STATEMENT OF
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CHAIRMAN
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BEFORE THE
UNITED STATES SENATE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON SECURITY
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Chairman Sullivan, Ranking Member Markey, Senators, thank you for this opportunity to appear before you today to testify in support of the Fiscal Year 2020 budget request of the Federal Maritime Commission and to discuss the work of the agency as well as developments in the international ocean transportation industry we monitor.

I am joined today by two of my colleagues, Commissioner Louis E. Sola and Commissioner Daniel B. Maffei. Commissioners Sola and Maffei joined the FMC in January after being confirmed by the Senate. We are pleased to have them aboard. Commissioner Rebecca F. Dye is working with Innovation Teams at the FMC who are meeting today on port demurrage, detention, and free time practices.

The Federal Maritime Commission

As a first matter, allow me a moment to introduce the FMC and its role, which is best summarized by our prime meridian: ensuring competition and integrity for America's ocean supply chain.

The FMC is an independent agency with specialized experience in the international ocean transportation industry. We administer a focused antitrust regulatory regime tailored to the particular factors affecting the ocean liner trade. The Shipping Act of 1984 contains several major sections that are comparable to the antitrust statutes administered by the Department of Justice and the Federal Trade Commission. Since passage of the original Shipping Act in 1916, Congress has recognized that the international ocean liner industry requires special legislative and regulatory oversight. This is due to the substantial amount of our Nation's international exports and imports being delivered via ocean liner carriage, the resulting critical role the industry plays in our international commerce, and the many competing, and potentially conflicting, maritime regulatory regimes and interests of our international trading partners.

Based on economic and non-economic conditions affecting the international ocean liner trade, Congress determined in 1916 to allow certain types of ocean carrier collaboration that would not normally be permitted under other antitrust statutes, in order to ensure that certain U.S. national objectives would be met. This included the availability of ocean transportation and stability of the shipping infrastructure upon which our international commerce depends. The antitrust laws, including the Shipping Act of 1984, are designed to protect competition, not individual competitors. Collaborative joint venture agreements among competitor ocean carriers, *as long as they are not found to be materially anticompetitive*, are recognized as beneficial, finding efficiencies, and reducing costs that ultimately benefit U.S. exporters and saves the U.S. consumer money.

Congress entrusted competition oversight and antitrust enforcement for this industry to a specialized agency with particular expertise in this legal area, close familiarity with the commercial and operational issues involved in the ocean liner industry, and sensitivity to the interests of U.S. stakeholders and our many international trading partners. The FMC reviews and monitors international ocean liner carrier joint collaborations and agreements under the Shipping Act to ensure that procompetitive efficiencies and cost savings are obtained for the benefit of U.S. consumers, and that anticompetitive effects are prevented or properly mitigated.

Our Annual Report was submitted on April 1, 2019 and provides a comprehensive summary of the Commission's activities and industry developments in Fiscal Year 2018. Our Fiscal Year FY 2020 Budget Justification was submitted on March 18, 2019 and provides detailed support for our budget request. I will address matters of interest to the Committee, discuss what we foresee as potential developments and trends in the coming year, review our significant activities of the past year, and recap our budget request for FY 2020.

LoBiondo Legislation

On December 4, 2018, the "Frank LoBiondo Coast Guard Authorization Act of 2018" was enacted as Public Law No. 115-282 (LoBiondo Act). The LoBiondo Act represents the first substantive changes to the statutes administered by the Commission since 1998.

