



Understanding The FMC and Its Role in The Modern Supply Chain

Technology and its effects on global supply chains are making the world feel like a smaller place. We are truly a global community and more interconnected thanks to technology than ever before. This is true not only in the sense that many of us have the means to communicate with virtually anyone, anywhere, anytime - but also by the infrastructure that exists to produce and deliver goods globally with amazing efficiency.

While it may be cutting edge technology that is connecting the world from a data perspective, it is still necessary to get physical goods where they need to be – and in this regard there is no more important role played by that of ocean cargo shipping.

Given ocean shipping's vital place in the modern supply chain, it's no surprise that The Federal Maritime Commission (FMC) is an important entity for shippers and forwarders operating in the U.S. to understand.

In the past, many shippers haven't felt the need to pay too much attention when carriers and freight forwarders mention the FMC or the need to file tariffs. This is changing and it's now important for all parties involved in ocean shipping to understand the FMC, its jurisdiction, and the evolution of the maritime law that now governs these operations.

Shippers who contract with NVOCCs as well as carriers need to be aware of this agency's authority and how the Shipping Act applies to ocean freight contracts and operations.

The FMC actively enforces the provisions of the Shipping Act of 1984 and will move to collect hefty penalties from violators. In August of 2015, [the FMC imposed a fine of \\$1.2 million](#) on a group of NVOCCs and one VOCC for violating the Shipping Act. In September, the agency imposed a [\\$135,000 penalty on Norwegian carrier Siem Car](#) for a voluntary disclosure of a violation where the carrier had not filed certain space charter agreements in their RO-RO operations. And, while most infractions result in a compromised monetary penalty, the FMC can also suspend a carrier's service.

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The Federal Maritime Commission

The FMC's history is an important part of U.S. history. In 1916, the government created the United States Shipping Board to enforce the Shipping Act of 1916. After several decades of evolution, in 1961 the Federal Maritime Commission as it now exists began to take shape.

U.S. Maritime Law Time Periods

- 1900-1950 Early Regulations
- 1950-1984 Increasing Regulation
- 1984-1998 Reform
- 1998-today Global Regulatory Harmonization

The FMC is an independent agency made up of five commissioners. These commissioners are appointed by the President and must be confirmed by the Senate. The entire Commission is staffed by about 120 employees whose primary duties are to regulate NVOCCs, VOCCs, freight forwarders, and marine terminal operators.

The FMC performs six key functions:

1. To regulate parties involved in U.S. foreign commerce
2. To ensure cruise ship lines manage finances properly in order to satisfy injury or non-performance law suits
3. To monitor foreign laws to ensure that they would not adversely affect U.S. shipping or maritime trade and impose sanctions to persuade foreign governments to change these laws
4. To manage controlled carriers owned by foreign governments and enforce requirements to ensure these carriers engage in fair trade practices
5. To review agreements and service contracts between carriers and marine terminals or between carriers and customers
6. To license and regulate the fiscal management of freight forwarders (NVOCCs) or ocean transportation intermediaries

The FMC derives its authority from maritime laws called acts. One of the very earliest acts was the Shipping Act of 1916. It was passed by Congress out of concern that early shipping lines owned by other nations would act in collusion to fix pricing to unreasonable levels or severely limit their service of U.S. exports. Just as today, at that time ocean exports were crucial to the world's economy. This early act gave the U.S. Shipping Board authority to regulate these foreign owned carriers while granting them some immunity to antitrust regulations. This set the stage for the FMC's authority today.

Maritime Acts

- Shipping Act of 1916
- Shipping Act of 1984
- Ocean Reform Act 1998

Shipping Act of 1984

The time period between 1950 and 1984 was one of increasing regulation of the ocean freight industry - culminating with the passage of The Shipping Act of 1984. This act is the legal framework for the FMC's enforcement of fair shipping standards and it is through this enforcement that the FMC investigates claims of unfair shipping practices, issues licenses, and collects penalties.

The goal of the Shipping Act is to foster competition in the ocean transportation market and to regulate costs to protect U.S. interests and consumers (importers and exports as well as those who purchase these goods). It is also intended to provide stability to the industry as a whole by keeping the playing field level between U.S. carriers and freight forwarders and those of other nations.

The part of the act known as the Controlled Carrier Act (a controlled carrier is a shipping line owned by a foreign government) is used by the FMC to regulate rates, agreements, or contracts protecting the industry as a whole from a controlled carrier setting rates far below the market price as this would destabilize service and unfairly punish privately owned shipping lines. It also allows the FMC to review the laws or regulations imposed on U.S. carriers when they operate in foreign countries. If the laws are found to be discriminatory or applied only to U.S. carriers, the Commission can issue sanctions to encourage fair treatment by the foreign government.

Penalties and sanctions can be significant, but are rarely imposed against controlled carriers. For example, [the FMC considered sanctioning China's controlled carriers with a fine of \\$1.1 million dollars](#) each time they docked at a U.S. port. The commissioners also would have suspended Chinese liner service to the U.S. and restricted port access. The sanctions were in response to Chinese regulations on U.S. carriers requiring the U.S. carriers to hire Chinese affiliates (competing liners and freight forwarders) to handle their commercial activities for freight entering a Chinese port. Penalties can be severe enough to discourage any single or group of ocean carriers from creating a monopoly to drive up rates or costs.



The Ocean Shipping Reform Act of 1998

Although the Ocean Shipping Reform Act of 1998 (OSRA) has been called an act of deregulation, it actually kept most of the Shipping Act of 1984 in tact while changing specific regulations that inhibited competition. The FMC remains in its role of monitor and enforcer of fair shipping practices. This act did, however, introduce a few major changes to the Shipping Act of 1984.

Under OSRA contracts could be confidential and made between shippers and carriers in a one-on-one agreement as opposed to shippers contracting with conferences (groups of carriers). Prior to the act, contracts and their pricing were publicly available. Under OSRA, contract terms can be (but are not required to be) confidential if the parties involved want them to be kept private. The contract is still filed with the FMC who reviews it as before, but does not disclose any information related to pricing about the contract. This change gave shippers and carriers more flexibility in negotiations as well.

Another change that OSRA brought was the removal of contract fillings for certain tariffs. This applies only to the limited amount of freight not covered by a contract. In this case, the shipping line or freight forwarder would charge "rack rates" or their publicly available pricing without needing to file their standard pricing with the FMC.

Finally, OSRA continued the policy of granting limited immunity to shipping lines or freight forwarders from antitrust violations providing the participants follow the FMC rules.

Conclusion

It is important that all parties involved in international shipping understand the role of the Federal Maritime Commission and how maritime laws like the Shipping Act of 1984 and OSRA affect the way these parties negotiate, contract, and operate today.

All parties must be aware that the FMC is stepping up enforcement and regularly issuing penalties for violations, and will take necessary measures to ensure that the ocean shipping industry is fair, competitive, and stable.

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