



# FEDERAL MARITIME COMMISSION STRATEGIC PLAN FY 2018-2022

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## **Message from the Acting Chairman**

The Federal Maritime Commission (FMC or Commission) is pleased to issue its Strategic Plan for fiscal years (FY) 2018-2022. The FMC's work to maintain competition and integrity throughout the Nation's ocean transportation supply chain is vital to America's economy and job growth. The international ocean transportation system is experiencing significant changes, including consolidation of vessel-operating common carriers as well as further cost-saving efforts through the increased use of carrier Alliances to create industry synergies. The Commission's efforts in facilitating commerce and protecting U.S. shippers will continue to be critical in the upcoming years.

Our Plan provides the framework to address current and anticipated challenges in the ocean transportation industry over the next five years. It continues to calibrate performance measures to ensure the Commission is meeting its statutory mission and the needs of a rapidly changing ocean shipping industry. It is intended to be flexible and adaptable as the shipping industry continue to evolve, while providing clear and measurable targets.

This Strategic Plan builds on the success of our prior Strategic Plan, which covered FY 2014-2018. The FMC's two strategic goals, as well as a section on administrative functions, will guide our efforts and ensure that the Commission is an efficient and effective steward of the public's interest.

The Commission's specialized and professional staff are dedicated to executing our Strategic Plan to achieve results for the American people. My colleagues and I look forward to the work ahead as we continue to fulfill our important mandate.

Michael A. Khouri  
Acting Chairman  
Federal Maritime Commission

# *Competition and Integrity for America's Ocean Supply Chain*

## Mission

Ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices.

Fulfilling this mission involves achieving two primary goals:

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

# About the Federal Maritime Commission

## History and Statutory Authority

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The Federal Maritime Commission is an independent agency charged with regulating liner shipping in the U.S.-international trades. From its creation through a statutory reorganization in 1961, the FMC has worked to fulfill its mission to ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and job growth; and protects the public from unlawful, unfair, and deceptive practices. While the specifics of U.S. maritime policy and legislation have changed markedly during the last few decades, the FMC's mission and dual strategic goals remain significantly stable and the focus of today's regulatory efforts.

The passage of the Shipping Act of 1984 (Shipping Act) brought about major change in the regulatory regime applicable to shipping companies operating in the U.S.-foreign oceanborne commerce. The subsequent passage of the Ocean Shipping Reform Act of 1998 (OSRA), with its deregulatory amendments and modifications to the Shipping Act, further signaled a significant shift in shipping regulation to more market-oriented solutions to industry challenges.

The Commission will achieve its mission by ensuring that the fundamental dynamics of a free, open, and competitive ocean transportation market drive economic outcomes. The Commission is committed to faithfully administering the Shipping Act while employing a minimum of government intervention and regulatory costs, and by placing a greater reliance on the marketplace. Congress assigned these responsibilities to the FMC in the following laws now codified at 46 U.S.C. §§ 40101-44106:

- The Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998;
- The Foreign Shipping Practices Act of 1988 (FSPA);
- Section 19 of the Merchant Marine Act, 1920 (1920 Act); and
- Sections 2 and 3 of Pub. L. No. 89-777, 80 Stat. 1350.

## Regulatory Responsibilities

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The Commission's principal regulatory responsibilities include:

- Reviewing and monitoring agreements among vessel-operating common carriers (VOCCs), and among VOCCs and marine terminal operators (MTOs) serving the U.S. foreign oceanborne trades to ensure that they do not cause substantial increases in transportation costs or decreases in transportation services.
- Maintaining and reviewing confidentially filed service contracts and non-vessel-operating common carrier (NVOCC) service arrangements to guard against detrimental effects to shipping.
- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce.
- Ensuring common carriers' tariff rates and charges are published in private, automated tariff systems and electronically available.
- Monitoring rates, charges, and rules of foreign, government-owned/controlled carriers to ensure they are just and reasonable.
- Taking action to address unfavorable conditions caused by foreign governments or business practices in U.S. foreign shipping trades.
- Investigating and ruling on complaints regarding rates, charges, classifications, and practices of VOCCs, MTOs, and Ocean Transportation Intermediaries (OTIs), that violate the Shipping Act.
- Licensing OTIs with appropriate character and adequate financial responsibility.
- Helping resolve disputes involving shipments of cargo, commercial, personal, or household goods, or disputes between cruise vessel operators and passengers.
- Identifying and holding regulated entities accountable for mislabeling cargo shipped to or from the United States.
- Ensuring that cruise lines maintain financial responsibility to pay claims for personal injury or death, and to reimburse passengers when their cruise fails to sail.

## Organizational Structure

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The FMC is composed of five Commissioners appointed by the President with the advice and consent of the Senate. Commissioners serve five-year, staggered terms, and no more than three members of the Commission may belong to the same political party. The President designates one Commissioner to serve as Chairman. The Chairman is the chief executive and administrative officer of the agency. Commissioners appointed and confirmed after December 18, 2014, may serve no more than two terms.

The Commission's staff includes economists, attorneys, and experts in ocean transportation and government administration. The FMC's organizational chart is included as Appendix B. In addition to the Commissioner's offices, the staff of the FMC is organized into 10 bureaus and offices.

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

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

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

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

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

*The Office of Equal Employment Opportunity (OEOO)* advises and assists the Commission in carrying out its responsibilities relative to Titles VI and VII of the Civil Rights Act of 1964 (as amended), other laws, executive orders, and regulatory guidelines implementing affirmative employment, and the processing of EEO complaints.

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

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

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

*The Office of the Secretary (OS)* serves as the office through which all filings are made in Commission proceedings, notices of proceedings are given, and from which all official actions are issued by the Commission. OS prepares and maintains agenda matters and actions taken by the Commission; maintains official files and records of formal proceedings; ensures

compliance with Freedom of Information, Government in the Sunshine and Privacy Acts; responds to information requests from the public; issues publications and authenticates instruments and documents of the Commission; maintains a public reference/law library and a docket library; and oversees the organization and content of the Commission's website.



