

FEDERAL MARITIME COMMISSION

[Docket No. 22-19]

Request for Information

AGENCY: Federal Maritime Commission.

ACTION: Request for Information.

SUMMARY: The Federal Maritime Commission seeks public comment on whether congestion of the carriage of goods has created an emergency situation causing a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system. Information received in response to this request will help inform the Commission's decision on whether an emergency situation exists, and whether to issue an emergency order to address any such situation.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. 22-19, by email to: *secretary@fmc.gov*. For comments, include in the subject line: "Docket No. 22-19, Request for Information." Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

• *Instructions:* For detailed instructions on submitting comments, including requesting confidential treatment of comments, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission's website unless the commenter has requested confidential treatment.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523-5908; Email: *secretary@fmc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 16, 2022, the Ocean Shipping Reform Act of 2022 ("OSRA 2022") became

law.¹ Section 18 of OSRA 2022 authorizes the Federal Maritime Commission (the Commission) to issue an emergency order requiring any common carrier or marine terminal operator to share certain information with shippers and other specified entities when the Commission unanimously determines that 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 transportation supply system.²

If the Commission determines that cargo congestion has created an emergency situation, it may issue an order requiring any common carrier or marine terminal operator to share directly with relevant shippers, rail carriers, or motor carriers information relating to cargo throughput and availability. Such information sharing among industry participants is to improve the efficient transportation, loading, and unloading of cargo to or from (1) any inland destination or point of origin, (2) any vessel, or (3) any point on a wharf or terminal.³

Any Commission-issued emergency order must be tailored in terms of duration and geographic scope; consider the likely burdens on common carriers and marine terminal operators; and consider the likely benefits on congestion relating to the purposes of the Shipping Act stated in 46 U.S.C. 40101.⁴

An emergency order issued under OSRA 2022 would remain in effect for a period of not longer than 60 days and may be renewed by a unanimous vote of the Commission. The authority to issue an emergency order under Section 18 of OSRA 2022 terminates 18 months after the date of enactment of the Act.⁵

A common carrier or marine terminal operator subject to a Commission-issued emergency order may file a petition for exception from one or more requirements of the

¹ Ocean Shipping Reform Act of 2022 (“OSRA 2022”), Public Law 117-146 (June 16, 2022).

² *See generally*, OSRA 2022, sec. 18(c)-(d).

³ *See* OSRA 2022, sec. 18(c).

⁴ *See* 46 U.S.C. 40101. *See also* OSRA 2022, sec. 18(d)(2) (detailing the criteria for the Commission to consider when issuing an emergency order under Section 18).

⁵ *See* OSRA 2022, sec. 18(f)(1)-(2).

emergency order. Petitions for exception must be based on a showing of undue hardship or other condition rendering compliance with such a requirement impracticable. Not later than 21 days from the petition filing date, the Commission is required to determine whether to grant the petition.⁶

Section 18 of OSRA 2022 requires that, not later than 60 days after the effective date of the Act, the Commission must issue a request for information seeking public comment regarding specific criteria – namely, (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, (2) whether an emergency order under Section 18 would alleviate such an emergency situation, and (3) the appropriate scope of such an emergency order, if applicable.⁷ During this process, the Commission may also consult (as it deems appropriate) with other Federal departments and agencies and persons with expertise relating to maritime and freight operations.⁸ This notice fulfills this OSRA 2022 requirement.

II. Request for Information

At the beginning of the COVID-19 pandemic, the demand for worldwide ocean transportation services decreased significantly as lockdowns were imposed globally and people were hesitant to engage in normal economic activities. Accordingly, ocean common carriers cancelled many voyages, and the supply of ocean transportation services decreased.

Within a few months, however, U.S. consumer spending shifted markedly. Spending on services decreased significantly, while consumer spending on goods increased considerably - leading to a renewed and increased demand for ocean transportation services. Carriers responded with increases in vessel capacity, however this rapid shift in cargo volumes driven by consumer demand led to bottlenecks throughout the U.S. supply chain system. In particular, increased

⁶ See OSRA, sec. 18(e)(1)-(2).

⁷ See OSRA 2022, sec. 18(b)(1)(A)-(C).

⁸ See OSRA 2022, se. 18(b)(2).

container dwell times at marine terminals led to inefficiencies, including delays in vessel berthing and motor carrier services at U.S. ports.

Over the last 2 years, there have been a variety of strategies employed by industry participants to reduce congestion throughout the U.S. ocean transportation system. For example, some carriers have diverted vessel services away from the most congested port areas in an effort to alleviate severe cargo congestion at major U.S. ports. This shift, however, has often resulted in increased congestion at previously non- or less-congested U.S. port areas or regions. Total 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. Relevant metrics, however, remain higher than pre-pandemic levels.

In view of these factors and consistent with the requirements set out in Section 18 of OSRA 2022, the Commission is seeking public comments on the following:

- (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;
- (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; and
- (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.

III. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under ADDRESSES. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by email to the address listed above under ADDRESSES:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page.
- A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page and must clearly indicate any information withheld.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission’s Electronic Reading Room at <https://www2.fmc.gov/readingroom/>.

By the Commission.

William Cody
Secretary