What FMC's Rejection Of War Surcharges Means For Shipping

By **Julie Maurer, Benjamin Nashed and Serena Tang** (April 16, 2026)

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In March, five vessel operating common carriers, or VOCCs, and two non-vessel operating common carriers, or NVOCCs, filed requests with the Federal Maritime Commission seeking special permission to bypass the statutory notice requirements of Title 46 of the U.S. Code, Section 40501, and implement various emergency or war surcharges in response to Mideast conflicts.

Two VOCCs even filed second requests for special permission. But the FMC denied every application, save one that was withdrawn.

These denials, coupled with the FMC's recent enforcement actions and record-setting civil penalty assessments, signal a decisive shift in the agency's regulatory posture toward stronger shipper protections.

Shippers, freight forwarders and other supply chain participants should be rigorously scrutinizing the charges they receive from carriers now more than ever.

To understand the significance of these denials, it is important to consider the statutory framework the FMC enforces. The FMC is an independent federal agency that regulates the U.S. international ocean transportation system.

Its mission is to ensure a competitive, reliable and transparent maritime supply chain that serves U.S. exporters, importers and consumers, while protecting the public from unjust, unreasonable or deceptive practices.

Consistent with that shipper-protective mission, Section 40501 requires common carriers to publish their rates, charges, classifications, rules and practices in publicly accessible tariffs.

This transparency requirement is a core feature of the Shipping Act of 1984, and serves a straightforward but critical purpose: Shippers must be able to see, understand and rely on the rates they are charged, and carriers must apply those rates uniformly to similarly situated customers.

Public tariff publication enables informed decision-making, deters discriminatory and deceptive practices, and gives the FMC the visibility necessary to police improper charges, such as unreasonable detention and demurrage charges, surprise surcharges or charges unrelated to services rendered.

To further safeguard rate transparency and enable informed decisions by shippers, Section 40501 requires that any tariff change increasing costs be published at least 30 days before taking effect, unless the FMC grants special permission for earlier implementation.[1]

This authorization allows carriers, in defined circumstances, to seek FMC approval to deviate from the otherwise applicable notice and publication timelines.

The 30-day notice period is not a mere procedural formality; rather, it provides shippers the opportunity to evaluate, negotiate or adjust their logistics arrangements before carriers impose new charges.

Historically, the FMC granted special permission requests upon a showing of good cause. Most notably, in late 2023 and early 2024, amid a prior conflict in the Middle East, approximately a dozen common carriers sought and received special permission to implement surcharges on an accelerated timeline.

A key distinction between those 2023 and 2024 approvals and the FMC's most recent special permission rejections is the commission's 2025 restructuring of its decision-making process.

Prior to June 2025, the Director of the Bureau of Trade Analysis exercised delegated authority to evaluate and approve special permission requests. Under the revised structure, special permission requests are now decided by a majority vote of the commissioners of the FMC.[2]

This shift centralizes authority and introduces a more deliberative — if not more politically sensitive — review process.

As FMC Chairman Laura DiBella explicitly noted in a March 23 statement, granting special permission is "a significant matter, requiring careful deliberation," and VOCCs and NVOCCs bear the burden of establishing "good cause for the requested exception to the rules."

The FMC's insistence that carriers strictly comply with the notice and publication requirements of Section 40501 is not an isolated development. It is consistent with a broader pattern of shipper-friendly enforcement.

In an order issued in January, the FMC held that a "basic section 40501 violation does not require a showing that it reflected any particular intent or caused any particular tangible harm," but that the mere failure to publish is a violation in and of itself.[3] The FMC ultimately decided that these cumulative tariff violations would amount to $9.46 million in civil penalties.

This holding affirms that publicly available tariffs are enforceable commitments that define the lawful bounds of carrier conduct. They are not aspirational disclosures or internal billing references.

Where a tariff fails to clearly and accurately state applicable charges, the violation is complete regardless of internal intent, asserted good faith or post hoc remedial efforts.

The FMC also affirmed this principle in a news release last November, announcing that it had collected a total of $1.3 million from an NVOCC for tariff publication violations and providing service that was not in accordance with published tariffs.[4]

These enforcement actions underscore a critical point: Tariff compliance is not merely a regulatory obligation, but a prerequisite to enforceable charges.

Under the FMC's civil penalty framework and Title 46 of the U.S. Code, Section 41107(a), each day that a deficient tariff remains publicly available constitutes a separate statutory violation.

Accordingly, what might initially appear to be an administrative lapse can mature into a compounding and expensive compliance failure, exposing carriers to millions of dollars in regulatory civil penalties or private civil actions.

