

**Testimony of
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Chairman
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Subcommittee on Coast Guard and Maritime Transportation
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Chairman Webster, Ranking Member Carbajal, Members of the Subcommittee, thank you for this opportunity to appear before you today to discuss the Federal Maritime Commission's Fiscal Year 2024 budget request of \$43,720,000 to fund its operations in the coming fiscal year.

The last time I appeared before this subcommittee, the supply-chains that service this country were still very much in crisis. The media was still showing long lines of ships held up outside our major ports, ports were clogged with containers, ship schedules were woefully unreliable making it extremely challenging for exporters, and freight rates and fees were sky-high adding to the inflationary pressures on imported goods and inputs.

The Nation's freight transportation systems were largely overwhelmed by the unprecedented high demand that resulted from COVID-related consumer spending patterns. However, there were also widespread reports from importers and exporters that the large multinational ocean container ship operators were taking advantage of a situation already economically favorable to them. The most cited example was additional freight charges called detention and demurrage being improperly assessed for laden containers that were not picked up on schedule or empty containers and other equipment that was not returned on time. The assertion was that many of these charges – amounting to millions and millions of dollars for even a medium-sized shipper – did not comply with FMC rules such as the May 2020 interpretive rule on detention and demurrage authored by Commissioner Rebecca Dye and approved unanimously by the Commission.

Sorting all of this out and promulgating solutions to stakeholders to help us unravel the knots in the Nation's supply chains was largely the job of the Federal Maritime Commission. It has been and continues to be the most intense period of activity in our agency's over 50-year history.

I am pleased to report to you that now the ocean freight transportation system is much improved in virtually every way. The ship queues and congestion that overwhelmed the supply chain for approximately two-years have drastically dissipated. Cargo is flowing more fluidly, shippers are having an easier time securing intermodal equipment, and exports are making their connections to the outgoing ships. The cost of ocean shipping has dropped dramatically to levels more typical of pre-pandemic prices – and this rate drop occurred far more rapidly than forecast. If anything, ocean shipping is now exerting downward pressure on price inflation.

Of course, much of this is a natural result of market-forces. Nonetheless, the FMC played a vital role in promoting fairness to America's importers and exporters and restoring confidence to America's ocean supply chains. Many stakeholders and their representatives in Congress turned

to the Federal Maritime Commission to do more during the crisis. In rapid response, the FMC substantially stepped up its activity, and made a difference.

As shippers realized the FMC was eager to help them where appropriate and provide fair arbitration or adjudication of their disputes, there was a huge jump in cases.

We are handling exponentially more complaints now than before the Ocean Shipping Reform Act of 2022 (OSRA) was enacted. Our Office of the Secretary reports that the number of dockets it manages increased by 88% in Fiscal Year 2022 from Fiscal Year 2021, and there are three times as many docket filings when compared to Fiscal Year 2019. This is a useful barometer of Commission activity as docketed proceedings include formal complaints, informal complaints, petitions, fact findings, special permission applications, and rulemakings.

A second indicator of the new demand for Commission services is the marked increase of both small claims and formal cases that have been filed with the Commission's Office of the Administrative Law Judges (ALJ) beginning in 2020. The ALJ's caseload tripled in Fiscal Year 2022 when compared to a pre-pandemic year. Comparing statistics within the pandemic period, the OALJ's output in FY 2022 doubled from FY 2021. Many of the cases heard by our ALJs are complicated and involve substantive matters of the law that do not lend themselves to immediate rulings. The Commission hired a second Administrative Law Judge to help manage this caseload and are we are in the process of recruiting for a third now. These hirings ensure that legal proceedings do not become delayed because of caseloads and the judicial process at the Federal Maritime Commission continues to function effectively.

The demand for Commission services from all our bureaus and offices remains high and we believe this workload will remain at elevated levels. This increase is largely a positive development because it means that importers, exporters, and other industry stakeholders have seen others benefit from using the FMC. We are closely tracking requests for service to determine if present volumes are indicative of the tail end of a trend or a new baseline for how often the public turns to the FMC for assistance.

OSRA 2022 Implementation

Of course, the capacity of the FMC to assist American importers and exporters and promote fairness and efficiency in America's cargo transportation systems was significantly aided by the enactment of the bipartisan Ocean Shipping Reform Act of 2022 (OSRA). Whether you ultimately supported the legislation, thought it went too far, or thought it did not go far enough, I want to thank each and every member of this subcommittee for your constructive contribution to America's ocean freight transportation system.

I maintain that the additional resources and authority in OSRA and the Congress' willingness to act so expeditiously were crucial to putting the system back on course.

