



World
Shipping
Council

Submission of Information from the
World Shipping Council

Submitted to the
Federal Maritime Commission

In the matter of
Request for Information
FMC Docket Number: 22-19 (87 Fed. Reg. 50085)

September 14, 2022

The World Shipping Council (WSC) is a non-profit trade association that represents the liner shipping industry, which is comprised of operators of containerships and roll-on/roll-off (ro-ro) vessels (including vehicle carriers). Together, WSC's members operate approximately 90% of the world's liner vessel services including more than 5,000 ocean-going vessels of which approximately 1,500 vessels make more than 27,000 calls at ports in the United States each year.¹

The Ocean Shipping Reform Act of 2022 (OSRA), Section 18 Temporary Emergency Authority (Section 18), requires the Commission to issue this Request for Information (RFI). Section 18 is both an extraordinary and very limited authority. Congress made clear both by Section 18's title – Temporary Emergency Authority – and by the series of determinations and factors required to implement it – that Section 18 is inherently an emergency authority. To issue a Section 18 Emergency Order, the Commission must first make the threshold determination that the high statutorily defined level of severity exists to declare an emergency situation, and then unanimously agree that the order it has crafted to share information will in fact alleviate the emergency situation.²

At bottom, the Commission must find that its order will fix the emergency. While we respond to whether Section 18's requirements are satisfied below in further detail, we offer that if the Commission were to take the extraordinary step of moving to issue a Section 18 Emergency Order, it should publish the order in advance of its implementation to receive comment on these same questions.

1. Has the congestion of the carriage of goods created an emergency situation causing a substantial adverse effect on the competitiveness and reliability of the international ocean transportation system?

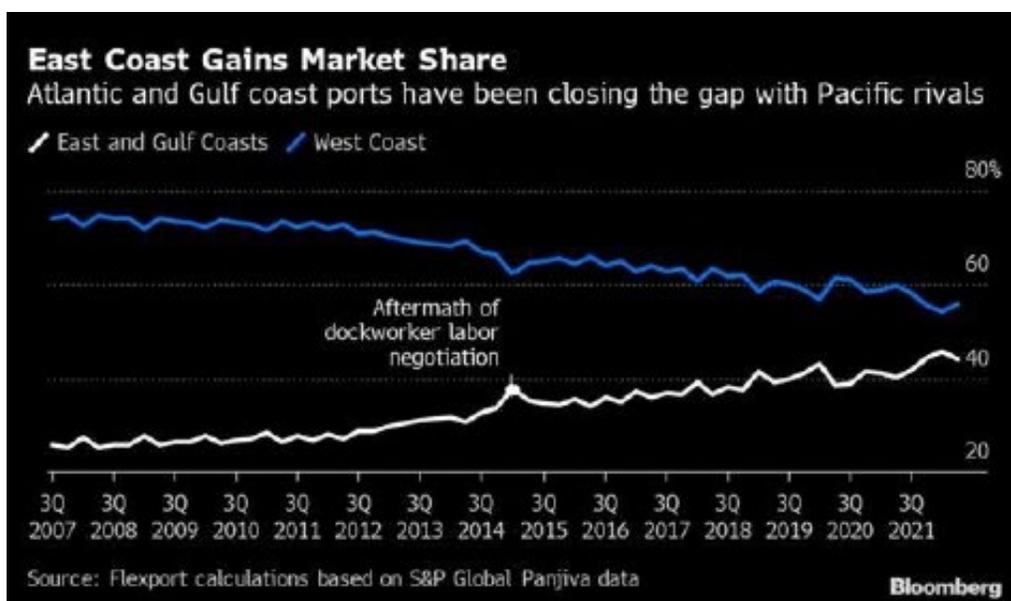
The current level of congestion in the supply chain does not support a Commission determination that meets the high standard required to declare an OSRA Section 18 "emergency situation." In fact, the Commission expressly acknowledges in its RFI that "[t]otal U.S. port congestion, measured by the number of containers on ships waiting to berth, average ship waiting time at key U.S. ports and container dwell time have all decreased in recent months." Moreover, with regard to competitiveness, the Commission's recently completed Fact Finding 29 Investigation concluded that the current market for ocean liner services in the trans-Pacific Trade is not concentrated, the trans-Atlantic is only minimally concentrated, and competition among

¹ A full description of the Council and a list of its members are available at www.worldshipping.org.

