

**STATEMENT OF
THE FEDERAL MARITIME COMMISSION
PRESENTED BY
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**BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND
MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
April 15, 2008**

Mr. Chairman and members of the Subcommittee, it is a pleasure to appear before you today to present the President's fiscal year 2009 budget for the Federal Maritime Commission. With me today are my fellow Commissioners, Joseph E. Brennan, Harold J. Creel, Jr., and Rebecca F. Dye.

The President's budget for the Commission provides for \$23,953,000 for fiscal year 2009. This represents an increase of 7.8%, or \$1,881,000, over our fiscal year 2008 appropriation. This budget provides for 131 workyears of employment.

Our fiscal year 2009 budget request contains \$17,106,000 for salaries and benefits to support the Commission's programs. This is an increase of \$1,467,000 over our fiscal year 2008 appropriation. This includes all salaries, including those for employees hired in fiscal year 2008, promotions, and within-grade increases. The funding includes annualization of the fiscal year 2008 cost of living adjustment increase, and an anticipated 3.0 percent fiscal year 2009 cost of living adjustment.

Official travel has been increased by \$24,000 over our fiscal year 2008 level of \$261,000. As you know, the Commission sought approval to reprogram travel funding in FY 2007, which funds were then used to finance much-needed IT upgrades. With an earlier approval of the Commission's FY 2008 budget, we expect to spend this year's appropriated funds allocated for travel

needs. Travel 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 will have increased \$390,000 net over fiscal year 2008. Roughly one-quarter of this amount, or \$91,000, reflects an anticipated increase in rent from GSA for our Washington headquarters space. Other commercial and government contracts would increase \$334,000. These increases are partially offset by expense reductions for furniture and equipment. Administrative expenses to be funded in fiscal year 2009 support our customary business expenses, such as for telephones, postage, and supplies.

As in previous years, the Commission's budget contains primarily non-discretionary spending. These items represent the basic expenses any organization faces in order to conduct its day-to-day operations, and are crucial to allow us 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' directives for oversight of the ocean transportation industry. Working with the industry, we have developed a regulatory system that allows for necessary oversight with minimal disruption to the efficient flow of U.S. imports and exports. I would like to highlight the state of the U.S. trades as well as identify some of the significant current events, programs and initiatives at the Commission:

In fiscal year 2007, the total cargo volume of U.S. liner exports shipped worldwide grew by 12 percent due largely to the weak value of the U.S. dollar relative to foreign currencies, which made U.S. goods more affordable abroad. Total liner imports to the U.S. declined slightly, by a little over one percent, for the first time in many years. However, import cargo still exceeded export cargo, an imbalance of approximately one (1.0) twenty-foot equivalent container units ("TEU") of goods exported out of the U.S. for every 1.8 TEUs of cargo imported into the U.S.

As in preceding years, China was the leading trading partner in liner cargo with the U.S.; over half of all U.S. liner cargoes (both imports and exports) are concentrated in

trade with countries in Northeast Asia. Cargo growth in imports from Asia slowed substantially by the end of fiscal 2007, to less than one percent, down from a growth rate of 15 percent in fiscal year 2006. Some of this drop can be attributed to the corresponding declines in the U.S. housing market, rising costs of energy and fuel, as well as to product safety issues recently highlighted in the case of certain goods made in China. Conversely, U.S. liner exports to Asia grew by 11 percent, up from a 6 percent increase in the preceding fiscal year.

Containership capacity on the world market continued to grow at a steady pace ahead of demand. Additional capacity growth is anticipated for the future because of the considerable number of containerships on order. Many newbuildings now have individual vessel capacities of 10,000 TEUs or more. Concentration in the liner shipping industry likewise increased during the fiscal year, with the top ten ocean carriers in control of 60.5 percent of the world's containership capacity, up from 53 percent in the preceding fiscal year.

Current Events, Programs and FMC Initiatives

Over the past year, the Commission has continued to monitor the international liner trades, focusing in large part on agreement activities relating to ocean common carriers and marine terminal operators. Consistent with shifts in trade volumes and the introduction of new vessels, membership changes and agreement modifications are filed with the Commission in those carrier rate discussion agreements that operate in the U.S. trades. We have also continued our licensing and enforcement initiatives and worked to provide a forum for the industry to resolve disputes through our consumer affairs office. The Commission has also succeeded in updating many of its information-gathering processes and has improved public access to our informational resources.

The Commission recently issued an order reviewing the lawfulness of allowing licensed ocean transportation intermediaries ("OTIs") to utilize unlicensed and unbonded agents to provide NVOCC and ocean freight forwarding services to the public. The Commission has been charged by Congress under section 19 of the 1984 Act to protect the shipping public through licensing and bonding of those providing OTI services. From the time Congress first required licensing and bonding in 1961 to the present, the Commission has consistently rejected

the utilization of unlicensed agents to provide OTI services. This decision, issued by a majority of the Commission in response to a petition filed with the Commission, underscores Congressional intent to require OTI licensing as a means to protect the shipping public from unqualified and potentially unscrupulous operators, to preserve the integrity of the licensing process, and to uphold the financial responsibility requirements made applicable to OTIs under the NVOCC Act of 1990. We believe that the decision also aligns the Commission with the nation's security interests by ensuring a safe and transparent supply chain.

