Tenth Annual Report

of the

Federal Maritime Commission

Fiscal Year Ended June 30, 1971

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FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

June 30, 1971

HELEN DELICH BENTLEY, *Chairman*
ASHTON C. BARRETT, *Vice Chairman*
JAMES F. FANSEEN, *Member*
JAMES V. DAY, *Member*
GEORGE H. HEARN, *Member*

LETTER OF TRANSMITTAL

Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

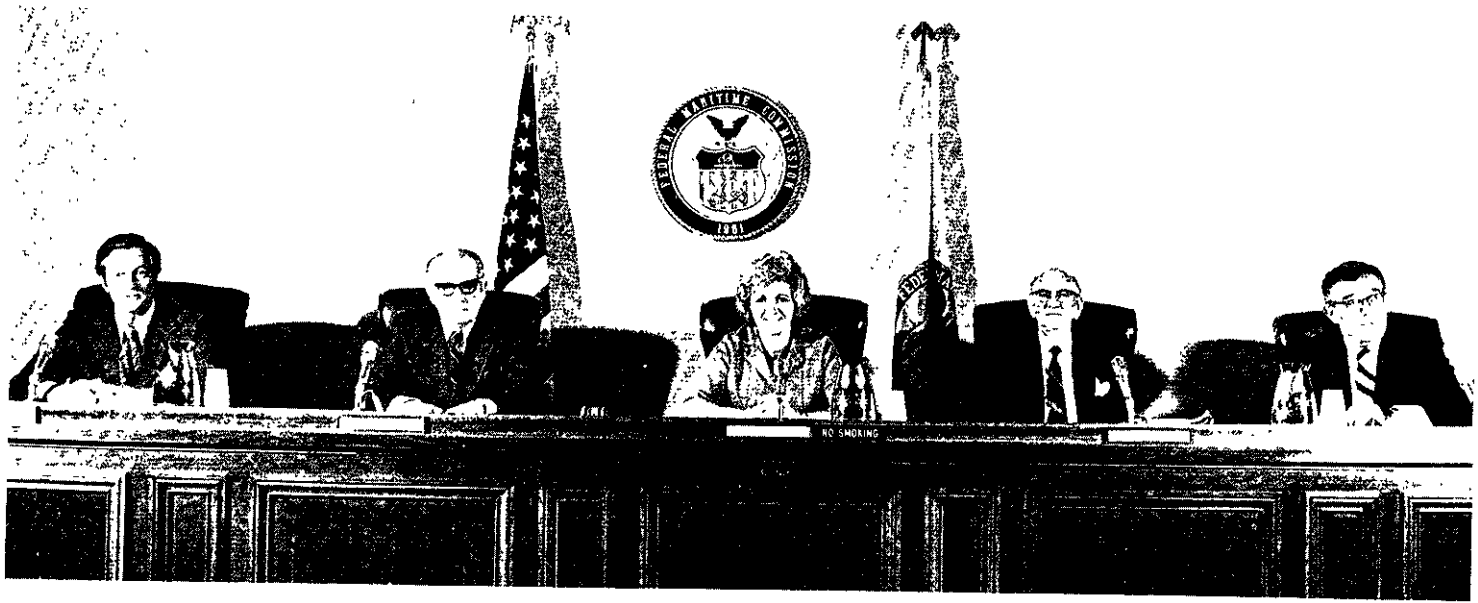
July 1, 1971

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, I respectfully submit the Annual Report of the Federal Maritime Commission for the fiscal year 1971.

Helen Delich Bentley
Chairman

Federal Maritime Commission (Fiscal Year 1971)



Left to right—Commissioner James F. Fanseen, Vice Chairman, Oct. 29, 1969–Feb. 28, 1971; Commissioner James V. Day; Chairman Helen Delich Bentley; Commissioner Ashton C. Barrett, Vice Chairman, Mar. 1, 1971, and Commissioner George H. Hearn.

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SCOPE OF AUTHORITY AND BASIC FUNCTIONS

The Federal Maritime Commission was established as an independent agency by Reorganization Plan No. 7, effective August 12, 1961. Its basic regulatory authorities are derived from the Shipping Act, 1916; Merchant Marine Act, 1920; Intercoastal Shipping Act, 1933; Merchant Marine Act, 1936; Public Law 89–777 of November 6, 1966; and Public Law 91–224, approved April 3, 1970.[1]

The Commission is composed of five Commissioners appointed by the President with the advice and consent of the Senate. The Commissioners are appointed for 5-year terms, with not more than three of the Commissioners being appointed from the same political party. The President designates one of the Commissioners to be the Chairman, who also serves as the chief executive and administrative officer of the agency.

The statutory authorities and functions of the Commission embrace the following principal areas: (1) Regulation of services, practices, and agreements of common carriers by water and certain other persons engaged in the foreign commerce of the United States; (2) acceptance, rejection, or disapproval of tariff filings of common carriers engaged in the foreign commerce of the United States; (3) regulation of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water in the domestic offshore trades of the United States; (4) licensing independent ocean freight forwarders; (5) investigation of discriminatory rates, charges, classifications, and practices in the waterborne foreign and domestic offshore commerce; (6) issuance of certificates evidencing financial

[1] Executive Order 11548, dated July 20, 1970, delegates to the Federal Maritime Commission the responsibility and authority, pursuant to Public Law 91–224 "Water Quality Improvement Act of 1970," to issue regulations concerning requirements for the certification by the Commission of proof of financial responsibility of certain vessels to meet the liability to the United States for the discharge of oil.

responsibility of vessel owners or charterers to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages or cruises; (7) issuance of certificates evidencing financial responsibility of vessel owners, charterers and operators to meet the liability to the United States for the discharge of oil; and (8) rendering decisions, issuing orders, and making rules and regulations governing, and affecting common carriers by water, terminal operators, and freight forwarders.

The Commission's headquarters is located at 1405 I Street NW., Washington, D.C. 20573. There are four field offices located as follows:

New York Office	26 Federal Plaza, Room 4012, New York, N.Y. 10007.
San Francisco Office	Federal Building, Room 2302, 100 McAllister St., San Francisco, Calif. 94102.
New Orleans Office	Post Office Box 30550, Room 945, 610 South Street, New Orleans, La. 70130.
Puerto Rico Office	Old San Juan Post Office Bldg., Room 108A, Comerico and Tanca Streets, P.O. Box 3168, San Juan, P.R. 00904.

HIGHLIGHTS AND REFLECTIONS OF THE YEAR

Fiscal 1971 marked the 10th anniversary of the Federal Maritime Commission's creation as an independent regulatory agency.

During the year the Commission was faced with many problems which arose from the developing role of ocean shipping technology in the constant move toward the transportation goal of totally integrated intermodal carriage of cargoes from point of production to the distributive consignees or to the ultimate consumer.

Basically, fiscal 1971 was a year in which containerization began to give new and firmer evidence of its future patterns, desires and ambitions. An emerging blueprint for the future revealed the dominant container carriers in fierce rate and service competition on global trade routes. There emerged, for public inspection and analysis, in 1971, an unquestioned need for shipper protection against arbitrary curtailments of services, continually climbing rates and recurring surcharges. The spectre of ship-operator consolidation in associations beyond the conventional conference concepts and toward such competition curtailing collective action as pooling, bilateral understandings and mergers became more distinct. Hints of the possibility of stronger and more pervasive dual-rate arrangements to more firmly tie the shipper to those lines and combinations of lines which offer the shipper the advantages of berth service began to be heard.

