



# Federal Maritime Commission

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Fiscal Year 2016 Budget Request

February 2, 2015

Submitted to the Appropriations Committees  
(Subcommittees on Transportation, Housing and Urban  
Development and Related Agencies)



**Chairman Mario Cordero**

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## OVERVIEW



### **THE FEDERAL MARITIME COMMISSION'S MISSION**

**To foster a fair, efficient, and reliable international ocean transportation system, and to protect the public from unfair and deceptive practices.**

Fulfilling this mission involves pursuing two primary strategic goals:

- 1. Maintain an efficient and competitive international ocean transportation system.**
- 2. Protect the public from unlawful, unfair and deceptive practices and resolve shipping disputes.**

## **Regulatory Authority History and Background**

The Federal Maritime Commission (FMC or Commission) is an independent agency which regulates oceanborne transportation in the foreign commerce of the United States. The bipartisan Commission is composed of five Commissioners appointed for staggered five-year terms. The President designates one Commissioner to serve as Chairman, the Chief Executive, and Administrative Officer of the agency.

The FMC administers the Shipping Act of 1984 (1984 Act, Shipping Act) as amended by the Ocean Shipping Reform Act of 1998 (OSRA); section 19 of the Merchant Marine Act, 1920 (1920 Act); the Foreign Shipping Practices Act of 1988 (FSPA); and sections 2 and 3 of Public Law (P.L.) 89-777 (46 U.S.C. §§ 44102 and 44103).

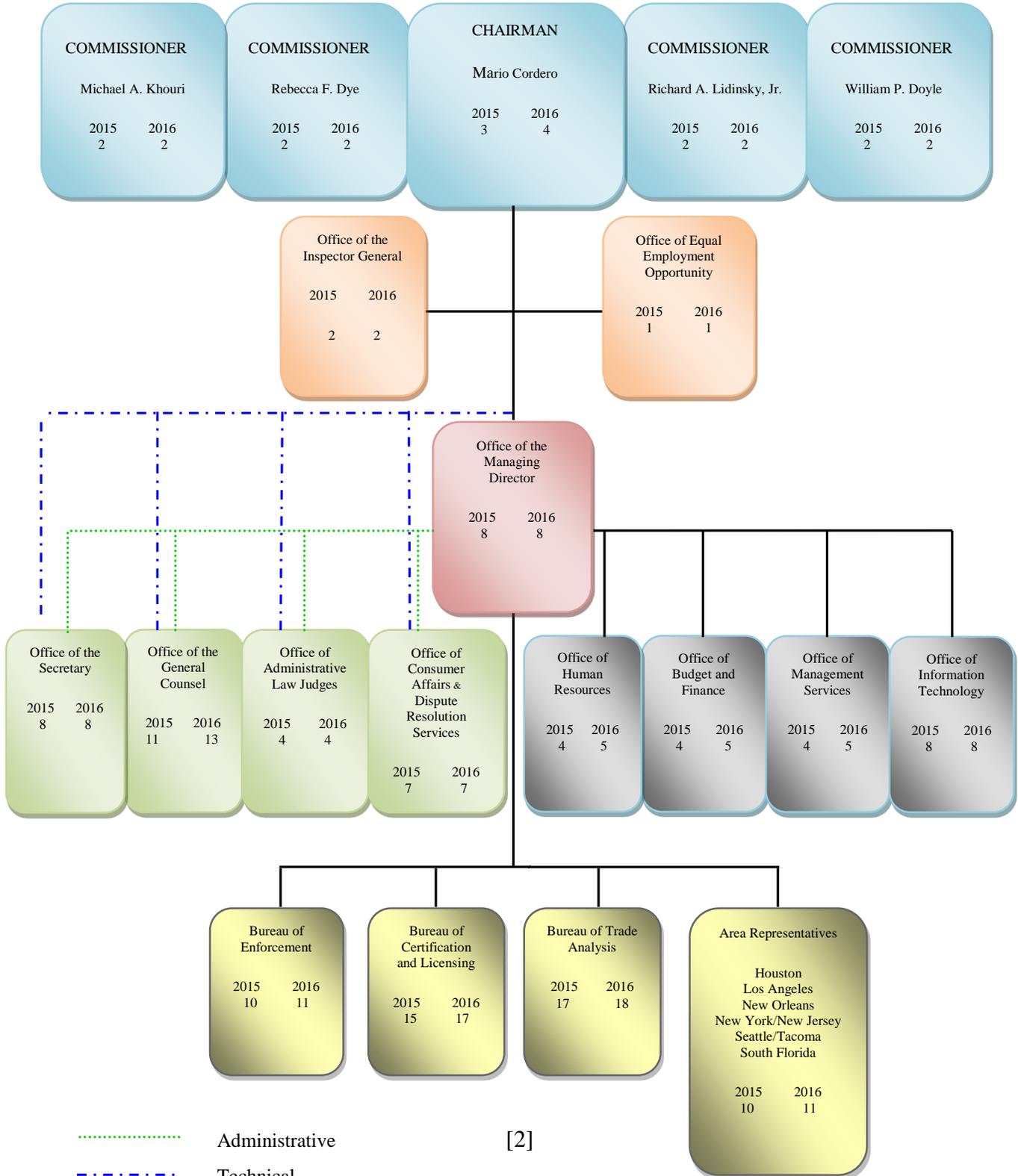
The FMC has been charged with responsibilities including: (1) monitoring the activities of ocean common carriers, marine terminal operators (MTOs), ports, and ocean transportation intermediaries (OTIs) who operate in the U.S. foreign commerce to ensure just and reasonable practices; (2) reviewing competitive activities, such as rate discussion agreements, carrier alliances, and other agreements among common carriers and/or MTOs; (3) licensing qualified OTIs in the U.S. and ensuring that all OTIs (including foreign OTIs) are bonded or maintain other evidence of financial responsibility; (4) maintaining trade monitoring, enforcement and dispute resolution programs to assist regulated entities in achieving compliance and to detect and remedy malpractices and violations of the prohibited acts set forth in section 10 of the 1984 Act; (5) providing dispute resolution services to the industry and consumers; (6) monitoring the laws and practices of foreign governments for discriminatory or otherwise adverse impact on shipping conditions in U.S. trades, and imposing appropriate remedial action pursuant to section 19 of the 1920 Act or FSPA; (7) enforcing special regulatory requirements applicable to carriers owned or controlled by foreign governments; (8) ensuring that passenger vessel operators (PVO) demonstrate adequate financial responsibility to indemnify passengers in the event of non-performance of voyages or passenger injury or death pursuant to 46 U.S.C. §§ 44102 and 44103; and (9) processing and reviewing agreements, service contracts, and service arrangements pursuant to the 1984 Act for compliance with statutory requirements; and reviewing common carriers' privately published tariff systems for accessibility, accuracy, and reasonable terms.

To carry out Congress' charge, the FMC has gathered a small workforce of highly experienced economists, attorneys and experts in ocean transportation. The request for an increase of 11 full-time equivalent (FTEs) in fiscal year (FY) 2016 will continue staff's efforts to effectively fulfill its mandate.

The Commission's offices and bureaus support the agency in accomplishing its mission. The Office of the Inspector General is independent and reports to both the Commissioners and Congress. The specific roles and responsibilities of each office can be found at <http://www.fmc.gov/about/orgchart.aspx>.

FEDERAL MARITIME COMMISSION  
ORGANIZATION CHART

Total FY 2015 Enacted: 124 FTEs  
Total FY 2016 Request: 135 FTEs

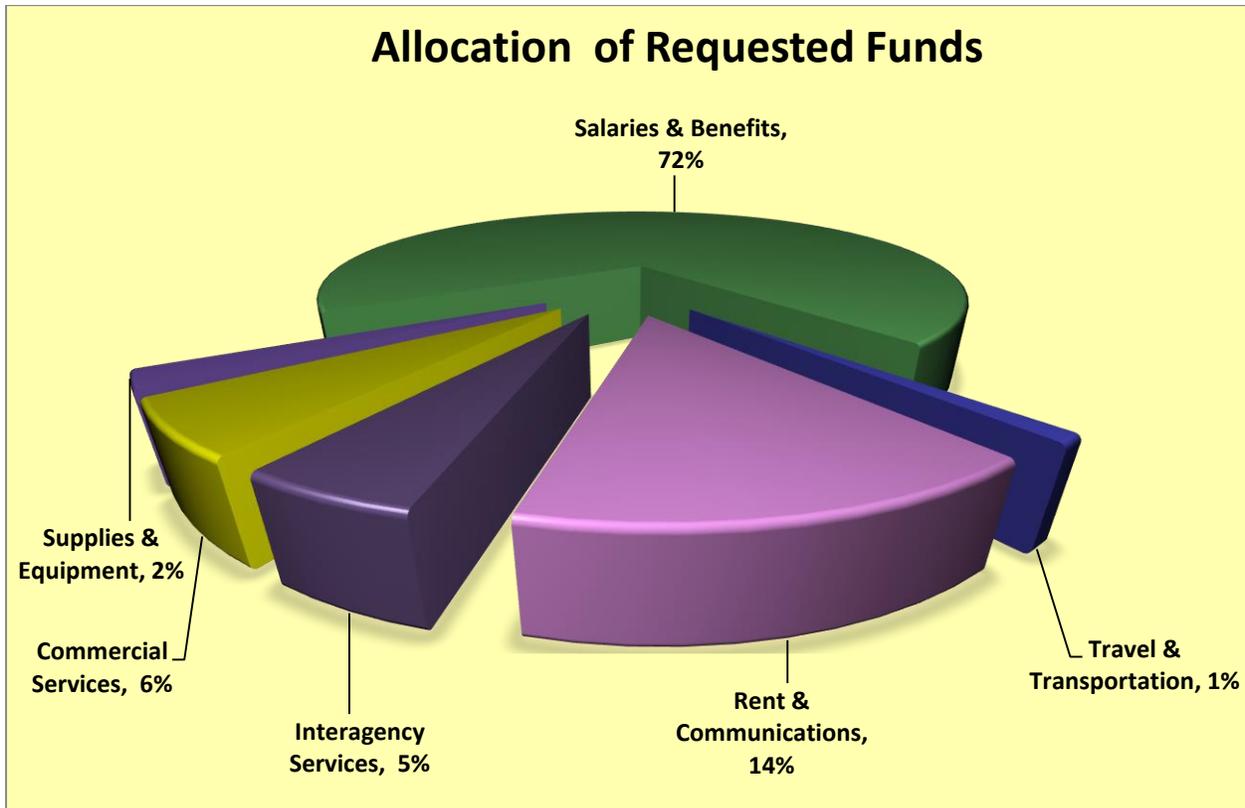


## **FY 2016 BUDGET REQUEST**

The FMC's Fiscal Year 2016 Budget Request is \$27,387,000 to support 135 FTEs. This is a net increase of \$1,727,000 over the Commission's 2015 enacted appropriation level.

