

Testimony of
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Subcommittee on Coast Guard and Maritime Transportation
House Committee on Transportation and Infrastructure

Chairman Ezell, Ranking Member Carbajal, Members of the Subcommittee, thank you for holding this hearing and for your interest in the responsibilities of the Federal Maritime Commission (FMC or Commission).

As you are aware, my friend and colleague, Louis E. Sola, departed on June 30, 2025, and we look forward to news of his future endeavors. There is a smooth transition and there will be consistency in dealing with the international ocean supply chain and shipping issues of most importance to each of you and your constituents.

The Commission will continue to emphasize strong enforcement and compliance, protecting exporters and importers from potential anticompetitive behavior, supporting port and marine terminal process improvements to strengthen our international ocean freight delivery system, and revitalizing the American merchant marine industry.

I applaud President Trump for emphasizing the criticality of both the U.S. military and commercial maritime sectors and prioritizing the growth of the maritime industry. The President is taking the actions necessary to develop a vibrant maritime industry that creates economic security for many and national security benefits for us all.

I support the President's FY 2026 budget of \$40 million for the Federal Maritime Commission, which will fully fund the FMC's mission and statutory-driven activity, as well as important technology investments. This level of funding reflects no change from the FY 2025 enacted budget.

As in past years, our budget is straightforward, with the majority of funding going to personnel, office space, and important information technology (IT). We have budgeted \$25.8 million for employee salary and benefits, a reduction from FY 2025 of \$2 million. That leaves rent and security services at \$4.2 million, a slight increase of \$150,000 from FY 2025. Finally, \$6 million has been budgeted for core IT operations and modernization. The remainder consists of all other budget requirements to support essential operational needs.

The \$40 million budget allows us to effectively carry out our mission: identifying and assertively investigating conduct that unlawfully disadvantages U.S. interests is essential to protect marketplace integrity.

I. Statutory Authorities

OSRA 2022

The most recent update to the Commission’s statutory authorities took place when the Ocean Shipping Reform Act (OSRA 2022) was enacted, positioning the Commission to be even better prepared to meet the demand for its services and to respond to developments in the marketplace. The Commission issued two OSRA 2022 mandated final rules in 2024:

- Detention and Demurrage Billing Practices; and
- Unreasonable Refusal to Deal With Respect to Vessel Space Accommodations.

With both of these rules now in force, only two rulemakings remain to be completed: the Shipping Exchange Registry and completing any elements of Unfair or Unjustly Discriminatory Methods that were not included as part of the Final Rule on Unreasonable Refusal to Deal.

- Elements of both the Final Rule on Detention and Billing Practices and the Final Rule on Unreasonable Refusal to Deal With Respect to Vessel Space Accommodations are being legally challenged by the World Shipping Council.
- Oral arguments in the Detention and Demurrage case has been heard before the U.S. Court of Appeals for the D.C. Circuit and we are awaiting the court’s ruling. Oral arguments in the Refusal to Deal case is scheduled for September 9, 2025.

The Commission is guided by the purposes section of the Shipping Act: to “encourage an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs and supporting commerce [,]” 46 United States Code (U.S.C.) § 40101(3). The Commission is using all its authorities to meet this goal.

Here are other statutory authorities of the Federal Maritime Commission that support commerce:

Unfavorable Conditions in Foreign Trade, Section 19 Authority (Chapter 421 of Title 46, United States Code) (46 U.S.C. §§ 42106, 42107)

The Commission may investigate and address general or special conditions unfavorable to shipping in the foreign trade when the conditions are attributable to laws or regulations of a foreign country, or competitive methods, pricing practices, or other practices of foreign vessel operating common carriers, including container vessels. The Commission has very broad authority under this provision, including over entities it does not typically regulate under the Shipping Act, such as vessel owners, and over a wider scope of activities, including other services and activities integral to transportation systems. The Commission may initiate an investigation on its own, or in response to a petition.

Foreign Shipping Practices Act
(Chapter 423 of Title 46, United States Code) (46 U.S.C. §§ 42304, 42305)

This authority is narrower than the Commission's Section 19 authority. It is tailored to address laws, regulations, or practices of a foreign government, or practices of a foreign carrier, that adversely affect U.S.-flag common carriers and that do not exist for foreign-flag carriers. The Commission has extensive authority to address these conditions by imposing restrictions or fines on foreign-flag vessel-operating common carriers.