Most of the changes are aimed at broadening the Commission's authority and increasing the tools at the Commission's disposal to carry out its mission. It makes several changes and places further restrictions on cooperation between or among ocean carriers and marine terminal operators (MTOs). These changes include: removing antitrust immunity for certain activities; prohibiting certain joint procurement activities; restricting overlapping agreement participation; and modifying the legal standard for enjoining agreements to jointly procure certain services. The LoBiondo Act also expands and clarifies the Commission's authority to seek information from MTOs, and, during agreement review, to seek information from interested parties other than the filing parties. The legislative history reveals that many of these provisions were intended to address concerns regarding carriers' ability to form alliances and collectively negotiate, and the potential impacts on shippers and port service providers. H.R. Rep. No. 115-1017 at 5—6 (2018).[1]

The Commission applauds the Committee's work on this important legislation. We are diligently working on the LoBiondo Act's implementation and I assure the Committee that the additional authorities provided in the legislation will be implemented and enforced by the Commission as intended by Congress.

[1] H.R. Rep. No. 115-1017 accompanied H.R. 2593, an earlier authorization bill that contained several of the provisions later incorporated in the Authorization Act.

The FMC and Security

While the Federal Maritime Commission is not charged with a *national* security role in the same sense as the U.S. Coast Guard or the U.S. Maritime Administration, America's *economic* security very much depends on a competitive and efficient ocean transportation system. That is the Commission's mission.

What economists call the "invisible hand" is not the only force that guides the global shipping industry. Many nations throughout the world go to great lengths to support national ocean transportation companies, including use of indirect subsidies and direct capital infusion to maintain the national company's solvency. Some carriers are owned in whole, or in part, by foreign governments.[2] This governmental ownership must be examined in the context of America's long-term national and economic security interests. The People's Republic of China (PRC) is the United States' largest trading partner in terms of cargo volume.[3] The PRC actively invests in logistics, transportation, and infrastructure through initiatives such its "One Belt, One Road Initiative" to advance their strategic goals. Last year PRC-owned COSCO Shipping completed its acquisition of a controlling interest in Hong Kong-based OOCL. The combined volumes of COSCO Shipping and OOCL now represent the largest market share in the U.S.-China import trade at 19 percent of the total.

For the moment, such links between governments and national carriers hold the potential to provide lower freight costs and greater service choices for imports and exports. Some economists argue that such foreign state support tends to distort otherwise competitive markets.

The FMC is active in federal security initiatives related to U.S. ocean commerce. We work with other agencies engaged in homeland security to improve identification of entities providing and utilizing maritime transportation services and to coordinate the use of available database systems. The FMC partners with various agencies, such as the U.S. Customs and Border Protection, supporting efforts to address international criminal activity that would undermine the Nation's security.

[2] Foreign owned and/or controlled carriers that are registered pursuant to Section 9 of the Shipping Act of 1984 (46 U.S.C. §40701-40706) include: COSCO Shipping Lines Co., Ltd. (PRC), COSCO Shipping Lines (Europe) GmbH (PRC), Orient Overseas Container Line Limited (PRC), Orient Overseas Container Line (Europe) Limited (PRC), CNAN Nord SPA (PDR Algeria). Note that this Act defines control at 50.01% of equity. State direct investment and support in ocean shipping lines is a common practice with several foreign countries. Chile, France, Germany, Korea, Qatar, Saudi Arabia, and Taiwan have provided market and non-market support to ocean carriers or related marine industries.

[3] During CY 2018, 13 million loaded twenty-foot equivalent container units (TEUs) moved between the U.S. and China. Our #2 Trans-Pacific trading partner is South Korea with 1.4 million TEUs of combined exports and imports.

Industry Developments 2018

The container shipping industry plays an integral role in America's international trade and commerce. There is no more efficient, economical, or environmentally-friendly way to move goods and components from origin to destination than in a container transported on a ship. Since the first container ship, the *Ideal X*, made her maiden voyage from Newark, New Jersey to Houston, Texas in 1956, intermodal transportation has transformed international ocean trade, facilitating and enabling dramatic growth in the global economy. American importers and exporters rely on container shipping to meet domestic retail demand, to provide the inputs manufacturers require, and to allow our companies and farmers to reach markets overseas. Ocean shipping is interwoven into every aspect of our lives and our economy.

