STATEMENT OF

RICHARD A. LIDINSKY, JR.,
CHAIRMAN, FEDERAL MARITIME COMMISSION
800 NORTH CAPITOL ST., N.W.
WASHINGTON, D.C. 20573
(202) 523-5911
(202) 523-4224 (fax)
www.fmc.gov

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

March 1, 2011

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to present the President's Fiscal Year 2012 budget for the Federal Maritime Commission.

The President's budget for the Federal Maritime Commission ("the Commission" or "FMC") provides $26,265,000 for Fiscal Year 2012. This represents an increase of $2,130,000 over the enacted Fiscal Year 2010 appropriation and funds 133 work years of employment.

Our Fiscal Year 2012 budget request contains $18,809,000 for salaries and benefits to support the Commission's programs. This figure includes funds for all salaries and benefits for the 131 positions authorized for Fiscal Year 2010, and an increase of two positions, which will be targeted to our Office of Consumer Affairs and Dispute Resolution Services ("CADRS") to strengthen the Commission's efforts to provide prompt, efficient solutions for commercial disputes between ocean carriers and their customers so that problems with ocean transportation or equipment do not hinder the growth of U.S. exports.

Official travel has been straight-lined at the Fiscal Year 2009-2011 levels 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 increased $426,000 from the enacted Fiscal Year 2010 funding level. This includes $265,000 for mandated government-wide internet security upgrades. The remaining $161,000 is for Government Printing Office printing costs, telephones, rental of office space, supplies and library materials, and express mail services.

These increases are partially offset by reductions of $59,000 for government and commercial services, $97,000 for furniture and equipment, and $5,000 for postage. Administrative expenses to be funded in Fiscal Year 2012 support our customary business expenses, such as for rent, security, 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. The Commission was established as an independent agency fifty years ago. Throughout those years we have worked with the industry and its customers to develop a regulatory system that protects competition, commerce, and U.S. exporters and importers while minimizing government intervention and regulatory costs. I would like to give a brief overview of the state of major U.S. trades and then identify some significant current events.

From late 2008 to late 2009, the international container shipping industry suffered the worst year in its 45-year history. Fortunately, in calendar year 2010 the U.S. liner trades saw a rapid recovery. U.S. container volumes in 2010 expanded by 11 percent to reach 28.3 million twenty-foot equivalent units ("TEUs"), compared to 25.5 million TEUs in 2009. The total volume of U.S. liner exports increased by 8 percent, which matched an 8 percent contraction in 2009. Similarly, the total volume of liner imports to the U.S. increased by 13 percent following a decline of 14 percent in 2009. Despite these impressive gains in 2010, total container volumes in the U.S. trades were still approximately 5 percent below their 2007 pre-recession peak.

For the international container shipping industry, last year's recovery was even more robust than these trade volumes suggest. When I testified to this Committee last year, I reported that in 2009 freight rates had collapsed and carriers had laid up more than 500 containerships. At one point they had idled 575 containerships, or 12 percent of their worldwide fleet capacity. By the end of fiscal year 2010, rates had regained most of their declines, load factors increased, and worldwide idle capacity had dropped to 2 percent. As a result, liner shipping companies' total freight revenue grew considerably, and they began expanding their service offerings.

Despite expanding service offerings, liner shipping companies have shown restraint in ordering new vessels. Today carriers have orders for 597 new containerships worldwide, with an aggregate capacity of 4 million TEUs, equivalent to 28 percent of the existing fleet capacity. This figure includes announcements in February that Maersk ordered ten 18,000 TEU vessels, and Mediterranean Shipping Company ordered six 8,800 TEU vessels. Today's order total of 28 percent of existing capacity is down from 43 percent last year and 60 percent two years ago.

The recent recession has not led to the increases in concentration among ocean carriers that many experts were predicting. In fiscal year 2010, the top 10 carriers accounted for 61 percent of the world's containership capacity, while in 2008 and 2009 they accounted for approximately 60 percent.

