



RECOMMENDATIONS FOR THE FEDERAL MARITIME COMMISSION (FMC) FROM THE PORT OF LOS ANGELES PERSPECTIVE

BACKGROUND

As a key stakeholder, the Port of Los Angeles would like to provide the new Administration with recommendations for the future direction of the FMC. The current FMC regulatory structure and practices do not effectively address current business or economic realities in the shipping industry. It is imperative that the Administration shape the FMC to become an organization that is current, competent and consistent in its dealings with stakeholders, that it does not substitute its judgment for other governmental bodies, and that it only seeks litigation as a last resort.

Currency - the landscape of the maritime industry has changed dramatically during the tenure of the FMC. Marked changes have occurred in the areas of safety, environmental and security. In particular, state and local environmental regulations have emerged and the post 9-11 “new normalcy” exists through a multi-layered approach to maritime security and anti-terrorism by federal, state and local authorities. These changes have dramatically affected the way maritime businesses operate. As a result the FMC must change under the new Administration:

- Congress never intended that the FMC use its Shipping Act authority over rate agreements to second-guess local government decisions on environmental, safety or security improvements. Having an independent agency with limited subject matter competence and a vague statutory authority is a threat to the comprehensive national, regional, state and local air quality, safety and security improvements that are being implemented at the ports.
- A legislative correction is necessary. The Administration, with guidance from the CEQ, EPA and DHS, should make it a high priority to promptly amend the Shipping Act of 1984 to limit the FMC authority in the areas of port environmental, safety and security. The ocean carrier industry relies much less on antitrust-exempt rate agreements than was the case when the Shipping Act was enacted in its present form. Additional measures, such as the transfer of antitrust matters to the Department of Justice should also be considered.
- The FMC must understand the environmental requirements such as NEPA and should comply with required processes applicable to its own actions relating to environmental plans, if permitted to continue such activities.
- The FMC must understand the international, national, and local port security requirements and the effect that these requirements have on stakeholders, without substitution of their own opinions for the decision making by the port authorities.

Competency – The FMC needs to ensure that it has the expertise necessary in those areas that are critical to the stakeholders that it regulates. To be relevant the FMC staff and commissioners must be intimately familiar with current regulatory requirements and other challenges facing the maritime industry. This Administration should seize the opportunity to ensure a new competency in the FMC by the following high priority actions:

- Appoint Commissioners that have a complete and current understanding of these areas and practical experience in the industry. Seek Commissioners from diverse



backgrounds, including port executives or commissioners who bring a broader perspective.

- Hire FMC staff that has current expertise and practical experience in the areas of maritime safety, environmental and security in order to support informed decisions that contemplate the impacts on these important issues.
- The FMC should conduct public hearings and regular stakeholder outreach to build current understanding of the maritime industry and receive stakeholder input.
- The FMC should not use its rate agreement regulation procedures, designed primarily to regulate ocean carrier price-fixing arrangements that are exempted from antitrust law application, to interfere with port environmental, safety and security plans.
- The Administration should promptly ensure that no public funds are being applied by the agency to oppose environmental initiatives of Ports and local governments.

Consistency – the FMC is an independent agency, but needs to act with fairness, neutrality and consistency among all stakeholders and parties affected by its decisions. The Commission needs to ensure that the decisions it makes are consistent with and meet the spirit of the Shipping Act and comply with laws and regulations applicable to the FMC. Specifically:

- The FMC needs to review national legislation regarding safety, environmental and security to determine the applicability to the FMC of guidance that applies to their stakeholders, such as the requirements of NEPA.
- The FMC must not allow itself to be influenced by the industry sector it regulates and must ensure that it is capable of the complex independent analysis that is essential to the decision making process.
- Most importantly, the FMC needs to become an agency that communicates openly and fairly with stakeholders, provides notice of concerns and works with parties prior to litigation, which should only be used as a last resort after negotiation. The FMC needs to work with stakeholders to ensure that what they are doing represents the best course of action for the American public, not just those in the maritime industry.