American regulatory doctrine has now reached the point where it can serve timely notice that the United States must not be counted upon to continually carry more than its fair share of responsibility for the security and material prosperity for world oceanborne trade and commerce. To the Federal Maritime Commission this is a welcome and equitable position.

At the same time, and for its own sake, the United States cannot avoid its responsibility for the leadership required to bring about a

sane and healthy international system of ocean-transport arrangements which the world so clearly needs. The better arrangements, the Commission feels, must be reached after full and free consultations, not by ultimatum and not by confrontation.

The purpose of these consultations must be the further enlargement and liberalization of the regulatory terms of world trade and not in regulatory contraction.

The Federal Maritime Commission will use every opportunity and every instrument at its disposal to work with the United States and our foreign partners in U.S. ocean trade to help make sure that our regulatory efforts, within the law, are thorough and far-reaching, dealing effectively with the problems before us and laying a secure foundation for another decade of peaceful ocean commerce for developed and developing nations alike.

The Federal Maritime Commission believes it can best serve the shipping community when it realistically faces the dynamic growth factors that spur ocean trade and courageously "umpires" the game by calling them as the "umpire" sees them.

There are three factors which have become self-evident:

1. The hope that containerization, or larger ships, or new advanced technology in ship loading will result in a lowering of rates is fast fading.

2. To meet the need for an increase in world trade, greater international movement of goods must be encouraged, fostered and promoted as the only equitable and responsible avenue of approach to the need of the ship operator for increased income.

3. The need for a regulatory climate of understanding, sympathy and encouragement within the law must be maintained by all authorities who deal with the complex and vital problems that beset all transportation and especially ocean transportation as the years of the seventies progress.

It is with these matters and needs foremost in our mind that the Tenth Annual Report of the Federal Maritime Commission is submitted to the Senate and House of Representatives as a chart of the course we have sailed in the year gone by. Our activities, we hope, are beacons to those who fall lawfully within the scope of our jurisdiction.

Significant Decisions

In reporting upon the highlights and reflections of the 1970–1971 period it is well to examine several significant decisions of the Commission. It is hoped that these decisions will emphasize in some measure the Commission's readiness to initiate and to explore new paths

of procedure, to be of service to the ideal of a stabilized ocean-trading complex.

While Commission decisions are covered elsewhere in this report the following are of significant importance.

Ocean-Pollution Guard

Docket No. 70–25—*Financial Responsibility for Oil Pollution Cleanup.*

On September 25, 1970, the Commission served its final rules in this action setting forth procedures whereby vessel owners or operators would be required to establish and maintain evidence of financial responsibility for the discharge of oil into the navigable waters of the United States. The rules apply to vessels over 300 gross tons, using any port or place in the United States or navigable waters of the United States. Evidence of financial responsibility was to be established at the level of $100 per gross ton, or $14 million, whichever is less. Financial responsibility is required to meet liability to the United States to which any vessel could be subjected pursuant to section 11 of the Water Quality Improvement Act of 1970. Five separate subsequent rulemaking proceedings were completed for the purpose of refining or revising the oil pollution rules.

Brazil Trade Stabilized

Docket No. 70–30—*Agreement Nos. 9847 and 9848—Revenue Pools, U.S./Brazil Trade.*

On November 18, 1970, the Commission served its report in this proceeding approving for a 3-year period, agreements between carriers calling for the apportioning of freight revenue on certain cargo shipped by the lines. The agreements, involving Moore McCormack, Lloyd Brasileiro, Netumar, Delta Steamship, and Navem also provided for equal access to Government controlled cargoes and rationalization of sailings.

"En Banc" Action Spurs Decision

In an effort to expedite this above proceeding the Commission sat en banc for the taking of evidence, thereby eliminating the need for an initial decision by an examiner, often a lengthy process.

The Commission ultimately concluded that approval of the agreements would contribute substantially to stability in the southbound trade between the United States and Brazil, thereby fulfilling a serious transportation need. It was also concluded that the participation of third-flag lines in carriage of cargo in the trade would not be affected to any significant degree in relation to cargo they then carried.

Search for Peace on Piers

Docket No. 69–57—*Agreement No. T–2336—New York Shipping Association Cooperative Working Arrangement.*

On November 20, 1970, the Commission served its report in this proceeding approving, subject to certain modifications, the New York Shipping Association assessment formula which was designed to meet certain financial obligations of the New York Shipping Association in its collective bargaining agreements with the International Longshoremen's Association.

The assessment agreement provides a combined man-hours/tonnage basis for raising the monies for New York Shipping Association's obligations at the Port of New York.

As modified and approved by the Commission, all cargoes to and from Puerto Rico and the port of New York would be given "excepted cargo" status in determining assessments for that cargo.

"Excepted" cargo would be assessed under a separate formula at a considerably lower level. Puerto Rican cargo was determined to warrant "excepted" treatment because it is already a fully containerized trade and did not contribute to or cause shortfall during the labor contract period. The Commission further noted the peculiar status of the Puerto Rican economy and its dependence upon low-cost ocean transportation.

As a result of a petition for reconsideration proceedings in this matter were subsequently remanded to the Examiner for further hearing.

Service Rules Clarified

Docket No. 70–11—*Pacific Coast European Conference—Rules 10 and 12, Tariff No. FMC 14.*

On June 15, 1971, the Commission served its report in this proceeding, finding certain tariff rules of respondent subject to section 15 and unapprovable.

The rules in question had the effect of limiting the number of terminals in the San Francisco Bay area at which conference members could call. The existing rule limited members calls to two terminals. The proposed amendment would limit members calls to one terminal.

The Commission found both concerted limitations to be unapprovable under section 15 as contrary to the public interest since they prevent or attempt to prevent carriers from serving federally improved ports in contravention of section 205, Merchant Marine Act, 1936.

The Commission emphasized that its decision was not to be construed as a requirement that any particular line serve any particular port or even that any line serve any port.

International Relations

For the Federal Maritime Commission fiscal year 1971 was a continuation of work initiated in 1970 and resulted in material improvement and stability in the international shipping situation.

Judicial and careful handling of delicate problems and cautious consultations and discussions paved the way for an easier tone in the regulation of international shipping.

It can be definitely stated that the modest but effective regulation by the Federal Maritime Commission has caused no drastic consequences for any foreign shipping line.

This does not mean that the foreign shipping lines, or their governments, have all gracefully accepted the United States regulatory philosophy. There are, and will continue to be, problems arising in the international field.

Emulation of FMC Aims Noted

Fiscal year 1971 has seen the passage by the Canadian Government of law No. 184, which provides for the filing of conference agreements and tariffs with the Canadian Government officials and the availability of these tariffs to the public.

The FMC also has seen the transportation ministers of the major European countries and Japan draw up a proposal in which those governments indicated to the conferences serving European and

Japanese trades that the conferences should immediately proceed with the drawing up of a "Code of Conference Practices."

"Personal Diplomacy" Helps

Commission Chairman Helen Delich Bentley has continued her personal diplomacy with the various European and Japanese government shipping officials.

The activities of the Chairman in explaining and discussing the regulatory problems of the various trades between the United States, Europe, and the Far East has materially assisted in the day-to-day regulatory activities of the Commission.

