



26 Nov 2008

The National Association of Waterfront Employers ['NAWE'] concerns with the FMC/Shipping Act.

NAWE members are the private sector marine terminal operators ['MTOs']/stevedores who generally operate under a lease or other agreement with a public port authority. NAWE members load/unload about 90% of the import/export containers in the U.S.

Marine terminal operations fall squarely within the maritime and [foreign] commerce jurisdiction of the United States, and MTOs are probably the most heavily federally regulated entities. E.g., federal laws govern our workers' compensation insurance [The Longshore and Harbor Workers' Comp. Act], our cargo liability insurance [The Carriage of Goods by the Sea Act], our commercial relations with port authorities, ocean carriers and others in the intermodal chain [The Shipping Act], etc. Additionally there is a heavy federal security regime now imposed on MTOs and their operations by regulations of several DHS agencies, primarily the CG, TSA, and CBP. MTOs are also subject to the more generalized jurisdiction of numerous other federal agencies such as OSHA. Moreover, it has been estimated that approx 40 federal, state and local governmental entities exercise some police power over MTOs.

With all of the changes to the industry since 9/11, NAWE members need and expect a functioning FMC exercising skillful oversight over all of the 'stakeholders' subject to the Commission's jurisdiction. Stakeholders, whether up or down the intermodal chain, allowed to operate in open defiance of the requirements of the Shipping Act will only lead to commercial anarchy and encroachment by states and/or lesser political subdivisions on federal authorities. Nothing good can be accomplished should this result occur. With trade [imports and exports] still expected to contribute substantially to the GDP, despite the current downturn, and resume its steep increase at some point in the future, the role of the FMC will be critical to keeping the stakeholders dealing fairly under the dictates of the Shipping Act, and the Obama Administration needs to appoint knowledgeable Commissioners willing to meet the challenge.