Federal Maritime Commission FY 2023 Budget Justification

March 2022

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Mission Statement

Ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

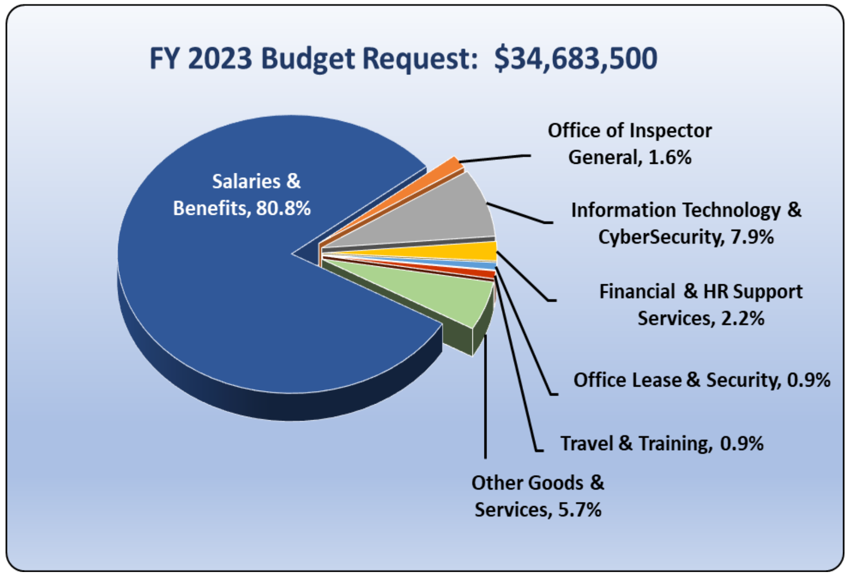
The Federal Maritime Commission (FMC or Commission) is an independent agency that regulates the international ocean transportation supply system (both liner carriers and ocean transportation intermediaries). This system is vital to the Nation's commerce.

Congress created the FMC to administer and enforce the Shipping Act and related laws. The principal statutes administered by the Commission, codified at 46 U.S.C. §§ 40101-44106 and § 3503, are:

- The Shipping Act of 1984, as amended (Shipping Act);
- The Foreign Shipping Practices Act of 1988 (FSPA);
- Section 19 of the Merchant Marine Act, 1920 (1920 Act);
- Sections 2 and 3 of Pub. L. No. 89-777, 80 Stat. 1350; and
- Section 834 of the Frank LoBiondo Coast Guard Authorization Act of 2018 (LoBiondo Act).

FY 2023 Budget

Request Overview



The FMC requests $34,683,500 to accomplish its statutory responsibilities and to meet the needs of stakeholders and the public. This level of funding represents a $4.4M (14.5 percent) increase from the FY 2021 enacted budget. This budget increase will support the Commission's efforts to ameliorate the impact on the ocean shipping industry of unprecedented surges in cargo volumes and congestion at our Nation's ports. This chart provides an overview of the largest spending categories in the budget. More detailed information on the allocation of resources is provided in the appendices. As the above chart illustrates, the vast majority of the Commission's budget is devoted to salaries and benefits.

Workforce – Salaries and Benefits

Full Time Positions (FTP): 164 (+36)
Full Time Equivalents (FTE): 149.5 (+29.5)

The requested funding level will enable the Commission to add the appropriate resources to create a lasting capability to focus on supply chain issues. The additional staffing, as compared to the FY 2021 staffing levels, would be applied to Commission enforcement actions, efforts to preserve competition in the industry, initiatives focused on the supply chain that are within the authority of the Commission, as well as the capability to provide timely informational and dispute resolution assistance to consumers. Added administrative resources in the areas of human resources, information technology, and logistics would supply necessary support to the increased staffing. The Commission is requesting a portion of the funding for salaries and expenses as multi-year funding to mitigate the risk of being unable to complete hiring actions within the first year of enacted funding. This approach will provide the Commission with flexibility in our approach and sequencing of hiring actions.

In FY 2021, the Commission initiated hiring actions for an additional 12 positions that were previously unfunded and ended FY 2021 with 120 employees onboard. The agency will continue its hiring efforts to reach 164 FTP and achieve the 150 FTE level supported by the budget. The Commission had an impactful turnover rate of 9% in FY 2021, with 11 departures. The turnovers have been primarily in high-level and hard-to-fill positions. By FY 2023, approximately 18% of the FMC workforce will be eligible to retire. As the Commission implements office post re-entry policies, the number of retirement applications is expected to increase. The FY 2023 request allows the Commission to continue the practice of initiating hiring actions for retirements in advance of staff departures to facilitate the transfer of knowledge in key high-level or hard-to-fill positions.

The Commission's payroll estimate includes a projected 4.6% pay raise in FY 2023 and no changes to retirement benefit contribution percentages. The Commission's FY 2023 awards allocation of $258,000 for non-SES remains at a level of approximately 1.2% of non-SES salaries (payroll benefits not included).

At the outset of FY 2022, the Commission continued its maximum telework schedule for staff due to the continuing COVID-19 pandemic. The agency evaluated how to modernize its policies and practices in preparation for the post-reentry work environment. In planning for the future of office operations, the Commission is exploring a myriad of work policies and organizational changes that would foster a hybrid work environment. Providing such options is necessary to remain competitive when recruiting top talent. During FY 2022 and 2023, the Commission will implement, evaluate, and adjust its policies, as necessary, to maintain a highly effective workforce.

The Commission continues to engage in succession management and projecting its future workforce needs. Continuous training and development in leadership competencies will prepare the next generation of leaders at the Commission. To that end, the Commission is offering leadership opportunities under the agency's Leadership Development Program and realigning and combining functions across the Commission to allow for greater career development opportunities.

Office Lease and Security – Washington, D.C., and Field Offices

The FMC is located in Washington, D.C., and maintains a small field presence in regional locations. All FMC office spaces are leased through the General Services Administration (GSA). The FMC follows federal best practices to align the size of real property assets with program needs and will continue to evaluate its space requirements. The Commission optimizes office space use with the goal of reducing rental locations and costs when possible.

The Occupancy Agreement for the D.C. office space has been fully executed for a new lease beginning in FY 2023. The FMC will remain in its current location, receiving a rent concession in FY 2023 with annual lease payments commencing in FY 2024. The FY 2023 budget request includes the leasing costs of $300,000 for several regional offices.

As the agency examines its workforce and space needs, the FMC will explore how to maximize our existing footprint to accommodate the increased number of positions without increasing space requirements.

Information Technology and Cybersecurity

Funding at the requested level will allow the Commission to continue information technology (IT) modernization projects, enhancing both public-facing services and internal workflow processes. The FMC's investments in its IT infrastructure, cloud tenant, and security posture have allowed it to remain fully operational under maximum telework flexibilities during the ongoing COVID-19 pandemic and to meet cybersecurity requirements.

In FY 2023, the Commission will be working on the final stages of modernizing the FMC-18, Ocean Transportation Intermediary (OTI) License and Registration Application, the agency's Regulated Persons Index (RPI), the Commission's Electronic Reading Room, and the dockets filing system for Commission proceedings.

The projected costs include contractor-provided software development services to assist the Commission's IT staff to modernize its mission-critical web applications, line-of-business applications, infrastructure, and server platforms. These crucial services also include on-site training and knowledge transfer, which require continued funding. During FY 2022, the Commission is assessing the progress of modernization initiatives to establish a new baseline for future development. This assessment will identify emerging business requirements requested by internal and external stakeholders, staying current with changes in technology, and addressing increased cybersecurity requirements for public-facing and internal applications. This new baseline will guide activities over the next 3-5 years.

Proposed Appropriation Language: Salaries and Expenses

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 46107), including services as authorized by section 3109 of title 5, United States Code; hire of passenger motor vehicles as authorized by section 1343(b) of title 31, United States Code; and uniforms or allowances therefore, as authorized by sections 5901 and 5902 of title 5, United States Code, ~~$30,300,000~~ [$34,683,500] of which $2,000,000 shall remain available until September 30, 2024: Provided, that not to exceed $3,500 shall be for official reception and representation expenses. (Proposed text derived from: Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2021.)

Mission Activities and Impacts for FY 2023

The FMC regulates U.S. international ocean shipping, ensuring that the ocean transportation supply system is competitive and reliable, while protecting the public from unfair and deceptive practices. Through its oversight, the FMC's staff engages with a competitive industry that moves more than $1 trillion in containerized exports and imports each year.[1] The FMC's programs enforce the Shipping Act and related laws, resolve shipping disputes, and promote best practices in the industry. The Commission timely and efficiently analyzes the competitive impact of proposed vessel-operating common carrier (VOCC) and marine terminal operator (MTO) agreements; monitors activities under filed agreements; detects and addresses unreasonable increases in transportation costs or decreases in transportation services enabled by filed agreements; and addresses other activities prohibited by the law. Furthermore, the FMC licenses ocean transportation intermediaries (OTIs), and ensures those entities possess adequate financial responsibility to provide the U.S. international ocean supply chain with integrity and security. The Commission also protects consumers from cruise industry nonperformance, such as cruise cancellations. These functions are inherent to the Commission's role under the law.

