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BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

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Mr. Chairman and members of the Subcommittee, thank you for this opportunity to present the President's Fiscal Year 2011 budget for the Federal Maritime Commission.

The President's budget for the Federal Maritime Commission ("the Commission" or "FMC") provides $25,498,000 for Fiscal Year 2011. This represents an increase of $1,363,000 over our Fiscal Year 2010 appropriation and funds 132 work years of employment.

Our Fiscal Year 2011 budget request contains $18,515,000 for salaries and benefits to support the Commission's programs. This salary and benefits request is an increase of $1,410,000 over our Fiscal Year 2010 appropriation. This figure includes funds for all salaries and benefits, promotions, within-grade increases, annualization of Fiscal Year 2010 pay increases, and an anticipated 2.1 percent Fiscal Year 2011 pay adjustment. It also includes one new information technology (IT) position to speed the Commission's efforts to comply with recent government-wide technology and information security initiatives, and to modernize and automate filings and registrations to increase productivity, transparency, and reduce burdens on the businesses we regulate.

Official travel has been straight-lined at the Fiscal Year 2010 level of $283,000. The ability of our staff to travel to meet with stakeholders and our counterparts remains an essential aspect of our effort to provide better service to the ocean transportation industry and to accomplish our oversight duties more effectively.

Administrative expenses are decreased $47,000 below the Fiscal Year 2010 level. GPO printing costs are increased by $25,000, rental of office space is increased by $18,000, and costs associated with sending correspondence are increased by $7,000.

These increases are offset by reductions for furniture and equipment, library materials, and telephone and postage expenses totaling $40,000, plus a reduction in commercial and government contract costs of $57,000. Administrative expenses to be funded in Fiscal Year 2011 support our customary business expenses, such as for telephones, litigation, postage, commercial and government contracts, and supplies.

In summary, the Commission's budget represents the basic spending necessary to conduct day-to-day operations and to meet the responsibilities Congress has entrusted to this agency.

STATE OF THE U.S. TRADES

Since 1916, the Commission and its predecessor agencies have effectively administered Congress's directives for oversight of the liner shipping industry. Working with the industry and its customers, we have developed a regulatory system that allows for necessary oversight activity with minimal impact on the efficient flow of U.S. exports and imports. I would like to highlight the state of major U.S. trades as well as identify some significant current events.

Due to the global recession's impact on international trade flows, Fiscal Year 2009 was perhaps the worst year to date in the forty-year plus history of international containerized shipping. The total volume of U.S. liner exports shipped worldwide fell by 14 percent in contrast to the preceding fiscal year's 16 percent increase. Similarly, the total volume of liner imports to the U.S. declined by 16 percent compared to a decline of 6 percent in Fiscal Year 2008. Freight rates dropped precipitously, and liner companies reduced and reconfigured their service offerings to adjust to the reduced demand and consequent overcapacity of vessel space.

On a global scale, container trade contracted by 11 percent. By end of the fiscal year, excess capacity resulted in the idling of over 500 container ships, or 10 percent of the total fleet capacity in twenty-foot equivalent units (TEUs) – a sharp increase from the 2 percent idle capacity in Fiscal Year 2008. Overcapacity problems were exacerbated by pre-existing vessel orders that expanded worldwide containership capacity by 10 percent as of July 2009.

China remained our leading overseas trading partner, and trade with nations in northeast Asia continued to account for over half of U.S. combined containerized imports and exports. Concentration among carriers remained relatively unchanged from Fiscal Year 2008, with the top 10 carriers accounting for about 60 percent of the worldwide containership capacity.