In FY 2018, approximately 35 million TEUs (twenty-foot equivalent units) moved through our Nation's ports, a 5 percent increase from FY 2017. The U.S. imported over 23 million TEUs last fiscal year valued at $803 billion. This was an increase of over 6.3 percent by volume from FY 2017. Meanwhile, the U.S. exported approximately 12 million TEUs in FY 2018 with a value of $290 billion, a 2.7 percent increase over FY 2017 by volume. The U.S. share of the world's container trades was 16 percent, down slightly from FY 2017. Primarily as a result of continued growth in U.S. imports, the U.S. container trade imbalance worsened in FY 2018. Such imbalance is measured by the number of imported loaded containers versus exported loaded containers. For every 100 loaded export containers shipped from the U.S., 195 loaded containers were imported into the U.S. For FY 2017, that metric was 190 loaded import containers.[4]

The last decade has seen significant changes to the ocean transportation services marketplace, with mergers and acquisition activity among shipping lines reducing the number of major ocean carriers serving the international trade, the bankruptcy of a top-ten ocean carrier, and the formation of three global alliances – 2M,[5] OCEAN,[6] and THE.[7]

Compared with prior years that experienced significant changes to the ocean transportation services marketplace, 2018 was a more stable period for the container shipping industry. The notable transactions were COSCO Shipping's acquisition of a majority interest in Orient Overseas Container Line and the completion of the merger of three Japanese container lines (K Line, MOL, and NYK) into one company, Ocean Network Express (commonly referred to as "ONE").

At year end, for U.S. combined import and export trades, the market share for all container operators were as follows: Maersk (13.2%), CMA CGM (12.8%), MSC (12.6%), COSCO/OOCL (12.0%), Ocean Network Express (10.8%), Hapag Lloyd (8.5%), Evergreen (7.7%), Yang Ming (3.9%), HMM (3.8%), Zim (2.6%), and all other combined carriers such as Crowley, Seaboard, PIL, SM Lines, Wan Hai, Matson, and ACL (12.1%).[8]

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[4] Source: PIERS Interactive.
[5] The 2M Alliance carriers are Maersk Line and Mediterranean Shipping Company.
[6] The Ocean Alliance carriers are CMA CGM, COSCO Shipping Line, Evergreen, and Orient Overseas Container Line.
[7] THE Alliance carriers are Hapag Lloyd, ONE, and Yang Ming.
[8] Source: PIERS Interactive.

2019 Industry Challenges

The calm of 2018 suggests the ocean carriers are in a settling period, assimilating companies they have acquired or merged with while adjusting to the new marketplace structure. Nevertheless, the industry faces business and operational issues that may challenge their revenues and financial health.

Excess Capacity

There continues to be a surplus of carrier vessel capacity compared to global trade volumes. Shipping lines traditionally address this imbalance by offering lower freight rates in order to fill vessels or maintain an individual carrier's market share. Ocean freight rates have been relatively flat over the past decade, 2009-2018. Average revenue from China to the U.S. West Coast declined by nearly 17 percent in nominal terms. However, adjusted for inflation, real rates are 29 percent lower. This decline does not reflect seasonal fluctuations, such as, during peak pre-holiday shipping season[9] in the east-bound Trans-Pacific trade lane or freight rates that include value added services. Nevertheless, it does provide an insight into the competitive pressure ocean carriers face as well as the real value ocean transportation has provided to American companies through consistently low pricing.

IMO 2020 Low Sulphur Rule Requirement

An International Maritime Organization (IMO) Rule, commonly referred to as "IMO 2020", requires ocean carriers, beginning in January 2020, to burn low sulfur fuel that has a 0.5 percent sulfur content *or* install exhaust scrubbers in order to continue to run their vessels with heavy bunker fuel that contains 3.5 percent sulfur content. The low-sulphur requirements could boost ship fuel costs by as much as one third, and estimates run between $10 to $15 billion dollars a year in additional costs for ocean carriers. There is uncertainty about how some ocean carriers will comply with the IMO requirements, whether adequate supplies of low-sulphur fuel will be available, whether adequate supply of scrubber equipment will be available, and how individual ocean carriers will try to pass on part or all of these additional costs to cargo shippers, especially if economic growth slows and container demand falls.

