



September 14, 2022

VIA ELECTRONIC SUBMISSION (www.regulations.gov)

William Cody
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

RE: Request for Information [Doc. No. 22-19]; 87 Fed. Reg. (156): 50085 (August 15, 2022)

Dear Mr. Cody,

Tyson Foods, Inc. (“Tyson”) is an American, multinational food company based in Springdale, Arkansas that operates to process and market chicken, beef, and pork products, among others. Tyson depends on effective and functional supply chain to ensure our food is accessible every day.

The supply chain remains a stressed system. Tyson currently must find alternative arrangements approximately 80 percent of the time as our goods are unable to move as scheduled for ocean transport. That means additional financial and staff resources must be spent to ensure our goods are delivered, albeit delayed. A relatable analogy for this situation is for a traveler to arrive at the airport for an international trip only to learn the airplane is not available. The traveler would need to wait – perhaps two to 15 days – for the airplane to arrive as there is no other option for this type of travel. All expenses during that time for the hotel, food, *etc.* would have to be covered by the traveler – not the airline carrier. That is the situation thousands of companies face daily as ongoing congestion of the international ocean transportation supply system exists.

The Federal Maritime Commission Must Act to Address the Sustained Congestion of the International Ocean Transportation Supply System

The Federal Maritime Commission (FMC or Commission) should take immediate action to reduce the sustained congestion at U.S. ports due to instability of the international ocean transportation supply system. This action should address short-term issues through an emergency order and include long-term strategy to be nimbler when such issues arise. Our comments below address the questions the Commission is seeking input on.

An Emergency Order Would Alleviate Congestion and Should not be Limited to a Specific Timeframe or Region.

The U.S. agriculture and food exporters are not a major cause of the global supply crisis; however, our inputs and food products are critical for populations around the world, and if the supply chain is congested, it risks contributing to global food insecurity. For Tyson, that not only includes food that is sold at retail and foodservice channels but also food products that have little market appeal in the U.S. and are primarily consumed in other countries such as chicken and pig feet. Seamless flow of goods in and out of ports is essential to ensure no food products are wasted and must be landfilled.

We appreciate the Biden Administration taking action to help alleviate congestion in the supply chain. Activities such as pop-up container yards and the Freight Logistic Optimization Works (FLOW) Initiative are important initial activities but have limited effectiveness as they do not benefit the reefer exporter. As an exporter for temperature sensitive goods and components, these activities do not alleviate the challenges we face. Tyson supports additional activities by the Commission to ensure a steady flow of the supply chain.

We believe that Section 18 of the Ocean Shipping Reform Act of 2022 (OSRA 2022) information sharing under an emergency order can help mitigate the severe congestion at many U.S. ports. The value of Section 18 of OSRA 2022 lies in the data and information of importers with excessive dwell and volume so that action can be immediately taken to ensure goods are able to move; then the value of Section 18 is significant. Importer action to process imported goods at a normal flow is critical to the recovery of the global supply-chain. For example, real time information can help companies navigate vessel changes, terminal Early Return Date (ERD) - Cut-off coordination with service providers, reduce documentation revisions, and improve communication with internal and external customers. Consequently, if Section 18 of OSRA 2022 information sharing does not drive action or inventory acceleration, then Section 18 of OSRA 2022 may not have an impact in reducing the sustained congestion at U.S. ports due to instability of the international ocean transportation supply system.

The FMC must be nimble and act when conditions arise to prevent a slowing of the supply chain. The instability of vessel service continues to significantly impact Tyson operations, administration, service providers, and international customers. To ensure food is accessible, the congestion of ocean transportation supply system must be addressed. Further, an emergency order should not be limited to one region or port as today's crisis demonstrates. When one region is stressed, the entire system is stressed limiting the ability to move goods freely. Below are a few examples that highlight this interconnectedness.

○ Recent Examples

- Example 1: Forest, MS – Products traditionally flow from Mississippi to the Memphis, TN rail hub. Due to the significant congestion in Savannah, GA (Garden City), rail embargoes are frequent throughout the week in Memphis. Often, our dray carriers arrive in Memphis without knowledge of an embargo. As a result, we must divert product to other ports which impacts service, costs, plant productivity, and document revisions.