FMC Response to Current Ocean Shipping Challenges and COVID-19 Impacts to the Maritime Industry

Due to changes in the U.S. consumer demand behavior and other ripple effects of the COVID-19 pandemic, the ocean shipping industry has been challenged by unprecedented surges in cargo volumes and supply chain congestion. The Commission is using the full extent of its authority under the law to address supply chain challenges, including implementing service contract filing relief, facilitating stakeholder discussions on supply chain challenges, implementing temporary relief for small U.S. cruise businesses, and increasing enforcement actions. The assistance extended to the ocean shipping industry during the pandemic will continue into FY 2023 and is already achieving positive results through the following initiatives:

The Federal Maritime Commission Vessel-Operating Common Carrier Audit Program: In July 2021, the Commission established a new audit program and dedicated audit team to assess Vessel-Operating Common Carriers' (VOCCs) compliance with the FMC's interpretive rule on detention and demurrage, as well as to address complaints from shippers and other stakeholders regarding detention and demurrage practices. The audit team is working with VOCC companies to clarify any questions or ambiguities concerning the application of the rule. Through review of quarterly quantitative and qualitative information from the carriers regarding their internal and external detention and demurrage practices, as well as details of substantive changes to their detention and demurrage tariff rules, the FMC is facilitating the creation of industry best practices.

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[1] According to the U.S. Census Bureau: Economic Indicators Division USA Trade Online. *Source: U.S. Import and Export Merchandise trade statistics*, U.S. container exports and imports totaled $1,031,799,889,658 in 2020.

Investigation of Congestion Surcharges: In August 2021, the Commission issued letter demands to eight VOCCs seeking information on the implementation of and justification for the assessment on their customers of congestion surcharges. These surcharges are in addition to other charges that VOCCs have imposed in recent months. As the pandemic continues and new fees are created, the Commission will continue to analyze whether these surcharges violate the law or the Commission's regulations.

Fact Finding 29 – International Ocean Transportation Supply Chain Engagement: Initiated by the Commission on March 31, 2020, this Fact Finding investigation convened supply chain innovation teams to address port and terminal operational challenges in the wake of the COVID-19 pandemic and continues to make industry recommendations as warranted. By Order issued on November 19, 2020, this investigation was expanded to investigate whether alliances are employing practices or regulations in violation of Shipping Act prohibited acts, including practices and regulations related to demurrage and detention, empty container return practices and regulations, and practices and regulations related to the carriage of U.S. exports. In February 2021, the Fact Finding Officer issued information demand orders to ocean carriers and marine terminal operators to determine if legal obligations related to detention and demurrage practices are being met. In July 2021, the Fact Finding Officer issued interim recommendations to the Commission aimed at minimizing barriers to private party action, clarifying Commission and industry processes, and encouraging stakeholders to engage the Commission in enforcement actions and alternative dispute resolution.

Increased Enforcement Activity: In July 2021, potential enforcement matters were separated from the Fact Finding 29 investigation and transferred to the FMC's Director of Field Investigations and the Bureau of Enforcement (BOE). Since that time, the BOE and the Director of Field Investigations have opened 35 cases investigating port congestion and detention and demurrage charges. The subjects of these investigations are MTOs in major US ports, and several of the largest VOCCs. The issues being investigated include changes to earliest return dates for exports; charges assessed during customs holds for imports; terminal area closures; lack of available appointments; lack of container return locations; delayed container release; and container availability. The Commission also issued a Notice of Inquiry into the use of merchant clauses in VOCCs' bills of lading to require payment from entities that are not in contractual privity with the VOCC. Attention to the collection of demurrage and detention is of particular concern.

Public Assistance and Informal Dispute Resolution: The Commission is revitalizing the Office of Consumer Affairs and Dispute Resolution Services to provide informational assistance and to facilitate prompt and fair informal dispute resolution to FMC stakeholders. To that end, in FY 2022, the Commission designated an Export Expert on the CADRS staff, per a Fact Finding 29 recommendation. In FY 2023, the agency seeks to significantly increase CADRS staffing to bolster its services to the public as an accessible and effective resource for resolving commercial conflicts that might otherwise be submitted to the Commission for costly litigation. In FY 2021, CADRS responded to a total of 2,041 inquiries from the public. Of that total, 239 ombuds matters were handled: 126 relating to commercial cargo; 27 involving household goods; and 86 cruise matters. In FY 2023, with the dedicated resources requested, this program will be better equipped to quickly respond to both inquiries and disputes.

Policy Actions:

Statement on Retaliation and Other Obstacles to Private Party Complaints: At the suggestion of Interim Recommendations from Fact Finding 29, the Commission issued a policy statement to set forth the Commission's position on potential retaliation, awarding of attorney fees in Commission cases, and representational complaints filed by associations on behalf of their members. This policy statement clarifies some uncertainties that might be inhibiting private parties from filing cases before the Commission.

Detention and Demurrage Billing Requirements: At the suggestion of Interim Recommendations from Fact Finding 29, the Commission issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments on detention and demurrage billing requirements, including certain minimum information common carriers or marine terminal operators should be required to include in billings and whether common carriers should be required to adhere to certain practices regarding billing timing.

Maritime Transportation Data Initiative: In December of 2021, the Commission initiated a program to identify data constraints that impede the flow of ocean cargo and add to supply chain inefficiencies. The project aims to establish data standards and best practices for data access and transmission essential for a reliable and stable ocean transportation system. A series of meetings with maritime and intermodal stakeholders, as well as a data summit during FY 2022, will inform the Commission on the current need and solutions for improvements in data transparency to create greater efficiency in the movement of cargo.

Increased Monitoring of Ocean Carrier Alliances: The FMC monitors key economic indicators and changes to underlying market conditions for all global alliance agreements to detect any joint activity by agreement members that might raise and maintain freight rates above competitive levels, or unreasonably decrease services. In November 2020, due to the prolonged congestion challenges, the Commission increased the frequency of trade data filings by ocean carrier alliances from quarterly to monthly.

Providing Industry Regulatory Relief: Effective June 2, 2021, a new rule amended existing FMC regulations to enable ocean carriers to file original service contracts with the Commission up to 30 days after they go into effect. This change was prompted by positive industry response to the temporary service contract filing relief provided during the pandemic to minimize COVID-19-related impacts on the supply chain. The filing change provides regulatory requirements that reflect industry practices that benefit both carriers and shippers. In making its decision, the Commission carefully weighed the regulatory burden on regulated entities and the need for the FMC to carry out its mission concerning statutory oversight of service contracts.

Addressing Cruise Industry Challenges: COVID-19 has also severely impacted the cruise industry. On March 14, 2020, the Centers for Disease Control and Prevention (CDC) issued a No Sail Order and Suspension of Further Embarkation causing all but the smallest Passenger Vessel Operators (PVOs) to cease all operations, which was extended through October 2020. Consequently, questions concerning future travel and passengers' ability to obtain refunds of monies remitted for transportation disrupted by COVID-19 were legion. On April 30, 2020, the Commission initiated Fact Finding 30, *COVID-19 Impact on Cruise Industry*, to engage industry stakeholders, including PVOs, passengers, and MTOs, to identify commercial solutions to COVID-19-related issues that interfere with the operation of the cruise industry. On July 23, 2020, the Commission adopted the Fact Finding Officer's proposal providing limited and temporary relief to small U.S. PVOs whose operations and business had been disrupted by the response to COVID-19. Small PVOs may now qualify for alternative forms of evidence of financial responsibility, provided applicants meet key conditions.

On August 10, 2020, the Commission adopted the Fact Finding Officer's recommendation to initiate a rulemaking to amend its regulations concerning "non-performance" by a PVO. Accordingly, on August 24, 2021, in Docket 20-15, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on a proposed rule to amend its regulations governing non-performance by passenger vessel operators (PVO/cruise lines) and establishing new requirements for when cruise passengers should be provided refunds for cancelled or delayed voyages. After careful consideration of the public comments submitted, on February 28, 2022, the Commission unanimously approved a final rule. Investigative efforts will continue during the pandemic and recovery to assist with identifying commercial solutions to COVID-19-related issues that interfere with the operation of the cruise industry.