Trans-Pacific Trades

In the largest of the U.S. liner trades, the Trans-Pacific trades, carriers reduced shipping capacity by almost 10 percent on a year-to-year fiscal year basis following a decline in U.S. export container volume to Asia of 12 percent and a decline in U.S. import container volume from Asia of 16 percent. Nonetheless, Asian import cargo continued to dominate the trade. For every TEU of U.S. exports moved outbound, 2.2 TEUs of imports from Asia were shipped inbound. In the outbound trade direction, members of the rate discussion agreement, the *Westbound Transpacific Stabilization Agreement*, had a combined market share of 63 percent. In the inbound trade direction, the combined market share of the rate discussion members of the

Transpacific Stabilization Agreement (TSA) dropped from 86 percent to 83 percent. However, with Maersk Line's recent return to TSA, the organization's market share now exceeds 94 percent.

The fourth quarter of calendar year 2009 and early 2010 saw an unusual and largely unanticipated increase in cargo volumes shipped from Asia as well as an increase that had been expected in U.S. exports. It is unclear how much of this recent increase in imports from Asia was related solely to decisions by U.S. companies to replenish low inventory levels, and how much represents a longer-term revival of demand for cargo space.

U.S. – North Europe Trades

In the liner trade between the U.S. and North Europe, cargo volumes dropped significantly in both trade directions. U.S. exports fell by 28 percent compared to the preceding fiscal year. Import cargo from North Europe decreased by 18 percent. To cope with the declines in cargo volume, major carriers in the trade cut back their services to remove excess vessel capacity and further coordinated their operations through vessel sharing agreements. By the end of the fiscal year, it was reported that annualized vessel capacity in the trade was reduced by 18 percent in the outbound direction and 11 percent in the inbound direction. Despite such capacity reduction, utilization was only at 68 percent in both directions.

In October 2008, the European Union (EU) repealed its block exemption from competition rules for liner shipping conferences. In place of a conference agreement, carriers in the U.S.-EU trades formed the *Container Trade Statistics Agreement*, which established an information exchange system among its members, and formed a trade association called the *European Liner Affairs Association*. In September 2009 the European Commission renewed a revised version of its block exemption regulations for ocean carrier consortia agreements, which allow them to share vessel space, effective for the period from April 2010 through April 2015.

U.S. – Oceania Trades

Between the U.S. and the region of Australia, New Zealand, and the Pacific Islands, the volume of liner cargo fell by about 10 percent in both trade directions, and remained substantially imbalanced. U.S. export cargo exceeded import cargo by 70,000 TEUs, or about 40 percent. Over the fiscal year, coordinated service changes implemented by carriers through their vessel sharing agreements resulted in capacity reductions in both trade directions. By the end of the fiscal year, the reductions in vessel capacity were estimated at 12 percent in the outbound trade direction and 17 percent in the inbound trade direction.

The structure of the trade for container carriage between the United States and Australia, New Zealand, and the Pacific Islands may have the potential to generate anticompetitive conditions for U.S. importers and exporters. Six carriers control over 80 percent of the market and have overlapping rate discussion and capacity management authorities. Accordingly, the

Commission is closely analyzing that trade, and has issued two orders recently requiring the carriers to submit data.

U.S. – South America Trades

Between the U.S. and South America as a whole, liner exports in the outbound trade direction declined by 18 percent, and liner imports moving inbound fell by 14 percent in comparison to the preceding fiscal year. The volumes of cargo shipped inbound and outbound was closely balanced. The region can be generally divided into two liner trade sectors: the west coast of South America and the east coast of South America.

Carriers operating between the U.S. and east coast of South America do not participate in a broad-based discussion agreement. In the western sector, however, most of the major carriers that provide direct service are members of the *West Coast of South America Discussion Agreement* (WCSADA), a discussion agreement with voluntary rate authority. During the fiscal year, a number of membership changes occurred that raised the market share of WCSADA to 85 percent in the outbound direction and 63 percent in the inbound direction.

COMMISSION ACTIVITIES

During my confirmation hearing last July, I stated a commitment to three main priorities for the Commission: First, the Commission's top priority should be playing a key role in assisting our economic recovery for job growth — both within our ocean commercial transportation industry and among the exporting and importing businesses they serve. Second, the Commission must remain at all times alert to foreign activities that are harmful to our carriers and trade routes, with a focus on protecting our country's shipping community, and above all the American consumer. And third, consistent with our regulatory authority, the Commission needs to work with all sectors of our maritime family to help green our ports and the shipping industry.

