



September 14, 2022

William Cody
Secretary
Federal Maritime Commission
800 North Capitol Street NW
Washington, DC 20573

Transmitted electronically via email to: secretary@fmc.gov.

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

Dear Mr. Cody:

The International Dairy Foods Association (“IDFA”) represents the United States’ dairy manufacturing and marketing industry, which supports more than 3 million jobs that generate \$159 billion in wages and \$620 billion in overall economic impact. IDFA’s diverse membership ranges from multinational organizations to single-plant companies, from dairy companies and cooperatives to food retailers and suppliers, all on the cutting edge of innovation and sustainable business practices. Together, they represent 90 percent of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world.

The United States exports over \$7.6 billion in dairy products to 141 countries around the world every year: currently, approximately one day’s worth of U.S. milk production each week – about 15% of all production. As a result, ensuring “an efficient, competitive, and economical transportation system in the ocean commerce of the United States” and promoting “the growth and development of United States exports through a competitive and efficient system for the carriage of goods by water in the foreign commerce of the United States” are policy priorities for the industry, since they enable U.S. dairy producers and exporters to maximize their opportunities.¹

With this context, IDFA welcomes the opportunity to submit these comments concerning the Federal Maritime Commission’s (“FMC” or “Commission”) Request for Information (“RFI”) 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” pursuant to Section 18 of the Ocean Shipping Reform Act (“OSRA 2022”).²

¹ See 46 U.S.C. 40101.

² 87 Fed. Reg. 50085 (August 15, 2022).

I. COMMENTS

(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***

The unprecedented supply chain congestion U.S. dairy exporters experienced during the pandemic has negatively affected the entire U.S. food and agricultural sector and the ripple effects are ongoing. As noted by USDA, “[o]ngoing market disruptions have created logistical challenges associated with the availability and flow of containers to transport agricultural commodities, which has prevented or delayed American-grown agricultural products from reaching their markets.”³ Secretary of Agriculture Tom Vilsack has also emphasized that the agriculture industry needs “some stability in the supply chain” and “[w]ith the delays and disruptions that are occurring, market share is at risk.”⁴

In particular, exporters throughout the U.S. dairy industry remain severely challenged by supply chain challenges that have hampered their ability to export more product, fulfill obligations to customers, and meet the world’s growing demand for U.S. dairy. Because dairy products are perishable, systemic supply chain issues create unique risks and challenges for, and impose additional burdens on, IDFA members. While dairy exports increased substantially from 2020 to 2021,⁵ the trade data does not account for the extreme rise in costs dairy exporters face across the supply chain as they try to meet customer expectations and contract terms. Dairy exporters are seeing reduced or lost profits on exports due to supply chain-related costs. Other dairy exporters are concerned that they cannot win contracts with Asian customers, even when priced lowest, because those customers will not risk dealing with an unreliable product supply chain in the United States (compared to, for example, New Zealand).

More poignant a signal of the magnitude of the adverse effect on dairy exporters’ competitiveness are the regular stories IDFA members continue to relay, even despite recent easing of West Coast port congestion, which we believe may again easily return. Some examples include:

- Observations that the current shipping situation is unlike anything companies have experienced in twenty years, including market conditions that require companies to negotiate contracts at least six weeks ahead of time in order to meet contract deadlines.
- Severe challenges finding containers in the Midwest, which often require companies to truck their products to nearby cities or ports to locate available containers.

³ <https://www.farmers.gov/pandemic-assistance/ccap>

⁴ <https://www.thecattlesite.com/news/57994/usda-funds-california-port-project-to-tackle-food-export-delays/>

⁵ Outlook for U.S. Dairy. Presented by Carolyn Liebrand, Agricultural Economist at USDA’s Agricultural Marketing Service-Dairy Program, at Agricultural Outlook Forum 2022 (February 25, 2022).