National Shipper Advisory Committee (NSAC): The Committee is comprised of individuals who represent companies importing and exporting cargo to and from the United States. The purpose of the Committee is to advise the FMC on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. The Committee is responsible for identifying the scope of its work and for providing its advice, reports, and recommendations to the Commission. The inaugural meeting of the NSAC was held on October 27, 2021, and the members meet every other month.

Investigation into Canadian Ballast Water Regulations: On March 6, 2020, the Commission received a petition from the Lake Carriers' Association, a trade association made up of owners and operators of vessels on the Great Lakes, alleging that conditions created by Transport Canada, an agency of the Government of Canada, are unfavorable to shipping in the United States/Canada trade under Section 19 of the 1920 Act. In particular, the Lake Carriers' Association asserted that Transport Canada's proposed regulations requiring the installation of ballast water management systems on vessels loading or discharging ballast water in Canadian waters would drive U.S.-flag vessels from the cross-lakes U.S. export trade with Canada. On June 16, 2020, the Commission issued a Notice of Investigation and Request for Comments. The comment period closed on July 22, 2020, and the Commission received 21 comments. In October 2020, the U.S. Environmental Protection Agency issued a proposed regulation that did not align with the proposed Canadian approach to ballast water. In June 2021, Transport Canada issued its final rule on ballast water that delayed the effective date for most of the affected U.S. vessels until 2030. Due to the developments within Canada and the U.S., on January 28, 2022, the Commission issued an additional request for comments on the submitted petition. The FMC will continue to monitor the situation and will review received comments. The Commission continues to monitor the situation and to remain in contact with other federal agencies as it proceeds with its investigation. This investigation is expected to continue into FY 2023.

Strategic Plan Activities

The Commission's FY 2022-2026 Strategic Plan provides a clear and measurable framework for continuous improvement in achieving the agency's mission and addressing current and anticipated regulatory challenges in the ocean transportation industry. Detailed performance information can be found in the FMC's annual Performance and Accountability Report on the FMC's website at www.fmc.gov/about-the-fmc/performance-and-accountabilty-reports/.

Program evaluations, monitoring activities, and analyses will continue to be used to rigorously and credibly document program effectiveness.

The Commission's FY 2022-2026 Strategic Plan contains two strategic goals measuring mission performance, and one stewardship objective for measuring the effective and efficient employment of allocated resources. Program evaluations, monitoring activities, and analyses will continue to be used to rigorously and credibly document program effectiveness.

At the requested funding level, the FMC will meet its mission, strategic goals, and stewardship objective.

Strategic Goal 1.

Maintain a competitive and reliable international ocean transportation supply system.

Through the activities under this goal, the Commission analyzes and evaluates the competitive impact of the shipping industry's practices, detecting and addressing, as necessary, any unreasonable increases in transportation costs and/or unreasonable decreases in transportation services for the benefit of U.S. exporters/importers and the U.S. consumer.

Objective 1.1: Ensure no unreasonable increases in transportation costs or decreases in transportation service are attributed to anticompetitive practices under FMC-filed agreements.

The FMC ensures that the international ocean transportation supply system provides the American public with competitive and reliable movement of goods. In upcoming fiscal years, the FMC will continue its focus on competition and integrity for the United States' ocean supply chain by:

- Analyzing and monitoring key U.S. trade lanes;
- Assessing the competitive effects of agreement parties' activities, particularly focusing on issues of costs (freight rates), vessel capacity (supply), and equipment availability upon the business community;
- Licensing our Nation's OTIs, and registering foreign-based non-vessel-operating common carriers (NVOCCs);
- Administering an effective surety bond program to ensure payment of claims against OTIs;

- Investigating violations of 46 U.S.C. §§ 40101-44106 ; and
- Monitoring provisions of chassis for the inland movement of containerized goods, and the competitive effects of carrier alliance structures.

Objective 1.2: Ensure competition is preserved in the purchase of certain covered services (46 U.S.C. § 40102(5)) through 46 U.S.C. § 40307 authorities.

The Commission has imposed alternative periodic reporting requirements on approximately 100 agreements that contain authority for the joint procurement of covered services as defined in the LoBiondo Act, requiring each to file a quarterly report with the Commission, effective with the June 2021 quarter. These reporting requirements will ensure that the Commission is aware of and can monitor any joint negotiation or procurement activity in a timely manner to ensure adequate competition for U.S. providers of these services. Additionally, in accordance with the LoBiondo Act, the Commission conducts an analysis and prepares an annual report to Congress on the use of these authorities and associated competitive impact within any of these agreements, and particularly within the three major ocean carrier alliance agreements.

Agreements Review: The FMC's statutory authority and regulations require the filing of agreements with the Commission to ensure that the parties' activities comply with U.S. shipping statutes and regulations. These agreements memorialize cooperation among VOCCs and/or MTOs. The Commission analyzes these agreements when they are initially filed and then monitors the agreements on an ongoing basis. There are approximately 375 agreements on file with the Commission, comprised of VOCC agreements, MTO agreements, and assessment agreements. Approximately 75 percent of these are VOCC agreements.

Through data provided in agreements and agreement monitoring reports, Commission staff analyze market conditions in key U.S. liner trades. Using this information, the Commission identifies and researches economic or commercial issues that may distort competition in, or impair access to, U.S. liner markets and tracks and assesses developments in international trade and the global economy.

Agreements filed with the FMC remain a valuable tool for VOCCs and MTOs to cooperate and achieve efficiencies and cost savings for U.S. shippers and ultimately, the U.S. consumer. The requested budget level will:

- Enable the Commission to timely review and prepare competitive analyses for both newly filed agreements and amendments to existing agreements; and
- Allow for effective management and review of multiple major agreements in the same 45-day review period.

Commission Analysis of Agreement Activities: The LoBiondo Act places restrictions on cooperation between or among ocean carriers and MTOs, including removing antitrust immunity for certain activities, prohibiting certain joint procurement activities, restricting overlapping agreement participation, and modifying the legal standard for enjoining agreements to jointly procure certain covered services, including:

- Berthing or bunkering of a vessel;

- Loading or unloading of cargo to/from a vessel, or to/from a point on a wharf or terminal;
- Positioning, removal, or replacement of buoys related to the movement of the vessel; or
- Towing vessel services provided to a vessel.

With respect to vessels operated by an ocean common carrier in the United States, the LoBiondo amendments to the Shipping Act stipulate that no group of two or more common carriers may negotiate for the purchase of certain covered services unless the negotiations and any resulting agreements are not in violation of the U.S. antitrust laws (46 U.S.C. § 41105(6)). The U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC) have jointly issued guidance on the appropriate safeguards that should be implemented when market participants engage in joint purchasing. In FYs 2022 and 2023, the FMC will continue to monitor and report to Congress on jointly negotiated terminal and stevedoring services agreements to ensure conformity with the DOJ/FTC guidelines for joint purchasing arrangements.

Marine Terminal Operator Agreements: As referenced above, approximately 90 MTO agreements serving the U.S. East, Gulf, and West coasts are on file with the Commission, and monitoring of MTO agreements is tailored to each agreement's specific authorities. To facilitate operations, some U.S. marine terminals enter into agreements on rates and/or terminal charges or cooperate in their daily terminal operations and related practices.

During FY 2021, the Bureau of Trade Analysis (BTA) continued a comprehensive review of the status of MTOs and began working with those that are no longer active in providing MTO services to remove them from the Commission's website. BTA also reviewed all VOCC agreements on file with the Commission and is in the process of ensuring that all filed agreements continue to reflect ongoing cooperation between agreement parties under the Shipping Act. In addition, for those MTOs that elect to make their MTO schedules publicly available, BTA staff verified the internet location where those schedules are published and updated the FMC website accordingly to provide more current information to the shipping public to inform their business decisions.

Service Contracts and Tariffs*:* The Commission oversees the process by which service contracts between shippers and VOCCs are filed with the Commission. Under service contracts, shippers make a commitment to provide a certain volume or portion of cargo over a fixed period of time, and carriers commit to a specified rate and a defined service level. These confidential contracts are filed with the Commission in its automated SERVCON system. Commission rules also permit NVOCCs to enter into NVOCC service arrangements (NSAs) with their shipper customers, which are similar to service contracts between VOCCs and shippers.

As mentioned earlier, to minimize COVID-19-related impacts to the Nation's vital supply chain, the Commission provided temporary service contract filing relief, which was made permanent in the FMC's regulations following the positive response of the industry to this relief. The resultant Final Rule in Docket No. 20-22 became effective on June 2, 2021, permitting ocean carriers to file original service contracts with the Commission up to 30 days after the contract becomes effective. Shippers and carriers now have more flexibility in meeting service contract filing requirements, which better reflects contemporary business practices. Previously, Commission regulations required the filing of initial service contracts with the FMC before an ocean carrier was permitted to receive and move cargo under the terms of that contract. This flexibility extends to original service contracts the same delayed filing relief previously granted for service contract amendments under Docket No. 16-05.