These priorities are consistent with the Commission's strategic plan and its mission of fostering a fair, efficient, and reliable international ocean transportation system, and protecting the public from unfair and deceptive practices. The agency's strategic plan sets forth three goals: (1) to maintain an efficient and competitive international ocean transportation system; (2) to protect the public from unlawful, unfair, and deceptive ocean transportation practices and resolve shipping disputes; and (3) to advance agency objectives through high-performance leadership and efficient stewardship of resources. In the coming year, these goals will only increase in importance. As trade and the economy continue their recovery and the Administration begins to implement the National Export Initiative to double exports over the next five years, the ocean transportation system we regulate will play a critical supporting role. Each of the Commissioners understands the importance of the agency's objectives, and we are committed to working in a collegial, cooperative, and bipartisan manner to accomplish them.

During the past year, we have taken several important actions directed toward accomplishing these goals:

Agency Reorganization

After receiving valuable insight and input from Congress and others, we recently announced an agency reorganization that became effective on January 31, 2010. I believe the Commission's new organizational structure will enable us to become more responsive to the needs of exporters, importers, and the shipping industry; enhance the fiscal and operational efficiency of our overall operation; and put the Commission in the best position to satisfy our statutory mandates and meet our strategic goals. The reorganization involved two major changes to the Commission's structure — the re-establishment of the position of Managing Director and the establishment of the Office of Consumer Affairs and Dispute Resolution Services (CADRS) as an independent office. For more than 42 years of its almost 49 year existence as an independent agency, the Commission has worked effectively with a Managing Director who served as the Commission's senior executive responsible for the management and coordination of the Commission's operating bureaus and administrative functions. The Commission's return to this structure is intended to achieve greater cohesion and coordination of operating and administrative programs, leading to greater efficiencies and effectiveness.

The establishment of CADRS as an independent office better equips the Commission for its increased emphasis on assisting consumers, resolving disputes that impede the efficiency of ocean transportation, and assisting parties in avoiding lengthy and costly litigation. The Director of CADRS will serve as the Commission's Ombudsman and, with a direct line to my office, will be ideally situated to handle inquiries and complaints about industry issues and Commission services. CADRS also provides the public and ocean transportation industry a variety of impartial, speedy, and confidential alternative dispute resolution services, such as mediation.

This reorganization also marks the first stage of an internal assessment of the Commission's strategic priorities and allocation of resources to maximize the positive impact of Commission programs in meeting the needs of the shipping industry and consumers. Since the reorganization, we have already initiated a study of the Commission's licensing process, with a view towards streamlining the process to improve the response time to applicants, while continuing to ensure effective review of each applicant's qualifications.

Because of the timing of the reorganization, the Fiscal Year 2011 budget necessarily reflects the Commission's previous organization. In the near future, the Commission will be presenting a revised budget that reflects the new organization. The revised budget will seek the same total funding, and the same FTEs, as the budget currently before you. No additional appropriations are required to implement the reorganization.

Economic Relief for Non-Vessel Operating Common Carriers

Just last week, the Commission voted to initiate a rulemaking that would relieve Non-Vessel Operating Common Carriers (NVOCCs) from tariff rate publication and adherence requirements of the Shipping Act. NVOCCs are common carriers that act as intermediaries between their shipper customers and steamship lines. The exemption action, which the Commission is taking under Section 16 of the Shipping Act (46 U.S.C. § 40103), would apply to individually negotiated rates memorialized in writing. However, relief would be subject to several conditions, in order to ensure no adverse effects on competition or U.S. commerce result. This relief should result in significant cost savings for more than 3,200 licensed NVOCCs, most of whom are small businesses. I predict that many of those cost savings will also be passed along to the hundreds of thousands of exporting and importing businesses the NVOCCs serve.

