



U.S. Federal Maritime Commission Update

April 17, 2018 – CRCBFA Meeting, Portland, OR





Voyage Plan

- Meet the New Area Reps
- FMC Overview
- AR Roles
- Recent Enforcement Actions
- The Demurrage Petition (P4-16/Fact Finding 28)
- Supply Chain Innovation Team Final Report
- Regulatory Reform Initiative/ NSA and NRA Rulemakings



Introductions

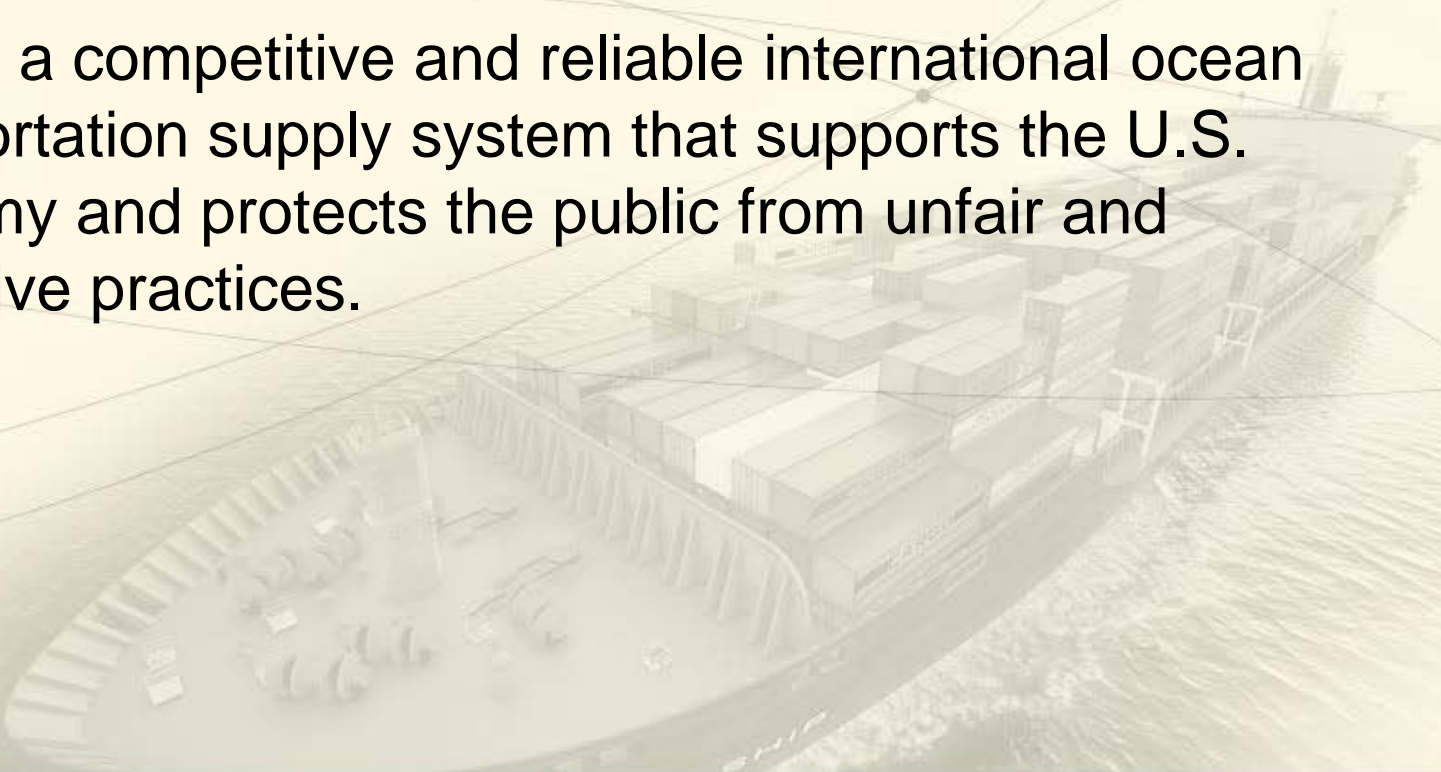




Federal Maritime Commission (FMC)

Mission

Ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.





Federal Maritime Commission (FMC)

Primary Goals

1. Maintain a competitive and reliable international ocean transportation supply system.
2. Protect the public from unlawful, unfair, and deceptive practices.