- As much as 99% of a dairy export company’s shipments being canceled or re-booked at least once in 2021, up from 10% in a typical year. IDFA argues that even a “typical year” rate of cancellations or re-bookings must be viewed as having an adverse effect on reliability and competitiveness.
- In some cases, severe delays have required companies to ship products to Asia by air, which is incredibly expensive but necessary in order to meet contract deadlines, maintain product quality, and not lose customers.⁶

Some industry partners have stepped up and are working with IDFA and its members to address congestion-related issues. For example, IDFA teamed with the Port of Los Angeles and CMA CGM to form a Dairy Exports Working Group in February 2022. The purpose of the Working Group is to identify and address supply chain issues hampering U.S. dairy product exports with market-based solutions.⁷ The Working Group discussions, which are being led by top management at the Port, CMA CGM, IDFA, and IDFA members, have yielded positive and timely results for all of the participants.

Thus far, however, other ports and liner shipping companies have not taken similar steps to engage with the industry, and the dairy foods segment continues to be negatively impacted by unnecessary supply chain-related costs that damage its perceived reliability and competitiveness with competitors in overseas markets. A market segment as large as dairy foods cannot rely on a single port and a single carrier to help resolve this crisis. As a result, we continue to find ourselves in an emergency situation and more needs to be done by the federal government to help address congestion-related issues.

(2) Whether an emergency order pursuant to Section 18 of OSRA 2022 would alleviate or improve such an emergency situation

Despite the large number of data standards and systems that have been developed over the years, the lack of appropriate and sufficient data sharing within the supply chain remains one of the main, if not *the* main, issues contributing to the massive and systemic congestion issues we face. A lack of data sharing, in turn, leads to a lack of supply chain visibility for shippers and other actors⁸ that impedes optimal decision-making – both for specific transactions as well as for forecasting and long-term planning – and thereby reduces freight fluidity and competitiveness.

⁶ <https://www.thecattlesite.com/news/57994/usda-funds-california-port-project-to-tackle-food-export-delays/>

⁷ <https://www.idfa.org/news/despite-supply-chain-challenges-dairy-companies-port-of-los-angeles-and-cma-cgm-make-progress-to-prioritize-u-s-dairy-exports>

⁸ See, e.g., the comments submitted by the Association of Bi-State Motor Carriers:

“The lack of adequate information sharing has created an emergency situation that is adversely affecting motor carriers’ operations, impeding the efficient movement of freight. An emergency order issued by the Commission would help alleviate this situation.”

Consequently, the scope of the emergency order should include a requirement for vessel-operating common carriers and MTOs to provide timely updates to beneficial cargo owners on the status of their cargoes, including data on location, container availability, earliest return date, and charges. In the 21st century, shippers should not need to spend all day on the phone or via e-mail trying to track down this information from vessel-operating common carriers and other sources.

Vessel-operating common carriers and MTOs should also be required to provide data elements proposed by numerous commenters from the trucking and third-party logistics sectors:

- “Marine Terminals that require appointments for movement of freight must clearly indicate the number of appointments available for each type of move (specific to time slot, SSL [steamship line], and container size), and must notify shippers, motor carriers and ocean carriers when those appointment slots are fully booked/no longer available.
- When a location is designated as an Empty Container Return location, notice must be given on the total number of containers being accepted (specific to SSL and container size). If capacity [to receive empty containers] is reached before the end of the day and empties are shutout by the terminal, notice must be sent to shippers, ocean carriers and motor carriers, documenting the lack of available return location.
- If a Marine Terminal Operator places restrictions on the free flow of Empty Container Returns (e.g. requiring double moves only, restricting returns for a specific SSL to certain time windows, etc.), Shippers, Ocean Carriers and Motor Carriers must be notified of these restrictions, as they may adversely affect the motor carriers’ ability to return the container.
- When on-street congestion and/or extreme traffic conditions warrant temporary closure of access to the terminal, notification must be sent to Shippers, Ocean Carriers and Motor Carriers, including time stamps of when the metering commenced, and when free flow into the terminal resumed. Port law enforcement agencies and port operations personnel may assist in this notification process as warranted.
- When system issues adversely affect a terminal’s ability to process trucks, notification must be sent to Shippers, Ocean Carriers and Motor Carriers, including time stamps indicating when the system issue commenced, and when the issue was resolved.”⁹

