



National Association of Waterfront Employers

September 14, 2023

NAWE News

Latest with NAWA

FMC to add to Public Docket Bipartisan Letter Urging Commission to Follow Congressional Intent for OSRA-2022

Rulemaking – This week, the Federal Maritime Commission (FMC) notified U.S. Representative Jake Auchincloss (D-MA-04) that the FMC will add to the Public Docket for the OSRA-2022 rulemaking a letter he sent with U.S. Representative Brian Babin (R-TX-26) urging the FMC to follow congressional intent for the initiative’s rulemaking. On August 24, 2023, Reps. Auchincloss and Babin sent the bipartisan letter to FMC Chairman Daniel Maffei urging the Commission to follow the intent of Congress by removing marine terminal operators (MTOs) from the substantive demurrage billing requirements under the proposed rulemaking for the Ocean Shipping Reform Act of 2022 (OSRA-2022), which was enacted into law during the 117th Congress. In the letter, Reps. Auchincloss and Babin express concern that the Commission’s rulemaking should be based on the final version of the OSRA-2022 bill that became law. Specifically, Representatives Auchincloss and Babin cite that burdensome demurrage billing requirements and other provisions that would have potentially negative impacts to MTOs and the supply chain included in the original House or Senate bills, but removed from the final version of the OSRA-2022 that became law, should not be part of FMC’s proposed rulemaking for implementation of OSRA-2022. Click to view letter [here](#). Click here to view NAWA’s press release [here](#).

NAWE OSRA Working Group Drafts Comments Critical of FMC Commissioner Rebecca Dye’s Proposals to Address Supply Chain Bottlenecks

– On August 1, FMC Commissioner Rebecca Dye announced three proposals to “increase the performance of the U.S. international ocean freight delivery system by reforming the practices of the international ocean carrier and marine terminal operators (MTOs) in the Ports of Los Angeles and Long Beach and the Port of New York and New Jersey.” Commissioner Dye’s proposals address: 1) Container Return; 2) Early Return Date; and 3) Container Pickup (Notice of Availability). Commissioner Dye cited these three practices as creating “bottlenecks in the U.S. international ocean supply chain that contribute to congestion and unreasonable demurrage and detention charges. According to the announcement, the proposals outlined in this initiative were developed “based on Commissioner Dye’s years of experience with Nonadjudicatory Fact Finding Investigations, industry leader engagement in Federal Maritime Commission Supply Chain Innovation Teams (Innovation Teams), and the work of the National Shipper Advisory Committee (NSAC) and the Council on Port Performance of the Port of New York and New Jersey (CPPNY/NJ).” [Click here to view the announcement.](#)

The deadline to submit comments to Commissioner Dye’s proposals is Friday, September 15. In response, NAWA’s OSRA Working Group met recently and drafted comments critical of the process through which these supply chain proposals were developed, as well as the substance of the proposed measures. Specifically, NAWA raises objections to the proposals taking place as an independent action without a balanced process for all stakeholders, including marine terminal operators and ports, to provide input prior to its release. NAWA also points out that many of these proposals are unworkable or inconsistent with established industry practices and, if implemented, would create inefficiencies and risk terminal congestion. NAWA will continue to monitor and report on any further developments on these proposals.

NAWE Call to Action – NAWE Urges Member Companies to Contact their U.S. Representatives to Cosponsor H.R. 4993, Bipartisan Legislation to Expand the Capital Construction Fund – House Transportation & Infrastructure Committee Members Representatives Mike Ezell (R-MS) and Troy Carter (D-LA) sent a “Dear Colleague” letter to all of their fellow House offices inviting them to join as cosponsors of their bipartisan bill, H.R. 4993. The Ezell-Carter bill would extend tax incentives in order to maximize private capital investments aimed at lowering emissions at ports and waterways, advance innovative technologies in domestic manufacturing, and create new high skilled job opportunities for American workers. If signed into law, Marine Terminal Operators would be able to deposit a portion of their taxable income into a Capital Construction Fund account and use those funds on a tax-deferred basis to maximize their purchasing power for zero or near-zero cargo handling equipment. [Read NAWE’s press release here.](#)

NAWE strongly supports this bipartisan legislation and urges all NAWE member company to reach out to their respective member of Congress to ask them to consider cosponsoring H.R. 4993. Last week, the NAWE Legislative Team emailed NAWE member companies a draft outreach message, along with the email and office addresses for all members of the House of Representatives and their staff, that may be used for contacting members of Congress with this request. The NAWE team is available to answer questions and provide additional information about this effort.

