

# **FEDERAL MARITIME COMMISSION**



## **ANNUAL PROGRAM PERFORMANCE REPORT**

**FOR FY 2000**

**March 2001**

## INTRODUCTION

This document comprises the Federal Maritime Commission's Annual Program Performance Report for Fiscal Year 2000, as required by the Government Performance and Results Act ("GPRA"). It has been prepared in accordance with OMB Circular No. A-11, Part 2.

This progress report describes the Commission's actual performance in FY 2000 compared with the projected levels of performance we established in our FY 2000 Annual Performance Plan. It reflects the degree of success we achieved in pursuit of our FY 2000 performance goals, and briefly evaluates the effect of that performance on our current Annual Performance Plan (i.e., our FY 2001 Plan).

This is the second progress report the Commission has prepared pursuant to GPRA. It covers the Commission's first full year operating under the new business environment and operational changes resulting from the Ocean Shipping Reform Act of 1998 ("OSRA"). In FY 2000 we initiated various actions to assure compliance with OSRA's new requirements, while also reassessing our implementing regulations to ensure that they comported with the new statute and enabled efficient industry operations. The Commission implemented a major reorganization in February of 2000 to enhance its ability to efficiently address the policy objectives of OSRA and to streamline agency operations. We also issued a report describing the industry's initial year of activity complying with and reacting to OSRA – a more comprehensive two-year study of the impact of the new statute will be issued in late summer of 2001. And for the fourth consecutive year, the Commission conducted operations with a straightlined budget that significantly impacted its ability to accomplish effectively all of its ongoing responsibilities.

While the foregoing occupied a good deal of our attention, we are pleased to report overall success in achieving our stated goals and objectives. With the continuing efforts and professionalism of our dedicated staff, we were able to accomplish all of our goals and exceed several. We continue to find that the planning and direction required by the GPRA process facilitates our efforts to perform as we envisioned. Our processes remained appropriate, our productivity high, and we were successful in achieving the results-driven objectives of GPRA. Despite specific obstacles and an extensive workload, we are gratified by our accomplishments. Under the guidelines and framework of our GPRA planning process, we look for continuing results in the future.

This report has been forwarded to the President, with a copy to the Director, Office of Management and Budget. We also have furnished copies to all those in Congress required to receive the report, who are the same individuals who previously have received copies of our Strategic Plans and Annual Performance Plans. Additionally, we have placed this report on our Internet website to ensure that it is readily accessible to interested parties, and have advised all Commission employees to take the time to review it.

We believe that we have compiled a report that is easy to read and understand, but appropriately communicates the results of our programs and activities. We have attempted to be direct and concise in the manner in which we have conveyed the information. For organizational purposes, and to facilitate review, we have repeated the mission statement from our Strategic Plan and briefly summarized it. We then have listed the strategic goals we identified as necessary to accomplish our mission. In order to demonstrate the linkage between our strategic goals and performance goals, we have organized this report by the six program activities under which our FY 2000 budget was predicated. For each of these activities, we begin by stating the specific strategic goals that are directly related to the performance goals attendant to that activity. We then state each performance goal with the target level of performance for each, and then describe our actual level of

performance regarding that goal. At the end of each of these descriptions, we assess the effect of actual performance on our estimated levels of performance for the current fiscal year (i.e., FY 2001).

## **FMC MISSION**

The Commission established its mission as follows:

*Ensure the Nation's interests are met through an efficient, competitive, market-driven, and nondiscriminatory ocean transportation system that is free of unfair foreign maritime trade practices.*

The Commission acknowledged in its Strategic Plan that the basic principles of liner shipping were being modified. The shipping industry continued to restructure itself while shippers were placing an increasing importance on rates and services. International trade remained dependent upon an efficient and economic ocean transportation system. Given the extremely significant issues the agency was facing, it identified the actions necessary to ensure that its oversight and legislative initiatives produced a competitive and nondiscriminatory trading environment in the U.S. ocean commerce that was in harmony with and responsive to international shipping practices. The Commission set out to focus its energies and efforts on its mission and to ensure that it was organized and managed in a manner best suited to accomplish its mission with a minimum of government intervention and regulatory costs. It also recognized that its actions must encourage the development of a sound U.S.-flag liner fleet.

## **FMC STRATEGIC GOALS**

In recognition of its stated mission, and in conformity with the Shipping Act of 1984, the FMC established the following four strategic goals:

1. ***Compliance:*** Promote the development of U.S. exports and the efficiency of ocean shipping by ensuring compliance with shipping statutes administered by the FMC.
2. ***Balanced Enforcement:*** Foster economic efficiencies and reliance on marketplace factors by administering U.S. shipping statutes in a balanced and equitable manner that redresses excessive anticompetitive actions and restrictive practices of foreign governments.
3. ***Efficient Regulatory Process:*** Promote a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.
4. ***Internal Capabilities:*** Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its regulatory, enforcement and educational responsibilities.