- Example 2: Oakland, CA – Port terminals have significant container inventories. Due to high terminal container inventories, ERD-Cut dates/times are dramatically reduced, which impacts our ability to deliver exports to the terminal. It is not uncommon for companies to have to deliver the entire booked container volume in a single shift due to the cut date compression. This impacts dray carriers, Container Freight Stations partners, and increases equipment pressures.
- Example 3: Oakland, CA – Week of Aug 1, 2022, the Oakland International Container Terminal could not discharge imports due to excessive container inventory. Therefore, the booked vessel could not dock at Oakland, requiring us to rebook with another vessel at that port, assuming one would be available. Rebooking with another vessel causes significant coordination, rework of documents, and negatively impacts product freshness to our customers. This was challenging for a company that produces refrigerated product, as not all ports are equipped to handle temperature sensitive product. When options are limited, having timely information allows companies with temperature sensitive product to seek alternative gates ensuring those products remain in the market.
- Cold Storage Capacity is Challenged – With the instability of the ocean network, our export cold storage footprint is near full capacity.
- Import Containers Are Not Staged Efficiently – Import containers are the lifeblood of export operations and having containers available at inland ports is crucial. Lack of container availability forces us to move a significant amount of priority product with over-the-road trucks, resulting in increased cost, reduction of container/trailer utilization (weight limitations), strained container freight station capacity, and compressed document timelines.

The FMC should also be working with other Department of Transportation (DOT) federal agencies, as congestion of the international ocean transportation supply system impacts other transportation networks within the supply chain. For instance,

- U.S. Rail Network is Impacted by Port Congestion – Rail service for both container and manifest trains continue to suffer. It is not uncommon for rail embargoes to be enforced. As a result, companies quickly shift product to over-the-road transportation, which significantly increases cost and impacts container/trailer utilization. For temperature sensitive products that have a limited shelf-life (refrigerated or frozen product), this adds additional complexity as product safety conditions must be maintained to ensure public health is protected.
- Truckers Hours of Service Is a Limiting Factor – Delays at ports frequently cause truckers to “time out” as they wait in line for goods. This needs to be addressed to ensure a consistent supply chain. Potential solutions include a coordinated effort by the DOT with states and other agencies that provide emergency exemptions for hours of service, weight limits, *etc.*
- Goods Should be Prioritized for Expediated Transport – The DOT, working with its agencies, should develop a strategy for critical goods to be given priority for transport.

For instance, life sustaining goods and the components needed to manufacture them should be prioritized as well as allowing reefer exporters priority gates.

As highlighted above, it will be critical for reducing the congestion of the supply chain that the scope of an emergency order should be extended for all jurisdictions under the Commission's authority. Further, the emergency order duration should be indefinite and reviewed as needed until supply-chain uncertainty alleviates and normal activity can resume across the entirety of FMC's jurisdiction.

Finally, all the issues raised above, combined with typical maritime complexities, the detention and demurrage data mining on disputes continue to negatively impacts companies as significant personnel resources are needed to address to ensure issues are accurate and reflective of the situation. For example, the costs of increased cold storage and demurrage/detention may be more than the fee for ocean freight itself.

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In summary, the FMC must address the sustained congestion at U.S. ports due to instabilities of in the international ocean transportation supply system. With ocean carrier on-time delivery percentage being less than 30 percent, the supply chain and the accessibility of goods is significantly impacted. A short-term solution is to issue an emergency order with a scope that includes all jurisdictions under the Commission's authority.

In addition, the FMC should develop a long-term strategy to address instability of the international ocean transportation system. This strategy should identify when an emergency order is needed, including the parameters for it to be lifted. This strategy should also address the prioritization of goods that are moved during an emergency order. For instance, life sustaining goods and the components needed to manufacture them should be prioritized as well as allowing reefer exporters priority gates. To ensure the strategy developed by the FMC reflects today's supply system, this strategy should be developed and made available to stakeholders through the Administrative Procedures Act process. This transparency is essential for the Commission to maintain ongoing legitimacy with stakeholders.

Tyson is a food company, and we depend on thousands to help produce and deliver our food. If our food cannot be made or delivered, people go hungry. Our ability to supply food is tied to an effective supply chain and the FMC leadership is critical to ensure that the supply chain is functional.

Thank you for your consideration and should you have any questions, please contact me.

Sincerely,

Patrick Simmons
Vice President, Supply Chain
Transportation