During the current fiscal year, the Chairman has made several trips to Europe as well as a trip to Japan to discuss shipping problems with appropriate government officials of those countries.

Managing Director Aaron W. Reese, as a member of the U.S. Delegation to the Drafting Committee of the Convention on the Combined Transport of Goods (TCM Convention), made three trips to Europe during the current fiscal year to complete the drafting of the proposed TCM Convention.

Information Lines Kept Open

The staff of the Federal Maritime Commission continued its policy of holding discussions and meetings with the Shipping Attachés of the major shipping countries of Europe and Japan, to discuss various problems arising from U.S. regulation of international shipping, intermodal transportation and containerization.

During the period under review, a number of meetings were held with representatives of the embassies of the various foreign countries which had questions concerning the Commission's regulatory activities, or concerning international shipping problems in general.

Surveillance on Surcharges

The Commission continued its policy of securing information and assistance from the American Embassies abroad concerning the conditions affecting U.S. shipping in ports around the world. This information proved exceedingly valuable in the Commission's evaluation of the validity of surcharges at these various ports.

The Commission also furnished information to the American Embassies abroad on a variety of international shipping problems such as the Commission's regulatory aims, conference matters, freight rates, and a number of allied subjects.

Cargo-Preference Watched

There is a growing tendency in the various developing countries of the world to direct cargoes to national shipping lines by government decree. In Latin America this is brought about by enlarging the types of commerce within the governmental sphere and issuing regulations which require that a given percentage of such government-generated cargoes move on national shipping lines.

The Federal Maritime Commission would like to see a U.S.-flag Merchant Marine capable of carrying a substantial part of our foreign trade, and we recognize that other nations are entitled to the same aspirations.

Whether cargo-preference measures may be appropriate to achieve this objective, it is our view that this is a matter for determination by each country, taking into account the fact that the trade and the arrangements for carrying it are of deep and abiding concern to its trading partners and to third countries as well.

The Federal Maritime Commission hopes that nations adopting cargo-preference measures will exercise restraint and seek solutions acceptable to others in the affected trade.

"Government-Cargo" Problem Weighed

The discriminations most troublesome to the Federal Maritime Commission are brought about by the direction of large volumes of so-called government cargoes to national-flag shipping lines to the detriment of U.S.-flag lines.

Experience has shown that proper pooling or equal access agreements are acceptable alternatives to retaliatory steps which could be taken in opposing the above type of discrimination.

The FMC objective is to diplomatically forestall any governmental action which might adversely affect the operations of U.S. shipping lines in these areas.

Pooling, Equal-Access Approved

During the period under review, the Commission has approved pooling and equal-access agreements between:

—Moore-McCormack Lines, Inc., Lloyd Brasileiro, and Netumar—from the U.S. Atlantic to Brazil;

—Delta Steamship Lines, Inc. and Lloyd Brasileiro—from the U.S. Gulf to Brazil;

—Prudential-Grace Lines, Inc. and Compania Peruana de Vapores (CPV)—from the U.S. Atlantic to Peru;

—Gulf and South American Steamship Co., Inc. and CPV—from the U.S. Gulf to Peru; and,

—Prudential-Grace Lines, Inc. and Lloyd Brasileiro—from the U.S. Pacific Coast to Brazil.

In addition, the Commission has before it for approval the renewal of the pooling agreement between Prudential-Grace Lines, Inc. and Compania Sudamericana de Vapores (CSAV), as well as Gulf and South American Steamship Co., Inc. and CSAV.

It also has an agreement between the Prudential-Grace Lines, Inc. and Compania Peruana de Vapores—from the U.S. Pacific Coast to Peru.

LDC's Favor Rate "Control"

The Lesser Developed Countries (LDC), for the past 3 years, have been attempting through varied international machinery to devise some means whereby their governments would have some control, or at least some information about the conference freight rates—their level, increase, and applicability.

All indications at the present time are that these countries are becoming very nationalistic and determined to have a voice in the movement of their export and import trade.

It is the impression of the Federal Maritime Commission that unless the various shipping conferences reach some understanding with the LDC's concerning consultation on conference practices and notification on rates, that several of the LDC's will, within the near future, pass laws or regulations to unilaterally control shipping rates into and out of their ports.

Such actions by these governments could, of course, increase the international problems faced by the Commission.

Discrimination Peril Watched

The Federal Maritime Commission is continuing its active consideration and surveillance of the actions by the various foreign governments which might be discriminatory in nature against the operations of U.S. shipping lines.

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UNITED STATES OCEANBORNE COMMERCE IN REVIEW

Implementation of Lash, Roll-On/Roll-Off, and Mini-Ship Services

While containerization has thus far constituted the most important technological advance in the shipping industry, other new and greatly improved transport systems have been introduced in our international trade.

One of these is the LASH/SEABEE service, where a mothership operates between deepwater ocean ports carrying a complement of barges. Cargoes are stowed in the barges. The barges are discharged at ocean ports or river points, from which they are moved by tug or on a self-propelled basis through rivers and other inland waterways to an ultimate destination.

U.S. Leads Development of LASH/SEABEE

LASH/SEABEE systems represent an all-water transportation service which is capable of reaching a wide variety of inland waterway points, with economics similar to those inherent to intermodal container service.

Thus far, American-flag carriers have led in the process of developing the LASH/SEABEE technology.

It was first introduced by an American company between U.S. Gulf ports and Europe.

A second American-flag carrier is presently operating a LASH service between U.S. North Atlantic ports and the Mediterranean Sea area. However, two foreign-flag carriers plan the introduction of a joint-service LASH operation in fiscal year 1972, between U.S. Atlantic and Gulf port areas, and the United Kingdom/European

port areas. Two American-flag carriers report plans to introduce LASH services in the Trans-Pacific Far East trades during the coming fiscal year.

Another technological advance in ocean shipping is the operation of roll-on/roll-off vessels, catering to cargoes such as automobiles, trucks, and tractors which can be driven on and off the vessels by the use of ramps. This type of service greatly facilitates savings in cost and time involved in the loading and unloading of a vessel.

Mini-Ship Service

Introduction of a "mini-ship" service, which is currently operating between U.S. Gulf/Mississippi River and Central American ports, represents another new and developing technology. The mini-ship is a relatively small, shallow-draft vessel capable of navigating inland waterways and docking at inland water points which are not accessible to the normal-sized oceangoing ship. By traversing these inland waterways, the mini-ship operator has the capacity to directly deliver its cargoes to a wide variety of inland points.

These developing technologies offer the shipping public improved shipping services with built-in economic advantages for carrier and shipper.

Development of Containerization

Fast, modern containerships afford the carrier optimum economy in vessel utilization and the shipper a faster delivery to his market. Cargo-handling costs at ports, which are a major portion of carrier expenditures for a conventional service, may be reduced. Both carriers and shippers can reap the benefit of a decline in cargo pilferage and in cargo claims. Few of the economies accruing to the carriers which are inherent in an intermodal containership service are being shared today with the shipping public in the form of rate reductions.

Additionally, containerization has been the genesis of intermodalism, fostering the integration of transport modes so that goods can flow without interruption from the door of the supplier to that of a customer abroad, even though a number of transport modes might be involved.

Development is Spotty

The container has not developed to the same degree in all of our international trades. It is the most advanced in the trades between

U.S. North Atlantic ports and United Kingdom/Continental European ports, where both American- and foreign-flag carriers are offering fully integrated containership services.