Our nation's ports also rebounded in 2010. On the West Coast, the Port of Long Beach saw total container volumes increase 19 percent; Los Angeles rose 10 percent; and Seattle increased 32 percent. The exception was Tacoma, which declined 5 percent in 2010, in large part due to the world's largest container carrier, Maersk Line, shifting container terminal operations to Seattle in 2009. On the East Coast, New York-New Jersey increased 13 percent; Charleston grew 12 percent; Savannah increased 13 percent; Jacksonville grew 11 percent; and Hampton Roads increased 4 percent.

Transpacific Trades

The Transpacific continued to be the largest of the U.S. liner trades, and China remained our leading overseas trading partner. Trade with nations in northeast Asia continued to account for over half of U.S. combined containerized imports and exports.

Trade in the Transpacific rebounded strongly in 2010, but experienced some growing pains. Beginning in late 2009, importers began to restock depleted inventory and exporters experienced a surge in demand for U.S. goods due to the weak dollar. As a result, demand approached or exceeded supply in the first quarter of 2010, and shippers experienced difficulty moving cargo between the U.S. and Asia. But carriers began increasing Transpacific capacity in April 2010, and by October 2010, container shipping capacity in the Transpacific had surpassed pre-recession levels. Currently, average weekly capacity is 24 percent higher than this time last year.

In 2010, Transpacific container imports grew by 14 percent and container exports grew by 7 percent. Asian import cargo continued to dominate the trade. For every TEU exported from the United States, 2.1 TEUs are imported from Asia.

In the outbound trade direction, the ten members of the rate discussion agreement, the *Westbound Transpacific Stabilization Agreement* (WTSA), had a combined market share of 63 percent. In the inbound trade direction, the combined market share of the fifteen members of the *Transpacific Stabilization Agreement* (TSA) rate discussion agreement had a combined market share of 92 percent. Following problems that U.S. shippers experienced in the Transpacific when demand returned in 2010, the Commission increased its monitoring of these carrier discussion agreements. We will continue our heightened vigilance in the nation's largest trade lane.

U.S. – North Europe Trades

The liner trade between the U.S. and Europe also recovered in 2010. Compared to 2009, U.S. liner exports grew by 14 percent in 2010, and liner imports from North Europe grew by 12 percent. The general outlook for cargo volume growth in the trade is modest due to the uncertainty over economic conditions affecting the trade lane.

Ocean carriers added services and capacity to the trade in 2010. Vessel capacity increased by about 10 percent in each trade direction, and the utilization of vessel capacity was reported to be around 87 percent in each trade direction — an increase from 68 percent utilization in 2009. With improved capacity utilization levels, carriers increased both rates and revenue. By the end of 2010, rates for inbound containers from North Europe had increased 34 percent from the previous year, after a 35 percent drop in 2009.

U.S. – Oceania Trades

U.S. exports to the Oceania region (Australia, New Zealand, and the Pacific Islands) were unchanged for the most part in calendar year 2010 from 2009. In the inbound trade direction, liner imports from the region grew slightly by 2 percent. Overall, U.S. exports shipped to the region exceeded imports. For every import TEU that moved inbound from the region, 1.5 TEUs of U.S. export cargo moved outbound.

The structure of the trade for container carriage between the United States and Australia, New Zealand, and the Pacific Islands has potential to generate anticompetitive conditions for U.S. exporters and importers. Six carriers directly serve the trade with a market share of over 85 percent and are parties to agreements with overlapping rate discussion and capacity rationalization authorities. There were no substantive agreement changes during the year, but the Commission continues to monitor and analyze the trade closely.

U.S. – South America Trades

Between the U.S. and South America as a whole, liner exports in the outbound trade direction increased by 27 percent in 2010, and liner imports moving inbound increased by 4 percent in comparison to the preceding calendar year. The volumes of cargo shipped inbound and outbound were 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. In 2010, the combined market share of WCSADA members was 78 percent in the outbound direction and 66 percent in the inbound direction.