This potential legal exposure reinforces why shippers and all supply chain stakeholders should rigorously scrutinize every charge they receive, to evaluate whether new or revised charges align with the carrier's duly published and effective tariffs.

Any deviation from the "rates, charges, classifications, rules, and practices" within a published tariff could constitute a Shipping Act violation. Shippers that identify such deviations are well-positioned to seek recourse before the FMC.

Viewed against this statutory and enforcement backdrop, the FMC's recent denials of special permission requests take on added significance.

If carriers cannot circumvent statutory notice and publication requirements through special permission, and remain bound to their published tariffs, the scope for imposing unexpected or unjustified charges on shippers is sharply constrained.

The result is a far narrower margin for error in invoicing and billing than carriers may have assumed in prior emergency-driven surcharge environments. Likewise, shippers are in a stronger position to challenge charges that deviate from published tariffs.

This dynamic also marks a pivot from tariff publication enforcement to a broader examination of carrier rate setting conduct under the Shipping Act.

By uniformly rejecting expedited war-related surcharge requests, the FMC implicitly reinforced the distinction between permissible rate adjustments and practices that may be deemed unjust or unreasonable.

Emergency conditions alone do not authorize carriers to depart from statutory processes, particularly where proposed surcharges would materially alter transportation costs without the transparency and advance notice required by law, a principle the FMC has emphasized in its recent decisions and rulemakings.

For shippers, this means that emergency-labeled surcharges deserve the same level of scrutiny as any other rate increase, and that the FMC is ready to enforce the statutory protections designed to prevent this type of unilateral cost imposition.

The denials further implicate a "refusal to deal" dimension. If a carrier conditions service on payment of surcharges that have not been lawfully published or approved, then the carrier's conduct may be viewed as a constructive refusal to deal.

This would likely trigger Title 46 of the U.S. Code, Section 41104(a)(3), or other possible violations under the Shipping Act, independent of whether the underlying tariff itself is ultimately found deficient.

This possibility takes on heightened significance in light of World Shipping Council v. FMC, where the U.S. Court of Appeals for the District of Columbia Circuit confirmed last year that the FMC may consider rates when evaluating a refusal-to-deal violation.

The final rule at issue in World Shipping, Title 46 of the Code of Federal Regulations, Section

542.1, provides that the FMC may consider factors such as whether the ocean common carrier followed a documented export policy, engaged in good faith negotiations, relied on legitimate transportation factors and any other relevant conduct bearing on the reasonableness of the refusal.

While not every billing dispute gives rise to a refusal-to-deal violation, conditioning essential transportation services on compliance with charges that have not been lawfully published or approved materially heightens the risk that the carrier's conduct could be deemed unreasonable under Section 41104(a)(3).

Shippers that encounter such conditions should consider whether the carrier's conduct warrants a complaint before the FMC.

More broadly, the FMC's across-the-board rejection of recent special permission requests suggests that the agency is drawing a sharper line between genuine operational exigency and opportunistic rate increases framed as emergency surcharges.

The commissioner-level review process appears particularly attuned to this distinction, reflecting increased scrutiny of claims of necessity that lack concrete carrier-specific showings of good cause.

These developments point to an evolving enforcement landscape that is increasingly favorable to shippers.

For carriers, the message is increasingly clear: Tariff publication is not a procedural formality, emergency conditions do not relax statutory compliance, and rate-setting decisions made outside those bounds may invite both regulatory scrutiny and private litigation.

For shippers, the corollary is equally significant: enhanced transparency, enforceable tariff commitments and a more robust framework for challenging unlawful charges in a tightening regulatory environment.

In this climate, shippers and logistics stakeholders should treat every surcharge, accessorial fee and rate adjustment as an occasion for careful review against the carrier's published tariff.

The FMC has made clear that it views tariff compliance as a nonnegotiable obligation, and shippers that take the time to scrutinize their charges will find a regulatory environment that is prepared to support them.

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[1] A tariff change that decreases a shipper's cost may become effective immediately upon publication, with no advance notice period.

[2] The FMC is composed of five commissioners appointed by the president and confirmed by the Senate, with no more than three commissioners permitted to belong to the same political party. One commissioner is designated by the president and serves as the chairman.

[3] Order on Initial Decision, Mediterranean Shipping Company S.A. — Possible Violations of the Shipping Act, U.S.C. §§ 41102(c), 40501, and 41104(A)(2)(A), Docket No. 23-08, 22 (Jan. 1, 2026) (Fed. Mar. Com'n), https://www2.fmc.gov/readingroom/proceeding/23-08/.

[4] Federal Maritime Commission, FMC Collects $1,350,000 in Penalty Payments (Nov. 18, 2025), https://www.fmc.gov/articles/fmc-collects-1350000-in-penalty-payments/.