



August Legislative and Regulatory Report

Legislative

House Introduces the Freight Rail Shipping Fair Market Act

In August, Rep. Payne (D-NJ) introduced the Freight Rail Shipping Fair Market Act. The bill would authorize \$256 million over five years for STB programs and require at least \$1 million per year for two years be used for studies on freight rail competition, the environmental benefits of rail, and supply chain data.

The legislation expands detention and demurrage to private car owners and lessees that transport goods, including agricultural commodities and other essential commodities, by allowing them to establish demurrage charges and rules. The charges should be assessed to fulfill the need for freight car use, distribution, and efficient use of private freight cars. Railroads, private car owners, and lessees must report quarterly assessed demurrage charges to the STB. STB must complete a rulemaking to implement these changes and identify which goods qualify as essential commodities.

The bill requires common carrier service terms to include minimum service delivery standards for efficient, timely, and reliable rail service and remedies for instances when these standards are not met. To determine whether a carrier provided reasonable service, STB will consider the effects of changes on the frequency of service and delivery windows; employee reductions, including clerical, customer service, maintenance, dispatch, yard, and train and engine service workers; changes in train or yard crew availability; consolidation or shifting crews within service territories; and a rail carrier reducing equipment supplies, equipment maintenance, railroad infrastructure, or moving equipment across or within service territories, customers, or commodity groups. STB will also consider whether the service reasonably meets the local operational and service needs of the person requesting transportation; whether the person requesting service provided rail equipment or resources to support the service; whether any rail carrier service requirements are necessary to meet local service requirements or allow the rail carrier to recover variable costs of providing transportation; and how the carrier handles equipment owned or leased by the person requesting service. STB will expedite and consider alleged common carrier service term violations within 180 days. If STB determines a carrier failed to provide reasonable service, it may prescribe reasonable transit or cycle times for equipment owned or leased by the person requesting transportation.



The bill also directs the Government Accountability Office to conduct a study within two years of enactment on the types and frequency of contractual prohibitions and restrictions that discourage new interchange agreements between Class I and Class II and III railroad carriers. The study will also analyze the pros and cons of the prohibitions or discouragements for railroads, shippers, and the public.

Additionally, the bill directs STB and the National Academies to conduct a study on data constraints that impede freight flows and cause supply chain disruptions. The study will determine where most disruptions occur, what common shipping data is created with each container handoff, and how data is stored and shared. Data will be collected from rail carriers, VOCCs, NVOCCs, marine terminal operators commercial motor vehicle operators, chassis providers, ocean transportation intermediaries, custom brokers, freight forwarders, shippers, cargo owners, and relevant government agencies (STB, FMC, and Customs and Border Protection). The information will be compiled into a report within two years containing recommendations to implement information sharing in the U.S. supply chain.

The legislation establishes an 18-member Railroad-Passenger Rail Transportation Advisory Council to advise on transportation policy issues with a particular focus on issues impacting rail passengers, including on-time performance of intercity passenger rail on freight rail hosted routes and Amtrak access to the track and facilities of host railroads. Representatives on the council will include ten senior executive officers of freight and passenger railroads as well as a representative of states that fund intercity passenger rail service. All STB members, the Secretary of Transportation, a representative of rail passengers, and a representative of an employee labor organization will serve as non-voting members.

Additional Freight Rail Shipping Fair Market Act provisions:

- Direct STB to update the Study of Competition in the U.S. Freight Railroad Industry first published in 2010 within two years;
- Instruct STB to review exempt commodities one year after enactment and every ten years after to determine whether there is enough market competition to keep the item on the exemption list;
- Direct STB to determine, within nine months of enactment, how it can expedite its consideration of rate review cases and report its findings to Congress;
- Require railroads to return furloughed employees to service, add property capacity, and acquire or return to service freight cars or locomotives during urgent freight rail problems;



- Prevent rail rate increases when STB declares a rail service emergency and allows a civil penalty three times the amount of the rate increase for noncompliance; and
- Require that STB accommodate current and future passenger rail service when evaluating railroad merger and acquisition considerations.

H.R. 8649 has three Democratic cosponsors – including House T&I Chair DeFazio (D-OR) – and was referred to the House Committee on Transportation and Infrastructure.

REGULATORY

Presidential Emergency Board Releases Recommendations to Resolve Labor Disputes

In July, President Biden issued an Executive Order establishing a Presidential Emergency Board to resolve rail labor disputes and prevent a potential strike by railroad workers. The EO was issued after negotiations that were being overseen by the National Mediation Board reached a stalemate in June. The PEB sought to investigate and resolve disagreements between workers and management by releasing a set of best practices for the parties to agree on within 30 days of release.

On August 16, the PEB released its non-binding recommendations to resolve the rail labor disputes. The PEB proposed that railroad workers receive a retroactive annual wage increase of 3 percent for 2020 and 3.5 percent for 2021; an annual wage increase between 4 percent and 7 percent through 2024; a \$1,000 annual bonus for 2020 through 2024; and one additional paid day off each year starting in 2023. The PEB also suggested that employers remove the monthly cap on health and welfare contributions so that contributions equal 15 percent of the overall cost of the plans providing covered benefits to participants.

Following the release of these recommendations, the railroads and unions entered a 30-day cooling-off period to review the best practices. Each rail union must reach its own agreement with the railroads for its members to agree upon. So far, three of the 12 rail unions have reached an agreement with the railroads that aligns with the PEB recommendations. Some rail unions, such as SMART-TD and BLET, remain in negotiations with the railroads and stated that they are seeking clarification on some of the PEB health and welfare recommendations.

Rail workers can resort to self-help, such as a strike, if an agreement has not been reached by mid-September. Meanwhile, carriers would be then allowed to implement their proposed contracts and lock out or replace striking workers.

FMC Implements Ocean Shipping Reform Act Provisions



Since the Ocean Shipping Reform Act was enacted in June, the Federal Maritime Commission has started to implement provisions concerning whether an emergency order is necessary to alleviate ocean transportation supply system congestion and a data collection on containerized vessel imports and exports.

As authorized by OSRA, FMC issued a notice seeking comments to determine whether supply chain congestion caused an emergency in the ocean transportation supply system and, if so, whether an emergency order would alleviate the situation. If FMC indicates that an emergency situation exists, it can issue an emergency order requiring common carriers or marine terminal operators to share data on cargo throughput and availability with shippers, rail carriers, or motor carriers. The information sharing may alleviate the system by improving efficient cargo transportation, loading, and unloading to or from any inland destination or point of origin, vessel, or point on a wharf or terminal. Comments submitted to FMC will inform the decision to issue an emergency order, which, if issued, would remain in effect for no longer than 60 days unless unanimously renewed by the Commission. Comments are due by September 14.

FMC also issued a notice and request for comments, as required by OSRA, on a new data collection concerning containerized vessel imports and exports. The gathered data will be published by FMC in a quarterly report on its website to indicate the total import and export tonnage and the total loaded and empty 20-foot equivalent units per vessel operated by certain common carriers. FMC will receive the data monthly from carriers that transport 1,500 or more 20-foot equivalent empty or laden units per month either in or out of U.S. ports. According to FMC estimations, 70 of the 154 registered Vessel-Operating Common Carriers will be subject to the information collection. Comments are due by October 7.