November 7, 2022

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

Dear Secretary Cody,

These comments regarding Federal Maritime Commission (FMC) Docket 22-24 are respectfully submitted by the International Fresh Produce Association (IFPA) and its respective members. IFPA is the largest and most diverse trade association representing the entire global produce and floral supply chains. Formed on January 1, 2022, out of the combination of legacy organizations, Produce Marketing Association (PMA) and United Fresh Produce Association, IFPA represents 3,000 member companies including growers, shippers, wholesalers, distributors, fresh-cut businesses, retailers, foodservice companies, and related subsidiaries. IFPA members have operations in all fifty states, Washington D.C. and Puerto Rico, and thirty-eight countries around the world.

Ocean carriers play a vital role in commerce and are a vital partner for both the private and public sector in the transportation of goods. While we understand that ocean carriers are a business with fiduciary responsibilities like any other business, they also have a responsibility to the public at large. Their determination of which cargo to carry and when, has far reaching impacts across multiple sectors of their economy and they have historically used those to exclude the transportation of some goods, like produce, which are less profitable for them.

To that end, we are concerned about language in the NPRM that states: “An ocean common carrier may be viewed as having acted reasonably in exercising its business discretion to proceed with a certain arrangement over another by taking into account such factors as profitability and compatibility with its business development strategy.”

This language provides ocean common carriers with broad discretion to reference their “business development strategy” as a reason to refuse the transport of any goods, including produce, simply because it does not align with their interests – which can vary, and be changed at a moment’s notice simply to maximize profit, while ignoring public good. Specifically, this regulation undermines Congressional intent, and one of the main reasons that the Ocean Shipping Reform Act (OSRA) was passed in the first place, to protect the interests of exporters and the American public which has suffered from the business practices of the ocean carriers. To include such a provision, essentially voids this OSRA aim and nullifies protection of US exporters.

Our request would be for the commission to remove the reference to discretion altogether. We believe that there is no basis for the FMC to extend discretion to common carriers that can be presumed to act only in their private interests, not the public interest. The reasonableness of a refusal should not be
prejudged by the regulation’s deference to a general business development strategy and should only be judged by its merits, on a case-by-case basis.

We appreciate the opportunity to submit these comments and look forward to the publication of a decision by the FMC in response to Docket 22-19.

Respectfully,

John Hollay
Director of U. S. Government Relations
International Fresh Produce Association