## Strategic Plan Overview

The Federal Maritime Commission is pleased to issue this *Strategic Plan for FY 2018-2022*, which builds on the success of the FMC's prior Strategic Plan covering FY 2014-2018. This Plan retains the two previous strategic goals (albeit slightly modified), as well as a section on administrative strategies in support of agency objectives. This latter section was established for the Commission's administrative support functions: human resources; information technology (IT); contracting and property management; and financial management. Each of these important functions are subject to their own stringent planning and measuring regimes pursuant to various laws and executive mandates. Those related plans support this Strategic Plan and are referenced and described herein.

This plan sets goals and objectives for each fiscal year through 2022 and contains targets and measures linked to objectives via strategies. These objectives, strategies, targets, and measures drive the agency's budgetary process. This strategic plan conforms with the spirit and letter of the GPRA Modernization Act of 2010; OMB Circular A-11, *Preparation of Submission of Strategic Plans, and Annual Program Performance Reports*; and Executive Order 13450 – *Improving Government Program Performance*.

As directed by the Acting Chairman, the Office of the Managing Director led the Strategic Plan update process. The Commission's senior executives evaluated the current plan and provided input on revisions to the Commission's mission, goals, and policy initiatives. This evaluation included a thorough review of available evidence including experience with evolving industry structural and behavioral changes, current challenges, and future industry forecasts to determine the best strategies to support a competitive and reliable shipping industry and drive continuous improvement in the FMC's performance. Along with its senior executives, the FMC's deputy directors and office heads participated in the Commission's internal analysis of its strengths, weaknesses, opportunities and threats or challenges (SWOT analysis).

This iterative process of evaluating the current state of the industry and possible future challenges validated retention of the Commission's two previous strategic goals with slight modification, as broad outcomes that the Commission should continue to achieve consistent with its statutory mandate. The SWOT analysis helped to refine and focus several of the strategies and measures in support of the two goals, as well as develop new strategies, measures, and targets. This Strategic Plan has been provided to the Office of Management and Budget, posted to the Commission's website, and presented to Congress for feedback.

To achieve competition and integrity for America's ocean transportation supply chain, the FMC identified two strategic goals. Each goal is broken down into specific action-oriented objectives representing key components of the Commission's approach to achieving its goals. The Commission's goals and objectives are:

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

**Objective 1.1:** Ensure that actions under filed agreements do not result in unreasonable increases in transportation costs and/or unreasonable decreases in transportation services.

**Strategic Goal 2:** Protect the public from unlawful, unfair, and deceptive ocean transportation practices.

**Objective 2.1:** Identify and take action to end unlawful, unfair, and deceptive practices.

**Objective 2.2:** Prevent public harm through licensing and financial responsibility requirements.

**Objective 2.3:** Enhance public awareness of agency resources, remedies, and regulatory requirements through education and outreach.

**Objective 2.4:** Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication.



## FMC Strategic Plan Fiscal Years 2018- 2022

### Strategic Goal 1 - Maintain a competitive and reliable international ocean transportation supply system.

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The Commission's oversight of the international ocean transportation supply system remains critical. Ocean transportation plays a primary role in the movement of goods to and from the American marketplace with nearly \$1 trillion in U.S. exports and imports moved by ship. Over the past decade, significant changes to the international ocean transportation industry, including carrier consolidations, mergers, and a major carrier bankruptcy, have changed the landscape of the industry. Operational alliance composition has been upended, and the Commission foresees mounting impacts on both existing and future filed agreements. Anticipation of these changes in concerted carrier activity and market structure will drive the FMC to intensify its efforts to timely and efficiently analyze the competitive impact of carrier and MTO cooperation, balancing the cost-containment strategies and cooperative working arrangements of VOCCs and/or MTOs with the legitimate business needs of the Nation's many exporters and importers. The Commission's oversight of VOCC and MTO antitrust immunity, as part of a non-discriminatory regulatory process, works to provide a competitive and reliable ocean transportation supply system essential to the growth of trade and the creation of jobs.

A stated policy objective of the Shipping Act is "to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace." Maintaining a competitive and reliable international ocean transportation supply system by ensuring that actions under filed agreements do not result in unreasonable increases in transportation costs and/or unreasonable decreases in transportation services is a primary responsibility of the Commission. Competition among participants in U.S. liner trades fosters competitive rates, encourages innovation and a variety of service offerings for the benefit of U.S. exporters and importers, and ultimately consumers.

The Shipping Act allows competitors to meet, discuss, and cooperate on certain business issues, but first they must file a written agreement with the Commission. Filed agreements are reviewed by a team of FMC economists, attorneys, and transportation analysts using antitrust law and economic models to evaluate the potential competitive impact of a proposed agreement and to advise the Commission of potential issues or actions before a pending agreement becomes effective. The initial review and analysis of a proposed agreement and subsequent monitoring of the members' activities under the agreement, should it become effective, are designed to identify and guard against possible anticompetitive abuse of the filed authority, avoid unreasonable increases in transportation costs or decreases in transportation services, and address other activities prohibited by the Shipping Act.

The Shipping Act is a federal competition law applicable to the industry of international liner shipping. The Shipping Act creates a separate regulatory regime from traditional antitrust under which collective carrier or MTO activity is both evaluated when the agreement is initially filed and closely monitored thereafter for any adverse impact on competition in the trade. So long as the regulated entities comply with the statutory and regulatory proscriptions of the Act, then the other federal antitrust statutes generally do not apply. Conversely, if a regulated entity violates the Shipping Act, it would be subject to penalties set forth in the Act, and may under certain circumstances be subject to investigation and prosecution under the full array of federal antitrust statutes.

In addition, the Commission addresses unfavorable conditions affecting U.S. carriers in U.S. oceanborne trades when such conditions do not exist for foreign carriers. Restrictive foreign shipping practices are addressed under section 19 of the 1920 Act and the Foreign Shipping Practices Act. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the United States.

The Commission also classifies foreign, government-owned controlled carriers subject to section 9 of the Shipping Act. Common carriers owned or controlled by foreign governments are required to adhere to certain requirements under the Shipping Act, and their rates are subject to Commission review.

**Objective 1.1: Ensure that actions under filed agreements do not result in unreasonable increases in transportation costs and/or unreasonable decreases in transportation services.**

The Commission will achieve this objective through a number of strategies aimed at using its statutory authority in a fair and expeditious manner to allow lawful agreements to support a competitive and reliable international ocean transportation supply system.