With respect to carrier tariffs, the FMC maintains an up-to-date electronic website listing of ocean carrier tariff locations for the public's use in identifying ocean carriers' publicly available rules and rates for the transportation of cargo. An ANPRM was published in April 2021 seeking public comment on ocean carrier application of the Commission's regulations on tariffs. The FMC's transportation analysts also research, verify, and maintain a listing of marine terminal schedule locations on the Commission's website for the shipping public to inform their business decisions. In September 2021, the FMC issued an NPRM proposing to modernize outdated requirements and clarifying existing requirements for marine terminal operator schedules. This rulemaking is ongoing.

The Commission also provides regulatory relief from its NVOCC rate tariff requirements by exempting licensed and foreign-registered NVOCCs when using NVOCC Negotiated Rate Arrangements (NRAs). NVOCCs have indicated that NRAs, which are not required to be published or filed with the Commission, are a less burdensome commercial pricing option than rate tariffs, which must be published. Consequently, NVOCCs advised that NRAs save them both time and money. The majority of NVOCCs which have implemented NRAs continue to use a combination of NRAs and tariff rate filings.

Commission rules also granted regulatory relief from rate tariff requirements by allowing NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers, termed NVOCC Service Arrangements (NSAs), rather than under a published tariff. As a pricing option, NSAs are more commonly offered by larger volume NVOCCs. Smaller volume NVOCCs tend to use NRAs and tariff rates as pricing options for their shipper customers.

The FMC regularly provides guidance to NVOCCs seeking to expand NRA offerings to their shippers or to introduce NRAs as a pricing option to their customers. The FMC also advises NVOCCs of the regulatory relief for NSA requirements and has participated in outreach efforts to facilitate the industry's ability to take advantage of the NRA and NSA regulatory changes. The Commission will continue to provide such guidance in the upcoming fiscal years.

During FY 2021, more than 100,000 original service contracts and nearly 800,000 contract amendments were filed into the SERVCON system by 76 VOCCs. At the end of the fiscal year, the FMC had posted more than 6,500 active/current publicly available tariff locations to the agency's website. Original service contract filings doubled in FY 2021, due to changes in carrier contracting practices. As more carriers adopt spot market or single shipment service contracts for a limited duration, original service contract filings are expected to increase further in FY 2022 to 110,000 and to 115,000 in FY 2023. Service contract amendments are expected to increase to 840,000 in FY 2022 and are expected to continue increasing in FY 2023.

The FMC is working to optimize the internal architecture of its SERVCON filing system for service contracts to ensure the search functionality keeps pace with the rapid accumulation of records in the system. The Commission continued to reach out to various service contract filers to encourage the use of web services when filing service contracts to increase efficiency, reduce costs, and eliminate frequent filing errors. The Commission anticipates that its workload through 2022 and 2023 will remain relatively steady with respect to service contracts.

The FMC's work in this area is also impacted by the continual entry and exit of various OTIs to and from the market, which requires ongoing monitoring and verification by the FMC's transportation analysts to ensure that an accurate listing of tariff publication locations on the Commission's website is maintained and to ensure that published tariffs meet the Commission's tariff requirements. In addition, the FMC has substantial responsibilities associated with monitoring VOCC tariffs for compliance and verifying that VOCCs continue to operate as common carriers in the U.S. waterborne foreign commerce. This FMC work ensures that all VOCCs and OTIs follow the requirements of the Shipping Act and that the rates and terms of shipping contracts are clear and unambiguous to shippers prior to tendering cargo.

International Affairs and Cooperation: The Commission's international affairs program monitors foreign shipping laws and practices that may have an adverse effect on the industry and makes recommendations to the Commission for investigating and addressing such practices. The Commission has the authority to address restrictive foreign shipping practices under the 1920 Act and FSPA.

The 1920 Act provides the Commission with authority to investigate and address discriminatory conditions caused by laws, rules, or regulations of foreign governments or the practices of foreign vessel operators. If the Commission finds that such actions result in conditions unfavorable to shipping in a U.S.-foreign trade, then the 1920 Act provides the FMC with several remedies that include: levying fines on foreign vessels calling at U.S. ports, prohibiting foreign vessel calls at U.S. ports, and restricting cargos that may be carried between the U.S. and the foreign country.

The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in the foreign trade and that do not exist for foreign carriers in the United States. Part of the FMC's work in FY 2023 will be to pursue potentially restrictive foreign practices, including new foreign legislation, new interpretations of existing legislation, and potential regulations, such as those concerning surcharges. The FMC will continue to participate, both formally and informally, in international agreement negotiations that could affect foreign-borne cargo shipments to the United States. The FMC will also track consumer and U.S.-flag vessel operator inquiries regarding possible foreign restrictive shipping practices.

The Commission continued its international outreach efforts to coordinate with foreign counterparts to end unlawful, unfair, and deceptive practices. On September 7, 2021, the Commission participated in the 5th Global Maritime Regulatory Summit, hosted by the European Union (EU). The Summit is a biennial forum for competition officials from the U.S., the People's Republic of China, and the European Union to meet and discuss their respective approaches to the common goal of ensuring continued competition in ocean shipping. China is scheduled to host the 6th Summit in 2023.

In addition, Chairman Maffei met with high-level British parliament members to discuss the international shipping market while he attended the London International Shipping Week in August 2021. Relatedly, in November 2021, Commissioner Dye spoke at a semi-annual meeting of the Consultative Shipping Group, a group of 18 maritime countries in Europe, Asia, and Canada that all adhere to the same values and principles of open and unimpeded access to international maritime markets. Chairman Maffei met with Danish Ambassador Wisborg in December 2021 to discuss current supply chain disruptions and port congestion. The Commission will continue to meet with their international counterparts to discuss issues affecting ocean shipping in FY 2023.

In order to sustain the Commission's activities in this area and improve services, the Commission would dedicate additional resources to these efforts from the requested increase in personnel.

Strategic Goal 2.

Protect the public from unlawful, unfair, and deceptive ocean transportation practices.

This goal encompasses a broader mandate to protect the shipping public and consists of four objectives.

Objective 2.1: Identify and take action to end unlawful, unfair, and deceptive practices.

The Commission effectively uses both its enforcement and compliance programs to support investigations under 46 U.S.C. §§ 40101-44106 that identify unlawful, unfair, and deceptive practices. Additional funding will significantly enable the Commission to take on more enforcement and compliance initiatives by increasing its staffing in these key areas.

Enforcement Program: The Commission's enforcement program strives to achieve industry compliance with the laws administered by the Commission through investigations, compliance initiatives and prosecutorial actions. The FMC will pursue enforcement actions against entities who employ unreasonable, market-distorting, fraudulent, or anticompetitive practices harmful to the industry and the public.

Due to the unabating global supply chain challenges, the Commission is focusing its enforcement efforts on addressing VOCC and MTO practices that assess unjust or unreasonable congestion surcharges or demurrage and detention charges against import and export shippers. Specifically, the Commission is investigating actions or inactions by carriers calling at the Nation's ports to identify a lack of appointments for empty returns, imports sitting in container yards creating excessive dwell times, and underlying reasons for the extensive chassis shortages.

Current resource levels would support the FMC in maintaining its ongoing efforts to identify and address potential legal violations. Additional resources would enable the Commission, through the work of the area representatives and BOE, to identify and address more violations or stem potential violations more quickly. These efforts could result in beneficial treatment of U.S. export and import shippers. It is anticipated that the Commission's authorization to hire additional trial attorneys will help enable the BOE to prosecute the most egregious and complicated violations of the law.

The Commission is utilizing its new pre-enforcement procedures developed in FY 2019 (Direct Final Rule, 84 FR 54037) to guide its enforcement actions in FY 2021 and FY 2022. The procedures give advance notice to the subject of an investigation that the BOE intends to recommend to the Commission the initiation of enforcement proceedings. The process also provides the subject an opportunity to submit a response before an enforcement action is recommended. Following the implementation of the Commission's new process, seven entities have been sent Pre-Enforcement Notices. The usage of pre-enforcement procedures is discretionary and can be waived by the Commission. It has elected to do so in several recent cases.

Area Representatives: The Commission employs area representatives (ARs) who cover major U.S. ports where they provide coordination between the FMC, the maritime industry, and the public. ARs collect and analyze information of regulatory significance, assess industry conditions, explain Commission programs and requirements to industry stakeholders, and investigate alleged regulatory or statutory violations. ARs also cooperate with other federal, state, and local government agencies to coordinate investigative and research efforts. ARs conduct investigations using a systematic, fact-finding approach that requires evidence to be collected in the field through observation, surveillance, and on-site visits.

