

FMC Expands Use of Innovation Teams to Respond to COVID-19 Supply Chain Concerns

On March 31, 2020, in response to concerns stemming from the coronavirus (COVID-19) pandemic, the Federal Maritime Commission (FMC) initiated Fact Finding Investigation No. 29, which is aimed at developing improvements to the U.S. ocean transportation supply chain through the use of innovation teams.¹ The order directs the formation of these teams in light of the FMC's recognition that COVID-19 has produced "economic urgency" within port and terminal operations. Per the order, the FMC will further its traditional mandate to "ensure an efficient and economic transportation system for ocean commerce" and improve its ability "to actively respond to current challenges impacting the global supply chain and the American economy."

Last week, the innovation teams convened by Commissioner Rebecca Dye began work identifying steps to provide immediate relief to the ocean transportation supply chain with respect to its most pressing COVID-19-related challenges and disruptions.² Each team, consisting of no more than five members from various parts of the ocean shipping industry, is tasked with answering the following questions:

1. What can the FMC do to provide relief or assistance to mitigate negative impacts on the supply chain related to COVID-19?
2. What can companies involved in ocean cargo delivery do to respond to existing supply chain challenges and bottlenecks?
3. What can supply chain actors do to strengthen the overall performance of the American freight delivery system?

Cargo volumes overall have declined as a result of the reduction in economic activity caused by the pandemic. Some ports have experienced congestion issues due to cargo being stored on the marine terminal and/or a surplus of empty containers on the terminal. Other locations have experienced shortages of containers or other equipment. These types of problems impact all participants in the international ocean cargo supply chain to one degree or another. The FMC's Fact Finding Investigation No. 29 is a recognition of the impacts anticipated within the industry and the importance of ocean transport to the national supply chain. The FMC has invited written comments from parties who wish to provide information or advice separately from participation in the actual innovation teams.

The innovation teams are expected to focus on immediate problems arising from the pandemic and possible solutions to those problems. The FMC's order initiating the fact finding does not specify a date by which work is to be completed or a particular form of work product. Thus, it remains unclear if the work will result in any action by the FMC, or if it will recommend or suggest industry-based solutions. The latter would seem to be more likely, given the time required for agency action and the fact that many supply chain participants are not subject to FMC jurisdiction.

Katie Sobotta, a law clerk with the firm, contributed to this article.

¹ 85 Fed. Reg. 19146.

² Fact Finding 29 Supply Chain Innovation Teams to Begin Work, F. MARITIME COMM'N (Apr. 6, 2020) (<https://www.fmc.gov/fact-finding-29-teams-to-begin-work/>).



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