The Shipping Act requires VOCCs and MTOs that wish to establish agreements that would benefit from antitrust immunity to file their agreements with the FMC. FMC staff review proposed agreements when they are initially filed, and before they take effect. Agreements are permitted to proceed when they do not cause competitive harm. The FMC is authorized, pursuant to section 6(g) of the Shipping Act, 46 U.S.C. § 41307(b), to seek appropriate injunctive relief against any agreement that is likely to result in a reduction in competition that could be expected to unreasonably raise transportation costs or reduce transportation service.

The Shipping Act and implementing regulations also authorize the FMC to require agreement parties to: (a) provide information needed to assess certain categories of agreements; (b) file

certain standard types of reports—including quarterly economic data and/or minutes of meetings held by the agreement parties; and (c) submit special ongoing informational reports once the agreement becomes effective. Both the baseline and periodic monitoring reports allow the FMC to initially evaluate, and monitor on an ongoing basis, the conduct of the parties to VOCC and MTO agreements.

In recent years, the FMC has seen an increase in operational VOCC and MTO agreements, many of which allow cooperation to improve efficiency, allow sustainable growth, or respond to new or imminent environmental regulations. The FMC gives consideration to efficiency, sustainability, and other likely benefits when evaluating their net impact on competition, transportation cost, and transportation service.

## **Strategies**

The Commission's performance measures tracking negotiations to mitigate the anticompetitive effects of agreements and potential market distorting collective behavior will be achieved through the following strategies. These strategies cover a broad range of Commission activities, all using agency resources to foster the purposes of the Shipping Act, particularly with regard to filed agreements and agreement monitoring reports under this objective.

- Review initial agreements and amendments, including additional information requested by the FMC, to determine the likelihood that the agreement parties could engage in substantially anti-competitive conduct with respect to transportation costs or services.
- Review on a regular, on-going basis, the data and information provided in standard reports and special reporting to assess the existence or likelihood of substantially anti-competitive conduct or unfavorable trade conditions.
- Develop and apply statistical tests to identify potential anticompetitive changes in relevant metrics such as level of transportation costs or level of services.
- Initiate meetings with the FMC's various stakeholder industries to help determine whether anti-competitive behavior or unfavorable trade conditions exist in U.S. trades.
- Conduct research studies on current competition issues with respect to U.S. trades.
- Actively monitor for and record the presence of all foreign, government-owned controlled carriers in U.S. trades, and regularly review their pricing practices.

- Obtain information via inquiries and/or complaints about conduct or conditions that impede the efficient movement of cargo.
- Encourage and support stakeholder developed, market driven solutions to systemic supply chain inefficiencies by sponsoring opportunities for collaboration across a diverse group of industry stakeholders.
- Ensure competitive conditions in the U.S. foreign oceanborne trades by working with agreement parties on an informal basis to negotiate changes in agreements that raise competitive concerns.
- Preserve competition and reliability in ocean transportation by seeking appropriate injunctive relief under section 6 of the Shipping Act for agreements likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.
- Address disruptions in the ocean transportation marketplace by investigating violations of the Shipping Act.
- Take action under the FSPA to address adverse conditions affecting U.S. carriers in the U.S. oceanborne trades, when such conditions do not exist for foreign carriers or others providing maritime or maritime-related services in the United States.
- Make rules and regulations, pursuant to the 1920 Act, affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade.
- Ensure timely action on formal proceedings undertaken to protect competition.
- Maintain or upgrade an electronic agreement library, accessible from the FMC's website, to provide transparent, real-time public access to search and download documents.

## Five-Year Performance Measures

The following measures will be used to indicate the FMC's progress towards achieving Objective 1.1.

**Measure 1:** Percentage of FMC-filed agreements reviewed at Commission level which are modified through negotiation to mitigate anti-competitive effects.

**Measure 2:** Percentage of agreement monitoring reports reviewed within 30 days of receipt to detect actionable information including market-distorting behavior.



## **Strategic Goal 2 – Protect the public from unlawful, unfair, and deceptive ocean transportation practices.**

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The FMC has a wide variety of responsibilities related to protecting the shipping public from financial harm that may be caused by the commercial activities of regulated entities. The FMC is responsible for licensing ocean transportation intermediaries serving the U.S. trades; certifying that passenger vessel operators meet the required financial responsibility levels for death, injury, or nonperformance; assisting the public with resolving informal complaints related to the shipment of goods or to passenger vessel cruises; the identification and prosecution of unreasonable or unjust practices by VOCCs, OTIs, or MTOs; and the investigation and satisfaction of formal, private-party complaints or FMC-initiated proceedings alleging Shipping Act violations. To carry out its mission, the FMC uses various tools and techniques including monitoring, investigation, education, enforcement, adjudication, and ombuds services.

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

The Commission uses both its enforcement and compliance programs to identify and take action to end unlawful, unfair, and deceptive practices. Enforcement-based initiatives will continue against VOCCs and NVOCCs that engage in unfair service contracting practices, particularly those practices which permit unlicensed OTIs to compete unlawfully with carriers and OTIs operating in compliance with U.S. laws. The FMC will pursue enforcement actions against those who engage in market-distorting, fraudulent, or anti-competitive practices harmful to the industry and the public.

The FMC offers informal dispute resolution, and adjudicates claims of unlawful practices by VOCCs, MTOs, and OTIs. The Commission's staff educate industry members and the public on the Shipping Act and shipping regulations, and help to address international ocean transportation disputes. The FMC supports mediation and collaborative dispute resolution when feasible, and requires parties involved in formal Commission docketed proceedings to attend mandatory mediation conferences. The FMC offers both facilitation and arbitration services to the industry and shipping public to resolve disputes. An online mediation tutorial and tool is available for parties to use to prepare for mediation.

The FMC's Administrative Law Judges, whose independence is protected by the Administrative Procedure Act, 5 U.S.C. Subchapter II, resolve cases involving alleged violations of the Shipping Act and other laws within the Commission's jurisdiction. Cases may be initiated either by private parties or by the Commission (represented by the Bureau of

Enforcement to seek civil penalties for Shipping Act violations). The Chief Administrative Law Judge also has the authority to assign small claims complaints, valued at up to \$50,000, to a Small Claims Officer for resolution.

