

**Comments in Response to
Department of Transportation – Office of the Secretary
Request for Information – Docket No. DOT-OST-2021-0106**

Submitted by National Milk Producers Federation & U.S. Dairy Export Council

Please accept these comments in response to the U.S. Department of Transportation's Notice of Request for Information, Docket No. DOT-OST-2021-0106, published on September 16, 2021, on behalf of the National Milk Producers Federation (NMPF) & U.S. Dairy Export Council (USDEC).

NMPF develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of dairy producers on Capitol Hill and with government agencies. NMPF provides a forum through which dairy farmers and their cooperatives formulate policy on national issues that affect milk production and marketing. NMPF's contribution to this policy is aimed at improving the economic interests of dairy farmers, thus assuring the nation's consumers an adequate supply of pure, wholesome, and nutritious milk and dairy products.

USDEC is a non-profit, independent membership organization that represents the global trade interests of U.S. dairy producers, proprietary processors and cooperatives, ingredient suppliers and export traders. The Council's mission is to build global demand for U.S. dairy products and assist the industry in increasing the volume and value of exports. U.S. dairy exports are critical to the economic health of America's 31 thousand dairy farmers and the thousands of American workers throughout the supply chain whose jobs are supported by the U.S. dairy industry.

We appreciate the Department of Transportation's work to determine how to help address the nation's supply chain issues, and specifically, its attention to the challenges facing shippers and exporters. Since the onset of COVID in early 2020, supply chains have been severely imbalanced, with significant consequences for many American industries. These issues warrant the focus of the entire federal government in order to address the negative economic effects to both businesses and consumers from these challenges. The establishment of the White House Supply Chain Disruptions Task Force and the President's executive orders on America's Supply Chains and Promoting Competition in the American Economy are positive initial steps which we hope will continue to drive high-level attention to the obstacles affecting U.S. supply chains and exports. We urge the Administration to act with expediency to implement additional measures to address the mounting challenges facing U.S. exporters.

As the Department is well-aware, the international ocean carrier market has been a source of increasing frustration for American exporters and importers. Foreign flagged ocean carriers have implemented extraordinary business practices that have aggravated the effects of the equipment distribution situation, causing further disruption for American exporters. It appears to many that some ocean carriers have sought to exploit these shipping challenges to their economic advantage, at great cost to agriculture producers and other American businesses.

NMPF and USDEC member companies rely on ocean carriers to facilitate their access to foreign markets and customers. In effect, their business success is captive to the ocean carriers, so disruptions to this system that affect the reliability of cost and delivery have significant consequences. We are understanding of supply and demand effects, but the current situation exceeds fundamental economic trade-offs and is the result of a failure to use reasonable regulatory tools to create functioning markets for all users.

The carrier practices in question include limitations on access to equipment (containers & chassis), unavailability and/or cancellation of vessel bookings, increased assessment of detention and demurrage charges, new fees, violations of service contracts, spot rate increases, among other unreasonable and unjust actions. We have seen the export of empty containers swell to 70 percent of outbound TEUs from West Coast ports, while at the same time U.S. dairy exporters experience unprecedented obstacles to securing the means of export conveyance. Many shippers are reluctant to file complaints before the Federal Maritime Commission due to concerns about retaliation, in addition to apprehension about the cost, time and likelihood of success from engaging in lawsuits. Port terminals have also contributed to these challenges, often in concert with the carriers that typically fund and direct their operations. This has included limited hours of operation, challenges with drayage appointment bookings, levying of their own detention and demurrage fees.

Below are a few examples of the shipping challenges U.S. milk producer and dairy exporters have faced:

Continually Rolled Vessel Bookings, Cancellations & Delays: One customer has had 30 shipments delayed greater than six months continuously. Another had a shipment of product on the West Coast that has been rolled so many times it ultimately was booked to go on the next voyage of original vessel that the product was booked on weeks ago. So, the boat has circumnavigated Asia and come back to get its original cargo. Another exporter reported that in any given week they have 100-175 containers that they have loaded at their plant but cannot get onto a vessel. Additionally, an exporter noted that 95% of their bookings from October 2020 to April 2021 have been delayed at least once. A carrier canceled shipments of 58 forty-foot equivalent units (FEU) for one exporter.