Containership services have been slow to develop in U.S. South Atlantic and Gulf ports, primarily because of the nature of the cargoes, a high proportion of which is bagged and bulk-type products. Modern containerizations have not yet been introduced in any great measure at U.S. Great Lakes ports, because of additional voyage time required to transit the seaway and the relative ease with which Midwestern cargoes can move through other port ranges by using inland transport services.

The U.S. West Coast ports are today enjoying the benefits of containership services. Two carriers are operating fully containerized ships between our West Coast ports and Europe, and the volume of containerized cargo moving between East and West Coast ports and the Orient is increasing daily. Present plans of many carriers to fully containerize their operations in the Far East trade indicates that the technological transport revolution that has almost completely changed the character of ocean services in our European trade will shortly spread to that area.

The latter part of fiscal year 1971 saw the introduction of modern containerships in the U.S.-Australian/New Zealand trade. Both the inbound and outbound conferences liberalized their respective tariffs to accommodate container-type services.

Challenging Regulatory Problems

The rapid spread of fully containerized operations has presented the Commission with some new and challenging regulatory problems. For example, the economics of an efficient containership operation dictates keeping the number of port calls to a minimum. Cargoes can be funneled to their ultimate destinations through a relatively small number of ports with economic advantage to the carrier. This presents a serious problem to those ports being denied direct vessel services, and to the Commission which has a statutory obligation to protect ports from unjust discrimination and, at the same time, insure the welfare of our commercial, oceanborne trades.

The question of whether a carrier may, under the Shipping Act, 1916, serve a port area by discharging cargoes in one port and then

delivering to the port of consignment by inland transportation services, is currently under consideration by the Commission. While the Commission encourages ocean shipping technological and economic improvements, it must also insure the welfare of our ports to the extent that they may not be unjustly or unduly harmed.

Terminal Operations and Modernization

Marine terminal operators who furnish wharfage, dock, warehouse or other terminal facilities within the United States, or a commonwealth, territory or possession, for oceanborne common carriers in our foreign or interstate commerce, are regulated by the Commission as "other persons" under the Shipping Act, 1916. Under the Commission's General Order 15, they are required to publish and file tariffs with the Commission setting forth their rates, charges, rules and regulations for their services. Section 17 of the Shipping Act, 1916, requires that terminal operators as well as carriers establish, observe, and enforce just and reasonable regulations and practices in connection with the receiving, handling, storing, or delivery of property. Section 15 of the Act requires that common carriers by water or other persons subject to the Act file with the Commission a true copy of every agreement with another party subject to the Act. Section 15 agreements pertaining to terminal activities cover the lease, license, assignment or use of marine terminal property or facilities and include those which:

1. Fix or regulate rates for marine terminal services;
2. Give or receive special rates, accommodations, or other special privileges or advantages;
3. Control, regulate, prevent or destroy competition;
4. Provide that earnings or losses received from a marine terminal operation shall be divided between two or more persons subject to the act;
5. Restrict or otherwise regulate the number and character of sailings;
6. Limit or regulate in any way the volume or character of freight traffic to be handled; and,
7. Provide in any manner for an exclusive, preferential, or cooperative working arrangement.

Terminal agreements in the recent past usually involved arrangements by terminal operators and municipal port authorities with common carriers by water generally providing for the lease, license or use of terminal facilities. These agreements followed a more or less

standardized form, i.e., preferential berthing privileges and a backup area or warehouse space for receipt and delivery of cargo.

However, the more recent agreements provide not only berthing space for the vessel, but sizable backup areas for the handling and servicing of containers as well as marshalling and holding areas for barges.

Stevedore Role Assumed

There appears also to be a trend toward more integrated terminal services where a terminal operator also acts as a stevedore. In these cases, the agreements with carriers provide for all-inclusive terminal and stevedore services and long-term lease arrangements.

These more sophisticated terminal/stevedore agreements when filed with the Commission for approval have often resulted in protests from competing terminals that the arrangements objected to are not compensatory.

In order to clarify questions being raised by these new type terminal agreements and to provide better guidelines to the industry, the Commission has proposed a rulemaking proceeding covering the filing of terminal agreements. This proposed rulemaking is designed to remove any uncertainty as to the Commission's jurisdiction over terminal and stevedore arrangements and delineate the types of agreements which will require approval pursuant to section 15 of the Act.

Intermodal Jurisdiction

A modern, efficient international transport system requires the movement of cargoes on a coordinated basis between the various transportation modes. Such movements involve multiagency regulation—the Interstate Commerce Commission has jurisdiction over surface transportation within the United States, the Civil Aeronautics Board regulates air transport, and the Federal Maritime Commission has authority over oceanborne movements.

The Federal Maritime Commission has taken particular care not to infringe upon the authority of its sister regulatory agencies. However, the Commission holds the view that regulation cannot be allowed to become outmoded by developing transportation technology. It must be sufficiently flexible to accommodate the changing times. It

must not become a deterrent to the free development of a modern and efficient system of transporting goods at maximum economy.

General Order 13 Amended

Accordingly, the Commission amended General Order 13, which prescribes the tariff filing requirements for common carriers by water in the foreign commerce of the United States, to permit carriers regulated by the Commission to publish and file single factor through-rates either unilaterally or jointly with carriers of other modes. When through-rates are offered, the ocean carrier's tariffs must break out the port-to-port portion of the through-rate, specify the through-route and other participating carriers, if any. Where carriers of other modes participate in a joint-rate or through-route, a memorandum of any existing agreement between the ocean carrier and such other carriers must also be filed with the Commission. This information is essential to effective regulation by the Commission of that part of the through-rate representing ocean transportation.

At the close of fiscal year 1971, fifty-one single factor through intermodal rate tariffs were on file with the Commission.

It is believed that continuing uncertainty on the part of the transportation industry with respect to multiagency jurisdiction and the lack of antitrust immunity have deterred many carriers from offering single factor through intermodal rates in our foreign trades.

Trends in Trade by Geographic Area

Services

In the trades between U.S. North Atlantic ports and Europe, most of the carriers operate modern, highspeed containerships, representing tremendous financial investments and substantially increased cargo-carrying capacity. This increase in capacity has sharply accelerated competition among the lines and created strong pressures on them to reduce their rates and provide additional services.

Rebating and other malpractices have reportedly weakened the economic health and stability of these major trades.

While containership services are not as developed in the Far East trades as they are in the European trades, present plans portend that the Far East trades will suffer from the same problem. As a matter of fact, increased competition and vessel tonnages have already be-

come a reality in our trades to the Orient which is undergoing transition to containerships and LASH-type vessels.

U.S.S.R. Carrier Enters Trade

A development of significant note was the entry of a Soviet-flag carrier in the Far East trade. The Far Eastern Steamship Co. instituted a regular liner service between U.S. Pacific coast ports and Japan, which has recently been expanded to include Hong Kong and the Philippines. This Soviet carrier is offering rates which are generally lower than the conferences', and in numerous instances lower than other independent carriers. The Commission is maintaining a close surveillance over the rate structures in this trade. The Russian carrier does not presently operate containerships. However, there are reported plans to acquire such vessels in the future.

Rules Controversy Cited

Numerous conferences made improvements in their container rules through increased shipper allowances and other advantages, in order to make containerization more economically attractive. However, except for the carriage of a limited number of containers on the decks of conventional vessels, little progress has been made in Africa, India, and Latin America trades.