Foreign Shipping Practices

The Commission continues to address restrictive or unfair foreign shipping practices under Section 19 of the Merchant Marine Act, 1920; the Foreign Shipping Practices Act of 1988 (FSPA); and the Controlled Carrier Act of 1978. Section 19 empowers the Commission to make rules and regulations to address conditions unfavorable to shipping in our foreign trades; FSPA allows the Commission to address adverse conditions affecting U.S. carriers in our foreign trades that do not exist for foreign carriers in the United States. Under the Controlled Carrier Act, the Commission can review the rates of government-controlled carriers to ensure that they are not below a level that is just and reasonable. The Commission is carefully monitoring state-owned carriers to ensure that U.S. trades remain substantially free of unfair trading practices of foreign governments.

The Commission is closely monitoring the impact of the People's Republic of China's new requirements on vessel operating ocean common carriers to provide freight rate data to a quasi-governmental agency, the Shanghai Shipping Exchange (SSE) and for the SSE to establish a freight index based upon information received from such carriers in U.S. trades. In response to complaints that shippers have recently filed with the Commission, we are consulting with other U.S. Government agencies on how to address those requirements.

The Commission is also carefully monitoring the diversion of U.S.-bound container cargo to Canadian ports and away from U.S. ports, an issue that has had a growing impact on our west coast ports. Two years ago, Canada opened a new container port in Prince Rupert, British Columbia. The Port of Prince Rupert, its vessel-operator customers, and the Canadian government have begun an advertising campaign promoting that Canadian port as the most efficient and cost-effective gateway for cargo destined to the U.S. Midwest and beyond. West coast ports in the United States are already feeling the impact of this diversion. Yet Canada has said they expect to multiply capacity at Prince Rupert from the roughly 265,000 TEUs they received in 2009 to between 1.5 and 2 million TEUs by the end of 2010, and perhaps to 4 million TEUs by 2015. United States-destined cargo moving through Canadian ports avoids both the U.S. harbor maintenance tax and parts of the U.S. container security regime. We are consulting regularly with U.S. ports and examining the issue of potential unfair practices that would shift U.S. cargo from U.S. ports to Canada. We also have reached out to U.S. Customs and Border Protection (CBP) to discuss and address any potential security impacts.

Environment

I believe that in the coming years, the international ocean transportation industry will only be able to remain efficient, competitive, and reliable if it also takes steps to become more sustainable. Our nation's ports will have difficulty handling the necessary flow of cargo if their impacts on surrounding air quality prevent needed expansion and modernization. As oil becomes increasingly scarce and the world takes steps to address climate change, the ocean vessel carriers have begun to recognize the importance of measures to reduce fuel consumption and carbon emissions. Although estimates vary, several studies have found that the international ocean shipping industry accounts for roughly 3% of global greenhouse gas emissions. This means that if the ocean shipping industry were a country, it would rank seventh in the world in emissions. Recognizing that any future accord to address climate change may include this important sector, many in the industry have begun taking steps to ensure they remain sound in a carbon-constrained future.

In its role as a regulator of marine terminal operators and ocean common carriers, the FMC has therefore seen environmental issues become increasingly central to the new agreements and shipping practices it monitors and approves. As ports and ocean common carriers adjust to reduce their environmental footprint, the Commission has been working this past year to ensure that it is a helpful partner. So far, the Commission has begun three important efforts to help our ports and the shipping industry become cleaner and more sustainable.

First, in my initial Commission meeting in August 2009, the Commission voted unanimously to withdraw its opposition to the Clean Trucks programs at the ports of Los Angeles and Long Beach and allow their clean air measures to proceed. Going forward, the Commission is committed to a renewed, proactive relationship with these and the rest of the country's ports.

Second, in November 2009, we announced the formation of an internal staff committee to help the Commission become a clearinghouse for information on current and proposed environmental initiatives by the ports, the shipping industry, and other agencies. The Commission's environmental committee has begun to review the filings at the agency for best environmental practices that the Commission can put forward as models for adoption by other ports and companies. The Commission plans to coordinate with the Environmental Protection Agency and other agencies to begin rolling these best practices out this year.