Unreasonable Detention and Demurrage Fees: One exporter cites that appointments for container pick up or drop off are not facilitated and drivers often have to wait in line for hours. As a result, appointment times are missed, leading to additional detention & demurrage charges that are incurred for factors beyond the shippers' control. Similarly, others report being charged detention and demurrage for time when the port is not open for container retrieval or return, or when containers are detained for Customs inspection. Year to date, a dairy exporter notes that detention charges and related fees alone on the ocean side totaled approximately \$120k and \$58k for inland ports.

New Booking Guarantee Fees & Late Notice of Spot Rate Increases: One exporter had to pay a carrier an additional fee of \$200/TEU for a booking guarantee. Another exporter notes that an ocean carrier informed them of rate increases of as much as \$1000/TEU with less than 30 days' notice of the pending shipments. Others have indicated that carriers acknowledge

that they are not abiding by service contract rates and are charging higher fees for vessel accommodations.

Economic Consequences

The economic and market consequences of these carrier practices are significant and damaging to NMPF and USDEC member companies and the thousands of workers they support throughout the supply chain. U.S. producers are losing hundreds of millions of their export value to the added costs, delays, and fees.

This challenge also is causing long-term damage to the reputation of and market opportunities for American dairy and other agriculture exporters. Some foreign customers are reporting that they have been forced to move their sourcing away from American dairy products in order to tap into more dependable supply sourcing from other countries. The delivery of American-produced dairy goods to Asian and other markets is no longer considered consistent or reliable, which upsets customers production schedules. The increased costs of ocean shipping either result in passed-on costs and less competitive goods, or lost revenue for American producers. Delays and waylaid containers reduce the shelf-life of goods, diminishing values and at times rendering product unusable. Excess product initially destined for export backs up domestic supply, putting downward pressure on prices and subsequently farm-gate milk prices.

Some Asian customers have been put at risk of shutting down their operations due to chronically late shipments. Competitors from Europe, Australia, and New Zealand are faced with either substantively fewer shipping disruptions when compared to the United States or none at all. These foreign suppliers are stepping in to fill the void exacerbated by carrier cancelations and delays that American exports face. We're aware of importers substituting for these and other goods in the face of cost and time challenges facing American exports. These will be challenging markets and customers to reclaim

Recommendations for DOT & US Government

Though there are some that suggest the ocean shipping challenges are simply a consequence of supply and demand, and that time alone will lead to rebalancing, there is ample evidence that that is not the case. Instead, there has been a change in behavior by the ocean carriers that is severely harming shippers, including American dairy exporters. While there is hope that ocean carriers will make changes to these practices, it is important that the U.S. government and Department of Transportation take steps to alleviate these challenges and encourage, induce, and incent improvements in ocean carrier's posture. Moreover, ports and related enterprises involved in the supply chain have – after over a year of market upheaval – failed to respond to market incentives to expand port handling, warehouse, and transportation capacity by expanding hours for ports, warehouses, and related staffing.

Below are some specific recommendations on steps that can be taken by DOT and the U.S. government. We would like to emphasize the importance of pursuing both near-term and long-term remedies. Our industry urgently needs action to improve shipping conditions; progress on certain fronts should not await the ability to implement new steps on all conceivable supply

chain areas. Rather, we urge the Administration and DOT to swiftly implement those measures that can be accomplished in the near-term while continuing to work toward implementation of those measures requiring more time to execute.