Inter-Agency Cooperation: The FMC participates in security initiatives as they relate to U.S. ocean commerce, including coordination with the Committee on Foreign Investment in the U.S. (CFIUS). The FMC uses database systems with agencies engaged in domestic security to improve identification of entities providing and utilizing maritime transportation services. To facilitate these activities, the FMC has an ongoing Memorandum of Understanding (MOU) with the U.S. Customs and Border Protection (CBP), for access to CBP's Automated Commercial Environment (ACE). The FMC also has an active Inter-Agency Agreement with the Census Bureau for access to the Census' Automated Export System (AES) database.

These affiliations facilitate access to confidential U.S. export shipment data, helping the FMC to accomplish its mission. The Nation's economic and security interests are also supported by the Commission's continued partnership with the National Intellectual Property Rights Coordination Center (IPR Center), a U.S. Department of Homeland Security-led partnership of 25 federal and international agencies targeting intellectual property- and trade-related crimes. This relationship has brought about coordinated enforcement efforts addressing international criminal activity to provide a more efficient utilization of existing systems and services.

An MOU with the Department of Justice, Antitrust Division, was executed in July 2021 to increase cooperation and communication in each agency's respective oversight and enforcement responsibilities of the ocean liner shipping industry.

Objective 2.2: Prevent public harm through licensing and financial responsibility requirements.

The Commission's certification and licensing program focuses on three primary areas: OTI activities (licensing and registrations), OTI financial responsibility, and passenger vessel operator (cruise line) monitoring and certifications. These activities are fundamental to protecting the public from unqualified and underfunded shipping companies. At the requested funding level, the Commission will continue to process licensing applications and enforce bonding requirements quickly and efficiently. This supports vital shipping and passenger vessel/cruise line businesses, including small businesses, critical to keeping U.S. exports/imports moving and job growth in this sector.

OTI Licensing: Ocean transportation intermediaries are the middlemen for oceanborne cargo moving in the U.S.-foreign trades. Before the FMC grants licenses to OTIs, each applicant must establish that it employs a Qualifying Individual (QI) with the necessary character and a minimum of three years of experience in the U.S., as well as establish its financial responsibility by means of a bond, insurance, or other instrument, as mandated by the Shipping Act.

Over 7,000 OTIs are regulated by the Commission, including approximately 4,900 licensed entities based in the United States. In addition, more than 2,000 foreign-based NVOCCs are registered with the Commission. The Commission continues to streamline its OTI licensing process, reducing time to process applications and render a decision, supporting the Commission's goal of completing 75 percent of all OTI license applications within 60 days. At its current funding level in FY 2021, the Commission exceeded its 75 percent target, completing 85 percent of all OTI license applications within 60 days for the fourth year in a row. More than 650 new and amended OTI applications were received during the fiscal year, and of those, approximately 75 percent were accepted and processed for formal determination of approval. The remaining 25 percent were returned to the applicant due to lack of completeness or undetermined qualifications. These efforts directly benefit U.S. export shippers who rely on licensed OTIs to help get their goods to foreign markets.

The FMC's triennial renewal program for licensed OTIs provides a user-friendly, online renewal process for OTIs to review and update their essential information on file with the Commission within minutes. In FY 2021, approximately 1,500 OTI licenses were renewed, with most reviewed and processed within 48 hours of submission. The Commission projects that trend will continue in FY 2022 and FY 2023 and beyond, as approximately one-third, or about 1,600, OTIs are required to renew their licenses each year. These renewals enhance the enforcement of important aspects of the licensing and registration programs, such as maintaining an appropriate qualifying individual and verifying the business status and location of the OTI.

At the requested funding level, the Commission projects that the licensing and registration processes will continue unimpeded.

OTI Financial Responsibility: All licensed and registered OTIs must maintain proof of financial responsibility with the Commission. At present, this amounts to approximately $780 million in surety bonds to protect the shipping public. The FMC annually processes over 1,000 bond termination notices, 1,000 OTI bond riders, and 1,000 new and replacement bonds. The Commission also receives a small number of bond riders and bond rider cancellations for the China trade. Failure to file and maintain proof of financial responsibility leads to license revocation.

Passenger Vessels: The FMC oversees a program to ensure financial responsibility for passenger vessels (cruise lines) that have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The requirement for Certificates of Performance, which provide financial responsibility for the indemnification of passengers for non-performance of transportation, prevents unscrupulous or financially vulnerable operators from serving U.S. ports. The PVO program includes 236 vessels and 48 passenger vessel operators, with aggregate evidence of financial responsibility coverage of over $750 million for non-performance and $700 million for casualty. PVO Certificates of Performance for passenger vessels are reissued every five years, however, during FY 2021, no vessels were scheduled for reissuance. Through its website and the Consumer Affairs and Dispute Resolution Services (CADRS) office, the FMC offers information and guidance to the cruising public on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages.

In August 2020, the Commission initiated a process that may lead to amending its regulations concerning "non-performance" by a PVO/cruise line and under what circumstances passengers must be provided a refund for a cancelled or delayed voyage. The Commission accepted a recommendation made in Fact Finding 30 and directed staff to draft an ANPRM to solicit public comment on possible regulatory changes. The ANPRM was published on October 14, 2020. After considering the comments received, the Commission approved an NPRM that was published on August 24, 2021. Comments were received through October 25, 2021, and the Commission unanimously approved a final rule on February 28, 2022.

Objective 2.3: Enhance public awareness of agency resources, remedies, and regulatory requirements through education and outreach.

The Commission provides information in many forms to educate regulated entities, stakeholders, and the public about its resources, remedies, and regulatory requirements. The Commission's website offers brochures, how-to guides, forms and applications, reference libraries, news releases, information on investigations, and advice on topics such as FMC regulations, OTI licensing, household goods moves, and the use of alternative dispute resolution (ADR) services to assist parties with resolving cruise- and cargo-related disputes.

In FY 2023, staff from the various operating bureaus and offices will provide presentations and instructional opportunities to educate consumers, regulated entities, industry trade associations and academic institutions regarding regulations, shipping trends, and the effective use of available FMC resources to resolve formal proceedings, cruise- and cargo-related disputes, service contract matters, and other commercial shipping disputes. These services are especially important during the challenges facing our Nation's supply chain. The requested increase in personnel would enable the Commission to greatly expand its educational outreach and public informational assistance efforts.

Objective 2.4: Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication.

The FMC offers informal dispute resolution and adjudicates claims of unlawful practices by carriers, MTOs, and OTIs.

Proceedings before the FMC: The Commission's Administrative Law Judge (ALJ) operates independently under the Administrative Procedure Act, 5 U.S.C. Subchapter II, to resolve cases involving alleged violations of the Shipping Act and other laws within the Commission's jurisdiction. Cases may be initiated either by private parties or by the Commission (represented by the BOE) to seek civil penalties for statutory violations. Small claims complaints, valued at up to $50,000, may be assigned to a Small Claims Officer for resolution. At the requested budget level, proceedings will continue expeditiously at the Commission in FY 2023.

Alternative Dispute Resolution: The FMC, through CADRS, offers facilitation services to the ocean shipping industry and shippers to resolve disputes. The Commission supports mediation and collaborative dispute resolution when feasible, and requires parties involved in formal Commission docketed proceedings to consult CADRS regarding the mediation services offered and consider whether the parties want to participate in a mediation conference. These conferences may be held in person or virtually, thus providing an option for a cost-effective process and conflict resolution in a pandemic and post-pandemic world.

The Commission plans to provide additional resources for CADRS to enable the Commission to increase assistance to the number of industry stakeholders in need of informal dispute resolution services or for informational assistance concerning FMC jurisdiction. It is anticipated that the Commission's authorization to hire additional staff well-versed in ocean shipping industry practices will help enable the FMC to address supply chain congestion challenges more efficiently and effectively.

Stewardship Objective.

Advance the FMC's performance through excellence in organizational management.

The FMC recognizes the critical importance of providing effective, performance-oriented management and ensuring that all resources allocated to its mission are wisely employed. The Commission's stewardship objective and sub-objectives have been created to measure agency administration in supporting the FMC's mission. A portion of the personnel and resources requested in this budget would be necessary to maintain the Commission's superior service standards

Stewardship Sub-objective 1: Strengthen infrastructure and effective resource management.

