



FEDERAL MARITIME COMMISSION FY 2024 BUDGET JUSTIFICATION

March 2023

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Overview

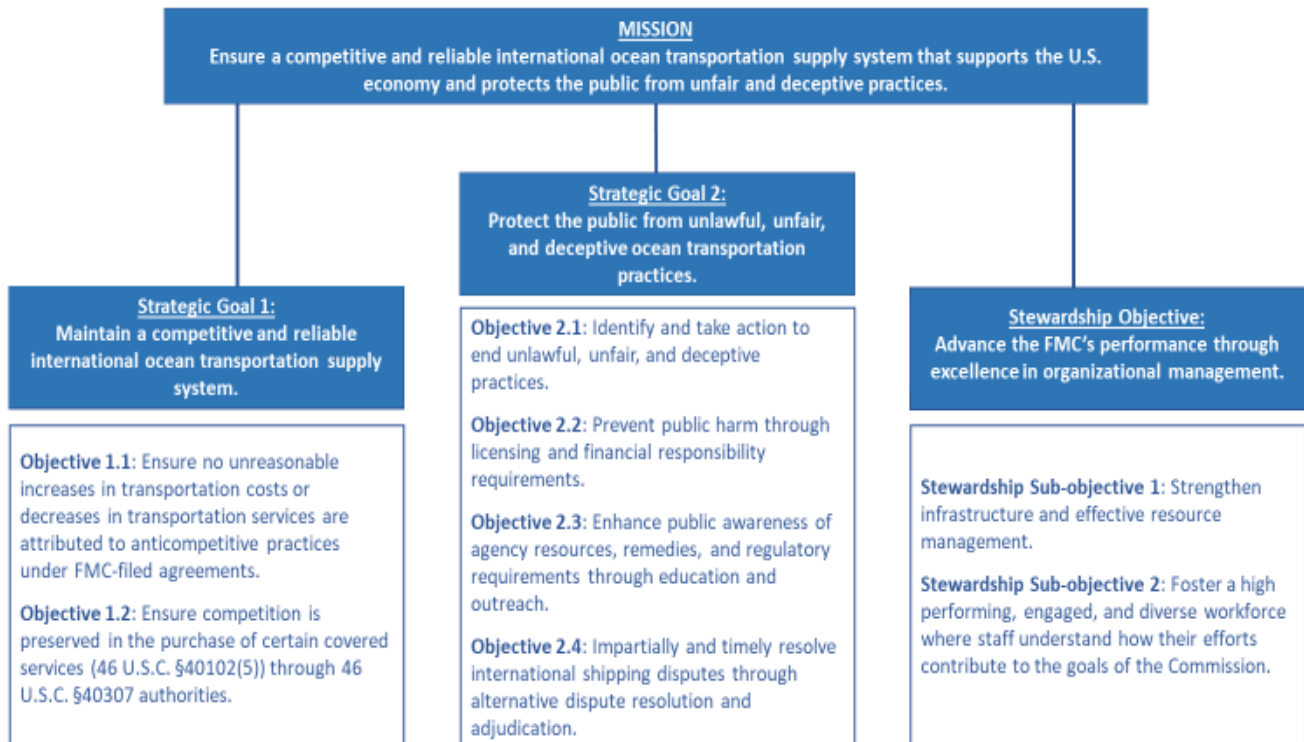
The Federal Maritime Commission (FMC or Commission) is an independent agency that has sole jurisdiction in the U.S. over competition, practices, and service in the ocean shipping industry. Its mission is to ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

Increased supply chain challenges and new Commission regulatory responsibilities require additional resources to continue effective industry oversight, to provide enhanced enforcement, improved service to shippers and consumers, and prompt implementation of the Ocean Shipping Reform Act of 2022 (OSRA 2022). Public Law 117-146.

To support the Commission's mission and statutory responsibilities, the FMC total budget request for Fiscal Year (FY) 2024 is \$43,720,000. Of this amount, \$33.4 million is for Salaries and Expenses to support 180 Full-Time Positions (FTP) and 163 Full Time Equivalent (FTE). In addition, \$10.9 million will be allocated towards other operating expenses that include rent and building security, information technology (IT), and administrative services.

In support of President Biden's commitment to technology modernization, this level of funding would allow the Commission to prioritize IT modernization and cybersecurity obligations. IT and cybersecurity expenses will increase as the FMC continues to evaluate and modernize its IT infrastructure, as well as support its cybersecurity needs. Modernization will replace outdated IT systems, making significant cybersecurity improvements. It will also help build the foundation for an appropriate security framework. The Commission will invest in leading-edge IT solutions that can be adapted easily and quickly to the FMC's evolving needs.

The Commission's mission to facilitate commerce and protect U.S. shippers will be critical in upcoming years. The FY 2024 Congressional Budget Justification is aligned with the FMC's Fiscal Years 2022-2026 Strategic Plan goals and objectives. The 2022-2026 Strategic Plan serves as the blueprint for the Commission to address current and anticipated challenges in the ocean transportation industry over the next five years. It promotes accountability performance measures to ensure the Commission is meeting its statutory mission and the needs of a rapidly changing ocean transportation supply system.



Summary of Changes Compared to the Enacted FY 2023 Budget

Employee Salary & Benefits

+ \$ 6,158,000

Achieving the Commission's mission and OSRA priorities requires personnel. The budgets provided in FY 2022 and FY 2023 resulted in an increase from 149 to 180 full-time positions. In FY 2024, this requires an increase of \$6,158,000 with a total cost of \$33,415,000 for salaries and benefits. The total funding for salary and benefits requested in this budget is for 163 full-time equivalent (FTE) resources. This increase supports a projected pay raise of 5.29 percent.

Travel & Training

+ \$ 80,000

The Commission relies upon highly skilled professionals. The FMC ensures that the knowledge, skills, and abilities of staff are not eroded by deferring investment in staff training. The Commission has instituted leadership development programs and manager coaching to invest in staff professional and leadership skills growth. These programs provide opportunities for personnel to expand their skills and abilities to prepare them for senior management positions. Due to increased enforcement activities, consumer assistance, and support for U.S. exporters, travel costs in FY 2024 will increase. These activities, combined with additional personnel, result in an FY 2024 budget for travel and training expenses of \$445,000 (\$80,000 above the FY 2023 budget).

Rent & Building Security

+ \$ 1,326,000

The total cost for leasing headquarters office space in FY 2024 will be \$2,497,000. In FY 2023, the Commission began a new occupancy agreement for its offices in Washington, D.C., which included a rent abatement for the first year of the new lease. In FY 2024, the leasing costs will be re-applied to rental payments through the U.S. General Services Administration (GSA). The amount for FY 2024 for the Washington, D.C. office is \$1,558,000, which will escalate to full-year costs of \$2,881,000 in FY 2025. In response to a reduced need for regional office leases, in 2022, the Commission began shifting personnel stationed in other parts of the country. The Commission will continue to evaluate leases in the future and use GSA's new flexible workspace contracting options on occasions when workspace is needed.

Information Technology System Improvements

+ \$ 753,000

During FY 2022 and FY 2023, the Commission assessed the capabilities and requirements of its IT systems as a basis to formulate the framework for its upcoming IT modernization plan. The plan for replacement of operational systems will rely heavily on Commercial-Off-The-Shelf (COTS) Systems, moving away from custom development wherever possible. The plan includes initiatives to counter cybersecurity threats and achieve the goals of the zero-trust architecture strategy. Beginning in FY 2023, the Commission significantly increased spending on services from non-federal sources and advisory and assistance services to support these initiatives.

In FY 2023, the Commission began using contractors for IT management and support. These resources will provide the Commission with the agility it needs to adapt to changing technology and use a mix of

resources to execute projects where the needed skill in one area may equate to less than a full-time position.

The Commission's last technology refresh was conducted over four years ago with a mass replacement of workstations and peripheral equipment. The budget request for FY 2024 supports a recurring spending line started in FY 2023 for workstations and other peripheral equipment that have reached end-of-services-life. A recurring expense, budgeted at one-third of the total equipment replacement each year, will shift the agency from a pattern of occasional and very costly outlays to a more sustainable and consistent approach to keep pace with technology updates and to address unexpected breakage.

These changes result in a total budgeted amount of \$4,784,000 for system modernization initiatives, equipment, software, and services to support IT operations.

Proposed Appropriation Language: Salaries and Expenses

For necessary expenses of the Federal Maritime Commission as authorized by section 46107 of title 46, United States Code, 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, ~~\$38,260,000~~ [\$43,720,000] of which \$2,000,000 shall remain available until September 30, 2025: 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, 2023.)

Full Time Positions and Equivalents

Full Time Positions (FTP): 180
Full Time Equivalents (FTE): 163

The requested funding will enable the Commission to add resources and staffing necessary to focus on supply chain issues, and to implement and sustain the requirements of OSRA 2022. The Commission requests a portion of the funding for salaries and expenses as multi-year funding because completing hiring actions within fiscal year constraints may be challenging as the staff is growing by over 40 percent since the pre-enactment of OSRA 2022. This approach will provide the Commission with flexibility in the sequencing of hiring actions and mitigate risk.