An increase of \$1.643 million is requested for salary and benefit increases. An additional \$84,000 is requested to meet administrative expense needs. The Commission has achieved significant progress during FY 2014 by implementing security enhancements and information technology (IT) infrastructure improvements. IT improvements will continue in FY 2015 and FY 2016. The ongoing multi-year enhancement of FMC IT systems is improving the Commission's internal business processes, expanding research and analysis capabilities, and continuing to improve the public's accessibility to FMC information. The FMC's continuing transition to Enterprise Content Management (ECM) technology will drastically improve turnaround times and reduce application processing/registration errors due to current business processes which are labor and paperwork intensive. The new technology will enable improved access to documents, data, and the real-time status of applications, licenses, and registrations. It will provide a modern and efficient business process for applicants and staff, saving time and money while also enabling the FMC to keep pace with the electronic business practices of the industries it regulates. The IT investments are increasing the agency's effectiveness, improving outcomes and customer satisfaction with FMC services.

The FY 2016 request includes an increase of 11 FTEs over the authorized level of 124 for FY 2015. The Commission's ability to meet its mandate and strategic goals depends upon attracting and maintaining a strong and dedicated workforce. The 2016 FTEs will play vital roles at the Commission, such as meeting the President's Management Agenda; providing customer service to the public and industry; handling time-sensitive requests for assistance; and improving delivery of the Commission's public facing information. New hires in administrative offices will support the agency's ability to respond to acquisition, hiring, and budgetary needs. All of the requested new positions will help with sustainability and succession planning and will be a crucial part of the FMC's continued success in maintaining an efficient and competitive international ocean transportation system and protecting the public from unlawful, unfair and deceptive practices.



Our request is motivated by the Commission’s estimated costs to cover fundamental operational needs. As reflected in the above chart, 97% of the Commission’s FY 2016 Budget Request is needed to meet payroll expenses, mandatory rent, telephones, interagency services, and critical commercial services. The remaining 3% is comprised of supplies and equipment (including IT hardware and software) and official travel. Funding resources needed for fiscal years 2015 through 2016 by object class are provided in Appendix C. To the extent possible, costs have been straight-lined. Continued investments are needed in mission-critical technologies (both software and hardware) for the Commission to effectively and efficiently carry out its statutory duties.

<b>Federal Maritime Commission</b>				
<b>Executive Summary</b>				
		FY 2014 Actual	FY 2015 Enacted	FY 2016 Request
<b>FTE:</b>	<b>Headquarters &amp; Field</b>	<b>112.96</b>	<b>124.00</b>	<b>135.00</b>
<b>Cost:</b>	<b>Salaries &amp; Benefits</b>	\$16,877,651.40	\$18,173,000.00	\$19,816,000.00
	<b>Non-Personnel Expenses</b>	\$7,773,138.04	\$7,487,000.00	\$7,571,000.00
	<b>Total Cost</b>	<b>\$24,650,789.44</b>	<b>\$25,660,000.00</b>	<b>\$27,387,000.00</b>
<b>FY 2016 FTE by FMC Strategic Goal</b>				
<b>Strategic Goal 1</b>		<b>Strategic Goal 2</b>		
Maintain an efficient and competitive international ocean transportation system		Protect the public from unlawful, unfair and deceptive practices and resolve shipping disputes		
<b>34.53</b>		<b>100.47</b>		
<b>FY 2016 Cost by FMC Strategic Goal</b>				
<b>Strategic Goal 1</b>		<b>Strategic Goal 2</b>		
<b>\$7,250,623.35</b>		<b>\$20,136,376.65</b>		

The FMC’s role in the U.S. shipping industry remains critical and the FMC will continue to be at the forefront of the nation’s oceanborne transportation system in the coming years. The FMC’s Strategic Plan, the blueprint for all Commission activities, focuses on maintaining a competitive ocean transportation system, facilitating America’s international commerce, and encouraging reliable liner service for U.S. exporters and importers. The FMC’s mission directly supports the President’s commitment to economic growth and job creation. Commission programs related to monitoring international oceanborne trade conditions advance the President’s National Export Initiative by promoting access to foreign markets for American exports and efficient supply chains for the importation of goods for domestic production and consumption. The Commission also supports the President’s Management Agenda and cross-agency priorities by increasing efficiencies, customer service initiatives, and public information to make a positive difference in the lives of American people and the economy.

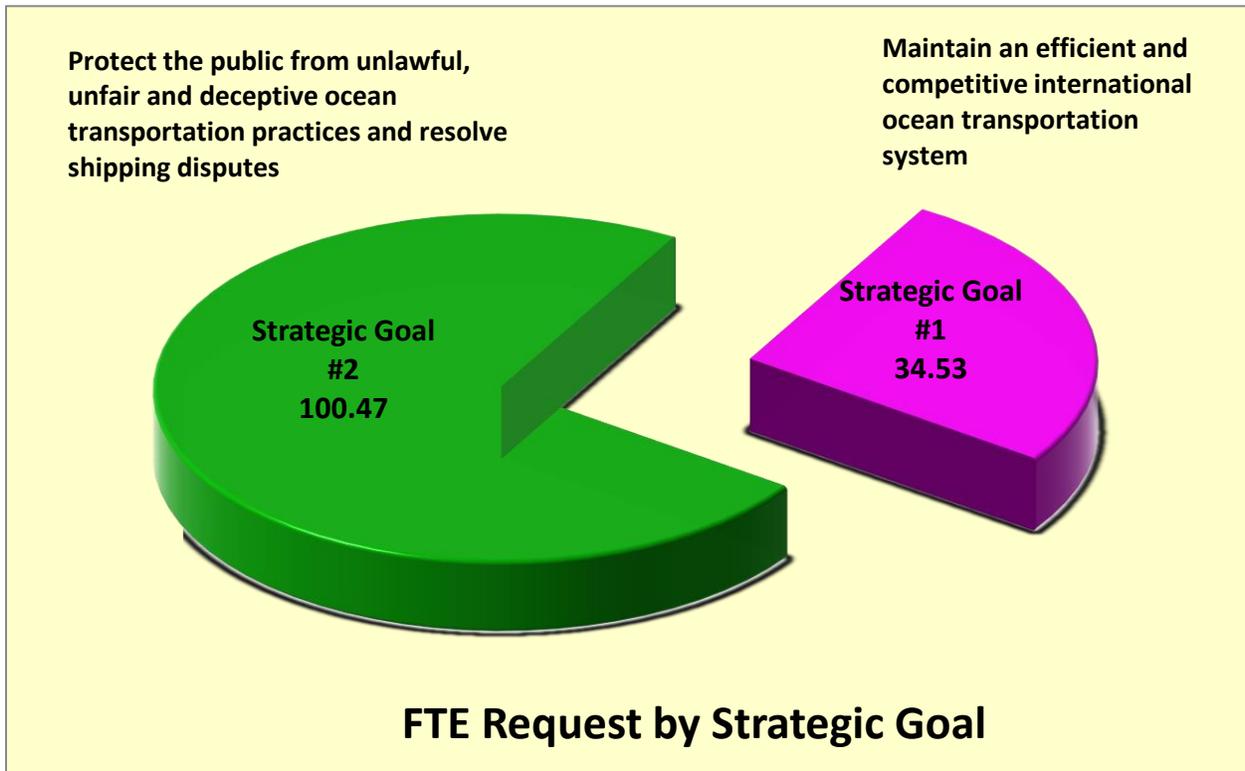
The Commission consistently reaches out to the shipping industry and other government entities to educate these groups on the statutes it implements, as well as to address any issues that may arise. Commissioners and staff address various industry groups as speakers and panelists to provide information on the latest trends and issues related to Commission activities.

While the first strategic goal concerning competition encompasses the vital tasks of reviewing and monitoring carrier and MTO agreements and monitoring foreign-shipping practices, most of the Commission's programs are covered by the second strategic goal which is protecting the shipping public. As reflected on page 7, of the total FY 2016 request, \$7,250,623 and 35 FTEs are needed to support Strategic Goal 1, *Maintain an efficient and competitive international ocean transportation system*, and \$20,136,377 and 100 FTEs are needed to support Strategic Goal 2, *Protect the public from unlawful, unfair and deceptive ocean transportation practices and resolve shipping disputes*. The Commission-wide action items, addressed on page 11, identify the FMC's ongoing commitment to improve its infrastructure and open data to the public and stakeholders.

Included in this FY 2016 Budget Request are a number of charts to explain the funding and FTE resources needed to meet the Commission's mission and congressional mandate. Specifically, Appendices A and B provide detailed funding and FTE requirements at the program level. Appendix C categorizes the funding resources needed for fiscal years 2015 through 2016 by object class. Appendix D provides funding by program areas and the relationship of the Commission's obligations to outlays by fiscal year. Appendix E details the FMC's Strategic Goals, Objectives and Performance Measures. Appendix F provides the Commission's Workload Summary statistics, and Appendix G is the Certification of the Office of the Inspector General's FY 2016 Budget Request.