Third, the Commission recently reviewed, and allowed to become effective on February 6, 2010, a proposal of the TSA that would allow member lines to establish a forum to discuss ways to reduce vessel-related pollution. The TSA is a discussion agreement among 15 carriers operating in the U.S.-Asia trades. Those carriers are the major ocean common carriers involved in the largest U.S. international shipping lane. TSA officials and member lines have stated that their immediate effort would be to coordinate the implementation of a practice called "slow steaming." As has recently been noted in the New York Times and elsewhere, slow steaming allows vessels to save fuel, which reduces their emissions and affords substantial cost savings during this period of financial stress. TSA member lines have indicated that they may also use their new authority to work to increase use of alternative fuels, "cold ironing,"[1] and other pollution-reducing technologies. While these practices hold promise for reducing vessels' emissions, the Commission will closely monitor slow-steaming arrangements to ensure that they do not cause unreasonable constraints as international shipping demand recovers. Each of these steps will help advance the Administration's goals of creating green jobs and seeking a more sustainable approach to maritime issues.

Impact of European Union Repeal of Block Exemption

The Commission is continuing its comprehensive study of the impact of the October 2008 EU repeal of its block exemption from competition laws for liner conferences. While the long-term effects of the EU's policy shift are difficult to predict — given the global recession's effect on international trade flows — the study will describe and analyze what has occurred in the U.S.-EU trades following the repeal of liner conference antitrust immunity and the economic downturn. We hope also to make some comparisons between trade lanes operating under U.S. shipping statutes and those operating under the EU regime.

We are collecting data for the 5-year review period (CY 2006–CY 2010), including data on changes to market structure, demand, vessel capacity and utilization, and revenues and rates. In addition, we have been consulting with, and will continue to consult, organizations representing our major stakeholders — U.S. exporters and importers, public port authorities and marine terminal operators, ocean transportation intermediaries, and the liner vessel operators. We are seeking both their practical insights and information-gathering assistance. We also plan to solicit industry and public views more formally by way of a Notice of Inquiry (NOI) later this year.

Updating Financial Protections for Cruise Ship Passengers

As I stated earlier, the Commission is increasing its emphasis on service and protection for members of the public who are not sophisticated shippers, but who may travel on cruise ships or deal with international shipping once or twice when they ship personal belongings. Consistent with that emphasis, the Commission issued a NOI to obtain input about the adequacy of financial coverage of passenger vessel operators to reimburse passengers when a cruise line fails to perform a cruise. Following receipt of written comments, the Commission has scheduled a public hearing on March 3, 2010, to provide interested parties further opportunity for input via oral testimony directly before the Commissioners.

National Security

The Commission continues to exchange enforcement information with the Department of Homeland Security (DHS). Within the DHS, the Commission works together with CBP under

[1] "Cold ironing" is the practice of a ship plugging into shore-side electricity instead of running its on-board fuel engines to generate electricity while it is docked.

an existing Memorandum of Understanding. Cooperation with other agencies has expanded into joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation often involves local police, U.S. Citizenship and Immigration Services (formerly INS) officers, and Immigration and Customs Enforcement officers, and the Federal Bureau of Investigation. FMC Area Representatives also confer with other federal agencies regarding ongoing matters of mutual interest, such as inaccurate descriptions of shipments and other industry malpractices.

The Commission's oversight of ocean common carriers, ocean transportation intermediaries, and marine terminal operators is an important element in the effort to protect our nation's seaports. The Commission has a wealth of information available to assist our nation's efforts to secure not only our seaports but the entire supply chain. Unique among federal agencies, the FMC regulates virtually all entities involved in liner shipping, receiving, handling, and transporting cargo and passengers in foreign commerce. The FMC's unique mission affords us the opportunity to assist front-line security efforts by providing information regarding the backgrounds of all parties utilizing our nation's supply chain, including those with direct access to our seaports.