These strategic goals addressed all important FMC programmatic, policy, and management responsibilities. They were developed with a specific focus on accomplishing the basic thrusts of our mission. The Commission determined that achieving its mission-driven goals would enable it to effectively address the external factors it faced, while assuring an equitable and efficient administration of the shipping statutes under its jurisdiction.

## PROGRESS IN ACHIEVING PERFORMANCE GOALS

The Commission identified specific means to enable it to achieve its goals in the most cost-efficient and least disruptive manner. The performance goals of the Commission's FY 2000 Annual Performance Plan were directly linked to the Commission's strategic goals. They were identified as the appropriate means for accomplishing our mission.

This section of the report assesses our actual performance in FY 2000. As previously mentioned, we have organized this report according to our six budget program activities. The specific strategic goals related to each activity are cited. The four performance goals under each activity then are succinctly described, followed by a description of our performance under each goal, along with its effect on performance under our current Annual Performance Plan.

### Budget Program Activity: Formal Proceedings

#### Related Strategic Goals

2. ***Balanced Enforcement:*** Foster economic efficiencies and reliance on marketplace factors by administering U.S. shipping statutes in a balanced and equitable manner that redresses excessive anticompetitive actions and restrictive practices of foreign governments.
3. ***Efficient Regulatory Process:*** Promote a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.

#### Performance Goal 1:

*By end of FY99, Commission decisions on average are issued 16 months from date case begins, so the public is provided with more timely determinations on contested matters.*

**Progress:** The Commission exceeded its goal in FY 1999 of reaching a final decision in formal proceedings 16 months on average from the date the case begins. This goal represented a one-month reduction from the 17-month average in FY 1997. In FY 1998, the average completion period for a formal proceeding was approximately 15 months. In FY 1999, the average completion date was approximately 9.5 months. In FY 2000, the average completion period for a formal proceeding was approximately 13 months, well within the 16-month target. It should be noted that the Commission completed two complex, vigorously litigated enforcement proceedings in FY 2000 that took an extraordinary length of time to conclude. Absent these two proceedings, the Commission's completion average would have been approximately 9 months. Although the uncertainties associated with litigation, particularly with respect to private party complaint cases, make it difficult to forecast completion dates, the Commission hopes to continue providing timely determinations on contested matters during fiscal 2001 and beyond.

#### Performance Goal 2:

*By mid-FY99, assess 84 Act, PL 89-777 & Reform Act proposals & identify changes to benefit US commerce, to facilitate FMC oversight, and to provide further needed protection for the*

*cruising public, and appropriately advise Congress. Monitor impact and effect of new legislation and implementing regulations to assess if changes are warranted.*

**Progress:** Given the progress of reform legislation, the intention of this goal was to furnish ongoing assistance to Congressional committees, and to identify relevant issues/concerns. The Commission did so, providing substantive ongoing assistance to Congress during OSRA's enactment, which resulted in widely endorsed legislation. We also provided ongoing assistance to interested members of Congress regarding the scope of the FMC's P.L. 89-777 authority to protect the cruising public. We also used the Internet, public appearances, and other informal means to apprise and educate the public and our stakeholders of the new regulatory requirements and opportunities under OSRA. These actions affect our current year estimated performance in that we are undergoing a two-year assessment of the new Act. On June 22, 2000, the Commission issued an interim status report, discussing data and trends reflecting the first year under OSRA. To ensure that its regulations meet the objectives of Congress in enacting OSRA, specific reevaluation of those regulations continued with the February 8, 2000, rulemaking to amend certain new licensing requirements under OSRA, and the May 8, 2000, amendment to the agency's rules governing intermediaries, to clarify OSRA's new claim settlement procedures. The necessity for changes in other rules in a variety of areas continues to be under review.

**Performance Goal 3:**

*Develop & utilize process for rapid response to clear cases of fraud & passenger vessel operators' financial failures with result, e.g., 25% increase in FY99 in number of unscrupulous intermediaries forced to cease and desist in actions harming unsuspecting shippers.*

**Progress:** Under this goal, the Commission planned to develop an appropriate approach to address the issue by March 31, 1999. This was accomplished by establishment of an inter-office task force to exchange information and pursue specific strategies. The Commission worked with Congress to include in OSRA clearer protections for injured consumers via more stringent and expansive bond coverage for intermediaries and procedures for pursuing claims with surety companies. The Commission prioritized the resolution of cases dealing with unscrupulous intermediaries who are the subject of multiple complaints. We increased assistance to individual members of Congress in addressing PVO complaints, certain of which did not fall squarely within our area of responsibility. Additionally, we promulgated rules carrying out and clarifying OSRA's new bonding and surety requirements, which are aimed at providing additional levels of protection for consumers. In FY 2000 the agency's legal and enforcement staffs coordinated to identify unscrupulous malfeasors injuring the shipping public, and to obtain injunctive relief to prevent their continued operations. These intra-agency efforts resulted in pro-consumer preemptive actions taking place in an effective and expeditious manner. Additionally, our new Bureau of Consumer Complaints and Licensing worked closely with our enforcement staff to identify and appropriately address applicants and licensees whose operations required scrutiny. This coordination assists our efforts to preclude unqualified or potentially unscrupulous entities from harming unsuspecting persons involved in ocean shipping.