Foreign-to-Foreign Jurisdiction
(Chapter 411 of Title 46, United States Code) (46 U.S.C. § 41108(d))

The FMC has jurisdiction over actions by foreign governments or foreign carriers that impair access of U.S.-flag vessels to ocean trade between foreign ports. The FMC's authority to respond to these conditions is extensive, mirroring that under the Foreign Shipping Practices Act. This statutory provision refers to U.S.-flag vessels and is broader than the statute's definition of a common carrier. It empowers the Commission to address access restrictions imposed on bulk, tramp, tanker, or other kinds of vessels so long as they are U.S.-flagged. This results in the scope of the Commission's foreign-to-foreign jurisdiction being broader than its jurisdiction under the Foreign Shipping Practices Act.

Controlled Carrier Act,
(Chapter 407 of Title 46, United States Code) (46 U.S.C. § 40701)

Ocean carriers may benefit from different forms of direct and indirect governmental support. In instances where that subsidization goes from support to control, the Commission designates the shipping company as a Controlled Carrier. A Controlled Carrier is an ocean common carrier operating in the U.S.-foreign trades that is, or whose operating assets are, directly or indirectly owned or controlled by a foreign government. Controlled carriers are subject to enhanced regulatory oversight by the Commission.

By statute, the Commission monitors government-controlled carriers, whose marketplace decision-making can be influenced by foreign governmental priorities or by their access to non-market sources of capital, to ensure that they do not engage in unreasonable below-cost pricing, which would disrupt trade or harm privately owned shipping companies.

Since 2024, the Commission has added four companies to the Controlled Carrier list. Today, six are from the People's Republic of China (COSCO, OOCL, OOCL Europe, HEDE, ANJI, and Chipolbrok) and one is from the Republic of Korea (HMM).

Additionally, pursuant to section 14 of OSRA 2022 (section 46106(b) of Title 46, United States Code), the Commission is required to identify otherwise concerning practices by ocean carriers, particularly controlled carriers, that are:

- (A) State-owned or State-controlled enterprises; or
- (B) Owned or controlled by a subsidiary of, or related legally or financially to a corporation in a nonmarket economy country, identified by the U.S. Trade

Representative as a priority foreign country or subject to monitoring by the U.S. Trade Representative.

The Commission is currently developing a methodology to identify otherwise concerning practices by ocean carriers in the above-mentioned countries.

II. Supporting U.S. Commerce

Using the above referenced statutory authorities, the Federal Maritime Commission carries out enforcement matters and investigations. Below are some of the Commission's ongoing investigations.

Lake Carriers Investigation (Investigation Into Conditions Affecting United States Carriers in Connection With Canadian Ballast Water Regulation in the United States/Canada Great Lakes Trade, 89 FR 44979 (May 22, 2024))

- The Commission is statutorily authorized to investigate and take remedial measures to address laws or policies of foreign governments that discriminate against U.S.-flag vessels.
- The Commission has been investigating and monitoring the impacts of Canadian ballast water regulations on U.S.-flag vessels since 2020. The core issue is whether Canadian regulations would require U.S.-flag vessels to install new, expensive, and unnecessary ballast water management systems.
- The Commission initiated a targeted Chapter 423 investigation in May 2024 of the impact of the Canadian regulations on specific U.S.-flag vessels built after a certain date. In response, Canada developed a process for U.S.-flag vessels to request exemptions from the regulations, and all covered vessels were exempted. Due to this successful outcome, the Commission closed its Chapter 423 investigation in December 2024.
- The Chapter 421 Investigation remains open. FMC continues to investigate and monitor the impact of Canada's ballast water regulations on all U.S.-flag vessels, regardless of build date, in anticipation of Canada's planned 2030 full implementation of its ballast water rules.

Spain Investigation (Investigation Into Conditions Affecting Shipping in the Foreign Trade and Denial of Entry of Vessels Into Spanish Ports, 89 FR 96973 (Dec. 6, 2024))

- FMC is authorized by statute to investigate and take remedial measures to address laws or policies of foreign governments that discriminate against U.S.-flag vessels.
- FMC initiated an investigation in December 2024 because reports that the Government of Spain had denied port entry to U.S.-flag vessels participating in the U.S. Department of Transportation's Maritime Administration's (MARAD) Maritime Security Program.
- Comment period closed on December 26, 2024. The FMC received 8,323 comments. The Government of Spain filed a comment that focused on their sovereignty rather than on their reasons for refusing port access.

- The Commission continues to investigate and will make public findings this year.