In the trade between East and Gulf Coast ports and Australia, the introduction of fully containerized ships and the controversy over container rules threatened the stability of the conference. While agreement on the rules was finally reached, one container carrier offers a through intermodal independent service from interior points in Australia to U.S. ports as distinguished from the conference port-to-port service.

Roll-On/Roll-off Tariff Published

In the Pacific coast/Australasia trade the first roll-on/roll-off vessel was introduced.

The roll-on/roll-off carrier, although a member of the conference, published a tariff of through-rates from interior points in the United States to ports in Australia but included a port-to-port portion which differed from the conference rates. However, the RoRo carrier subsequently cancelled its independent tariff with the understanding that the conference would seek to have its agreement modified so that through intermodal door-to-door rates could be established.

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Bilateralism Trend Noted

The trend to bilateralism in pooling and equal access agreements between American-flag carriers and government-owned or controlled Latin American carriers increased considerably in fiscal year 1971. Five new sailing, pooling and equal access to government-controlled cargo agreements were approved by the Commission.

Two agreements involved the southbound trade from U.S. Atlantic and Gulf ports to Peru and three covered the southbound trade from the U.S. Atlantic, Gulf, and Pacific coast ports to Brazil.

There were pending at the end of the year two sailing, pooling and equal access agreements in the trades from the U.S. Atlantic and Gulf to Chile, and another such agreement from the U.S. Gulf to Colombia and Ecuador.

Rates

Ocean freight rates in both U.S. foreign and domestic offshore trades were very much affected by spiraling inflation.

Few, if any, trades escaped general freight rate increases.

In the foreign trades conferences and carriers, prompted by rising costs, both ashore and afloat, published rate increases which generally averaged between 10 and 15 percent.

In the domestic offshore trades, 19 carriers published general rate increases in fiscal year 1971. In each instance the Commission ordered a formal proceeding to determine the reasonableness of the proposed rate increases. Eleven of the hearings involved carriers in the Pacific Coast/Hawaiian trade where proposed increases ranged from 5 to 12½ percent.

The remaining eight proposed general increases were in the Puerto Rican trade and ranged from 10 to 15 percent on trailerload shipments and from 20 to 25 percent on less-than-trailerload movements.

Three of the carriers in each trade area canceled proposed increases following the service of an order of investigation by the Commission.

In the domestic offshore trades the Commission maintains suspension power over rates and can accordingly take summary action to prevent them from taking effect. It has no such authority over rates in the international trades where rates must be permitted to take effect provided they are properly filed.

In the foreign trades the Commission can order a rate altered only after hearing and upon a finding that the rate is so unreasonably high or low as to be detrimental to the commerce of the United States, or otherwise in violation of certain provisions of the Shipping Act, 1916.

Surcharges

In order to protect the shipping public against unwarranted freight-rate increases and to insure that ocean rates do not become an undue marketing impediment, the Commission maintains a vigorous program for surveillance over the activities of the carriers in both our international and domestic offshore trades and the conferences in our international trades.

While the publication of freight-rate surcharges is a frequent occurrence in the international trade, for unique and special reason they are sometimes also published in the domestic offshore trade.

The most common reason that surcharges are published is to compensate carriers for increased expenses related to conditions beyond their control such as port congestion, strikes and other labor difficulties, or other abnormal conditions affecting carrier operations.

In the conduct of this program, it is the Commission's basic policy not to question the right of carriers or conferences to establish surcharges at proper levels to compensate them for extraordinary expenses incurred for unusual circumstances which they do not control.

Bunker Surcharge Problem

The most far-reaching surcharge activity affecting both our foreign and domestic offshore trades in fiscal year 1971 was the publication of bunker surcharges throughout almost all trading areas. These surcharges were prompted by the fact that the cost of fuel oil for operating vessels dramatically rose to the point where carriers and conferences considered the expense factor to represent an abnormal condition warranting a surcharge.

In the foreign trades these surcharges varied considerably although in the majority of cases they ranged from 3 to 5 percent or from $2 to $3 per ton.

In the domestic offshore trades they ranged from 2 to 3 percent of the freight charges per ton.

Commission Actions

The Commission, under its surveillance program, kept in constant touch with the fluctuations in fuel oil prices. Recent decreases in such prices caused us to approach conferences and carriers in certain trades, suggesting that appropriate surcharge reductions be considered.

The Commission is presently negotiating this matter with the carriers and conferences concerned.

In conducting our surveillance program particular care is taken to insure that freight-rate surcharges are not filed in a discriminatory manner so as to represent a rate disparity which is unwarranted against American exporters.

Some specific examples of favorable action resulting from the Commission's work follow:

Ports/Country	*Amount of Surcharge*	*Action*
All ports in Nacala-Walvis Bay Range in South & East Africa.	15 percent.....	Indefinitely postponed at all ports except Durban, Capetown, Laurenco Marques and Beira.
Barranquilla, Colombia..	$6.00 per ton..	Canceled April 1971.
Buenaventura, Colombia.	$6.00 per ton..	Canceled June 1971.
Puerto Limon..... ...	25 percent.....	Canceled April 1971.
Abu Dhabi..	10 percent....	Canceled August 1970.
Vietnam....	Increased from $3.50 to $4.50.	Proposed increase canceled June 1971.

In addition to the above, the conduct of our surveillance program insures that surcharges are not established except in compliance with the requirements of the existing valid dual rate contract systems. Frequently, where dual rate systems operate, conferences will propose to increase rates without affording 90-day tariff filing notice as required by the contracts, claiming that the circumstances involved allow publication on shorter notice under exceptional or force majeure clauses therein. Whenever this occurs the Commission takes action to insure proper compliance with the 90-day notice provisions of the dual rate contracts.

Disparities

The Commission has been operating a program to insure that alleged ocean freight rate disparities which represent discrimina-

tions against American exporters do not exist to the extent that they cannot be justfied by valid transportation conditions.

The Federal Maritime Commission program considers two basic types of disparities. First, the reciprocal trade disparity where the ocean rate in the inbound portion of a trade is considerably lower than that charged the American exporter in the outbound portion of the same trade.

Second, the third market disparity situation where the American exporter is charged a considerably higher rate than that charged his foreign competitor who is competing with him in the same overseas market.

In fiscal year 1971 the Commission's rate disparity program was considerably accelerated.

United States/Japanese Trade

During the fiscal year considerable effort was expended in identifying specific commodities where ocean freight rate disparities appeared to discriminate against American exporters on a reciprocal basis. This activity involved the conferences operating in our trade with Japan. Shippers were canvassed in order to determine the extent of harm caused by the disparities and negotiations were conducted with the conferences in an effort to have the disparities eliminated by appropriate reductions in the export rates or to have the conferences justify disparate rates.

In April 1971 the Commission's Chairman visited government and shipping officials in Japan to discuss shipping problems in our trade including freight rate disparities.

During that visit the Chairman agreed to the establishment of a joint United States-Japanese working group that would seek solutions to the overall disparity problem in the trade.

The group, consisting of both United States and Japan Government officials, has scheduled meetings for this purpose in September 1971.

U.S. Great Lakes/Mediterranean Trade

Negotiations were concluded with the American Great Lakes/Mediterranean Eastbound Freight Conference resulting in the voluntary elimination or a substantial reduction in ocean freight rate disparities on 15 commodities.