The FMC realizes the critical importance of the administrative component of the agency in support of agency strategic goals, objectives, and performance measures. The following strategies addressing budget, planning, procurement, and IT are developed to provide an effective administrative support program within the FMC:

- Maintain an updated Continuity of Operations (COOP) program, which includes a COOP plan and Disaster Recovery plan that has training and exercises for staff and the emergency response team.
- Implement enterprise risk management practices, including updating the FMC's annual Risk Profile and providing risk management training.
- Promote economy and efficiency by detecting waste, fraud, and abuse in the agency's programs via auditing agency operations.
- Execute financial management policies and programs, manage agency appropriations, administer internal control systems for agency funds, travel and cash management, and coordinate with contractors who provide accounting and payroll services.
- Use technology and IT expertise to streamline and automate the agency's work processes and enhance the productivity and efficiency of the workforce, as well as maintain accessibility of the FMC's website, applications, and resources.
- Secure FMC IT systems to protect against cybersecurity threats.
- Provide clear and timely guidance to staff regarding administrative matters, including procurement, personnel, and contracting issues.
- Ensure program compliance with rules and regulations regarding such areas as forms clearance, information collection pursuant to the Paperwork Reduction Act, environmental effects pursuant to the National Environmental Policy Act, small business impacts pursuant to the Regulatory Flexibility Act, and other federally

required reports and submissions.

Sub-Objectives for Performance Measurement:

S.1.1 Manage risks and continue mission essential operations.

S.1.2 FMC's financial management systems and practices demonstrate fiscal responsibility and proper accounting.

S.1.3 Information Technology is optimized and IT systems are protected.

S.1.4 Maintain the Commission's cloud-based website to allow industry access to FMC resources and applications.

Stewardship Sub-objective 2: Foster a high performing, engaged, and diverse workforce where staff understand how their efforts contribute to the goals of the Commission.

The Commission's ability to carry out its mission and serve its customers depends on having a well-trained, highly skilled, and flexible workforce. The FMC is committed to the principles of diversity and the implementation of policies and objectives to enhance the Commission's workforce. The Commission's Office of Equal Employment Opportunity, along with senior leaders and the Diversity & Inclusion Council, effectively carry out this commitment.

Sub-Objectives for Performance Measurement:

S.1.1 Management promotes a culture that is open, diverse, inclusive, and engaged.

S.1.2 Management promotes a results-oriented performance culture.

Administration Initiatives Support and Cross-Government Actions

In addition to the FMC's Strategic Goals, the Commission's activities highlighted in this budget request contribute to the Administration's priorities and government-wide initiatives that increase efficiencies, improve customer service, and support transparency. The Commission will continue to meet its mission and make a positive difference in the lives of the American people and the economy.

Advancing Equity

The Commission supports the Administration's efforts to promote equity and remove barriers from underserved populations. As an independent agency, the Commission has voluntarily complied with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* and OMB Memo M-21-17 by conducting equity assessments of programs and services directed at the public. The Commission has drafted an Equity Action Plan to be finalized in FY 2022. The Equity Action Plan will address its OTI licensing program and access to public information.

It also addresses the FMC's acquisitions and contracting work. The agency will continue to consider steps to serve underprivileged groups and to ensure that the FMC is accessible to the public and its stakeholders.

The FMC is voluntarily participating in Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce*, geared towards cultivating a workforce that draws from our Nation's full diversity and advancing equitable employment opportunities for individuals from underserved communities. Commission efforts are currently in the initial stages of review and assessment of the FMC's current state of diversity, equity, inclusion, and accessibility (DEIA) in the agency's human resources practices and workforce composition.

Data Accountability and Transparency

The FMC recognizes and supports a robust, integrated approach to using data to deliver on mission, serve customers, and manage resources. The FMC participates in government-wide tracking of its spending. The Digital Accountability and Transparency Act of 2014 (DATA Act) expanded the reporting requirements on federal spending and provided free public access to reliable information on federal spending. Reliable data allows the public to trust in the information that the government provides and allows federal and elected officials to use that data to make informed decisions about government programs and projects. It also provides assurance to the public and those with oversight functions that agencies and programs are accountable for the federal funds spent.

The Commission has an Interagency Agreement in place with the Bureau of the Fiscal Services (BFS) to meet its federal financial reporting requirements. Through this cross-service provider, the FMC obtains a full range of financial management and accounting services, including DATA Act reporting services. The FMC continues to work internally and with BFS to ensure full and accurate reporting of its federal spending. The Commission is modifying the accounting treatment of expenditures that are considered overhead items, which are items that are shared by all programs, bureaus, and offices. To date, the Commission allocated costs between its two programs by the ratio method of program direct costs to total FMC direct costs applied to the overhead costs. The Commission will no longer allocate overhead to the Inspector General (IG) program because the program is approximately 1.6% of the FMC total budget. Any benefit gained in allocating overhead to the IG program is de minimis compared to the cost in staff effort and added complexity in budget formulation, tracking, and reporting. This accounting treatment modification does not change the budget directly allocated to the IG program. This change is made in consultation with, and concurrence of, the Inspector General.

Records Management

Pursuant to OMB Memorandum M-19-21, *Transition to Electronic Records*, federal agencies must transition all business processes and recordkeeping to a fully electronic environment by December 31, 2022. During FY 2021, the FMC continued to make progress in this important endeavor. Working with a contractor, the Commission digitized over 500,000 pages of paper records into a fully searchable records management system and securely disposed of paper records following scanning. The Commission will complete this effort by the end of the first quarter of FY 2023.

Updating User Fees

The FMC charges user fees for services as required by Section 8 of OMB Circular A-25. Agencies are required by the Chief Financial Officers Act of 1990 to conduct biennial reviews of fees and other charges that they impose, and to revise these fees and charges to cover program and administrative costs incurred, as necessary. The Commission completed its biennial review of user fees in FY 2021 under Docket No. 20-18 *Update of Existing User Fees*, with revised charges to recover the full cost of services. The Commission increased some fees to reflect salary increases for FTEs assigned to certain fee-generating services. For some services, an increase in processing or review time accounted for all or part of the increase in the amount of the fees. For other services, the Commission decreased fees due to an overall reduced cost to provide those services or a decrease in overhead costs resulting from fewer FTEs employed by the Commission and fewer FTEs assigned to fee-generating activities. The FMC will review user fees in FY 2023.

Strengthening Federal Hiring

The Commission has encountered difficulty in attracting the requisite talent to fill vacancies for economists, industry analysts, and attorney advisors. On multiple occasions, there has been a need to readvertise openings because selected candidates declined offers after initially accepting, which greatly increased the time to fill positions. The Commission continues to utilize recruitment incentives, when available, and to improve existing hiring practices, such as implementing Subject Matter Expert (SME) reviews to aid in referring the most highly qualified candidates to the hiring manager. This was the first step toward meeting the requirements outlined in Executive Order 13932, *Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates*. The Commission continues to explore additional assessment methods and is considering the use of OPM's automated USA Hire tool, which would allow the agency to implement and use a skill- and competency-based assessment that could carefully measure a candidate's ability to perform the job.

The Commission continues to partner with the Surface Transportation Board (STB) to collaborate on a shared Equal Employment Opportunity Manager. This practice has been used since 2019 and has proven to be beneficial for both organizations.

To leverage talent, the Commission employed four interns through its Volunteer Service Program in FY 2021, which provides unpaid education-related work assignments for students, and plans to continue this effort in FY 2022, 2023, and beyond. While the Commission is not currently providing paid internships, the option may be considered in the future utilizing its established Student Pathways Program policy as a tool for federal hiring.

Inspector General Request and Certification

FEDERAL MARITIME COMMISSION

Washington, DC 20573

February 18, 2022

Office of Inspector General

The Inspector General Reform Act (Pub. L. 110-149) was signed by President George W. Bush on October 14, 2008. Section 6(f)(1) of the Inspector General Act of 1978, 5 U.S.C. app. 3, was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year (FY).

Each inspector general (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- the aggregate amount of funds requested for the operations of the OIG,
- the portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for the fiscal year, and
- the portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget to the President for approval, shall include:

- an aggregate request for the OIG,
- the portion of this aggregate request for OIG training,
- the portion of this aggregate request for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress:

- a separate statement of the budget estimate submitted by each IG,
- the amount requested by the President for each OIG,
- the amount requested by the President for training of OIGs,
- the amount requested by the President for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing duties of the OIG.

Following the requirements as specified above, the Federal Maritime Commission (FMC) Inspector General submits the following information relating to the OIG's requested budget for FY 2023:

- the aggregate budget request for the operations of the OIG is $543,615,
- the portion of this amount needed for OIG training is $2,500, and
- the portion of this amount needed to support the CIGIE is $2,000.

The Commission is modifying the accounting treatment of expenditures that are considered overhead items and will no longer allocate overhead to the Inspector General (IG) program. The IG program is less than 1.6% of the FMC total budget, and any benefit gained in allocating overhead to the IG program is de minimis compared to the cost in staff effort and added complexity in budget formulation, tracking, and reporting. Prior to making this change, the Commission consulted and obtained concurrence from the Inspector General. This accounting treatment modification does not change the budget directly allocated to the IG program.

