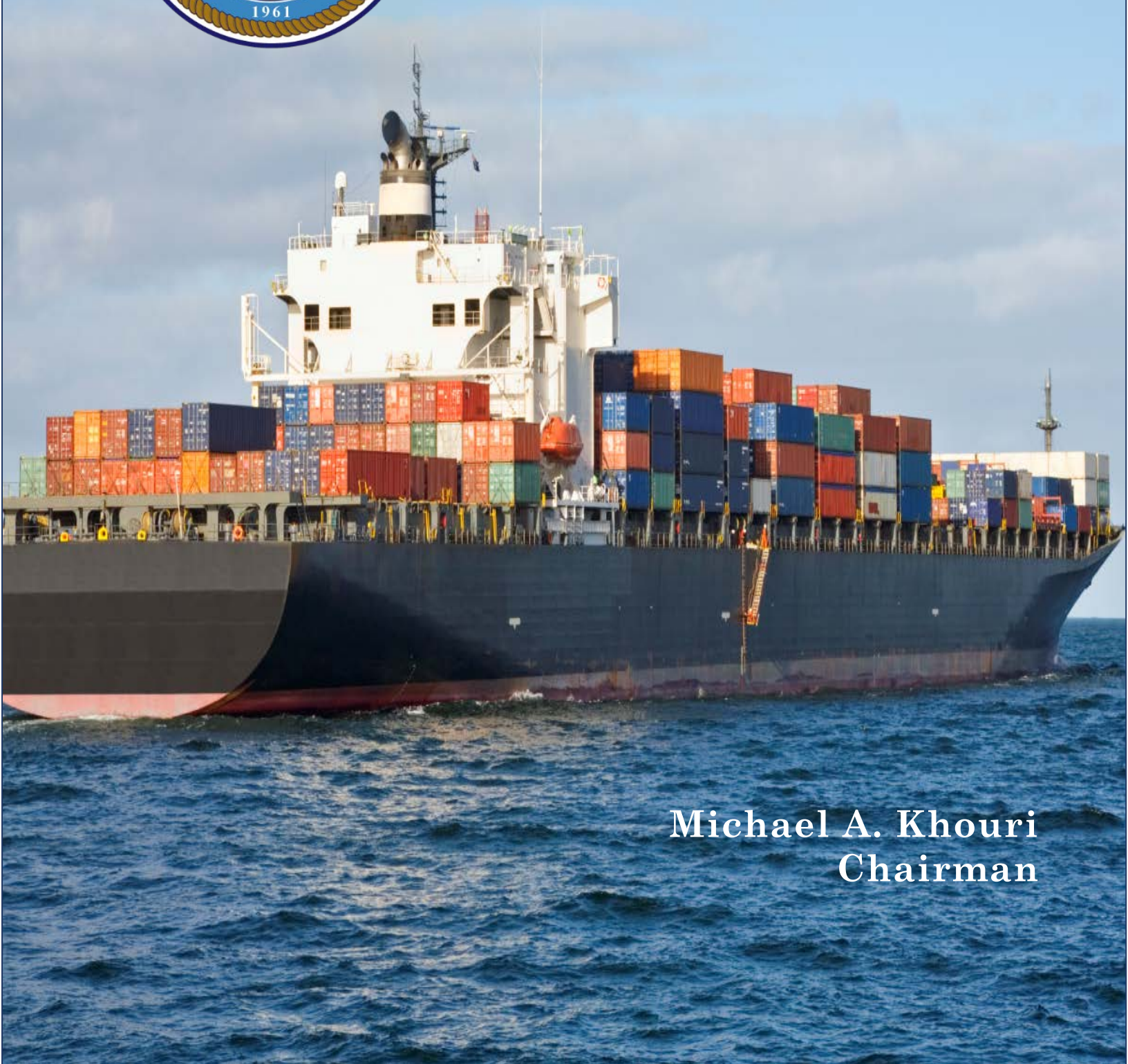


# Federal Maritime Commission



**Fiscal Year 2021  
Budget Justification**

**February 2020**



**Michael A. Khouri  
Chairman**

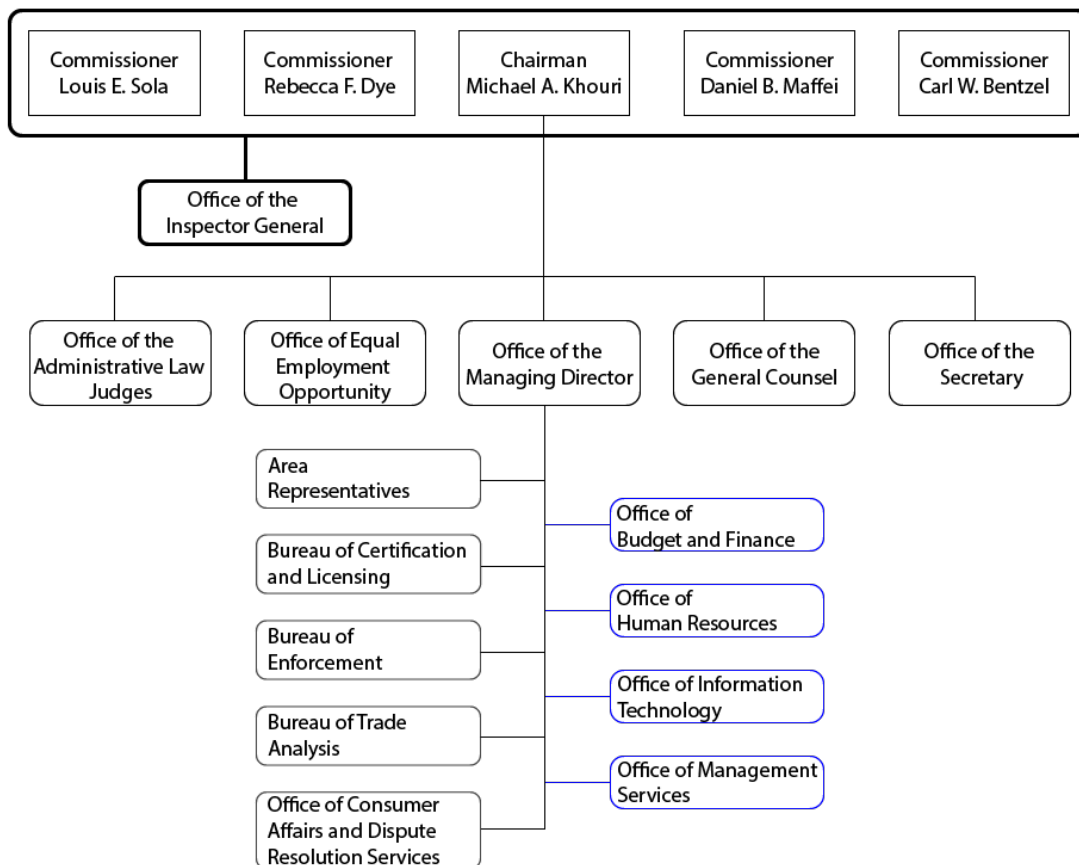
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## About the Federal Maritime Commission

The Federal Maritime Commission (FMC or Commission) is an independent agency that regulates the international ocean transportation supply system (both liner carriers and ocean transportation intermediaries). The FMC’s mission is ensuring a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unlawful, unfair, and deceptive ocean transportation practices. This system is vital to the Nation’s commerce.

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



\*This is the current organization chart for the Commission, depicting a Congressionally-authorized realignment of the Office of Consumer Affairs and Dispute Resolution Services under the Managing Director, approved April 27, 2018. Counterpart changes in 46 C.F.R. Part 501 are currently pending publication.

## Mission

**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.**

Fulfilling this mission involves achieving two primary goals:

1. Competition  
Maintain a competitive and reliable international ocean transportation supply system.
2. Integrity  
Protect the public from unlawful, unfair, and deceptive practices.

## Statutory Authority

The principal statutes administered by the Commission, codified at 46 U.S.C. §§ 40101-44106 and § 3503, are:

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

## Regulatory Functions

The FMC maintains a competitive and reliable ocean transportation supply system by:

- Reviewing and monitoring agreements among and between vessel-operating common carriers (VOCCs or carriers) and among and between marine terminal operators (MTOs) serving the U.S. foreign oceanborne trades to ensure they do not cause unreasonable increases in transportation costs or decreases in transportation services;
- Requiring reports and other information filed by MTOs and ocean transportation intermediaries (OTIs);
- Maintaining and reviewing confidentially-filed service contracts which provides a critical source of data and information on trends in carrier pricing and services;
- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce;
- Ensuring common carriers' tariff rates and charges are published in private, automated tariff systems and publicly available;



- Providing regulatory oversight of competition and remedies for violations of the Shipping Act's antitrust provisions;
- Monitoring rates, charges, and rules of government-owned or -controlled carriers to ensure they are just and reasonable; and
- Acting to address unfavorable conditions caused by foreign government or foreign business practices in U.S. foreign shipping trades.

The FMC protects the public from financial harm and contributes to the integrity and security of the Nation's import and export supply chains and ocean transportation system. The FMC's activities include:

- Licensing and registering non-vessel-operating common carriers (NVOCCs), and licensing U.S.-based freight forwarders, collectively OTIs;
- Administering and enforcing a surety bond program to ensure payment of judgments for damages by OTIs;
- Investigating and prosecuting violations of the Shipping Act and related statutes;
- Registering and annually verifying VOCC status of ocean common carriers operating in U.S. trades and the status of U.S.-based MTOs;
- Helping resolve disputes involving the shipment of goods or the carriage of passengers;
- Adjudicating private party complaints alleging Shipping Act violations; and
- Ensuring 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.



## Members of the Commission



Chairman Michael A. Khouri  
Appointed 2009  
Term Expires 2021



Commissioner Daniel B. Maffei  
Appointed 2016  
Term Expires 2022



Commissioner Rebecca F. Dye  
Appointed 2002  
Term Expires 2020



Commissioner Louis E. Sola  
Appointed 2019  
Term Expires 2023



Commissioner Carl Bentzel  
Appointed 2019  
Term Expires 2024

## Commission Bureaus and Offices

The FMC staff is comprised of economists, attorneys, and experts in ocean transportation. While most of the workforce is located at its Washington, D.C. headquarters, the Commission maintains a presence in six major port locations nationwide.

In addition to the Commissioners' offices, the staff of the FMC is organized into 10 bureaus and offices:

***Bureau of Certification and Licensing (BCL)*** protects the public from financial harm through its OTI licensing, registration, and surety bonding programs. BCL also protects the public by requiring Passenger Vessel Operators (PVOs) to maintain adequate financial coverage to reimburse cruise cancellations or to cover liability in the event of death or injury at sea.

***Bureau of Enforcement (BOE)*** is the prosecutorial arm of the Commission. Bureau attorneys serve as trial counsel in formal proceedings and protect the shipping public by working closely with the Commission's Area Representatives in investigations of potential violations of the Shipping Act and Commission regulations. BOE negotiates settlements and informal compromises of civil penalties and may act as investigative officers in formal fact-finding investigations.

***Bureau of Trade Analysis (BTA)*** analyzes and monitors the concerted activities of VOCCs and MTOs to detect and guard against possible anticompetitive abuse of authority contained in filed agreements under the Shipping Act which could result in substantial increases in transportation costs or decreases in transportation services; and to identify and address other prohibited activities. BTA also reviews and analyzes service contracts, monitors rates of foreign, government-owned controlled carriers; and reviews carrier-published tariff systems under the accessibility and accuracy standards of the Shipping Act.

***Office of the Administrative Law Judges (OALJ)*** resolves cases of alleged violations of the Shipping Act and other laws within the Commission's jurisdiction. Through trial hearings and the issuance of an initial decision, the OALJ ensures that the rights of all parties are preserved.

