and defining the top-down strategy plan should be accomplished in 60 days. For

⁶ Northwest Seaport Alliance is composed of the Port of Seattle and the Port of Tacoma

⁷ “Maritime Transportation Data Initiative.” *Federal Maritime Commission*, www.fmc.gov/fmc-maritime-transportation-data-initiative/

⁸ Gallagher, John. “Cracking the supply chain data code.” *American Shipper*, 5 Apr 2022, www.freightwaves.com/news/cracking-the-supply-chain-data-code

⁹ The Port Authority of New York & New Jersey, Port Master Plan 2050, July 2019

¹⁰ Salinger, Curtis, “Containing Compounding Container Congestion” (2022). CMC Senior Theses. 3090. https://scholarship.claremont.edu/cmc_theses/3090

example, The National Shipper Advisory Committee (NSAC) to the FMC has recommended that the FMC have oversight over rail carriage, rail detention and demurrage fees, and terms and conditions for shipments with an ocean Bill of Lading.¹¹ This would standardize oversight across the modes of transport and increase efficiency of rail operations by introducing a top-down approach.

4. Place more responsibility on port and terminals to establish a command-and-control structure over inbound and outbound containers. Establishing a stronger control structure provides an opportunity for an evenly distributed flow of containers that increases resiliency and reduces congestion outside ports. As part of a command-and-control structure consider match-making solutions that connect departing and arriving containers from carrier to U.S.-based mode of transportation. Methods that have shippers registering for a load to pick up and having the port or terminal tell the shipper when to show up can keep terminals operating at near-maximum capacity normalized over time and control congestion at the terminals. Notifying shippers allows restructuring of fees and penalties to be focused on a missed appointment versus demurrage and detention charges. This is a paradigm shift from current implementations of shippers signing up for a dual, pickup, or empty drop off timeslot that will take more than 60 days to implement.
5. Determine the effectiveness of the Interpretive Rule¹² as measured by a reduction in unreasonable detention and demurrage fees. The emergency order should be used to collect statistics on these fees, such as the total revenue from fees per month, the proportion of charges disputed, and the percentage of containers in violation of detention before and after the Interpretive Rule. This information measures if the process to dispute fees has been sufficiently improved with the Interpretive Rule. The collection of statistics should be accomplished in 60 days.

3.0 Conclusion

The U.S. supply chain is part of our nation's critical infrastructure. Congestion of the carriage of goods has created an emergency situation causing an adverse effect on the competitiveness and reliability of the international ocean transportation supply system. The FMC should facilitate standardized, direct, and live communication between carriers and shippers regarding the locations for empty container returns. Also, the FMC should ensure all participants submit data in a standardized timely manner and keep data sharing systems updated. The FMC should provide a top-down strategy that guides seamless operations across ocean carriers, ports, terminals, chassis, trucks, and rail supported by effective policies and regulations. This challenge of coordinating shipment delivery between many independent and diffuse actors can be informed by the recent restructuring of air traffic control. There, robust data sharing and centralized collaboration has allowed for a more efficient allocation of resources and resiliency in the nation's air traffic control system. Lastly, the FMC should place more responsibility on port and terminals to establish a command-and-control structure over inbound and outbound containers.

¹¹ "Expanding the Scope of the Federal Maritime Commission to Include Oversight of Rail Carriage and Related Charges for Through Bills of Lading." *National Shipper Advisory Committee*, April 2022, www.fmc.gov/wp-content/uploads/2022/04/Proposed-NSAC-Recommendation-Rail-Intermodal-Oversight.pdf

¹² "Interpretive Rule on Demurrage and Detention Under the Shipping Act." *Federal Maritime Commission*, 18 May 2020, www.federalregister.gov/documents/2020/05/18/2020-09370/interpretive-rule-on-demurrage-and-detention-under-the-shipping-act

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An emergency order leading to data transparency can allow for better visibility, simulation, and testing of supply chain disruptions. This combined with informed, proactive policies will lead to a robust supply chain that can plan for the doubling or tripling of container volumes by 2050.

Sincerely,

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