#### 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. 307), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901 - 5902, ~~\$25,660,000~~ \$27,387,000: *Provided*, That not to exceed \$2,000 shall be available for official reception and representation expenses. (*Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015.*)



## Strategic Goal 1:

### Maintain an efficient and competitive international ocean transportation system

#### Competition and Foreign Practices

The focus of the Commission's program of reviewing and monitoring carrier and MTO agreements is to enhance trade efficiency through the use of various types of agreement authority. Agreement filings in 2015 and 2016 are expected to number approximately 150 per year (see Appendix F for these and other workload statistics). Agreement activity during FY 2014 significantly increased, attributable in part to the establishment and implementation of several major operational shipping alliances in the global containership industry. The Commission's Bureau of Trade Analysis (BTA) rapidly handles the economic assessment and provides guidance to the Commission on filed agreements. During FY 2016, the Commission will continue to monitor key U.S. trade lanes, and review and analyze the competitive impact of agreements. In particular, the Commission will exercise close oversight of the increasing operational cooperation occurring among ocean carriers as the global liner trades continue to rapidly evolve. With increasing pressure on consolidation in the industry, port congestion, rising energy costs, and environmental concerns, the Commission is particularly sensitive to the impact on the nation's exporters and their need for efficient and competitive ocean transportation in reaching foreign markets.

The Commission monitors foreign laws and practices to determine whether there are any unjust non-market barriers to trade, and takes action where appropriate. It also classifies controlled carriers subject to section 9 of the Shipping Act of 1984. Common carriers that are owned or controlled by foreign governments are required to adhere to certain requirements under the 1984 Act, and their rates are subject to Commission review. The Commission is particularly concerned with foreign restrictions that unjustly disadvantage U.S. interests.

Vessel-operating common carrier (VOCC) service contracts and non-vessel-operating common carrier (NVOCC) Negotiated Service Arrangements (NSAs) are required to be filed with the Commission. Under service contracts and NSAs, shippers make a commitment to provide a certain volume or portion of cargo over a fixed period of time, and carriers and NVOCCs commit to a specified rate and a defined service level. These confidential contracts and arrangements are filed into the Commission's automated Service Contract Filing System (SERVCON).

During fiscal years 2015 and 2016, the Commission expects to receive SERVCON filings of approximately 51,000 service contracts and 560,000 contract amendments, 1,600 original NSAs, and 2,000 amendments.

In fiscal years 2015 and 2016, the Commission will continue to monitor service contract, tariff, and agreement activities, prepare reports and economic analyses on developments and issues in key U.S. trades, review the activities of controlled carriers, and respond to inquiries and informal complaints. In addition, the Commission will monitor changes taking place in the provision of chassis for the inland movement of containerized goods. The Commission will continue to oversee international trade issues, including unfair foreign shipping practices. The FMC participates with

the U.S. Customs and Border Protection (CBP) in development of the Automated Commercial Environment/International Trade Data System (ACE/ITDS) to advance the nation's security interest and protect U.S. ports. It will also continue to participate in the Maritime Data Working Group and the Interagency Action Team for the National Committee on the Marine Transportation System, furthering our nation's maritime interests.

Also in fiscal years 2015 and 2016, the Commission's Office of Information Technology (OIT) will enhance IT systems with respect to the agreement and trade monitoring programs in order to streamline internal business processes and expand research capabilities, as well as to improve external users' filing processes. The Commission is working to optimize the internal architecture of the SERVCON system to allow the search functionality to keep pace with the rapid accumulation of records in the system.

## Strategic Goal 2:

**Protect the public from unlawful, unfair and deceptive practices and resolve shipping disputes**

### Enforcement and Alternative Dispute Resolution

The first objective of Strategic Goal 2 is to identify and take action to end unlawful, unfair and deceptive practices. The Commission's activities pursue this goal with both enforcement and compliance programs, and also through dispute resolution. In fiscal years 2015 and 2016, the FMC will continue enforcement actions against those who pursue market-distorting, fraudulent, and anti-competitive practices harmful to the industry and the public. The Commission will advance initiatives aimed at VOCCs and NVOCCs engaged in unfair service contracting practices, particularly the practices which permit improper entities, such as unlicensed OTIs, to compete unlawfully with carriers and OTIs operating in compliance with U.S. laws.

The FMC's program to monitor and audit ocean common carrier, NVOCC, and ocean freight forwarder (OFF) operations continues to be a Commission focus. This program conducts up to 130 OTI audits each year which reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's regulations. It emphasizes correction of routine tariff matters and prompt compliance with reporting, licensing, and bonding requirements. The FMC annually audits for compliance approximately 2.5% of the nearly 6,000 licensed and bonded OTIs currently registered with the Commission.

Informal dispute resolution is ongoing at the FMC. The FMC will continue to facilitate the resolution of informal complaints and disputes, and investigate unlawful practices by carriers, MTOs, and OTIs. In their outreach roles, the Office of Consumer Affairs and Dispute Resolution Services (CADRS) and the FMC's Area Representatives (ARs) will educate maritime transportation users and providers on FMC statutes and regulations, assist shippers with access to transportation services, and help address any transportation disputes that may arise, such as shipper concerns regarding demurrage charges, charges related to the storage of containers at marine terminals beyond the allotted free time.

The FMC will continue to expand its participation in security initiatives as they relate to U.S. ocean commerce. Specifically, the Commission is working to coordinate the use of available database systems with other agencies engaged in homeland security to improve identification of entities providing and utilizing maritime transportation services. To facilitate these activities, a Memorandum of Understanding (MOU) between the U.S. Customs and Border Protection and the FMC was recently updated and expanded to provide more efficient utilization of existing systems and services. The FMC also has an active MOU with the Census Bureau, U.S. Department of Commerce, providing the FMC with access to the Census' Automated Export System (AES) database. The MOU allows the FMC to handle and use the confidential U.S. export shipment data to accomplish its mission and protecting the nation's security interests. The FMC also supports the nation's economic and security interests by partnering with the National Intellectual Property Rights Coordination Center (IPR Center), a Department of Homeland Security-led partnership of 21 Federal and international agencies targeting intellectual property- and trade-related crimes.

The FMC's outreach efforts have been successful in promoting the industry's awareness of Commission-based facilitation and arbitration. The Commission supports the trend for mediation and collaborative dispute resolution when feasible. The Commission requires parties involved in formal Commission docketed proceedings to attend mandatory mediation conferences.

Efforts to further expand awareness of the Commission's Alternative Dispute Resolution (ADR) services will continue through internal and external education programs, training, and other appropriate methods. Use of mediation will be promoted to assist in resolving formal proceedings, service contract matters, and other significant disputes.

Further, the Commission offers periodic seminars and instructional opportunities to educate consumers and regulated entities regarding regulations, shipping trends, best practices, and the effective use of FMC services to resolve shipping disputes. Consumer protection will be enhanced by the FMC's plan to develop electronic delivery of this information through webinar capability.

### **Licensing and Certification**

The second objective of Strategic Goal 2 is to prevent public harm through licensing and financial responsibility requirements. The FMC licenses OTIs as mandated by the Shipping Act, and provides financial certification of PVOs. OTIs are transportation middlemen for oceanborne cargo moving in the U.S.-foreign trades. An OTI applicant must establish to the FMC that it has the necessary character to render OTI services as well as establish its financial responsibility by means of a bond, insurance, or other instrument, and demonstrate a minimum of three years of experience in ocean transportation intermediary activities in the U.S.

There are approximately 6,000 domestic and foreign OTIs regulated by the Commission. Over 650 licensing transactions were processed in FY 2014. Currently 967 OFFs; 1,734 U.S.-based NVOCCs; 1,992 joint NVOCCs/OFFs; and 76 foreign-based NVOCCs hold active OTI licenses. An additional 1,259 foreign-based NVOCCs are registered and maintain proof of financial responsibility with the Commission. Approximately 1,400 foreign-based NVOCC registration transactions were processed in FY 2014, including 1,333 new registrations and 52 revised registrations. Registered unlicensed NVOCCs must renew their registrations every three years.

The FMC also oversees the passenger vessel operator financial responsibility program. Evidence of financial responsibility is required for vessels that have berth or stateroom accommodations for 50 or more passengers, and embark passengers at U.S. ports and territories. Certificates of performance cover financial responsibility for the indemnification of passengers for non-performance of transportation. This requirement also helps prevent unscrupulous or financially weak operators from serving U.S. ports. The current PVO program encompasses 213 vessels and 45 operators with aggregate evidence of financial responsibility coverage in excess of \$446 million for non-performance and over \$774 million for casualty. The FMC protects the cruising public by offering information and guidance throughout the year on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages.

The number of PVOs in the program is likely to remain constant in fiscal years 2015 and 2016. The Commission recently changed its PVO rules by adjusting the coverage amounts and implementing five-year expiration on PVO performance certificates. The Commission will continue to seek ways to enhance PVO monitoring procedures during 2015 and 2016.

## Commission-wide Action Items - Supporting the President's Management Agenda and Cross-Agency Priorities

In addition to the strategic goals above, the FMC continues to make progress on Commission and government-wide initiatives that will strengthen the Commission and the ability of government to react to the rapidly changing needs of its citizens.

### **Customer Service**

The FMC provides direct services to the public through a number of offices and programs. The Office of the Secretary updates the FMC's website and social media, and responds to requests from the press and the public. The Commission's Office of Consumer Affairs and Dispute Resolution Services receives time-sensitive requests for assistance (through e-mail and calls to its toll-free number) from shippers and carriers. Similarly, the Commission's Area Representatives, strategically located at key maritime ports (Southern California, Seattle/Tacoma, New York/New Jersey, Houston, New Orleans, and South Florida), commonly operate as the front line for questions and issues facing the industry.

### **SAVE Award**

The Commission's senior staff have an open door policy for employees to discuss ideas to improve the agency and government functions. Suggestion boxes and cards are located at headquarters in the common areas. The FMC will continue to identify best practices to implement the President's SAVE (Securing Americans Value and Efficiency) Award program. Many of the Commission's IT strategies, discussed below, are also aimed at increasing agency-wide efficiencies to reduce costs.