***Office of Consumer Affairs and Dispute Resolution Services (CADRS)*** provides assistance to shippers, OTIs, cruise operators and passengers, truckers, MTOs, and VOCCs by providing alternative dispute resolution (ADR) services, ombuds assistance, mediation, facilitation, and arbitration to resolve disputes involving cargo shipments, household goods shipments, and cruises.

***Office of Equal Employment Opportunity (OEEO)*** advises and assists the Commission in carrying out its responsibilities relative to Titles VI and VII of the Civil Rights Act of 1964 (as amended),

other laws, executive orders, and regulatory guidelines implementing affirmative employment, and the processing of EEO complaints.

**Office of the Inspector General (OIG)** is an independent and objective oversight office created within the FMC by the Inspector General Act of 1978 (as amended) to conduct and supervise audits, inspections, and investigations relating to the FMC's programs; detect and prevent waste, fraud, and abuse; promote economy, efficiency, and effectiveness; review existing and proposed legislation and regulations; keep the Chairman, Commissioners, and Congress fully informed of serious problems and deficiencies and recommend corrective actions; and, as appropriate, report violations of law to the U.S. Attorney General.

**Office of the General Counsel (OGC).** The General Counsel is the Commission's Chief Legal Officer. The OGC provides legal services to the Commission and staff as it fulfills responsibilities that include: preparing final decisions, orders, and regulations for Commission approval and issuance; representing the Commission in litigation before the courts; providing technical and policy assistance to other government agencies engaged in international negotiations or discussions on shipping matters; and providing legal opinions to the Commission, its staff, and the general public in appropriate instances. OGC also oversees the Commission's international affairs activities.

**Office of the Managing Director (OMD)** is responsible for implementing the administrative directives of the Chairman; the management and coordination of Commission program offices and bureaus; and overseeing the agency's Area Representatives located in six major port areas nationwide. It has direct oversight of the administrative offices of the Commission, which include the offices of Budget and Finance, Human Resources, Information Technology, and Management Services. The Managing Director is the Commission's Chief Financial and Operating Officer.

**Office of the Secretary (OS)** serves as the office through which all filings are made in Commission proceedings, notices of proceedings are given, and from which all official actions are issued by the Commission. The OS prepares and maintains agenda matters and actions taken by the Commission; maintains official files and records of formal proceedings; ensures compliance with the Freedom of Information, Government in the Sunshine, and Privacy Acts; responds to information requests from the public; issues publications and authenticates instruments and documents of the Commission; maintains a public reference/law library and a docket library; and oversees the organization and content of the Commission's website.



## Proposed Appropriation Language: Salaries and Expenses

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 307), including services as authorized by 5 U.S.C. § 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901 - 5902, ~~\$28,000,000~~ \$28,900,000: Provided, That not to exceed ~~\$2,000~~ \$5,000 shall be available for official reception and representation expenses. (Proposed text derived from: Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2020.)

## Fiscal Year 2021 Budget Request

The FMC's Fiscal Year (FY) 2021 Budget Request is \$28,900,000 to support 116 FTEs. This reflects a funding increase of \$900,000 above the net Non-Defense Discretionary total provided to the Commission for FY 2020.

International ocean shipping is vital to the Nation's commerce, moving more than \$1 trillion in U.S. exports and imports each year. The FMC's significant statutory mandate – 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 – is an undertaking accomplished by a relatively small number of talented and dedicated shipping industry experts with a very modest budget and workforce complement. Continuing a trend that has spanned the past decade, the international ocean transportation industry continues to adjust and react to challenging market conditions. Carriers and MTOs have been forced to find ways to cut costs and realize greater efficiencies, whether individually or through consolidation, mergers, or operational cooperation with their competitors under agreements filed with the FMC. These changes in carrier and MTO-concerted activity and market structure likewise require the FMC to quickly respond by timely and efficiently analyzing the competitive impact of proposed agreements in the VOCC and MTO industries to guard against possible anticompetitive abuse of the filed agreement authority; to avoid unreasonable increases in transportation costs or decreases in transportation services; and to address other activities prohibited by the Shipping Act.

The FMC ensures a competitive and reliable international ocean transportation supply system in part by balancing the cost-containment strategies and cooperative working arrangements among carriers or MTOs with the legitimate business needs of the Nation's many exporters/importers to ensure their goods reach international markets efficiently and reliably. As the industry continues to evolve and change, the FMC will continue its focus upon competition and integrity for America's ocean supply chain by:

- Analyzing and monitoring key U.S. trade lanes;
- Assessing the competitive effects of agreement parties' activities, particularly focusing on issues of costs (freight rates), vessel capacity (supply) and equipment availability upon the business community;

- Licensing our Nation's OTIs, registering foreign-based NVOCCs, and administering an effective surety bond program to ensure payment of judgments for damages by OTIs; and
- Monitoring changes taking place in the provision of chassis for the inland movement of containerized goods, and the competitive effects of changing carrier alliance structures, particularly as they may affect concerted procurement of carrier services in U.S. ports.

For many years, the appointed Commissioners and career staff of the FMC have honed a working agency budget consistent with its statutorily-mandated mission and the Administration's needs and objectives. The Commission's past budgets were targeted and fiscally responsible. Workload and staffing needs, stated in full-time equivalents (FTEs), were balanced and reconciled annually against supplemental contract support and information system development, intended to manage FTE growth and improve the quality and timeliness of FMC decision-making.

Over successive budget cycles, the FMC has prioritized IT development, inclusive of mission-critical IT contract support. The agency committed a dedicated funding stream to planned IT initiatives for both currently underway and projected initiative development. For the present, the FMC's continued investments in IT development will prove key in sustaining and improving future performance and quality of the IT network systems and programs essential to support the FMC's mission and operations. The Commission's Office of Information Technology (OIT) relies upon contractor-provided software engineer services to assist the Commission's IT staff in modernizing its infrastructure, server platforms, and mission-critical web applications, while providing on-site, hands-on training and knowledge transfer. Although prior years' IT expenditures have set the stage for implementing the FMC's application modernization plan, the FMC proposes to commit additional funding in FY 2021 with the objective of completing and successfully deploying our modernized FMC-18 enterprise application.

Without IT development to facilitate processing of agency workload and delivery of services to the shipping industry, critical staffing requirements will continue to increase commensurate with the volume of license applications filed, license renewals processed, carrier and MTO agreements requiring review and analysis, etc. These IT improvements are critical to restraining future personnel growth and permitting options for the FMC to reallocate existing personnel to the strategic program needs of the future, consistent with the Commission's 5-year plan responsive to OMB Memorandum M-17-22, *Reforming the Federal Government and Reducing the Federal Workforce*.

The FMC's budget request includes a specific budget allowance for awards to recognize high performing employees. The total projected FMC employee performance awards spending for FY 2020 and FY 2021 are \$265,000 and \$400,000, respectively. Requested FMC FY 2021 non-SES performance award spending for FY 2021 is approximately \$305,000, or 2.2 percent of estimated non-SES salaries. This is 1.0 percentage point higher than the FY 2020 non-SES performance award spending of approximately \$172,000, equivalent to 1.2 percent of non-SES salaries.

The FMC's FY 2021 Budget Request also includes an increase in the agency contributions for the Federal Employee Retirement System as described in OMB Circular A-11, Section 32.3. This increase has been incorporated under Personnel Benefits in Appendix C hereof, *Obligations by Object Code*.

The FMC's headquarters lease will expire on October 31, 2022. The FMC has employed contractor support to review its current use and develop future space requirements. This process was recommended to the FMC by other Federal agencies that recently went through the process of executing a new lease, relocating, and/or reconfiguring existing space or building-out new space. In conformance with best practices, the contractor will work alongside the FMC and the General Services Administration (GSA) to limit rental payments while procuring office space adequate and appropriate to meet the FMC's mission. Contractor support for lease, change and construction services will continue through FY 2021, and diminish thereafter, at such time as the FMC occupies new (or renewed) leased space.

Pursuant to OMB Memorandum M-19-21, *Transition to Electronic Records*, Federal agencies must transition all business processes and recordkeeping to a fully electronic environment by December 31, 2022. During FY 2019, the FMC initiated a contract solution to digitize approximately 1.6 million pages of paper into an indexed and fully searchable records management system, and to securely dispose of paper records following scanning. This project will span three years for completion.

Consistent with its past budgets, the FMC's FY 2021 Budget Request remains fiscally responsible, seeking carefully to balance workforce requirements to meet strategic performance goals, while continuing to develop and deploy the modernized IT applications expected of the Commission by American businesses and taxpayers. The FMC will continue in the future to pursue cost-reduction strategies across all budget accounts, including personnel, contracting, travel, and training.

### **FY 2021 Budget Request Explanatory Materials**

The Commission's budget allocations are organized by "program, project, or activity (PPA)." The FMC has two PPAs: (1) Operational and Administrative, and (2) Office of the Inspector General. This FY 2021 Budget Request includes several graphs and tables which explain the funding and FTE resources needed to meet the Commission's mission and statutory mandates:

- Appendices A and B** provide detailed funding and FTE requirements at the program level;
- Appendix C** categorizes the funding resources needed for FY 2019 through FY 2021 by object class;
- Appendix D** provides funding by program areas and the relationship of the Commission's obligations to outlays by fiscal year;
- Appendix E** provides an overview of the FMC's Strategic Goals, Objectives, and Performance Measures covering FY 2019-2022;
- Appendix F** provides the Commission's Workload Summary statistics;
- Appendix G** sets forth the IT Resources Statements for the Commission; and

**Appendix H** is the Certification of the Office of the Inspector General’s FY 2021 Budget Request.

## FMC Strategic Plan and the FY 2021 Budget Request

International ocean transportation continues to evolve rapidly. Container ships revolutionized ocean shipping sixty years ago, allowing for intermodalism, where a container’s cargo could be transported by ship and over land without being unloaded. Globalized international trade has significantly increased over the past several decades. The FMC has adapted to and evolved with the industry. From its creation over a hundred years ago, and in its current form since 1961, the FMC’s mission remains vital. While the specifics of U.S. maritime policy and legislation have changed markedly during the last few decades, the FMC’s goal of protecting American exporters, importers, and consumers remains the cornerstone of today’s regulatory efforts. Consequently, the Commission focuses on maintaining a competitive international ocean transportation system for U.S. exporters and importers and protecting the shipping public from financial harm.

The Commission’s FY 2018-2022 Strategic Plan provides the framework to address current and anticipated challenges in the ocean transportation industry. The Strategic Plan calibrates performance measures to ensure the Commission is meeting its statutory mission and the needs of a rapidly-changing ocean shipping industry. The FMC’s Strategic Plan is a living document, flexible and adaptable, as the shipping industry and the challenges facing the industry continue to evolve, while providing clear and measurable targets that will drive continuous improvement in the FMC’s performance. The Commission’s next cycle of strategic planning will be underway in FY 2021.

The Commission’s FY 2018-2022 Strategic Plan contains two strategic goals. The first goal – *maintain a competitive and reliable international ocean transportation supply system* – encompasses the critical tasks of reviewing and monitoring carrier and MTO agreements, and monitoring foreign shipping practices. The second goal – *protect the public from unlawful, unfair, and deceptive practices* – encompasses a broader mandate to protect the shipping public. The following graphic displays the FMC’s resource utilization by strategic goal.

In addition to the FMC’s Strategic Goals, the Commission’s budget request supports the President’s vision of reform through accountability, excellent customer service, and fiscal stewardship. By contributing to government-wide initiatives that increase efficiencies, improve customer service, and support transparency, the FMC will make a positive difference in the lives of the American people and the economy. The FMC’s mission supports the President’s commitment to economic growth and job creation.

FMC action items to support the President’s Management Agenda, addressed on pages 25-32 identify the FMC’s ongoing commitment to fiscal stewardship by continually looking to improve its operational infrastructure, as well as the availability of informational resources for the benefit of the public and industry stakeholders.





