



FEDERAL MARITIME COMMISSION

800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725
Secretary@FMC.gov

June 30, 2022

Mr. Brian Bumpass
Chair, National Shipper Advisory Committee

Dear Chairman Bumpass:

On behalf of the Federal Maritime Commission, this responds to Recommendation 2 from the National Shipper Advisory Committee (NSAC) submitted on May 6, 2022. The statute that created NSAC provides a 60-day timeline for the Commission to respond in writing to NSAC recommendations, publish the recommendations on the FMC website, and submit the recommendations to Congress. Your full recommendation and this response will be posted to the FMC's website and submitted to Congress in order to fulfill these statutory requirements. Please thank the NSAC for its diligent work and thoughtful recommendation.

NSAC Recommendation 2: A recommendation to expand the scope of the Federal Maritime Commission to include oversight over all carriers, subcontractors, rates, demurrage, detention, storage under any other name, terms and conditions, and modes reflected on any Bill of Lading issued by an ocean carrier. Additionally, this recommendation requests that the FMC begins mandating the provision of accurate transit, cargo location, and container pickup/return locations by carriers to shippers and their nominated forwarders and/or brokers. Finally, in the event of a conflict between the terms of the Uniform Intermodal Interchange Access Agreement (UIIA) and the FMC's oversight and Interpretive Rule, it is recommended that the terms of the FMC shall prevail.

Commission Response

Any expansion of the FMC's jurisdiction must be legislated by Congress. The Commission has direct jurisdiction over common carriers, marine terminal operators (MTO), and ocean transportation intermediaries (OTI). This includes jurisdiction over "through transportation."

Through transportation means continuous transportation between the origin and destination and is offered or performed by one or more carriers, at least one of which is a common carrier under the Shipping Act. An ocean carrier that provides a shipper with a through transportation rate from Asia to an inland destination in the United States will be subject to Commission jurisdiction for the entire through transportation, as will any ocean transportation intermediaries and/or marine terminal operators involved in the through transportation. In other words, ocean cargo that is shipped under a through bill of lading to a final destination in the United States remains under Commission jurisdiction for any Shipping Act violations.

The Commission agrees with the importance of information accuracy to ensure an efficient supply chain. The provision of inaccurate information by an ocean carrier, OTI, or MTO, particularly with regards to cargo and equipment locations, is subject to the general prohibition contained in 46 U.S.C. § 41102(c) against failure “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.”

Your final recommendation relates to the relationship between FMC oversight and regulations, and the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA).¹ The Commission staff will reach out to NSAC to obtain additional information related to your recommendation in order to better inform a more fulsome response and any future actions.

Thank you for NSAC’s proactive role in advising the Federal Maritime Commission on policies related to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. Please contact me or the Designated Federal Officer for the NSAC to confirm receipt of this response and if you have any questions.

Sincerely,

William Cody
Secretary

¹ The UIIA is a standard industry contract that outlines the rules for the interchange of equipment between intermodal trucking companies and equipment providers (ocean carriers, railroads, and equipment leasing companies).