The Commission is currently assisting national security efforts by working to share its informational resources with other federal agencies, including DHS through the International Trade Data System (ITDS) and the Automated Commercial Environment (ACE) portal. The Commission and CBP are in the process of executing and implementing an updated Memorandum of Understanding that will solidify the cooperative relationship between the two agencies, particularly with respect to the sharing of information. For its part, the Commission expects to provide access to its extensive informational resources and databases containing background information on entities regulated by the Commission. These are some of the most complete databases identifying ocean transportation intermediaries and other persons engaged in U.S. foreign commerce. Once completed, the ACE/ITDS system will provide greater transparency into the nation's supply chain.

Monitoring Agreements

Over the past year, the Commission continued to monitor the international liner trades, focusing in large part on agreement activities relating to ocean common carriers and marine terminal operators. The Commission continued to monitor agreements that had potential for the greatest competitive impacts due to the parties' ratemaking authority or high market share. For example, I mentioned earlier that the Commission has been analyzing data gathered from the carriers operating in the U.S. and Australia/New Zealand trade, first issuing an Order requiring data pursuant to our authority under Section 15 of the Shipping Act, followed by a second Order in November 2009 to update our analysis with data addressing the impact of the global economic downturn and the reductions in capacity following the downturn. The Commission continues to monitor that trade closely, as six carriers control over 80 percent of the market and have overlapping rate discussion and capacity management authorities.

Modernization and Technology

The Commission is pursuing several IT initiatives to comply with governing IT statutes and regulations, as well as evaluating use of IT to increase efficiency and productivity, particularly in the licensing process. We believe enhanced information systems are critical to efficient identification and licensing of regulated entities and to information sharing with our counterparts at the CBP and other federal agencies. These IT systems will enable our Area Representatives, Bureau of Enforcement, and CADRS staff to have timely and comprehensive access to data needed to tackle ocean transportation intermediary and vessel operator practices that abuse or defraud the shipping public.

The Commission plans to use new IT to improve both agency business processes and the public's ability to conduct business with the agency. In Fiscal Year 2009, the agency, in response to several recent government-wide initiatives, identified new technology that will be incorporated into its business processes. This technology investment will lead to greater productivity, efficiency, and transparency. It will also reduce burdens for the ocean shipping industry.

Annual Employee Survey

On a final note, I have found the Commission's staff, although small, to be very dedicated to public service and the Commission's mission. We are continuing to implement personnel practices that earned the Commission recognition from the Partnership for Public Service and American University's Institute for the Study of Public Policy as the Most Improved Small Federal Agency. The Commission has analyzed the results of the 2009 Annual Employee Survey, along with those obtained from the 2007 and 2008 surveys. The FMC's response rate to those surveys has remained relatively stable, with approximately 66% of employees responding. Even with such a good response rate, the data may only be statistically reliable to a point because of the small size of the Commission's staff. However, when the data is compared to similar data from prior years, certain trends are apparent. The trends are predominantly positive and are indicative of a healthy organization. The Commission remains committed to building a skilled and effective staff.

General overall results indicated that more than 75% of the responding Commission employees answered positively on questions regarding their personal work experience. More than 30% of the survey questions showed successive improvement from 2007 to 2008, and again from 2008 to 2009. Most significant were the ever-increasing positive responses received about the respondents' general satisfaction with their job and their pay, taking everything into consideration.

The survey results suggest that, overall, FMC employees are very satisfied with their jobs and related aspects of employment, hold their leaders in high regard, believe FMC's organizational culture promotes improvement in processes, products, services, and outcomes, and has the talent necessary to achieve its organizational goals.

Mr. Chairman and members of the Subcommittee, I hope that these comments give you a clear indication of the state of the U.S. shipping industry and the important work to be accomplished by the Federal Maritime Commission. I thank the Subcommittee for its support of the Commission through the years and respectfully request favorable funding consideration for Fiscal Year 2011 and beyond so that the agency may continue to perform its vital statutory functions, and so that the public and shipping industry may continue to be served efficiently and effectively.