### **Reducing Regulatory Burden**

The FMC continuously reviews its regulatory processes. As economic conditions alter the state of our trades, regulations are revised to respond to new conditions. As part of an ongoing *Plan for Retrospective Review of Existing Rules* (initiated in FY 2012), the FMC is systematically reviewing, evaluating and making recommendations for improvements to its regulatory requirements concerning the filing and processing of agreements, quarterly monitoring reports, and agreement meeting minutes. A review of the regulations governing service contracts and NVOCC service arrangements continued in FY 2014, and recommendations are being developed for the Commission's consideration. It is anticipated that this rulemaking initiative will conclude in FY 2015. A review of the Marine Terminal Operator Schedule regulations is planned to begin in FY 2015 and, in FY 2016, a review of the Carrier Automated Tariff regulations is scheduled.

In fiscal years 2015 and 2016, the Commission will: (1) review the impact of recent rule changes affecting the passenger vessel program and explore alternatives to enhance PVO monitoring procedures; (2) review suggested amendments to the regulations regarding OTI licensing and financial responsibility requirements in light of changed industry circumstances; (3) continue efforts to develop, enhance, and implement an improved electronic application process for both OTIs and PVOs; (4) review the Marine Terminal Operator Schedule regulations; and (5) review the Carrier Automated Tariff regulations.

### **Open Data / Applying Innovative Technologies**

The FMC is committed to the ongoing multi-year enhancement of its IT systems, which will ultimately make it faster and easier for individuals and businesses to complete transactions and have positive experiences with the government. As indicated previously, much of this work involves a transition to the use of Enterprise Content Management or ECM technology. In connection with increasing the public's accessibility to FMC information, the Commission will begin implementing a plan to upgrade the website and document repository in fiscal year 2015.

Planned FMC actions that open up government data for FY 2015 and 2016 include efforts to:

- modernize and expand the Regulated Persons Index (RPI), a critical database that contains up-to-date records of licensed OTIs (OFFs and NVOCCs), ocean common carriers, MTOs and other entities, which is used by FMC staff, the shipping public, and other governmental security and trade entities. The modernization of this system, along with continued investments in public information and education, will give the public access to useful information to make critical decisions on how to move their goods overseas;
- develop and begin implementation of a plan to upgrade the FMC's current internet hosting, maintenance, and public document repository solution to include launching a newly designed website that will implement technology to make Commission information more easily accessible via mobile devices;
- update the public on issues in the trade and cruise issues via consumer alerts and public service announcements published on the FMC website and other social media;
- provide continuous updates to key public information including website publication of the docketing activity and documents for cases filed before the Commission;

- provide public access to filed agreements through the FMC’s agreement library, accessible through the FMC website; and
- provide the public with key FMC studies and economic analysis of shipping industry trends when applicable.

Planned FMC IT actions that provide internal improvements for FY 2015 and 2016 include efforts to:

- continue to develop and deploy the ECM technology, which will consolidate all OTI applications and renewal processes, enhancing the ability of applicants to file electronically, reducing errors and enabling staff to significantly increase efficiency in processing applications and renewals for approximately 6,000 licensed/registered OTIs. This improvement will support the ability of American entrepreneurs to enter the industry and offer needed services to the public;
- build and deploy a new Service Contract Filing System for ease of filing, and optimize the internal architecture of SERVCON, particularly the search functionality needed to keep pace with the rapid accumulation of records. This improvement will facilitate U.S. trade and allow shippers and carriers to more rapidly respond to real-time business needs;
- develop a plan to automate the filing of applications for certificates by PVOs for more efficient processing and to permit applicants to use available technology to easily interact with the Commission to complete their Congressionally mandated requirements;
- develop and implement an updated CADRS case tracking system for more responsive handling of consumer complaints;
- design and deploy an updated Automated Tariff Registration System (Form-1) for VOCCs, NVOCCs, conferences, and MTOs;
- migrate IT security standards from the Certification and Accreditation (C&A) process to the Risk Management Framework (RMF) process for all applicable systems;
- update the FMC IT desktop infrastructure through the User Experience Modernization (UEM) project, which is a multifaceted approach to modernize desktop hardware and software while also transitioning infrastructure components to a cloud environment;
- refresh the datacenter hardware, including servers, and network and security appliances;
- enhance IT systems with respect to agreement filing and trade monitoring programs in order to streamline internal business processes; and
- establish the FMC Disaster Recovery (DR) infrastructure in order to meet recovery points, times, and objectives.

## FY 2014 ACCOMPLISHMENTS



### Strategic Goal 1:

Maintain an efficient and competitive international ocean transportation system

#### **Competition and Foreign Practices**

Competitive ocean transportation facilitates commerce, economic growth, and job creation. Competition among participants in U.S. liner trades fosters competitive rates and encourages a variety of service offerings for the benefit of U.S. exporters and importers, and ultimately, consumers. The 1984 Act grants ocean carriers and MTOs limited antitrust immunity for activities pursuant to agreements they file with the Commission. Carrier and MTO agreements are subject to competition analyses and subsequent monitoring of their activities to guard against possible abuse of that limited immunity, to avoid unreasonable increases in transportation costs or decreases in transportation services, and to guard against other activities prohibited by the 1984 Act. Due to greater operational collaboration among shipping lines, the use of much larger and more fuel-efficient vessels, and other contributing factors, container terminals at U.S. ports presented significant congestion in late FY 2014. The FMC monitored the growing challenge of congestion at ports in FY 2014, publishing an advisory notice regarding publication requirements for imposing new costs, and, beginning in September 2014, held a number of regional port forums to promote dialogue on the causes and implications of congestion at U.S. ports. The FMC continues to remain vigilant to monitor, and, when possible, facilitate solutions to this growing problem.

### Trade Oversight and Industry Research

In fiscal year 2014, the Commission administered its agreement oversight responsibilities and produced various reports and analyses. Activities included:

- preparing a Request for Additional Information (RFAI), a competitive impact analysis, and periodic monitoring report requirements for the major operational shipping alliance formed under the *P3 Network Vessel Sharing Agreement*;
- preparing an RFAI, a competitive impact analysis, and periodic monitoring report requirements for the amendment expanding the geographic scope and cooperative services under the *G6 Alliance Agreement*;
- preparing a competitive impact analysis, and reporting requirements for the discussion agreement between MTOs formed under the *Seattle Marine Terminal Operators/Port of Seattle Discussion Agreement*;
- preparing a competitive impact analysis on the amendment adding Pacific International Lines (PIL) as a member to the *United States/Australasia Discussion Agreement*;
- preparing an RFAI, and a competitive impact analysis on capacity in the trade lane from the U.S. Pacific to Australia/New Zealand resulting from the *OVSA/PIL Space Charter and Cooperative Working Agreement*;
- monitoring developments and the availability of chassis under the *Consolidated Chassis Management Pool Agreement* as carriers divest their chassis fleets and discontinue providing chassis service;
- monitoring the Pier Pass program under the *West Coast MTO Agreement* to ensure its operational features are in conformity with the U.S. shipping statutes;
- responding to an inquiry from the U.S. Department of Defense on the shipment of military household goods by U.S.-flag carriers under the *Trans-Atlantic American Flag Liner Operators Agreement* and the *Trans-Pacific American Flag Berth Operators Agreement*;
- conducting biannual meetings with representatives of the *Transpacific Stabilization Agreement* to review major developments in the ocean liner trade between the U.S. and Asia;
- reviewing the regulations in 46 C.F.R. parts 530, 531, and 535 as part of the Commission's *Plan for Retrospective Review of Existing Rules*, and developing recommendations for updating the regulations;
- preparing analyses in accordance with the Regulatory Flexibility Act to assess the small business impact of proposed rules to update the Commission's user and filing fees, and to adjust the regulations in 46 C.F.R. part 515 governing the licensing and financial responsibility of OTIs;
- preparing the quarterly *Economics & Trade Briefing* for the Commission;
- reviewing the Commission's agreement monitoring program to improve its oversight of major rate discussion and alliance agreements;
- developing a performance goal metric to measure the efficiency of asset sharing between ocean carriers as part of the Commission's Strategic Plan;
- participating in the Automated Commercial Environment (ACE) under the U.S. Customs and Border Protection; and
- providing data and information on liner trade conditions and agreement matters in response to requests from within and outside the Commission.

During the fiscal year, the Commission reviewed 724 sets of minutes, 601 monitoring reports and related reports, and 77 voluntary service contract guidelines.

The Commission's Office of the General Counsel (OGC) is responsible for the administration of the Commission's international affairs program. The OGC 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 section 19 of the 1920 Act and the Foreign Shipping Practices Act. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect United States' carriers in foreign trade and that do not exist for foreign carriers in the United States.

In fiscal year 2014, the FMC informally pursued several matters that involved potentially restrictive foreign practices including new legislation, new interpretations of existing legislation, and new regulations of non-domestic carriers' terminal handling charges. The FMC continued to monitor and participate, both formally and informally, in international agreement negotiations that could affect foreign-borne cargo shipments to the United States. In addition, the FMC tracked consumer inquiries regarding possible foreign restrictive shipping practices.

The FMC continues its international outreach efforts by attending and coordinating events with foreign embassies and counterparts, and monitors foreign laws and practices to determine whether there are any unjust non-market barriers to trade. The Commission also classifies controlled carriers subject to Section 9 of the Shipping Act of 1984. Common carriers owned or controlled by foreign governments are required to adhere to certain requirements under the 1984 Act, and their rates are subject to Commission review. The Commission monitors the activities of controlled carriers.

### **Agreements, Contracts, and Tariffs**

During fiscal year 2014, 44,208 service contracts and 573,208 contract amendments were filed into the SERVCON system. The Commission processed 1,583 original NSAs and 1,864 amendments filed by 92 NVOCCs, and received, processed, and reviewed 1,327 Form FMC-1 filings, making the locations of those tariffs available to the public through its website. At the end of the fiscal year, 5,355 active/current tariff locations were posted to the agency's website.

The FMC continues to conduct service contract and tariff research in support of the Commission's agreement monitoring program and *ad hoc* research to meet the agency's internal needs for information. The FMC also conducts statistical research on service contracts on file that reference container freight indices and various surcharges, such as congestion surcharges, as well as on General Rate Increases set by the ocean carriers.