² It is important for the Commission to recognize that the scope of requested information can quickly diverge from the statutorily authorized criteria, and to correct course when it sees that happening. For example, comments from the docket include motor carriers requesting information that appears to be more about creating a database "in order to document issues that have the potential to impact detention and demurrage billing." Section 18's purpose is not to create a database for detention and demurrage claims – the Commission is already addressing detention and demurrage in several separate proceedings – rather it is to issue an information sharing emergency order that will remedy an identified emergency. The referenced docket comments do not identify an emergency.

ocean carriers is vigorous.³ With regard to reliability, ocean liner schedule reliability, while it has a long way to go, continues to steadily improve, and is up 7.8 percent on the U.S. East Coast and 13.8 percent on the West Coast from January to June 2022.⁴ Improving reliability is an indication that congestion is improving, as more vessels are able to make their scheduled berthing window. Inflationary pressures are starting to result in reduced consumer spending, with retailers reporting high inventories, cutting import volumes, and forecasting a decline in imports over the remainder of the year continuing into 2023.⁵ This will only reduce congestion as time goes by.

However, many U.S. ports continue to handle record volumes of cargo. Recent data indicates a volume shift from West Coast to East Coast ports with West and East coast volumes nearly at parity.⁶ In sharp contrast to declaring an emergency situation, however, many of these ports are looking to sustain higher volumes by investing in technology and infrastructure – to include digital information sharing technologies to enhance cargo fluidity – and actively and aggressively competing against one another for market share.⁷ This is an indication of a healthy market – not a supply chain emergency.



³ Federal Maritime Commission Fact Finding 29 Final Report, May 31, 2022, available at [FactFinding29FinalReport.pdf \(fmc.gov\)](#)

⁴ Smaller trades/ports see improving reliability, Sea Intelligence, Issue 577, August 14, 2022.

⁵ Global Port Tracker, National Retail Federation, August 2022, available at [Global Port Tracker August 2022.pdf \(nrf.com\)](#)

⁶ NAEC ports: Continued strong volume growth, Sea Intelligence, Issue 578, August 21, 2022.

⁷ U.S. Shipping Routes Shift East as Retailers Hit West Coast Snarls, Sep. 1, 2022, Bloomberg Government, available at [Supply Chain Latest: Ship Routes Move East as Firms Avoid West's Snarls - Bloomberg](#)

While record cargo volumes do result in congestion, which at times has been severe, it has not risen to the statutory level of severity set forth in Section 18. Rather, the opposite is true. Ports are highlighting their ability to handle record volumes and collaboratively resolve bottlenecks as a success story to encourage companies to do business with them.⁸ As the FMC points out in its RFI, this new environment has been in place for over two years. How can it be said now, after two years and with record volumes of cargo moving, that an emergency exists of such a magnitude that it is causing a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system?

2. Would a Temporally and Geographically Limited Section 18 Emergency Order Requiring Common Carriers and Marine Terminal Operators to Share Information Relating to Cargo Throughput and Availability with Relevant Shippers, Rail Carriers, or Motor Carriers Alleviate any Emergency Situation found to exist?

Without the benefit of an actual emergency order to review, we can only speak in the abstract as to whether any information the Commission orders to be shared will fix any emergency situation it has found to exist. What we do know is that Congress required a Section 18 order to be geographically limited. This would seem to mean that the Commission would have to limit any order to an emergency situation that it has found to exist in a particular place—likely a specific port or port area. The temporal limitation is clearer, as Congress expressly limited a Section 18 emergency order to a period no longer than 60-days.