NAWE Submits Amicus Brief for TCW v. Evergreen Litigation Appeal – NAWE recently registered its opposition to FMC’s decision in the TCW v. Evergreen case by formally submitting a joint amicus brief in support of Evergreen’s appeal. The FMC’s decision in the case ruled that Evergreen’s imposition of equipment detention charges on a holiday weekend was in violation of the incentive principle and, therefore, unreasonable under the Shipping Act. The decision has resulted in significant uncertainty regarding the imposition of weekend and holiday terminal storage fees. NAWE filed the joint amicus brief with the World Shipping Council in the D.C. Circuit Court. NAWE will provide further updates on this case as information becomes available.

NAWE Legislative Updates

Upon Return from August Recess, Congress Attempts to Avert Government Shutdown – Lawmakers have returned from August recess with a full agenda and limited time to pursue it. With the end of the fiscal year approaching on September 30, Congress must either pass an appropriations package or a continuing resolution (CR) to avoid a federal government shutdown. Despite indications that the House and Senate leadership support a CR through early December 2023 to allow for time to negotiate appropriations and other measures, the likelihood of reaching a CR prior to the September 30 deadline is uncertain given the vast differences between the House and Senate spending measures. Absent a CR, the federal government will shut down until an agreement is reached. Once a CR is passed, appropriations work can continue, and Congress may address additional policy priorities.

Senate Majority Leader Chuck Schumer (D-NY) and House Speaker Kevin McCarthy (R-CA) have both acknowledged the need to pass a CR to give negotiators more time to reach an agreement on spending levels, while the House Freedom Caucus has laid out demands for substantial and unlikely policy concessions as part of any stopgap agreement. Republican Leader Mitch McConnell (R-KY) plainly said last week that House Republicans’ effort to pass appropriations bills at spending levels below the agreement reached in the debt ceiling deal would not be “replicated in the Senate.”

The Biden Administration last week asked Congress for a short-term funding package through mid-December. Further complicating funding negotiations, the White House outlined temporary spending increases in its request, including \$1.85 billion for handling a surge of migrants — an ask the GOP will find problematic — and \$1.4 billion for the Women, Infants, and Children nutrition program. Biden is also seeking \$44 billion in emergency spending as part of a CR package, including \$16 billion for disaster assistance and \$24 billion for the war in Ukraine and related international emergencies. On September 1, the White House requested an additional \$4 billion in disaster relief following the aftermath of Hurricane Idalia and the recent fires in Maui.

This week, both chambers have floor votes slated on their versions of the FY 2024 spending measures. The House had planned to advance its Defense Appropriations bill on Wednesday with a procedural vote to set the terms of the floor debate, but the measure stalled amid pushback from House GOP conservatives who want to secure cuts across all 12 appropriations bills. The Senate, on the other hand, is on track to pass with bipartisan support a three-bill spending package that includes Military Construction-VA, Agriculture-FDA, and Transportation-HUD (T-HUD). Notably for NAWE, the T-HUD bill provides funding for federal grant programs such as PIDP, America's Marine Highways, and INFRA, RAISE, and Mega grants. In contrast to the House T-HUD bill, the Senate bill maintains funding for the RAISE grant program at FY 2023 levels, provides \$150 million for PROTECT grants and funds MARAD's Port Infrastructure Development Program (PIDP) grants at \$213 million for FY 2024. The House version of the T-HUD bill zeroed out funding for the PIDP program. A CR would freeze funding levels for these programs at favorable FY2023 levels. Overall, the Senate's T-HUD measure provides a total of \$28.433 billion for the Department of Transportation in FY 2024 — an amount consistent with the levels agreed to in the debt limit legislation. NAWE will continue to monitor and report any significant developments on the government funding process.