The FMC will continue the hiring efforts it initiated in FY 2022 to reach 180 FTP in FY 2024 and to maintain a commensurate FTE level of 163, which is a growth of 31 FTP over the FY 2022 staffing level. The increase in FTE costs reflects the hiring actions completed in FY 2022 and FY 2023, which will necessitate full-year costs for these positions in FY 2024. The use of the multi-year appropriation provided in the FY 2023 Appropriations will mitigate the risk to the availability of funding at the beginning of the next fiscal year to support hiring actions.

The Commission's salaries and expenses includes a projected 5.29 percent pay raise and no changes to retirement benefit contribution percentages.

The Commission continues to engage in succession management and projecting its future workforce needs. These efforts include staffing to align with agency mission and training to support the Commission's priorities of increased enforcement, providing public assistance, and helping U.S. importers and exporters.

Continuous staff development will prepare the next generation of leaders at the Commission and address skills gaps. The FY 2024 budget request provides for continuation of these training and development opportunities.

Fulfilling the Mission: Commission Activities

FMC Responds to Supply Chain Challenges

Unprecedented shocks to the supply chain during the pandemic challenged the ocean transportation industry as the Commission operated to the maximum of its capabilities. Historically high shipping rates and unpredictable ocean shipping services resulted in high demand for FMC assistance and intervention. The FMC introduced initiatives to meet the needs of the shipping public.

The Commission promptly launched two fact findings at the beginning of the pandemic that resulted in new regulations and improved FMC services to the supply chain. First, led by Commissioner Rebecca F. Dye, Fact Finding No. 29 (FF 29), *International Ocean Transportation Supply Chain Engagement*, aimed to identify operational solutions to cargo delivery system challenges related to COVID-19. Based on recommendations from this effort, the Commission re-established the FMC's Rapid Response Team in the Office of Consumer Affairs and Dispute Resolution Services (CADRS) to work directly with high-level executives at the major ocean carriers to escalate emergency situations for quick commercial dispute resolution. CADRS hired an export expert to specifically assist U.S. exporters experiencing obstacles working with carriers and other regulated entities. Additionally, the Commission initiated a new maritime Supply Chain Program in the Bureau of Trade Analysis, which hired new staff to support the program. The Commission issued policy statements on who may file a complaint (Docket No. 21-13), attorney fees (Docket No. 21-14), and retaliation (Docket No. 21-15). Additionally, information on the Commission's process for complaints was added to the website, including a video explaining the process. As will be discussed later, a recommendation from FF 29 that also addresses OSRA 2022 statutory requirements on detention and demurrage billing practices are also being addressed in a rulemaking.

The Commission published a new rule in 2020, 46 C.F.R. 545.5 – *Unjust and unreasonable practices with respect to detention and demurrage* – which established the incentive principle by which reasonableness in detention and demurrage context would be assessed. The “interpretive rule,” ensures that charges are used to incentivize the efficient movement of freight and use of equipment, and not used to accrue revenue at the expense of the shipping public. This interpretive rule provided an important foundation and focus for enforcement actions related to these fees in fiscal years 2021-2023.

Fact Finding 30, *COVID-19 Impact on Cruise Industry*, led by Commissioner Louis E. Sola, focused on the impact of the pandemic on the cruise industry, particularly for struggling small passenger vessel operators (PVOs) seeking temporary relief from financial regulatory requirements. These efforts also led to the Commission establishing a new regulation for refunding cruise passengers for cancelled or delayed cruises. In FY 2022, the Commission bolstered its PVO program by adding staff to increase its work to protect cruise passengers and ensure accountability in the cruise industry.

New Commission Priorities Center on Improved Results

Since March 2021, Chairman Maffei has identified increased enforcement, consumer assistance, and assistance to U.S. exporters as the FMC's top priorities. Accordingly, more than 100 investigations were opened related to unjust and unreasonable practices with respect to demurrage and detention charges,

as well as unfair or unjust discriminatory methods by common carriers. In addition, new enforcement actions and informal compromise negotiations were initiated. The Commission also brought formal proceedings against three ocean common carriers related to detention and demurrage, one of which settled for a civil penalty of \$2 million (the other two are pending). Additionally, the Commission took pre-enforcement actions against two ocean carriers and two non-vessel-operating common carriers (NVOCCs). Finally, the Commission initiated multiple proceedings involving denial and revocation of ocean transportation intermediary (OTI) licenses issued by the Bureau of Certification and Licensing.

To enable increased enforcement activities, the Commission restructured its Bureau of Enforcement and its Office of Area Representatives into one entity. As presented later in more detail in this budget request, the new structure now titled the Bureau of Enforcement, Investigations and Compliance (BEIC), is bringing a more efficient flow to investigations and formal enforcement actions, and a means to conduct consistent compliance and consumer protection responsibilities.

In July 2021, Chairman Maffei launched the Vessel-Operating Common Carrier (VOCC) Audit Program. This initiative involves the on-going collection of qualitative and quantitative information from the largest ocean common carriers, as well as regular meetings with carrier representatives regarding the Commission's key priorities, including detention and demurrage. In FY 2022, the FMC began publishing aggregated information on the levels and trends of detention and demurrage fees charged and collected by carriers. This information is updated quarterly and published on the Commission's website.

In FY 2022, the VOCC Audit Program's scope expanded to include a focus on exports. The VOCC Audit Team met with carriers to discuss trends in the volumes of exports carried, with a particular focus on agricultural exports. Both carriers and shippers cited problems with cancelled bookings, particularly for exports. In addition, in June 2022, the FMC began collecting information from the carriers on "fall downs," a term referring to the share of confirmed bookings that are cancelled. Data on this metric is collected quarterly and will be published on the Commission's website.

Meetings with ocean carriers have proven to be an effective way to communicate Commission priorities and gather their questions. These meetings have been used to identify appropriate points of contact for compliance and charge complaints, reinforce Commission policy statements, update carriers on upcoming Commission activities, and understand information gaps. Upcoming meetings with the carriers will focus on statutory anti-retaliation provisions. Transitioning this important program to permanent status will require staffing and support for ongoing information collection.

To increase assistance to the ocean shipping public and U.S. exporters, the Commission bolstered the services of CADRS with more resources and staffing. CADRS assists in resolving commercial disputes on an informal basis, as well as through formal mediation. Supply chain strains due to the pandemic resulted in increased disputes between entities, particularly between carriers and shippers. CADRS has handled on average 1,500 inquiries per year since the onset of the pandemic.

As mentioned earlier, the Commission reintroduced its Rapid Response Team, and CADRS has direct contacts with executives at the largest ocean carriers for the quick resolution of emergency matters. Staffing increases since FY 2021 have enabled more cases to be resolved quickly. Additionally, CADRS will increase outreach to educate the shipping public about the services the Commission provides. The newly

hired export advocate has extensive ocean shipping industry experience and will work to assist exporters facing challenges.

The Maritime Transportation Data Initiative (MTDI), led by Commissioner Carl Bentzel at the request of Chairman Maffei, launched in Fall 2021, focusing on cataloguing the status quo in maritime data elements, metrics, transmission, and access; identifying key gaps in data definitions and classification; and developing recommendations for common data standards and access policies/protocols. Seventeen meetings with industry representatives were held between December 2021 and April 2022. In June 2022, the FMC hosted a virtual transportation data summit.

Implementation of the Ocean Shipping Reform Act of 2022

On June 16, 2022, President Biden signed into law the Ocean Shipping Reform Act of 2022. Several provisions of OSRA 2022 were effective immediately, requiring both the Commission and regulated entities to act quickly to ensure compliance. These self-executing provisions included new requirements related to detention and demurrage invoices, as well as prohibitions on issuing invoices or otherwise assessing charges that did not meet the new OSRA 2022 requirements.

OSRA 2022 tasked the Commission with engaging on short timelines in new data collections, initiating new research regarding chassis pools, and improving its website. Rulemakings are underway in the areas of detention and demurrage billing, unreasonable refusal to deal with respect to vessel space accommodation, and unfair or unjustly discriminatory methods with respect to cargo. All are intended to result in considerably more protection for U.S. importers and exporters.

Implementing the requirements of OSRA 2022 involves action by staff across all Commission offices and is a top agency priority. In the short-term, two retired senior executive annuitants returned to support OSRA 2022 implementation activities and 18 new full-time positions have been added since June 2022 to fully execute the requirements.

The Commission communicates its OSRA-related activities to the public via its website, news releases, and updates at Commission meetings. The Commission has issued information and multiple industry advisories, including the applicability of provisions contained in OSRA 2022, interim procedures for submitting charge complaints, and demurrage and detention billing practices.