## FMC Activities and Performance Highlights

This section provides an overview of the programs and work of the FMC that this budget request supports. The FMC's two strategic goals guide the Commission's planning and performance. By measuring performance and meeting its strategic goals, the Commission remains an efficient and effective steward of taxpayer funds.

Additional information on the work of the Commission and its accomplishments can be found in the FMC's Annual Reports and Performance and Accountability Reports (PAR), published at [www.fmc.gov](http://www.fmc.gov). The PAR outlines the efficacy of the FMC's programs and ensures that strategic goals are tied to objectives and performance measures that capture actions and results.

### **Strategic Goal 1: Maintain a competitive and reliable international ocean transportation supply system**

***Objective: Ensure that actions under filed agreements do not result in unreasonable increases in transportation costs and/or unreasonable decreases in transportation services***

The Commission works to ensure that America's international ocean transportation supply system provides the public with competitive and reliable movements of goods by monitoring, analyzing, and evaluating the competitive impact of the shipping industries' practices, detecting and addressing as necessary, any unreasonable increases in transportation costs and/or unreasonable decreases in transportation services.

The Commission has statutory authorities and regulations to accomplish this goal, including the authority to require the filing of written agreements with the Commission that memorialize agreements or cooperation among carriers and/or MTOs. The Commission analyzes these agreements when they are initially filed and on an ongoing basis thereafter to determine the

competitive impact on the industry. The Commission's regulations require VOCCs to file their service contracts with the Commission, which provides a critical source of data and information on existing or emerging trends in carrier pricing and service behavior. The Commission classifies and monitors controlled carriers subject to Section 9 of the Shipping Act. Common carriers owned or controlled by foreign governments are required to adhere to certain requirements under the Shipping Act, and their rates are subject to Commission review.

VOCC and MTOs file agreements with the Commission, which ensures that the parties' activities comply with U.S. shipping statutes and regulations. In carrying out this responsibility, the FMC reviews agreement monitoring reports, including commercially-sensitive data; prepares economic analyses; and researches and produces studies and profiles on agreements, carrier organizations, MTOs, and market conditions in key U.S. liner trades. The Commission identifies and researches economic or commercial issues that may distort competition in, or impair access to, U.S. liner markets and remains informed about developments in international trade and the global economy.

The FMC monitors international ocean shipping rates. Historically, tariffs that specify the rate charged for a commodity and the destination were filed with the Commission – first in paper tariffs, then in a fixed electronic format – to memorialize the applicable rate and combat unjust discrimination among shippers. Through a series of deregulatory efforts, and with the growth of technology, tariffs are no longer filed with the Commission, but instead are published electronically and available to the shipping public through the Internet. The Commission has authorized additional flexibilities for the industry to memorialize applicable rates in formats commonly used in the industry. A regularly utilized format is the service contract, in which a shipper makes a commitment to provide a certain volume or portion of cargo over a fixed period, and an ocean common carrier commits to a specified rate and a defined service level. These confidential contracts are filed with the Commission in the automated SERVCON system. Commission rules permit NVOCCs to enter into NVOCC service arrangements (NSAs) with their shipper customers, a non-tariff alternative similar to service contracts between VOCCs and shippers. In addition, the FMC maintains an up-to-date electronic listing of ocean carrier tariff locations on its website used by the public to identify ocean carriers' publicly available rules and rates for transportation of cargo.

## FY 2019 Accomplishments

### *Ocean Carrier Agreements*

As the basis for its analytic work, the FMC receives, reviews, and monitors minutes of agreement meetings and regular informational reports, confidentially filed by parties, to potentially anticompetitive agreements, such as those that discuss freight rates, service contract guidelines, cargo or revenue pooling, and/or the rationalization of vessel capacity. In FY 2019, the Commission received 170 agreement filings, including amendments to existing agreements, and terminations of existing agreements. The FMC reviewed, evaluated, and processed 186 filings

during the fiscal year, including those pending at the end of the prior fiscal year. (See Appendix F for these and other workload statistics.)

Carrier agreement-related activities in FY 2019 included:

- completing a review and economic analysis of the *MED/USEC Vessel Sharing Agreement*, FMC No. 201271, between several members of THE Alliance and OCEAN Alliance to coordinate their operations between the western Mediterranean and the U.S. Atlantic Coast;
- completing a review and economic analysis of the *Australia New Zealand South Pacific Islands Agreement*, FMC No. 201295, to allow carriers to cooperatively operate service strings between American Samoa, on the one hand, and Australia and New Zealand, on the other hand;
- completing a review and economic analysis of the *Digital Container Shipping Association Agreement*, FMC No. 201288, to allow carriers to discuss and develop uniform standards for information technology used in the movement of containers or ancillary services;
- preparing an economic analysis of the potential competitive impacts of joint purchasing agreements by global ocean carrier alliances;
- conducting semi-annual meetings with ocean carrier representatives of the three major alliance agreements to monitor the agreement parties' planned service changes and activities, and preparing a memorandum to the Commission on the relevant details discussed at each meeting;
- continuing development of a Quality Management System for the monitoring of filed agreements involving the ongoing review, analysis and monitoring of operational and revenue data and information submitted by parties to ocean carrier and MTO agreements; timely review and summary of agreement parties' discussions and activities reported in minutes of agreement meetings; preparing quarterly reports on the data and information submitted by the parties to assess the competitive impact of the agreement in accordance with the standards of the Shipping Act; and statistical tests of changes to prices and independence of pricing among carriers; and
- briefing Congressional staff concerning FMC competitive analysis process and monitoring of carrier alliances

### ***Marine Terminal Operator Agreements***

The Commission oversees 80 marine terminal agreements across 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 cooperate in their daily terminal operations and related practices. For example, during FY 2019, the Commission reviewed MTO agreements that included:

- a review and economic analysis of the West Coast MTO Agreement (WCMTOA), FMC No. 201143, responses to the Commission's Request For Additional Information to replace the

PierPASS extended gates program with a truck appointment system and a flat fee at marine terminals at the Ports of Los Angeles and Long Beach;

- a review and economic analysis of the *Puerto Nuevo Terminals LLC Agreement*, FMC No. 201292, to authorize a joint venture among terminals in San Juan, Puerto Rico; and
- a review and economic analysis of an amendment to the South Atlantic Chassis Pool Agreement, FMC No. 011980-002, updating its membership and clarifying membership language.

Commission staff and legal counsel review of agreement filings and discussions with filing counsel surrounding potential issues often result in negotiated revisions to agreements that resolve issues without formal Commission action. In FY 2019, the review and economic analysis of the Georgia-South Carolina Marine Terminal Operator Cooperative Working Agreement, FMC No. 201293 resulted in the withdrawal of the agreement. Further, the updates made to the Southern States Chassis Pool (SSCP) Agreement, FMC No. 201262, were alternatives to potentially implementing a single provider in that agreement.

A comprehensive audit of all MTO agreements on file with the Commission was also completed during fiscal year 2019. The audit eliminated obsolete and inactive agreements from the FMC's publicly available online agreements library and now contains all current MTO agreements which receive antitrust immunity. Additionally, all MTO agreements may now be filed and amended using the online eAgreements system, which eliminated the administrative burden associated with paper agreement filings.

As part of the Commission's MTO agreements audit, entities no longer providing MTO services to ocean common carriers were removed from the Commission's website and are deemed to operate outside the FMC's substantive jurisdiction. In addition, for those MTOs that elect to make their MTO schedules publicly available, staff verified the internet location where those schedules are published and updated the FMC website accordingly to provide more current information to the public.

#### ***Recent Statutory Changes to Agreement Activities and Commission Analysis***

On December 4, 2018, the "Frank LoBiondo Coast Guard Authorization Act of 2018" (LoBiondo Act) was enacted as Public Law No. 115-282. Among other changes, the LoBiondo Act placed restrictions on cooperation between or among ocean carriers and marine terminal operators (MTOs), including removing antitrust immunity for certain activities, prohibiting certain joint procurement activities, restricting overlapping agreement participation, and modifying the legal standard for enjoining agreements to jointly procure certain covered services, including: the berthing or bunkering of a vessel; the loading or unloading of cargo to/from a vessel, or to/from a point on a wharf or terminal; the positioning, removal, or replacement of buoys related to the movement of the vessel; or towing vessel services provided to a vessel.

Section 703 of the LoBiondo Act also requires that the Commission annually provide to Congress: (1) an analysis of the competitive impact of ocean carrier alliance joint purchases of the covered



services mentioned above; and (2) a summary of actions, including corrective actions, taken by the Commission to promote competition.

The Commission may issue a request for additional information on an agreement, and/or negotiate a language change with filing parties to alleviate reduction in competition concerns. Agreements with potential competition issues may ultimately be withdrawn by filing counsel after negotiations with the Commission. Additionally, the LoBiondo Act permits the Commission to seek an injunction if it determines that an agreement is likely, “to substantially lessen competition in the purchasing of certain covered services.” 46 U.S.C. § 41307(b)(1). This new legal standard may be applied to existing agreements as well as any agreements filed in the future.

To determine the extent to which existing agreements contain language that could potentially represent a reduction in competition in the purchasing of certain covered services, the Commission reviews all filed ocean carrier agreements. If an agreement is viewed as potentially authorizing the joint negotiation or purchase of covered services by two or more VOCCs, the Commission contacts filing counsel for that agreement. The Commission analyzes agreements reached under the authority and contacts filing counsel for agreements to ensure agreements are properly filed, and to terminate any agreements no longer in use.

With respect to vessels operated by an ocean common carrier in the United States, the LoBiondo amendments to the Shipping Act stipulate that no group of two or more common carriers may negotiate for the purchase of certain covered services unless the negotiations and any resulting agreements are not in violation of the U.S. antitrust laws (46 U.S.C. § 41105(6)). The U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC) (collectively, the Agencies) jointly have issued guidance on the appropriate safeguards that should be implemented when market participants engage in joint purchasing.

When structured properly so as to produce efficiency-enhancing or pro-competitive outcomes, joint purchasing activities (i.e., agreements among buyers) are lawful under U.S. antitrust laws, but arrangements that aim to simply fix the price that each group member will pay for the services rendered are not legitimate under the antitrust laws. Additionally, an arrangement could run afoul of the antitrust laws if it includes other features that unduly restrict or distort competition. Other principles in the guidelines stress that group buying activity should not be used as a vehicle for exchanging commercially sensitive information between or among competitors, and that members should be free to make purchases outside the joint purchasing arrangement. The FMC monitors jointly negotiated terminal and stevedoring services agreements to ensure conformity with the DOJ/FTC guidelines for joint purchasing arrangements.

The LoBiondo Act also mandated that the Comptroller General of the United States conduct a study that examines the aftermath of a major ocean carrier bankruptcy and its impact through the supply chain. The study is to consider any financial mechanisms that could be used to mitigate the impact of any future bankruptcy events on the supply chain. Throughout the year, the Commission participated in the U.S. Government Accountability Office (GAO)’s effort, meeting

with GAO representatives, advising on Commission's statutory mandate, processes, and relevant industry information.

### *Service Contracts and Tariffs*

Under service contracts, shippers make a commitment to provide a certain volume or portion of cargo over a fixed period of time, and carriers commit to a specified rate and a defined service level. These confidential contracts are filed with the Commission in its automated SERVCON system. Commission rules also permit NVOCCs to enter into NVOCC service arrangements (NSAs) with their shipper customers, which are similar to service contracts between VOCCs and shippers. While NSAs were filed in SERVCON for years, pursuant to the Commission's rulemaking in Docket 17-10, effective August 22, 2018, NVOCCs are no longer required to file original NSAs and amendments into SERVCON. The corresponding NSA Essential Terms publication requirements were also eliminated in the rulemaking.