**Performance Goal 4:**

*By mid-FY 2000, review and modify the Commission's Rules of Practice and Procedure with a view toward modernization, clarification, elimination of unnecessary provisions, and expediting the resolution of issues. Monitor effects of revisions to determine if further changes are warranted.*

**Progress:** The Commission completed a rulemaking proceeding amending its Rules of Practice and Procedure in FY 1999. Since that time an internal assessment was performed which

revealed that these rules are both current and clear in their presentation. Additionally, inquiries concerning the application or interpretation of our rules are very infrequent. Accordingly, it was determined that no further changes are warranted at this time. However, the Commission is developing and implementing an enhanced alternative dispute resolution (“ADR”) program. As part of this initiative, the Commission is conducting an assessment of its procedural rules to determine how they should be modified to facilitate the implementation of the ADR initiative. When fully implemented by the end of FY 2001, the ADR program and the revisions to the procedural rules should lower the agency’s and the public’s cost for resolving disputes, decrease the use of formal adjudicatory proceedings, and provide a more accessible means for dispute resolution.

**Budget Program Activity: Operational and Administrative**

**Related Strategic Goals**

1. **Compliance:** Promote the development of U.S. exports and the efficiency of ocean shipping by ensuring compliance with shipping statutes administered by the FMC.
4. **Internal Capabilities:** Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its regulatory, enforcement and educational responsibilities.

**Performance Goal 1:**

*Develop & implement enforcement/compliance initiatives to address evolving violative malpractices or non-compliance activities influenced by experience under OSRA by end of 1999.*

**Progress:** Under this goal, the Commission determined to have the planned initiatives fully operational by 1/1/99, and then to dedicate the necessary resources to identify probable violators. We achieved this goal. We developed an audit program for ocean transportation intermediaries (“OTIs”) and vessel-operating common carriers, which has encouraged compliance. Malpractice initiatives also were begun, especially in the North/South trades. Based on our informed industry sources, malpractices did decrease and our enforcement and compliance actions have encouraged compliance and self-policing. Commission databases have been developed to allow improved monitoring of OSRA’s OTI licensing and carrier service contract filing requirements. As indications, from FY 1998 to FY 1999, the number of informal settlements increased from 28 to 30, the dollar value of settlements increased from \$3.9 million to \$5.4 million, and shipper complaints to the agency ombudsmen decreased by 19%. From FY 1999 to FY 2000, the number of informal settlements increased from 30 to 34, and the dollar value of settlements in FY 2000 was \$3.2 million. As aforementioned, our activities under this goal must be considered in concert with our evolving redirection toward facilitating industry compliance efforts (as set forth in a specific performance goal in our FY 2001 Annual Performance Plan).

**Performance Goal 2:**

*Maximize use of Information Technology (“IT”) by fulfilling all goal-related objectives of IT 5-year plan by 3/30/99, to increase staff efficiency.*

**Progress:** Our actual performance in FY 1999 under this goal met projections, with minimal lapses of certain deadlines. We procured both better Internet access to maximize staff efficiency and firewall protection to strengthen security; developed an electronic service contract

filing system designed to meet the needs of the industry, thereby reducing filing burdens and increasing the ease of compliance; and made agency documents (speeches, application forms, etc.) more readily available via our website. Reduced agency funding in FY 1999 continued to affect full performance on all technology objectives, but necessary actions in our 5-year IT plan were accomplished.

In FY 2000, funding was requested and approved from Congress' Y2K Contingency Fund, which was used to achieve Y2K compliance among agency IT systems. We replaced two-thirds of the agency's computers, upgraded software, upgraded servers and routers, and procured a Y2K-compliant document imaging system to improve records management and retrieval. The Commission also initiated development of improvements and upgrades to several database systems, including the FMC-1 webform and the service contract filing system, which, when completed, will reduce filing burdens and enhance industry compliance with OSRA. Further, we coordinated with the regulated industry to facilitate our review of OSRA-required published tariffs, and we entered into an arrangement with DOT to provide customized software as part of our ongoing effort to make our entire financial management system JFMIP compliant. We also acquired an outside evaluation of IT security issues to provide a blueprint for further strengthening our IT security. Reduced agency funding again precluded full performance on all technology objectives, but critical actions in our 5-year IT plan were targeted and effected. Those actions will enhance our efforts to accomplish various of the tasks in our current performance plan.

**Performance Goal 3:**

*Since OSRA will impact individual employee goals and performance, conduct an audit by 10/1/99 to ensure that the performance appraisal process specifically considers activities unique to OSRA.*

**Progress:** The performance plans of all senior executives and agency managers include several elements that are tied directly to achieving the results set forth in the agency's Strategic Plan and overall Annual Performance Plan. Additionally, all employees have specific performance elements geared towards accomplishing agency strategic and performance goals. These elements were assessed, and modified if necessary, at mid-year progress reviews (or at other times of the appraisal year if necessary). Additionally, all executives and managers consistently were reminded of the importance of working toward achieving the agency's stated goals and objectives. Through these efforts, we were able to substantiate that our staff's daily efforts and ongoing performance comported with our overall goals and policy objectives.