About the Federal Maritime Commission

- Independent Regulatory Agency Est. 1961
- 5 Commissioners
 - Nominated by President; Confirmed by Senate
 - Staggered 5 year terms
 - No more than 3 of President's party
- Authorized 134 Full Time Employees in 7 locations:
 - Washington DC (HQ)
 - New York
 - Miami
 - New Orleans
 - Houston
 - LA/Long Beach
 - Seattle



Current Commissioners



Michael A. Khouri
Acting Chairman



Vacant
Commissioner



Rebecca F. Dye
Commissioner



Daniel B. Maffei
Commissioner



Vacant
Commissioner



Statutes and Regulations

Principal statutes administered by the Commission, now codified in Title 46 of the U.S. Code at sections 40101 through 44106:

- The Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998
- The Foreign Shipping Practices Act of 1988
- Sections 2 and 3 of Pub. L. No. 89-777, 80 stat.1356 (Financial Responsibility for Death or Injury to Passengers and for Nonperformance of Voyages) Act of November 6, 1966
- Section 19 of the Merchant Marine Act, 1920



FMC Key Functions

- **Regulate oceanborne transportation in the foreign commerce of the United States.** Specifically, the FMC regulates the following:
 - Vessel Operators in the Liner Trade
 - Ocean Transportation Intermediaries
 - Marine Terminal Operators
 - Certain Passenger Vessels Operators
- **Grant Limited Antitrust Immunity** for agreements amongst and between Vessel Operators and Marine Terminal Operators
- **Help resolve disputes** involving shipment of cargo, personal or household goods, or disputes between cruise vessel operators and passengers
- **Investigate and rule on complaints** regarding rates, charges, classifications, and practices of common carriers, Marine Terminal Operators, and OTIs, that violate the Shipping Act.



Area Representatives

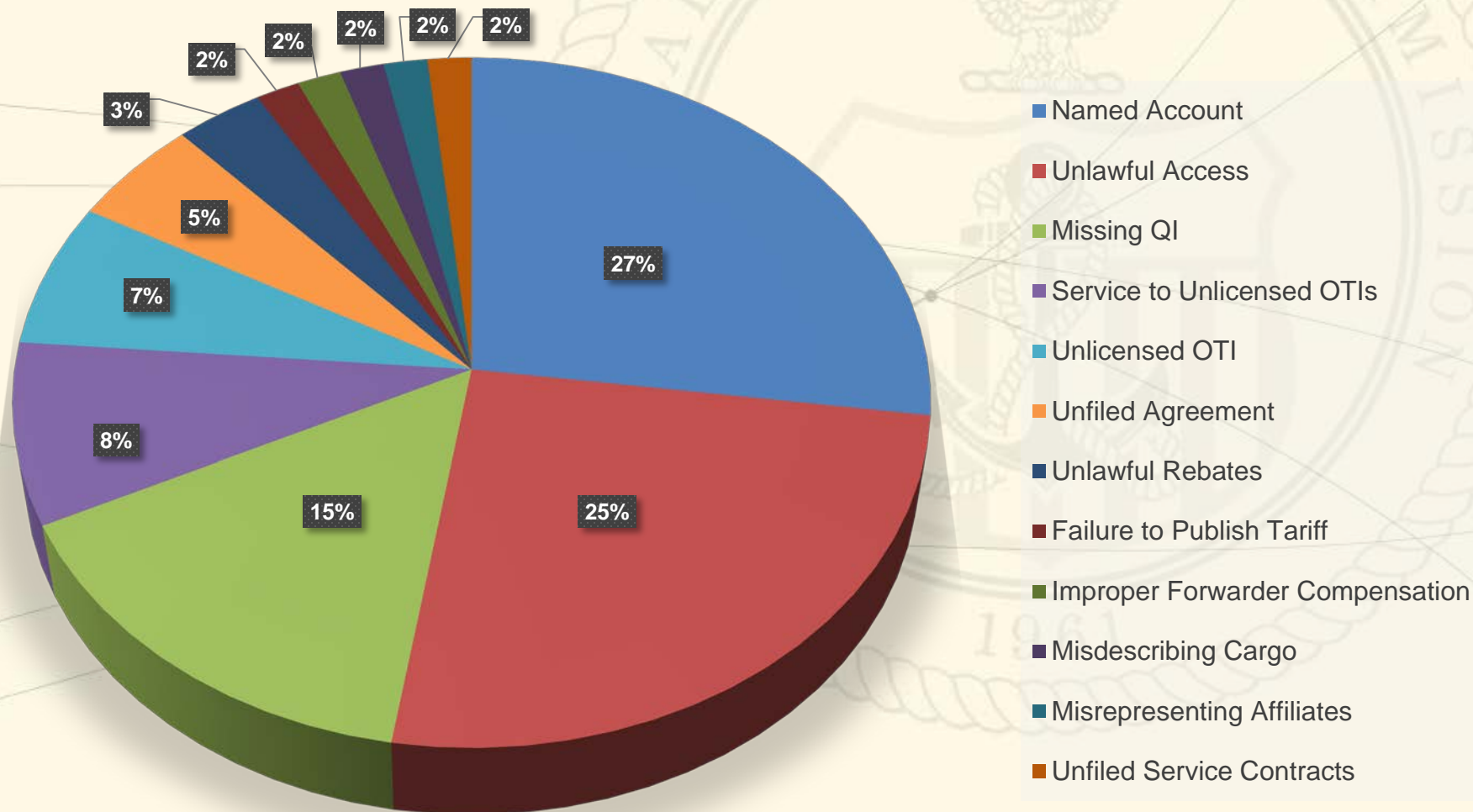
Located in field offices located in New York, South Florida (Miami), New Orleans, Houston, Southern California, and Seattle.

