



U.S. House of Representatives
Committee on Transportation and Infrastructure

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April 14, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Fiscal Year 2009 Budget – Federal Maritime Commission

PURPOSE OF THE HEARING

The Subcommittee on Coast Guard and Maritime Transportation will convene at 10:00 a.m. on April 15, 2008, in Room 2167 of the Rayburn House Office Building to receive testimony on the Federal Maritime Commission's ("FMC") fiscal year 2009 budget request.

BACKGROUND

The President requests \$24 million in FY 2009 for Federal Maritime Commission activities, which is an increase of approximately \$1.9 million (7.8 percent) over the total amount enacted in FY 2008 for the Commission.

Obligations by Program Activities

The President requests \$8 million for formal proceedings; \$1 million for the Inspector General; \$11 million for operations and \$4 million for administrative costs.

The FMC is authorized for five years. That authorization expires at the end of fiscal year 2008 and the FMC needs to be reauthorized by Congress this year.

History

The Federal Maritime Commission was established August 12, 1961, as an independent regulatory agency by Reorganization Plan No. 7. Prior to that date, the Federal Maritime Board had

responsibility for the regulation of ocean commerce and the promotion of the United States Merchant Marine. Under Reorganization Plan No. 7, U.S. shipping laws were separated into two categories: regulatory and promotional. The responsibility of promoting an adequate and efficient U.S. Merchant Marine was assigned to the United States Maritime Administration ("MARAD"), now located within the Department of Transportation. The newly formed FMC was charged with the administration of the regulatory provisions of the shipping laws.

When the Shipping Act passed in 1984, major deregulatory changes were made in the regulatory regime for shipping companies operating in the U.S. foreign commerce. In 1998, Congress passed the Ocean Shipping Reform Act that had additional deregulatory amendments and modifications to the Shipping Act of 1984. This legislation was a significant pro-market shift in shipping regulations.

Functions

The principal statutes or statutory provisions administered by the Commission are contained in subtitle IV of title 46, United States Code. This includes filing of tariffs and service contracts under chapter 405; regulation of controlled carriers under chapter 407; regulation of ocean transportation intermediaries such as freight forwarders under chapter 409; and actions to address unfair foreign shipping practices under chapters 421 and 423.

The Federal Maritime Commission's regulatory responsibilities include:

- Regulating certain activities of international shipping lines (called "ocean common carriers"), marine terminals operators, and ocean transportation intermediaries that operate in the U.S. foreign commerce or the trade between individuals or legal entities in U.S. with different countries. (An Ocean Transportation Intermediary is either an ocean freight forwarder or a non-vessel operating common carrier. An ocean freight forwarder is an individual or company that dispatches shipments from the United States via common carriers and arranges or books space for those shipments on behalf of shippers. They also prepare and process the documentation and perform related activities pertaining to those shipments. A non-vessel operating common carrier is a common carrier that extends itself out to the public to provide ocean transportation. It does not operate the vessels by which ocean transportation is provided, and is a shipper in relation to the involved ocean common carrier.)
- Overseeing the financial responsibility of cruise ship lines and other passenger ship operators, ensuring they have the resources to pay compensation for personal injuries or non-performance.
- Monitoring the laws and practices of foreign governments which could have a discriminatory or otherwise adverse impact on the U.S. maritime trade and U.S. shipping industry and administers bilateral trade sanctions to persuade foreign governments to remove adverse conditions.
- Enforcing special regulatory requirements applicable to shipping lines controlled or owned by foreign governments (so-called "controlled carriers")
- Reviewing and regulating agreements between marine terminals and/or shipping lines (which enjoy statutory immunity from the antitrust laws) and service contracts between shipping lines and their customers.

- Licenses and regulates ocean transportation intermediaries in the U.S., and ensures all maintain evidence of financial responsibility. These intermediaries include freight forwarders, who make bookings and process paperwork for shipper customers (roughly analogous to a travel agent for freight), and "non-vessel-operating common carriers", who act as resellers of space on shipping lines' vessels.
- Reviewing common carriers' privately published tariff systems for accessibility and accuracy.

The Commission is authorized by chapters 421 and 423 of title 46, United States Code, to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may inflict penalties to address actions by carriers or foreign governments that adversely affect shipping in the U.S. foreign oceanborne trades or that impair access of U.S. flag vessels to ocean trade between foreign ports.

The Commission conducts informal and formal investigations as a part of its regulatory responsibility. If a person or company is unable to settle a dispute that involves a possible violation of the Shipping Act, that person or company may file a complaint to the Commission. The complaint will be referred to the Commission's Office of Administrative Law Judges. If the Administrative Law Judge ("ALJ") is unable to decide the case merely by reading written evidence, a hearing may be conducted that is similar to trial in which witnesses will appear and give testimony under oath. The ALJ's initial decision may be appealed to the Commission by the filing of exceptions by the parties within 22 days, or may be reviewed by the Commission on its own motion. If there are no exceptions to the initial decision, it becomes administratively final 30 days after the date of issuance.

Organization

The Commission is typically composed of five Commissioners appointed to five-year terms by the President with the advice and consent of the Senate. Not more than three members of the Commission may belong to the same political party. The Chairman of the Commission is designated by the President.

The Chairman is the administrative officer and chief executive of the agency. Presently, the Chairman's position is vacant. Therefore, all four Commissioners are responsible for the day-to-day management of the agency including hiring and establishment of Senior Executive Service ("SES") positions, renovations to the Commission offices, and other personnel and administrative matters.

The Commission's organizational units consist of: Office of the Secretary; Office of the General Counsel; Office of Administrative Law Judges; Office of the Inspector General; Office of the Executive Director; Office of Equal Employment Opportunity; Bureau of Consumer Complaints and Licensing; Bureau of Enforcement and Bureau of Trade Analysis. The Executive Director assists the Chairman in providing executive and administrative direction to the bureaus in the Commission. The offices and bureaus are responsible for the Commission's regulatory programs or providing administrative support.

In fiscal year 2007, the Commission was authorized a total of 119 full-time equivalent positions and had a total appropriation of \$20 million. In the President's FY 2009 budget, 131 full-time equivalent positions have been requested. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in Los Angeles, New York, Miami, New Orleans, and Seattle.

FEDERAL MARITIME COMMISSION BUDGET REQUEST
(in millions)

Program	FY2008 Enacted	FY2009 Authorized	FY2009 President's Budget	Diff. of FY2009 Pres. Budget and FY2008 CR	
				\$	%
Formal Proceedings	7.0	None	8.0	1.0	14%
Inspector General	1.0	None	1.0	0	0%
Operations	10.0	None	11.0	1.0	10%
Administrative	4.0	None	4.0	0	0%
Total	22.0	None	24.0	2.0	9%

WITNESSES

Commissioner A. Paul Anderson
Commissioner
Federal Maritime Commission

Commissioner Joseph E. Brennan
Commissioner
Federal Maritime Commission

Commissioner Harold J. Creel Jr.
Commissioner
Federal Maritime Commission

Rebecca F. Dye
Commissioner
Federal Maritime Commission