The Commission is monitoring this issue because of our interest in an efficient marketplace and to ensure that carrier efforts to recover costs associated with the new standards do not violate the Shipping Act. A primary concern to the Commission under the Shipping Act is whether ocean carrier bunker charge adjustment formulas are clear and definite.

Review of Ocean Carrier and Marine Terminal Operator Agreements

Ocean Carrier Agreements

As noted above, nine of the major ocean carriers serving the U.S. trades have organized themselves under the Shipping Act into three major *global* alliances – 2M, OCEAN, and THE. These alliances are joint operating agreements of ocean carriers where they are allowed to discuss and agree on

[9] "Peak Season" includes the pre-holiday retail shipping period from August 15th to October 15th. A second, short peak season is associated with the Chinese New Year in January/February.

the deployment of specific service strings of vessels in various trade routes. Each alliance operates multiple services in the major Trans-Pacific (Asia-U.S. and Canada), and Trans-Atlantic (Europe-U.S. and Canada) trades. These three alliances supply 80 percent of the vessel capacity in each of these trade lanes.[10]

The alliance agreements allow the parties to discuss trade-specific economic conditions and adjust the number of vessels deployed in the relevant trade routes. These three major alliances are not the only vessel sharing agreements in which these and other ocean carriers participate. Ocean carriers can and do participate in multiple agreements filed at the FMC. These include various space charter agreements, two party vessel sharing agreements having limited geographic scope, joint service agreements, and cooperative working agreements. In addition to the three global vessel sharing alliances referenced above, ocean carriers participate in more than 325 other cooperative business agreements filed at the Commission.

Carrier alliances can be very beneficial for U.S. exporters, importers, and consumers. Such alliances allow participants to obtain efficiencies and cost-savings that can be passed on to domestic consumers especially when healthy competition exists among vessel operators. Of note, the benefits of alliances and other forms of joint commercial vessel operating arrangements are recognized by Congress and addressed in the Shipping Act of 1984, as amended, and addressed in the contemporaneous joint Congressional report:

> Another important potential benefit to be considered is any efficiency-created aspects of an agreement. Agreements involving significant carrier integration are, if properly limited to achieve such important benefits, to be favorably considered by the Commission and the courts. Joint ventures and other cooperative agreements can enable carriers to raise necessary capital, attain economies of scale, and rationalize their services. Pooling arrangements can also offer significant benefits in reducing excess capacity and promoting efficiency.[11]

An alliance is not an integrated business organization. The individual members of an alliance remain business competitors in every sense in terms of sales/marketing, freight pricing, strategic planning, finance, and related back office operations. Individual companies compete with the other members of their own alliance and they compete with each other across alliances. There is a finite number of containers to be transported and each of the nine alliance carriers, as well as four other major ocean carriers not in alliance but offering global service outside of an alliance, vie fiercely to win that business. By all accounts, the marketplace for containerized ocean transportation services remains open and highly competitive. Smaller companies in specialized trades continue to exist and there are even new market entrants. No one company, even among the top carriers, has a dominant position in trade volumes to or from the United States.

In terms of growth, the vessel capacity of the ocean lines continues to expand through new vessel building at a rate that exceeds the growth in global trade volumes. The Herfindahl-Hirschman Index values for the Trans-Pacific and North-Atlantic trade lanes reveal that the marketplace remains unconcentrated. As discussed below, a critical function of the Federal Maritime

[10] Source: PIERS Interactive.
[11] The Conference Report for the Shipping Act of 1984, H. Rept. 600 at pg. 36.

Commission is to ensure that these carrier agreements do not violate the Shipping Act's competition standard.