COMMISSION ACTIVITIES

In the coming year, I plan to continue working on the three top priorities I outlined during my confirmation hearing in 2009: First, the Commission must work to assist our economic recovery for job growth — both within our ocean transportation industry and among the exporting and importing businesses they serve. Second, the Commission must remain at all times alert to foreign activities that may be harmful to our exporters, importers, the American industry that serves them, and above all the American consumer. And third, consistent with our regulatory authority, the Commission should 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 while protecting the public from unfair and deceptive practices. The agency's strategic plan sets forth two 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. It also recognizes the need to accomplish these goals through high-performance leadership and efficient stewardship of resources. Each of the Commissioners understands the importance of the agency's objectives, and we are committed to working in an efficient, cooperative, and bipartisan manner to accomplish them.

During the past year, the Commission has taken several important actions to accomplish these goals:

Supporting U.S. Exports and Economic Growth

The nation's push to increase exports gives each of us at the Commission a heightened focus. We know that the vast majority of those exports will travel through a port and by ocean. U.S. exporters must have an efficient, reliable system to deliver their goods to market, and we are working closely with those exporters, the shipping industry, and this Committee to solve bottlenecks or inefficiencies that could hinder growth. Continued vigilance is important when more than 95 percent of the United States' ocean container trade travels on ships controlled by foreign carriers.

In early 2010, the Commission began receiving reports that the strong rebound in demand was causing U.S. exporters and importers to experience supply chain disruptions such as abruptly cancelled bookings, cargo rolled to the next sailing, and successive surcharges and price increases. The Commission responded with an aggressive search for solutions to these supply chain problems. In March 2010, the Commission launched a fact finding investigation into vessel capacity and container availability issues, led by Commissioner Rebecca F. Dye. Her team held more than 170 interviews with companies and organizations involved in all aspects of international ocean shipping, led a series of best-practices discussion pairs between exporters and carriers, and began internet-based collaborative efforts to develop solutions to container availability issues. Commissioner Dye's team issued an interim report and recommendations in June, and a final report and recommendations in December. The Commission took several steps to act on those recommendations:

- Rapid Response Teams: In June 2010, the Commission established Rapid Response Teams to provide prompt solutions for commercial disputes between carriers and their customers. Sixteen ocean carriers have named high-level liaisons to work with the Rapid Response Teams to cut through red tape and respond to specific concerns within 24 hours.

- Increased TSA and WTSA oversight: In September 2010, the Commission ordered members of the TSA and WTSA rate discussion agreements in the United States' largest trade lane to file verbatim transcripts of their meetings. We are reviewing these transcripts for any collective actions that could harm our trade.

- Increased carrier alliance oversight: In January 2011, the Commission increased its monitoring of global vessel alliances and required them to provide advanced notice of planned changes in capacity. These alliances can enhance efficiency, but they also have the potential to become complex and anticompetitive agreements that allow manipulation or restriction of vessel capacity in a trade.

The Commission is currently working to implement additional recommendations from the investigation. Chief among those is a project to enhance the service contracts that set the terms of the relationship between ocean carriers and their customers who export or import. The Commission voted in December 2010 to move forward with this project, which is focused on helping small U.S. exporters and importers improve their service contracting practices through education and outreach. As we head into a new negotiating season for most annual service contracts, one of the most important lessons from the disruptions of the past two years is that service contracts must be improved. They need to provide clear rules of the road and accurately reflect the parties' mutual expectations. When, despite these efforts, disputes do arise, I encourage parties to bring their issues to the Commission's Rapid Response Teams for a resolution that avoids the cost and delay of litigation. Parties can even specify in their service contracts that they intend to make an initial stop at the Commission to attempt a mediated resolution rather than proceeding directly to a lawsuit.

The Commission is also working with the industry and their customers to form two working groups that the fact finding investigation team recommended:

- An International Ocean Transportation Working Group that will focus on such issues as booking cancellations, cargo rolling, improving shipper forecasting and minimum quantity estimates, and export capacity forecasting; and

- An Intermodal Container Availability Working Group that will focus on U.S. exporters' problems locating and obtaining the shipping containers they need.