Lawmakers Prepare to begin Formal Negotiations on the National Defense Authorization Act (NDAA) – House and Senate lawmakers this month are set to begin formal negotiations to reconcile the differences between the House and Senate passed versions of the FY 2024 National Defense Authorization Act (NDAA). Prior to adjourning for the August recess, the House and Senate each passed their respective versions of the NDAA. The large-scale defense bill, which sets policy and authorizes funding for national defense programs at the Pentagon, Energy Department and other agencies, is considered must-pass legislation and has been approved by Congress with bipartisan support for 62 consecutive years. The must-pass nature of the NDAA has allowed it to become a legislative vehicle that members of the House and Senate use to attach various provisions as a way of bypassing the formal legislative process. This year, to gain the House Freedom Caucus' support for the NDAA, the House GOP leadership permitted a large number of amendments on controversial social issues to be attached to its version of the bill (H.R. 2670), resulting in its passage along party lines. In contrast, the Senate passed its version of the NDAA (S. 2226) without similar controversial provisions with bipartisan support. Our sources indicate that the House may soon consider a "motion to go to conference" in the next couple of weeks—a procedural step to name conference committee negotiators and formally begin discussions to reach a final version of the NDAA. House and Senate negotiations are expected to be complicated as the conferees contend with the controversial House provisions that were added on the floor to gain the necessary GOP votes for House passage. NAWE monitors the NDAA closely, as it contains a maritime title that includes the authorization for several important MARAD grant programs, including the Port Infrastructure Development Program (PIDP) and America's Marine Highways grants. NAWE will continue to monitor and report any significant developments on this legislation.

NAWE Regulatory Updates

Federal Maritime Commission (FMC) Updates

FMC Releases July Activity Report – On August 31, the Federal Maritime Commission (FMC) released its July 2023 Activity Report. Among the statements and announcements included in the FMC report are: 1) [an Industry Advisory regarding Requirements for Doing business with NVOCCs and OFFs](#); 2) [Notice to Passenger Regarding Vantage Travel Services, Inc.](#); and 3) [Commissioner Rebecca Dye's Proposed Reforms to International Ocean Supply Chain Practices: Empty Container Return, Early Return Date, and Container Pickup](#). Click [here](#) to read more.

FMC Commissioner Seeks Comments on Maritime Transportation Data Initiative RFI – On August 23, FMC Commissioner Carl Bentzel released a statement on the release of the Commission's Request for Information (RFI) on the Maritime Transportation Data Initiative (MTDI). Commissioner Bentzel explains in his statement that, "the purpose of this RFI is to solicit further public review and comment on the proposed processes and definitions identified in the MTDI Report. Your input will help better standardize information sharing; clear standards for understanding container availability, earliest return dates, and other key metrics that arise when cargo is transferred between nodes; and information on fees and charges. All of these issues were raised in the 18 MTDI public meetings as well as my subsequent meetings with individual stakeholders and the National Shipper Advisory

Committee.” [Click here to view Statement of Commissioner Carl W. Bentzel on the Release of the Maritime Transportation Data Initiative Request for Information.](#)

Chairman Maffei Giving Keynote at WESCCON 2023 on October 27 – FMC Chairman Daniel Maffei will provide the breakfast keynote address at “[WESCCON 2023](#),” the annual meeting of the Pacific Coast Council of Customs Brokers and Freight Forwarders (PCC). Information on registration and cost to attend can be found on the PCC website.

Chairman Maffei to Speak to Virginia Maritime Association on October 4 – Chairman Daniel Maffei will address the “[VMA 2023 International Trade Symposium](#)” during a fireside chat entitled “Reliability through Regulatory Compliance & Rulemaking.” The symposium is being hosted by the Virginia Maritime Association. Click [here](#) for additional details about the event, including registration and costs.

Upcoming DOT Infrastructure Grant Program Application Deadlines

FY 2023 DOT Infrastructure Grant Deadlines Have Expired – The application deadlines for the majority of FY 2023 DOT infrastructure grants of interest to NAWE members are now expired. According to White House’s “Upcoming Infrastructure Funding Opportunities” webpage, remaining NOFOs that may possibly be released before the end of the year (in “Winter 2023 or early 2024”) are:

- 1) **MARAD’s America’s Marine Highway Grants** – TBD
- 2) **DOT’s Consolidated Rail Infrastructure & Safety Improvements (CRISI)** – TBD