Chokepoints Investigation (Order of Investigation Into Transit Constraints at International Maritime Chokepoints, 90 FR 12158 (March 14, 2025))

- The Commission is authorized by statute to investigate unfavorable shipping conditions caused by the laws, regulations, or practices of foreign governments or the practices of foreign-flag vessel owners or operators.
- FMC initiated an investigation of conditions at seven key global chokepoints – the English Channel, the Malacca Strait, the Northern Sea Passage, the Singapore Strait, the Panama Canal, the Strait of Gibraltar, and the Suez Canal.
- The comment period closed on May 13, 2025. Thirteen comments were filed, including from the Panama Canal Authority and the Government of Singapore.
- The Commission continues this investigation and may reach out to specific governments or commercial entities for additional information.

Flags of Convenience Investigation (Investigation Into Flags of Convenience and Unfavorable Conditions Created by Certain Flagging Practices, 90 FR 21926 (May 22, 2025))

- The Commission is statutorily authorized to investigate unfavorable shipping conditions caused by the laws, regulations or practices of foreign governments or the practices of foreign-flag vessel owners or operators.
- The Commission initiated an investigation of the flagging rules and practices of foreign governments in May 2025. The 90-day public comment period will close on August 20, 2025.
- Initial indications are that vessel registration practices of certain foreign countries, so-called flags of convenience, are creating unfavorable shipping conditions in the foreign trade of the United States. These flags enable unsafe vessels to operate, and further enable shadow fleet activity and the evasion of sanctions.
- There has been a race to the bottom—a situation where flag states compete by lowering standards and easing compliance requirements, lowering the cost of flagging vessels beyond a point where the efficiency, reliability, and safety of the vessels used in the ocean shipping supply chain can be assured. The use of these flags of convenience endangers the U.S. ocean shipping supply chain.
- The Commission will review all filed comments and determine next steps later this year.

Unfortunately, not all foreign ship registries share a commitment with the United States to ocean shipping integrity and accountability. This lack of ship registry accountability not only disadvantages U.S.-flag shipping, but also presents a problem in addressing smuggling operations, sanctions evasion, disguised ownership, and other irregularities.

Aggressively investigating and enforcing the law against foreign conduct that disadvantages U.S.-flag interests is an incentive to registering ships under the United States flag, as the United States is prepared to intervene legally on behalf of U.S.-flag vessels.

Shipowners have a multitude of options to register their vessels, and the ability of the Federal Maritime Commission to take direct action to enforce the law against discriminatory behavior of other foreign governments or foreign-flag carriers, with the involvement of the President, Federal agencies, and Federal courts, is a unique benefit to U.S.-flagged vessels.

III. Competition Enforcement

The FMC's Competition Enforcement Program monitors filed agreements to ensure that collaboration between vessel-operating common carriers (VOCCs) and/or marine terminal operators, which compete against each other in the market, do not result in a reduction in competition that produces unreasonable increases in transportation costs or unreasonable decreases in transportation services. (46 U.S.C. § 41307 (b)(1)).

The number of major carriers in the U.S. transpacific and transatlantic trades has decreased from 20 in 2015 to 11 by 2022, due to ocean carrier mergers and the bankruptcy of one major carrier.

The Federal Maritime Commission and the U.S. Department of Justice (DOJ) have a statutory division of competition authority over international liner shipping in the U.S. trades. The DOJ reviews and approves mergers of ocean carriers. The FMC analyzes the competitive market effects of collaborative agreements among competitors, such as vessel sharing agreements (alliances are vessel sharing agreements that operate globally) or joint ventures. It is noted that market concentration results from mergers, not from the market effects of collaborative agreements among competitors.

While it may be characterized as an exemption, the Shipping Act of 1984 is not an exemption from the antitrust laws, but an alternative competition regime put in place by Congress in recognition of the multinational nature of international ocean shipping and importance of working with our international trading partners in this arena.

The FMC, with its specialized knowledge and expertise, is the agency responsible for administering this alternative competition law. The basic framework for initial analysis aligns with established guidelines used for evaluating collaboration among competitors and is performed by attorneys, economists, and industry analysts who are experts in the ocean transportation system.

Agreements that may pose competitive concerns are subject to continuous monitoring by Commission staff. The Commission validates the data and information collected through our monitoring with external sources of information on ship schedules, capacity, and measures of cargo moved. The FMC also regularly reviews and revises monitoring data to ensure that the data collected aligns with the realities of the industry.