The Commission continued to make it a high priority to align individual employee performance plans with the goals and objectives of agency Annual Performance Plans. Particular attention was devoted to this goal in FY 2000 to ensure that OSRA-required activities appropriately were covered agencywide. Employee performance plans covering the majority of FY 2000 were prepared in July 1999, subsequent to OSRA's effective date. The Commission was fully aware of all relevant new requirements and the actions necessary to implement its changed oversight responsibilities. A review was conducted to ensure that pertinent OSRA objectives were specifically included in employee performance plans beginning with the agency's senior executives and filtering down through managers' plans to those of line and clerical staff. Employees' suggestions were sought and incorporated, which served to enhance and facilitate the process. These efforts enabled us to maintain the effectiveness of agency programs, while appropriately transitioning to our changed oversight role. It was accomplished without disruption, and Commission actions continued to be effectuated smoothly. Our Inspector General and EEO Director were kept apprised and provided

positive feedback. And, while we did implement further improvements when preparing our FY 2001 employee performance plans, we are confident that our efforts this fiscal year contributed to our accomplishing the goals and objectives established for FY 2000.

**Performance Goal 4:**

*Develop administrative and operational procedures to address a regulatory environment without tariff filing.*

**Progress:** The Commission actively began to address this goal in the last quarter of FY 1999. Initial efforts focused on OSRA's directive to ensure the accessibility and accuracy of carrier automated tariff systems. Several staffers from separate units randomly reviewed specific aspects of various systems. When this review raised significant concerns over carrier compliance, an inter-office working group was formed, which developed a specific program for a more comprehensive review. Deficiencies persisted, and despite informal contacts with filers, necessary corrections were slow in coming. In a continuing attempt to gain compliance without resorting to enforcement action, the Commission issued two circular letters and an Advance Notice of Proposed Rulemaking. While some parties did effectuate appropriate changes, problems concerning the accessibility of tariffs remain, and now are being addressed on an ad hoc enforcement basis.

Per the Commission's February 2000 reorganization, our emphasis now is on the substance of published tariffs. The reorganization restructured offices and redirected resources with this objective in mind. Monitoring efforts are accomplished via inter-bureau teams composed of attorneys, area representatives, transportation specialists, and economists. Substantive, market-distorting activities are the focus, although technical publishing issues are addressed when uncovered. Members of these teams exchange ideas and experiences with an eye toward more efficiently accomplishing agency oversight responsibilities. This goal influences current performance in that our inter-unit efforts continue to be used to address our various program responsibilities. Additional experience operating in this manner and in dealing with the new shipping environment emanating from OSRA should increase the agency's ability to accomplish its OSRA mandates.

**Budget Program Activity: Economics and Agreement Analysis**

**Related Strategic Goals**

2. ***Balanced Enforcement:*** Foster economic efficiencies and reliance on marketplace factors by administering U.S. shipping statutes in a balanced and equitable manner that redresses excessive anticompetitive actions and restrictive practices of foreign governments.
3. ***Efficient Regulatory Process:*** Promote a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.
4. ***Internal Capabilities:*** Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its regulatory, enforcement and educational responsibilities.

**Performance Goal 1:**

*Assess information form reporting requirements & reduce number of information form reports by at least 20%.*



**Progress:** The Commission met the requirements and self-established deadlines of this goal in FY 1999. In order to reduce carriers' filing burdens, the Commission aimed to eliminate the need for certain information and increase the effectiveness of staff analysis of data submissions. The number of information form reports was reduced by close to 20%. As a first step, waivers and the renewal of past waivers of certain information form and monitoring report requirements were granted to ocean carriers, which reduced the amount of data required from numerous agreements. The reduction in reports was achieved through consolidation of trade lane, commodity and revenue reports which reflect actual pricing strategies of the agreements.

Further review of the involved reporting requirements was undertaken in FY 2000. The initiative to consider a further reduction in monitoring report requirements contemplates provisions for different, but more relevant data and information which would assist the Commission in analyzing new agreements and those in effect. To accomplish this goal, consideration is being given to combining monitoring report requirements and agreement minutes reporting provisions (the subject of a separate performance goal in our FY 2001 Annual Performance Plan) with the issues contained in the Commission's proceeding dealing with the content of filed agreements, since all of these matters are relevant to the Commission's agreement program. These initiatives are consistent with the policy objectives of OSRA in that they seek to remove any burdensome regulations, while streamlining others.