Some of the commodities involve disparities on a reciprocal trade basis and some involve disparities on a third market basis where rates from U.S. Great Lakes ports to the Mediterranean were considerably higher than from Canadian ports to that area.

In addition to obtaining corrective rate action on the commodities involved, the conference passed a resolution fully acknowledging its responsibility to fix rates in the American Great Lakes trade which do not discriminate against American exporters by the existence of disparities.

U.S. North Atlantic/Continental Trades

Five show cause orders were issued against carriers operating in U.S. North Atlantic/Continental Trade, each involving a list of 20 or more commodities where rate disparities existed to the apparent detriment of our exporters.

In these proceedings the carriers were required to come before the Commission and show cause why their rates should not be found to be unjustly discriminatory and, hence, why the Commission should not order appropriate corrective action.

These proceedings have been concluded and the disparity items involved have been eliminated in almost all cases.

Additionally, without the necessity of formal Commission orders, the staff presented three additional carriers in the trade with a list of the same type of disparities, requesting voluntary elimination or justification.

These informal negotiations were concluded with the same favorable results as were obtained in the show cause proceedings.

U.S. North Atlantic Ports Versus Eastern Canadian Ports to Foreign Destinations

In fiscal year 1971 the Commission embarked upon the study of U.S. exports and imports moving through the Canadian transport systems as opposed to U.S. transport systems.

The Commission's basic purpose was to insure that ocean carriers it regulates in the U.S. foreign commerce which also serve the Canadian foreign commercial trade do not unjustly discriminate in rates and practices in favor of Canadian versus U.S. services.

Comparisons were made of rate structures from Eastern Canada to the United Kingdom, Continental Europe, and Australia/New

Zealand, versus those from U.S. Atlantic ports to the same destinations. In some of the trades substantial alleged freight rate disparities were identified.

As soon as this study is complete the Commission will consider appropriate action within the limits of its statutory authority.

Steamship Conference Activity

Both U.S.-flag and foreign flag carriers in all world trades have become extremely interested in merger possibilities. Many have followed this method in order to reduce expense, share risk, avoid duplication of services and rationalize sailings. Additionally, the merger approach has provided the extra needed capital for construction of new containerships, containers, LASH-type barges, and Ro-Ro type ships.

Latin American Trades

A recent development in the Latin American trades was the chartering of the vessels of several lines to a single carrier. This has been done under a cooperative working agreement rather than a merger arrangement in order to achieve the same financial benefits and operating improvements as through mergers.

Prior to this chartering arrangement, these same carriers were operating under five joint service agreements.

Far East and Australasian Trades

During the year there has been a continual disruption between "conventional" and "container" operators in conferences in which the container operators have sought to inaugurate new services. This has been manifested in: (1) establishment of "container" and "unitized" load tariff rules; (2) usually unsuccessful attempts by minority containership operators to establish and implement "intermodal" conference tariffs; and (3) establishment and monitoring of absorption and equalization practices in the United States and overseas.

The trend toward amalgamation and rationalization of resources and services has continued with some acceleration. There has been no great demand by shippers for inland-to-inland intermodal services and rates because the present system has remained adequate for the moment. Most steamship companies in this trade still operate a port-

to-port transportation service, hence are ill-equipped to offer through services. Only the Ro-Ro service lends itself to through movements readily and may be expected to supplant lift-on lift-off containership services within 10 years.

Many factors inhibiting "intermodalism" are commercial and not transportation oriented, i.e., bill of lading liability, cargo insurance coverage, booking arrangements and documentation.

U.K. Continental Europe, Mediterranean Trades

In the North Atlantic trade between the United States, United Kingdom and Western Europe, integrated intermodal transportation reached its greatest development advancing to the point of full containerization. These advances were achieved not only through the technology represented by the container, the automated containerized ship, and high-speed terminal facilities but also through the use of newly developed computer systems to control the flow of cargo and containers.

As a result of the rapid intermodal development, the ocean shipping industry has become so capital intensive that methods for combining various carriers into single well-financed groups was considered necessary by many carriers. Mergers of companies usually involved protracted formal hearings before the Commission followed by appeals to the courts to overturn Commission decisions. During fiscal year 1971, 16 carriers chose the somewhat easier route of combination by establishing eight joint-service arrangements. Some of these joint-service agreements have the same anticompetitive effect as a complete merger of the parties' services.

Domestic Offshore Commerce

Agreement No. DC–38, between Gulf-Puerto Rico Lines, U.S.A. Inc.; Seatrain Lines, Inc.; Sea-Land Service, Inc.; and Transamerican Trailer Transport, Inc., established a conference of carriers in the trade between U.S. Atlantic and Gulf ports and ports in Puerto Rico. It provides for establishing and maintaining uniform rules and regulations, and provisions for terminal or accessorial charges but not for fixing of ocean freight rates.

The agreement was originally approved for a 2-year period expiring May 9, 1971. Prior to its expiration, the parties filed a request

for permanent approval of the agreement. Protests against approval were filed by the Commonwealth of Puerto Rico and the Puerto Rico Manufacturers Association.

Now Under Hearing

The Commission has set the matter down for hearing in *Docket No. 71–32* and has extended the approval of the agreement pending the outcome of the proceeding. In setting the matter down for a hearing to determine whether the agreement should be granted permanent approval, the Commission's order stated that: "The Commission is particularly interested in developing a record, under the public interest criterion, whether * * * a conference agreement between carriers in the domestic commerce of the United States is, in fact needed * * *"

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SURVEILLANCE/COMPLIANCE/ ENFORCEMENT

Tariff Filing

At the close of fiscal year 1971 there were 3,580 tariffs on file with the Commission, broken down as follows:

1. Tariffs published by conferences and carriers in foreign commerce of the United States—2,718
2. Tariffs published by carriers in the domestic offshore commerce of the United States—345
3. Tariffs published by terminal operators at U.S. ports—517

The Commission's program for surveillance over this tariff material is designed to insure that the rates and practices of the ocean carriers and terminal operators are in compliance with statutory and other Commission requirements.

Tariff examination in the U.S. international trade must consider compliance with the Shipping Act, 1916, and other related statutes as follows:

1. Section 18(b) and General Order 13 which prescribe the Commission's tariff filing regulations,
2. Section 15 as to whether a tariff might require approval thereunder or whether rates and practices contained therein might extend beyond the Commission's authority,
3. Section 14(b) and the various provisions of the dual rate contract systems as approved by the Commission,
4. Sections 14, 16, and 17 which proscribe unjust discriminations and undue or unfair preference or advantage.

In fiscal year 1971, the Commission received a total of 117,070 tariff filings in the foreign commerce of the United States involving a total of approximately 272,000 rate changes. Six hundred ninety-one of these were rejected by the Commission for failure to conform to its tariff filing requirements.

In the domestic offshore trade, 9,333 tariff filings were received of which 505 were rejected for failure to comply with the Commission's tariff filing regulations as prescribed by section 2 of the Intercoastal Shipping Act of 1933 and the Commission's Tariff Circular No. 3.

During the fiscal year, 6,922 terminal tariff filings were received. There is no statutory provision for the filing of tariffs by terminal operators. Such tariffs are required to be filed with the Commission pursuant to its General Order 15 which does not contain rejection authority.

The Commission is considering proposed legislation which would expand its authority over terminal tariffs to require 30-day tariff filing notice for all filings and to allow the rejection of tariff matter.