I certify as the Inspector General of the FMC that the amount requested satisfies the needs of the OIG for FY 2023, including all FMC OIG training requirements, and resources to support CIGIE.

Jon Hatfield

Jon Hatfield, Inspector General

Federal Maritime Commission

Appendices

FY 2023 Budget Request Explanatory Materials

Appendix A: Budget Request Details

Appendix B: Organizational Chart

Appendix C: Summary of Strategic Goals, Objectives, and Performance Measures

Appendix A: Budget Request Detail

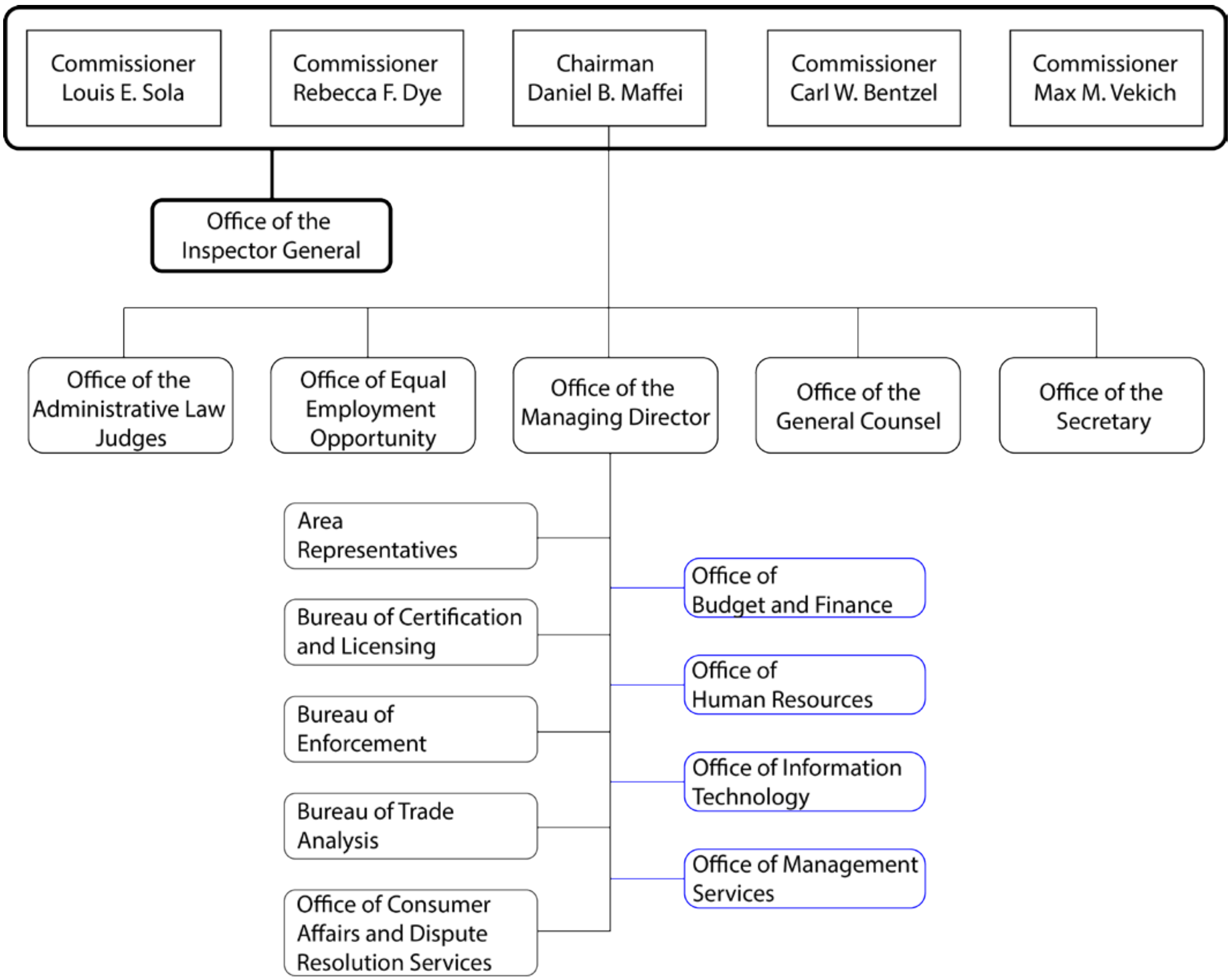
Budget Request Detail Funding Amounts in ($000)						
Budget Object Class (BOC)		**FY 2021 Enacted**	**FY 2022 Full-Year CR**	**FY 2023 Request**	**FY 2023 - 2021**	**% Change**
Full Time Equivalents		**116.1**	**124.8**	**149.5**	**24.7**	
Full-Time Permanent		16,037	15,271	20,830	4,793	29.9%
Other Personnel Compensation		400	279	397	(3)	-0.8%
Civilian Personnel Benefits		5,373	6,664	7,253	1,880	35.0%
Sub-Total Compensation & Benefits		**21,810**	**22,214**	**28,480**	**6,670**	**30.6%**
Travel and Transportation of Persons		198	117	117	(81)	40.9%
Transportation of Things		16	11	11	(5)	-31.3%
Rental Payments to GSA		3,461	3,683	300	(3,161)	-91.3%
Comm., Utilities, and Misc. Charges		252	239	541	289	114.7%
Printing and Reproduction		83	90	90	7	8.4%
Advisory and Assistance Services		1,298	1,297	1,297	(1)	0.0%
Services from Non-Fed. Sources		1,075	858	857	(218)	-0.1%
Goods & Services from Fed. Sources		1,711	1,562	1,562	(149)	-8.7%
Operation and Maintenance of Equip.		27	15	15	(12)	-44.4%
Supplies and Materials		65	97	97	32	49.2%
Equipment		305	117	1,317	1,012	331.8%
Sub-Total Administrative Expenses		**8,491**	**8,086**	**6,204**	**(2,287)**	**-26.9%**
Total Funding		**30,300**	**30,300**	**34,684**	**4,384**	**14.47%**
Operations & Administration (O&A) Program	Amount	29,746	29,722	32,140	2,418	
	FTE	114.1	122.8	137.0	25.0	
Operations Salary & Benefits (Multi-Year)	Amount	0	0	2,000	2,000	
	FTE	0	0	10.5	10.5	
Office of Inspector General (OIG) Program	Amount	554	578	544*	**(34)**	
	FTE	2.0	2.0	2.0	0.0	

Some amounts may not total due to rounding.

*The Commission, with concurrence of the OIG, will no longer include a distribution of overhead costs in the allocation of the budget for OIG expenses.

Appendix B: Organizational Chart

The FMC is composed of five Commissioners nominated by the President and confirmed by the Senate, each serving a staggered five-year term. The Commission is a bipartisan body; no more than three members of the Commission may be of the same political party. One Commissioner, designated by the President, serves as Chairman, Chief Executive, and Chief Administrative Officer of the Commission.



Appendix C: Summary of Strategic Goals, Objectives, and Performance Measures

Summary of Strategic Goals, Objectives, and Performance Measures

STRATEGIC GOAL 1: Maintain a competitive and reliable international ocean transportation supply system.

OBJECTIVE 1.1: Ensure no unreasonable increases in transportation costs or decreases in transportation service are attributed to anticompetitive practices under FMC-filed agreements.