In addition to these industry advisories, the Commission used the VOCC Audit Program to ensure that the largest ocean carriers calling in the United States were aware of their obligations under OSRA 2022. Last summer, executives at the largest 25 carriers were sent letters highlighting new requirements established by OSRA 2022, emphasizing the Commission's expectation that carriers move aggressively to come into compliance with all self-executing provisions, including detention and demurrage billing. Further, all executives were requested to affirm their awareness of the provisions of OSRA 2022 and that they were taking steps to comply with all relevant requirements. All 25 carriers acknowledged their obligations.

Before the enactment of OSRA in 2022, the Commission emphasized the seriousness of anti-retaliation measures. Section 5 of OSRA 2022 amended 46 U.S.C. § 41102 to expressly delineate actions common carriers, marine terminal operators (MTOs), and ocean transportation intermediaries (OTIs) are forbidden from taking against shippers, agents of shippers, OTIs, or motor carriers. Letters requesting information

about anti-retaliation policies were sent to carrier executives in December 2022; this was a key agenda item for the VOCC Audit Team's January 2023 meeting with the top 11 carriers.

One OSRA 2022 provision that has already resulted in direct benefits to shippers is Section 10, which provides an additional avenue to submit complaints regarding carrier charges to the Commission. Upon the promulgation of OSRA 2022, an FMC task force was quickly assembled to develop a process for complaint intake, processing, assessing, investigating, and prosecution. The first Charge Complaint was received on July 14, 2022. Between July and the end of December 2022, the FMC received approximately 200 Charge Complaints. Of those, 69 met the threshold requirements and were assigned for investigation. By the end of the calendar year, nearly thirty cases had been quickly resolved through refunds issued by carriers totaling approximately \$700,000. In fourteen of the investigations, it was determined that the evidence did not support a claim that the charge(s) were not in compliance with the Charge Complaint provisions of the Shipping Act. In December 2022, the Commission issued guidance on the interim procedure for filing Charge Complaints to provide stakeholders with additional information on how to initiate this process.

Since the enactment of OSRA 2022, the Commission has moved expeditiously to fulfill the requirements of various rulemaking mandates included in the legislation. One rule, *Demurrage and Detention Billing Requirements*, proposes requirements on specific minimum information that must be included on demurrage and detention invoices and outlines certain billing practices on appropriate timeframes for issuing invoices, disputing charges with the billing party, and resolving such disputes. The Notice of Proposed Rulemaking (NPRM) was published in the Federal Register on October 14, 2022, 120 days after OSRA 2022 was signed into law. It is anticipated that the rule will be finalized before the end of FY 2023. This rulemaking encompasses the FMC's pre-OSRA 2022 demurrage and detention guidance. 87 Fed. Reg. 62341.

OSRA 2022 required two additional rulemakings addressing *Unreasonable Refusal to Deal or Negotiate With Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier* and *Unfair or Unjustly Discriminatory Methods Related to Cargo Space Accommodations*. An NPRM for the former was issued on September 21, 2022. 87 Fed. Reg. 57674. In January 2023, the Commission announced that it will issue a supplemental notice of proposed rulemaking to gather public comments to determine next steps.

Longer-term rulemakings required by OSRA 2022 center on processes for registration for shipping exchange registries and essential terms for service contracts. Working groups have already begun researching and developing these proposed rules.

Concerns about lack of timely and accurate data regarding laden and empty containers carried in U.S. international oceanborne trade are addressed by Section 9 of OSRA 2022 and mandate a new data collection by the FMC. The Commission has issued both the 60-day and 30-day required public notices for this data collection, submitted supporting materials to the Office of Management and Budget, and will update an existing IT system to allow carriers to submit required data and enable efficient processing and publication of the required quarterly report on import and export tonnage and number of laden and empty containers operated by ocean common carriers.

Section 18 of OSRA 2022 requires the Commission to issue a request for information (RFI) on whether congestion in the carriage of goods had created an emergency situation and whether an emergency order for data sharing between ocean common carriers, marine terminal operators, and stakeholders would alleviate such an emergency. The RFI was published in the Federal Register on August 15, 2022, 60 days after OSRA 2022 enactment. The Commission received 48 comments from the public and determined further information was necessary. In January 2023 the Commission announced that it will not be invoking temporary emergency authority at this time and will continue to monitor congestion to determine whether further action is needed before the provision sunsets in December 2023.

OSRA 2022 mandated that the Commission improve its website to streamline the process for the public to submit inquiries, file complaints, and provide comments on Commission actions. The Commission quickly secured IT contracting support for this effort. The new web portal will be deployed in FY 2023.

Enforcement, Investigations, and Compliance

In July 2022, Congress approved the FMC’s proposal to reorganize the enforcement and investigation staff into an integrated Bureau of Enforcement, Investigations, and Compliance (BEIC). The revised organizational chart is found in Appendix C. The Commission is currently in the process of hiring a new Senior Executive to oversee this transition. The new BEIC director will have considerable experience in litigation and will oversee a complex portfolio of enforcement and compliance cases, resulting in additional benefits for the shipping public.

Within the BEIC, the Office of Enforcement will be staffed with a director and additional attorneys, substantially bolstering resources to enable more efficient legal action. All incumbent Area Representatives have been reclassified as Investigators and moved to the Office of Investigations. Recognizing the new emphasis on investigations and enforcement activity, Investigators will no longer engage in the public outreach function formerly conducted by Area Representatives. Outreach will now be handled by the appropriate subject matter expert. Additionally, the FMC is hiring several new investigators and supervisors to ensure there is appropriate assignment of investigatory resources based on Commission priorities. The investigators will work closely with the new Office of Compliance and the Office of Enforcement to ensure quality case development and litigation strategies are deployed in the interest of the shipping public. The newly structured organization, with its additional resources, will substantially increase the effectiveness of the enforcement program. Enforcement activities for FY 2022 include the following type of matters:

ENFORCEMENT PROGRAM	INVESTIGATIONS	ENFORCEMENT ACTIVITIES	COMPLIANCE MATTERS	FORMAL ENFORCEMENT PROCEEDINGS
TOTAL	191	204	59	3

Legal Proceedings at the FMC

The Office of the Administrative Law Judges (OALJ) receives cases involving alleged violations of laws within the Commission’s jurisdiction initiated either by private parties or the Commission via BEIC. Due to

the Commission’s focus on ocean shipping industry accountability, the number of cases before the OALJ increased markedly between FY 2021 and FY 2022.

These are complex cases involving international commerce with complicated matters of law in question. Cases frequently involve considerable procedural motions, and they are not routine cases.

	FY 2021	FY 2022
Formal complaints, enforcement actions, Subpart T		
new or remanded	9	31
Closed	7	15
Subpart S Small Claims		
new or remanded	8	15
Closed	5	10
Hearings and non-dispositive orders issued	79	155
Full Dispositive Decisions	10	28

In response to the increased number of cases, the Commission added staff to the OALJ and is in the process of recruiting another judge. These additions reflect the Commission’s prioritization to support adjudicating cases brought by the shipping public. As the Commission expands its enforcement capacity, it will continue to evaluate the resources required by the OALJ, including IT resources needed to reduce/eliminate manual processes. This caseload will increase into FY 2024, and this request provides for continued resources to support the rise in cases.

The Office of the General Counsel (OGC) provides legal advice and recommendations to the Chairman and Commissioners on adjudicatory, regulatory and policy matters. OGC advises the Commission on cases initiated either by private parties or the Commission itself. Docketed proceedings before the Commission in FY 2022 included those related to improper use of detention and demurrage, obtaining ocean transportation at less than applicable rates using unjust or unfair means, and unlicensed OTI activities.

There are multiple docketed proceedings currently pending related to the use of detention and demurrage charges in violation of the Shipping Act and the Commission’s regulations at 46 C.F.R. § 545. Notably in 2022, the ALJ found that Hapag-Lloyd A.G. knowingly and willfully violated 46 U.S.C. § 41102(c), imposed a civil penalty of \$822,220, and ordered Hapag-Lloyd A.G. and its agents to cease and desist from imposing detention or demurrage charges (absent extenuating circumstances) when there are insufficient appointments available. Following the submission of a joint petition by the parties, the Commission approved a \$2 million settlement, expressly noting that any remedial actions by Hapag-Lloyd A.G. would not create a “safe harbor” insulating it or any other regulated entity from future scrutiny or findings of violations of the Shipping Act. Hapag-Lloyd A.G.’s civil penalty payment was received by the Commission on July 13, 2022. Docketed proceedings also related to detention and demurrage concerning Wan Hai Lines, Ltd. and Evergreen Shipping Agency (America) Corp. has recently concluded. Multiple docketed proceedings concerning detention and demurrage billing practices are before the ALJs. Given the length

of time involved in these cases and the renewed focus on detention and demurrage in OSRA 2022, the Commission expects continued activities in these areas.

Oversight of Industry Competition

The FMC protects competition in U.S. ocean transportation, ensuring that there is both efficiency and reliability in the supply chain for U.S. exporters and importers. The FMC's competition program consists of careful analysis of agreements when they are filed and ongoing review of actions that are taken under these agreements.