The Commission has also been actively monitoring agreements that address supply-chain and operational issues such as port congestion, security, air pollution and environmental concerns that affect local communities and the industry, including, in particular, the Clean Truck Program ("CTP") in the Port of Los Angeles and the Port of Long Beach ("the Ports"). The cities of Los Angeles and Long Beach, acting through their Harbor Boards, filed the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement* ("the Agreement") with the Commission to allow them to discuss and agree upon a joint program to address environmental and transportation infrastructure issues at their Ports. Under the Agreement the Ports developed the San Pedro Bay Ports Clean Air Action Plan ("CAAP") to address diesel emissions from multiple port sources, including heavy-duty trucks used in cargo drayage, ocean-going vessels, cargo-handling equipment, harbor craft, and railroad locomotives.

The Ports' first major initiative under the CAAP was the development of a proposed Clean Truck Program ("CTP"). The CTP proposed to reduce diesel emissions by drayage trucks up to 80 percent over 5 years by replacing or retrofitting approximately 16,000 trucks with the assistance of a port-sponsored subsidy. The program anticipated the Ports using their tariff authority to limit access to port terminals to certain qualified licensed motor carriers ("LMCs") as concessionaires under contract to the cities. Those LMCs would own the retrofitted and replacement trucks and be required to hire employee drivers. The LMC "concession/employee driver only" provision, recently adopted by Los Angeles but not by Long Beach, eliminates the existing system in Los Angeles under which LMCs primarily contracts for the movement of cargo and then dispatches independent owner-operator truckers to haul the cargo. In addition, the CTP

proposal included a temporary Truck Impact Fee to be assessed on the LMC concessionaires that use "dirty" trucks during the 5-year phase-out period. A related development regarding the implementation of aspects of the CAAP was the recent filing of the Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement. This agreement provides authority for the parties to cooperate on the administration and operation of port programs relating to port security, infrastructure, or clean air, such as the testing and implementation of TWIC and the administration of certain CAAP programs (possibly using PierPASS).

Because the Commission has oversight responsibility to monitor agreements filed with it and to act upon potential violations of the Shipping Act, the Commission met with concerned parties, including staff and executives from the Ports, organizations representing marine terminals, shipping lines, truckers, railroads, importers and exporters, local government officials, community activist groups, organized labor, academics, and officials from air quality agencies. These meetings have provided insight into the competitive effects of the programs proposed by the parties. The Commission met formally on November 28, 2007 to consider the proposed Clean Trucks Program, and continues to closely monitor developments at the Ports. The Commission is actively assessing the development and competitive impacts of a comprehensive CAAP for LA-Long Beach given its critical importance as a trade gateway to the Far East. The Commission's assessment will, in part, be facilitated by a request for additional information recently sent to the Port/MTO implementation agreement. The Commission currently awaits receipt of the parties' responses to the request for additional information, and looks forward to further discussions with the agreement parties regarding the impact and implementation of programs thereunder.

As noted earlier, shifts in trade often gives rise to a need for the Commission to review changes to agreements in our U.S. ocean trade lanes. In the Transpacific trade, Commission staff examined the competitive impact of expanding the geographic scope of the *Transpacific Stabilization Agreement* ("TSA") to include the Indian Subcontinent; and the competitive impacts anticipated from the announcement that TSA would add CMA-CGM, S.A., Mediterranean Shipping Company, S.A. and Zim Integrated Shipping Services Ltd., as members. Although the addition of carrier parties increased TSA's market position,

anticompetitive concerns at present are mitigated by the decline in rate levels in the Transpacific trade over the past year.

In another significant development relating to marine terminal agreements, the Commission analyzed an agreement between and among ocean common carriers participating in the Ocean Carrier Equipment Management Association ("OCEMA"). Under OCEMA, ocean common carriers and marine terminal operators have established regional chassis pools at marine terminals and inland intermodal terminals in the South Atlantic region of the United States. The Commission allowed the agreement to become effective upon determining that the agreement likely would enhance efficiency at the marine terminals and inland intermodal terminals. We will, of course, continue to monitor developments in these and other important agreement areas.

Within the Commission, our operating bureaus have updated their processes and assigned personnel where needed to enhance efficiency in order to better respond to the needs of the industry. Following written notice to Congress, the Commission added an Area Representative (AR) based in Houston, TX, in response to the significant growth in container volumes transiting the port. The new AR will serve Houston and other ports and transportation centers within the geographic area.

