

FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



David A. Skeel, Jr.
Chair

Members
Andrew G. Biggs
Arthur J. González
Antonio L. Medina
John E. Nixon
Justin M. Peterson
Betty A. Rosa

Natalie A. Jaresko
Executive Director

BY ELECTRONIC MAIL

July 20, 2021

Mr. Jaime A. Lafuente González
President
Transport and Other Public Services Bureau

Re: Transport and Other Public Services Bureau Code of Regulations

Dear Mr. Lafuente González:

We write regarding NTSP's proposed regulation (the "Proposed Regulation") currently under review by the Oversight Board in accordance with its policy for the review of rules, regulations, and orders established pursuant to section 204(b)(4) of PROMESA (the "Policy"). The NTSP initially submitted the Proposed Regulation to the Oversight Board on June 11, 2021.

As you know, the certified 2021 Commonwealth Fiscal Plan (the "Fiscal Plan") includes an extensive discussion of the regulation of land freight. As a general matter, the Fiscal Plan recommends "the deregulation of land freights in Puerto Rico" which would likely reduce transportation costs and lead to a reduction in consumer prices.¹ The Fiscal Plan also specifically addresses the Proposed Regulation and, in particular, the NTSP's "new interpretation of Act 75-2017 that expanded NTSP's regulations across new segments of the economy, including manufacturing and retail."² The Fiscal Plan provided several requirements and recommendations that impact both NTSP and the Proposed Regulation, including:³

1. NTSP should "undergo the regulatory process to update the regulations required under Law 38-2017, the Uniform Administrative Proceedings Act [(“LPAU”)];”
2. NTSP must submit any proposed regulation to the Oversight Board pursuant to PROMESA section 204(b)(4);

¹ See Fiscal Plan at 119–20.

² See Fiscal Plan at 119–20.

³ See Fiscal Plan at 119–20.

3. NTSP should include with any proposed regulation “a study by a credible and independent economist built on a sound empirical foundation of the market for trucking services in Puerto Rico, including such details as shipping rates actually paid, trucking firm sizes, the number of trucking firms, and the number of firms using trucking services”, as well as “a simulation on the economic impact on any tariff increase on consumer prices, economic growth and tax collections”;
4. NTSP must “revert tariff application” to private contract carriers by April 30, 2021;
5. The “regulations should be reviewed to ensure they do not place oversized burdens on the trucking industry.”
6. “It is critical that NTSP shares its evaluation methodology with stakeholders to ensure transparency in the process.”
7. NTSP must revise its regulations to clarify that private contract carriers “are exempt from tariff requirements”;
8. NTSP must revise its regulations “to eliminate duplicate permitting processes, excessive requirements and documentation to carriers”; and
9. “The 2021 Fiscal Plan recommends the Government retract the extension of the tariff setting function of the NTSP to private contracts.”

Based on these requirements and recommendations, the Oversight Board set deadlines for the NTSP to refrain from imposing the tariff to private contracts and to revise its regulations to clarify that private contract carriers “are exempt from tariff requirements.”

On June 21, 2021, pursuant to the Policy, the Oversight Board informed NTSP that—due to the importance and complexity of the Proposed Regulation—it would require additional information to complete its analysis. On July 19, 2021, the Oversight Board requested NTSP provide additional information regarding its compliance with the requirements of the Fiscal Plan as well as all procedural requirements for promulgating an administrative regulation.

On July 20, 2021 at 4:01 a.m. Atlantic Standard Time, the Oversight Board received a series of emails from NTSP containing representations about its regulatory process, among other things. The Oversight Board has completed an initial review of the nearly 500 pages of documents submitted.

Based on that review, the Oversight Board believes the adoption of the Proposed Regulation was not in compliance with the Fiscal Plan. Specifically, it appears the process employed by the NTSP did not meet the requirements of the LPAU. For example, the public notice of the Proposed Regulation, published in November 2020, fails to provide an adequate summary or brief explanation of the regulation, as required under the Fiscal Plan and the LPAU and has no reference to private contracts.

Mr. Lafuente González

July 20, 2021

Page 3 of 3

In addition, the Oversight Board notes that the “Informe sobre la adopción del Código de Reglamentos del Negociado de Transporte y Otros Servicios Públicos” (Report on the adoption of the Code of Regulations of the Transport and Other Public Services Bureau) was signed on July 19, 2021. This report should have been drafted and included in the file prior to adopting the Proposed Regulation. In addition, the report does not include an explanation of the applicability of the minimum tariffs to private contracts. Finally, the report does not contain a description of the amendments incorporated into it after the public hearings; it only mentions that it was amended, but does not describe the amendments or provide a rationale for them. Accordingly, the Oversight Board has determined that NTSP has not complied with the Fiscal Plan requirement to “undergo the regulatory process to update the regulations” as set forth by the LPAU.⁴

Because the Proposed Regulation does not comply with the Fiscal Plan, the Oversight Board cannot approve its implementation at this time, particularly with respect to private contracts. That being said, as part of its commitment to working together of the benefit of the people of Puerto Rico, the Oversight Board is willing to work with the NTSP to promulgate a Fiscal Plan-compliant regulation that achieves the purposes of the Proposed Regulation, including an appropriate increase in freight tariffs, excluding private contracts.

The Oversight Board further reserves the right to take such actions as it deems necessary, consistent with PROMESA sections 104(k), 108(a), and 204, including seeking remedies to prevent implementation and enforcement of the Proposed Regulation. We hope that such action will be unnecessary.

Sincerely,



Jaime A. El Koury
General Counsel

⁴ *Id.* at 119.