Filed Agreements and FMC Monitoring

The FMC's statutory authority and regulations require that agreements which allow collaboration among ocean common carriers or MTOs must be filed with the Commission. Commission staff analyze these agreements for potential anticompetitive effects upon filing and then monitor activity under these agreements on an ongoing basis for those agreements that are competitively concerning.

There are approximately 375 agreements on file with the Commission, comprised of VOCC agreements, MTO agreements, and assessment agreements. The vast majority of agreements on file with the Commission are VOCC agreements which represent basic space sharing agreements and are not competitively concerning. There are approximately 50 agreements on file which staff monitor regularly due to competitive concerns.

The largest ocean common carriers collaborate in "alliances" or global vessel sharing arrangements. There are three alliances with agreements on file with the FMC, and these are the most closely scrutinized by the Commission. Alliance agreements allow coordination of capacity, but discussion or coordination on rates is categorically prohibited. The limited antitrust immunity granted under an alliance agreement extends only to activities among agreement parties within the scope of the filed agreement. Conduct inconsistent with the terms of an agreement is illegal and exposes parties to criminal and civil prosecution under existing statutes.

The FMC's monitoring program is unlike any other in the world. Competition authorities in the European Union and in various Asian nations do not have access to the same detailed information that the FMC collects from alliance carriers. During the pandemic, when carrier rates increased sharply, the FMC closely scrutinized all monitoring data to assess whether this was the result of collusion among the carriers which would violate the terms of their FMC-filed agreements. The Commission has also twice amended the data required from alliance carriers since the onset of the pandemic, most recently in Spring 2022, to ensure staff have the information needed to fully understand carrier activities and the impacts on the market. As the market shifts from scarcity to excess supply of carrier capacity, the FMC's focus will be on ensuring that alliance carriers do not restrict capacity to artificially increase rates. The new monitoring requirements permit the Commission to rapidly track and anticipate changes in capacity.

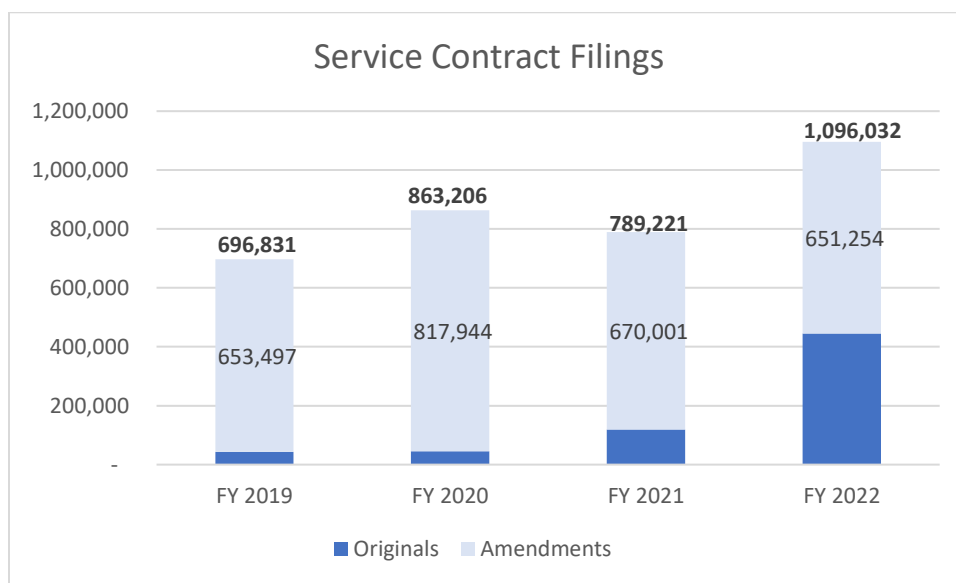
Ensuring Compliance with Commission Regulations on Service Contracts and Tariffs

Tariffs: The FMC maintains an up-to-date listing of ocean carrier tariff website locations for the public to use in identifying ocean carriers' publicly available rules and rates for the transportation of cargo. There are more than 8,600 common carrier tariff locations posted on the FMC's website. Roughly 150 of these are VOCCs and the balance are NVOCCs. While the Commission's goal of publishing tariff locations is to make it possible for the public to freely access the rates and rules of carriers, many common carriers rely upon tariff publishers and often the public is required to pay for access to these tariffs. An NPRM was

published in May 2022 seeking public comment on revisions to the Commission’s regulations on carrier automated tariffs to require free access to tariffs. The final rule will be issued in FY 2023.

The Commission is working to revamp its program to assess compliance with tariff requirements, as well as an annual review to assess MTO and VOCC status. This work will commence in FY 2023 and be supported by additional resources to improve compliance targeting and automate review. The Commission will also launch an outreach and education effort surrounding tariff requirements, particularly for NVOCCs. The Commission is developing an informed compliance program to better communicate requirements and to monitor and hold regulated entities accountable for not complying with the laws and regulations.

Service Contracts: The Shipping Act requires ocean common carriers to file service contracts with the Commission. Over time, the number of original service contracts filed has increased with the rise in spot market or single shipment service contracts of a limited duration. Amendments to service contracts are affected by changes to costs and charges, including fuel costs. Although the FMC is directed by statute to evaluate service contracts, the large volume, the lack of uniform filing requirements, and the lack of key data elements prevent the FMC from properly leveraging the information in service contracts to track developments in the industry and to assess for compliance at a reasonable scale.



Service contract volumes, particularly for amendments, are typically higher in times of market transition. The Commission has received historic high numbers of service contract amendments in the past year; over 90,000 in September 2022 alone, which is the highest single month on record. Without major revisions to systems and filing requirements, the FMC cannot leverage the information contained in service contracts to determine whether this is driven by changes in fuel prices or major downward revisions in contract rates. In FY 2023, the Commission will engage in a rulemaking to propose adjustments to the required elements and filing format of service contracts and increase staffing and IT support to develop an improved system for receiving, processing, and analyzing service contracts. In FY 2024, the Commission anticipates a systems improvement to facilitate large-scale automated data extraction from service contracts, which will enable it to track and analyze market changes and to identify problematic trends in rates and fees more readily.

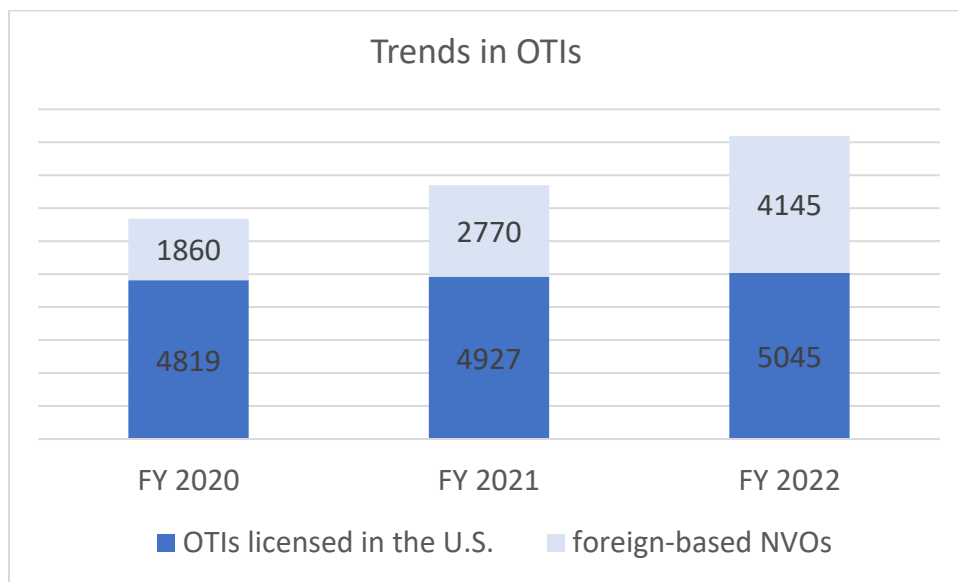
Licensing and Financial Responsibility

The Commission protects the public from harm by overseeing OTIs and PVOs. The certification and licensing program focuses on three primary areas: OTI licensing and registrations, financial responsibilities, and PVO monitoring and certifications. These activities are fundamental to protecting the public from unqualified and underfunded shipping companies and cruise lines.

Ocean Transportation Intermediaries

OTIs serve as middlemen for oceanborne cargo moving in the U.S.-foreign trades. Ocean cargo transportation may be purchased directly from an ocean carrier; however, cargo owners often use licensed OTIs for their services. Before the FMC grants a license to an OTI, the applicant must establish that it employs a Qualifying Individual (QI) with the necessary character and a minimum of three years of shipping experience in the U.S. Also, the applicant must demonstrate its financial responsibility by means of a bond, insurance, or other financial instrument.