#### **Performance Goal 2:**

*Apply economic analysis component of 6(g) process to evolving industry & modify agency approach as set forth in Conference Report on OSRA, and issue two 6(g) analyses under refined process.*

**Progress:** The targets assigned to this goal were achieved in FY 1999. In order to eliminate any existing and prospective concerted carrier activity of carrier agreements that could be detrimental to shippers, and to provide an ocean shipping environment that encourages the free flow of commerce, analyses pursuant to section 6(g) of the Shipping Act of 1984 were issued on one major agreement in the transpacific and one agreement in the North Atlantic trades. As a result of the analyses of information submitted by the agreements and obtained from shippers, one potentially highly anticompetitive agreement was withdrawn, while the other's activities continue to be closely monitored to ensure a sufficiently competitive environment in that trade.

In FY 2000, the Commission continued to focus on eliminating problematic concerted activity under carrier agreements and promoting a competitive and efficient ocean transportation system that places a greater reliance on the marketplace. We conducted 6(g) analyses on a number of agreements operating in the U.S. liner trades, including two significant, newly filed global strategic alliances in the North Atlantic trades. Reflecting an OSRA-influenced, modified approach to gathering more information, wherein extensive information and data were requested from agreement members and evaluated within the context of other agreements' inter-relationships and existing trade conditions, the Commission determined that each of the proposed agreements would not unreasonably reduce vessel capacity in the trade and therefore adversely reduce shipping services and/or cause upward pressure on ocean shipping rates. Also during FY 2000, we scrutinized a cargo-sharing arrangement implemented by the conference serving the U.S./Australasia trade. After careful review of extensive information and data requested from the members under the section 6(g) standard, no action was taken to further delay or prevent the agreement from becoming effective. However, specific quarterly reporting requirements were imposed to facilitate our monitoring of the competitive environment in that trade. In addition, a review of operations under evolving carrier global strategic alliance agreements was initiated during the fiscal year. This goal clearly will influence FY 2001 performance given the need for continuing review and assessment of carrier use of antitrust immunity.

**Performance Goal 3:**

*Refine teamwork approach to monitoring carrier concerted activity & capture informally in two instances or issue two §15 orders in FY99 aimed at eliminating significantly anticompetitive concerted carrier activity.*

**Progress:** The refined teamwork approach between economists and transportation specialists in monitoring concerted carrier activity in FY 1999 resulted in the Commission issuing a section 15 order to members of the Asian Shipowners Forum and a request for additional information from members of a major transpacific agreement, to obtain critical information aimed at eliminating significantly anticompetitive carrier activity. As a result, the Asian Shipowners Forum filed an agreement with the Commission that will provide minutes of their meetings enabling monitoring of concerted activities. The information obtained from the transpacific agreement enhanced Commission monitoring, thereby reducing the likelihood of unacceptable anticompetitive behavior.

In FY 2000, the Commission refined the teamwork approach and enhanced ongoing coordination efforts. This resulted in a number of instances where the staff informally addressed situations that could have raised competitive concerns. In one instance, pursuant to the staff's direct inquiry, the Caribbean Shipowners Association amended its agreement to more clearly reflect that it functions as a binding conference in one subtrade, and as a voluntary discussion agreement in all other agreement subtrades. The Commission also requested extensive information and data from the parties of two rather significant vessel-sharing agreements in the North Atlantic trades to ensure that the proposed agreements would not unreasonably restrict vessel capacity to such a degree that there would be an artificial upward pressure on rates. Finally, by reviewing monitoring reports, the in-house agreement database, and other sources, the Bureau was able to identify and have terminated 16 agreements that were not being used by the parties. The teamwork approach continues to be used in FY 2001 to address potentially problematic competitive circumstances.

**Performance Goal 4:**

*Enhance FMC ability to utilize agreements information by consolidating bureau databases and making available to other Commission components on the agency Intranet.*

**Progress:** The Commission was successful in enhancing the utility of its various agreements information sources. Several agreement-related databases were consolidated, including information on the agreements themselves, such as membership, geographic scope and authority; minutes; monitoring reports; and staff recommendations to the Commission. This information was made available within the Commission via the local-area network ("LAN"), and will be linked to the agency Intranet in the near future. Additionally, we are in the process of assessing the feasibility of linking in-house agreement information with publicly available trade data. In a related matter, we have designed and implemented databases for gathering information regarding tariff and service-contract compliance with Commission regulations, which often is valuable in assessing agreement activity. This information has been made available to other Commission components via the LAN. We are further pursuing this goal in FY 2001 to ensure that we take full advantage of available information and efficiencies which technological initiatives can produce.

## Budget Program Activity: Tariffs, Certification & Licensing

### Related Strategic Goals

3. ***Efficient Regulatory Process:*** Promote a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.
4. ***Internal Capabilities:*** Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its regulatory, enforcement and educational responsibilities.

#### Performance Goal 1:

***Maximize the use of available IT to develop by 3/30/99 a cost-justified proposal for the automated filing of service contracts.***

**Progress:** The passage of OSRA essentially compelled the Commission to significantly exceed its goal of proposing an automated filing system for service contracts by 5/30/99. Using the latest IT technology, we designed, proposed, and implemented an Internet-based system for filing service contracts by 5/1/99. Use of transmission Internet protocols realized considerable developmental cost savings over conventional IT approaches to high-volume, confidential document filings. Additionally, the Commission significantly simplified time and cost filing burdens on the industry by enabling the use of low-cost, easily accessible, and readily usable off-the-shelf software. The agency significantly exceeded this goal because it accelerated its efforts in response to the industry's expressed interest in being able to use a low-cost, user-friendly system upon the May 1 effectiveness of OSRA.