Marine Terminal Operator (MTO) Agreements

The Commission oversees 99 ports and MTO agreements covering the U.S East, Gulf, and Pacific coasts. To facilitate operations, some U.S. marine terminals enter into agreements on rates and/or terminal charges, or to cooperate in their daily terminal operations and related practices.

The demands of significantly bigger vessels unloading larger numbers of containers at each port call demands more of marine terminals in terms of productivity and infrastructure. As a result, ports and marine terminal operators have filed agreements to combine aspects of their operations, finance necessary infrastructure improvements, increase terminal velocity, develop collective solutions to mitigate cargo bottlenecks, and a host of other business activities, all aimed at enhancing their ability to compete against other ports for cargo.

In recent years, it has become increasingly important for ports and marine terminal operators to address and mitigate air quality and traffic congestion impacts on their local communities. Ports use agreements filed at the Commission to address environmental and community impact issues that require coordination within a port or region.

Ports and MTOs use agreements filed at the Commission to address concerns that require a collective solution. For example, the supply of chassis in ports is critical to moving containers into and out of the ports. FMC-filed agreements have been used to help ports and MTOs in an area or region to manage chassis availability.

Competition and Integrity for America's Ocean Supply Chain

Ensuring Competition

At the heart of the mission of the Federal Maritime Commission is ensuring a competitive and reliable international ocean transportation system that supports the U.S. economy and protects the public from unfair and deceptive practices. We achieve these objectives through constant oversight of the marketplace in general and the specific monitoring of ocean carrier and/or marine terminal operator behavior under agreements filed at the Commission.

The Commission's transportation analysts, economists, and attorneys are diligent and maintain a careful watch on industry trends, being vigilant for any indications of anticompetitive behavior by the participants operating within the filed agreements. The Commission may challenge an agreement in Federal District Court during the 45-day initial agreement filing period or any time after the effective date if we find evidence that service levels, freight rates, or charges by and among a group of ocean carriers or MTOs operating within an agreement are not reflective of the overall prevailing market conditions.

The FMC prioritizes all filed agreements on a *red-yellow-green* scale, with red signifying higher profile agreements. These agreements have the highest potential to cause or facilitate adverse market effects based on the agreement's authority in combination with underlying market conditions. On an ongoing basis, the FMC monitors key economic indicators and changes to underlying market conditions for all *red* agreements to detect any exercise of market power that could allow agreement members to raise and maintain freight rates above competitive levels. All global carrier alliances are categorized as *red* agreements. For these agreements, FMC staff conducts more detailed quarterly reviews, and periodically presents their findings and recommendations to the Commission.

The FMC conducts a four-tiered analytical approach. The first tier is an immediate review of advance notifications of cancelled alliance sailings or other changes in vessel capacity that affect the supply of vessels of any individual alliance service by more than five percent of average prior weekly vessel capacity. The second tier consists of a careful review of submitted minutes of the most senior agreement committees that make vessel deployment decisions to assess the medium- to long-term outlook for capacity levels and how that could impact freight rates. Under the third tier, changes in individual alliance members' vessel capacity, capacity projections, and how that relates to changes in freight rates are analyzed. The final tier consists of reviewing and analyzing confidentially filed carrier data submitted by the alliances for completeness and accuracy to determine if this data reveals any potential red flags.

The Commission also monitors trends in other carrier and marine terminal operator agreement filings. Further, the Commission monitors and analyzes commercial contracts confidentially filed in the FMC's SERVCON System between vessel-operating common carriers (VOCCs) and shippers for the transport of U.S. exports and imports. SERVCON is the Commission's repository for all filed service contracts, excluding exempt commodities, in the U.S. waterborne foreign commerce. Service contracts contain the rates, terms, and other service requirements agreed upon by VOCCs and shippers for the carriage of cargo. Commission staff conducts focused research and analysis on service contract terms and conditions, such as chassis usage/fees, demurrage terms/fees, etc., in order to investigate or clarify industry reports, gain effective insight into emerging industry issues, and appropriately inform policy decisions.