In addition, the Commission is working with both the U.S. Department of Agriculture and the International Trade Administration at the Department of Commerce on projects aimed at better understanding and finding solutions to container shortages that plague U.S. exporters in rural areas.

Economic and Regulatory Relief and Modernization

The Commission is committed to applying the Executive Order that President Obama issued in January to improve regulation and make it less burdensome. Although independent agencies are not required to apply the Order, it was an easy decision for this Commission to do so, since we have already made regulatory relief and modernization a top priority. Recently the

Commission took several steps to reduce regulatory burdens and bring cost savings and flexibility to the shipping industry and the customers they serve:

Last week, after a year of work and many years of debate, the Commission issued a final rule that will relieve more than 3,300 licensed Non-Vessel-Operating Common Carriers (NVOCCs) from the costs and burdens of publishing in tariffs the rates they charge for cargo shipments. According to comments filed with the Commission, this action could save many of these supply chain businesses up to $200,000 per year. Those who take the steps to elect the exemption can stop publishing their tariff rates in 45 days. In the coming year, the Commission will be working to implement this new rule, and will be examining ways to improve it.

Also last week, the Commission issued a final rule that updates its filing requirements and clarifies its procedures for informal proceedings for small claims. The changes reduce filing burdens on the public and enhance privacy protections for parties to FMC proceedings. This rule change is the first step in an ongoing project to make the Commission's procedural rules more clear, modern, efficient, and environmentally friendly.

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 foreign government-controlled carriers to ensure that they are not below a level that is just and reasonable. The Commission is carefully monitoring these 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 both vessel operating ocean common carriers and NVOCCs to provide freight rate data and sensitive commercial information to a quasi-governmental agency, the Shanghai Shipping Exchange. In response to concerns raised by U.S. shippers, we visited the Shanghai Shipping Exchange in September 2010 to seek and obtain assurances regarding protections for confidential information of U.S. companies that must be filed with the Exchange. The FMC also raised these issues and concerns of U.S. NVOCCs in October 2010 as part of the U.S. delegation to bilateral consultations with the Chinese Ministry of Transport under the U.S.-China Maritime Agreement. The FMC will continue to follow these and related developments in China closely to ensure that no unreasonable conditions exist that would impair U.S. commerce.

Protecting American Consumers

The Commission has increased its emphasis on service and protection for members of the public — especially those 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. In June 2010, the Commission began a fact finding investigation, led by Commissioner Michael A. Khouri, into issues that individual consumers have experienced when shipping their personal household goods overseas. Between 2005 and 2009, the Commission received over 2,500 consumer complaints related to household goods moving companies transporting personal effects and vehicles. In December, the Commission approved several interim recommendations from the fact finding team. These include efforts to educate consumers, work with industry and consumers to develop best practices and model shipping forms for consumers, update Commission licensing requirements to address issues with household goods shipments, enhance law enforcement efforts to protect consumers and address problem household goods movers, and promote alternative dispute resolution services to assist consumers. Commissioner Khouri's fact finding team is working on the second phase of the investigation, and will submit a final report and additional recommendations on April 15, 2011. Following up on one of the team's interim recommendations, the Commission is also working to finalize a Memorandum of Understanding with the Federal Motor Carrier Safety Administration to coordinate our efforts to protect household goods movers across the different modes of transportation.

In addition, the Commission has been conducting an inquiry to gain input on updating its financial protections for cruise passengers. Following receipt of written comments, the Commission held a public hearing in March 2010. Commission staff is currently working to develop a set of specific proposals to update its rules for the protection of passengers.

The Commission's Bureau of Certification and Licensing also worked with Cruise West to ensure that passengers scheduled to sail on vessels that board in U.S. ports were compensated when the cruise line ceased operations and cancelled sailings in September 2010.

Sustainability and Efficiency

In its role as a regulator of marine terminal operators and ocean common carriers, the FMC has seen environmental issues become increasingly central to the new agreements and shipping practices it monitors and approves. As ports and ocean common carriers adjust their business practices, equipment, and facilities to reduce their environmental footprint, the Commission works to ensure that it is a helpful partner.