The number of OTIs has increased substantially since the onset of the pandemic, with a large number of foreign-based NVOCCs entering into the market. In FY 2020, there were roughly 1,800 foreign-based NVOCCs and in FY 2021 there were roughly 2,700. As of the end of FY 2022, over 9,000 OTIs are regulated by the Commission, including approximately 5,000 licensed entities based in the United States and more than 4,000 foreign-based NVOCCs.



The FMC's triennial renewal program for licensed OTIs provides an efficient process for OTIs to review and update their essential information on file with the Commission within minutes. In FY 2022, approximately 1,500 OTI licenses were renewed, with most reviewed and processed within 48 hours of submission. Given the increased number of OTIs, there is an increased workload related to renewal and evaluating these regulated entities for compliance. A new OTI compliance program is being developed to evaluate OTI business activities and to increase the Commission's ability to find and remedy instances of noncompliance. Staff will work closely with the newly restructured Office of Compliance within BEIC to assess cases and ensure that the industry is aware that there is heightened scrutiny of OTIs, particularly those entities who are newer to the market.

Passenger Vessel Operators

The FMC oversees a program to ensure financial responsibility for PVOs, (commonly referred to as “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 issued by the FMC ensures financial responsibility for the indemnification of passengers for non-performance of transportation and prevents unscrupulous or financially vulnerable operators from serving U.S. ports. The PVO program currently includes 48 operators and 258 vessels.

As previously presented, Fact Finding 30, *COVID-19 Impact on Cruise Industry*, identified commercial solutions to COVID-19-related issues interfering with the operation of the cruise industry. Under 46 C.F.R. § 540.5 and 46 C.F.R. § 540.9(l), the Commission can consider alternative forms of financial protection using a shorter period to determine the required amount of a PVO’s financial responsibility. In July 2020, the Commission approved a Passenger Vessel Operator Financial Responsibility policy to provide limited and temporary financial relief for small PVOs whose operations and business were disrupted by the response to COVID-19. The FMC determined it would look favorably upon requests from small PVOs seeking a temporary surety/financial responsibility lower coverage amount based upon 110 percent of the PVO’s previous month’s UPR rather than the prior two fiscal years’ UPR. Operators were required to agree to: 1) provide monthly reports to the FMC that satisfactorily demonstrate the company’s UPR, and 2) comply with the requirements and conditions of the alternative form of evidence of financial responsibility, or they would be subject to the default requirements in the Commission’s regulations.

In February 2022, the Commission amended its regulations governing non-performance by PVOs to establish new requirements for refunding cruise passengers for cancelled or delayed voyages. Pre-COVID-19 pandemic, PVOs’ ticket contract policies and procedures traditionally refunded passengers in the form of future cruise credits in lieu of monetary refunds for non-performance. The pandemic resulted in considerable uncertainty regarding fully operational cruises, yet passengers were still being held to their ticket contracts. The Commission’s new rule mandated that passengers be fully refunded within 180 days all fees, including ancillary fees, paid to the PVO. Optionally, passengers could agree to receive future cruise credits in lieu of the refund.

These new rules and processes have increased the scope and complexity of cases involving PVO non-performance. The program is currently staffed by only one employee, which is not sustainable. The Commission will expand resources for this program by adding multiple positions to support rulemakings, develop systems requirements, and conduct on-going monitoring and compliance work. The staff will develop processes for monitoring and compliance to protect consumers and will ensure that cruise passengers with complaints in scope for CADRS are provided resources for quick case resolution and create feedback loops with CADRS to identify any gaps in consumer protection that can be handled through rulemakings or industry guidance.

International Affairs

The Commission’s international engagement allows it to consult with foreign counterparts. Meetings over the past year involved representatives from Australia, Brazil, Canada, Denmark, and the Republic of Korea. In addition, Commissioners regularly meet with multi-country groups to discuss competition issues. The People’s Republic of China is scheduled to host the 6th Global Maritime Regulatory Summit in 2023, and representatives from the Commission will attend, along with representatives from the European Union, to discuss approaches to the common goal of ensuring continued competition in ocean shipping.

Since the passage of OSRA 2022, there has been an increase in requests from officials of other governments for meetings and consultations to learn about changes to U.S. laws and implications for global maritime trade. The Commission anticipates continued interest from foreign counterparts in FY 2023 and FY 2024 and will accommodate requests for meetings and official consultations.

Providing New Regulations

The FMC's regulations implement the Shipping Act, OSRA 2022, and other related laws. The FMC issues and updates regulations through the rulemaking process. The Commission worked on 17 rulemakings during calendar years 2020-2022; six of those rulemakings were triggered by the COVID-19 pandemic and the related supply chain disruption. In addition to requiring review and updating of the Commission's regulations, OSRA 2022 contains references to five mandatory rulemakings and one optional rulemaking. The Commission hired a new General Counsel in FY 2023, who will lead OGC operations with Commission priorities and bolster staffing and training to further support rulemakings and provide advice to the Commission. More information on rulemakings is included in Appendix B, *Biennial Report on Unfinished Regulatory Proceedings*.

National Shipper Advisory Committee

Establishing a shipper advisory board was a key recommendation from Fact Finding 28, *Conditions and Practices Relating to Detention, Demurrage, and Free Time in International Oceanborne Commerce*. The National Shipper Advisory Committee (NSAC), comprised of 12 import representatives and 12 export representatives, was chartered in June 2021, and operates under the Federal Advisory Committee Act, 5 U.S.C. App., and 46 U.S.C. Chapter 425. Specifically, the Committee will advise the Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. Commission staff support the activities of this committee, including serving as the Committee Management Officer, the Designated Federal Officer, and two Alternate Designated Federal Officers. Members of the public may find more information about the NSAC (member list, charter, meeting materials, recommendations, and responses) on our website.

The Committee has taken an active role since its establishment, forming subcommittees related to fees/surcharges, data, and equipment. The NSAC issued recommendations at its April 2022 meeting related to dwell fees and intermodal oversight, and at its August 2022 meeting recommendations related to earliest return date and the creation of a second advisory committee were issued.

Effective Organizational Management

Focusing efforts on enforcement, increased consumer assistance, assistance to U.S. exporters and OSRA 2022 implementation requires appropriate alignment and support from the Commission's administrative units. The agency has rapidly increased the pace of hiring to enhance its new priorities. It is anticipated that this hiring surge will continue over the next two years. The FMC recognizes that its employees are critical to achieving its mission and continues to make investments in its workforce a top priority. A highly skilled, agile, and committed workforce is needed for the Commission to execute program goals and respond effectively and quickly to changing priorities. Hiring a diverse workforce ensures that the FMC retains talent and that its employees reflect the diversity of the U.S. population.

The FMC's Office of Human Resources has made improvements to the hiring process, including using new job series for technical experts, USA Hire to improve candidate assessment, and Direct Hire authorities to

quickly onboard staff in key positions. The Commission will continue to promote various hiring authorities and flexibilities, including Direct Hire and Schedule A authorities, and expand use of the Pathways Program (e.g., interns and Presidential Management Fellows) to attract new and diverse talent by focusing recruitment to include more students and recent graduates.

The FMC maintains multiple leadership programs to better prepare internal candidates for the leadership roles that are required under our new regulatory environment and organizational structure. In FY 2022, the Commission offered three leadership development programs for different grade levels under the Commission's Leadership Development Program; and instituted a Senior Executive Service Development Program which supports professional development through formal trainings, details and rotational assignments, and mentoring opportunities. These programs will continue in FY 2023 and FY 2024 to grow the next generation of leaders.

The FMC will continue to identify and address skills gaps, act on outcomes of root-cause analyses and participate in government-wide strategic initiatives. In FY 2023, the Commission will continue succession planning efforts to ensure that gaps in knowledge, skills, and abilities are addressed through recruitment or workforce development and that resources are properly allocated throughout the organization. These efforts include assessment of staffing needs with hiring managers, remediation of identified skills and knowledge gaps, creation of career path resources for Mission Critical Occupations (MCOs), evaluation of leadership development programs such as leadership succession management strategies, performance management training, supervisory training, leadership journeys, and career and leadership development job rotational opportunities. The Commission will continue to promote its mentoring/coaching program to develop future leaders and take steps to implement phased retirement. These efforts will continue into FY 2024 and will help manage the risk of having a high number of retirement-eligible employees.

IT Solutions

Information technology spending will increase as the Commission evaluates and modernizes its IT infrastructure, with an initial focus on cybersecurity risk mitigation and system integration. The Commission has multiple legacy systems used to collect information from the public and regulated entities. The modernization of these systems, initiated in FY 2023, will improve the way the Commission interacts with the ocean shipping industry to collect required information, the management and use of the data collected, as well as mitigate cybersecurity risks.

The Commission continues to prioritize its cybersecurity posture through infrastructure enhancements and maturation of its cybersecurity and privacy program. Improvements include an integrated cybersecurity incident and privacy breach response plan, an Integrated Cybersecurity Center that provides monitoring and response, and an improved ability to continue business/mission operations despite a cyberattack. The Commission continues to address potential gaps in its security posture to enable better decision-making and improve leadership visibility and oversight. Historical and expected spending on cybersecurity requirements are provided in Appendix E.