In addition to their monitoring and investigative functions, ARs represent the Commission within their areas of responsibility, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. In short, ARs play a vital role in the collection and dissemination of information. The ARs enable the Commission to better interact with the industry and, most importantly, ensure the success of the Commission's licensing, compliance and enforcement initiatives. These efforts contribute to national security efforts in verifying the accuracy of the Commission's informational resources, and making those resources available as needed by other Federal investigatory/enforcement bodies.

During fiscal year 2007, the Bureau of Certification and Licensing (BCL) implemented electronic filing of an automated Form FMC-18, *Application for an Ocean Transportation Intermediary License*, permitting filers a modern, optional method to complete OTI applications on-line, scan and attach required documents, and submit the application electronically.

The filing system incorporates significant security features for the purpose of protecting applicant data, and detecting and preventing unauthorized system intrusions. Further, BCL has completed modernization of our Regulated Persons Index ("RPI"). Through the RPI, the agency posts on its website a list identifying those OTIs which are currently licensed, bonded, and have provided their tariff location, if required. The RPI assists carriers and the shipping public in ascertaining whether an OTI has met FMC requirements and is therefore a reputable company with whom to do business. That list is actively employed by U.S. Customs and Border Protection ("CBP") and other Federal agencies in conjunction with homeland security initiatives. These initiatives have resulted in a more user-friendly interface for the industry by streamlining the licensing process and by providing improved access to the Commission's informational resources.

The Commission continues to exchange enforcement information with CBP in accordance with an effective Memorandum of Understanding. Cooperation with CBP has expanded into joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation often includes local police and U.S. Citizenship and Immigration Services (formerly INS) officers. FMC Area Representatives also conferred with CBP regarding ongoing matters of mutual interest such as misdescriptions of shipments inbound from China, and other industry malpractices.

The Commission is pleased to report a welcome decline in the number of household goods complaints received this year, possibly attributable to formal action and outreach undertaken in the previous year. As we previously advised this Committee, the Commission commenced a formal investigation against nine household goods moving companies operating in violation of the Shipping Act in 2006. The Commission's preliminary investigation had indicated that these companies were unlawfully doing business as unlicensed NVOCCs without proof of financial responsibility or published tariffs, and were engaging in conduct that created significant risk of financial harm to the shipping public. In order to mitigate the threat posed by these companies, the Commission obtained a preliminary injunction from the U.S. District Court for the Southern District of Florida. The injunction prohibits the respondents from operating in violation of the Shipping Act and remains in effect pending ongoing formal proceedings at the Commission. This coordinated

approach will be employed in the future wherever needed to protect the shipping public from harm.

The Commission continues to address restrictive or unfair foreign shipping practices under section 19 of the Merchant Marine Act, 1920 ("Section 19"); 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.

Last year, several U.S. NVOCCs complained to the Commission that the Chinese Ministry of Communications was implementing licensing regulations on U.S. NVOCCs in an uneven and confusing way, and not in accordance with the method agreed upon by the U.S. and the PRC in the Maritime Bilateral Agreement. With the clearance of the State Department and the Maritime Administration, the Commission drafted a cable to the U.S. Embassy in Beijing, China, outlining the concerns that had been raised and asking for the Embassy's assistance in clarifying these matters with Chinese authorities. The Maritime Administrator raised these concerns directly with the Chinese Ministry of Communications in the context of bilateral consultations in late November 2007. The Commission continues to monitor this situation and will keep Congress apprised of any developments.

Finally, the Commission's oversight of ocean common carriers, ocean transportation intermediaries, including ocean freight forwarders and NVOCCs, and marine terminal operators, is an important element in the effort to protect our Nation's seaports. The FMC 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. Our 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 the CBP and the Department of Homeland Security, through the International Trade Data System (ITDS) and the Automated Commercial Environment (ACE) portal. An updated Memorandum of Understanding with Customs is in process of negotiation and 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 - some of the most complete databases identifying OTIs and other persons engaged in U.S. foreign commerce. Once completed, the ACE/ITDS system will provide greater transparency of the Nation's supply chain.

The Commission stands ready to contribute more significantly to the nation's current and long-term efforts to improve maritime security in ways closely related to our current mission and responsibilities. Among these are closer scrutiny of licensees and other regulated transportation entities; better information gathering and sharing with other agencies; and ensuring greater transparency for container cargo. Enhancing these areas would allow the FMC to provide greater value, including access to our informational resources and use of such data in cargo screening and targeting, to other Federal agencies more directly charged with the responsibility for preventing terrorist attacks on, or by means of, ocean shipping. As the Congress continues to refine the roles and duties of agencies and industry in the safeguarding of our national security, we are committed to providing our technical expertise and assistance to those agencies on the front lines of securing our ports and vessels.

Mr. Chairman, we hope that these comments have served to give you a clear indication of the important work to be accomplished by the Federal Maritime Commission. We respectfully request favorable consideration of the President's budget for the Commission so that we may continue to perform our vital statutory functions in fiscal year 2009 and beyond.