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**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 18-06

Comments on Interpretive Rule; Shipping Act of 1984

Submitted by

**NEW YORK NEW JERSEY FOREIGN FREIGHT FORWARDERS & BROKERS
ASSOCIATION, INC.**

The New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. (“NYNJFFF&BA”) respectively submits its comments in support of an interpretive rule to clarify the scope of the Shipping Act of 1984 and its prohibition against failing to establish, observe, and enforce just and reasonable regulations and practices related to or connected with receiving, handling, storing, or delivering property. Established in 1917, the NYNJFFF&BA is one of the oldest trade associations for licensed freight forwarders, NVOCCs, and Customs Brokers in the United States with over 100 regular members and 25 industry –related affiliates. The membership, consisting of both publically traded global logistics giants as well as small businesses, will be directly impacted by the proposed regulations.

Intent of Congress

The Notice of Proposed Rulemaking provides a careful, well-documented review of legislative, judicial and Federal Maritime Commission (“Commission”) history over the past 100 years concerning what constitutes a violation of 41102 (c). The NYNJFFF&BA agrees with the conclusion that a regulated entity must engage in a continuous practice of failure to

follow the regulations in connection with “receiving, handling, storing or delivering property” in order to be considered in violation of the Shipping Act. An isolated instance or occasional error by a regulated entity that otherwise exercises due diligence in its duty to take reasonable care for the cargo in its custody and arrange for proper delivery should not be raised to the level of a violation of 41102 (c).

The very wording of 41102 (c) and its inclusion of “practices” logically leads to a the recognition that the emphasis is on repeated action and a pattern of behavior. The Commission provided a very elegant and well-reasoned discussion of the meaning in support of its conclusion to return the interpretation of this section to the original intent of Congress in its enactment of the Shipping Act.

It has always been our understanding that Congress intended the General Prohibitions in section 41102 to restrain abuses of power and to protect shippers. Violations would mean that the regulated entities were knowingly and willfully acting with a consistent disregard for the requirements of the law and thus undermining a competitive maritime transportation system.

Affect on Ocean Transportation Intermediaries

If the Commission were to issue an interpretive ruling that recognizes continuous unjust or unreasonable practices as violations and not individual instances it would have a positive common sense affect on Ocean Transportation Intermediaries (“OTIs”). Under recent more narrow interpretations of what constitutes a violation many OTIs striving to be compliant can be put at risk for a single disagreement or accidental misstep. It is all too easy for a disgruntled party involved in a single issue to use the Commission and the threat of a violation to force a resolution.

The question of the effect of such an interpretation is particularly relevant in the current discussion of issues stemming from port congestion and the Commission’s fact finding investigation in to detention, demurrage, and free-time practices. The NYNJFF&BA has been assisting its members to bring instances of unreasonable practices in the assessment of detention, demurrage, and free-time in support of the Coalition for Fair Port Practices Petition. This was a result of continuous widespread complaints by our membership that revealed a systemic problem in being able to take delivery and tender cargo efficiently without punishing additional costs in instances beyond their customer’s

control. The concern of our membership was not focused on being able to resolve an individual incident without the assistance of the Commission but to bring rationality and fairness to the process so that detention and demurrage costs are not blindly passed to the cargo interests because they must pay them, even when not responsible, in order to gain control of their freight. The NYNJFF&BA recognizes that the broader interpretation of what constitutes a violation may also restrict OTIs from bringing complaints in very specific isolated situations. However, the net effect will be more positive than negative as it will also limit the risk of frivolous claims brought against them.

Remedies

OTIs would prefer to operate and settle individual claims through common business practice of negotiation and agreement. This is far more cost effective and allows the OTI to guide the client or vendor relationship. If a commercial solution is not possible then each party has ample recourse to bring the case for damages to the legal system.

Often the complaints of violation are brought to the attention of the Commission by the more knowledgeable industry participants. The process to bring a claim of violation to the Commission carries costs as well. While the Commission serves the entire industry the practice and reality is that it is only accessed by a limited number of companies and these are usually financially strong regulated entities.

The balance of the industry participants will not be further advantaged or disadvantaged by the proposed interpretation of what constitutes a violation. They will continue to find solutions in the marketplace. There are sufficient alternatives to allow companies to resolve individual disputes without invoking Commission action.

Scope

The NYNJFF&BA supports the Commissions' effort to clarify through an interpretive ruling the meaning of 41102 (c). We would also encourage the Commission to include in its future interpretive rulings a review of all of the general prohibitions in section 41102.

These would include Section 41102 (a) stating the general prohibition of " Obtaining Transportation at Less Than Applicable Rates and 41102 (b), Operating Contrary to Agreement. Cases before the Commission's Bureau of Enforcement have over the years reflected instances of isolated technical violations which are resolved by

compromise and settlement in view of the expense of litigation where no harm or damages resulted to any industry stakeholders . These type of penalties are counterproductive in any case since there are no injured parties and involve substantial sums to settle. It would be very useful if the Interpretive Ruling could at least recognize that these technical violations do not serve the larger purpose of the Commission or its statutory obligation under the Shipping Act of 1984 to “ provide an efficient and economic transportation system” (46 CFR 40101 (2) and to “promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace” (46 CFR 40101 (4). We recognize that this is not the subject matter of this proceeding, but it would send a proper signal to the industry that this is a topic which the Commission may wish to visit in the near term.

Such interpretive rulings will provide regulatory clarity, which is essential to business in making decisions. It will further allow the Commission to marshal its resources on the larger issues of safeguarding a competitive maritime industry and efficient ocean transportation system without unnecessary government regulation.

Executed on October 10, 2018

On Behalf of the NYNJ Foreign Freight Forwarders & Brokers Association, Inc.

A handwritten signature in black ink, appearing to read "William B. Skinner", followed by a horizontal flourish.

William B. Skinner

President

NYNJ Foreign Freight Forwarders &Brokers Association, Inc.