One of the issues we are analyzing is the industry's widespread adoption of slow steaming, the practice of slowing vessel speeds to save fuel and reduce costs and emissions. In January 2010, the Commission voted to allow the TSA to discuss its members' slow steaming deployments. In January 2011, the Commission issued a Notice of Inquiry to solicit public input on how slow steaming has impacted ocean liner carrier operations and shippers' international supply chains, affected the cost of ocean liner service, and mitigated greenhouse gas emissions. Comments are due in April, and the Commission will then prepare a formal study of the effects of slow steaming. TSA member lines indicated that they may also use their discussion authority to work to increase use of alternative fuels, cold ironing, and other pollution-reducing technologies.

The Chairman's staff committee on environmental issues continues to examine these issues, as well as environmental initiatives at the nation's ports and international climate change negotiations under both the United Nations Framework Convention on Climate Change and the International Maritime Organization's Marine Environment Protection Committee. The Committee has met with other federal government agencies as well as industry experts and is working to highlight the work being done in this area.

Impact of European Union Repeal of Block Exemption

The Commission is studying the impact of the October 2008 European Union (E.U.) repeal of its block exemption from competition laws for liner conferences. As part of our study, 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. In November 2010, we solicited industry and public views through a Notice of Inquiry (NOI) with a deadline for submitting information or comments in January 18, 2011. Responses to that NOI are available in the electronic reading room on the Commission's website. As we move forward, we would welcome any additional input from this Committee and all sides of the maritime industry or their customers.

While the long-term effects of the E.U.'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.-E.U. 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 E.U. regime. The study is scheduled to be completed, reviewed by the Commission, and publicly released in late 2011.

National Security

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 parties using our nation's supply chain, including those with direct access to our seaports.

The Commission's Bureau of Enforcement and Area Representatives continue their efforts to prevent practices that are unfair and deceptive. Targeted violations included misdescription of cargo, which not only affects shipment costs, but can also pose a serious safety and security risk by preventing vessel operators and port officials from knowing what goods are being transported on vessels into the United States. During 2010, the Commission collected more than $1.1 million in penalties for such violations.

The Commission continues to exchange enforcement information with the Department of Homeland Security ("DHS"). Within the DHS, the Commission works together with Customs and Border Protection ("CBP") under 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 officers, and Immigration and Customs Enforcement officers, and the Federal Bureau of Investigation. Also during the past year, Commission Area Representatives provided assistance to an investigation by the Export-Import Bank and Department of Justice into a conspiracy to defraud the Export-Import Bank out of more than $850,000. FMC Area Representatives also confer with other federal agencies regarding ongoing matters of mutual interest, such as inaccurate descriptions of shipments and other malpractices.

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.

Modernization and Technology

The Commission is pursuing several information technology ("IT") initiatives to comply with governing IT statutes and regulations, as well as strategically 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 CBP and other federal agencies. These IT systems would also 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. The scope and speed of these technology investments will depend on availability of funds. These investments will lead to greater productivity, efficiency, and transparency. They will also reduce burdens for the ocean shipping industry.

Human Capital Management

At FMC, we understand that our leadership corps is a critical asset. At the present time, two-thirds of FMC's executives are eligible for optional retirement.

Our Human Capital Plan guides our actions in planning for succession. We provide training and development in leadership competencies within a technical context to prepare the next generation of leaders.

This year, we launched a Senior Executive Service Candidate Development Program in anticipation of filling executive vacancies over the next few years. That class of four individuals has embarked on a comprehensive development program that provides a variety of learning experiences to build on their already considerable technical knowledge.

We will continue to use a systematic succession management process that allows us to project our needs, prepare individuals to assume greater levels of responsibility, and evaluate the results. In this way, we expect to continue to maintain a talented leadership corps that can meet the challenges of the future.

CONCLUSION

Mr. Chairman and members of the Subcommittee, I hope that these comments give you a clear indication of the state of the liner shipping industry serving the nation's foreign trades 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 2012 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.