Three main duties:

- Performing investigations into violations of the Shipping Act
- Provide education and outreach to the shipping public, regulated entities, and other government agencies
- Help to resolve complaints and disputes



Enforcement Actions 2015-18*



*Based on Press Release data available at <https://www.fmc.gov/> as of 4/1/2018.



Civil Penalties

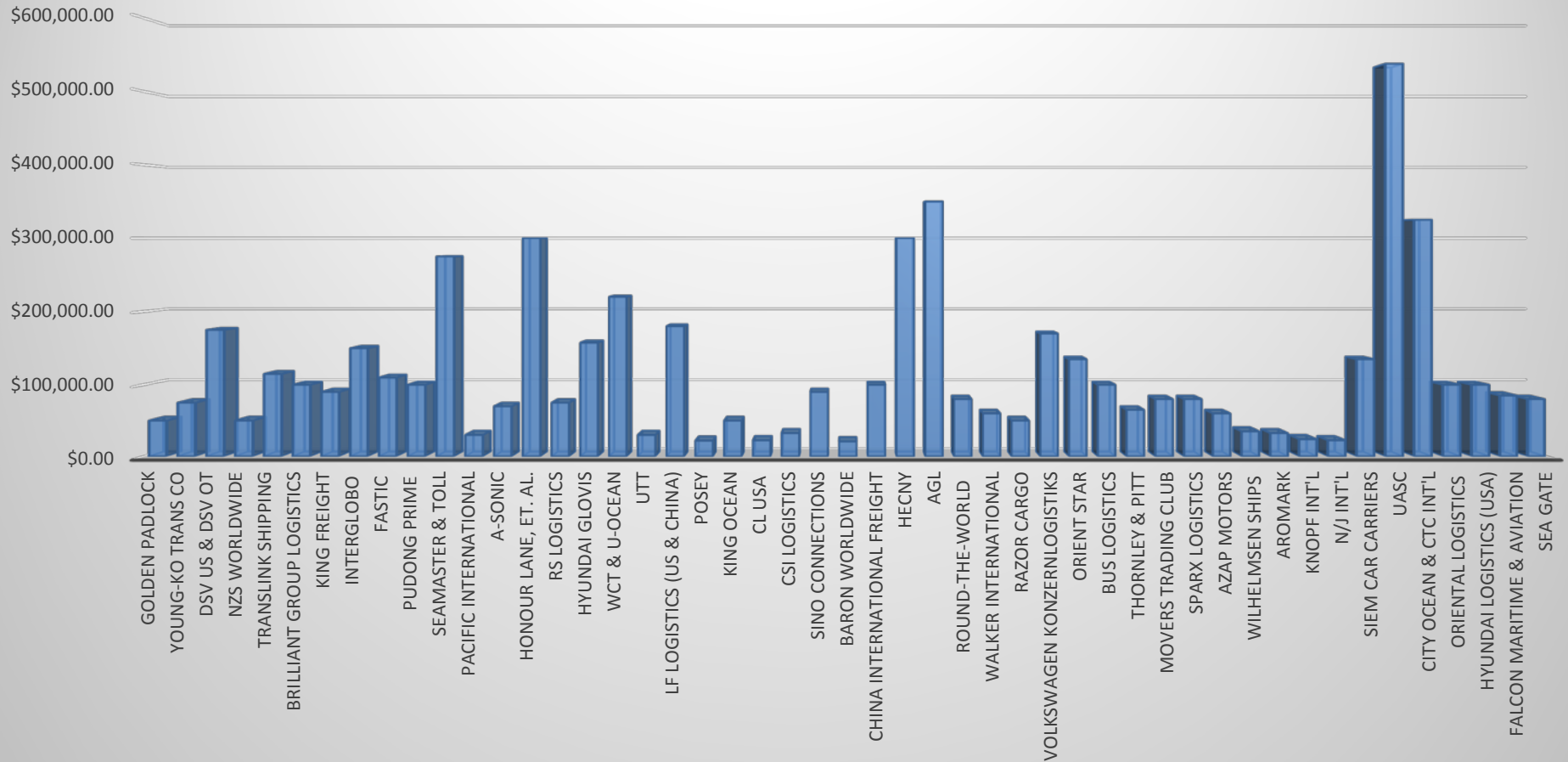
Violators are subject to monetary penalties:

