

Shipping Act Reform

ISSUE TYPE	Legislative (Federal)	KEY DATES	Mar. 5, 2018 – FMC initiates Fact Finding 28 Investigation into detention and demurrage practices
AGENCY	FMC		Dec. 4, 2018 – Frank LoBiondo Coast Guard Authorization Act of 2018 is passed
STATUS	Active/Tracking		Dec. 7, 2018 – FMC publishes final report on Fact Finding 28 Investigation into detention and demurrage practices
DIVISION IMPACT	Marine, Rail, MC, Supplier, Associate		March 1, 2019 – FMC announces creation of Innovation Teams, as recommended by the Dec. 2018 final report
INTERESTED PARTIES	WSC, NITL	MOST RECENT ACTION	

Statement of the Issue

The Shipping Act of 1984 provides the Federal Maritime Commission (FMC) with the authority to regulate maritime commerce in the United States. Since its passage, there have been efforts by both Congress and industry stakeholders to amend the bill, arguing that ocean carriers should be more stringently regulated.

Policy Position – Adopted by the Board (11/14/2010)

IANA should continue to monitor Shipping Act reform activities and, in coordination with the World Shipping Council (WSC), oppose any legislation that substantially changes the current laws under which the ocean carriers provide international intermodal service.

Summary

The Frank LoBiondo Coast Guard Authorization Act of 2018, which contains the Federal Maritime Commission Authorization Act of 2017, was signed into law on Dec. 4, 2018. Provisions in the bill amend the Shipping Act of 1984 to allow FMC to investigate ocean carrier alliances engaging in anti-competitive behavior during negotiations, while the authority to prosecute antitrust matters remains with the Department of Justice.

On Dec. 7, 2016 the Coalition for Fair Port Practices submitted a petition for rulemaking with the FMC requesting the agency clarify what constitutes “just and reasonable rules and practices” with respect to the assessment of detention and demurrage fees when port conditions prevent timely pick up of cargo or return of equipment. FMC received over 100 comments in response to the petition. Two comments by the WSC argued the petition was unsupported legally and would result in increased congestion. Following two days of

hearings on the petition in Jan. 2018, the Commissioners reported that, despite troubling alleged practices, there was a lack of field evidence. Consequently, FMC launched a fact finding investigation focusing on the detention, demurrage and per diem practices of vessel operating common carriers (VOCCs) and marine terminal operators (MTOs) in March 2018. During the investigation, FMC met with representatives of the shipper, carrier, MTO, ocean transportation intermediary, ports, and drayage trucking industries.

On Dec. 7, 2018 FMC approved the final report on this fact finding investigation which recommended: establishing a Shipper Advisory Board that could provide FMC with information on emerging maritime issues; and convening Innovation Teams that would meet on a limited basis to refine demurrage and detention approaches by: 1) developing transparent/standard language for the practices; 2) creating clear, accessible and simple demurrage and detention billing practices and dispute resolution processes; 3) drafting guidance outlining the evidence relevant to resolving demurrage and detention disputes; and 4) establishing consistent notice to parties of container availability. FMC announced the creation of the Innovation Teams in March 2019. The Teams met for the first time in mid-April 2019 and are required to submit a final report by Sept. 3, 2019.

Potential Impact to Intermodal Freight Transportation

Impact I:

Ocean carriers expect that any repeal of the ability to retain rate discussion agreements would create rate instability, inconsistent and inefficient service offerings

and hamper the ability to forecast demand. Impeding the ability to forecast demand and associated revenue could negatively impact the carriers' ability to develop long term capital commitment and investment plans, which are critical to supporting the ongoing growth and expansion of the North American intermodal supply chain.

Impact 2:

Ocean carriers would be severely hampered by new FMC oversight, review and approval of vessel sharing agreements that have created undeniable operational efficiency and cost savings to carriers, shippers, terminal operators, railroads and motor carriers. These agreements have a positive effect on the inland portion of ocean carrier movement. They also enable the planning and operation of dedicated intermodal trains, as well as the associated labor and terminal support at origin and termination points. Consolidated vessel operations and capacity management also allow motor carriers to provide inland delivery and drayage services in an efficient and timely manner, and also allow them to supply an adequate roster of drivers.

Impact 3:

Some proposed changes to the Shipping Act would require ocean carriers to handle shipper-owned or private equipment and to itemize certain equipment charges on freight bills; these equipment provisions may also include chassis and chassis pools. This would be cumbersome to the ocean carrier, and also add further complexity to all intermodal service providers in managing equipment, equipment flows and operational procedures for pick-up and return of equipment that is not owned or controlled by the ocean carrier.

Impact 4:

There have been attempts to define "regulation of equipment providers" by the FMC, although vague, states an equipment provider is "a person in the United States that rents or leases marine cargo containers, or chassis for marine cargo containers to shippers or common carriers." This definition could make unclear the jurisdiction of federal regulatory agencies, as the FMCSA and FMC would likely have conflicting viewpoints on responsibilities. Furthermore, the term "common carriers," would affect all intermodal service providers with that designation, including motor carriers and railroads.

Impact 5:

FMC actions to regulate carrier and marine terminal operator detention, per diem, and demurrage charges could negatively affect those stakeholders' ability to compete in the market and harm existing commercial solutions.