



National Association of Waterfront Employers

August 4, 2023

NAWE News

Latest with NAWE

FMC Commissioner Rebecca Dye Unveils Three Proposals to Address Supply Chain Bottlenecks – On August 1st, 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 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, and the work of National Shipper Advisory Committee and the Council on Port Performance of the Port of New York and New Jersey.” Click to view the announcement: <https://www.fmc.gov/addressing-supply-chain-bottlenecks>.

House Members Introduce Legislation to Expand Capital Construction Fund (CCF) for Cargo Handling Equipment – Reps. Mike Ezell (R-MS-04) and Troy Carter (D-LA-02) last week introduced [H.R. 4993](#), which would expand the Capital Construction Fund (CCF) program to incentivize the use of private capital by U.S. marine terminal operators for the purchase of near-zero or zero emission cargo handling equipment (CHE). The proposed bipartisan legislation would specifically allow marine terminal operators (MTOs) to deposit a portion of their taxable operating income into a CCF account and use those funds on a tax deferred basis to maximize purchasing power for CHE. The private capital investments derived from the extension of this tax incentive would serve to lower emissions at ports and waterways, advance innovative technologies in domestic manufacturing, and create new high skilled job opportunities for American workers. Click [here](#) to read NAWE’s news release.

Welcome New Member to NAWE – Maher Terminals LLC has joined NAWE as a Level VI member. Maher is the largest marine container terminal located in the Port of New York and New Jersey and specializes in operations; energy; and carbon efficiency. You can visit their [website for more information](#).

NAWE Legislative Updates

Congress Departs for August Recess, Threat of Government Shutdown Looms – In its last week before adjourning for an extended August Break, Congress achieved mixed results in advancing the FY 2024 appropriations bills, kicking much of the heavy lifting into September.

With only 12 workdays in September before the end of the fiscal year, House leaders last week were aiming to begin the process of approval for fiscal year 2024 spending measures to avoid a government shutdown on October 1. Specifically, House GOP leadership had hoped to bring to the floor the Agriculture-FDA and Military Construction-VA appropriations bills, usually the least controversial of the spending bills. However, progress stalled mid-week over

House Freedom Caucus demands for additional spending cuts to programs beyond the substantial reduction the Appropriations Committee had already made. Conservative lawmakers also proposed a number of controversial policy riders to the legislation, including one that would nullify the Biden administration's rule allowing the abortion pill (mifepristone) to be sold in retail pharmacies and by mail. Moderate Republicans were vocal that they would not support the measure if the provision was not removed. The House did, however, approve funding for military construction and veterans programs, while defeating some of the most controversial amendments, including an amendment to defund NATO proposed by Rep. Marjorie Taylor Greene (R-GA-14). The bill passed by a 219-211 party line vote.

Friction between GOP leaders and conservative members disgruntled with using unspent money to pad topline spending levels also derailed the House appropriations process last week. Rep. Ralph Norman (R-SC-05) stated that Freedom Caucus members had reached a deal with GOP leaders on curbing spending and disallowing rescinded funds from being redirected. However, House Speaker Kevin McCarthy (R-CA-20) said that no deal had been made and indicated that he is looking for any way to save money and reach 218 votes. With more moderate Republican members also expressing concerns with the GOP leadership's efforts to appease Freedom Caucus demands, the House will face stiff challenges to advancing the remaining appropriations bills come September.

In contrast to the House, the Senate Appropriations Committee last Thursday approved its final four spending measures, including Defense, Homeland Security, Interior-Environment, and Labor-HHS-Education, marking the first time in five years that the Committee advanced all 12 appropriations bills. The Senate's top-line funding levels for most of these measures exceed the levels approved in the House version of the bills, continuing a trend that has existed throughout the budget process. In addition to approving spending allocations in line with the debt limit agreement reached between the President and Speaker McCarthy, Senate appropriators struck a deal last week to provide an additional \$13.7 billion in emergency funding that was largely disbursed between the appropriations bills approved on Thursday. The defense spending bill received the largest share of the additional funding at \$8 billion, while Homeland Security and Labor-HHS-Education received an additional \$2 billion each. Specifically, the Senate's defense spending bill would provide \$831.7 billion for the Pentagon, \$5 billion more than what the Republican-led House approved and about \$534 million above President Biden's request. Of particular interest to NAWA, the Senate Homeland Security appropriations bill provides \$61.3 billion in discretionary spending – \$1.5 billion less than the House bill – with \$94 million allocated for port security grants, \$6 million less than the House legislation.