EPA’s Diesel Emissions Reduction Act (DERA) Grants – The U.S. Environmental Protection Agency (EPA) is now accepting proposals for fiscal 2022-2023 grants under the Diesel Emissions Reduction Act (DERA). There is \$115 million available to be awarded. Applications must be submitted no later than Friday, December 1, 2023. The DERA program partially funds projects that achieve significant reductions in diesel emissions. Repowering of marine vessels with lower-emission engines is a permissible purpose. An information session webinar is scheduled on Thursday, September 14. Here is a link to slides that will be discussed on the webinar: <https://www.epa.gov/system/files/documents/2023-08/dera-fy22-23-national-grants-nofo-webinar-08-23-23.pdf>. A private company cannot submit an application directly but must work through an eligible entity. An eligible entity includes (1) a port authority or a governmental agency with jurisdiction over transportation or air quality (such as a metropolitan planning organization), or (2) a nonprofit organization with a principal purpose of promoting transportation or air quality or one that provides pollution reduction or educational services to operators of diesel fleets. DERA is a competitive program and is not restricted simply to marine transportation. Funding is divided among the various EPA Regional Offices, so an applicant must compete against other proposals from the same region. There is a requirement for a non-federal cost-share, the size of which depends upon the type of project being proposed. Extensive information about the DERA program, the application process, the September 14 information session webinar, and the criteria for judging applications can be found at <https://www.epa.gov/dera/national>.

The NAWE Team continues to monitor and will report to the Legislative Committee any updates on the 2024 round of NOFOs for federal grant program opportunities of interest to NAWE members.

NAWE Event Updates

We hope to see you in New Orleans next month for the NAWE Annual Meeting! If you’ve not registered to attend, you can do so at [the link here](#). We have an incredible [line up of speakers and activities](#) for this year’s meeting, including a tour of the Port of New Orleans on Friday, October 13. In order to attend the port tour, you must be registered for the annual meeting beforehand and will then need to register for the port tour. To sign up for the port tour, [please click the link here](#). For those who register for the port tour, transportation will be provided from the Ritz-Carlton, New Orleans and back. Sign up soon as space is limited and will be reserved on a first-come, first-served basis.

New Spouse/Companion Ticket for NAWE Annual Meeting Available for Purchase –A [spouse/companion ticket](#) grants access to all NAWE Annual Meeting networking functions which include the opening reception on Wednesday and the breakfast, lunch, and reception on Thursday. Spouses/Companions are invited to join the Thursday morning Spouse/Companion walking tour throughout the city as part of their registration. The walking tour will leave the hotel at 10:00 am CT and return around 3:00 pm CT, visiting local landmarks such as St. Louis Cathedral and the French Quarter. Tour goers can enjoy classic New Orleans cuisine and beverages all while popping into local art galleries and shops across the Crescent City! [Click here to purchase!](#)

As a reminder – all four of NAWE’s Committees (E3C, Insurance, Legislative, and Security) will convene at 1:00pm CT on Wednesday, October 11. If you serve on a committee, please arrange your travel to arrive in time to participate.

Articles of Interest

Maritime Executive

[U.S. Pushes Forward with Offshore Wind Despite Financial Pressures](#)
September 12, 2023

The Bureau of Ocean Energy Management (BOEM) announced yesterday that it has completed its environmental review of the proposed massive Empire Wind Farm Project, which would become the U.S.’s largest offshore wind site to gain approval. The Biden administration continues to push forward while developers are looking to reset their agreements to reflect the changing economics for the projects.

Forbes

[House GOP Launching Impeachment Inquiry Into Joe Biden, McCarthy Says](#)
September 12, 2023

House Speaker Kevin McCarthy (R-Calif.) instructed House committees to open a formal impeachment inquiry into President Joe Biden on Tuesday, following a long-running probe into Biden’s family—as McCarthy faces demands from hard-right Republicans for an impeachment vote and wrangles his caucus to avert a government shutdown. McCarthy said Tuesday he has instructed the House Judiciary, Oversight and Ways and Means committees to open a formal impeachment inquiry into Biden, citing evidence the House has gathered in its investigations into Hunter Biden’s foreign business dealings and whether the president used his influence to financially benefit his son.

Journal of Commerce

[SSA Aims for US Gulf, Southeast port growth as Ceres deal closes: CEO](#)
September 11, 2023

While some cargo will return to the US West Coast now that a new longshore worker contract is in place, long-term growth still favors ports along the Gulf Coast and Southeast due to lower landed costs and increasing population in those regions, according to the head of terminal operator and stevedore SSA Marine. As such, the acquisition of Ceres Terminals was necessary so West Coast-based SSA could “remain relevant” to ocean carriers making a similar switch, Chief Executive Uffe Ostergaard told the *Journal of Commerce*.