Given Section 18's geographic and time limitations, there are numerous questions surrounding the issuance of any Section 18 Emergency Order. Though not an exhaustive list, below are several major concerns:

- (1) As the Commission acknowledges in its RFI, the supply chain is already employing a variety of strategies that are working to reduce congestion in the port areas and throughout the U.S. ocean transportation system. It is critical that participants in this work stay focused on these broader efforts to ensure cargo fluidity and velocity. It is important that the Commission closely engage with stakeholders to ensure that any order to share information will not detract from these broader efforts. There are no extra qualified personnel available to implement new requirements.
- (2) Sixty days does not provide sufficient time to develop and launch new data streams or information sharing systems. Any information being requested by the Commission will need to already be in existence and be readily transmittable using existing systems. As a recent Journal of Commerce article on OSRA Section 18 noted, "It's one thing to tell carriers to send some after-the-fact reporting, but the real-time data-sharing that will really move the data is very hard and complex. It involves thousands of participants and hundreds of software packages."⁹

⁸ Id.

⁹ [Container shipping data: Existing solutions could be elixir to 'emergency' data-sharing: vendors \(joc.com\)](#), Journal of Commerce, Sep. 2, 2022.

- (3) The Commission is aware of the myriad initiatives currently in progress to share information by both the private sector and government.¹⁰ Indeed, a significant amount of information is already being shared. Certain ports are heavily investing in information technology systems to share information as a means of enhancing cargo transparency and fluidity, optimizing terminal and asset utilization, and gaining a competitive advantage, e.g., Port of Los Angeles Port Optimizer, the Port of Long Beach’s Supply Chain Information Highway, and the Georgia Ports Authority Navis N4 Terminal Operating System.¹¹ Similarly, both the Department of Transportation’s Freight Logistics Optimization Works (FLOW) and the Commission’s own Maritime Transportation Data Sharing Initiative (MTDI) are investing their time and effort to implement information sharing systems to improve supply chain resiliency and efficiency.¹² Would a Section 18 order – which can only order one-way information sharing from common carriers and MTOs to shippers, rail and motor carriers – duplicate, interrupt, or otherwise detract from these more collaborative efforts?
- (4) The Commission must address how it will protect confidential business information, from both a security perspective as well as ensuring that sharing such information does not violate domestic and international data protection laws, competition laws, or the Shipping Act’s restrictions at 46 U.S.C. § 41103 on disclosure of information.
- (5) The Commission must consider which parties have ownership of the information ordered to be shared to ensure the emergency order does not place a disclosure burden on a party that does not have possession, custody, or control of the information sought.
- (6) Finally, Section 18 expressly requires the Commission to consider the burdens on common carriers and MTOs ordered to share information in relation to any benefit in reducing congestion a Section 18 emergency order will provide. The Commission must work closely with common carriers and MTOs subject to any order to understand the personnel and capital costs its order might impose, and most importantly, engage with stakeholders such as port directors to ensure that at the end of the day they too agree that any order will fix the emergency.

¹⁰ EDRAY’s new “Street Turns” product will provide increased visibility into the availability of U.S. export containers, see, [Technology: Software provider launches product to help exporters locate elusive containers \(joc.com\)](#), Journal of Commerce, August 29, 2022.

¹¹ See Port of Los Angeles [Port Optimizer™ | Supply Chain | Business | Port of Los Angeles](#); and Port of Long Beach Supply Chain Information Highway [Port of Long Beach, Tech Company to Create Cargo Data Tool - Port of Long Beach \(polb.com\)](#); Port of Savannah launches Navis Terminal Operation System, Sep. 6, 2022, American Shipper, available at [Port of Savannah launches Navis terminal operating system - FreightWaves](#)

¹² See White House Fact Sheet: Biden-Harris Administration Announces New Initiative to Improve Supply Chain Data Flow—Freight Logistics Optimization Works, March 15, 2022, available at [Fact Sheet: Biden-Harris Administration Announces New Initiative to Improve Supply Chain Data Flow - The White House](#); Federal Maritime Commission, Maritime Transportation Data Initiative, available at [Maritime Transportation Data Initiative - Federal Maritime Commission - Federal Maritime Commission \(fmc.gov\)](#).

WSC appreciates the opportunity to comment on the FMC's review as to whether an emergency order is necessary. We look forward to continuing to assist the Commission with its efforts to enable the supply chain to operate more efficiently.

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