Also during fiscal year 2014, the FMC conducted compliance audits of NVOCC tariffs and continued monitoring NVOCC tariff rules in connection with the Commission's regulations governing NVOCC Negotiated Rate Arrangements (NRAs) allowing NVOCCs to "opt out" of publicly posting rate tariffs on the internet so long as they use NRAs exclusively, maintain their rules tariffs free of charge, and comply with other requirements. At the end of fiscal year 2014, more than 900 NVOCCs had filed prominent notices or a rule in their respective tariff indicating

that they have invoked the NRA exemption. The FMC continues to educate NVOCCs regarding NRA compliance and will continue to inform the shipping public, including developing web-based training to facilitate full compliance with NRA requirements.

Agreement activity significantly increased during fiscal year 2014, attributable in part to the establishment and implementation of several major operational shipping alliances in the global containership industry, such as the *P3 Network Vessel Sharing Agreement* and the *G6 Alliance Agreement*. During fiscal year 2014, the FMC received 186 agreement filings for review, including amendments to existing agreements and terminations of existing agreements. These alliance agreements, and the filing of a substantial number of cooperative arrangements between these agreements and other carriers or groups of carriers, appear to correlate with the cascading of larger vessels from the Asia-Europe trade to the U.S. trades. Each of the alliance agreements and a number of other operational agreements were reviewed by the Commission.

## Strategic Goal 2:

Protect the public from unlawful, unfair and deceptive practices and resolve shipping disputes

### **Enforcement and Alternative Dispute Resolution**

The Commission undertook a number of significant actions during fiscal year 2014 to contribute to the integrity and security of the nation's import and export supply chains and protect the public from financial harm.

#### **Investigations and Enforcement Proceedings**

Major investigations undertaken or completed during fiscal year 2014 addressed practices of certain OTIs operating in the volatile China-U.S. inbound trades, as well as VOCCs seeking to operate pursuant to agreements that were not filed with the Commission. In Docket No. 14-05, the Commission commenced an investigation of an ocean freight forwarder and an affiliated shipper involving improper receipt of freight forwarder compensation upon the affiliate's shipments and the apparent return of such funds to the shipper. In Docket No. 14-02, the Commission initiated a formal investigation of an NVOCC obtaining ocean transportation at less than the rates or charges otherwise applicable, through the unfair device or means of accessing service contracts to which it was neither a contract signatory nor corporate affiliate thereof. In Docket No. 13-01, the Commission issued an order affirming the Administrative Law Judge's (ALJ) default decision assessing civil penalties for unlawfully accessing the service contracts of other parties, but modifying the language of the ALJ's order to cease and desist. The Bureau of Enforcement (BOE) also submitted a Reply to Respondents' Brief on Appeal of the ALJ's Decision on Remand in Docket No. 12-01, urging the Commission to uphold the ALJ's determination that respondents violated section 10(a)(1) of the Shipping Act by providing service to an unlicensed, unbonded NVOCC. The Commission previously determined that the agency's denial of an OTI license to respondents would be upheld on appeal.

The Commission also continued its investigations of the car carrier trades between Japan and the U.S., and in other U.S. trades inbound and outbound, culminating in two settlements relating to unfiled carrier agreements. Penalties against the three carriers involved netted \$1,900,000. In addition, the Commission collected nearly \$300,000 in penalties against two smaller carriers for operating under an unfiled space charter agreement affecting their container and break-bulk services.

At the beginning of fiscal year 2014, 13 enforcement cases were pending final resolution by the FMC and BOE was party to 3 formal proceedings. During the fiscal year, 15 new enforcement actions were referred for enforcement action or informal compromise; 18 were compromised and settled, administratively closed, or referred for formal proceedings; and 10 enforcement cases were pending resolution at fiscal year's end. Also, 4 formal proceedings were initiated; 4 formal proceedings were completed, and 3 were pending at the end of the fiscal year.

At the beginning of fiscal year 2014, 10 compliance audits were pending. During the fiscal year, 124 audits were commenced, 120 audits were completed (including audits carried over from fiscal year 2013), and 14 remained pending in the Bureau on September 30, 2014.

During fiscal year 2014, Area Representatives handled hundreds of informal complaints typically alleging unlawful activity. When possible, compliance with statutory and regulatory requirements was achieved informally. In other instances, investigative cases were opened and the Area Representatives conducted investigations to determine any unlawful activity. Most of these investigations were resolved informally, some with compromise settlements and civil penalties. The Area Representatives also participated in various enforcement initiatives sponsored by local law enforcement, the U.S. Department of Justice, the Department of Homeland Security (including CBP and Immigration and Customs Enforcement), the Department of Commerce, and the Federal Motor Carriers Safety Administration. This participation and sharing of information contributed positively to the investigation of a wide range of unlawful activities.

### **Ombuds Services and Educational Outreach**

During fiscal year 2014, the Commission's Office of Consumer Affairs and Dispute Resolution Services handled 1,664 requests for *ombuds* services. These included 77 passenger complaints about cruise line issues, 1,449 complaints with respect to household goods shipments, 136 complaints involving other cargo shipment matters, and 2 matters that involved other maritime-related issues. It is anticipated that the complexity and number of *ombuds* cases will continue to increase in light of recent educational meetings with trade associations, regulatory stakeholders, and others in the logistics chain. The Commission will continue to enhance its role in identifying industry trends and advising agency components regarding policies that address emerging trends and enhance the objectives of the shipping public.

Mediation is available to parties at any stage of a shipping dispute. During the fiscal year, the FMC provided mediation services in 9 matters. It is anticipated that requests for mediation services will continue to increase in light of a new regulation requiring parties involved in formal Commission docketed proceedings to attend mandatory mediation conferences.

In addition to providing ADR services, the FMC adjudicates small claims through informal proceedings. In FY 2014, FMC Settlement Officers issued 14 informal docket decisions and the Commission issued 9 final orders in informal proceedings. FMC staff also adjudicated 3 shipper and carrier special docket filings seeking refunds or waivers of tariff charges.

The FMC frequently offers educational opportunities to regulatory stakeholders and the shipping public regarding Commission programs, regulatory requirements, industry best practices, and the use of ADR to resolve disputes. The FMC issues consumer alerts, and participates in webinars, trade association meetings, media interviews, public stakeholder meetings, lectures at academic institutions, and other individualized meetings and educational sessions with stakeholders. In fiscal years 2015 and 2016, the FMC intends to continue its efforts to further expand awareness of its ADR services. Use of mediation will be promoted to assist in resolving formal proceedings, service contract matters, and other significant disputes.

The Commission continues to monitor public usage trends and leverage user feedback to implement small-scale improvements to the website. Improvements for FY 2014 included: homepage layout changes to highlight higher-priority information; implementing GSA's DigitalGov Search upgrades (formally USASearch) to increase website click-through traffic; implementing a photo sharing tool to increase visibility of Commissioner and Commission staff outreach and education activities; adjustments to the global navigation to improve visibility of important information; and archiving and streamlining content to improve delivery and accuracy of information.

The Commission completed a project that replaced a long-established business process for publishing Ocean Transportation Intermediary licensing notices in the Federal Register (FR) with a lower cost, FMC web-based solution. These notices are now provided to the public using the Commission's website at no additional cost to the agency.

In FY 2014, the Commission published 5 on-line consumer alerts regarding complaints against certain household goods movers and 3 alerts regarding what cruise passengers can expect by way of compensation for cruise line service disruptions. These alerts provide useful public information and increase awareness of available FMC assistance and services.

The Commission continued its outreach programs, speaking to industry audiences on the use of mediation and arbitration in shipping disputes, and explaining OTI licensing requirements and compliance with the new NRA Tariff Rate Exemption. The Commission presented to government agencies and university audiences about its programs and mandate. The Commission also worked closely with a number of law enforcement agencies, including local jurisdictions such as the New Jersey State Police, Broward County Sheriff's Office (Ft. Lauderdale, FL), and other Federal agencies including the Federal Bureau of Investigations and Department of Homeland Security.

### **Ocean Transportation Intermediaries**

In FY 2014, the Commission received 367 new OTI applications and 256 amended applications, issued 232 new OTI licenses and 107 amended licenses, revoked 270 licenses, and 87 licenses were voluntarily surrendered. In FY 2014, the Commission completed 71.3 percent of all OTI license applications within 60 days. Currently, 967 OFFs; 1,734 U.S. NVOCCs; 1,948 joint NVOCC/OFFs; and 74 foreign NVOCCs hold active OTI licenses. An additional 1,259 foreign-based NVOCCs are registered and maintain proof of financial responsibility on file with the Commission, but choose not to be licensed.

As part of its continuing outreach effort, the FMC also responded to 5,667 inquiries regarding licensing and related OTI issues during this period.

U.S. NVOCCs may file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government. In FY 2014, 81 China bond riders have been received, providing optional proof of financial responsibility for NVOCCs serving the U.S.-China trade, and 28 riders were terminated.

### **Passenger Vessel Operators**

The Commission has approved and issued 11 casualty certificates and 9 performance certificates during fiscal year 2014. The program encompassed 213 vessels and 45 operators, which had aggregate evidence of financial responsibility coverage in excess of \$446 million for non-performance and over \$744 million for casualty. In 2014, the Commission processed changes to PVOs financial instruments because the maximum unearned passenger revenue (UPR) coverage (cap) requirement increased from \$15 million to \$22 million. The cap will increase to \$30 million in 2015.

## Additional 2014 Achievements

### Information Technology

During fiscal year 2014, the Commission completed a 2014-2018 Information Resources Management (IRM) Strategic Plan expanding the IT actions identified in the FMC's Strategic Plan covering the same time period. A major element of the plan is to significantly upgrade internal IT systems through the implementation of an Enterprise Content Management solution to improve data support for all Commission programs and research projects, as well as to simplify stakeholder filing processes.