Enhancements to certain aspects of the developed service contract filing system were effectuated in FY 2000, building on FY 1999 accomplishments. The enhancements primarily focused on facilitating the filing of an increasing volume of service contracts and amendments. The system helped achieve FY 2000 performance targets by eliminating certain paper-management burdens for the agency and freeing analysts to spend more time reviewing substantive service contract provisions.

#### Performance Goal 2:

***By 3/30/99, freight forwarder license applications processed completely within 30 days, absent applicant delay, and monitored to maintain continued achievement thereof.***

**Progress:** The Commission accomplished this goal in FY 1999 by completely processing new freight forwarder license applications within 30 days, absent applicant delays. Considerable efforts were made to streamline application processing through training, tracking, and modification of our procedures for submitting *Federal Register* notices. Also, this area was monitored on a weekly basis to confirm that timely processing continued or improved further for the remainder of the fiscal year. Moreover, during this period significant effort was made to process the tremendous influx of OTI applications "grandfathered" under OSRA.

The Commission continued to pursue this goal in FY 2000, and also focused on processing grandfathered applications. We developed streamlined processing procedures to facilitate speedy licensing, while ensuring that the public was protected from unlicensed and unbonded OTIs. Monitoring of OTI application processing was ongoing. We have found, however, that while the Commission is able to complete its work on a timely basis, most applications cannot be processed

within 30 days because they often are incomplete or do not provide sufficient documentation. The time it takes to obtain corrections from applicants causes significant delays in processing. Additionally, applications may be placed on hold pending results of the background investigation. In FY 2001, the Commission has been working on simplifying and clarifying the OTI application form to help reduce filing errors or incomplete submissions. We also have been coordinating closely with the surety industry to facilitate the timely issuance of OTI licenses.

**Performance Goal 3:**

*By 3/30/99, develop a guide regarding information and guidance of bureau activities available on the FMC Homepage.*

**Progress:** For FY 1999, the Commission aimed to increase the amount of information on our website and reduce the number of hard copies necessary for various guidance and forms. Our Homepage information provided guidance on a wide scope of Bureau of Tariffs, Certification and Licensing activities, including tariff publication, OTIs, service contracts, and marine terminal operators. In an effort to provide the industry with as much information and guidance as possible regarding the statutory and regulatory changes occasioned by OSRA, the Commission also posted all of its implementing regulations on its Homepage and added a "Frequently Asked Questions" section. Further, we provided the industry with up-to-date information on reform regulations and issues that could be reviewed through Internet technology, while avoiding the possibility of unintentionally disseminating conflicting information.

In late FY 2000, the Commission provided extensive information to the public on a quickly developing situation regarding the suspension of cruise operations by Premier Lines. We published accurate and timely information on our Homepage and provided an Internet link to claims information for the cruising public and the media. This reduced the need for follow-up calls and resulted in more expeditious assistance to affected passengers. In FY 2001, the Commission has been reviewing and updating information published on its Homepage for a wide range of activities, with an emphasis on providing the location of, and links to, information on various OTIs.

**Performance Goal 4:**

*By 9/30/00, passenger vessel applications processed completely within 30 days, absent applicant delay.*

**Progress:** This goal was successfully accomplished in FY 2000. During the last quarter of FY 2000, 36 passenger vessel certificates were issued. On average, the certificates were issued within 12.5 days of the applicant providing all necessary documents and information. No certificate took longer than 21 days to issue. However, it should be noted that the application process can be lengthy in certain circumstances, e.g., failure to furnish necessary documentation showing that the required amount of financial coverage has been issued for the correct entities. Such delays are beyond the Commission's control, although we consistently assist applicants in providing the necessary information and documents, frequently advising potential applicants before an application is filed. The Commission works closely with all potential applicants and the surety industry to assure that performance certificates are issued prior to any advertising or ticket sales, and that casualty certificates are issued prior to a vessel sailing. These efforts are being continued in FY 2001 for the dual purpose of protecting the cruising public and reducing burdens on passenger vessel operators.

## Budget Program Activity: Enforcement

### Related Strategic Goals

1. **Compliance:** Promote the development of U.S. exports and the efficiency of ocean shipping by ensuring compliance with shipping statutes administered by the FMC.
3. **Efficient Regulatory Process:** Promote a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.