The Commission also recognizes the need to ensure alignment of an enterprise operating model to address digital business needs and improve business performance. Information technology functions should facilitate collaboration and efficiencies to create a better experience for the FMC's customers and staff. The FY 2024 budget request will enable the FMC to enhance services with better technology and

increased accessibility, streamline processes that put customers first, and provide equitable support that reaches into communities that have faced historic barriers.

A full IT investment assessment will be completed in FY 2023 to provide a roadmap for systems replacement and enhancements. Increased funding will allow the Commission to move antiquated legacy systems to a cloud-based, secure platform, and enhance functionality in support of enforcement and compliance initiatives. In addition to legacy system replacement and enhancement, systems that can better support internal business processes to manage agency workflows and reporting, collect data, reduce time spent on manual tasks, and improve public access to FMC services are needed.

Advancing Equity

Equity Action

The Commission promotes equity and works to remove barriers from underserved and underprivileged populations, both in its role in industry oversight, and its internal workforce. 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 will further consider Executive Order 14091, *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* in promoting Commission equity initiatives and leadership.

In January 2022, the Commission finalized its Equity Action Plan, which considered several areas for equity review. The Commission has continued its equity reviews to improve access to FMC information. In FY 2023, the Commission will conclude a review of contracting practices, and will include a plan to implement any identified steps to improve equity. The FMC will also work to improve access to information on its website in FY 2023 and FY 2024. The FMC will continue to consider steps to serve underprivileged groups and to ensure that it is accessible to the public and its stakeholders.

The Commission is following guidance in OMB M-22-01, *Improving Access to Public Benefit Program Through the Paperwork Reduction Act*, in conducting its equity work. While the FMC does not currently administer public benefits programs, it will consider whether the federal information collection burden for underserved and underprivileged communities can be minimized in future Commission information collections. No FTEs are required to implement this effort; employees already involved in information collections will consider equity in future burden analysis projects.

Diversity, Equity, Inclusion, and Accessibility in the FMC Workforce

The FMC is also 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.

For FY 2023, the FMC has identified a set of themes and strategies that support and promote diversity, equity, inclusion, and accessibility (DEIA) for employees and applicants for employment. Our programs focus on ensuring access to equal opportunities; accessing talents of and creative engagement with a diverse workforce; and improving employment outcomes for all employees. Through application of DEIA principles, we are supporting the agency's mission to 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 FMC's Fiscal Years 2022-2026 Strategic Plan includes an objective to foster a high performing, engaged, and diverse workforce where staff understand how their efforts contribute to the goals of the Commission. Specifically, the FMC promotes a culture that is open, diverse, inclusive, and engaged.

In FY 2023 and FY 2024, the FMC will deploy training for staff on equal employment opportunity law and process, accessibility requirements in the federal government, and enhance communication across diverse groups; expand use of exit surveys; recruit at a wide assortment of institutions and expand career development opportunities that connect workers to leadership roles, especially in ways that address barriers identified in workforce analyses and that target our goals to ensure inclusion of individuals with disabilities.

Resources for Equity and DEIA Efforts

The FMC will use its existing workforce to perform equity work. Resources for equity initiatives, such as website improvements to improve access, are included in the Commission's information technology request. No additional funds are requested for this effort. Additionally, the agency will consider whether detailees, interns or additional part-time staff will be necessary to assist in advancing these plans.

Inspector General Request and Certification



FEDERAL MARITIME COMMISSION
Washington, DC 20573

February 8, 2023

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 2024:

- the aggregate budget request for the operations of the OIG is \$629,628,
- the portion of this amount needed for OIG training is \$2,500, and
- the portion of this amount needed to support the CIGIE is \$2,412.

I certify as the Inspector General of the FMC that the amount requested satisfies the needs of the OIG for FY 2024, including all FMC OIG training requirements, and resources to support CIGIE.

A handwritten signature in black ink that reads "Jon Hatfield". The signature is written in a cursive, slightly slanted style.

Jon Hatfield, Inspector General
Federal Maritime Commission

Appendix A. FY 2024 Budget Request Table

2024 Budget Request Detail					
Amounts in Dollars					
Budget Object Class (BOC)	FY 2022 Actuals	FY 2023 Enacted	FY 2024 Request	FY2023 - FY2024	% Change
Full Time Equivalents (FTE)	120.0	140.5	163.0	22.5	16%
{11.1} Full-Time Permanent	\$14,585,106	\$18,511,575	\$22,694,000	\$4,182,425	23%
{11.5} Other Personnel Compensation	\$1,361,906	\$1,728,560	\$2,119,000	\$390,440	23%
{12.1} Civilian Personnel Benefits	\$5,528,227	\$7,016,825	\$8,602,000	\$1,585,175	23%
Sub-Total Personnel Compensation & Benefits	\$21,475,239	\$27,256,960	\$33,415,000	\$6,158,040	23%
{21.0} Travel and Transportation of Persons	\$115,585	\$215,000	\$345,000	\$130,000	60%
{22.0} Transportation of Things	\$10,832	\$13,000	\$15,000	\$2,000	15%
{23.1} Rental Payments to GSA	\$3,673,012	\$346,475	\$1,639,000	\$1,292,525	373%
{23.3} Communications, Utilities, and Miscellaneous Charges	\$260,514	\$427,000	\$442,000	\$15,000	4%
{24.0} Printing and Reproduction	\$90,000	\$93,000	\$97,000	\$4,000	4%
{25.1} Advisory and Assistance Services	\$3,389,970	\$3,551,000	\$2,126,000	(\$1,425,000)	-40%
{25.2} Other Services from Non-Federal Sources	\$1,097,467	\$1,842,670	\$1,853,000	\$10,330	1%
{25.3} Other Goods and Services from Federal Sources	\$1,662,290	\$3,234,429	\$2,825,000	(\$409,429)	-13%
{25.7} Operation and Maintenance of Equipment	\$13,074	\$52,000	\$75,000	\$23,000	44%
{26.0} Supplies and Materials	\$39,791	\$64,775	\$89,000	\$24,225	37%
{31.0} Equipment	\$556,771	\$1,163,691	\$799,000	(\$364,691)	-31%
Sub-Total Administrative Expenses	\$10,909,306	\$11,003,040	\$10,305,000	(\$698,040)	-6%
Total Funding	\$32,384,545	\$38,260,000	\$43,720,000	\$5,460,000	14.27%
Operations & Administration (O&A) Program (\$/FTE)	Amount	\$31,806,545	\$35,716,385	\$41,090,372	\$5,373,987
	FTE	118	128.5	151.2	22.7
Operations Salary & Benefits (Multi-year)	Amount	\$0	\$2,000,000	\$2,000,000	\$0
	FTE	0	10	9.8	-0.2
Office of Inspector General Program (\$/FTE)	Amount	\$578,000	\$543,615	\$629,628	\$86,013
	FTE	2	2	2	0

Appendix B. Biennial Report on Unfinished Regulatory Proceedings

The Commission reports to Congress biennially on the status of unfinished regulatory proceedings.