The Commission continued to enhance its information technology capabilities in a number of areas, including undergoing a multi-year transition to use ECM technology for managing its business activities and information needs. Important ongoing IT activities include:

- FMC-18 Application System and enterprise data store development, which is integral to the Commission's ECM solution;
- Data backup and recovery infrastructure hardware and software modernization;
- FMC desktop hardware and operating system modernization;
- New cloud-based email and collaboration service conversion;
- DHS Continuous Diagnostics and Mitigation (CDM) project in accordance with OMB M-14-03/04;
- HSPD-12 implementation;
- Pay.gov implementation, enabling electronic payments from the public;
- Multi-year Enterprise Software Agreement with Microsoft; and
- MOU with CBP to allow data from CBP's ACE to be accessed directly by the FMC for use in fulfilling its statutory and regulatory duties and responsibilities, including accessing trade data that facilitates the Commission's oversight of carrier agreement filings. This direct transfer of data will conserve resources of both agencies and ensure greater trade compliance with the SAFE Port Act.

## Representative Rulemakings, Adjudications, and Litigation

### Rulemakings

- **Amendments to OTI Licensing and Financial Responsibility Requirements [Docket 13-05].**

The Commission issued an Advanced Notice of Proposed Rulemaking (ANPRM) to evaluate whether certain rules governing the licensing, financial responsibility requirements and duties of OTIs should be amended. A number of comments were received and reviewed and the Commission anticipates moving forward with a Notice of Proposed Rulemaking in FY 2015.

- **Informal Procedure for Adjudication of Small Claims, Direct Final Rule, [Docket No. 14-09] (79 FR 46714).**

The Federal Maritime Commission amended Subpart S of 46 CFR Part 502, which sets forth the Commission's rules for the adjudication of small claims filed with the Commission seeking reparations in the amount of \$50,000 or less for violation of the Shipping Act of 1984. The new rules provide that claims less than \$50,000 will be decided by a Small Claims Officer appointed by the Commission's Chief Administrative Law Judge.

- **Amendments to Regulations Governing the Rules of Practice and Procedure for Dismissals of Action, Notice of Proposed Rulemaking, [Docket No. 14-12] (79 FR 56546).**

The Commission proposed to amend its rules governing dismissals of actions by complainants, by order of the presiding officer, and by respondents when complainant fails to prosecute to reflect its intent to adhere to its long-standing policy of reviewing settlements by adding language to clarify that when a voluntary dismissal is based on a settlement agreement, the agreement must be submitted for approval by the Commission.

- **Requests for Testimony by Employees Relating to Official Information and Production of Official Records in Litigation, Direct Final Rule, [Docket No. 14-03] (79 FR 243501).**

The Commission promulgated regulations under Part 501 and 503 of the Commission's regulations, adding procedures for the production of testimony or documents in legal proceedings when the Commission is not a party. The regulations, commonly called "Touhy" regulations, are named after the Supreme Court's decision *United States on behalf of Touhy v. Ragen*. The regulations provide the procedure in dealing with information, and address how the Commission will procedurally respond to a subpoena or other request for testimony or documents that are served on a current or former employee. The *Touhy* regulations create a predictable procedure for the Commission to determine what testimony and documents should or should not be released under subpoena.

### Commission Decisions

In FY 2014, the Office of the Administrative Law Judges (OALJ) issued 10 initial decisions or orders subject to review by the Commission, including 2 dismissals. At the end of fiscal year 2014, 6 formal proceedings were pending before the Administrative Law Judges. The Commission issued 14 final orders in formal docket complaint proceedings, 9 orders in small claims complaints, and 11 notices that they would not review the action of the settlement officer or ALJ. The following are representative of the cases heard before the Commission.<sup>1</sup>

- ***Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc., Olympus Partners, L.P., Olympus Growth Fund III, L.P., Olympus Executive Fund, L.P., Louis J. Mischianti, David Cardenas, Keith Heffernan, CJR World Enterprises, Inc. and Chad J. Rosenberg* [Docket No. 09-01].**

On May 5, 2009, Mitsui filed a complaint alleging that Global Link, a licensed NVOCC, violated sections 10(a)(1) and 10(d)(1) by engaging in a practice it called “split routing” on multimodal shipments by issuing a bill of lading to a land carrier in the U.S., directing shipments to a destination other than the destination on the Mitsui through bill of lading. Mitsui alleged that as a result, Global Link used an unjust or unfair device or means to obtain ocean transportation for property at less than the rates or charges that would otherwise apply. The ALJ issued an initial decision finding that Mitsui knew about the split routing practice. Therefore, Global Link had not used an unfair device or means to obtain the lower rates. On January 30, 2014, the Commission served an Order Adopting Initial Decision, in which it affirmed the ALJ’s conclusion that Mitsui knew of and encouraged the practice of split routing, and that any losses Mitsui suffered were caused by its own actions.

- ***Smart Garments v. Worldlink Logistics Services, Inc.*, [Docket No. 10-11], (FMC September 12, 2013); *Bimsha International v. Chief Cargo Services, Inc. and Kaiser Apparel, Inc.*, 32 S.R.R. 1861 (FMC 2013); *Yakov Kobel and Victor Berkov v. Hapag-Lloyd A.G., Hapag-Lloyd America, Inc., Limco Logistics, Inc., International TLC, Inc.*, [Docket No. 10-06] (FMC July 12, 2013).**

In 2013 and 2014, Commission decided a series of cases that clarified the scope of section 10(d)(1) of the Shipping Act to include violations of the Act where a regulated entity fails in a single instance to observe and enforce just and reasonable practices.

- ***Maher Terminals, Inc. v. The Port Authority of New York and New Jersey* [Docket No. 08-03] and *Maher Terminals, Inc., Third Party Counter-complainant, v. The Port Authority of New York and New Jersey, Third Party Counter-respondent* [Docket No. 07-01].**

Maher leases land and facilities at the Elizabeth Port Authority Marine Terminal from the Port Authority of New York and New Jersey (PANYNJ) for use as a marine

<sup>1</sup> Information on Commission proceedings, including procedural history and case documents, can be found in the electronic reading room on the Commission’s [website](#).

terminal. On June 3, 2008, Maher filed a Complaint alleging that PANYNJ violated the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and § 41102(c), because PANYNJ (a) gave and continues to give an undue or unreasonable prejudice or disadvantage with respect to Maher as compared to APM Terminals North America, Inc. (APM), another marine terminal operator; (b) gave and continues to give an undue or unreasonable preference or advantage with respect to APM; (c) has and continues unreasonably to refuse to deal or negotiate with Maher; and (d) has and continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. On April 25, 2014, the administrative law judge issued an Initial Decision determining that PANYNJ did not violate the Act and dismissed Maher's claims. On May 1, 2014, the Commission granted Maher's motion to enlarge the time to file exceptions. The proceeding is currently pending before the Commission.

### Litigation before Courts

- ***The Auction Block Co. v. City of Homer*, [Docket No. 12-03], United States Court of Appeals for Ninth Circuit.**

On April 2, 2012, Complainants, the Auction Block Company (Auction Block) and Harbor Leasing, LLC (Harbor Leasing) filed a complaint with the Commission against Respondents, The City of Homer (City) and the Port of Homer (Port), alleging violations of the Shipping Act, 46 U.S.C. § 40101 *et seq.* Complainants alleged that the City and Port were Marine Terminal Operators (MTOs) that violated the Shipping Act through unreasonable prejudice or preference, refusal to deal, and unfair practices. 46 U.S.C. §§ 41106(2)-(3), 41102(c). The dispute involves a lease between the City and Harbor Leasing, dated March 26, 2008, for terminal facilities utilized by Auction Block. Complainants alleged that the dispute centers around the lower rates charged to Icicle Seafood, Inc. under its lease with the City, and those charged to Auction Block under the terms of the tariff.

In the May 20, 2013 Initial Decision, the ALJ dismissed all of Complainants' claims against Respondents with prejudice, finding that the Commission lacked jurisdiction. On June 21, 2013, Complainants filed Exceptions to the ALJ's conclusions of law and certain findings of fact and requested oral argument before the Commission on the Exceptions. On April 3, 2014 Oral Argument was held before the Commission and was limited to whether the Port is an MTO in connection with all dock/terminal areas including Fish Dock (the facility at issue), despite the fact that the terminal services in dispute do not involve common carriers.

On August 12, 2014, the Commission upheld the Initial Decision of the Administrative Law Judge dismissing Auction Block's complaint for lack of jurisdiction. On August 22, 2014 the Auction Block Company filed a Petition for Review of the Commission Order with the United States Court of Appeals for the Ninth Circuit. The Commission and the Department of Justice entered appearances in the case. The Court of Appeals granted leave for the City of Homer and the Port to intervene in the appeal.

- ***City of Chief Cargo Services, Inc. v. Federal Maritime Commission*, [Docket No. 10-08], United States Court of Appeals for the Second Circuit.**

On November 1, 2013, Chief Cargo Services, Inc., filed a petition for review of the Commission’s Order in FMC Docket 10-08, *Bimsha International v. Chief Cargo Services, Inc. & Kaiser Apparel, Inc.*, upholding the ALJ’s initial decision holding that by the release of three shipping containers, without requiring presentation of the original bills of lading, Chief Cargo failed to fulfill its obligations as a non-vessel-operating common carrier, thereby violating section 10(d)(1) of the Shipping Act. The ALJ also ordered Chief Cargo to “cease and desist releasing cargo without requiring presentation of an original bill of lading.” On April 24, 2014, Chief Cargo filed its Joint Appendix, Brief, and Special Appendix. Chief Cargo questioned the jurisdiction of the Commission to hear and adjudicate Bimsha’s claim of violations of the Shipping Act; argued that the Commission improperly found violations of the Shipping Act; and argued that the Commission improperly issued a cease and desist order. On June 20, 2014, the Commission and the United States filed a joint brief. Oral Argument was held on September 30, 2014.

