

**Statement of
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On

**“Review of Fiscal Year 2025 Maritime Transportation Budget Requests, Pt. 1:
Maritime Administration and Federal Maritime Commission”**

Before the

**Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
U.S. House of Representatives**

April 30, 2024

Good afternoon, Chairman Webster and Ranking Member Carbajal. I appreciate having this opportunity to appear before you today to discuss the Fiscal Year 2025 budget request of the Federal Maritime Commission.

America’s importers and exporters are having to adapt to rapidly changing circumstances around the world that impact ocean shipping. They deserve a Federal Maritime Commission that is also able to adapt as rapidly as possible to the varying challenges that can affect the cost, availability, reliability, and competitiveness of ocean shipping available at container ports throughout the United States.

As many of you know and some have probably experienced, changing the capacity, priorities, and culture of a government agency is not always as simple or as quick as we would like. Nonetheless, thanks to five devoted Commissioners, a professional staff truly dedicated to helping American shippers, and a clear message from Congress and from the President, the Federal Maritime Commission in just a few years has changed course to actively address many of the pressing issues in ocean shipping that became so evident during the COVID-related supply chain crisis.

Informed by our experiences during the pandemic and empowered by the *Ocean Shipping Reform Act of 2022* (OSRA 2022), the Commission is more active than ever, leaning into unfolding events, and increasingly serving as a venue that shippers turn to for assistance.

Our consumer affairs team remains busy, averaging more than 100 contacts monthly from individuals seeking help. Since June 2022, our Office of Consumer Affairs and Dispute Resolution Services (CADRS) has responded to approximately 2,400 requests for assistance, the great majority related to issues with commercial cargo shipments. CADRS is often successful in resolving matters quickly and amicably, and in a way that helps the parties avoid costly formal legal proceedings.

Matters before the Office of the Administrative Law Judges are triple what they were in 2019, the last full year prior to the global spread of COVID-19. Almost 100 cases have been filed at the Commission since June 2022, which is an unmatched level of litigation in the agency's recent history. Nor is there any indication that the pace of work is lessening. In assessing year-to-date statistics, the Commission is on pace to meet or exceed the number of complaints it received last year. That even two years after the end of the COVID-linked supply chain disruption, the Commission remains a venue for shippers to bring matters for assistance and adjudication demonstrates that the need for, and value of, FMC services is strong. This suggests that one legacy of COVID is that the public and the industry are more aware of the FMC, and that American shippers view the FMC as the agency that can resolve their concerns and have a positive impact on their businesses.

The Commission continues to build a robust enforcement capability with the wherewithal to conduct complex investigations, encourage compliance for regulated entities, and prosecute cases against even the most well-resourced potential violators. Effective enforcement creates meaningful deterrence to illegal behavior and assures the compliant businesses that we will not allow their competition to get ahead by breaking the rules.

Our Bureau of Enforcement, Investigations, and Compliance (BEIC) is already rigorously reviewing the conduct of, and holding accountable, regulated entities. We have gone from assessing virtually no penalties in 2020 and 2021 to assessing \$2.0 million in penalties in fiscal year 2022, which followed on with \$2.8 million in penalties assessed in fiscal year 2023. Our enforcement program continues to investigate many cases against foreign-based ocean carriers and other large companies that are accused of violating the law, and BEIC now is seeking penalties in the millions, and sometimes tens of millions of dollars. We expect to see at least a similar level of penalties assessed before the end of fiscal year 2024.

The Bureau of Trade Analysis and the Bureau of Certification and Licensing (BCL) do critical work in ensuring marketplace integrity through oversight, analysis, and compliance of regulated entities. The efforts of these two bureaus are invaluable to protecting the public from unfair and deceptive practices, as well as guaranteeing a competitive and reliable international ocean transportation supply system that supports the U.S. economy. BCL also does important work to ensure cruise companies operate with the appropriate consumer protections in the event they fail to provide the service they promise.

The Commission's ability to better serve American importers, exporters, and consumers was greatly enhanced by the additional authorities and resources contained in the *Ocean Shipping Reform Act of 2022*. As we approach the second anniversary of the legislation's enactment, I can report that the Commission has implemented, or made significant progress toward completing nearly all the mandates contained in the statute.

We continue to elaborate on the Incentive Principle interpretive rule in the manner prescribed by Congress. The Incentive Principle rule – authored by Commissioner Rebecca Dye and approved unanimously by the FMC in Spring 2020 – established that for a detention or demurrage charge to

be reasonable, it must help promote the efficient movement of cargo and/or equipment and not be for some other purpose.

In February, a Final Rule on Demurrage and Detention Billing Practices was published following a unanimous vote of the five commissioners. The rule establishes requirements for how common carriers and marine terminal operators must bill for demurrage and detention charges and provides clarity on who can be billed, within what timeframe, and specifies the process for disputing bills. The rule is scheduled to take effect on May 28, 2024.