Section 18(b) gives the Commission authority to waive the 30-day notice provision of all tariff filings submitted thereunder "in its discretion and for good cause." The Commission has similar authority in the domestic offshore trades under the Intercoastal Shipping Act, 1933. In fiscal year 1971, 128 special permission applications for waiver of tariff filings in its foreign trade were received, of which 100 were granted, 21 denied and seven withdrawn. In the domestic offshore trade 142 special permission applications were received of which 130 were approved, 10 denied and two withdrawn.

Agreements Review

Pursuant to the Shipping Act, 1916, the Commission reviews section 15 agreements and applications for permission to institute dual rate contracts under section 14b in order to establish whether these agreements and applications should be approved, disapproved, or modified.

Unless approval is obtained prior to implementation of the concerted arrangements, the parties thereto may be liable to a penalty of not more than $1,000 for each day such violation continues. Where approvals have been obtained from the Commission, the parties are granted immunity from the application of the U.S. antitrust statutes.

During the fiscal year 1971, 296 carrier agreements and 100 terminal agreements were filed for Commission consideration. A statistical table of receipts, approvals, and total active agreements is attached as appendix A.

Conference Minutes

In fiscal year 1971, 2,278 minutes of meetings of conferences and ratemaking agreements were filed with the Commission and reviewed by the staff. The Commission's continuing surveillance over concerted activities permitted under approved agreements requires a careful review of all actions reported on minutes of owners', principals', and other meetings, to determine that the parties are acting within the prescribed limitations of the agreements, the applicable statutes, and Commission policies.

Minutes review has revealed in some instances that tariffs have exceeded the ratemaking authority conferred by the agreements, particularly with respect to overland rates and absorptions, brokerage, equalization, and trans-shipment arrangements. As a result, formal proceedings have been initiated by the Commission to determine whether the particular agreements should be disapproved or modified.

Shippers' Requests and Complaints

General Order 14 covering reporting requirements was promulgated by the Commission to implement the 1961 amendments of the Shipping Act which required that the Commission disapprove any agreement where it finds a failure or a refusal by the parties to "* * * adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints."

During fiscal 1971, 354 separate reports covering shippers' requests and complaints were filed. These reports are submitted quarterly and are reviewed by the staff to determine whether shippers' requests for rates and rate reductions are being handled promptly and fairly.

Dual Rate Contract Systems

There has been little activity in the area of dual rate contract systems. Several existing approved systems have been terminated along with termination of the underlying section 15 agreements. Only one new contract rate system was filed for Commission consideration. This was in the Australia, New Zealand, and South Sea Island/Pacific Coast Conference trade. However, when the matter went to

hearing to determine the need for the system, the conference withdrew its application.

In connection with the 60 dual-rate systems still in effect, there were 11 modifications filed covering mainly extensions of systems about to terminate at the end of the Commission's original 3-year approval period and minor clarifying language changes in the contract form.

Informal Complaints

In October 1970, the Commission effected reorganizational changes which involved a transfer of responsibility for surveillance/compliance of agreements and tariff matter in the domestic offshore trades from the previous Bureau of Domestic Regulation to the Bureau of Compliance. The purpose of this reorganization was to place responsibility for surveillance/compliance in the area of agreements and tariffs under a single authority, namely the Bureau of Compliance.

The reorganizational change transferred to the Commission's Bureau of Enforcement responsibility over informal complaints with the exception that all such complaints involving the propriety of the level of tariff rates would remain the responsibility of the Bureau of Compliance.

Record of Action

During fiscal year 1971, the Bureau of Compliance received or initiated a total of 534 informal rate complaint cases. Three hundred ninety-nine of these were processed to an appropriate conclusion. In many instances the Commission was successful in negotiating with conferences and carriers to obtain rate reductions for the shipping public. In the handling of these matters every effort is made to insure that rates are not fixed by carriers and conferences at levels which are unjustly discriminatory or would represent an impediment to the shippers' marketing ability.

During the fiscal year, a total of 305 informal complaints were received, of these 80 percent related to practices of water carriers, 10 percent to activities of independent ocean freight forwarders, 7 percent to the practices of terminal operators, and 3 percent related to shippers; 228 informal complaints were brought to a conclusion.

The Commission has no statutory authority to adjudicate loss and damage claims but does have general authority under section 14, Fourth and 17 of the Shipping Act, 1916, to correct unfair or discriminatory practices. A major portion of the complaints received fall into these categories and even without this specific authority to adjudicate, we were successful in resolving 37 percent of this type of complaint in favor of the complainant.

Lack of Merit Cited

Many of the complaints were found without merit or had already been time barred by the 1-year statute of limitations of the Carriage of Goods by Sea Act, making relief impossible. In addition, 16 percent concerned matters within the jurisdiction of other government agencies and were referred to the respective agencies for handling.

Field Activities

The Commission's field activities directed by Washington, are strategically situated in New York City, New Orleans, and San Francisco. Coverage of the Great Lakes area is shared by New York City and New Orleans, thereby furnishing the Commission with coverage of all the major port areas of the United States. Field offices headed by a director are staffed with investigative and auditing personnel.

During the fiscal year, 440 new investigative cases were opened and 396 were completed. These investigations concerned suspected violations of sections 14, 15, 16, 17, 18, and 44 of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, as well as investigations of applicants for independent ocean freight forwarder licenses, compliance checks of licensed freight forwarders and audits in conjunction with the issuance of certificates of financial responsibility issued to operators of cruise vessels.

During the fiscal year, 19 cases were concluded by either court imposed fines or compromise settlements for a total of $108,930.53 for violations of the shipping acts.

Cases Still Pending

At the yearend there were 304 cases pending and 56 inactive cases on which investigations had been completed but are awaiting final disposition within the Commission or finalization by the Department of Justice.

A substantial portion of the investigative activities during the past year were concentrated on the chaotic condition, resulting from the rate war in the North Atlantic trade.

The field offices provide the industry and the general public with local centers where indigenous regulatory problems can be presented, the Commission's regulations explained, informal complaints received and where published data concerning all areas of the Commission's regulatory activities may be examined in the public reference room.

Crime in Transportation

The Senate Select Committee on Small Business has brought to the attention of everyone concerned with transportation the impact of crime, due to theft and pilferage of cargo on all modes of transportation and ultimately the consuming public. The Commission has participated in meetings with other government agencies and particularly with those agencies concerned with transportation. All have recognized that in each mode a basic shortcoming was the absence of any significant statistics to determine the magnitude and focal points of the problem.

Rulemaking on Pilferage

The Commission has under consideration a proposed rulemaking proceedings (Docket No. 71–74) which will require the quarterly reporting of loss and damage claims by common carriers and other select persons subject to the jurisdiction of the Commission.

These rules, if adopted, will be compatible with the rules promulgated by the other transportation regulatory agencies and the Bureau of Customs and will enable the Commission to furnish specific information to a central repository serving as a focal point where similar data from other agencies may be analyzed, problem areas identified and dissemination made to Federal, State and local law enforcement agencies for action.

These statistics will also enure to the benefit of the maritime industry in identifying problem areas, where the industry itself can take remedial action.

One of the most important results of our reporting system will be a statistical analysis of the claims settlement practices of the reporting parties.

This will make evident whether specific Commission action is necessary in this area.