## APPENDICES

Appendix A: *Resource Allocation by Program*

Appendix B: *FTEs and Positions Allocation by Program*

Appendix C: *Obligations by Object Class*

Appendix D: *Relationship of Obligations to Outlays*

Appendix E: *Performance Measures by Strategic Goals*

Appendix F: *Workload Summary*

Appendix G: *OIG Certification*

Appendix A: Resource Allocation by Program

Resource Allocation by Program						
FY 2016						
Program/Office	FY 2014 Actual	FY 2015 Enacted	FY 2016 Request		FY 2016 Request	Difference From FY 2015
			Strategic Goal # 1 Maintain an efficient and competitive international ocean transportation system	Strategic Goal # 2 Protect the public from unlawful, unfair and deceptive practices and resolve shipping disputes		
<b>Formal Proceedings</b>						
Office of the Chairman	\$391,956.78	\$662,407.75	\$178,250.22	\$713,000.88	\$891,251.10	\$228,843.35
Office of the Commissioners	\$1,719,539.39	\$1,861,233.47	\$380,897.79	\$1,523,591.15	\$1,904,488.94	\$43,255.47
Office of the Secretary	\$1,203,091.13	\$1,351,256.90	\$304,649.42	\$1,088,033.65	\$1,392,683.07	\$41,426.17
Library	\$207,121.65	\$97,927.53	\$48,138.77	\$48,138.77	\$96,277.54	(\$1,649.99)
Office of Consumer Affairs and Dispute Resolution Services	\$1,149,271.35	\$1,156,765.87	\$0.00	\$1,227,883.56	\$1,227,883.56	\$71,117.69
Office of the General Counsel	\$2,303,557.46	\$2,179,699.17	\$1,237,100.24	\$1,237,100.24	\$2,474,200.47	\$294,501.30
Ethics	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Office of Administrative Law Judges	\$627,673.46	\$790,757.10	\$165,361.47	\$661,445.87	\$826,807.34	\$36,050.24
<b>Formal Proceedings Total</b>	<b>\$7,602,211.22</b>	<b>\$8,100,047.79</b>	<b>\$2,314,397.90</b>	<b>\$6,499,194.11</b>	<b>\$8,813,592.02</b>	<b>\$713,544.23</b>
<b>Office of Equal Employment Opportunity</b>	<b>\$197,656.88</b>	<b>\$191,115.81</b>	<b>\$39,819.82</b>	<b>\$159,279.30</b>	<b>\$199,099.12</b>	<b>\$7,983.31</b>
<b>Office of the Inspector General</b>	<b>\$420,587.00</b>	<b>\$634,434.52</b>	<b>\$263,818.75</b>	<b>\$263,818.74</b>	<b>\$527,637.49</b>	<b>(\$106,797.03)</b>
<b>Operational and Administrative</b>						
Office of the Managing Director	\$2,189,905.44	\$1,943,094.20	\$571,243.98	\$1,506,006.86	\$2,077,250.84	\$134,156.64
Bureau of Trade Analysis	\$2,688,184.21	\$3,032,378.68	\$1,993,516.78	\$1,320,504.53	\$3,314,021.31	\$281,642.63
Bureau of Certification and Licensing	\$2,166,802.65	\$2,340,377.06	\$0.00	\$2,592,679.85	\$2,592,679.85	\$252,302.79
Bureau of Enforcement	\$1,797,788.59	\$1,952,777.28	\$0.00	\$2,067,075.93	\$2,067,075.93	\$114,298.65
Area Representatives	\$1,690,725.48	\$1,957,339.96	\$431,223.11	\$1,724,892.45	\$2,156,115.56	\$198,775.60
Office of Information Technology	\$4,000,897.49	\$3,443,944.73	\$637,385.05	\$2,549,540.18	\$3,186,925.23	(\$257,019.50)
Office of Human Resources	\$654,807.29	\$619,618.96	\$151,388.91	\$605,555.64	\$756,944.55	\$137,325.59
Office of Budget and Finance	\$714,669.49	\$697,614.37	\$437,068.32	\$437,068.32	\$874,136.64	\$176,522.27
Office of Management Services	\$526,553.70	\$747,256.64	\$410,760.74	\$410,760.73	\$821,521.47	\$74,264.83
<b>Operational and Administrative Total</b>	<b>\$16,430,334.34</b>	<b>\$16,734,401.88</b>	<b>\$4,632,586.88</b>	<b>\$13,214,084.49</b>	<b>\$17,846,671.38</b>	<b>\$1,112,269.50</b>
<b>Totals</b>	<b>\$24,650,789.44</b>	<b>\$25,660,000.00</b>	<b>\$7,250,623.35</b>	<b>\$20,136,376.65</b>	<b>\$27,387,000.00</b>	<b>\$1,727,000.00</b>

The Request by Strategic Goal and Program chart identifies the funding level requested for FY16 broken out by program office and strategic goal. The chart identifies FY16 changes over both the FY14 actual and FY15 estimated funding requirements.

The FY 2016 request does not include any future legislative changes that could vest the FMC with additional statutory responsibilities.

Appendix B: FTEs and Positions Allocation by Program

FTEs and Positions by Program								
FY 2014 - FY 2016								
Program/Office	FY 2014 Actual		FY 2015 Enacted		FY 2016 Request		Difference From FY 15	
	FTEs	Positions*	FTEs	Positions*	FTEs	Positions*	FTEs	Positions*
<b>Headquarters</b>	<b>105.40</b>	<b>102.00</b>	<b>114.10</b>	<b>123.00</b>	<b>124.00</b>	<b>124.00</b>	<b>9.90</b>	<b>1.00</b>
<b>Area Representatives</b>	<b>7.56</b>	<b>9.00</b>	<b>9.90</b>	<b>11.00</b>	<b>11.00</b>	<b>11.00</b>	<b>1.10</b>	<b>0.00</b>
<b>Agency Total</b>	<b>112.96</b>	<b>111.00</b>	<b>124.00</b>	<b>134.00</b>	<b>135.00</b>	<b>135.00</b>	<b>11.00</b>	<b>1.00</b>
<b>Formal Proceedings</b>								
Office of the Chairman	2.00	2.00	3.17	4.00	4.00	4.00	0.83	0.00
Office of the Commissioners	7.07	8.00	8.00	8.00	8.00	8.00	0.00	0.00
Office of the Secretary	7.00	7.00	7.95	8.00	8.00	8.00	0.05	0.00
Library	0.86	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Office of Consumer Affairs and Dispute Resolution Services	7.89	8.00	6.63	7.00	7.00	7.00	0.37	0.00
Office of the General Counsel	10.13	11.00	11.26	12.00	13.00	13.00	1.74	1.00
Office of Administrative Law Judges	3.00	3.00	3.87	4.00	4.00	4.00	0.13	0.00
<b>Formal Proceedings Total</b>	<b>37.95</b>	<b>39.00</b>	<b>40.88</b>	<b>43.00</b>	<b>44.00</b>	<b>44.00</b>	<b>3.12</b>	<b>1.00</b>
<b>Office of Equal Employment Opportunity</b>	<b>1.00</b>	<b>1.00</b>	<b>1.00</b>	<b>1.00</b>	<b>1.00</b>	<b>1.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Office of the Inspector General</b>	<b>1.31</b>	<b>1.00</b>	<b>1.64</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>	<b>0.36</b>	<b>0.00</b>
<b>Operational and Administrative</b>								
Office of the Managing Director	8.56	8.00	8.00	8.00	8.00	8.00	0.00	0.00
<i>Bureau of Trade Analysis</i>								
Office of the Director	2.99	3.00	3.00	3.00	3.00	3.00	0.00	0.00
Office of Service Contracts and Tariffs	3.00	3.00	3.95	4.00	4.00	4.00	0.05	0.00
Office of Economics and Competition Analysis	6.35	6.00	6.99	8.00	8.00	8.00	1.01	0.00
Office of Agreements	2.12	2.00	2.72	3.00	3.00	3.00	0.28	0.00
<i>Bureau of Certification and Licensing</i>								
Office of the Director	2.46	2.00	2.45	3.00	3.00	3.00	0.55	0.00
Office of Passenger Vessels and Information Processing	4.85	4.00	4.64	5.00	5.00	5.00	0.36	0.00
Office of Transportation Intermediaries	7.00	7.00	8.28	9.00	9.00	9.00	0.72	0.00
<i>Bureau of Enforcement</i>								
Area Representatives	9.29	9.00	10.51	11.00	11.00	11.00	0.49	0.00
Office of Information Technology	7.56	9.00	9.90	11.00	11.00	11.00	1.10	0.00
Office of Human Resources	7.38	7.00	7.76	8.00	8.00	8.00	0.24	0.00
Office of Human Resources	3.96	3.00	4.05	5.00	5.00	5.00	0.95	0.00
Office of Budget and Finance	4.29	4.00	4.14	5.00	5.00	5.00	0.86	0.00
Office of Management Services	2.89	3.00	4.09	5.00	5.00	5.00	0.91	0.00
<b>Operational and Administrative Total</b>	<b>72.70</b>	<b>70.00</b>	<b>80.48</b>	<b>88.00</b>	<b>88.00</b>	<b>88.00</b>	<b>7.52</b>	<b>0.00</b>
<b>Total FTEs and Positions</b>	<b>112.96</b>	<b>111.00</b>	<b>124.00</b>	<b>134.00</b>	<b>135.00</b>	<b>135.00</b>	<b>11.00</b>	<b>1.00</b>

\* Denotes positions on September 30.

