

FEDERAL MARITIME COMMISSION

INTERNATIONAL OCEAN
TRANSPORTATION SUPPLY CHAIN
ENGAGEMENT - POSSIBLE VIOLATIONS
OF 46 U.S.C. § 41102(C)

Fact Finding No. 29

Issued: November 19, 2020

SUPPLEMENTAL ORDER

On March 31, 2020, in an effort to respond to growing concerns about challenges impacting the global supply chain and the American economy, the Federal Maritime Commission (Commission) issued an order establishing Fact Finding 29. Order: *International Ocean Transportation Supply Chain Engagement*, 85 Fed. Reg. 19146 (April 6, 2020). The primary purpose of the Fact Finding was to identify operational solutions to cargo delivery system challenges related to recent global events.

The Order designated Commissioner Rebecca F. Dye as the Fact Finding Officer pursuant to 46 U.S.C. §§ 41302, 40302, 41101 to 41109, 41301 to 41309, and 40104, and 46 C.F.R. § 502.281 et seq. The Order also granted her full authority under 46 C.F.R. §§ 502.281 to 502.291 to perform such duties as may be necessary in accordance with U.S. law and Commission regulations.

The initial focus in Fact Finding No. 29 was on commercial solutions. Based on information obtained in the fact finding, the Commission is concerned that vessel-operating common carriers in alliances who call on the Port of New York and New Jersey or who call on the Port of Long Beach and the Port of Los Angeles may be employing practices and regulations that violate 46 U.S.C. § 41102(c). As one example, stakeholders who participated in discussions in Fact Finding No. 29 shared problems they are experiencing with policies regarding the return of empty containers. *See* Press Release, *Commissioner Dye Announces Findings of San Pedro Bay Discussions* (June 17, 2020); Press Release, *Commissioner Dye Completes Work in NY & NJ, Turns Attention to New Orleans* (Aug. 4, 2020). In follow up conversations with the Fact Finding Officer, stakeholders have reiterated these concerns, and articles in the trade press have also highlighted questionable practices.

Because of these stakeholder concerns, the Commission now has a clear and compelling responsibility to investigate the practices and regulations that are having an unprecedented negative impact on congestion and amplifying bottlenecks at these ports and other points in the Nation's supply chain. This is a serious risk to the growth of the U.S. economy, job growth, and to our Nation's competitive position in the world.

Therefore, the Commission fully endorses efforts by the Fact Finding No. 29 Officer, Commissioner Rebecca F. Dye, under the authority existing in the March 31, 2020 Order, to investigate whether alliance carriers who call on the Port of New York and New Jersey or who call on the Port of Long Beach and the Port of Los Angeles are employing practices or regulations in violation of § 41102(c). This includes, but is not limited to, practices and regulations related to demurrage and detention, empty container return in light of 46 C.F.R. § 545.5, and practices related to the carriage of U.S. exports.

The Fact Finding Officer's authority includes the ability to issue a Notice of Inquiry (NOI) and/or compulsory information demands under 46 U.S.C. § 40104 to alliance carriers who call on the Port of New York and New Jersey or who call on the Port of Long Beach and the Port of Los Angeles.

THEREFORE IT IS ORDERED, That, pursuant to her existing authority under 46 U.S.C. §§ 41302, 40302, 41101 to 41109, 41301 to 41309, and 40104, and 46 C.F.R. § 502.281 et seq., Commissioner Rebecca F. Dye investigate whether alliance carriers who call on the Port of New York and New Jersey or who call on the Port of Long Beach and the Port of Los Angeles are employing practices or regulations in violation of 46 U.S.C. § 41102(c);

IT IS FURTHER ORDERED, That, the Fact Finding Officer provide periodic updates to the Commission on the results of efforts undertaken by this investigation;

IT IS FINALLY ORDERED, That, notice of this Order be published in the Federal Register.

By the Commission.

Rachel E. Dickon
Secretary