The Commission educates the public and industry groups involved in U.S. international trade on their rights and/or responsibilities under the Shipping Act, as well Commission resources available to facilitate movement of cargo or resolution of disputes. Brochures, how-to guides, forms and applications, reference libraries, news releases, information on investigations; and advice on topics such as FMC regulations, OTI licensing, household goods moves, and use of ADR services to assist parties with resolving cruise and cargo-related disputes are among the available offerings through the Commission's website.

Throughout the year, Commission staff participate in presentations and instructional opportunities to educate consumers and regulated entities about regulations, shipping trends, best practices, and the effective use of available FMC resources to resolve formal proceedings, service contract matters, and other commercial shipping disputes through industry sponsored conferences, workshops, briefings, webinars, and one-on-one meetings. The FMC will continue its efforts to increase transparent and public access to Commission resources by improving the design, usability, and platform of its public website docket library and historical document repository; as well as continue broadcasting public Commission meetings.

### **Objective 2.1: Identify and take action to end unlawful, unfair, and deceptive practices.**

The FMC is responsible for ensuring that individual VOCCs and MTOs, as well as those permitted by agreement to act in concert, treat shippers and other members of the shipping public fairly by not engaging in prohibited acts set out in the Shipping Act. In the effort to identify such practices, the FMC maintains a visible presence among regulated entities, collects intelligence and analyzes trade data, and exchanges intelligence with other regulatory and law enforcement agencies.

In order to ensure compliance with laws and regulations under the jurisdiction of the FMC, various formal and informal actions may be taken by the Commission. Formal proceedings may be initiated to investigate and prosecute Shipping Act violations. The Commission also often enters settlement agreements to informally resolve and correct prohibited activities.

## **Strategies**

The following strategies are specifically aimed at achieving the five-year performance measure of successfully resolving enforcement actions through various means.

- Gather intelligence through visible and accessible presence in the regulated community in order to identify unlicensed OTIs and other violations. Monitor all forms of advertising to identify potential illegal activity.
- Gather information related to unlicensed entities acting as OTIs.
- Respond to complaints regarding violations of the Shipping Act and Commission regulations.
- Identify subjects who offer, advertise or provide passage on vessels having berths or staterooms to accommodate 50 or more passengers and have not met FMC financial requirements.
- Audit OTIs and ocean carriers randomly selected as well as based upon information developed or received by the Commission and advise of any required corrective action.
- Exchange information and liaise with other federal, state, and local investigative and regulatory agencies and bureaus.
- Review tariffs and authorized alternative pricing mechanisms to ensure compliance with the Shipping Act and Commission regulations.
- Investigate allegations of conduct prohibited under the Shipping Act or Commission regulations.
- Prosecute alleged violations of the Shipping Act through formal proceedings.
- Enter into voluntary settlement agreements with alleged violators through informal procedures to terminate unlawful activities and bring about compliance with requirements of the law or regulations.
- Respond to inquiries regarding complaint history of transportation providers and advise consumers of means to protect themselves.

## **Five-Year Performance Measure**

The following measure will be used to indicate the FMC's progress towards achieving Objective 2.1.

**Measure 1:** Percentage of enforcement actions taken under the Shipping Act successfully resolved through favorable judgment, settlement, issuance of default judgment, or compliance letter or notice.

## **Objective 2.2: Prevent public harm through licensing and financial responsibility requirements.**

The FMC licenses and regulates ocean transportation intermediaries, including ocean freight forwarders and NVOCCs, and ensures that OTIs have the required financial responsibility. As well, the FMC issues certificates to owners and operators of passenger vessels that have evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages and for death or injury to passengers and other persons.

### **Strategies**

To prevent public financial harm, the Commission has developed the following strategies to support the Commission's five-year performance measures for tracking the expeditious review of OTI licensing applications and assuring PVO compliance with FMC financial responsibility requirements.

- License OTIs with the requisite character, experience, and financial responsibility.
- Process OTI license and registration triennial updates (renewals) to ensure OTIs continue to maintain the financial responsibility and experience required to perform OTI activities.
- Issue PVO certificates to cruise line operators that have met regulatory requirements for proof of financial responsibility.
- Monitor PVO unearned passenger revenue (UPR) reports, and conduct on-site review of PVO UPR receipts.
- Periodically review and assess the need to update OTI bonds and coverage amount.

## **Five-Year Performance Measures**

The following measures will be used to indicate the FMC's progress towards achieving Objective 2.2.

- Measure 1:** Percentage of decisions on completed OTI license applications rendered within 60 calendar days, facilitating lawful operation of OTIs with the appropriate character and experience requirements.
- Measure 2:** Percentage of PVOs examined during the year that have the full financial coverage required by regulation to protect against loss from non-performance or casualty.

## **Objective 2.3: Enhance public awareness of agency resources, remedies and regulatory requirements through education and outreach.**

Protection of the public requires both educating regulated entities about their responsibilities under the Shipping Act and Commission regulations and also educating their customers about FMC regulatory requirements. The shipping public needs to be informed of the services offered by the FMC and the remedies available in the event of non-compliance, injury, or unresolved disputes.

### **Strategies**

The following strategies support this objective by enhancing public awareness and education, including a specific focus on the performance measure for posting actions on the agency website within five days.

- Make available to the public all documents filed or issued in Commission formal proceedings through the Commission's website.
- Publish news releases and compromise agreements reached under informal penalty procedures describing alleged violations subject to enforcement action on the Commission's website.
- Leverage the Commission's website and social media presence to educate the shipping and cruising public regarding industry trends, challenges, and the risks associated with using unlicensed companies (including companies whose licenses have been revoked and may still be conducting business).

- Promote general awareness of resources available through Commission's website.
- Maintain an accessible presence in local regulated communities.
- Proactively educate regulated entities on regulatory requirements.
- Educate regulated entities and the shipping public about dispute resolution services available through CADRS.
- Publish VOCC and NVOCC tariff location information on the agency website.
- Emphasize OTI requirements to new licensees.
- Promote awareness of FMC-licensing and financial requirements.
- Continuously expand and update information available to the public through the Commission's website, including list of FMC-licensed OTIs.
- Use electronic strategies and modalities to deliver information to the shipping and cruising public (e.g. webinars, web tutorials, and social media).
- Employ additional strategies and external partnerships to amplify outreach initiatives (e.g. National Moving Month with FMCSA and trade associations; popular vacation times for cruising with AARP, AAA; and National Consumer Protection Week with the Federal Trade Commission and State Attorney Generals Offices).
- Conduct meetings, presentations, and other educational sessions to inform and educate the shipping and cruising public regarding Commission regulations, programs, services, and initiatives.