That is why I am committed to implementing OSRA in the spirit intended by Congress. We have made substantial progress in meeting our obligations under the law since its enactment by President Biden on June 16, 2022. To date, we have already:

- Updated our civil penalties regulations to include refunds of a charge (Section 8);
- Established a process for accepting, investigating, and adjudicating charge complaints (Section 10);
- Posted to the Commission’s website the Fact Finding 29 Final Report (Section 11);
- Updated the Annual Report to include any concerning practices by ocean common carriers (Section 14);
- Continued to maintain an Office of Consumer Assistance and Dispute Resolution Services (CADRS) (Section 17(b));
- Hired no fewer than seven positions to support investigations and oversight functions (Section 17(c));
- Determined if congestion of carriage of goods has created an emergency situation such that the Commission needs to order information sharing (Section 18);
- Entered into an agreement with the Transportation Research Board to conduct a study and develop best practices for on-terminal and near-terminal chassis pools (Section 19); and,
- Been in contact with relevant agencies responsible for sections of OSRA dealing with Review of Potential Discrimination Against Transportation of Qualified Hazardous Materials (Section 22), Use of Inland Ports for Storage and Transfer of Containers (Section 24), Report on Adoption of Technology at United States Ports (Section 25).

Significant work has been completed on other requirements of OSRA and we have made substantial progress in:

- Issuing a proposed final rule on detention and demurrage invoicing and billing (Section 7); and,
- Issuing a Supplemental Notice of Proposed Rulemaking on Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space (Section 7).

Notwithstanding my commitment to timely implementation, it is even more important we get these rules right. I want to assure you that Commission staff is working diligently on both these matters, giving all comments received the careful consideration they warrant. The Commission is committed to ultimately issuing rules that address and reconcile the important issues raised by the comments. I anticipate we will be taking next steps on both the Unreasonable Refusal to Deal and the Detention and Demurrage Billing Requirements proposed rules soon.

Implementation of OSRA involves the efforts of all staff at the Commission working in policy and program offices. All sections of OSRA are being worked on simultaneously. We have had to make decisions regarding prioritization. As staff achieves progress on first implementation priorities, they turn their efforts to other sections of the legislation. No section of OSRA is being left unaddressed and work has begun on all sections of the legislation the Commission is responsible for implementing. We will be announcing further implementation steps and achievements as the year goes on.

While OSRA implementation has provided the Commission with a “to do” list, these are responsibilities that are in addition to the ongoing work of the organization.

Charge complaints, created by OSRA, is generating a considerable amount of work for our investigators and enforcement attorneys. The public has responded favorably to the option of submitting billing complaints under a streamlined process allowing for more rapid review of claims than the other pre-existing options that were available at the Commission. Between June 16, 2022, and March 14, 2023, 260 charge complaints have been filed, 97 of which were perfected and assigned for investigation. Except for one case where the Commission’s Bureau of Enforcement, Investigations, and Compliance issued a “Show Cause” order (that is still pending) all other cases have been voluntarily settled by the ocean carriers once the disputed charge has been brought to their attention. Approximately \$800,000 in charges have been waived or refunded. Processing charge complaints requires the work of staff from our Office of the Secretary, the Bureau of Investigations, and the Bureau of Enforcement. We are assessing the requirements for accepting, investigating, and adjudicating charge complaints to make certain we have sufficient resources devoted to this effort.

The charge complaint statistics referenced above do not reflect charge mitigation that is taking place directly between carriers and shippers. We are collecting information from the top nine ocean carriers calling the United States on demurrage and detention billing through our Vessel-Operating Common Carrier (VOCC) Audit Program. Beginning in Quarter One Calendar Year 2022, the indices for collected and billed detention and demurrage began declining and in Quarter Two 2022, the rate of waived charges was rising. We believe that data will continue to show reductions in billed and collected charges. Nonetheless, continued progress must be made in changing what I believe has become a practice of using demurrage and detention as a revenue center as opposed to strictly an incentive to pick-up cargo and return equipment. We will be carefully monitoring information we gather on fees as one way to measure compliance with our rule on demurrage and detention.

Enforcement, Compliance, Oversight & Consumer Assistance

In April 2022, I directed the VOCC Audit Program to determine how ocean carriers are serving U.S. exporters and what proposals these companies had for doing more to help American shippers reach overseas markets. Last December, the VOCC Audit Program began assessing how ocean carriers will comply with anti-retaliation provisions of OSRA with particular attention paid to instituted training programs and if they result in bottom-to-top awareness of the new prohibitions. We have found the VOCC Audit Program to be a productive tool for raising and resolving issues with ocean carriers.

The FMC protects competition in U.S. ocean transportation, ensuring that there is both efficiency and reliability in the supply chain for U.S. exporters and importers. The FMC's competition program consists of careful analysis of agreements. Oversight of agreements and the marketplace continues through the important work done by our Bureau of Trade Analysis (BTA). As I have testified before, ocean carrier alliance agreements are subject to the most frequent and close monitoring of any class of filed agreement. BTA’s monitoring program provides the Commission with unequalled insight into the behavior and business decisions of ocean carriers participating in

agreements. Unlike reviews of mergers and acquisitions, alliance agreement monitoring is continuous, and we receive detailed information on operational data, minutes from meetings among agreement principals, and minutes from regularly scheduled alliance meetings. In effect, we have insight into the alliances' commercial and operational decisions that goes straight to the companies' top leadership. We also have the ability to change alliance agreement reporting requirements as warranted. We did so twice during the past two years, most significantly in 2022 by requiring enhanced pricing and capacity information be filed as part of the monitoring process. I should add that it is not just ocean carriers who are subject to monitoring requirements. Monitoring requirements for marine terminal operator agreements on file at the Commission that have rate discussion authority (something that the carrier alliance agreements do not have) were changed over the past year to give BTA more insight into how these companies operate when they utilize an agreement.