As you know, OSRA 2022 mandates three other rulemakings: Unreasonable Refusal to Deal with Respect to Vessel Space Accommodations; Shipping Exchange Registries; and Unfair or Unjustly Discriminatory Methods. The Commission's staff is working hard on completing these remaining rulemaking requirements. I anticipate there will be an announcement on Unreasonable Refusal to Deal within the next few months and one on Shipping Exchange Registries by the end of the calendar year. Parts of the rulemaking on Unfair and Unjustly Discriminatory Methods – specifically the provision prohibiting carriers from unreasonably denying space accommodations to U.S. exports – will be incorporated into the rulemaking on Unreasonable Refusal to Deal. The remaining areas not included in that rule will be addressed in a separate rulemaking.

The OSRA 2022 Charge Complaints process continues to be a popular avenue for shippers to seek relief from inappropriate bills and invoices. Since June 2022, almost \$2.5 million in charges or fees have been waived or refunded by common carriers. This total only reflects results from Charge Complaints filed at the Federal Maritime Commission. It does not include any fees or charges waived or refunded by either direct shipper to common carrier communications or through the efforts of an independent third party, such as an attorney outside of those filed with the FMC. In short, this provision of OSRA 2022 is having a consequential impact by giving shippers an expedited, simple process to address an erroneous invoice.

In recent months, the Commission has repeatedly demonstrated an ability to be dynamic in responding to events impacting shipping and supply chains. The Commission held a hearing on February 7, 2024, examining how events in the Red Sea and Gulf of Aden are affecting maritime trade and U.S.-based companies. The Commission issued two industry advisories putting regulated entities on notice that notwithstanding disruptions to regular vessel deployments in the Middle East or the inability to call Baltimore, all statutes and regulations administered by the FMC remain in effect. Common carriers and marine terminal operators were specifically reminded about the Commission's reasonableness standard for assessing demurrage and detention bills.

Further, the Commission is using its Audit Program to engage the nine largest-by-volume ocean carriers calling the Port of Baltimore to remind them of their responsibilities and obligations in adjusting their operations. We are scrupulously examining fees and surcharges implemented following the disruptions that have taken place resulting from the events in Baltimore, Panama, and the Gulf of Aden and Red Sea region to ensure they comport with the law. Our Office of Consumer Affairs and Dispute Resolution Services is prepared to help informally resolve issues shippers are having resulting from these disruptions. Our Bureau of Enforcement, Investigations, and Compliance will pursue any substantive allegations of misconduct, and the Bureau of Trade Analysis continues with its review of carrier conduct and marketplace conditions.

Global trade on our oceans continues to grow. Nonetheless, shifting ocean carrier alliances, international emissions regulations, changes in the geography of supply chain sourcing, and geopolitical developments all will affect oceanborne commerce. A capable, well-resourced Federal Maritime Commission is necessary to guarantee U.S. companies and consumers have access to reliable, efficient, and affordable ocean transportation services for both import and export trades.

That said, there is no desire – at least not on my part – to put the Commission on a path where it seeks continuous growth and additional jurisdiction. The Commission has had to grow to meet the vision of Congress and be a potent regulator of international ocean transportation. That growth was reflected in OSRA 2022, and the FMC’s budget requests have followed the budget and staff trajectories included in that legislation. If the Congress does decide to give us additional qualitative responsibilities, I only ask that you give us the additional resources to fulfill those new demands or understand when implementation is delayed or when other vital capabilities are cut.

The Commission is requesting \$48,452,000 to fund its Fiscal Year 2025 operations. This is the sum authorized by the *Ocean Shipping Reform Act of 2022*. This is \$4,732,000 more than the \$43,720,000 we requested—and was authorized by OSRA 2022—to fund our Fiscal Year 2024 operations. It is \$8,452,000 more than what was provided by the *Consolidated Appropriations Act 2024*.

As is usual with an FMC budget request, the great majority of our funds will pay for two categories of costs – personnel and rent. These two expenses combined will cost the Commission \$40 million in FY 2025. As also is typical, costs in both categories continue to rise each fiscal year. The Commission has budgeted \$35,871,000 for salary and benefits, which is a \$5 million increase from FY 2024. Similarly, the rent and building security costs are rising by \$1,341,000 to a total of \$4,076,000 for the coming fiscal year.

The Commission has also budgeted \$5,877,000 for information technology operations and for modernization projects. Substantial upgrades to the Commission systems and networks are necessary to defend against malicious cyber activities and enable the Commission’s systems to serve the public in the way that business is conducted today.

The Commission has established priorities and built plans based on authorizations contained in OSRA 2022. The Commission will carry out its duties to the best of its ability with whatever sum it is appropriated, but not being funded at authorized levels means that difficult decisions about resource allocation must be made. The Commission had planned programs and activities based on authorizations contained in OSRA 2022. Appropriations at less than these levels will necessitate changing objectives and goals. Progress in expanding the capabilities of our offices most involved in protecting the public and overseeing regulated entities will be threatened.

The Federal Maritime Commission has delivered on the investment made in it two years ago. That said, we still have much to do to fully execute on the changes we started and successfully position the agency to continue its mission in the long run. Now is the time to continue laying the foundation for the inevitable future needs of Americans who rely on ocean-linked supply chains. As events in Baltimore, Panama, and the Red Sea have shown, the world of ocean shipping can

change in an instant in disruptive ways. A strong and engaged FMC is a vital component of ensuring some stability for American importers and exporters in a world filled with uncertainty.

Thank you again for this opportunity to appear before you, for your attention, and for any questions you might have about my testimony or the work of the Federal Maritime Commission.