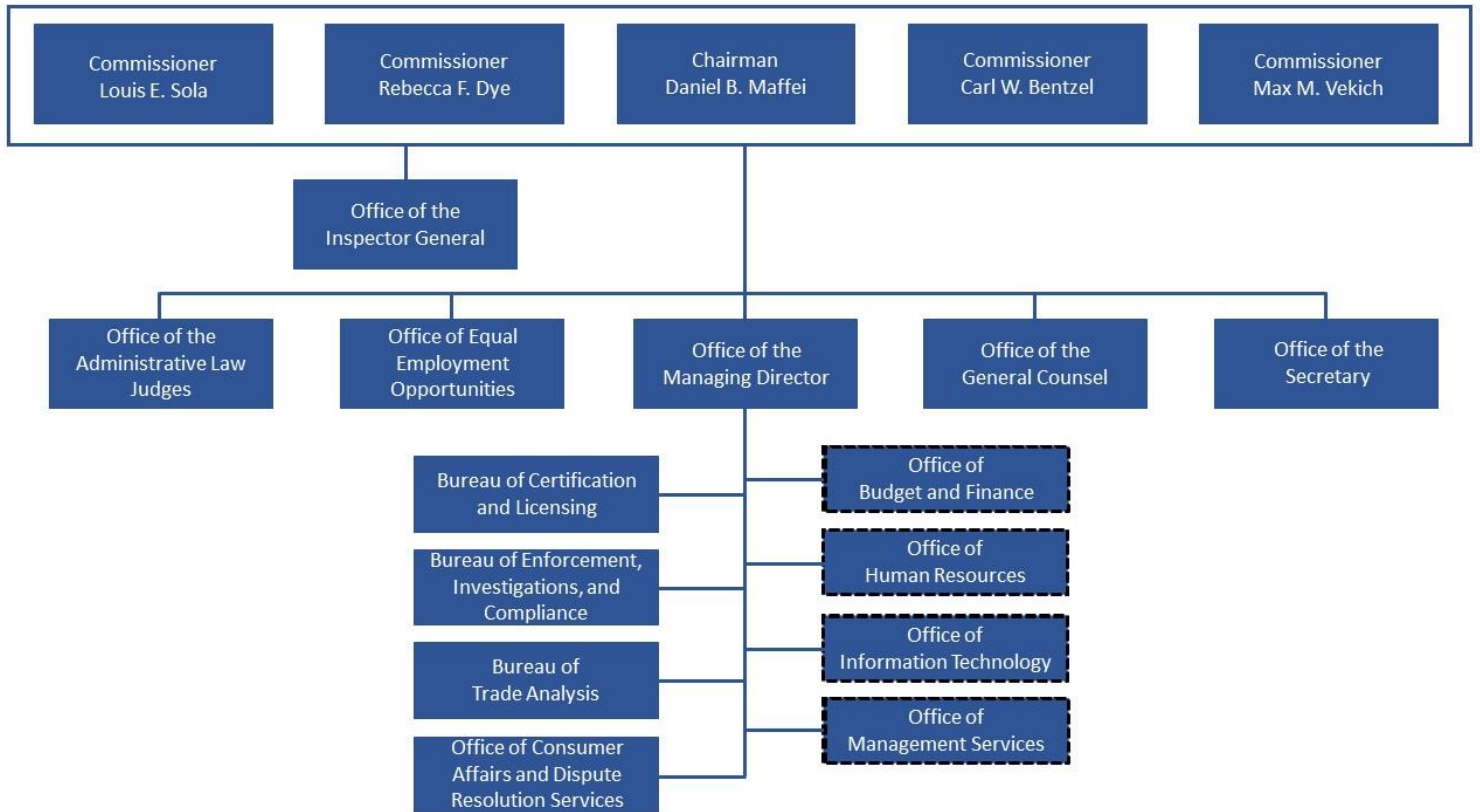
Unfinished Regulatory Proceedings		
Popular Title	Carrier Automated Tariffs RIN 3072-AC86	Demurrage and Detention Billing Requirements RIN 3072-AC90
Docket Number	21-03	FMC-2022-0066
Current Stage	Proposed Rule	Proposed Rule
Abstract	The Commission seeks information regarding the impact of tariff access fees and access requirements and how common carriers are applying “pass through” charges under their tariffs in Part 520.	The Commission is implementing requirements for common carriers and marine terminal operators to include certain minimum information on or with demurrage and detention billings. In addition, the Commission is implementing requirements for common carriers and marine terminal operators to adhere to certain practices regarding the timing of demurrage and detention billings.
What Prompted Action	Commission initiative	<i>Ocean Shipping Reform Act of 2022, Pub. L. 117-146 (2022), section 7(b).</i>
Applicable Statutory, Regulatory, or Judicial Deadline	None	06/16/2023
Initiated	ANPRM published – 04/08/2021 NPRM published – 05/10/2022	ANPRM published – 02/15/2022 NPRM published – 10/14/2022
Next Action	Action on Proposed Rule Scheduled – FY 2023	Action on Proposed Rule Scheduled – 06/2023

Unfinished Regulatory Proceedings (continued)		
Popular Title	Definition of Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier RIN 3072-AC92	Definition of Unfair or Unjustly Discriminatory Methods Under 46 USC 41104(a)(3) RIN 3072-AC93
Docket Number	22-24	FMC-2023-00^^ ¹
Current Stage	Proposed Rule	Pre-Rule
Abstract	The Commission is seeking public comment on its proposed rule arising from the Ocean Shipping Reform Act of 2022 requirement that prohibits ocean common carriers from unreasonably refusing to deal or negotiate with respect to vessel space accommodations. Specifically, the Commission is proposing to define the elements necessary to establish a violation and the criteria it will consider in assessing reasonableness.	The Commission is seeking public comment on its proposed rule arising from the Ocean Shipping Reform Act of 2022 requirement that prohibits ocean common carriers from resorting to other unfair or unjustly discriminatory methods. Specifically, the Commission is proposing to define the elements necessary to establish a violation and the criteria it will consider in assessing whether a method is unfair or unjustly discriminatory.
What Prompted Action	<i>Ocean Shipping Reform Act of 2022, Pub. L. 117-146 (2022), section 7(d).</i>	<i>Ocean Shipping Reform Act of 2022, Pub. L. 117-146 (2022), section 7(c).</i>
Applicable Statutory, Regulatory, or Judicial Deadline	12/16/2022	06/16/2023
Initiated	NPRM published – 09/21/2022	N/A
Next Action	SNPRM Scheduled – 06/2023	NPRM Scheduled – 08/2023

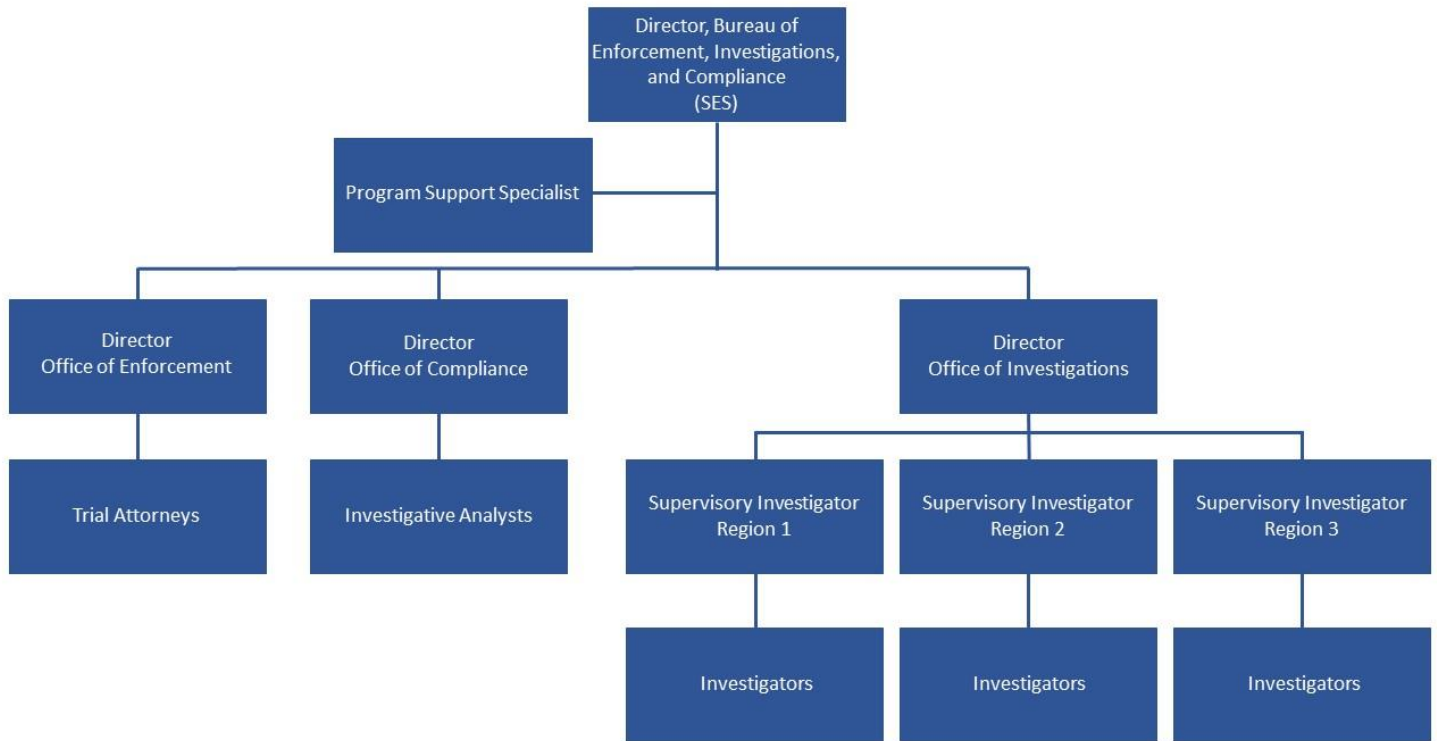
¹ The use of “^^” indicates that a docket number is not currently assigned.

Unfinished Regulatory Proceedings (continued)	
Popular Title	Civil Penalty Amendments to 46 CFR Part 502, Rules of Practice and Procedure RIN 2073-AC^^
Docket Number	FMC-2023-00^^
Current Stage	Pre-Rule
Abstract	The Commission revises its procedural rules in 46 C.F.R. part 502 to incorporate its authority to order a refund of a charge paid in addition or in lieu of a civil penalty.
What Prompted Action	<i>Ocean Shipping Reform Act of 2022, Pub. L. 117-146 (2022), section 8.</i>
Applicable Statutory, Regulatory, or Judicial Deadline	None
Initiated	N/A
Next Action	Direct Final Rule Scheduled – 02/2023

Appendix C. Commission Organizational Chart



Appendix C.1. New BEIC Organizational Structure



Appendix D. IT Modernization & Improvements in Digital Services

Section 3(d) of the 21st Century Integrated Digital Experience Act (21st Century IDEA) (Public Law 115-336), requires an annual report to Office of Management and Budget (OMB) and the public on the progress of modernizing agency’s websites and digital services. The information below details the efforts of the Commission’s websites and digital services in FY 2023.