We continue with efforts initiated last year to reorganize our investigative, enforcement, and compliance activities into a more capable and holistic enforcement function. Following Congressional approval, we established the Bureau of Enforcement, Investigations, and Compliance, bringing all those activities under one organization that will be led by a new director. Area Representatives were reclassified as Investigators and their public outreach responsibilities were reassigned to other parts of the Commission. This change removed any question as to the role of these field personnel and conveys the emphasis on enforcement I have brought during my tenure as Chairman. Further toward that effort, we are increasing the number of Investigators we have in total while simultaneously strategically expanding the size of BEIC by adding needed attorneys, investigative analysts, compliance analysts, and supervisors across all three programs.

Our reorganization efforts are showing results that include:

- As of March 1, 2023, there were 39 active cases on actions and practices of VOCCs and non-vessel-operating common carriers (NVOCCs);
- Preliminary actions have been taken against three large VOCCs and one NVOCC;
- One of the Commission's Administrative Law Judges recently issued a decision to accept a proposed \$950,000 settlement agreement reached between container company Wan Hai and BEIC; and,
- Compromise discussions are on-going with a NVOCC for providing service to unlicensed Ocean Transportation Intermediaries (OTI).

Though separate from BEIC, our Bureau of Certification and Licensing provides an important compliance function. Their continued administration of thousands of license applications, renewals, and revocations/suspensions of OTIs each year protects individuals who want to ship goods. When BCL learns of an OTI operating without a license, they work to bring that party into compliance, but if a company continues to refuse to meet their obligations under the law and regulations, then the case is turned over to BEIC for enforcement. Beyond OTI licensing, BCL is also responsible for the Passenger Vessel program which importantly provides protections to passengers embarking a cruise at a U.S. port.

Inquiries continue to come into CADRS at more than 1,500 communications annually. Requests for CADRS' aid cover almost any imaginable circumstance involved in international commerce

and cruising. As part of our efforts to bolster the effectiveness of CADRS, we have added staff to this office including an export expert whose primary responsibility is aiding shippers who want to reach overseas markets. The volume of contacts CADRS fields has remained fairly consistent year-to-year and we have every reason to believe that these statistics will remain steady if not grow.

The Commission cannot conduct its work without the important support it receives from many other parts of the agency. We are working to identify which parts of our information technology infrastructure are in need of upgrading and working on a plan to prioritize the order of work that must be completed. Many of the Commission's systems are built on legacy technology and need to be improved or replaced. We have retained an outside technology consulting company to assist us with this effort and to help guide us to making the most beneficial acquisitions. This will be a longer-term effort likely taking several years to complete.

Looking Forward

We continue to invest in the capabilities necessary to have a workforce that is fully telework ready. The Commission was fortunate to have adopted this goal in the pre-pandemic era and when COVID forced staff to stop coming to the office, we were well prepared to work successfully from locations other than our offices. We are looking to identify any lessons learned from the past two years and incorporate them into future contingency plans.

Beyond investing in improving our existing IT infrastructure, we will acquire capabilities that will serve us into the future and benefit the public. We have invested in an updated rulemaking docketing system and are in the process of purchasing a court docket system to allow us to better manage not just cases our ALJs are working on, but also all other docketed proceedings of the Commission. We will build a data lake that will streamline data submission from regulated entities as well as data review, processing, and analysis by FMC staff. We have initiated a series of construction projects to meet that goal. We are also undertaking a refresh of our Hearing Room to make it more accessible to the public, of more utility to the Commission, and to undertake technology upgrades that will better serve the public who watch our proceedings via webcasts.

The Federal Maritime Commission is changing. Not only in response to congestion, legislation, and the priorities I set when I became Chairman, but also because international trade is changing. General David H. Petraeus warned recently at a large gathering of ocean shipping stakeholders that the era of "benign globalization" is over, and that geopolitical risk will have an even greater impact of trade flows than it has in the past. Clearly, we have entered an era where international trade patterns are less stable and more fraught with risk. Any event or economic issue taking place anywhere in the world has the potential to dramatically alter everyone's supply chains. The U.S. freight delivery system will face another disruption, the only question is when. My goal as Chairman is that the Commission will be nimble and capable enough to respond when the inevitable occurs.

The budget we are submitting makes important Investments in our monitoring, enforcement, and consumer assistance functions. It permits us to hire the staff needed to do more enforcement, assist more exporters, and provide consumer assistance. This is an important juncture. Shippers and

other parties turned to the Federal Maritime Commission in record numbers throughout the pandemic. Now is the time to invest in building the capabilities of the Commission so that it is prepared to continue to provide competition oversight and address violations of the law.