## **Five -Year Performance Measure**

The following measure will be used to indicate the FMC's progress towards achieving Objective 2.3.

**Measure 1:** Percentage of Commission issuances, orders, and reports available through the Commission's website within five working days of receipt.

**Objective 2.4: Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication.**

The Commission has several means by which the public, shippers, or regulated entities may seek resolution of disputes or complaints. The Commission provides ADR services such as ombuds, mediation, arbitration, and facilitation to assist parties in resolving complaints informally through its office of Consumer Affairs and Dispute Resolution Services. Settling complaints through ADR has the potential to save shipping companies, their customers, and the FMC significant time and resources.

Complaints alleging Shipping Act violations may be filed with the FMC for formal adjudicatory hearing by an FMC administrative law judge. Parties to the formal adjudicatory hearings may seek assistance from a trained FMC neutral at any stage in the formal proceeding process for resolution using ADR processes.

### **Strategies**

The following strategies were developed to impartially and timely resolve international shipping complaints using ADR and adjudicatory Commission resources.

- Provide ADR services such as ombuds, mediation, arbitration, and facilitation to resolve commercial cargo, passenger vessel, household goods, and other disputes related to the FMC's authority and mission.
- Conduct mediation conferences to explore the use of mediation to resolve formal complaints filed with the Commission pursuant to 46 CFR § 502.64.
- Adjudicate and issue Special Docket Application decisions within 90 days of receipt.
- Adjudicate disputes under the jurisdiction of the agency through an FMC administrative law judge, with the possibility of appeal to the Commission, use of settlement officers, and through arbitration.
- Timely conduct Commission proceedings so that litigants and the shipping industry can adjust behavior accordingly to maintain regulatory compliance.
- Develop and streamline internal business processes and databases to reduce intake and processing time for resolving shipping disputes.

## **Five -Year Performance Measures**

The following measures will be used to indicate the FMC's progress towards achieving Objective 2.4.

**Measure 1:** Percentage of ombuds and ADR matters closed within 6 months of request for assistance.

**Measure 2:** Percentage of formal complaints or Commission-initiated orders of investigation completed within two years of filing or Commission initiation.



## Administrative Strategies in Support of Agency Objectives

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In pursuing its strategic goals of maintaining a competitive and reliable international transportation supply system and protecting the shipping public from unlawful, unfair, and deceptive ocean transportation practices, the FMC recognizes the critical importance of providing effective, performance-oriented management and ensuring that all resources allocated to its mission are wisely employed. The Commission's administrative strategies in support of its mission objectives are contained in separate but related plans for human capital development, information technology, and financial management support. Each of these plans are subject to stringent planning and measuring regimes pursuant to various laws and executive mandates.

The Commission's ability to carry out its mission and serve its customers depends on having a well-trained, highly skilled, and flexible workforce. The FMC is committed to the principles of diversity and the implementation of policies and objectives to enhance the Commission's workforce. The Commission's Office of Equal Employment Opportunity, along with senior leaders, effectively carries out this commitment.

The FMC offers professional training opportunities to all employees and has leveraged the flexibilities and cost-effectiveness of online training courses covering diverse topics such as IT technical skills, project management, communication, and writing. Further, the Commission provides annual performance management training, telework training, and takes advantage of cost saving opportunities for employees to participate in training classes offered by the Small Agency Council.

Flexible work schedules and telework are crucial to the FMC's success in attracting and retaining a highly qualified workforce. The FMC offers employees alternative work schedules and telework opportunities, which serve to increase employee productivity and to improve work/life balance. More than 50% of the staff participate in alternative work schedules with the option to telework. The FMC is currently revising its work schedules program to adopt additional flexibilities available under the government's alternative work schedules program.

The Commission's Human Capital Plan for FY 2012-2017 aligns our staff resources with our operational, information technology, and support processes in order to maintain a performance-based organization. Employee performance plans are linked to the Commission's strategic goals and mission. The Human Capital Plan ensures human capital needs are carefully considered as part of the Commission's strategic planning and budgeting processes and contributes to our mission success by monitoring and evaluating the progress and results of human capital goals, programs, and activities. Consistent with OMB Memorandum M-17-22, the Commission has developed strategies to reshape the agency workforce over the next five years, further improve accountability, and create a more efficient agency that works for the American people.

Planning is ongoing for use of IT resources necessary to accomplish the Commission's strategic goals. The Commission is committed to an integrated approach to IT capital planning and investment control — both of which are driven by the Commission's Strategic Plan and its need to meet mission objectives. Information technology planning is driven by programmatic needs of the Commission and is projected in a 4-year budgeting process. The Commission's Information Technology Capital Plan (covering FY 2016-2020) incorporates improvements in IT infrastructure security and services, such as cloud computing, that have made delivery of IT services and work product more secure, more accessible, and less costly.

The FMC's financial systems are monitored and audited annually as required by the Federal Manager's Financial Integrity Act (FMFIA), as amended, the Chief Financial Officers Act of 1990 (CFO Act), as amended, and the Government Management Reform Act (GMRA) of 1994. The FMC's results are reported annually in the Performance and Accountability Report, posted on the Commission's website. The FMFIA requires agencies to establish controls that reasonably ensure that obligations and costs comply with applicable law; assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and revenues and expenditures are properly recorded and accounted for. It requires the agency head to provide an assurance statement of the adequacy of management controls and conformance of financial systems with government standards. As well, the CFO Act mandates annual audits of the Commission's internal controls systems. The Commission is committed to maintaining an unmodified (clean) audit opinion on audits of its Annual Financial Statements. Further, the Commission is committed to addressing matters identified through the Financial Statement Audits involving internal controls and operations considered material weaknesses. By carefully and closely monitoring all of its operational programs, personnel needs, planning processes, financial and procurement practices, and mission-critical support activities, the agency strives to ensure that its strategic goals are not only being met – but being advanced in ways that make the most productive, efficient, and sustainable use of the scarce resources with which it has been entrusted.