The Commission continues to process and monitor service contracts and amendments. During FY 2019, there were 47,214 service contracts and 752,090 contract amendments filed into the SERVCON system by 87 VOCCs. The Commission received, processed, and reviewed 1,145 Form FMC-1 filings, making the locations of those tariffs available to the public through the FMC website. At the end of the fiscal year, the Commission had posted 5,867 active/current tariff locations to the agency's website. (See Appendix F for these and other workload statistics.)

The rulemaking in Docket 17-10 expanded commercial flexibilities for NVOCC rate arrangements (NRAs) and eased the regulatory burden associated with NSAs. The Commission regularly provides guidance to NVOCCs seeking to expand NRA offerings to their shippers or to introduce NRAs as a pricing option to their customers. NVOCCs are advised of the regulatory relief for NSA requirements and the Commission conducts outreach efforts to facilitate the industry's ability to take advantage of the NRA and NSA regulatory changes.

The Commission anticipates that its workload through 2020 and 2021 will remain relatively steady. The potential decrease in the filing of amendments to service contracts due to the Commission's rulemaking allowing carriers up to 30 days in which to file service contract amendments is being monitored.

The workload is also impacted by the continual entry and exit of OTIs from the market, which requires ongoing monitoring to ensure that an accurate listing of tariff publication locations on the Commission's website is maintained and also to ensure that published tariffs meet the Commission's regulatory requirements. In addition, there are substantial responsibilities associated with monitoring VOCC tariffs for compliance and verification that VOCCs continue to operate as common carriers in the U.S. waterborne foreign commerce.

### *International Affairs*

The Commission's international affairs program monitors foreign shipping laws and practices that may have an adverse effect on the industry and makes recommendations to the Commission for

investigating and addressing such practices. The Commission has the authority to address restrictive foreign shipping practices under section 19 of the Merchant Marine Act of 1920 and the Foreign Shipping Practices Act (FSPA). Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in the foreign trade and that do not exist for foreign carriers in the United States.

In FY 2019, the Commission informally pursued several matters that involved potentially restrictive foreign practices including new legislation, new interpretations of existing legislation, and potential regulations concerning surcharges. The Commission continued to monitor and participate, both formally and informally, in international agreement negotiations that could affect foreign-borne cargo shipments to the United States. In addition, the Commission tracked consumer inquiries regarding possible foreign restrictive shipping practices.

The Commission continued its international outreach efforts by attending and coordinating events with foreign embassies and counterparts. In FY 2019, the Commission, in conjunction with other Federal agencies, participated in bilateral international negotiations and discussions on shipping matters. In October 2018, the Commission participated in the Global Maritime Forum Annual Summit in Hong Kong. In addition to participating in the Summit, which brought together various industry stakeholders and regulators from around the world, Commission representatives met with representatives from the Hong Kong Competition Commission and the Transport and Housing Bureau. In late October 2018, the Commission attended a Dialogue Meeting between the Consultative Shipping Group, a group of 18 countries in Europe, Asia, and North America that monitor shipping policies internationally, and the U.S. shipping industry. In November 2018, the Commission participated in the U.S.-Republic of Korea Maritime Bilateral Meeting, which took place at the Maritime Administration and included representatives from the Maritime Administration, the U.S. Coast Guard, and the Department of State, to discuss matters pertaining to the state of the industry at large. In July 2019, the Commission hosted the 4<sup>th</sup> Global Regulatory Summit, which included representatives of the European Union and the People's Republic of China, to discuss the competitive landscape of the ocean shipping industry as well as recent international regulatory developments.

## **Strategic Goal 2: Protect the public from unlawful, unfair, and deceptive practices**

### ***Objective 1: Identify and take action to end unlawful, unfair, and deceptive practices***

The Commission effectively uses both its enforcement and compliance programs to identify and act to end unlawful, unfair, and deceptive practices. Major investigations during FY 2019 continued to address ongoing practices of certain OTIs operating in the volatile China-U.S. inbound trades, as well as VOCCs seeking to operate pursuant to agreements that were not filed with the Commission. Enforcement-based initiatives will continue to address VOCCs and NVOCCs that engage in unfair service contracting practices, particularly those practices which permit unlicensed OTIs to compete unlawfully with carriers and OTIs operating in compliance with U.S. laws. The

FMC will pursue enforcement actions against those who pursue market-distorting, fraudulent, or anticompetitive practices harmful to the industry and the public.

### FY 2019 Accomplishments

#### *Fact Finding Investigation*

In March 2018, the FMC initiated Fact Finding 28 to investigate port demurrage, detention, and free time practices. Specifically, reports about uncertainty stemming from differing practices between MTOs and VOCCs on the collection of charges from shippers, consignees, drayage providers, or carriers led to questions about whether current practices allow for a competitive and reliable American freight delivery system. Commissioner Rebecca F. Dye was appointed as the Fact Finding Officer.

Commissioner Dye's December 2018 Report on findings recommended in part that the Commission organize FMC Innovation Teams composed of industry leaders who will meet on a limited, short-term basis to refine commercially viable demurrage and detention approaches. In the spring of 2019, FMC Innovation Teams met and worked on demurrage and detention practices. In May 2019, Commissioner Dye testified at the U.S. Surface Transportation Board oversight hearing on demurrage and accessorial charges, speaking about the Commission's innovation team approach to develop commercial solutions to freight delivery system operational problems. On August 27, 2019, Commissioner Dye submitted three proposals to address detention and demurrage charge issues developed through the Fact Finding: (1) the agency should publish an interpretive rule that clarifies how the Commission will assess the reasonableness of detention and demurrage practices; (2) the FMC should establish a Shipper Advisory Board; and (3) continue FMC support for the Supply Chain Innovation Team working to address chassis availability issues in Memphis, TN. In September 2019, the Commission approved the Fact Finding recommendations and issued a proposed interpretive rule on detention and demurrage. The rulemaking is currently ongoing.

#### *Enforcement Actions*

The Commission completed a significant informal enforcement action involving four VOCCs in the American Samoa trades with Australia and New Zealand pursuant to agreements that were neither filed nor effective as required by the Shipping Act. The efforts resulted in a compromise agreement with the four VOCCs, including a payment of \$350,000 and in the filing of an agreement with the Commission that complies with the Shipping Act.

During the fiscal year, 24 investigative matters were referred for enforcement action or informal compromise; 32 were compromised and settled or administratively closed. The Commission completed notable compromise agreements with several major NVOCCs serving the inbound Far East-U.S. trades, addressing a variety of service contracting malpractices. (See Appendix F for these and other workload statistics.)



### ***Compliance Program***

In FY 2019, the compliance and audit program continued as a major focus in reviewing the operations of licensed OTIs to assist them in complying with statutory and regulatory requirements, as well as reviewing entities holding out as VOCCs to determine existence of actual vessel operations. During FY 2019, 121 audits were commenced and 113 were completed. (See Appendix F for these and other workload statistics.)

### ***Cross-Agency Cooperation***

The FMC is active in security initiatives as they relate to U.S. ocean commerce, and coordinates the use of available database systems with agencies engaged in homeland security to improve identification of entities providing and utilizing maritime transportation services. To facilitate these activities, the FMC executed a Memorandum of Understanding (MOU) with the U.S. Customs and Border Protection (CBP) to provide a more efficient utilization of existing systems and services, such as CBP's Automated Commercial Environment (ACE). The FMC also has an active Inter-Agency Agreement (IAA) with the Census Bureau at the U.S. Department of Commerce for access to the Census' Automated Export System (AES) database. A new MOU with the U.S. Coast Guard was executed in 2020. These relationships allow the FMC to access confidential U.S. export shipment data to accomplish its mission and to protect the Nation's security interests. The Commission also supports the Nation's economic and security interests by partnering with the National Intellectual Property Rights Coordination Center (IPR Center), a U.S. Department of Homeland Security-led partnership of 25 federal and international agencies targeting intellectual property- and trade-related crimes. This partnership has resulted in coordinated enforcement efforts to address international criminal activity.

### ***Objective 2: Prevent public harm through licensing and financial responsibility requirements***

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

## **FY 2019 Accomplishments**

### ***Licensing***

Over 6,600 OTIs are regulated by the Commission, consisting of approximately 4,900 licensed entities and more than 1,700 foreign-based registered NVOCCs. (See Appendix F for these and other workload statistics.) During FY 2019, the Commission continued to streamline its OTI licensing process, resulting in a reduction in the time to process applications and render a decision, supporting the Commission's goal of completing 75 percent of all OTI license applications within 60 days. The Commission exceeded its 75 percent target, completing 90 percent of all OTI license applications within 60 days for the second year in a row. More than 600 new and amended OTI applications were received during the fiscal year, and of those, approximately 75 percent were

accepted and processed for formal determination of approval. The remaining 25 percent were returned to the applicant due to lack of completeness or lack of appropriate qualifications. All licensed and registered OTIs must maintain proof of financial responsibility with the Commission. At present, this amounts to approximately \$700 million in surety bonds to protect the shipping public.

The FMC's triennial renewal program for OTIs licensed with the Commission provides a user-friendly, online renewal process for OTIs to review and update their essential information on file with the Commission within minutes. In FY 2019, approximately 1,800 OTI licenses were renewed, with most reviewed and processed within 48 hours of submission.

### ***Passenger Vessels***

The FMC also oversees a program to ensure financial responsibility for passenger vessels that have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The requirement for Certificates of Performance, which provide financial responsibility for the indemnification of passengers for non-performance of transportation, prevents unscrupulous or financially vulnerable operators from serving U.S. ports. The Passenger Vessel Operator (PVO) program includes 244 vessels and 51 passenger vessel operators, with aggregate evidence of financial responsibility coverage of \$684 million for non-performance and \$771 million for casualty. PVO Certificates of Performance for passenger vessels are reissued every five years, with 19 reissued during FY 2019. Through its website and the CADRS office, the FMC offers information and guidance to the cruising public on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages.

### ***Modernization of Licensing Processes***

The Commission continues to streamline its licensing processes. In May 2019, the Commission voted to update its OTI rules to clarify who is eligible to be a Qualified Individual when partnerships are involved; require NVOCCs to file a Form FMC-1 at the Commission before being issued a license; and to clarify renewal processes and timelines to allow the Commission to evenly distribute the number of licenses renewed each month, assuring efficient and timely responsiveness to industry.

In FY 2020, the Commission will consider additional regulatory reforms related to PVO monitoring procedures. Further, the Commission will continue to leverage its existing data collection of surety bond usage to measure how effectively bonds are protecting the industry and the public.

### ***Objective 3: Enhance public awareness of agency resources, remedies, and regulatory requirements through education and outreach***

The Commission provides information in many forms to educate regulated entities, stakeholders, and the public about its resources, remedies, and regulatory requirements. The Commission's website offers brochures, how-to guides, forms and applications, reference libraries, news releases, information on investigations, and advice on topics such as FMC regulations, OTI

licensing, household goods moves, and use of alternative dispute resolution (ADR) services to assist parties with resolving cruise- and cargo-related disputes. Staff from the various operating bureaus and offices participate in presentations and instructional opportunities to educate consumers, regulated entities, various shipper and industry trade associations, as well as academic institutions regarding regulations, shipping trends, and the effective use of available FMC resources to resolve formal proceedings, cruise and cargo-related disputes, service contract matters, and other commercial shipping disputes.

### **FY 2019 Accomplishments**

In FY 2019, the Commission completed a redesign of its public-facing website, [www.fmc.gov](http://www.fmc.gov). The newly designed website significantly improves public access to Commission resources and key content. All content was migrated to a mobile responsive platform to meet new government-wide website requirements and to make materials easier to locate. The Commission's IT plan will increase availability of public documents, including the docket library, historical document repository, and minutes of Commission actions under the Sunshine Act, on the FMC's website. In addition, the Commission continues to enhance its technological capabilities to caption and live stream the agency's public meetings under the Sunshine Act over the world wide web.