Review and analysis of confidentially filed commercial contracts between VOCCs and shippers provide a valuable tool to evaluate the competitive dynamics at play between shippers seeking to leverage cargo volumes in the pursuit of lower freight rates and/or special service terms and VOCCs competing to obtain that cargo. FMC staff also systematically monitor a sampling of service contracts for a number of beneficial cargo owners and non-vessel-operating common carrier (NVOCC) shippers on an ongoing basis to track overall competitive conditions in various trades. These reviews are designed to protect the shipping public from unfair and deceptive carrier practices by identifying and addressing potential concerted carrier activity under filed agreements found to have resulted in discriminatory practices involving rates or charges applied to any locality, port, or persons due to those persons' status as a shipper association or ocean transportation intermediary.

The Commission is aware of the ever-increasing pressure of industry consolidation and port congestion and its impact on U.S. exporters and their need for efficient ocean transportation in reaching foreign markets. The reporting requirements mandated by the Commission for the purposes of marketplace and agreement monitoring are not static. Just as container shipping business evolves and changes, so does the way in which we do oversight in order to ensure the integrity of the marketplace. Our Bureau of Trade Analysis continuously considers what is the best information to require of regulated entities to disclose to our staff and how often it must be provided to the agency. The Commission staff refines procedures and requirements to help us better monitor and interpret developments in the shipping industry.

The FMC continues its focus on monitoring agreements, service contracts, and tariffs in key trades as barometers of market cycles and shifts in the balance of supply and demand. The FMC will continue to expand and promote its compliance-focused program to monitor and audit ocean common carrier, NVOCC, and ocean freight forwarder operations. The Commission's Bureau of Enforcement, through the Commission's statutory and regulatory mandate, protects the shipping public and ensures industry adherence to U.S. shipping laws.

Ensuring Integrity

The FMC engages in a variety of activities to protect the public from financial harm, including licensing and registering of ocean transportation intermediaries (OTI, includes NVOCCs and ocean freight forwarders, OFFs); helping resolve disputes about the shipment of goods or the carriage of passengers; investigating and prosecuting unreasonable or unjust practices, and ruling on private party complaints alleging Shipping Act violations. These activities contribute to competitiveness, integrity, fairness, and efficiency of the Nation's import and export supply chains and ocean transportation system. In addition, the FMC ensures that passenger vessel operators maintain proper financial coverage to reimburse cruise passengers in the event their cruise is cancelled or to cover liability in the event of death or injury at sea.

All NVOCCs and OFFs located in the U.S. must be licensed by the Commission and must establish financial responsibility for the protection of the public. In FY 2018, licensed NVOCCs and OFFs had financial responsibility in the form of surety bonds on file with the FMC in excess of $443 million. NVOCCs doing business in the U.S.-foreign trades, but located outside the U.S. (foreign NVOCCs), may choose to become FMC-licensed, but are not required to do so. Foreign-based NVOCCs must register with the Commission and establish financial responsibility if not licensed under the FMC's program. Foreign NVOCCs (registered and licensed) had approximately $245 million in surety bonds on file with the FMC in FY 2018.

The Commission's renewal programs for foreign registered NVOCCs and FMC-licensed OTIs were instituted to better support Commission and shipping public decision making, by ensuring accurate and updated information. Since the programs began in FY 2016 and FY 2017 respectively, approximately 3,800 of the nearly 6,500 current foreign registered NVOCCs and FMC-licensed OTIs have completed the renewal process. The renewal procedure prepopulates the OTI's renewal form with information from the FMC's files providing a streamlined and user-friendly experience. The online renewal programs have improved the accuracy of foreign registered NVOCCs and OTI records and the timeliness of reporting material changes in ownership and operations - benefiting OTI sureties, ocean carriers, and the shipping public.