In order to manage its resources efficiently, the Commission's Office of Management Services follows federal acquisition rules and guidance. Procurements are carefully weighed and best values for the government are selected to manage the Commission's funds. Recently, the Commission implemented Federal Digital Accountability and Transparency Act of 2014 (DATA Act) requirements to assist in better government-wide collection of metrics on government spending. The FMC, through its shared service provider, updated its information collection parameters for contracting and fiscal oversight. Moving forward, collection and analysis of this information will better inform efficient FMC spending decisions and assist the Commission in comparing its spending with other similarly situated small agencies in order to evaluate potential cost savings.

The FMC also works in partnership with the General Services Administration (GSA) to act as a good steward of government resources. In recent years, the FMC reconfigured its headquarters space to better align the size of its real property assets with actual program needs. During FY 2017, the Commission recognized a further annual cost savings of approximately \$66,000 by coordinating shared use of existing space with another federal entity. This action reduced the FMC's footprint resulting in a reduction in rent and facility security costs. The FMC will continue to evaluate its space needs going forward.

## Strategies

The FMC realizes the critical importance of the administrative component of the agency in support of agency strategic goals, objectives, and performance measures. The following strategies addressing budget, planning, human resources, procurement, and IT were developed to assure an effective administrative support program within the FMC.

- Creation and maintenance of an annual budget directly linked to strategic plans for submission to Congress and the Office of Management and Budget (OMB).
- Track quarterly and report annually the Commission's performance under its strategic plan and assess the efficacy of performance measures for preparation of the annual performance and accountability report.
- Identify and alleviate current and future skills gaps by fostering human resources management principles, including recruitment and placement, position classification and pay administration, occupational safety and health, employee assistance, employee relations, workforce discipline, performance management and incentive awards, employee benefits, career transition, retirement, employee development and training, executive resources, personnel security, and equal employment opportunity.
- Promote economy and efficiency by detecting waste, fraud, and abuse in the agency's programs via auditing agency operations.
- Ensure program compliance with rules and regulations regarding such areas as forms clearance, Paperwork Reduction Act, Small Business Paperwork Relief Act, and other federally required reports and submissions.
- Execute financial management policies and programs, manage agency appropriations, administer internal control systems for agency funds, travel and cash management, and coordinate with contractors who provide accounting and payroll services.

- Monitor performance to ensure the agency's program operations are effectively, efficiently, and sustainably supported via telecommunications, procurement of administrative goods and services, property management, space, printing and copying, mail and records services, facilities and equipment maintenance, and transportation.
- Provide clear and timely guidance to staff regarding administrative matters, including procurement, personnel, and contracting issues.
- Use technology and IT expertise to streamline and automate the agency's work processes and enhance the productivity and efficiency of the workforce, in support of delivery of more cost-effective services to the shipping industry and to the American taxpayer.

## Program Evaluation

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The FMC maintains a steady focus on meeting the Commission's mission and goals, and in ensuring that the Commission's efforts are responsive to changing industry practices and circumstances. The FMC periodically reviews all program areas in light of identified performance measures, recognizing that measures and strategies may need to be modified to better meet the strategic goals.

The Commission continuously seeks ways to make compliance with its statutory and regulatory requirements less burdensome and more cost effective for shippers, VOCCs, and OTIs. The Commission does this by evaluating evidence collected, both qualitatively and, when applicable, quantitatively, to improve its rules or policies to benefit the American public.

In conjunction with Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, and the deregulatory spirit of the Shipping Act as amended by the Ocean Shipping Reform Act of 1998, the Commission has designated a Regulatory Reform Officer and established a Regulatory Reform Task Force. The Commission has issued a Notice of Inquiry for public comment, and the Task Force will work to identify existing FMC regulations that are outdated, unnecessary, ineffective, inhibit job growth, impose unnecessary costs, or otherwise interfere with regulatory reform initiatives and policies. Responses will be evaluated for evidentiary data and will inform the Commission's actions.

In addition to its Regulatory Reform Task Force, the FMC continues its ongoing program evaluation through its retrospective review plan to systematically examine and seek public input on its key regulations. For example, staff recommendations for reforms to the filing and processing of agreements, quarterly monitoring reports, and agreement meeting minutes, are currently under consideration. These potential regulatory changes take into consideration industry comments received in response to its Notice of Proposed Rulemaking in Docket No. 16-04.

Further, the Commission programs are informed by an overall risk management approach. The FMC uses evidence-based decision making to manage its risks and develop appropriate internal controls. Through the process of developing this Strategic Plan, the Commission completed a full analysis of its programs, reviewing both opportunities and threats. This process culminated in the creation of a Risk Profile, as required by M-16-17, *OMB Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control*. The Commission will annually review and update the Risk Profile as necessary to proactively manage risks to the agency and the completion of its mission.

