

Transportation Update

August 2022

FMC Takes Actions to Implement OSRA 2022

On June 16 President Biden signed into law the Ocean Shipping Reform Act of 2022 (OSRA 2022), a package of U.S. shipping law reforms that address supply chain disruptions, rising ocean shipping costs, and inadequate vessel service. Among other things, the legislation increases the Federal Maritime Commission's (FMC) authority to address the operating practices of global ocean shipping lines that service U.S. seaports. OSRA 2022 is "self-executing," meaning its requirements became effective immediately upon its passage. However, Congress also directed the FMC to take specific actions to implement and clarify requirements governing new prohibited conduct by ocean carriers, demurrage and detention reasonable rules and practices, data collection, emergency orders, and more.

Following the passage of OSRA 2022, the FMC has moved swiftly to implement and increase awareness of its requirements.

Recent developments include:

- **Guidance regarding the timing of the provisions of OSRA 2022.** On June 24 the FMC Office of the General Counsel issued [guidance](#) advising carriers that certain provisions of OSRA 22, including prohibitions on assessing non-compliant charges or issuing non-compliant invoices for demurrage or detention charges, are self-executing and effective immediately.
- **Interim process for submitting charge complaints.** OSRA 2022 contains a new process for submitting to the FMC complaints about charges assessed by a common carrier. (See 46 U.S.C. § 41310.) To implement this requirement, the FMC on July 14 published an [industry advisory](#) providing interim procedures for submitting charge complaints. Specifically, it advised parties wishing to dispute charges assessed by common carriers that they may file their complaints with the requested information by sending an email to chargecomplaints@fmc.gov. The complaints should include minimum shipment information, including the common carrier's identity, the alleged Shipping Act violation, and supporting documentation such as invoices, bill of lading numbers, and evidence of whether the charge(s) have been paid.
- **Unreasonable refusals to deal or negotiate.** OSRA 2022 requires the FMC to "initiate a rulemaking defining unreasonable refusals to deal or negotiate with respect to vessel space" within 30 days and issue the final rule within six months after the date of OSRA 2022's enactment. (See Section 7 of OSRA 2022.) In a July 28 [notice](#), the FMC reported that it started "rulemaking effort[s]" the day OSRA was enacted and a Notice of Proposed Rulemaking seeking public comment is expected to be published in the immediate future."
- **Notice seeking public comments on import/export data collection.** On August 8 the FMC published a [notice](#) in the *Federal Register* seeking comments on a proposed plan for gathering monthly import and export information from vessel-operating common carriers (VOCC) per OSRA 2022's requirements, which will be published on the FMC's website. The FMC proposes to request each VOCC transporting 1,500 or more 20-foot equivalent units per month to report information about the tonnage and TEUs carrier per vessel on a monthly basis. **Interested parties may submit comments on or before October 7.**
- **Emergency order to address congestion.** Section 18 of OSRA 2022 requires the FMC to seek information from the public to determine whether an emergency order is warranted requiring common carriers and marine terminal operators to share certain information with shippers, rail carriers, or motor carriers to improve supply chain disruption. The information would address

the efficient transportation, loading, and unloading of cargo to/from any inland destination or point of origin, any vessel, or any point on a wharf or terminal. Consistent with this mandate, on August 15 the FMC published a [notice](#) in the *Federal Register* asking interested parties to comment on whether congestion of the carriage of goods created an emergency situation of a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system; whether an emergency order pursuant to Section 18 of OSRA 2022 would alleviate or improve such an emergency situation; and the appropriate scope (duration and geographic) of such an emergency order. **Interested parties should submit comments on or before September 14.**

- **Establishment of the Bureau of Enforcement, Investigations, and Compliance.** On July 29 the FMC [announced](#) that it has consolidated its investigative and prosecution functions into a newly created Bureau of Enforcement, Investigations, and Compliance, effective immediately. In the media release, Chairman Maffei said that the reorganization will enhance “FMC’s capacity to closely scrutinize the conduct of the ocean carrier companies and marine terminal operators to ensure compliance with the law and fairness for American importers and exporters.”
- **OSRA 2022 implementation webpage.** On August 12 the FMC announced that it had established a [webpage](#) dedicated to its actions and activities related to OSRA 2022. In the media release, Chairman Maffei explained that the webpage will be a “resource where the public can easily and quickly see all relevant materials related to OSRA implementation.” The webpage will be updated as developments warrant.

FOR MORE INFORMATION

For more information, please contact:

Karyn A. Booth

202.263.4108

Karyn.Booth@ThompsonHine.com

Jason D. Tutrone

202.263.4143

Jason.Tutrone@ThompsonHine.com

Kerem Bilge

202.263.4104

Kerem.Bilge@ThompsonHine.com

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