Removing Regulatory Burdens, Clarifying the Shipping Act, and Removing Obstacles in the Ocean Supply Chain

During last month's hearing on "The State of the American Maritime Industry," Chairman Wicker's opening remarks expressed his hope that witnesses would discuss "[t]he laws and regulations affecting the operation and competitiveness of industry." Please be assured that the Commission is systematically reviewing its regulatory requirements, interpretations of the Shipping Act, and processes for efficiency and effectiveness. A valuable and important role for the Commission is its ability to bring stakeholders together and facilitate workable solutions to problems.

Regulatory Reform Initiatives

The Commission established a Regulatory Reform Task Force in March 2017 with Managing Director Karen V. Gregory assigned as the Task Force leader. The group was charged with identifying burdensome, unnecessary, and outdated regulations and directives and recommending how they should be remedied. Since its establishment, the Task Force has undertaken a comprehensive examination of Commission rules and regulations, published notices and solicited the views of the public as part of the process, and released a strategy and time schedule for achieving those priorities.

Effective August 22, 2018, the Commission issued a final rule in Docket 17-10, *Amendments to Regulations Governing NVOCC Negotiated Rate Agreements and NVOCC Service Arrangements*, offering deregulatory flexibilities for Non-Vessel Operating Common Carrier Negotiated Rate Arrangements (NRAs) and NVOCC Service Arrangements (NSAs). The rule allows NRAs to be amended at any time, allows the inclusion of non-rate economic terms, and allows an NVOCC to provide for shipper's acceptance of the NRA by booking a shipment. NSAs also were made easier and more attractive to use by removing filing and essential terms requirements. A number of favorable public comments were received, applauding the Commission's action to revise its regulations affecting these commercial pricing tools used by NVOCCs which will provide welcome regulatory relief to the 6,500 small businesses in the OTI community.

41102(c) Interpretive Rule

Effective December 17, 2018, following full notice and public comment procedures, a new Commission interpretive rule clarified for the industry and shippers the FMC's jurisdictional and evidentiary requirements when alleging conduct that would violate the Shipping Act's prohibition on unjust or unreasonable practices under 46 U.S.C. 41102(c). Pursuant to this rule, a common carrier, OTI, or MTO must engage in a practice or regulation in a normal, customary, and continuous basis and such practice or regulation must be found to be unjust or unreasonable in order to constitute a violation of the Shipping Act. This interpretation restores the standard of what constitutes a violation under section 41102(c) of the Shipping Act to its traditional and proper definition under the Shipping Act of 1984, reflects longstanding Commission case law and related legal precedent, and reflects the clear intent of Congress.

Fact Finding 28

On March 5, 2018, the Federal Maritime Commission initiated Fact Finding Investigation No. 28, a non-adjudicatory investigation into the practices of vessel operating common carriers and MTOs relating to U.S. demurrage, detention, and per diem charges. Demurrage is the charge per container for the use of ground space at the marine terminal. Detention is the charge by the ocean carrier for use of the container equipment. Per Diem relates to assessorial charges beyond demurrage and detention. All charges are subject to a set number of free days.

The Commission designated Commissioner Rebecca F. Dye as the Fact-Finding Officer and directed her to develop a record through public or nonpublic sessions, and issue interim and final reports and recommendations. In April 2018, Commissioner Dye issued an Information Demand on ocean carriers and marine terminal operators that provided the informational foundation for her investigation. The second phase of her work consisted of field interviews that took place at the Ports of Los Angeles and Long Beach, the Port of Miami, and the Port of New York and New Jersey. As a part of that phase of her investigation, she also conducted interviews in Washington, D.C.