#### Performance Goal 1:

*Actions under SBREFA for FY 99 indicate increase of 15% in number of small businesses provided with regulatory compliance. Actions required by SBREFA for FY 2000 met under OSRA rule requirements.*

**Progress:** The Commission exceeded this goal in FY 1999, particularly in its efforts to implement OSRA. In adopting new OSRA regulations, all Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") requirements were fulfilled, and extensive guidance was provided to small businesses to comply with the new legislation. Most OTIs are identified as small business entities, and all SBREFA requirements were considered when dealing with OTIs on compliance issues. All reports to Congress were timely provided, and SBREFA guidelines have been adopted by the agency and noticed to the public in the *Federal Register*. As to FY 2000 performance, all actions required by SBREFA have been met and SBREFA requirements have been adhered to in administering all enforcement programs and actions. The Commission's ombudsman responded to informal complaints of over 200 small business entities during FY 2000.

#### Performance Goal 2:

*Formal legal opinions & informal staff advice in FY99 provided 25% more quickly in 75% of cases, so industry can proceed with business activities on more timely basis.*

**Progress:** The Commission was quite successful under this goal in FY 1999. An improved IT system for monitoring involved activities was instituted, with a resultant increase in the timeliness in completion of assignments. Most public inquiries were responded to immediately. Our Area Representatives performed valuable public information services to respective local industry to encourage and enable industry compliance. Additionally, the Commission provided assistance to various entities to comply with its new regulations, and has increased the emphasis on voluntary compliance before enforcement actions when appropriate. Performance under this goal in FY 2000 permitted numerous parties in the industry to conduct their operations with more certainty regarding applicable requirements. New issues presented by OSRA continue to arise and all requests for opinions and advice receive immediate attention to encourage voluntary compliance.

#### Performance Goal 3:

*Shipper complaints to agency, both traditional and those driven by OSRA, show a 10-20% decline.*

**Progress:** During FY 1999, the Commission experienced an overall decrease of 8% in the number of complaints received, while the number of shipper complaints dropped by 19%. Although the latter figure correlates closely with the performance goal, experience has established that the

number of complaints received may not be the best measure of program success. During FY 2000, the Commission recognized that that number should not be the sole barometer for assessing industry compliance and the impact that the agency is having on the promotion of efficient U.S. ocean commerce. External factors, including economic and commercial realities, as well as the Commission's successful efforts to expand industry awareness of the informal dispute resolution program, have encouraged the submission of complaints from all sources. The informal complaint resolution service has attracted attention through information distributed on the Commission's Homepage, the increased use of e-mail, and other improvements in communication. Thus, the complaint total for FY 2000 nearly doubled the figure for FY 1999, while the number received from shippers increased by 8%. Accordingly, our FY 2001 Annual Performance Plan appropriately modifies this goal to focus on providing regulatory assistance to help resolve disputes and encourage voluntary compliance. Additionally, our ombudsman role has been expanded to include an increased emphasis on other means of ADR.

**Performance Goal 4:**

*Twenty percent reduction in time to conclude formal enforcement proceedings.*

**Progress:** A concerted effort has been made to reduce the time necessary to conclude formal enforcement proceedings. Early settlement is sought by Commission personnel and encouraged repeatedly by the agency's administrative law judges, together with exploring all other forms of ADR. ADR intervention often precludes the initiation of formal enforcement proceedings. For formal enforcement proceedings initiated in FY 97, the average time for completion was 14.4 months; for those initiated in FY 98 it was 7.3 months; and for FY 99, 6.8 months. This shows a reduction in the time to conclude formal enforcement proceedings exceeding the goal of 20%. However, it must be noted that while every effort is made to conclude formal enforcement proceedings with dispatch, the rights of litigants may not be compromised and all entitlements to due process must be respected. In any given proceeding, this could extend the time necessary to bring the case to conclusion.

**Budget Program Activity: Administration**

**Related Strategic Goals**

4. ***Internal Capabilities:*** Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its regulatory, enforcement and educational responsibilities.

**Performance Goal 1:**

*By 3/30/99, develop instrument/document & process for ensuring regular exchange of information between agency units & provider of administrative support services to improve level of service.*

**Progress:** This goal was intended to improve internal agency operations. In FY 1999, the Commission updated various administrative support-related Commission Orders to incorporate new legislation and implementing rules/guidance. We also updated Standard Operating Procedures for administrative activities, such as the Government purchase card, which facilitated timeliness of purchases, and reviewed and documented invoice/payment procedures to improve timeliness of payments. An automated, networked procurement system was implemented, which improved our acquisition process. And, through budget, senior policy and ad hoc meetings, regular discussions took place concerning the requirements of program bureaus to ensure appropriate and timely procurement.

In FY 2000, the Commission updated additional administrative support-related Commission Orders to incorporate changes resulting from a Commission reorganization as well as any changes in regulations. We also issued many messages of importance directly via e-mail (e.g., all training opportunities, vacancy announcements, Commission policy statements, and other issuances) to ensure timely and efficient communications which improve the level of administrative services. Most importantly, the reorganization of the Commission placed the Office of the Executive Director in charge of the agency's administrative offices. This improved communication between administrative support activities and program units, which led to a better understanding of relevant operational requirements. Further, regularly scheduled and ad hoc meetings continued to take place concerning the requirements of program bureaus to ensure appropriate and timely procurement and the development of improved support services strategies. And FY 2001 performance targets, up-to-date Commission Orders, and numerous Commission electronic communications provided necessary guidance to employees to facilitate administrative operations. Continued implementation of technological upgrades and other improvements will enable the Commission to enhance the exchange of information in FY 2001 in the areas of personnel, budget, technology, and procurement services.