During the pandemic, blank sailings were a particular concern because of their potential to be used for anti-competitive purposes. Our monitoring, however, indicated that this reduced service by ocean carriers was driven by port congestion rather than a desire to reduce capacity, and delays and skipped ports have been a frequent occurrence. The Commission

staff have reviewed the data collected on blank sailings to assess the factors driving schedule delays and blanked sailings.

Protecting the integrity of the marketplace is one of the key missions of the FMC and the linchpin of these efforts is our competition program. Accurate, insightful, in-depth analysis is essential to monitoring the behavior of carrier agreements, especially shipping alliances. The Commission took two important actions in 2024 to bolster its abilities to review newly filed agreements and monitor filed agreements for anticompetitive effects.

- First, the Commission issued a policy statement in July 2024 announcing that it may use its investigatory authorities, including fact finding investigations, when reviewing the competitive effects of some cooperative agreements among ocean carriers or marine terminal operators.
- Separately, in December 2024 the Commission moved primary responsibility for its monitoring program from the Bureau of Trade Analysis economists to the Office of the General Counsel attorneys, a realignment I strongly supported. The consolidation fosters greater efficiency and integration in the legal and economic review of competition analysis. As a result, the Commission will be able to conduct more extensive reviews of filed agreements and ensure that there are no current anticompetitive effects regarding agreements that are in effect.

IV. Alliance Structure

Most large VOCCs participate in alliances, which are agreements between competitors to rationalize vessel utilization and trade lanes. Alliance members are expressly prohibited from agreeing on pricing and agreeing on prices within an alliance carries severe criminal consequences. In 2025, the world's largest VOCC, Swiss-based Mediterranean Shipping Company (MSC), determined to operate independent of its previous alliance, although it currently cooperates with the Premier Alliance.

As it currently stands, there are three alliances:

- 1) Gemini (Hapag-Lloyd and Maersk);
- 2) Ocean (COSCO, OOCL, CMA, and Evergreen); and
- 3) Premier (HMM, ONE, and Yang Ming)).

The three alliances comprise 70% of U.S. trade, and MSC, which on its own covers 15% of U.S. trade. The remaining 15% of U.S. trade is served by smaller carriers.

The alliance system benefits U.S. trade by helping maintain a larger number of VOCCs in U.S. trades and disincentivizing further mergers and consolidation. VOCCs can join together to create efficiencies and economies of scale without the permanence of a merger. The system also promotes a steady level of service and shipping options in the U.S.

The withdrawal of MSC from the now dissolved 2M Alliance (Maersk and MSC) resulted in the filing of two new alliance agreements: the Gemini Cooperation Agreement and the Premier Alliance Agreement. In both alliances, the Commission issued a Request for Additional Information (RFAI) to obtain documents and verifiable information necessary to

achieve clarity on matters that were not addressed by filing parties or where insufficient information was provided in the originally filed agreements. The Gemini and Premier agreements are now fully in effect.

V. Commission Matters

In addition to all the previously described enforcement activities and responsibilities of the FMC above, the Commission's jurisdiction covers many areas across the supply chain. For example, one notable investigation was in regard to OCEMA Box Rules. In a complaint case filed by an association of truckers, the Commission found that in four national transportation markets, ocean common carriers' restrictions limiting truckers and shippers to the carriers' designated chassis provider violate the Shipping Act, and ordered those practices to immediately cease so truckers and shippers can negotiate and deal with chassis providers they choose. Ocean carriers had benefited financially from the restrictions they imposed on truckers and shippers.

- Reports that ocean carriers continued to enforce their unlawful restrictions in violation of the cease and desist order led the Commission to launch an investigation, subpoena documents and testimony from the carriers and other transportation providers and conduct in-person site visits at facilities servicing the Memphis region to document actual practices and barriers to truckers and shippers using chassis providers they choose.
- The Commission's Bureau of Enforcement, Investigations, and Compliance (BEIC) concluded its investigation and reported its findings earlier this year. BEIC concluded that carriers have changed their practices, as ordered by the Commission, so that truckers and shippers in the markets covered by the order are no longer restricted to carriers' designated chassis providers and can choose other options.
- After the Commission ordered certain restrictive practices to cease, the parties continued to litigate other claims raised by the truckers' association, and the Commission's Chief Administrative Law Judge dismissed as moot those remaining claims because intervening changes in the chassis market, including increased reliance on trucker-owned chassis, alleviated conditions the truckers sued to remedy. A motion by the ocean common carriers asking the Commission to reconsider and vacate the cease and desist order is pending before the Commission.