The Fact-Finding Officer conducted the investigation in two phases and issued an Interim Report on September 4, 2018, suggesting consideration of the benefits of: (a) standardized language; (b) clear, simplified, and accessible billing and dispute resolution practices; (c) guidance on evidence relevant to dispute resolution; and (d) consistent notice to cargo interests of container availability. The Interim Report also considered organization of Innovation Teams of industry leaders to meet on a limited, short-term basis to refine commercially viable demurrage and detention approaches. On December 3, 2018, the Fact-Finding Officer issued a Final Report. The Commission approved the Fact-Finding Officer's Final Report on December 7, 2018.

The work of Innovation Teams consisting of industry experts who are part of the ocean freight transportation system and global supply chains commences the next phase of Fact Finding 28. The Teams are meeting with Commissioner Dye at the Commission this week. The Innovation Teams will consider the four areas listed in the Fact Finding 28 Final Report identified as offering the best opportunities to refine commercially viable demurrage and detention approaches:

- Transparent and standardized language for detention and demurrage practices;
- Clear, simple, and accessible billing and dispute resolution processes for detention and demurrage charges;
- Evidence that would be relevant to resolving demurrage and detention billing disputes; and
- Consistent notice to cargo interests of container availability.

A report to the Commission reporting on the Innovation Teams, Commissioner Dye's findings, and any possible recommendations she may make, is scheduled to be filed by September 3, 2019.

Fiscal Year 2020 Budget Request

The FMC's Fiscal Year (FY) 2020 Budget Request is $28,000,000 to support 128 full-time equivalents (FTEs). This funding level builds on the Commission's FY 2019 budget request of $27,490,000 and reflects primarily necessary increases in operating costs and information technology modernization.

The FMC is a small agency with a technical, commercial, and competition focused mission requiring a specialized workforce. The great majority of our budget, $24,057,000, goes to Personnel ($20,638,000) and Rent ($3,419,000). All other costs associated with operating the agency such as interagency expenses, utilities, information technology, travel, supplies, equipment, miscellaneous purchases, and consulting services are funded from the remaining $3,943,000.

The FMC staff includes a high percentage of economists and attorneys – career fields that tend to command higher compensation in order to successfully recruit and retain qualified candidates. The agency must continue to invest in our workforce, particularly in attracting and retaining the economists and transportation analysts who perform the critical economic analysis and oversight of the marketplace. Overhead costs such as interagency services, commercial services, travel and transportation, supplies, and equipment account for most of the remaining budget dollars. We constantly work to find a balance between our resources and our workload, working to prioritize our mission-critical activity and reallocate resources to the extent possible.

Consistent with its past budgets, the Commission's FY 2020 Budget Request is fiscally responsible, carefully balancing workforce requirements to meet strategic performance goals, while developing and deploying necessary IT security capabilities and modernizing its IT services delivered to the American taxpayer. Workload and staffing needs are balanced and reconciled against supplemental contract support and information system development designed to manage FTEs and improve the quality and timeliness of FMC decision-making.

The FMC remains committed to continuous enhancement of its IT systems, which will make it faster and easier for individuals and businesses to find information and complete required filings with the FMC. The FMC's *Information Technology Strategic Plan FY 2018-2022*, identifies plans for efforts including: consolidation and upgrade of legacy applications and infrastructure with newer technologies; implementation of IT automation to streamline workflow processes and improve efficiency; and integrating security standards and frameworks to protect from cybersecurity risks, agency-owned/issued assets and commercially sensitive data collected from the shipping public.

When fully implemented by FY 2022, these investments will automate, streamline, and improve the Commission's internal business processes; expand research and analysis capabilities; provide better transparency and public access to information; and eliminate paper-based systems in favor of web-based, automated systems. The shipping public uses these web-based systems to file license applications, carrier and MTO agreements, and commercially-sensitive operational data which is analyzed and reported to the Commission by expert economists in their competition analyses.

Conclusion

I am proud of the contribution our agency makes toward ensuring competition and integrity for America's ocean supply chain. The Commission is grateful for the support of this Committee and its members. I look forward to working with each of you. I am happy to answer any questions you may have about the jurisdiction, work, or budget request of the Federal Maritime Commission. Thank you.