FMC.Gov Website

The Commission maintains a single website, fmc.gov, to provide information to the public on the FMC’s activities, notices to the industry on current and proposed regulations and initiatives, and links to digital services.

The table below provides an assessment of the FMC’s website compliance with the requirements of Section 3(a) of the 21st Century IDEA:

Criteria	Compliant
508 Compliant	Yes
Has a consistent appearance across services	Yes
Does not overlap with or duplicate any legacy website	Yes
Contains a search function that allows users to easily search content intended for public use	Yes
Is provided through an industry standard secure connection	Yes
Is designed around user needs with data-driven analysis influencing management and development decisions, using qualitative and quantitative data to determine user goals, needs, and behaviors, and continually test the website, web-based form, web-based application, or digital service to ensure that user needs are addressed	Yes
Provides users with the option for a more customized digital experience that allow users to complete digital transactions in an efficient and accurate manner	Not Applicable
Is fully functional and usable on common mobile devices	Limited

The Commission’s website would benefit from improvements to address the following challenges:

- The website relies on application technology that has, or is, approaching a date when it will no longer be supported.
- The capabilities of the website have not kept pace with needs of users for customization and would benefit from technology improvements.
- The website has limited portability to mobile devices which occasionally constrains the viewing of content.

The Commission plans to initiate a redesign/refresh of the website to address the challenges with funding provided in FY 2023. The budget for FY 2024 includes operation maintenance costs projected at 20 percent of the initial investment cost.

FMC Digital Services

Over several years, the Commission developed different online information filing applications and searchable databases to support the industry. The implementation of these services facilitated the successful transition from paper-based forms to electronic filing. These services include the following systems:

- Ocean Transportation Intermediary License, Registration, Renewal, and Application Processing System for both domestic and foreign OTIs;
- Proof of Financial Responsibility;
- eAgreement Filing System and Library;
- Service Contract Filing System (SERVCON);
- eMonitoring; and
- Regulated Person Index.

The FMC assessed the systems as a group for compliance with Section 3(a) of the 21st Century IDEA:

Criteria	Compliant
508 Compliant	Yes
Has a consistent appearance across services	No
Does not overlap with or duplicate any legacy website	Yes
Contains a search function that allows users to easily search content intended for public use	Limited
Is provided through an industry standard secure connection	Yes
Is designed around user needs with data-driven analysis influencing management and development decisions, using qualitative and quantitative data to determine user goals, needs, and behaviors, and continually test the website, web-based form, web-based application, or digital service to ensure that user needs are addressed	No
Provides users with the option for a more customized digital experience that allow users to complete digital transactions in an efficient and accurate manner	No
Is fully functional and usable on common mobile devices	No

The FMC has initiated a project to move these legacy systems to sustainable solutions to address the following challenges:

- Systems were developed on multiple application platforms, over the course of several years, which resulted in an inconsistent appearance.
- The current search function allows for searching the library of information but would benefit from newer technologies that would support a more robust, customizable capability.
- While connection to the system(s) uses current security protocols, additional manual procedures are used to address security and access control issues within the applications.
- Systems were implemented with the primary goal of moving from paper-based filing to electronic filing. The designs of these applications were constrained by the technology used when the applications were developed and now require significant improvement to meet the needs of stakeholders and to be considered compliant.

- Systems are limited in functionality and do not provide for customizable use or streamlined activity.
- Systems are available on mobile devices, but do not take advantage of newer technology.

In addition to these challenges, the cost to maintain the legacy systems has become prohibitive, inhibiting new development, and dependent upon identifying resources proficient on the outdated technologies.

The project to modernize IT Systems will combine the legacy, public facing systems under one initiative to provide improved useability for industry and consumers contacting the Commission for assistance. The solution will also aid Commission staff in the review and verification of industry compliance with the FMC’s regulations.

Opportunities exist along many fronts to improve the efficiency of the FMC’s internal processes. Parallel to the initiative to modernize the public facing systems, a project to improve systems supporting internal business practices is also in progress. The goal of the project is to improve the way that the Commission tracks formal proceedings, enforcement cases, investigatory activities, informational inquiries, and requests for dispute resolution assistance from industry stakeholders, and to take advantage of advances in technology in the use of data currently being collected.

Costs of Initiatives

The table below summarizes the projected lifecycle cost for each initiative with the planned spending in FY 2023 and FY 2024. Operation and maintenance of systems is intended to address changes in processes, patches to mitigate cybersecurity threats, and minor enhancements. Lifecycle cost estimates reflect a duration of five years of operations and maintenance following the implementation of the new system. The Program Management line in the chart reflects contractor support of solution implementation to include requirements and risk management, testing, change management and overall performance.

Project/Initiative	Lifecycle Costs	2023 Estimate	2024 Estimate
Webpage Update	\$ 440,000	\$ 220,000	\$ 44,000
Public Facing Solutions	\$ 3,700,000	\$ 500,000	\$ 1,000,000
Docket/Court Record Management	\$ 1,000,000	\$ 500,000	\$ 100,000
System(s) to support internal operations	\$ 3,300,000	\$ 650,000	\$ 530,000
Program Management		\$ 810,000	\$ 810,000

Solution Approach and Estimated Timelines

The objectives of the modernization plan are to replace legacy systems using COTS solutions wherever possible to speed deployments and reduce lifecycle cost of ownership. Opportunities to use Software as a Service (SaaS) and the use of currently licensed technologies will also be considered to achieve the objectives. A hybrid of custom development, COTS, and SaaS may be necessary in some cases to meet requirements. The profile below provides the planning assumptions for each category of systems. The

chart also depicts the expected time to complete acquisition, deployment of the initial operating system, and progress to an operation and maintenance phase.

Project/Initiative	Planned Approach	Implementation Timeframe
Webpage Update	Configuration of COTS	1 Year
Public Facing Solutions	Hybrid	2-3 Years
Docket/Court Record Management	SaaS	1 Year
System(s) to support internal operations	SaaS	2-3 Years

Appendix E. Cybersecurity Initiatives and Costs

The FMC uses a layered defensive posture for infrastructure protection, identifying intrusion attempts and infiltrations which are further enforced with annual user training on cyber and personal security. The Commission's cybersecurity program relies upon in-house- and contract expertise using the latest tools and technologies. The FMC fully participates in cybersecurity programs aimed at protecting the wider Federal enterprise or national digital ecosystem.

The FMC is reliant upon these interrelated programs to implement a defensive capability designed around the National Institute of Standards and Technology (NIST) framework.



Identify/Detect: The FMC uses capabilities inherent in firewall technology and other tools designed to detect attempts at phishing and malware attacks by malicious actors. The FMC uses specialized tools to monitor installed software to ensure computers/applications are up to date with patches or connection to un-support peripheral devices. Annual training aids keep staff informed of the latest threats and their responsibility to safeguard data and systems. In-house spoofing attempts test a users' ability to identify phishing attempts and enforces staff understanding of their role in the layered strategy.

Protect: The FMC uses Microsoft Azure Advanced Threat Protection and support from a Microsoft Threat Engineer to design protection strategies. The FMC also uses Personal Identity Verification (PIV Card) and 2-part authentication strategies to enhance the layers of protection for its systems and data. The FMC takes advantage of the Continuous Diagnostics and Mitigation (CDM) Program provided by the Cybersecurity and Infrastructure Security Agency (CISA) to fortify the FMC networks and systems.

Respond & Recover: Through a cloud-based architecture, the FMC maintains a layered backup capability to enable data recovery when incidents occur.

IT Expenditures:

Commission spending for Cybersecurity is characterized using the NIST Framework for cybersecurity functions and activities. Where there is significant overlap in activities, the functions and costs are combined to avoid duplication.

NIST Framework	FY 2022 Actual	FY 2023 Planned	FY 2024 Request
Detect/Identify	\$ 48,000	\$ 32,400	\$ 44,800
Protect	\$ 133,000	\$ 137,000	\$ 144,000
Respond & Recover	\$ 8,300	\$ 9,000	\$ 15,000

Personnel:

All members of the information technology team participate in efforts to implement cybersecurity protection led by the Commission’s Chief Information Officer (CIO) and the Chief Information Security Officer (CISO). In the face of increasing cybersecurity requirements, the Commission is adding a cybersecurity specialist in FY 2023 to help safeguard against cybersecurity threats and to promote compliance with cybersecurity directives. The chart below identifies staff time dedicated to cybersecurity compliance.

	FY 2022	FY 2023	FY 2024
CIO	.05	.05	.05
CISO	.80	.80	.80
Cybersecurity specialist		.50	.95
Total FTE:	.85	1.35	1.80