1. NMPF and USDEC also encourage DOT to identify ways of incentivizing ocean carriers to increase the loading of export containers, versus shipping upwards of 70% of their capacity to Asian markets as empty containers. This wasteful practice runs counter to the Administration's climate goals by not making efficient use of the vessels' return voyages. This could include prioritized berthing access, ameliorated terminal fees or other inducements.
2. The DOT can also take steps to support improved port operations and encourage more efficient export flows. Recent announcements of expanded hours of operation at the Port of Los Angeles and Port of Long Beach are positive steps in this regard but must also be coupled with actions to provide additional warehouse, labor, and transportation capacity to make effective use of the increased hours of port operation. Expanding vessel bookings and export flows out of the Port of Oakland and other ports and further expanding hours of operation at Los Angeles and Long Beach and at other ports would contribute to increased cargo flows. As noted earlier, we strongly urge coupling encouragements to expand ports hours together with supports to ensure the additional necessary elements of the supply chain are enhanced to make effective use of the longer port operations hours.
3. It has become apparent that the Federal Maritime Commission is not sufficiently equipped to address ocean carrier violations of this breadth. Shippers are reluctant to file complaints, which limits the FMC's enforcement capacity under the current overly legalistic system which requires companies to individually file complaints. The FMC has recently taken positive steps to investigate detention and demurrage, audit carrier practices and engage with stakeholders. But penalizing violations or compelling different behavior appears to be beyond their present authority and/or capacity. Legislation that would improve the FMC's authorities, including the Ocean Shipping Reform Act, H.R. 4996, has been introduced and should be supported by the Administration.
4. Workforce shortages at and around the ports have also been identified as a significant limitation on cargo efficiency. A shortage of available truckers, warehouse workers, among others, has limited the extent to which goods can be moved on and off of ports. The Department of Transportation, in concert the Department of Labor, state and local government, private businesses, unions and other stakeholders could engage to jointly identify means by which this port workforce gap can be addressed, both for immediate and long-term needs.
5. The DOT, through the Maritime Administration, should consider establishing standards for port terminal data sharing systems. The Port of Los Angeles has pioneered the Port Optimizer data tool to facilitate information sharing and trucker and container scheduling as a pilot program, and the full adoption of similar systems by other ports will help increase efficiency and cargo flows.

6. The Bureau of Transportation Statistics could also help shed additional light on the flow of containers, both loaded and empty, through the ports and identify trends relative to specific ocean carriers, vessels and/or destinations. Individual ports release some of this information, but collecting, analyzing and reporting on these cargo trends on a frequent, consolidated fashion would be valuable. This could enable insight into which carriers are supporting efficient export carriage, as well as those that have not been enabling reciprocal trade.
7. Over a longer-term, the DOT should conduct a comprehensive review of port infrastructure, operations and capacity and identify particular bottlenecks that have impeded more efficient cargo flows. While individual ports conduct their own operations and capital reviews and seek out local and federal grants and other infrastructure funding, a national review will better help assure that national investments are targeted at the greatest needs. Furthermore, cargo flows at and around ports often involve multitudes of infrastructure owners and stakeholders, so having a high-level review of port needs will better identify and address gaps and cross-cutting investment needs.
8. Similarly, the FMC should be better funded to expand its investigative capacity. Other means of expanding its influence, including assigning detailees from other Federal agencies, such as the Department of Justice or the Department of Transportation's Inspector General, should be considered.
9. NMPF and USDEC believe there would be value in the President directing the Department of Justice to review the existing Shipping Act law to determine if the enforcement tools in that Act can be activated to gain compliance with the other provisions of the Act setting forth reasonable practices.
10. The availability of containers and other equipment continues to be a challenge, both in terms of overall volume, as well as the ownership and control by ocean carriers. Consideration should be given to increasing the domestic manufacture of these essential means of conveyance rather than relying so heavily on foreign production of containers and chassis. Similarly, the development of increased domestically owned container capacity would have strategic value and could reduce dependence on ocean carriers for access to containers for American producers. Measures such as loan guarantees, tax credits or other incentives could be considered to promote the development of this domestic shipping equipment capacity.
11. The role that ocean carriers play in trade facilitation should also be a matter of review by the U.S. government. Ocean shipping is covered by certain World Trade Organization rules, and to the extent that some ocean carriers are owned or subject to the control by foreign states or state-owned enterprises, should permit a review of their practices by the U.S. Trade Representative.

We realize that the challenges our agriculture exporters face will not change overnight. But with the holiday import surges arriving soon, the challenge is growing. Regulatory action and enforcement steps take time to be implemented, and while those important processes need to

move ahead, NMPF and USDEC call on you and your administration to take effective steps to gain immediate relief. Recognizing that relief may be incremental, it must begin very soon.

Thank you for your consideration of these comments.

Contact Points:

Shawna Morris
Senior Vice President, Trade Policy
NMPF and USDEC
smorris@nmpf.org

Tony Rice
Manager, Trade Policy
NMPF and USDEC
trice@nmpf.org