#### ***Objective 4: Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication***

The FMC offers informal dispute resolution, and adjudicates claims of unlawful practices by carriers, MTOs, and OTIs. The Commission's Area Representatives and CADRS educate industry members and the public on the Shipping Act and shipping regulations, and help to address international ocean transportation disputes.

#### ***Alternative Dispute Resolution***

The FMC, through CADRS, offers both facilitation and arbitration services to the industry and shipping public to resolve disputes. An online mediation tutorial and tool was created for parties to use to prepare for mediation. The Commission supports mediation and collaborative dispute resolution when feasible, and requires parties involved in formal Commission docketed proceedings to attend mandatory mediation conferences.

### **FY 2019 Accomplishments**

During the fiscal year, the Commission assisted with informal (ombuds) international ocean shipping dispute resolution settlements including:

- Staff assisted parties resolve a dispute in which an importer relied on a carrier's information regarding the last free day at a marine terminal; the carrier agreed to refund over \$25,000 in demurrage charges.
- In a formal docket before the Commission with multiple respondents, staff provided mediation and all parties reached settlements. The matter was discontinued.

- Staff assisted with a number of requests from the offices of U.S. Senators and Members of the House of Representatives on behalf of their constituents relating to shipping and passenger disputes.
- Through staff efforts, parties succeeded in locating and releasing one container in a 7-container import shipment lost in transit from Turkey to Baltimore via Long Beach.
- In a dispute between a licensed OTI and a carrier regarding demurrage on an export shipment, staff assisted the parties in reaching a compromise, refunding half of the demurrage the OTI had paid.
- In a dispute between foreign OTIs that caused a cargo hold at destination, staff achieved an agreement by which the carrier mitigated damages to the shipper and discounted the accrued demurrage charges; the shipper and OTIs ultimately agreed to share the payment of the reduced charges, and the shipment was released.
- An importer who bought paper products from a manufacturer in China under Cost, Insurance and Freight (CIF) terms sought Commission assistance. Upon receipt of the arrival notice, the importer was advised that it had to pay additional charges before the shipment would be released. Staff contacted the destination agent regarding these concerns and was advised shortly thereafter that the disputed charges (over \$3,500) had been waived, and the cargo was released.
- In a dispute between an OTI and a carrier, the OTI alleged that the carrier had unfairly charged for demurrage on an import shipment. Staff contacted the carrier, who reported that it would waive the charges (over \$7,400).

### ***Proceedings before the FMC***

The Commission's Administrative Law Judges (ALJs) operate independently under the Administrative Procedure Act, 5 U.S.C. Subchapter II, to resolve cases involving alleged violations of the Shipping Act and other laws within the Commission's jurisdiction. Cases may be initiated either by private parties or by the Commission (represented by the Bureau of Enforcement) to seek civil penalties for statutory violations. Small claims complaints, valued at up to \$50,000, may be assigned to a Small Claims Officer for resolution.

### **FY 2019 Accomplishments**

#### ***Representative Adjudications and Litigation***

In FY 2019, the Commission heard international shipping disputes filed by complainants and enforced the Shipping Act and its regulations through adjudication before the Commission. In FY 2019, the Commission, including its ALJs and legal staff, issued numerous legal opinions, recommendations, case summaries, decisions, and final orders.



*Commission Decisions*

The following cases are representative of those considered by the Commission in FY 2019:

- **In re: Vehicle Carrier Services [Docket Nos. 16-01, 16-07, 16-10, 16-11]**

Complainants in these four consolidated cases alleged that Respondents violated multiple provisions of the Shipping Act for nearly two decades by secretly agreeing and conspiring to fix, raise, and stabilize prices and allocate customers and market share in the roll on/roll off (RoRo) shipping trade. Complainants shipped or purchased new assembled cars and trucks transported on Respondents' RoRo ships and alleged that Respondents' illegally-inflated charges were passed along to them, either directly as freight charges or indirectly in the purchase prices of vehicles. Complainants sued on their own behalf and on behalf of similarly-situated members of a class. The ALJ dismissed Complainants' claims as time-barred, and for lack of standing, and also provisionally ruled that the Commission does not have authority to adjudicate class actions. On October 21, 2019, the Commission affirmed the Initial Decision's dismissal of the Docket No. 16-07, Docket No. 16-10, and Docket No. 16-11 complaints with prejudice for lack of standing under the direct purchaser rule; affirmed the Initial Decision's dismissal of the complaint as to reparations in Docket No. 16-01 as untimely; reversed the Initial Decision insofar as it allowed the Docket No. 16-01 complainants to pursue cease-and-desist relief, and dismissed those complaints in their entirety with prejudice.

- **Port Elizabeth Terminal & Warehouse Corp. v. Port Authority of New York & New Jersey [Docket No. 17-07]**

Complainant alleged that Respondent violated numerous sections of the Shipping Act in connection with certain leasing decisions and negotiations at Port Newark. Specifically, Complainant alleged that Respondent decided to lease property occupied by Complainant to another tenant, while at the same time declining to lease additional property to Complainant. Complainant claimed that in so doing, Respondent violated 46 U.S.C. §§ 41102(c), 41106(2), and 41106(3). On January 12, 2018, Respondent moved to partially dismiss the complaint. The ALJ granted the motion and dismissed two of Complainants' claims on the merits. The ALJ also found that Complainant was barred from seeking reparations for the surviving claims. Subsequently, the ALJ dismissed the surviving claims on the merits. On November 20, 2019, the Port Authority filed an unopposed motion requesting dismissal of this case with prejudice pursuant to a settlement agreement between the parties. On December 19, 2019, the Commission granted the Port Authority's motion and discontinued the proceeding.



device and security upgrades; maintenance of IT infrastructure, A/V equipment, applications and IT software; cloud computing services and hosting; and telecommunications.

One of the Commission's highest IT investment priorities remains the ongoing development and upgrade of its internal and public-facing web applications. The FMC's IT Strategic Plan outlines the core objectives and timelines for:

- managing and delivering quality IT systems and services critical for the FMC to fulfill its mission and support related administrative, business, and operational functions;
- maintaining IT policies, procedures, and practices that support efficient and effective FMC business, administrative, and mission processes;
- expanding on current progress to strengthen cybersecurity of the FMC's networks and systems; and
- ensuring reliability and accuracy of federal information technology as required by statutes, government-wide requirements, directives, or guidance.

When implemented, these investments will fulfill the PMA goal of IT modernization to enhance mission effectiveness by improving the quality and efficiency of critical citizen-facing services. The planned investments will automate, streamline, and improve the Commission's business processes; expand research and analysis capabilities; provide better transparency and public access to information; and eliminate paper-based systems in favor of web applications. The shipping public uses these web applications to file license applications, carrier and MTO agreements, and commercially-sensitive operational data which is analyzed and reported on by the Commission's expert economist staff in their competition analyses.

The Commission continues to automate workflow documents for both Commission staff and the public to reduce dependency on paper filings. Further, the Commission will increase transparency and availability of documents through its website, including Sunshine Act meeting materials. Work has begun on development of an online docket filing tool. Also important are FMC initiatives to improve visibility of critical information, archiving, and streamlining of content to improve information delivery and accuracy.

The Commission uses IT contractor support to modernize its IT systems and web applications. Given the Commission's overall FTE level and relatively small number of IT staff, the Commission relies on IT contractor skills and specialized knowledge to supplement the Commission's IT staff, rather than incur the costs to maintain all necessary resources and specialized skills in-house. This approach has proven effective in meeting its IT automation needs while containing FTE levels.

Contractor-provided software engineer services are used to assist the Commission's IT staff modernize its infrastructure, server platforms, and develop mission-critical web applications; while providing on-site, hands-on training and knowledge transfer. This lays the groundwork for shifting the responsibility of maintenance and troubleshooting of custom and in-house built applications from contractors to FMC IT staff. By leveraging outside contractor support for the most specialized

development tasks, this approach has decreased the Commission's overall IT staffing needs for all previously identified and upcoming application development efforts. As the Commission's needs mature, contractor services and future funding requirements can be reduced accordingly.

Successful workflow automation allows staff to handle ever-increasing case, filing, and application volumes, or to permit staff to be allocated to other critical program areas. Subject to funding availability, the FMC will continue with its systematic application modernization in FY 2021 and beyond, updating and deploying the applications needed by program staff in the various operating bureaus, and used by the regulated shipping community to comply with FMC-administered shipping statutes and regulations.

Prior years' IT expenditures have set the stage for implementing the next phase of the FMC's application modernization plan, and for building or updating the IT systems and web applications. Under the previous Information Resources Management Strategic Plan, the Commission engineered and implemented critical hardware and software upgrades to its network infrastructure to support a more resilient and secure cloud-based environment, and also pursued proof-of-concept testing to validate applications identified for development in the Microsoft Azure environment.

The first application upgraded and migrated to the cloud platform was the Commission's existing Service Contract Filing System (SERVCON) application. SERVCON is a statutorily required, web-facing filing system for ocean common carrier service contracts and NVOCC service arrangements. The FMC uses SERVCON to review service contracts and NVOCC arrangements to ensure that these commercial pricing agreements and the parties to them, comport with the requirements of the Shipping Act.

The SERVCON upgrade was successfully launched in July 2018 without service disruptions or operational problems, and resulted in a more robust and resilient system. This application upgrade and migration to the more secure cloud-based environment was executed with FMC IT staff taking the lead on the programming enhancements, supplemented with specialized IT contractor support. The FY 2021 budget request provides for planned initiatives and projects, including IT contractor support needed to continue the work to modernize and integrate the Commission's OTI licensing applications. Upgrades and development of new applications are shown in Appendix G, Table 2.

In FY 2019 and continuing in FY 2020, the Commission's application modernization program focused on the back-end development for one keystone application: the new OTI License Application, Registration, and Renewal Processing System (formally known as Form FMC-18). The application is used by the public to apply for ocean freight forwarder and NVOCC licenses. Currently, the "back-office" process is not automated and requires manual entry, review, and manipulation of the data received from applicants. This project will combine five disparate agency applications currently used to process license applications for OTIs, track the issuance and validity of required surety bonds, collect and publish the location of carrier tariffs, and process renewals of

OTI licenses and registrations. When complete, modernization of this FMC application will automate the entire process, cut redundancy, improve efficiency, decrease processing time, and support the PMA's objectives by better serving the public.

This initiative will also develop and implement enterprise data storage technology to be shared among four offices under two operational Bureaus. The FMC's Bureau of Certification and Licensing has projected that business process collaboration will be significantly improved, duplication of data entry eliminated, and overall OTI application processing time will decrease.

Against the backdrop of continuing year-on-year increases in the number of licensees and registrants (6,600 and growing); over 1,750 yearly OTI license and registration renewals under a new user-friendly processing system; and thousands of bonding transactions annually; IT automation offers the most potent, effective, and efficient alternative to increase the FMC's licensing workforce. New technology and programming will enable instant access to documents, data, and real-time status of applications, licenses and registrations, improving the quality of staff processing, and decreasing the time required for management oversight.

Having successfully modernized the SERVCON system to a more secure and reliable platform, using IT contractor support, the FMC is pursuing the next phase in the modernization of our systems - development and implementation of an advanced licensing system.

During FY 2020 and FY 2021, the FMC also anticipates commencing programming to replace the Commission's existing (primarily manually maintained) electronic reading room and document repository. This initiative will replace that portion of the FMC's current online electronic reading room containing the activity logs of the public filings and documents issued by the Commission or FMC ALJs in FMC formal and informal adjudicatory proceedings, rulemakings, petitions, fact findings, and investigations, with a new web-based information system. The new electronic reading room and dockets filing system will provide public filers the ability to submit documents directly into the system, and automatic posting to the appropriate docket/proceeding log for immediate access through the FMC's public website. The new system will streamline internal processes by eliminating current manual steps for website posting and placement of filings in the current document repository, as well as streamline the internal circulation and review process for filed documents. These improvements will directly support the Commission's aggressive performance metric requiring timely publication, as set forth in its agency-wide Strategic Plan.