With more than \$100 billion separating the House and Senate government spending bills and House conservatives pushing for additional spending cuts, bicameral talks to bridge this already large funding gap will prove challenging ahead of the October 1 deadline to avoid a government shutdown. House Majority Leader Steve Scalise (R-LA-01) suggested that negotiations may occur during August recess, but the Senate has yet to bring its appropriations bills to the floor for a vote. The NAWA team will continue to monitor progress on the appropriations process and report on any developments in this area.

Senate Crosses the Finish Line on National Defense Authorization Act (NDAA) – Last week, the Senate passed its version of the *Fiscal Year 2024 National Defense Authorization Act* (NDAA) by a margin of 86-11 with bipartisan support. The large-scale defense bill, which sets policy and authorizes funding for national defense programs at the Pentagon, Department of Energy and other agencies, is considered must-pass legislation and has been approved by Congress with bipartisan support for 62 consecutive years. Several weeks ago, the House passed its version of the NDAA (H.R. 2670) on a near party-line vote of 219-210, after approving amendments to the legislation on a variety of hot-button social issues, such as abortion. Like the House legislation, the Senate bill (S. 2226) would set discretionary spending for national defense programs at \$886.3 billion – an amount in line with the spending limit agreed to in the debt-ceiling agreement – however there are significant policy differences between the House and Senate versions of the legislation.

Included in the Senate bill is a 5.2 percent pay increase for military personnel, \$9.1 billion for various measure aimed at increasing U.S. competitiveness with China, and \$300 million for Ukraine. Unlike the House, the Senate sidestepped controversial debates on culture war issues in its amendment process. Rather, the Senate adopted a number of amendments related to new weapons, bolstering nuclear energy in the U.S., and increasing U.S. competitiveness with China, among others. Specifically, the Senate passed by an overwhelming margin of 96-3 an amendment proposed by Sen. Joe Manchin (D-WV) to onshore nuclear fuel production. Additionally, two measures aimed at increasing U.S. competitiveness with China – one to boost transparency of investments by American entities in sensitive technologies in

adversarial nations, and another blacklisting China from purchasing U.S. farmland – passed with 91 votes each. In all, senators filed more than 900 amendments to the defense bill.

Since opening consideration of the NDAA on the floor two weeks ago, the Senate made a concerted effort to keep the process bipartisan, with Senate Majority Leader Chuck Schumer (D-NY) unveiling a “manager’s package” that ensured floor consideration of 50 non-controversial amendments containing priorities from both parties. Last week, the Senate considered a second manager’s package of 49 bills, which also contained priorities from both sides. Lawmakers ultimately considered 98 amendments to the legislation – 44 Democratic, 44 Republican and the rest bipartisan. Given the scope of the differences between the House and Senate versions of the NDAA, the process of reconciling the two bills in conference committee and passing a package that can garner 60 votes in the Senate promises to be yet another contentious undertaking by Congress in the coming months.

The NDAA is of particular interest to NAWE, as it contains a maritime title that includes the authorization for several important MARAD programs such as the Port Infrastructure Development Program (PIDP) and U.S. Marine Highways Program grants. NAWE will continue to report on developments on the NDAA as they occur.

House Passes H.R. 3395, the U.S. Supply Chain Security Review Act of 2023 – On July 27, 2023, the House of Representatives passed H.R. 3395, *the U.S. Supply Chain Security Review Act of 2023*, by a unanimous voice vote. As previously reported in NAWE News, H.R. 3395 would direct the Chairman of the Federal Maritime Commission (FMC) to seek to enter into an agreement with a federally funded research and development center to evaluate foreign ownership of marine terminals at the 15 largest container ports in the United States. The measure was favorably reported by a unanimous voice vote in the House T&I Committee on May 23, 2023. The bill text may be [viewed here](#).

NAWE Regulatory Updates

FMC Releases June Activity Report – On July 24th, the Federal Maritime Commission (FMC) released its June 2023 Activity Report. Among the statements and announcements included in the FMC report are: 1) the Supplemental Notice of Proposed Rulemaking on Unreasonable Refusal to Deal; 2) Industry Advisory reminding common carriers, including Vessel-Operating Common Carriers, that they must meet their compliance obligations when doing business with Non-Vessel-Operating Common Carriers and Ocean Freight Forwarders; 3) the announcement of Chairman Dan Maffei’s hiring of Alex M. Chintella to serve as Administrative Law Judge of the FMC; and the statement of FMC Commissioner Carl Bentzel on the Extended Weekend Gates at SSA Terminals in Oakland, Seattle, and Tacoma. Click [here](#) to read more.