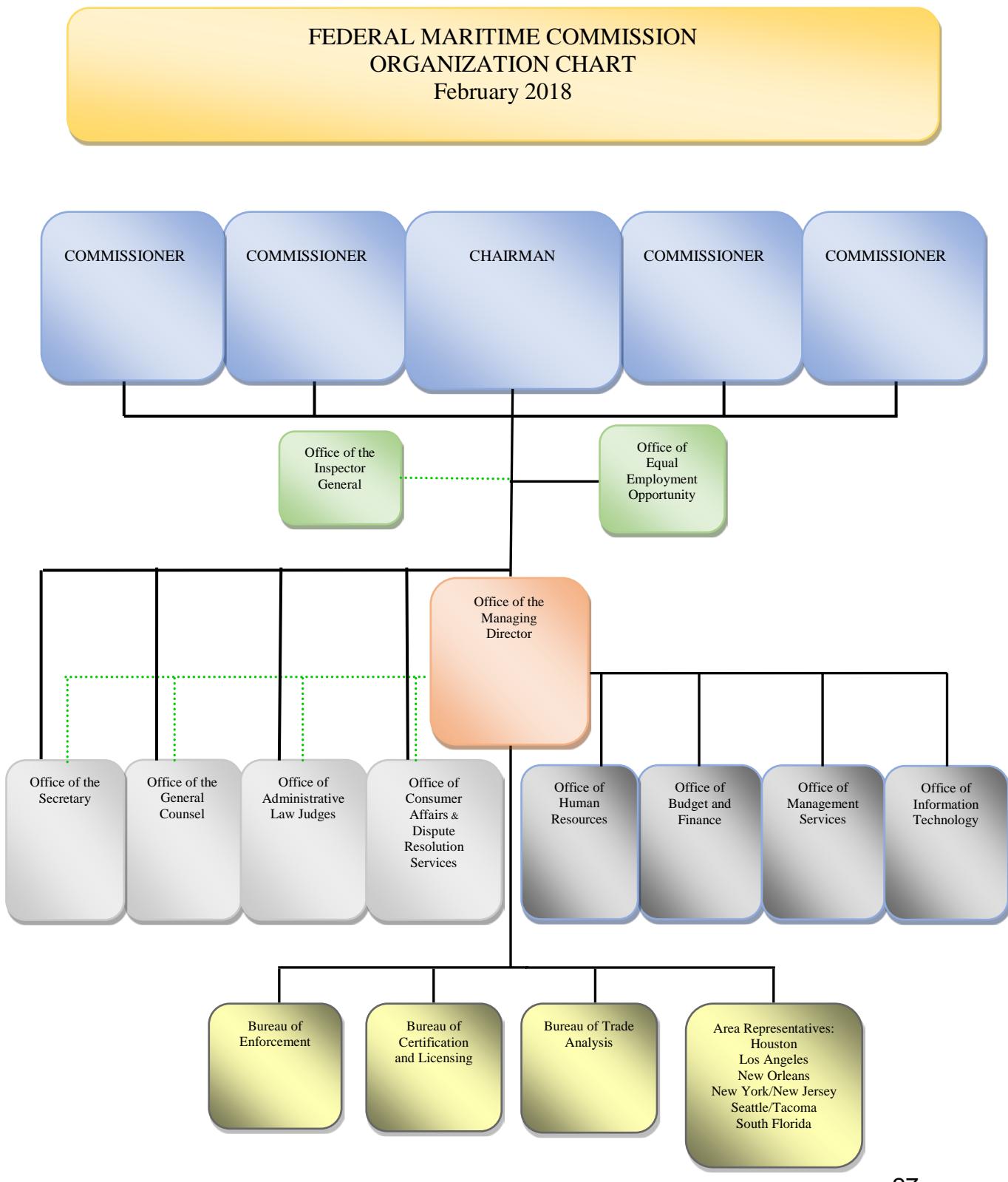
## Appendix A: Performance Measures by Strategic Goals

Summary of Strategic Goals, Objectives and Performance Measures						
<b>STRATEGIC GOAL 1: Maintain a competitive and reliable international ocean transportation supply system</b>						
<b>OBJECTIVE 1:</b> Ensure that actions under filed agreements do not result in unreasonable increases in transportation costs and/or unreasonable decreases in transportation services. <sup>1</sup>						
<b>Performance Measure:</b> Percentage of FMC-filed agreements reviewed at Commission level which are modified through negotiation to mitigate anti-competitive effects.	2017 Target	2018 Target	2019 Target	2020 Target	2021 Target	2022 Target
	N/A	50%	51%	52%	53%	54%
<b>Performance Measure:</b> Percentage of agreement monitoring reports reviewed within 30 days of receipt to detect actionable information including market-distorting behavior.	2017 Target	2018 Target	2019 Target	2020 Target	2021 Target	2022 Target
	N/A	65%	66%	67%	68%	69%
<b>STRATEGIC GOAL 2: Protect the public from unlawful, unfair, and deceptive ocean transportation practices</b>						
<b>OBJECTIVE 2.1:</b> Identify and take action to end unlawful, unfair, and deceptive practices.						
<b>Performance Measure:</b> Percentage of enforcement actions taken under the Shipping Act successfully resolved through favorable judgment, settlement, issuance of default judgment, or compliance letter or notice.	2017 Target	2018 Target	2019 Target	2020 Target	2021 Target	2022 Target
	77.5%	77.5%	77.5%	77.5%	77.5%	77.5%
<b>OBJECTIVE 2.2:</b> Prevent public harm through licensing and financial responsibility requirements.						
<b>Performance Measure:</b> Percentage of decisions on completed OTI license applications rendered within 60 calendar days of receipt, facilitating lawful operation of OTIs with appropriate character and experience requirements.	2017 Target	2018 Target	2019 Target	2020 Target	2021 Target	2022 Target
	75%	75%	75%	75%	75%	75%
<b>Performance Measure:</b> Percentage of PVOs examined during the year that have the full financial coverage required by regulation to protect against loss from non-performance or casualty.	2017 Target	2018 Target	2019 Target	2020 Target	2021 Target	2022 Target
	95%	95%	95%	95%	95%	95%
<b>OBJECTIVE 2.3:</b> Enhance public awareness of agency resources, remedies, and regulatory requirements through education and outreach.						
<b>Performance Measure:</b> Percentage of Commission issuances, orders, and reports available through the Commission's website within 5 working days of receipt.	2017 Target	2018 Target	2019 Target	2020 Target	2021 Target	2022 Target
	82%	84%	84%	86%	88%	90%
<b>OBJECTIVE 2.4:</b> Impartially and timely resolve international shipping disputes through alternative dispute resolution and adjudication.						
<b>Performance Measure:</b> Percentage of ombuds and ADR matters closed within 6 months of request for assistance. <sup>2</sup>	2017 Target	2018 Target	2019 Target	2020 Target	2021 Target	2022 Target
	60%	60.5%	61%	63%	65%	67%
<b>Performance Measure:</b> Percentage of formal complaints or Commission-initiated orders of investigation completed within 2 years of filing or Commission initiation.	2017 Target	2018 Target	2019 Target	2020 Target	2021 Target	2022 Target
	62%	64%	66%	68%	70%	72%

<sup>1</sup> This Objective is new for the FY 2018-2022 Strategic Plan. It replaces the previous Objective and accompanying Performance Measure to better reflect the work of the Commission in this area. Previous Objective and Performance Measure information can be found in the Commission's [Performance and Accountability Reports](#).

