



February Legislative and Regulatory Report

LEGISLATIVE

Senate Introduces Ocean Shipping Reform Legislation

In December 2021, the House passed the Ocean Shipping Reform Act by a bipartisan 364-60 vote. The legislation would authorize appropriations for the Federal Maritime Commission for FY22 and FY23 and proposes several changes to the Shipping Act. Senator Klobuchar (D-MN) recently introduced the companion measure in the Senate, which has 23 bipartisan cosponsors and was referred to the Senate Committee on Commerce, Science, and Transportation.

While the two bills are not identical, both versions would: require ocean carriers to certify detention and demurrage charges comply with federal regulations; shift the burden of proof regarding the reasonableness of detention or demurrage charges to the ocean carrier; prohibit ocean carriers from unreasonably declining shipping opportunities for U.S. exports, as determined by the FMC in a new required rulemaking; require ocean common carriers to report to the FMC quarterly on total import and export tonnage per vessel; authorize the FMC to self-initiate investigations of ocean common carrier's business practices and apply enforcement measures; and establish new authority for the FMC to register shipping exchanges.

However, the House bill includes stronger provisions pertaining to trade reciprocity of imports and exports. While the World Shipping Council strongly opposed the House legislation, it issued a statement indicating it looks forward to the "opportunity to work with the Senate to craft a final bill that – in contrast to the House bill – takes a comprehensive, forward-looking view of the real root causes of supply chain congestion – and that does not make that congestion worse." Organizations representing shippers, motor carriers, and the agricultural industry have generally been supportive of both measures, though some have favored the stronger reforms contained in the House bill.

Should the Senate bill pass the chamber, Congress would likely proceed with a conference or other negotiation process to resolve the differences between the two measures to produce a final bill.

Separately, Sen. Klobuchar also introduced the Ocean Shipping Competition Reform Act of 2022. The legislation is cosponsored by Sen. Booker (D-NJ) and was referred to the Senate Judiciary Committee. The bill would allow third parties, including shippers and ports, to participate in legal action brought by the FMC against ocean carriers in vessel



sharing agreements – also known as alliances – and if applicable, receive monetary damages.

REGULATORY

USDOT Issues Freight Supply Chain Assessment and Policy Recommendations

In February 2021, the Biden-Harris Administration issued an Executive Order on U.S. supply chain resiliency and security. Among other provisions, the EO directed the U.S. Department of Transportation to complete, within one year, an assessment of freight supply chains addressing the role of transportation systems in supporting existing supply chains and risks associated with those transportation systems, as well as the risks posed by climate change to the availability, production, or transportation of critical goods and materials.

The report provides 62 policy recommendations “to resolve current disruptions and build more resilient supply chains for the future.” USDOT identified five broad federal policy roles to strengthen supply chain resilience: infrastructure investment; planning and technical assistance; research and data; rules and regulations; and coordination and partnership with non-federal stakeholders. Each recommendation under these policy roles is categorized by its expected level of complexity, cost to implement, magnitude of its potential impact, and time frame for completion.

The recommendations address broad policy goals such as investments in projects of national and regional significance, supporting freight research and planning activities, and increased interagency and multimodal coordination. Consistent with Administration priorities, recurring themes throughout the report incorporate environmental, equity, and labor considerations.

The report also provides more specific policy recommendations for the freight and intermodal industry, including to: identify temporary solutions to ease congestion, such as “pop-up” intermodal yards; expand truck parking availability; facilitate the use of communications systems to identify the location of products or next loads for truckers, terminal managers, and/or beneficial cargo owners; support deployment of technology to track containers and chassis; urge Congress to eliminate the Fair Labor Standards Act motor carrier overtime exemption; support the FMC in regulating ocean carriers to promote free and fair competition and urge Congress to enact ocean shipping regulatory reform; focus on increasing domestic manufacturing of new chassis, containers, zero-emission equipment, and gantry cranes; promote alignment of operational hours at warehousing facilities, seaports, rail facilities, and intermodal transfer facilities; harmonize the appropriate roles of the STB, FMC, and USDOT in regulating and providing



oversight for the freight and logistics industry; and explore standardization of 53-foot marine container sizes for international trade.

FMC Requests Comments on Detention and Demurrage Billing Requirements

On February 15, the Federal Maritime Commission issued an advance notice of proposed rulemaking pertaining to demurrage and detention billing requirements. The ANPRM follows an interim recommendation by the Fact Finding 29 investigation on International Ocean Transportation Supply Chain Engagement.

FMC is requesting public comments regarding whether it should regulate the demurrage and detention billing practices of common carriers and marine terminal operators. The ANPRM asks stakeholders to consider the different circumstances under which fees are assessed and express whether any potential regulation should apply to vessel-operating common carriers, non-vessel operating common carriers, as well as MTOs, and if requirements should vary based on the type of entity.

Additionally, the ANPRM poses several questions on minimum information requirements for detention and demurrage bills. FMC notes such requirements could improve the accuracy and clarity of charges and potentially decrease the number of disputes. Specifically, FMC is considering whether it should require bills include: information necessary to identify the shipment, such as bill of lading and container numbers; information on how the charges are calculated, such as container availability dates, vessel arrival dates, and earliest return dates; and information on any events which would justify stopping the clock on charges, including container unavailability, lack of appointments or pickup or return locations, and chassis restrictions.

In response to complaints regarding delays in receiving detention and demurrage bills, FMC is considering the implementation of timing requirements for such bills as well as similar requirements for the issuance of refunds. The ANPRM requests feedback on a proposal that would require demurrage or detention bills be issued within 60 days of the occurrence of the charge, FMC notes this timeframe is consistent with invoicing requirements under the Uniform Intermodal Interchange Agreement.

Comments on the ANPRM are due March 17, 2022.

USDOT Solicits PIDP Grant Applications

In February, the Maritime Administration issued its fiscal year 2022 notice of funding opportunity for the Port Infrastructure Development Program. The program provides funding to improve port intermodal connections and facilities within coastal seaports, inland river ports, and Great Lakes ports. The NOFO marks the first round of PIDP grants under the Infrastructure Investment and Jobs Act, which provided \$450 million for the program's FY22 awards. Of this amount, 25 percent is reserved for small projects at



small ports – defined as projects requesting less than \$11.25 million in grant funding at ports with an average annual cargo tonnage of less than 8,000,000 short tons.

As directed by Congress, this year’s NOFO expanded eligibility to incorporate projects that improve the safety, efficiency, or reliability of operational improvements, including projects to improve port resilience as well as environmental and emissions mitigation measures. Examples of newly eligible projects include, idling reduction infrastructure, the purchase of cargo handling equipment, and electric vehicle charging or hydrogen refueling infrastructure for drayage and medium or heavy duty trucks and locomotives that service ports. MARAD notes that as required by the FY22 National Defense Authorization Act, “the Secretary shall give substantial weight to a project’s impact on port resilience.” Funding may not be used for the purchase or installation of fully automated cargo handling equipment or terminal infrastructure if such equipment would result in a net loss of jobs within the port or port terminal.

Applications are due May 16, 2022.