Additionally, the Commission reviewed a proposed amendment to the New York Shipping Exchange (NYSHEX) Agreement, which initially became effective on December 2, 2017. The Agreement intended to offer an American-based shipping index. Upon review of the proposed amendment that was filed in January 2025, the Commission issued an RFAI. The amendment to the NYSHEX agreement is now in effect.

VI. Significant Litigation

In addition to ongoing investigations, the Commission has cases pending in the U.S. Court of Appeals for the District of Columbia Circuit:

- *World Shipping Council v. FMC* (D.C. Cir. No. 24-1088) – World Shipping Council, a trade association for ocean carriers, challenged the Commission’s OSRA 2022-based demurrage and detention billing rule as it applies to the billing of truckers. The case was argued on March 13, 2025, and is pending a decision.
- *World Shipping Council v. FMC* (D.C. Cir. No. 24-1298) – World Shipping Council challenged FMC’s OSRA 2022-based rulemaking on unreasonable refusal to deal. The case has been briefed and is awaiting oral argument.
- *Evergreen Shipping Agency (America) Corp. v. FMC* (D.C. Cir. No. 25-1104) – Evergreen, a Taiwan-based VOCC, challenged the FMC’s decision that it could not bill demurrage to a motor carrier on certain days when a port was closed and equipment could not be returned, and the equipment was not available for pickup until the port’s closure. The case is currently in briefing.

Recently, on June 24 2025, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *Mediterranean Shipping Co. v. FMC* (D.C. Cir. No. 24-1262). MSC, a Swiss-headquartered VOCC, had challenged FMC’s decision in a private complaint case, in which the FMC ruled against the company because it refused to participate in discovery. The D.C. Cir. Court denied MSC’s petition and determined that it was reasonable for the Commission to find that MSC’s actions undermined the agency’s authority.

VII. Informal Dispute Resolution

The Commission is a venue for resolving disputes related to ocean shipping. This can be done informally and cooperatively through the Office of Consumer Affairs and Dispute Resolution Services (CADRS) or adjudicated through more structured, formal, and traditional litigation options. Across the board, the demand for Commission services remains strong.

In FY 2025 to date, CADRS has received more than 1,000 requests for assistance, resulting in more than 300 cases being opened.

Section 10 of the Ocean Shipping Reform Act 2022 established a new way for shippers to submit complaints to the Commission regarding charges assessed by common carriers and to receive a refund or waiver for non-compliant charges, 46 U.S.C. § 41310. From the start of FY 2025 to date, the FMC received 209 charge complaints. Of those, 118 were appropriate for the charge complaint process and assigned for investigation. Since OSRA 2022, the total amount of charge complaints refunded or waived during this period has been over \$5 million.

While most charge complaints were voluntarily resolved during the investigation phase, the FMC’s process also provides for fast resolution of non-compliant charges disputed by the parties through a proceeding before the Commission where the carrier is ordered to demonstrate the lawfulness of a charge. This temporary process has provided practical experience the Commission will include in a rulemaking that it will initiate to establish a permanent procedure for administering Charge Complaints. A rulemaking regarding the Charge Complaint process will begin in FY 2026.

VIII. Adjudicatory Proceedings

Adjudicatory proceedings at the FMC have increased dramatically in recent years, and this increased pace is expected to continue in upcoming years. FY 2024 was the Office of the Administrative Law Judge's (OALJ) busiest year on record with the highest caseload in decades. In FY 2024, the OALJ both received and resolved more cases than in prior years. We anticipate finishing FY 2025 with a significant number of new cases.

To address this additional demand, the Commission now has five Administrative Law Judges (three permanent, two detailed from the U.S. Department of Health and Human Services (HHS)) presiding over cases involving multiple parties in which potential damages can run into the millions of dollars. The Commission has seen a sharp increase in the motions practice before its ALJs.

The Commission's Small Claims Officer, located within the OALJ, has the highest number of pending cases ever recorded, and is on a pace to double.

Formal complaints, small claims, and CADRS activity demonstrate that the Commission is serving the U.S. shipper community.

The Commission continues to carry out its mission critical statutory responsibilities, making it a vital agency serving the American public. From helping small shippers informally resolve shipping disputes to adjudicating cases that establish precedent to resolve shipping disputes in the future, the FMC provides a wide range of services and resources to all parties involved in international ocean freight delivery. The FMC continued its critical mission to ensure coemption and integrity for America's oceanic supply chain. We have appreciated the President and Congress' support to fund the FMC at \$40 million for FY 2026.