⁹ See, e.g., comments submitted by Atlantic Star Trucking, STG Intermodal, MTI, Inc., L&A Transport, Fast Track Logistics, LLC, A I Dedicated Transport LLC, Marine Container Services LLC, San Antonio Broker Services, BBT Logistics, Inc., and RPM Courier Systems, LLC. See also similar comments submitted by the National Customs Brokers & Forwarders Association of America, Inc. (“NCBFAA”).

IDFA also recommends that ocean carriers be required to share information with respect to how many containers are on the last free day before accruing per diem or demurrage sufficiently in advance such that MTOs are able to anticipate demand and plan for the likely volume of appointments, as well as labor and equipment needs.¹⁰

In addition, IDFA agrees with other commenters that these notifications “should be posted and archived on a platform that is readily accessible by shippers, motor carriers and ocean carriers for later reference, in order to document issues that have the potential to impact detention and demurrage billing.”¹¹

When truckers have to wait in line for hours outside of ports, only to find out when they arrive at the terminal that no more empties can be returned (meaning that the chassis cannot be made available to pick up inbound containers), the container they went to pick up is not actually available, or the booking has been rolled, this feeds congestion. This broken system also drives good people out of the trucking industry, when we are already experiencing severe driver shortages in certain parts of the country. Ultimately, data sharing issues that negatively impact the trucking industry also adversely affect Beneficial Cargo Owners, such as IDFA members, in the form of unnecessary fees and other costs, delays, spoiled products, lost sales, damaged relationships with customers, and systemic unpredictability. These issues make it more difficult to plan ahead, grow a business, and hire, train, and retain workers.

If certain segments of the supply chain refuse to share appropriate data voluntarily within the supply chain to improve visibility and alleviate congestion issues – perhaps because their business models appear to benefit from such congestion (and the resulting fees that are generated) – then IDFA has no choice but to support potential FMC efforts to compel those actors to provide the necessary data.

In this context, IDFA notes that ASTM International, a globally recognized developer of international standards, is establishing a new Technical Committee on the Sharing and Use of Digital Information in the Supply Chain in the coming weeks. Established in 1898, ASTM and its 30,000 plus volunteer technical experts and business professionals from over 140 countries have developed over 12,500 standards in 110 technical committees. IDFA encourages all actors in the supply chain, as well as staff from FMC and other federal agencies, to participate in the work, which is aimed at incentivizing the exchange and use of appropriate data within the supply chain and complementing federal policymaking in the area of supply chain data. ASTM has also invited other standards bodies to participate in the work to ensure that there is coordination and no duplication of effort, and so the committee can move quickly by leveraging and adding value to the great work that has already been done.

¹⁰ See also comments submitted by the Bi-State Motor Carriers and NCBFAA.

¹¹ See, e.g., comments submitted by Atlantic Star Trucking et al.



(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

The geographic scope of the emergency order should be national: congestion-related issues are affecting IDFA members at port communities across the country. Further, because the supply chain is interlinked, problems affecting one region eventually spread and negatively impact other regions, as evidenced by the current congestion at East Coast ports. As a result, it is important to put in place an order that applies nationally.

Given the severity and systemic nature of the problem, the Commission should keep the emergency order in place for as long as OSRA 2022 allows, namely for 60 days, and then the emergency order should be renewed and extended until 18 months after enactment.

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IDFA thanks the Commission for its work on this important issue to our industry, and welcomes the opportunity to discuss these concerns and recommendations in greater depth.

Respectfully submitted,

A handwritten signature in black ink that reads "Becky Rasdall". The signature is written in a cursive, flowing style.

Becky Rasdall
Vice President, Trade Policy and International Affairs
International Dairy Foods Association