Appendix C: Obligations by Object Class

<b>Obligations by Object Class</b>				
FY 2014 - FY 2016				
Category	FY 2014 Actual	FY2015 Enacted	FY2016 Request	Difference From FY 2015
<b>Personnel Compensation and Benefits</b>				
(11.1) Full-time Permanent Employees	\$ 13,351,840.08	\$ 14,157,000.00	\$ 15,406,000.00	\$ 1,249,000.00
(11.3) Part-time and Temporary Employees	\$ -	\$ 76,000.00	\$ 90,000.00	\$ 14,000.00
(11.7) Performance Awards	\$ -	\$ -	\$ -	\$ -
(12.1) Civilian Personnel Benefits	\$ 3,525,811.32	\$ 3,940,000.00	\$ 4,320,000.00	\$ 380,000.00
<b>Personnel Compensation and Benefits</b>	<b>\$ 16,877,651.40</b>	<b>\$ 18,173,000.00</b>	<b>\$ 19,816,000.00</b>	<b>\$ 1,643,000.00</b>
<b>Travel and Administrative Expenses</b>				
(21.0) Travel and Transportation of Personnel	\$ 133,836.99	\$ 200,000.00	\$ 200,000.00	\$ -
(22.0) Transportation of Things (express mail)	\$ 14,275.11	\$ 22,000.00	\$ 22,000.00	\$ -
<b>Rent, Communications and Utilities</b>				
(23.1) Rental Payments to GSA	\$ 3,234,498.73	\$ 3,323,000.00	\$ 3,466,000.00	\$ 143,000.00
(23.5) Telephones (local, long distance and cellular)	\$ 289,883.92	\$ 233,000.00	\$ 233,000.00	\$ -
(23.8) Postage	\$ 6,479.48	\$ 5,000.00	\$ 5,000.00	\$ -
(24.0) Printing	\$ 140,590.00	\$ 139,000.00	\$ 139,000.00	\$ -
(25.1) Consulting	\$ 1,095,853.16	\$ 992,000.00	\$ 667,000.00	\$ (325,000.00)
(25.2) Purchase of Goods and Services from Commercial Accounts	\$ 788,281.18	\$ 728,000.00	\$ 849,000.00	\$ 121,000.00
(25.3) Purchase of Goods and Services from Government Accounts	\$ 1,112,162.40	\$ 1,154,000.00	\$ 1,303,000.00	\$ 149,000.00
(25.7) Equipment Maintenance	\$ 39,527.42	\$ 50,000.00	\$ 50,000.00	\$ -
(26.0) Supplies and Materials	\$ 97,081.61	\$ 128,000.00	\$ 128,000.00	\$ -
(31.0) Equipment (includes IT hardware and software)	\$ 820,668.04	\$ 513,000.00	\$ 509,000.00	\$ (4,000.00)
<b>Travel and Administrative Expenses</b>	<b>\$ 7,773,138.04</b>	<b>\$ 7,487,000.00</b>	<b>\$ 7,571,000.00</b>	<b>\$ 84,000.00</b>
<b>Total Budget Authority</b>				
	<b>\$ 24,650,789.44</b>	<b>\$ 25,660,000.00</b>	<b>\$ 27,387,000.00</b>	<b>\$ 1,727,000.00</b>
<p>The Obligations by Object Class chart identifies the Commission's actual funding expenses of 2014, the estimated funding requirements for the FMC to complete its mission for FY15 and FY16 funding. Costs are reported by object codes.</p> <p>The FY 2016 request does not include any future legislative changes that could vest the FMC with additional statutory responsibilities.</p>				

Appendix D: Relationship of Obligations to Outlays

<b>Relationship of Obligations to Outlays</b>			
FY 2014 - FY 2016			
Program	FY 2014 Actual	FY 2015 Enacted	FY 2016 Request
Formal Proceedings	\$7,602,211.23	\$8,100,000.00	\$8,813,000.00
Equal Employment Opportunity	\$197,656.88	\$191,000.00	\$199,000.00
Inspector General	\$420,587.00	\$635,000.00	\$528,000.00
Operational and Administrative	\$16,430,334.33	\$16,734,000.00	\$17,847,000.00
Unobligated	\$18,210.56	\$0.00	\$0.00
<b>Budget Authority</b>	<b>\$24,669,000.00</b>	<b>\$25,660,000.00</b>	<b>\$27,387,000.00</b>
<b>Obligations</b>	<b>\$24,650,789.44</b>	<b>\$25,660,000.00</b>	<b>\$27,086,000.00</b>
<b>Outlays*</b>	<b>\$21,306,014.11</b>	<b>\$22,178,288.59</b>	<b>\$23,670,958.28</b>
<b>Outlay Rate (Obligation to Outlay)**</b>	<b>86.43%</b>	<b>86.43%</b>	<b>86.43%</b>
<b>Obligation Rate</b>	<b>99.93%</b>	<b>100.00%</b>	<b>98.90%</b>
<b>Gross Outlays for FY 2014</b>			
<b>Total outlays for fiscal year 2009 disbursed in fiscal year 2014</b>	\$0.00		
<b>Total outlays for fiscal year 2010 disbursed in fiscal year 2014</b>	\$5,071.29		
<b>Total outlays for fiscal year 2011 disbursed in fiscal year 2014</b>	\$28.27		
<b>Total outlays for fiscal year 2012 disbursed in fiscal year 2014</b>	\$237,293.69		
<b>Total outlays for fiscal year 2013 disbursed in fiscal year 2014</b>	\$1,294,561.05		
<b>Total outlays for fiscal year 2014</b>	\$21,306,014.11		
<b>Outlays</b>	<b>\$22,842,968.41</b>		
<p>* Represents Outlays for FY 2014 only.</p> <p>** Represents the percentage of FY 2014 obligations that were disbursed during FY 2014.</p> <p>The Relationship of Obligations to Outlays identifies the actual outlay percentage for FY14. The chart also depicts the estimated outlay in expenses for FY15 and FY16.</p> <p>The FY 2016 request does not include any future legislative changes that could vest the FMC with additional statutory responsibilities.</p>			

Appendix E: Performance Measures by Strategic Goals

Strategic Goals	Objective	Performance Measures	2012 Actual	2013 Actual	2014 Actual	2015 Target	2016 Target	2017 Target	2018 Target
<b>STRATEGIC GOAL 1:</b> Maintain an efficient and competitive international ocean transportation system.	<b>OBJECTIVE 1:</b> Enhance efficiency in the trades through the use of asset sharing authority under the Shipping Act of 1984.	Percentage share of U.S. containerized cargo moving on other agreement parties' vessels in major U.S. trades.	N/A <sup>2</sup>	N/A	45.6%	40%	40.5%	41%	41.5%
<b>STRATEGIC GOAL 2:</b> Protect the public from unlawful, unfair and deceptive ocean transportation practices and resolve shipping disputes.	<b>OBJECTIVE 1:</b> Identify and take action to end unlawful, unfair, and deceptive practices.	Percentage of enforcement actions taken under the Shipping Act of 1984 successfully resolved through favorable judgment, settlement, issuance of default judgment, or compliance letter or notice.	88%	78.9%	83.8%	77%	77.5%	77.5%	77.5%
	<b>OBJECTIVE 2:</b> Prevent public harm through licensing and financial responsibility requirements.	Percentage of decisions on completed OTI license applications rendered within 60 calendar days of receipt, facilitating lawful operation of OTIs with the appropriate character and experience.	90.2%	87.6%	71.3%	75%	75%	75%	75%
		Percentage of cruise line operators examined during the year that have the full financial coverage required by regulation to protect against loss from non-performance or casualty.	100%	100%	96.7%	95%	95%	95%	95%
	<b>OBJECTIVE 3:</b> Enhance public awareness of agency resources, remedies and regulatory requirements through education and outreach.	Percentage of key Commission issuances, orders and reports are available through the Commission's website within 5 working days of receipt.	79%	86%	93%	78%	80%	82%	84%
	<b>OBJECTIVE 4:</b> Impartially resolve international shipping disputes through alternative dispute resolution and adjudication.	Number of cases opened and closed each fiscal year using ombuds and ADR services assisting consumers to recover goods or funds.	893	800	994	825	825	850	850
		Percentage of formal complaints or Commission initiated orders of investigation completed within two years of filing or Commission initiation.	73%	91%	88%	58%	60%	62%	64%

<sup>2</sup> This new measure was developed for FY 2014 and there is no actual 2012-2013 performance data.

Appendix F: Workload Summary

Workload Summary							
Workload Category	On Hand 9/30/2013	FY 2014 Actual		FY 2015 Estimate		FY 2016 Estimate	
		Received	Output	Received	Output	Received	Output
Formal Proceedings (ALJ)	11	7	10	10	10	10	10
Decisions, Reports, in Docketed Proceedings Before the Commission	15	26	35	35	35	35	35
Federal Register Notices	0	139	139	140	140	140	140
FOIA Requests	18	41	43	25	20	25	25
OMBUDS	680	1,024	1,664	700	700	750	750
ADR Matters	2	9	9	4	10	10	10
Legislation	0	110	110	125	125	130	130
Legal Opinions, Recommendations, Case Summaries, Decisions and Final Orders	5	174	174	145	145	140	140
Audits and Monitoring Activities	10	124	120	120	124	130	130
OTI Applicant and License Checks	0	615	615	645	645	650	650
Formal Proceedings (BOE)	3	4	4	4	5	6	6
Civil Penalty Cases	13	15	18	20	22	25	25
Agreements Filed	11	186	193	155	160	150	150
Agreement Reports	104	1,402	1,402	1,485	1,485	1,485	1,485
Service Contracts	0	44,208	44,208	51,000	51,000	52,000	52,000
Service Contract Amendments	0	573,208	573,208	558,000	558,000	560,000	560,000
NVOCC Service Arrangements	0	1,583	1,583	1,635	1,635	1,645	1,645
Arrangement Amendments	0	1,864	1,864	2,025	2,025	2,035	2,035
FMC-1 Form	0	1,327	1,327	1,375	1,375	1,400	1,400
OTI Applications – NEW	52	367	232	385	325	395	330
OTI Business Change Applications	13	256	107	268	240	278	245
OTI License Terminations	0	357	357	370	370	375	375
Passenger Vessel Applications (Performance)	0	9	9	17	17	18	18
Passenger Vessel Applications (Casualty)	1	11	11	17	17	18	18

Appendix G: *OIG Certification*



**FEDERAL MARITIME COMMISSION**  
Washington, DC 20573

January 20, 2015

The Inspector General Reform Act (Pub. L. 110-149) was signed by the President 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 Inspector General submits the following information relating to the OIG's requested budget for FY 2016:

- the aggregate budget request for the operations of the OIG is \$527,637,
- the portion of this amount needed for OIG training is \$5,000, and
- the portion of this amount needed to support the CIGIE is \$2,000.

I certify as the Inspector General of the Federal Maritime Commission that the amount I have requested for training satisfies all OIG training needs for FY 2016.



Jon Hatfield, Inspector General  
Federal Maritime Commission