- 46 U.S.C. §41107(a) Knowing and willful violation - up to \$58,562 per shipment or occurrence.
- 46 U.S.C. §41107(b) Where not knowing and willful - up to \$11,712 per shipment or occurrence
- Penalties adjusted annually for inflation.
See 46 CFR §506.4.



Enforcement Actions 2015-18*

Penalty Payments 2015-18



*Based on Press Release data available at <https://www.fmc.gov/> as of 4/1/2018.



Factors in Penalties

- Nature, circumstances, extent, and gravity of the violation
- The degree of culpability
- History of prior offenses
- Ability to pay, and
- Other matters justice may require

46 U.S.C. §41109(b)



The Demurrage Petition

Petition of the Coalition for Fair Port Practices (P4-16)

- Docket Available at: <http://www.fmc.gov/P4-16/>
- The Commission held two days of hearings, available at: https://www.fmc.gov/p4_16hearings.aspx
- Based on all of the comments and testimony received, the Commissioners voted unanimously to launch a formal investigation, Fact Finding No. 28.



The Demurrage Investigation

Conditions and Practices Relating to Detention, Demurrage, and Free Time in International Oceanborne Commerce (Fact Finding 28)

- Investigating Officer: Commissioner Dye
- Report due: December 2, 2018.
- More info available at:
 - https://www.fmc.gov/formal_investigation_in_detention_demurrage_case/, and
 - https://www.fmc.gov/ff_no_28/
 - Email: FF28@FMC.GOV



Fact Finding 28 Questions

- Whether the alignment of commercial, contractual, and cargo interests enhances or aggravates the ability of cargo to move efficiently through U.S. ports?
- When has the carrier or MTO tendered cargo to the shipper and consignee?
- What are the billing practices for invoicing demurrage or detention?
- What are the practices with respect to delays caused by outside or intervening events?
- What are the practices for resolution of demurrage and detention disputes between carriers and shippers?



Supply Chain Innovation Initiative (SCITI)

Two teams of Industry Leaders were charged with talking about and identifying solutions to Port Congestion issues:

- Almost 2 year effort looked at both imports & exports
- Report Published December 7, 2017 and at: <https://www.fmc.gov/supplychain.aspx>
- Greater Visibility across the freight delivery system key to improvement
- National Seaport Information Portal



Regulatory Reform Initiative

- Voluntary effort “to reduce unnecessary regulatory burdens and costs”
- Headed by Managing Director Karen Gregory
- Team to review FMC’s Regulations and propose Rule Changes to Commission
- Plan available at:
https://www.fmc.gov/commission_issues_regulatory_reform_priorities_plan/



Service Contact & NSA Amendments (Docket 16-05)

Final Rule Published March 2017

Effective May 5, 2017

- Allows the filing of sequential Service Contract/NSA **amendments** with the FMC within 30 days of the effective date
- **Originals** still need to be filed **prior** to first shipment!



NSA & NRA Rule Update (Docket 17-10)

Propose Rule Published Nov. 30, 2017

- Removes filing requirement for NSAs
- Allows NRAs to accepted by booking a shipment (or written acceptance)
- Allows NRAs to amended, but only for subsequent shipments
- More info available at: <https://www.fmc.gov/17-10/>



License Renewal

- Year 2 of a 3 year cycle
- Electronic Process – Is your email up to date?
- Should receive an email from oti@fmc.gov with link, username, and password, 90 days prior to deadline.
- Red Flags – require new Application (FMC 18):
 - QI up to date?
 - Corporate structure/ownership changes?
- More information including due dates:
https://www.fmc.gov/resources/guidance_renewals.aspx



Questions?

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