Performance Measure	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
Performance Measure: Percentage of newly filed vessel sharing agreements and amendments to agreements analyzed and presented to the Commission within 32 days. **Validation:** This outcome goal is measured using data from the eAgreements electronic filing system and tracking the time elapsed between the agreement submission and review.	85%	85%	85%	85%	86%
	FY 2022 Actual: TBD				
Performance Measure: Percentage of agreement monitoring reports reviewed within 30 days of receipt to detect actionable information, including market-distorting behavior. **Validation:** This outcome goal is measured using data contained in the eMonitoring system used for the electronic filing of agreement monitoring submissions. Performance is measured by comparing the file receipt date to the date that the filing was reviewed by staff analyst.	80%	80%	80%	80%	80%
	FY 2022 Actual: TBD				

OBJECTIVE 1.2: Ensure competition is preserved in the purchase of certain covered services (46 U.S.C. § 40102(5)) through 46 U.S.C. § 40307 authorities**.**

Performance Measure	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
Performance Measure: Percentage of alternative agreement reports indicating joint contracting/procurement of covered services analyzed and escalated to regular monitoring status within 30 days of receipt to ensure systematic analysis of data for actionable information. **Validation:** This outcome goal is measured using regulated entities' data. Performance is measured by reviewing information received and identifying whether reports indicating covered services are moved from this system to the eMonitoring system within 30 days.	>95%	>98%	>98%	>98%	>98%
	FY 2022 Actual: TBD				

Summary of Strategic Goals, Objectives, and Performance Measures - Continued

STRATEGIC GOAL 2: Protect the public from unlawful, unfair, and deceptive ocean transportation practices.					
OBJECTIVE 2.1: Identify and take action to end unlawful, unfair, and deceptive practices.					
Performance Measure: Percentage of enforcement actions taken under the Shipping Act successfully resolved through compliance audits, judgments, settlements, compromise agreements, or issuance of default judgments, that are favorable to the FMC's enforcement program. **Validation:** This outcome goal is measured by examining enforcement case inventory and counting the number of cases resolved.	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
	77.5%	77.5%	77.5%	77.5%	77.5%
	FY 2022 Actual: TBD				
Performance Measure: Percentage of contacted unlicensed OTIs that submit license applications within one year after pre-enforcement contact and education from an area representative. **Validation:** This outcome goal is measured by correlating prior fiscal year area representatives' approved pre-enforcement case inventories with the current fiscal year data and notices on the status of Ocean Transportation Intermediary licenses. This data is collected and maintained by the Bureau of Certification and Licensing on the Regulated Persons Index and the list of FMC Licensed & Bonded OTIs.	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
	10%	15%	15%	20%	25%
	FY 2022 Actual: TBD				
OBJECTIVE 2.2: Prevent public harm through licensing and financial responsibility requirements.					
Performance Measure: Percentage of decisions on completed OTI license applications rendered within 60 calendar days of receipt, facilitating lawful operation of OTIs with appropriate character and experience requirements. **Validation:** This outcome goal is measured by comparing the total number of OTI applications assigned to an analyst (X) and the number of applications completed by an analyst on or before the 60th calendar day following assignment (Y) during a specific time period. The outcome goal is calculated as (Y / X) x 100 = %.	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
	75%	75%	75%	75%	75%
	FY 2022 Actual: TBD				

Summary of Strategic Goals, Objectives, and Performance Measures - Continued

OBJECTIVE 2.2 (CONTINUED): Prevent public harm through licensing and financial responsibility requirements.

	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
Performance Measure: Percentage of license renewals completed on or prior to the 3-year renewal deadlines to timely verify regulatory compliance. **Validation:** The Completion Status Report, generated in the license renewal system, provides the total number of renewals completed (X) and the number of renewals completed on or before the renewal deadline (Y) during a specific time period. The outcome goal is calculated as (Y / X) x 100 = %	75%	75%	75%	75%	75%
	FY 2022 Actual: TBD				

	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
Performance Measure: Percentage of PVOs examined during the year that have the full financial coverage required by regulation to protect against loss from non-performance or casualty. **Validation:** This outcome goal is measured by comparing reported financial coverage amounts against required coverage amounts. Operators covered by this program file semi-annual, monthly, and weekly unearned passenger revenue reports. This information is used to compare reported coverage against required coverage amounts.	95%	95%	95%	95%	95%
	FY 2022 Actual: TBD				

OBJECTIVE 2.3: Enhance public awareness of agency resources, remedies, and regulatory requirements through education and outreach.

	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
Performance Measure: Percentage of Commission issuances, orders and reports available through the Commission's website within 5 working days of receipt. **Validation:** This outcome goal is measured by reviewing the workflow processes for posting documents to the Commission's website docket activity logs. The date that each docket activity log is updated with new filings or issuances is compared to the date the document is filed with or issued by the Commission in a particular proceeding.	90%	90%	92%	92%	92%
	FY 2022 Actual: TBD				

Summary of Strategic Goals, Objectives, and Performance Measures - Continued

<table>
<tr><td colspan="6">OBJECTIVE 2.4: Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication.</td></tr>
<tr><td rowspan="3">Performance Measure: Percentage of dispute resolution matters closed within 6 months of request for assistance.

Validation: This outcome goal is measured using data maintained by the Commission on each dispute resolution matter opened. Cases are opened upon the request of the public for assistance and are subject to the normal fluctuations in businesses and consumers seeking help from the Commission. Cases are closed upon resolution, voluntary termination by the parties, refusal to participate or failure to respond by a party, or when the CADRS mediator determines that particular issues prevent the possibility for successful resolution.</td><td>2022 Target</td><td>2023 Target</td><td>2024 Target</td><td>2025 Target</td><td>2026 Target</td></tr>
<tr><td>67%</td><td>70%</td><td>73%</td><td>75%</td><td>80%</td></tr>
<tr><td colspan="5">FY 2022 Actual: TBD</td></tr>
<tr><td rowspan="3">Performance Measure: Percentage of formal complaints or Commission-initiated orders of investigation completed within 2 years of filing or Commission initiation.

Validation: This outcome goal is measured by using docket activity logs maintained by the Commission and used for docket management, and monthly and annual reporting purposes.</td><td>2022 Target</td><td>2023 Target</td><td>2024 Target</td><td>2025 Target</td><td>2026 Target</td></tr>
<tr><td>72%</td><td>72%</td><td>72%</td><td>72%</td><td>72%</td></tr>
<tr><td colspan="5">FY 2022 Actual: TBD</td></tr>
</table>

Summary of Stewardships Objectives and Performance Measures

Stewardship Objective: Advance the FMC's mission through excellence in organizational management.

Stewardship Sub-objective 1: Strengthen infrastructure and effective resource management.

S.1.1. Manage risks and continue mission essential operations.

	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
Performance Measure: COOP activities, including annual training, notification exercises, and an annual COOP exercise are conducted throughout the year consistent with the FMC COOP Plan. **Validation:** Complete and document all activities between July 1 and June 30. Sources include annual training materials, sign-in sheets/confirmation emails, and after-action reports.	100%	100%	100%	100%	100%
	FY 2022 Actual: TBD				

S.1.2. FMC's financial management systems and practices demonstrate fiscal responsibility and proper accounting.

	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
Performance Measure: Achieve an unmodified (clean) opinion from the independent auditor on the Commission's fiscal year's end financial statements. (Data: Office of the Inspector General Independent Auditor's Report) **Validation:** This outcome goal is an unmodified (clean) opinion by the Office of the Inspector General based on findings from the independent auditor's review of the FMC's annual financial statements and internal controls over financial reporting. Each year, the independent auditor reviews approximately 75 processes, documents, procedures, checklists, transaction types, and reports that are all considered as part of the overall assessment.	100%	100%	100%	100%	100%
	FY 2022 Actual: TBD				

S.1.3. Information technology is optimized and IT systems are protected.

	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
Performance Measure: Percentage of the overall cybersecurity compliance with mandates that are issued. **Validation:** This objective is measured through the report card from the Cybersecurity and Infrastructure Security Agency (CISA).	100%	100%	100%	100%	100%
	FY 2022 Actual: TBD				

Summary of Stewardship Objectives and Performance Measures - Continued

Stewardship Sub-objective 1 (continued): Strengthen infrastructure and effective resource management.					
S.1.4. Maintain the Commission's cloud-based website to allow industry access to FMC resources and applications.					
Performance Measure: FMC website uptime percentage. **Validation:** This objective is measured through the Commission's Azure server uptime report.	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
	99.5%	99.5%	99.5%	99.5%	99.5%
	FY 2022 Actual: TBD				
Stewardship Sub-objective 2: Foster a high performing, engaged, and diverse workforce where staff understand how their efforts contribute to the goals of the Commission**.**					
S.2.1. Management promotes a culture that is open, diverse, inclusive, and engaged.					
Performance Measure: Benchmarking EEI index is above the average for small agencies; no more than 10% drop from the prior year. **Validation:** Annual employee responses from the Federal Employee Viewpoint Survey (FEVS).	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
	>-10%	>-10%	>-10%	>-10%	>-10%
	FY 2022 Actual: TBD				
S.2.2. Management promotes a results-oriented performance culture.					
Performance Measure: Benchmarking FEVS results tied to a results-oriented performance culture. **Validation:** Annual employee responses from the FEVS.	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
	>75%	>75%	>75%	>75%	>75%
	FY 2022 Actual: TBD				
Performance Measure: Percent of staff with the majority of (3 or more expectations per performance element) performance goals rated as meeting the characteristics of a specific, measurable, achievable, realistic, and timely (SMART) goal. Targets are for non-SES/non-supervisory staff. SES and supervisor targets will exceed listed staff targets. **Validation:** Review of performance plans each performance year.	2022 Target	2023 Target	2024 Target	2025 Target	2026 Target
	25%	>50%	>98%	>99%	>99%
	FY 2022 Actual: TBD				

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