The Commission is fulfilling the PMA's goal to reduce cybersecurity risks to its mission by leveraging current commercial capabilities and implementing cutting edge cybersecurity capabilities. To ensure cybersecurity readiness and facilitate document management and online collaboration, the FMC has increasingly moved its mission-critical applications and data to a cloud-based computing infrastructure. This budget request supports: (1) cloud-based services that deliver FMC continuity of operations, disaster recovery, and secure backup routines; (2) agency-wide Voice Over Internet Protocol (VOIP) communications services in-office, on the Web, and through hand-held devices; and (3) multiple enterprise licensed agreements essential to



supporting remote and shared access by all employees for their day-to-day execution of the Commission's mission.

Compliance with the Department of Homeland Security (DHS), National Institute of Standards and Technology (NIST), and the United States Computer Emergency Readiness Team (US-CERT) monitoring requirements for network security demand near-continuous data protection. The agency invests in internal security tools to effectively monitor network operations, including integrity of files, password sufficiency, probing for open ports and other externally visible points of attack. Planned software investments will meet a number of government-wide requirements, including mandatory cybersecurity and Federal Information Security Modernization Act (FISMA) requirements; government-wide MTIPS (Managed Trusted Internet Protocol Service) requirements; OMB Memorandum M-17-25, *Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks* and E.O. 13800; as well as OMB Memorandum M-17-12, *Preparing for and Responding to a Breach of Personally Identifiable Information*.

### Data Accountability and Transparency

The FMC supports the PMA's plan to develop a Federal Data Strategy to leverage data as a strategic asset to grow the economy, increase the effectiveness of the Federal Government, facilitate oversight, and promote transparency. In addition to the IT modernizations described above, which will, in part, enhance public-facing FMC regulatory data, such as the Regulated Parties Index, the Commission's efforts to leverage data include agency performance and accountability. The Commission's published FY 2019 Performance and Accountability Report reflects an unmodified (clean) financial audit. Further, the Commission participates in governmentwide tracking of its spending. The Digital Accountability and Transparency Act of 2014 (DATA Act) was enacted May 9, 2014, to expand the reporting requirements on federal spending and provide free public access to reliable information on federal spending. Reliable data allows the public to trust in the information that the government provides, and allows federal and elected officials to use that data to make informed decisions about government programs and projects. It also provides assurance to the public and those with oversight functions that agencies and programs are accountable for the federal funds spent.

The Commission contracts with the Bureau of the Fiscal Service (BFS) to meet its federal financial reporting requirements. Through this cross-service provider, the FMC obtains a full range of financial management and accounting services, including DATA Act reporting services.

In June 2019, the FMC's IG commenced the *DATA Act Audit, 2019*. This audit, completed in November 2019, assessed the Commission's (1) completeness, timeliness, and accuracy of fiscal year 2019, first quarter financial and award data submitted for publication on USAspending.gov; and (2) implementation and use of the Government-wide financial data standards established by OMB and Treasury. Management completed the agreed-upon work to remediate the OIG's recommendations prior to the end of the first quarter of FY 2020. The OIG also followed-up on the

FMC's implementation of the 2017 DATA Act audit recommendation. The IG determined that, with few exceptions, the FMC's audited transactions were complete, accurate, timely, and of good quality.

### People – Workforce for the 21<sup>st</sup> Century

The PMA lays out strategies to realign human capital to serve America's priorities. Actively managing the workforce, and improving employee performance management and engagement, is a key part of the PMA's effort to improve the Federal workforce. The FMC strongly supports this type of realignment to ensure employees are productive and well-utilized.

The FMC has a small, dedicated workforce to carry out its mission. The FY 2021 budget request allocates 70.6 percent to salaries and benefits for these employees. Additionally, 1.38 percent of the budget request has been allocated to reward performance. The FMC has internally reviewed its organizational structure to increase productivity. In FY 2019, the FMC continued to implement initiatives outlined in its 5-year Workforce Reform Plan in response to OMB Memorandum M-17-22, *Reforming the Federal Government and Reducing the Federal Workforce*, including removing management layers and reallocating existing personnel to critical program needs. As part of its 5-year Plan, future workforce needs will be tied directly to improving results for the American taxpayer.

The Commission also supports the PMA's efforts to acquire top talent and bring in the right skills for the job – to ensure that the FMC attracts and retains qualified candidates with the necessary skillsets, the FMC has taken concrete steps to maintain and improve employee satisfaction in the workplace. The FMC provides relevant training for job skills, leadership development, and employee professional growth. By creating a dynamic, positive workplace, talented applicants will be drawn to, and stay in, Federal service.

The FMC has institutionalized improving workplace satisfaction and employee morale. The FMC is committed to positively improving workplace satisfaction particularly in the areas of leadership, transparency, matching skills to its mission, and work/life balance. Agency-wide employee teams have been used to address employee suggestions, training needs assessments, peer recognition, updates to Commission policies, and other workplace initiatives. Senior leadership continues to encourage involvement and provide opportunities for participation in agency-sponsored programs. These efforts have resulted in the FMC being recognized as one of the Top 10 Best Places to Work (Small Agency) by the Partnership for Public Service.

A cornerstone to the Commission's efforts to improve the workplace is its Workforce Improvement Plan (WIP). Over the past five years, the WIP has identified and communicated a number of projects or initiatives through the Management Team (consisting of its Senior Executives and senior managers), working with the approval and guidance of the Chairman, to improve and support a positive and effective working environment with engaged employees. The

WIP is updated annually to incorporate input from the entire agency, as well as marking the addition, revision, and completion of specific projects and initiatives.

The agency's success in employee engagement is measured in part through the results of the anonymously conducted FEVS. Using the FEVS data, the Partnership for Public Service calculates the annual rankings of the best places to work. The FMC remains a top 10 Best Places to Work for Small Agencies for 2019.

Based on its 2019 FEVS results, the Commission continues to show a positive trend in key indicators, including:

- Increasing the FMC's overall Employee Engagement Index (EEI) score by 3 percent over last year's score to 76 percent, inclusive of an impressive 4 percentage point increase in both the **Leaders Lead** and **Supervisors** categories;
- Increasing the number of items identified as Strengths from 56 to 62 (Items rated at 65 percent positive or higher are considered strengths.); and
- Continuing to have no items identified as Challenges (Items rated 35 percent or more negative are considered a challenge.).

The FMC is currently ranked in the Top 10 Best Places to Work for Small Agencies.

Moving forward, the FMC will continue to build on these successes, guided by its WIP, to increase employee engagement and make the FMC a consistent Top 10 best small agency to work for in the Federal government.

### **Continuous Learning**

The PMA emphasizes the importance of continuous learning in strategic workforce management. The FMC offers job and professional training opportunities to all employees to reduce skills-gaps and support effective practices. In FY 2019, the Commission continued to provide training opportunities under the Leadership Development Program launched in 2018, offering leadership development to all grade level employees via a competitive process.

The FMC also provides online training to all employees through a commercial vendor. Online training is a cost-effective way to ensure that appropriate training is available year-round. The online offerings include classes in IT technical skills, project management, communication, leadership, management, and writing.

Required training is provided on an as needed or periodic basis, covering topics such as EEO, IT security, risk management, performance management, records management, whistleblower protections, and telework. The FMC also announces opportunities for employees to participate in ad hoc classes offered by the Small Agency Council and to liaise with counterparts at other small agencies to share best practices.

## Sharing Quality Services

The PMA directs agencies to reduce costs and increase efficiency by sharing purchases, modern technology and experts across agencies. The FMC uses shared services to efficiently accomplish some of its fiscal and personnel-related administrative functions. Each service is regularly reviewed to ensure that the best value is provided to the public.

The FMC maintains an effective job-sharing arrangement for the EEO Director position with a similarly-sized agency, the U.S. Surface Transportation Board. This job-sharing arrangement ensures that the FMC's limited resources are used efficiently while maintaining solid support of our EEO principles to ensure that the FMC fully meets its responsibilities in affirmative employment and the appropriate handling of EEO complaints.

In addition to the shared EEO position, the Commission currently uses shared service providers for several financial and personnel-related functions as follows:

### *National Finance Center*

The National Finance Center (NFC) currently provides the Commission with several human resources services, including payroll and web-based time and attendance (T&A) transaction processing, managing employee debt, and employee separation payments.

### *Office of Personnel Management*

The Commission maintains an MOU with the OPM for hiring functions. The Commission's Office of Human Resources provides the agency with full service hiring functions, including the recruitment, assessment, referral, and onboarding of candidates. Under the MOU, OPM assists with necessary services in cases where demand may exceed internal staffing capabilities.

### *Bureau of the Fiscal Service*

Due to its size, it is cost prohibitive for the FMC to internally maintain an integrated federal financial reporting system. The Commission contracts with the Bureau of the Fiscal Service (BFS) to meet its federal financial reporting requirements.

The FMC utilizes the Oracle platform services provided by the Administrative Resource Center (ARC) of BFS. Through this cross-service provider, the FMC obtains a full range of financial management and accounting services, including a financial management system platform, vendor and employee record maintenance and reporting services, budget processing, budget reporting, payroll accounting services, accounts payable and accounts receivable services, and procurement system platform services, including purchase and fleet card services. Additionally, the FMC contracts for ARC Travel services, including e-Gov travel service, travel card administration, travel payments, and relocation services, as well as DATA Act reporting services.

## Additional Initiatives and Efforts to Increase Efficiencies, Create Awareness, and Benefit the Taxpayer

### Efficient Government — Reducing Regulatory Burden and Improving Necessary Information Collection

As economic conditions alter the state of our trades, FMC regulations are revised to respond to new circumstances. Toward the goal of eliminating or reforming outdated regulations, the Commission designated its Managing Director as the Regulatory Reform Officer, who now leads an internal team to identify regulations that have become less relevant or are unduly burdensome. The Commission's Plan for Regulatory Reform of Existing FMC Rules (Regulatory Reform Plan), outlines the FMC's plan to identify regulations that may be suitable for reform or elimination, and establishing a schedule to consider further review and action on each identified regulation. The Regulatory Reform Plan's list of administrative and regulatory provisions, when amended or eliminated, will make it easier and less costly for companies to do business, while permitting the FMC to maintain competition and integrity for America's ocean supply chain. In recent years, the Commission has expanded flexibilities for OTIs through regulatory reform, issued an interpretive rule addressing unjust and unreasonable practices and regulations under the Shipping Act, and is currently working on updating OTI rules to clarify licensing requirement and processes.

#### Rulemakings

The following represents notable Commission rulemakings in FY 2019:

- **Unreasonable Practices Under the Shipping Act of 1984 [Docket No. 18-06]**

The Commission issued an interpretive rule on December 17, 2018, clarifying the Commission's interpretation of the scope of 46 U.S.C. § 41102(c) (section 10(d)(1) of the Shipping Act of 1984). Section 41102(c) prohibits common carriers, terminal operators, and ocean transportation intermediaries from failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property. The interpretive rule clarifies that, in order to violate this provision, a regulated entity must be engaged in a practice or regulation on a normal, customary, and continuous basis and such practice or regulation must be unjust or unreasonable.

- **Licensing, Registration and Financial Responsibility Requirements for Ocean Transportation Intermediaries [Docket No. 18-11]**

The Commission proposed minor changes to the requirements for ocean transportation intermediaries in a Notice of Proposed Rulemaking published on December 17, 2018. The proposed changes involve minor adjustments to the application and renewal procedures for licenses and registrations, such as changes to the form, type, and timing of information



required to be submitted to the Commission. On November 15, 2019, the Commission published in the Federal Register a final rule amending its regulations, effective December 16, 2019.