**Performance Goal 2:**

*Develop appropriate plan in first quarter FY00 to meet agency training needs, so employees have the skills to more effectively accomplish regulatory responsibilities (driven by 8 months under OSRA).*

**Progress:** The agency met this goal in FY 1999, although it was rendered more difficult by budgetary constraints. Nonetheless, all staff were surveyed to ascertain continuing education requirements. Mandatory training was a primary focus, while a good deal of no-cost training was obtained from other government agencies. Additionally, we promoted Small Agency Council courses, becoming among the top ten users, and we were successful in having other small agencies accept our staff for surplus seats in their courses. We also surveyed distance learning by the Internet, in conjunction with IRM-tested networkable training software, and acquired training software accessible by staff from their desks. In all, we increased the number of FMC employees trained in a wide variety of areas.

In FY 2000, the Commission developed a targeted training plan early in the year. This plan, which considered the agency's budgetary constraints, focused on mandatory training, which included new requirements resulting from the implementation of OSRA and the Commission's consequent reorganization. Additionally, we continued to promote Small Agency Council courses and offerings via the Internet, and a significant number of no-cost training again was obtained from other agencies. As a result, we were able to increase the number of FMC employees trained in several areas, ranging from procurement and ADR, to supervision and personnel operations. Anticipating a slightly improved budget situation in FY 2001, the Training Officer will seek to broaden the agency's training efforts to areas that could not be addressed in recent years. Input from managers and employees will facilitate our efforts to develop a comprehensive plan that addresses needed skill improvements and enables the Commission to better utilize available technology.

**Performance Goal 3:**

*By 12/31/99, through an appropriate certification process, ensure that all employees' individual performance plans have been revised to comport with thrust of Strategic Plan & Annual Performance Plan.*

**Progress:** Prior to the end of calendar year 1998, the Commission confirmed that the performance plans of all executives, managers and employees contained specific performance elements geared towards accomplishing agency strategic and performance goals. Certain plans were further along than others, but all employees were specifically accountable for performing in accordance with the agency's established goals and objectives. Additionally, all executives and managers consistently were reminded throughout FY 1999 of the importance of reviewing employee performance plans and modifying them, if necessary, to ensure that they continued to comport with the agency's stated goals and objectives.

In FY 2000, the Commission heightened its attention to this matter with very positive results. The performance contracts of all senior executives and the performance plans of all managers were thoroughly reviewed, and then modified to more closely track relevant goals from the agency's Annual Performance Plan. Additionally, managers discussed performance plans with all of their employees and appropriately modified them to ensure that they contained elements geared toward the accomplishment of the agency's established performance goals. Discussions and changes took place either at midyear progress reviews, at the time of final appraisals when new performance plans were prepared, or when employees changed positions or were promoted. Our lead staff executive ensured that all executives were aware of the importance of complying with this goal, as well as the fact that their efforts would be assessed in their final performance appraisals. The Commission is confident that employee performance plans across the agency now satisfactorily are tied to pertinent agency performance goals, which will facilitate achievement of those goals while enhancing the effectiveness of employee performance. While this performance goal will not be specifically reflected in upcoming plans, we will continue to focus on this area as a matter of course so as to maintain the logical nexus between the agency's stated goals and employees' individual performance.

#### **Performance Goal 4:**

##### ***Enhance FMC compliance with Final Rule implementing Debt Collection Improvement Act of 1996.***

**Progress:** This goal was intended to ensure that debts owed to the FMC are collected and procedures regarding outstanding debt are vigorously pursued. In FY 2000, the agency evaluated the necessity of implementing additional debt collection mechanisms provided by the Debt Collection Improvement Act of 1996 ("DCIA"), to build on mechanisms already in place pursuant to Commission rules and a 1997 memorandum of understanding for debt collection services with the Financial Management Services ("FMS") of the Department of the Treasury. It was determined that the Commission had sufficient procedures in place for debt collection. As to specific cases, two debts that had been referred to FMS were satisfied in FY 2000, and the Commission entered into an agreement with a former employee to repay a debt – this agreement was satisfied in full, on time. Further, the Chairman authorized one-time authority to write-off insignificant receivables that were likely never to be collected, and a formal write-off policy regarding uncollectible accounts was drafted that complied with the DCIA and guidance from the Office of Management and Budget. The final policy will become part of a formal Commission Order upon completion in FY 2001. Also in FY 2000, the agency completed a lengthy and comprehensive process of evaluating available, affordable accounts receivable systems – the Commission entered into a memorandum of understanding with the Department of Transportation to obtain a JFMIP-approved Oracle software based system. This new system will provide better reporting capabilities on debts and will furnish financial information which will be incorporated directly into the Commission's general ledger accounting.