Coast Guard Cyber Command Establishes New Cyber Protection Unit – On August 1st, Vice Adm. Peter W. Gautier, Deputy Commandant for Operations, presided over the ceremony at Coast Guard Island in Alameda, CA, that established the Coast Guard Cyber Command’s (CGCYBERCOM) third Cyber Protection Team (CPT 2003). According to the USCG press release, the mission of this new command and unit is “to provide assess, threat hunting, and incident response capabilities to the Marine Transportation System (MTS).” CPT 2003 is the first unit that is geographically detached from CGCYBERCOM. Lt. Cmdr. Kenneth Miltenberger was named commanding officer of CPT 2003. More details can be found at this link: [Coast Guard 2003 Cyber Protection Team establishes new command > United States Coast Guard News > Press Releases \(uscg.mil\)](#)

Upcoming DOT Infrastructure Grant Program Application Deadlines

2023 Multimodal Project Discretionary Grant program (MPDG) Combined NOFO – This is a new program established by the Biden Administration for large multimodal infrastructure projects that solicits grant applications at one time for several DOT programs, including INFRA, Mega, and Rural. The Mega grant program was created through the Biden Administration’s Bipartisan Infrastructure Law and will invest \$5 billion through 2026. Eligible projects could include highway, bridge, freight, port, passenger rail, and public transportation projects of national or regional significance. Per the law, 50 percent of funds are available for projects above \$500 million in total cost, and 50 percent are available for projects between \$100 million and \$500 million in total cost. The deadline for applications is August 21, 2023 at 11:59 p.m. ET. Link [here](#).

FHWA Opens NOFO for “PROTECT” Grants—Ports Among Eligible Recipients – The Federal Highway Administration (FHWA) opened applications for the first round of the Bipartisan Infrastructure Law’s Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Discretionary Grant Program. The

program will invest in projects to make the country's surface transportation system – including highways, public transportation, pedestrian facilities, ports, and intercity passenger rail – more resilient to the worsening impacts of climate change, while reducing long-term costs by minimizing demands for more expensive future maintenance and rebuilding. The program prioritizes innovative and collaborative approaches to risk reduction – including approaches that harness the power of nature to protect against flood, erosion, wave damage, and heat impacts. The Notice of Funding Opportunity for Fiscal Years 2022 and 2023 is available [here](#) and will remain open for applicants through August 18, 2023.

DOT Posts FY 2023 Discretionary Grant Preparation Checklist for Applicants for Federal Transportation Funding -- The U.S. Department of Transportation posted a comprehensive checklist for applicants for federal transportation grant program funding provided in FY 2023. According to DOT, the checklist is to assist eligible applicants better understand existing statutory and regulatory requirements and agency policies that they need to be aware of when filling out and submitting applications for DOT competitive grant programs funded in FY 2023. [Click to access DOT Grant Preparation Checklist.](#)

NAWE Event Updates



NAWE is heading to New Orleans, early bird ends soon – Act quick and [secure your spot](#) now to NAWA's annual meeting before the early bird discount expires later this month! Mark your calendar and start making your plans to attend NAWA's meeting in the Big Easy from October 11-13. The event will be held at the stunning Ritz-Carlton Hotel in New Orleans' historic French Quarter where we have a room block available at \$299/night.

Plan to [join your NAWA colleagues](#) to discuss current industry trends as well as legislative and regulatory priorities affecting marine terminal operators from around the country. During the event, all four of NAWA's committees (Legislative Committee, Insurance Committee, Security Committee, and Environment, Energy, and Equipment [E3C] Committee) will convene. **Virtual participation will not be permitted for any committee meeting.**

Articles of Interest

Journal of Commerce

[Carriers tell FMC not to 'weaponize' proposed rule on refusal of service](#)
August 2, 2023

Container lines are warning federal maritime regulators that any rulemaking that directs when it's considered "unreasonable" for them to refuse cargo will be weaponized against them, while shippers are asking for good faith clauses and tighter documentation requirements in that rulemaking.

Washington Technology

[Commerce unveils contract for supply chain analytics](#)
August 2, 2023

The Commerce Department agency responsible for promoting exports of U.S. goods and services is now accepting proposals for a potential three-year contract to build a supply chain data analytics platform.

Commerce's International Trade Administration wants the web-based system to collect and track a variety of data to help inform regulatory and economic policies. ITA also wants to better identify risks and opportunities for protecting supply chains.

Axios

[Tight labor market stands in the way of the White House manufacturing push](#)
August 2, 2023

Federal money is set to pour into the manufacturing industry in the U.S., but a big question looms: who is going to do all the work? The tight labor market poses a challenge to what Axios' Neil Irwin calls the coming manufacturing investment supercycle. That's a broad term for all the investment going into U.S. heavy industry, triggered by pent-up demand and money from the Biden administrations key legislative initiatives.