- **Petition of the World Shipping Council for an Exemption and Rulemaking [P3-18]**

The World Shipping Council, a trade association of ocean common carriers, petitioned the Commission for an exemption from the service contract filing and essential terms publication requirements set forth at 46 U.S.C. § 40502(b) and (d), and further petitioned for the initiation of a rulemaking proceeding to amend the Commission's service contract regulations in 46 C.F.R. Part 530 consistent with the requested exemption. On December 20, 2019, the Commission granted the petitioner's request that VOCCs be exempted from the requirement to file a concise statement of essential terms when confidentially filing service contracts with the Commission, and denied the petitioner's request that VOCCs be exempted from the requirement to file service contracts. The Commission ordered that the staff prepare and initiate a rulemaking proceeding to implement the exemptions to file a concise statement of essential terms when confidentially filing service contracts with the Commission. The rulemaking is ongoing.

### **Improving Customer Experience with Federal Services**

The FMC provides direct services to the public. Commissioners regularly interact with the industry and shippers. CADRS receives time-sensitive requests for assistance from shippers, carriers, and cruise line passengers. The Commission's Area Representatives are located near key maritime ports (Los Angeles/Long Beach, Seattle, New York, Houston, New Orleans, and Miami) and operate as the front line for questions and issues facing the industry. The Office of the Secretary updates the FMC's website and social media frequently, providing timely and important information to the public. The FMC responds to requests for information from the media and the public. Other offices interact with the industry and the public by providing information and assistance with tariffs, licensing, and competition-related issues. The FMC works diligently to provide the public with exceptional customer service.

The public can speak with FMC staff on the telephone, but can also receive a plethora of information that the FMC makes available online 24/7. The FMC has made numerous investments to enhance filing documents and accessing information to date. The continuation of the FMC's IT modernization efforts will allow carriers and OTIs to even more easily file documents and information with the FMC in the future.

## Rental Payments for Space

The FMC strives to be a good steward of government resources. In looking to better align the size of federal real property assets with actual program needs, the FMC continues to evaluate its space needs going forward. The FMC is headquartered in Washington, D.C. It also maintains a small field presence in six port locations. All FMC office space is leased through the GSA. The FMC's annual FY 2021 rent estimate for physical space is \$3,285,630 and an additional \$175,000 for estimated escalation of taxes for a total of \$3,460,630. The FMC's current headquarters lease, which comprises the greatest portion of the FMC's rental cost, expires on October 31, 2022.

The FMC's federal office space leasing process is currently underway for the FMC's headquarters. The Commission is reviewing its current use and future space needs to ensure the government is acquiring the correct space to meet agency needs. The FMC will work with the GSA to limit rental payments while balancing the space necessary to meet the FMC's mission.

## User Fees

The FMC charges user fees for services as required by Section 8 of OMB Circular A-25. The FMC overhauled its fee system effective on October 1, 2016, accurately aligning fees with the costs associated with each provided service.

The Commission completed its biennial review of user fees under Docket No. 18-08, *Update of Existing User Fees*, with a very limited set of new user fees which became effective January 2019. Agencies are required by the Chief Financial Officers Act of 1990 to conduct biennial reviews of fees and other charges that they impose, and to revise these fees and charges to cover program and administrative costs incurred as necessary. User fee rates will next be examined in FY 2020.

## Appendices

- Appendix A: Resource Allocation by Program
- Appendix B: FTEs and Positions Allocation by Program
- Appendix C: Obligations by Object Class
- Appendix D: Relationship of Obligations to Outlays
- Appendix E: Performance Measures by Strategic Goals
- Appendix F: Workload Summary
- Appendix G: IT Resources Statements
- Appendix H: OIG Certification

### Appendix A: Resource Allocation by Program

The chart below details the Commission’s current two programs, Operational and Administrative (O&A), and Office of the Inspector General (OIG).

Resource Allocation by Program FY 2021							
Program	FY 2019 Actual	FY 2020 Enacted	FY 2021 Request			Difference From FY 2019	Difference From FY 2020
			Strategic Goal # 1	Strategic Goal # 2	FY 2021 Request		
O&A	\$26,682,899	\$27,512,841	\$10,164,540	\$18,181,716	\$28,346,256	\$1,663,356	\$833,415
OIG	\$463,058	\$487,159	\$55,374	\$498,370	\$553,744	\$90,686	\$66,585
<b>Totals</b>	\$27,145,957	\$28,000,000	\$10,219,914	\$18,680,086	\$28,900,000	\$1,754,043	\$900,000

**Appendix B: FTEs and Positions Allocation by Program**

Full Time Equivalentents (FTE) and Positions (FTP) by Program								
FY 2019 - FY 2021								
Program/Office	FY 2019 Actual		FY 2020 Enacted		FY 2021 Estimate		Difference From FY 2020	
	FTE	FTP	FTE	FTP	FTE	FTP	FTE	FTP
<b>O&amp;A</b>	110	114	126	127	114	127	(12)	0
<b>OIG</b>	2	2	2	2	2	2	0	0
<b>Agency Total</b>	112	116	128	129	116	129	(12)	0
O&A: Operational and Administrative OIG: Office of the Inspector General								



## Appendix C: Obligations by Object Class

Obligations by Object Class				
FY 2019 - FY 2021				
Category	FY 2019 Actual	FY 2020 Enacted	FY 2021 Request	Difference From FY 2020
<b>Personnel Compensation &amp; Benefits</b>				
(11.1) Full-time Permanent Employees	\$13,847,697	\$15,563,000	\$15,273,482	(\$289,518)
(11.3) Part-time and Temporary Employees	\$49,844	\$0	\$0	\$0
(11.7) Performance Awards	\$271,903	\$265,000	\$400,000	\$135,000
(12.1) Personnel Benefits	\$4,249,824	\$4,810,000	\$4,736,655	(\$73,345)
<b>Total Personnel Compensation &amp; Benefits</b>	<b>\$18,419,268</b>	<b>\$20,638,000</b>	<b>\$20,410,137</b>	<b>(\$227,863)</b>
<b>Travel and Administrative Expenses</b>				
(21.0) Travel and Transportation of Personnel	\$163,511	\$274,000	\$198,300	(\$75,700)
(22.0) Transportation of Things	\$14,834	\$17,000	\$15,500	(\$1,500)
(23.1) Rental Payments to GSA	\$3,403,607	\$3,419,000	\$3,460,630	\$41,630
(23.5) Telephones	\$144,935	\$211,000	\$248,836	\$37,836
(23.8) Postage	\$4,546	\$2,000	\$3,500	\$1,500
(24.0) Printing	\$85,000	\$63,000	\$83,000	\$20,000
(25.1) Consulting	\$1,534,823	\$897,825	\$1,297,578	\$399,753
(25.2) Goods & Services from Commercial Accounts	\$1,384,762	\$575,720	\$1,075,000	\$499,280
(25.3) Goods & Services from Government Accounts	\$1,444,468	\$1,547,455	\$1,711,265	\$163,810
(25.7) Equipment Maintenance	\$46,092	\$20,000	\$26,500	\$6,500
(26.0) Supplies and Materials	\$89,473	\$125,000	\$65,000	(\$60,000)
(31.0) Hardware and Software	\$410,637	\$210,000	\$304,754	\$94,754
<b>Total Travel and Administrative Expenses</b>	<b>\$8,726,689</b>	<b>\$7,362,000</b>	<b>\$8,489,863</b>	<b>\$1,127,863</b>
<b>Total Budget Authority</b>	<b>\$27,145,957</b>	<b>\$28,000,000</b>	<b>\$28,900,000</b>	<b>\$900,000</b>
The Obligations by Object Class chart identifies the Commission's actual funding expenses of FY 2019, the enacted FY 2020 expense allocation and the FY 2021 request. Costs are reported by object codes.				

**Appendix D: Relationship of Obligations to Outlays**

<b>Relationship of Obligations to Outlays</b>			
<b>FY 2019 - FY 2021</b>			
	<b>FY 2019 Actual</b>	<b>FY 2020 Estimate</b>	<b>FY 2021 Request</b>
Operational and Administrative	\$26,682,899	\$27,512,841	\$28,346,256
Office of the Inspector General	\$463,058	\$487,159	\$553,744
Unobligated	\$344,043	\$0	\$0
Budget Authority	\$27,490,000	\$28,000,000	\$28,900,000
Obligations	\$27,145,957	\$28,000,000	\$28,900,000
Outlays*	\$22,717,860	\$23,432,590	\$24,185,780
Outlay Rate**	83.7%	83.7%	83.7%
Obligation Rate	98.7%	100.0%	100.0%
<b>Gross Outlays for FY 2019</b>			
Total outlays for FY 2014 disbursed in FY 2019			\$0
Total outlays for FY 2015 disbursed in FY 2019			\$2,790
Total outlays for FY 2016 disbursed in FY 2019			\$15,723
Total outlays for FY 2017 disbursed in FY 2019			\$115,413
Total outlays for FY 2018 disbursed in FY 2019			\$3,392,989
Total outlays for FY 2019			\$22,717,860
<b>Outlays</b>			<b>\$26,244,775</b>
<p>* Represents outlays for FY 2019 as of 09/30/19.</p> <p>** Represents the percentage of FY 2019 obligations that were disbursed during FY 2019.</p> <p>The relationship of obligations to outlays identifies the actual outlay percentage for FY 2019. The chart also depicts the estimated outlay expenses for FY 2020 and FY 2021.</p>			

## Appendix E: Performance Measures by Strategic Goals

<b>Summary of Strategic Goals, Objectives, and Performance Measures</b>				
<b>STRATEGIC GOAL 1: Maintain a competitive and reliable international ocean transportation supply system</b>				
<b>OBJECTIVE 1:</b> Ensure that actions under filed agreements do not result in unreasonable increases in transportation costs and/or unreasonable decreases in transportation services.				
<b>Performance Measure:</b> Percentage of FMC-filed agreements reviewed at Commission level which are modified through negotiation to mitigate anticompetitive effects.	2019 Target	2020 Target	2021 Target	2022 Target
	51%	52%	53%	54%
	2019 Actual: 67%			
<b>Performance Measure:</b> Percentage of agreement monitoring reports reviewed within 30 days of receipt to detect actionable information, including market-distorting behavior.	2019 Target	2020 Target	2021 Target	2022 Target
	66%	67%	68%	69%
	2019 Actual: 79%			
<b>STRATEGIC GOAL 2: Protect the public from unlawful, unfair, and deceptive ocean transportation practices</b>				
<b>OBJECTIVE 2.1:</b> Identify and take action to end unlawful, unfair, and deceptive practices.				
<b>Performance Measure:</b> Percentage of enforcement actions taken under the Shipping Act successfully resolved through favorable judgment, settlement, issuance of default judgment, or compliance letter or notice.	2019 Target	2020 Target	2021 Target	2022 Target
	77.5%	77.5%	77.5%	77.5%
	2019 Actual: 97%			
<b>OBJECTIVE 2.2:</b> Prevent public harm through licensing and financial responsibility requirements.				
<b>Performance Measure:</b> Percentage of decisions on completed OTI license applications rendered within 60 calendar days of receipt, facilitating lawful operation of OTIs with appropriate character and experience requirements.	2019 Target	2020 Target	2021 Target	2022 Target
	75%	75%	75%	75%
	2019 Actual: 96%			
<b>Performance Measure:</b> Percentage of PVOs examined during the year that have the full financial coverage required by regulation to protect against loss from non-performance or casualty.	2019 Target	2020 Target	2021 Target	2022 Target
	95%	95%	95%	95%
	2019 Actual: 96%			
<b>OBJECTIVE 2.3:</b> Enhance public awareness of agency resources, remedies, and regulatory requirements through education and outreach.				
<b>Performance Measure:</b> Percentage of Commission issuances, orders and reports available through the Commission’s website within 5 working days of receipt.	2019 Target	2020 Target	2021 Target	2022 Target
	84%	86%	88%	90%
	2019 Actual: 99%			
<b>OBJECTIVE 2.4:</b> Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication.				
<b>Performance Measure:</b> Percentage of ombuds and ADR matters closed within 6 months of request for assistance.	2019 Target	2020 Target	2021 Target	2022 Target
	61%	63%	65%	67%
	2019 Actual: 98%			
<b>Performance Measure:</b> Percentage of formal complaints or Commission-initiated orders of investigation completed within 2 years of filing or Commission initiation.	2019 Target	2020 Target	2021 Target	2022 Target
	66%	68%	70%	72%
	2019 Actual: 43%*			
* 43% of 7 matters instituted in FY 2017 were completed within the 2-year period. Four cases were not concluded – 2 were heavily litigated, leading to more procedural complexity, discovery issues, and delay than is customary. Two others were delayed as they involved a legal issue which required substantial consideration by the Commission because of potentially wide-ranging implications.				

