

Implementation of the Ocean Shipping Reform Act Timelines for Notable Action by Federal Maritime Commission

On June 16, 2022, President Biden signed into law the Ocean Shipping Reform Act (S. 3580, the Senate version of the legislation). The enactment of the law immediately affects certain portions of the Shipping Act and adds new authorities and tools for the Federal Maritime Commission (FMC) to regulate international ocean freight carriers, and also requires the FMC to develop and implement new regulations over the course of the following year. This memo provides further details and timelines about the implementation of the Ocean Shipping Reform Act.

Effective Immediately

Detention and Demurrage Rules. – OSRA established new rules related to detention and demurrage charges that took effect immediately upon enactment of the law. First, ocean carriers or terminals must include specific information on a detention and demurrage invoice for that invoice to be valid. These details include container details, dates for availability, free time start/stop dates, ERDs, charges, and certifications that the information is correct, among other details. Second, if a carrier or terminal fails to include any of those details, the shipper is not obligated to pay that invoice. And if the invoice is inaccurate or false, the carrier may be subject to penalties or refund requirements. (Section 7; 46 USC 41104)

Service Contracts. - The FMC has new authority to establish regulations related to service contracts that may include “any other essential terms that the [Commission] determines necessary”. The FMC is not required to pursue any regulation under this provision. This could be used by the FMC to address concerns related to charges, container availability, vessel booking cancellations or delays/rolled or other service contract-related matters. (Section 3; 46 USC 40502(c)(9))

Retaliation. - Rules regarding retaliation and other discriminatory actions are expanded, prohibiting a carrier, terminal operator or intermediary from retaliating against a shipper, its agent, or a motor carrier, by refusing cargo space or taking other unfair or unjustly discriminatory action based on complaints being filed, a shipper uses different carriers, or for any other reason. (Section 5; 46 USC 41102)

Disclosure. – The FMC must publish and update annually all finding by the Commission of false detention and demurrage invoice information by carriers; and, separately, all penalties imposed on carriers for violations of the Shipping Act. (Section 6; 46 USC 46106)

Penalties and Refunds. – Allows the FMC to require carriers to pay refunds to shippers, in addition to or in lieu of, assessment of civil, monetary penalties for violations. (Section 8; 46 USC 41107, 41109); also expands the FMC’s authority to require payment of reparations by carriers to shippers to include violations related to “just and reasonable practices” related to handing of property. (Sec. 12; 46 USC 41305)

Data Collection. – Requires the FMC to publish quarterly reports that describe data related to imports, exports, loaded and unloaded containers, per vessel operated by each carrier. (Sec. 9, 46 USC 41110)

Charge Complaints. – Allows the FMC to receive complaints related to charges (detention, demurrage, or other) assessed by carriers and to pursue investigations of those complaints, and places the burden of proof that a charge is permissible upon the carrier; allows the FMC to order refunds or penalties if the charges are not in compliance. (Sec. 10; 46 USC 41310)

Investigations. – Expands FMC investigatory authorities beyond “agreements” to include any “agreement, fee or charge”. (Sec. 11; 46 USC 41302)

Implementation Subject to Rulemakings

Prohibited Carrier Activity. – Ocean carriers are prohibited from:

- **Unreasonably refusal of cargo space accommodations, or refusal to negotiate or deal with respect to vessel space accommodations**, subject to an FMC rulemaking that must commence within 30 days and be complete within 6 months; and
- Engage in any **unfair or unjustly discriminatory** practice against commodity group or type of shipment (i.e. exports), subject to an FMC rulemaking that must start within 60 days and be complete in 1 year.

To further define prohibited practices with respect to **demurrage or detention** charges, the FMC must commence rulemakings not later than 45 days after enactment and must be completed within 1 year following enactment. (Sec. 7; 46 USC 41104)

Within 60 days, the FMC is directed to solicit public comment on whether an “emergency situation” has been created by the congestion of the carriage of goods, and if the FMC so determines an emergency exists, it may require extraordinary sharing of information by carriers and terminal operators with shippers, motor carriers, rail carriers, with intent that this information sharing may facilitate efficient cargo transportation. (Section 18)

Establishes minimum staffing requirements at the FMC for departments related to investigations, oversight and other functions, within 18 months. (Section 17, 46 USC 41302)

Other

The Ocean Shipping Reform Act also requires the Bureau of Transportation Statistics to collect and report on information related to the Dwell Time of intermodal containers and chassis at the top 25 ports (Section 16)

Directs the FMC to enter into a research agreement with the Transportation Research Board of the National Academies of Science, Engineering and Medicine to conduct a study on best

practices for chassis pools, with a goal of optimizing supply chain efficiency, to be commenced by April 2023. (Sec. 19)

Within 90 days, the Federal Motor Carrier Safety Administration must conduct a review of certain CDL skills testing examinations and COVID waiver authorities to determine if they should be made permanent. (Sec. 20)