<sup>2</sup> This Measure was adopted in FY 2017 and more accurately reflects the FMC's performance in this area. Previous Measure information is available in the Commission's Performance and Accountability Reports.

## Appendix B: Organizational Chart



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## **Appendix C: Major Management Priorities and Challenges: Factors Affecting the Achievement of Goals**

The FMC is a small agency that has established considerable in-house expertise in the legal, economic, and organizational aspects of international liner shipping, the inter-modal movement of ocean cargo, and the cruise line business operating from the United States. That expertise allows the FMC to effectively pursue its goals of maintaining a competitive and reliable international ocean transportation system, and protecting the public from unlawful, unfair, and deceptive practices efficiently at a very modest cost to the taxpayer and with a minimum regulatory burden on the shipping industry.

### **Challenge: Operating Budget Reductions**

A significant challenge facing the agency is the potential reduction in its operating budget. Given that the predominant portion of the agency's costs are salaries and benefits, any reductions in payroll through attrition or furloughs will impede progress toward meeting the FMC's mission and strategic goals. Cuts to the operating budget will also hamper continuous efforts to make identified and necessary IT improvements, diminishing the FMC's ability to improve service levels, reduce regulatory burden pursuant to Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, streamline workforce and organizational structure pursuant to Memorandum M-17-22, *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Workforce* to meet the requirements of the March 13, 2017, Executive Order 13781, *Comprehensive Plan for Reorganizing the Executive Branch*, and speed agency decision-making by deploying automated systems and workflows.

In spite of fiscal austerity, the agency will need to maintain its relevant expertise through the recruitment, training, and retention of highly qualified attorneys, economists, industry specialists, and information technology experts. New, more concentrated forms of carrier alliances, increasingly complex and sophisticated competitive working arrangements, and the surging number and importance of on-shore agreements among VOCCs and MTOs demands world-class analytical skills to support the Commission's competitive, economic, and legal review processes. The importance of recruitment and retention is likely to increase as the agency's experienced personnel reach retirement age, and in the face of competition from the commercial sector and other Federal agencies seeking to replace their retiring personnel.

Should the Commission's operating budget be reduced, the Commission will first look to further reduce spending in non-payroll expenses. Such reductions will, in whole or in part, negatively impact all areas of operation. Many essential services will be sharply curtailed, including acquisition of analytical tools, databases, or other mission-critical resources.

Critically, a reduction in funding would gravely hamper the Commission's IT functions, which supports all areas of the FMC's work and delivery of services to the industry it regulates. The use of information technologies is one way that the FMC is able to do more with less. The increasing importance of information technologies results not only from its contribution to the agency's ability to collect and process information more efficiently and accurately, but also because of the agency's need to keep up with the electronic-business practices of the industries it regulates. Greater use of information technology also helps make many of the aspects of licensing, certification, and information filing simpler and easier to accomplish for the agency's stakeholders. IT is critical to the maintenance and effective use of various key agency databases essential to achieving the FMC's strategic goals.

A reduction in IT investments would effectively halt program development and any appreciable further deployment of the Commission's IT infrastructure. That infrastructure includes improving FMC IT systems through a multiyear project, now underway, to greatly improve its efficiency, reliability, and cybersecurity readiness. Were these investments to be fully implemented, the Commission's internal business processes would be automated or enhanced, improving and expanding legal and economic research and analysis capabilities and providing better public access to FMC information. These improvements remain key to restraining future personnel growth, and permitting the FMC options for reallocating existing personnel to critical program needs in the future, consistent with its 5-year plan responsive to OMB Memorandum, M-17-22, *Reforming the Federal Government and Reducing the Federal Workforce*.

The security of agency databases and confidential business reports and associated documents filed with the FMC has received increased attention in recent years. Enhanced and extended application of information technologies helps ensure security and supports public trust. Ongoing efforts also are necessary to ensure continued cybersecurity readiness. In recent fiscal years, the FMC has sought to move critical applications to the cloud to ensure regular and effective data backups. Efforts to comply with Department of Homeland Security (DHS), National Institute of Standards and Technology (NIST) and United States Computer Emergency Readiness Team (US-CERT) monitoring requirements for network security demand near-continuous updating as well as agency investment in internal security tools to effectively monitor network operations, including integrity of files, password sufficiency, probing for open ports, and other externally visible points of attack. These actions also are necessary to meet a number of government-wide requirements including mandatory cybersecurity and Federal Information Security Modernization Act (FISMA) requirements; government-wide MTIPS (Managed Trusted Internet Protocol Service) requirements; OMB Memorandum M-17-25, *Reporting Guidance for Executive Order on Strengthening the Cybersecurity of Federal Networks* and E.O. 13800; as well as OMB Memorandum M-17-12, *Preparing for and Responding to a Breach of Personally Identifiable Information*.

### **Challenge: Impact of Industry Changes/Jurisdictional Issues**

The FMC regulates international ocean liner transportation, and is also involved, through its regulation of marine terminal operators, with aspects of the intermodal movement of ocean cargo in the United States. In addition, foreign-based OTIs are subject to statutory bonding requirements under FMC jurisdiction. To the extent that there are changes in the regulatory treatment of international liner operations by foreign governments, the agency will continue to monitor such changes and the likely effect of such changes on U.S. trades. To this end, the Commission now consults on a biennial basis with relevant maritime regulatory authorities of the European Community and the People's Republic of China to identify and discuss commercial and regulatory changes in various jurisdictions.

Finally, in recent years the industry has experienced significant consolidation of VOCCs as well as a reshuffling of alliances, largely as an effort to achieve cost savings through synergies. The FMC has witnessed the filing of new types of agreements - especially marine terminal operator agreements - that address issues such as traffic congestion, terminal operational efficiencies, and infrastructure funding. These nontraditional agreements tend to involve industries (drayage trucking and rail service), operations (pooling of chassis), and issues (public health, infrastructure finance) that require the development, by agency staff, of additional information sources and areas of expertise. Not infrequently, these nontraditional agreements have potentially significant pricing and service consequences. To the extent that the filing of nontraditional agreements increases in coming years – which seems to be the likely trend – analysis and oversight of activities under these filed agreements will continue to affect the agency's limited resources.