## Appendix F: Workload Summary

Workload Summary							
Workload Category	On Hand 9/30/2018	FY 2019 Actual		FY 2020 Estimate		FY 2021 Estimate	
		Received	Output	Received	Output	Received	Output
Formal Proceedings (OALJ)	6	7	9	8	8	8	8
Informal Proceedings (OALJ)	0	2	2	4	4	4	4
Decisions, Reports, in Docketed Proceedings before the Commission	5	11	16	25	25	25	25
Federal Register Notices	0	69	69	100	100	100	100
FOIA Requests	5	22	23	28	28	28	28
Ombuds	45	280	287	500	500	500	500
ADR Matters (formal dockets and requests)	8	13	12	15	13	15	15
Legislation*	0	65	65	65	65	65	65
Legal Opinions, Recommendations, Case Summaries, Decisions, and Final Orders	10	195	195	195	195	200	200
Audits and Monitoring Activities (BOE)	19	121	113	225	225	230	230
OTI Applicant and License Checks (BOE)	0	704	704	655	655	655	655
Formal Proceedings (BOE)	0	0	0	2	2	3	3
Civil Penalty Cases	14	24	32	24	22	25	25
Agreements Filed	18	170	186	185	190	185	185
Agreement Reports	129	1,209	1,253	1,377	1,395	1,389	1,388
Service Contracts	0	47,214	47,214	47,000	47,000	47,500	47,500
Service Contract Amendments	0	752,090	752,090	760,000	760,000	765,000	765,000
FMC-1 Form	0	1,145	1,145	1,200	1,200	1,300	1,300
OTI Applications – NEW	44	333	327	340	340	340	340
OTI Business Change Applications	79	349	360	310	310	310	310
OTI License Renewals	0	1,797	1,797	1,500	1,500	1,500	1,500
Foreign NVOCC Registrations (New, Amended, and Renewal)	0	650	650	816	816	450	450
OTI License Terminations	0	314	314	320	320	320	320
OTI Bond Transactions**	0	4,453	4,453	4,500	4,500	4,500	4,500
Passenger Vessel Applications (Performance)	9	22	19	17	17	18	18
Passenger Vessel Applications (Casualty)	5	9	13	17	17	18	18
Passenger Vessel Certificates (Performance) Reissued***	0	19	19	0	0	0	0

\*This number does not reflect the Commission's total legislative workflow, just matters in which OGC is consulted.  
\*\*Includes OTI bond terminations, bond riders, and new or replacement bonds.  
\*\*\*Commenced in FY 2018, PVO Certificates (Performance) are now reissued every 5 years.

## Appendix G: IT Resources Statements



### FEDERAL MARITIME COMMISSION Washington, DC 20573

#### *Statement of the Chief Financial Officer and Senior Agency Official for Privacy*

As Managing Director, I serve as both the Federal Maritime Commission's Chief Financial Officer (CFO) and Senior Agency Official for Privacy (SAOP). The FMC's planning and oversight efforts, in conjunction with strong fiscal management principles, ensures that necessary IT investments are funded to accomplish the Commission's mission with time-saving technology and innovations, while maintaining critical information security.

The FMC is a small agency, currently with approximately 115 employees. All investments are closely reviewed by myself, the Deputy Managing Director, Chief Information Officer, and the Director, Office of Information Technology. I have reviewed and approved IT investments detailed in this budget submission including all planned IT support for major programs and significant increases and decreases in IT resources necessary to ensure critical functionality and security.

The Commission safeguards personally identifiable information (PII) in its records. In my role as SAOP, I have reviewed the IT investments portion of the budget request to ensure that privacy requirements, as well as any associated costs, are explicitly identified and included with respect to any IT resources that will be used to create, collect, use, process, store, maintain, disseminate, disclose, or dispose of PII.

The FMC will continue to maintain the highest IT management standards.

/s/

Karen V. Gregory  
Chief Financial Officer and  
Managing Director





**FEDERAL MARITIME COMMISSION**  
Washington, DC 20573

*Statement of the Chief Information Officer (CIO)*

The FMC's planning for IT investments protects the integrity of Commission data and provides tools for staff and external users to maximize efficiency. The provided IT investments budget identifies the planned IT support for major programs at the Commission. As CIO, I have collaborated with the Senior Agency Official for Privacy (SAOP) and the CFO on the IT budget for this FY 2021 submission. I have reviewed and approved the cost estimates and acquisition plans included in this submission. In my role as CIO, I have provided guidance to the Managing Director in identifying crucial IT resources for strategic goals and objectives. The Commission performed incremental IT development for its applications/IT investments.

The FMC is not subject to the requirements of the Federal Information Technology Acquisition Reform Act (FITARA) (P.L. 113-291).

/s/

Anthony Haywood  
Chief Information Officer

IT TABLES

<b>Table 1 - IT SPENDING</b>							
IT Category	Unique Investment Identifier	FY 2019		FY 2020		FY 2021	
		Spending	FTEs	Spending	FTEs	Spending	FTEs
<i>Application Development</i> <i>(Table 2)</i>	251001	\$754,000	3	\$836,825	3	\$1,223,040	2
<i>Nondevelopmental IT Initiatives (Hardware, Maintenance, Software, Services, Telecommunications)</i> <i>(Table 3)</i>	233301 233304 251001 257102 310202 310302	\$369,772	6	\$538,437	6	\$588,855	6
<b>TOTAL</b>		<b>\$1,123,772</b>	<b>9</b>	<b>\$1,375,262</b>	<b>9</b>	<b>\$1,811,895</b>	<b>8</b>

**Table 2 - IT DEVELOPMENT**

IT Systems to be Updated	Unique Investment Identifier	FY 2019 Actual	FY 2020 Enacted	FY 2021	Notes
<i><b>OTI License Application, Registration, and Renewal Processing System (aka FMC-18)</b></i>	251001	\$754,000	\$836,825	\$1,223,040	
E-bonds (Electronic Bonds) Filing System	251001	User Acceptance testing	Deploy	--	E-filing system for OTI surety companies developed in conjunction with FMC-18. Target completion FY 2019/2020.
FMC-1 Filing System	251001	Future	In development	User Acceptance testing/Deploy	Stand-alone FMC-1 tariff locator will be integrated into updated FMC-18. Target completion in FY 2020.
FMC-18 License Renewal for OTI Licensees	251001	Future	In development	User Acceptance testing/Deploy	Developed in production system, will migrate to new FMC-18 system when deployed.
FMC-18 OTI Applications & Bonds Fillable/Fileable Forms	251001	Future	In development	User Acceptance testing/Deploy	Will migrate to new FMC-18 system when deployed in FY 2020.
FMC-65 Registration Renewal for Foreign-Based OTIs	251001	Future	In development	User Acceptance testing/Deploy	Developed in production system, will migrate to new FMC-18 system when deployed.
FMC-18 OTI License & Registration Application (back end)	251001	Future	Future	In development	Internal workflow processes to be integrated with public-facing front end, and with related applications below.
Regulated Persons Index (RPI) (Data Store integration)	251001	Future	Future	In development	Stand-alone RPI will be integrated into updated FMC-18 system.
<i><b>OS Electronic Reading Room &amp; Dockets Filing System</b></i>	251001	Future	Future	Future	Initial Electronic Reading Room completed in FY 2019. Development of Dockets Filing System and Laserfiche upgrades projected to begin in FY 2021.
<i><b>Passenger Vessel Operator (BCL system for application filing, processing, reports)</b></i>	251001	Future	Future	Future	To begin in FY 2021 or later.
<i><b>PIERS Interactive (BTA internal data store)</b></i>	251001	Future	Future	Future	To begin in FY 2021 or later.
<b>Total IT consulting services (in \$ per current fiscal year)</b>		\$754,000	\$836,825	\$1,223,040	Subsequent OIT deployments contingent on funding.

**Table 3 – Non-Development IT Investment Initiatives**  
**Major IT Investment Initiatives**

Title	Unique Investment Identifier	2019	2020	2021
<b>IT Systems Hardware and Network Infrastructure</b>				
Laptop Computers	310302	Refreshed in FY 2018 – no planned spending through FY 2021		
Data Storage	310302	Reallocated to Cloud Computing		
Disaster Recovery	251001	Reallocated to Cloud Computing		
Server Virtualization Equipment	310202	Reallocated to Cloud Computing		
Backup Devices & Media	310302	Reallocated to Cloud Computing awaiting supporting application development to be finalized		\$8,000
Network Devices	310302	\$5,000	\$5,000	-
Audio/Visual (A/V) Equipment	310302	--	--	\$10,000
Datacenter Environmental and Uninterruptible Power Supply (UPS)	310902	--	--	\$11,000
<b>Maintenance</b>				
Equipment (Switches, UPS servicing, etc.)	257102	--	--	\$8,000
A/V Equipment	257102	--	--	\$12,000
Server Room Supplemental Cooling (A/C)	257102	--	--	\$6,500
<b>Cloud Computing Services and Hosting; Software and Services</b>				
Software Renewals/Services	310202	Included in FY 2018 Laptop Costs		\$59,000
Cloud Hosting and Related Application Services / Software Assurance	310202	\$110,000	\$233,000	\$153,000
Desktop OS Management Software	310202	\$15,000	\$20,000	\$18,754
<b>Cybersecurity</b>				
IT Security Support Services	310202 <sup>1</sup>	\$15,000	\$35,000	\$35,000
Continuous Diagnostic and Monitoring	310202	--	\$18,765	\$18,765
<b>Telecommunications</b>				
Managed Trusted Internet Protocol Service (MTIPS), Voice over Internet Protocol (VoIP), Data, and Analog	233301	\$149,972	\$149,972	\$168,871
Mobile Communications Services	233304	\$38,500	\$39,500	\$42,765
Data links for Regional Offices (T1)	233301	\$36,300	\$37,200	\$37,200
<b>TOTAL</b>		<b>\$369,772</b>	<b>\$538,437</b>	<b>\$588,855</b>

<sup>1</sup>IT Security Support Services was previously referenced by Unique Investment Identifier/Budget Object Code 251001 in earlier budget request submissions. This has been updated to reflect the code for government contracts.

## Appendix H: OIG Certification



**FEDERAL MARITIME COMMISSION**  
Washington, DC 20573

January 6, 2020

### *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 2021:

- the aggregate budget request for the operations of the OIG, to include overhead, is \$553,744,
- the portion of this amount needed for OIG training is \$3,500, and
- the portion of this amount needed to support the CIGIE is \$1,300.

I certify as the Inspector General of the FMC that the amount requested satisfies the needs of the OIG for FY 2021, including all FMC OIG training requirements, and resources to support CIGIE.

/s/

Jon Hatfield, Inspector General  
Federal Maritime Commission