Oil Pollution Responsibility

Implementation and Administration of Program

In a letter to Chairman Bentley dated June 2, 1970, President Nixon delegated to the Federal Maritime Commission the responsibility for carrying out the provisions of section 11(p)(1) of the Federal Water Pollution Control Act, as amended by the Water Quality Improvement Act of 1970. On July 20, 1970, Executive Order 11548, entitled *Delegating Functions of the President Under the Federal Pollution Control Act, As Amended,* was issued incorporating the delegation and stating in section 3, "without derogating from any action heretofore taken thereunder * * *.

Section 11(p)(1) requires vessels over 300 gross tons, including certain barges of equivalent size, using any port or place in the United States, or the navigable waters of the United States, or transiting the Panama Canal, to establish and maintain with the Federal Maritime Commission evidence of financial responsibility of $100 per gross ton, or $14 million, whichever is the lesser amount, to meet liability to the United States to which such vessel may be subjected for the discharge of oil into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

General Order 27 Published

The Commission's rules implementing the oil pollution financial responsibility requirements, General Order 27, were published on September 30, 1970.

These rules provide for the certification of vessels having complied with the statutory financial responsibility requirements, sets forth the procedures whereby the owners or operators of subject vessels may establish the required evidence of financial responsibility, and establish the qualifications required by the Commission for issuance of certificates, as well as the basis for the denial, revocation, modification, or suspension of certificates.

Initial Rules Amended

It was necessary during the fiscal year to amend the initial rules on a number of occasions.

The first amendment prescribed a requirement for the payment of user charges covering the filing of applications and the issuance of certificates. The purpose of these user charges is, to the extent possible, to recover the cost incurred by the Government in processing applications and issuing certificates. Thus far, the Commission has collected in excess of $650,000 under this program.

A number of other amendments to the rules have been accomplished to comply with changes in the law and to simplify compliance for certain segments of the shipping industry faced with unusual situations.

In December of 1970, Congress amended section 11(p)(1) of the Act to exclude from the financial responsibility requirements non-self-propelled barges that do not carry oil as cargo or fuel.

A rulemaking proceeding was instituted to modify General Order 27 to comply with this statutory amendment, thereby enabling all applicants operating non-oil-carrying barges to withdraw pending applications.

U.S. Insurance Aided

Another rulemaking proceeding was undertaken to clarify the regulations to permit a syndicate of U.S. insurance companies, recently established, to underwrite the oil pollution cleanup risk.

This amendment enabled a substantial number of vessel owners and operators to insure the required risks in the U.S. market, whereas heretofore they had to rely on foreign underwriters.

A further modification was incorporated in the rules to permit shipbuilders and ship scrappers to more easily obtain insurance to qualify under the requirements of the Act.

Simultaneously with the promulgation of the implementing rules, the Commission undertook the task of apprising thousands of vessel owners and operators throughout the world of the financial responsibility requirements.

Copies of the Commission's rules and application forms were distributed to such owners and operators. Of necessity, this had to be done expeditiously since the financial responsibility requirements of the Act became effective on April 3, 1971, only 6 months after the issuance of the implementing rules.

Certification of Vessels

The first application was received on October 29, 1970, and during the remainder of the fiscal year applications for certification were received covering 19,171 vessels. Of these, 15,848 vessels were certified after having complied with the financial responsibility requirements, and applications covering 485 vessels, primarily exempt non-oil-carrying barges, were withdrawn.

At the close of the fiscal year, applications involving the certification of 2,835 vessels were pending receipt of fees and/or evidence of financial responsibility, and for other technical reasons.

Establishment of Compliance Procedures

Section 11 of the Federal Water Pollution Control Act, as amended, does not contain any express provision for enforcement of the financial responsibility requirements. In testimony before the Subcommittee on Air and Water Pollution of the U.S. Senate, Chairman Bentley pointed out this lack of enforcement provisions.

In an effort to remedy the lack of enforcement provisions, the Commission has recommended proposed legislation.

Under this proposed legislation the Bureau of Customs is authorized to deny clearance to any vessel not having a valid certificate from the Commission, and the U.S. Coast Guard would be authorized to deny entry or detain any such noncertificated vessel. The proposed legislation would further provide for a civil penalty to be assessed by the Commission.

U.S. Coast Guard Checks Vessels

It was recognized that enforcement legislation may not be enacted during the present fiscal year. Therefore, as an interim measure, the Commission has established coordinated procedures with the U.S. Coast Guard, Bureau of Customs, and the Panama Canal Co. whereby these agencies, in the course of their normal vessel inspection and clearance procedures, determine whether particular vessels are in compliance with the oil pollution cleanup financial responsibility requirements.

Any vessels not having complied with these requirements are reported to the Commission, and the Commission is taking appropriate steps to effect compliance.

Ocean Freight Forwarding

The Independent Ocean Freight Forwarders have long been recognized as providing an important link in our foreign commerce.

Three-out-of-four of this Nation's export shipments are shepherded from U.S. shippers to foreign consignees by freight forwarders. Freight forwarding services are utilized by most export shippers and, when such services are rendered with efficiency, they materially assist the promotion of U.S. trade and export commerce.

The importance of the ocean freight forwarder to commerce was recognized by Congress in 1961, when it enacted Public Law 87–254. This bill provided for the licensing and regulation of independent ocean freight forwarders by the Federal Maritime Commission. Prior to licensing, the forwarding industry was beset with violations of the Shipping Acts and undesirable practices which Congress sought to eliminate by the licensing bill.

1,350 Firms Licensed

Since enactment of the licensing statute a total of 1,350 firms have been licensed, but only after a thorough investigation as to each being "fit, willing and able" to properly perform ocean forwarding functions in the public interest.

At the end of fiscal 1971, there were 1,030 active licensed independent ocean freight forwarders. During the past fiscal year, 76 applications were received and 63 licenses were approved—an increase of 23 applications over fiscal year 1970.

Denials and Revocations

During fiscal year 1971, the Commission revoked 41 outstanding licenses of independent ocean freight forwarders for cause, after giving each licensee notice and opportunity for hearing.

In addition, 22 applications for freight forwarder licenses were either denied or withdrawn. Eleven freight forwarder cases, in which hearings were requested for purposes of denial of freight forwarder applications or revocation of existing licenses, were formally docketed during fiscal year 1971.

Agreements, Mergers and Consolidations

Eight agreements subject to section 15, Shipping Act, 1916, were filed during fiscal year 1971, which involved either purchases of one

licensed freight forwarder by another, or mergers of two or more licensed freight forwarders.

At the end of the fiscal year two such agreements were pending action by the Commission.

There is an increasing trend toward mergers in the ocean freight forwarding industry. There also appears to be an increasing trend toward the formation of conglomerates of ocean freight forwarders.

The conglomerate problem, brought on by containerization and intermodalism, will affect the regulation of the freight forwarding industry.

An independent ocean freight forwarder is prohibited by statute from having any direct or indirect relationship with a shipper of merchandise to foreign countries.

Conglomerates which seek to acquire a licensed freight forwarder or who seek individual licenses in their own name or that of a subsidiary company, create intricate problems when they or their subsidiary firms also control shippers.

A problem involving this particular issue was recently confronted by the Commission, i.e., *Independent Ocean Freight Forwarder License No. 790, North American Van Lines, Fort Wayne, Indiana,* Docket No. 68–48, involving North American Van Lines which was licensed as an independent ocean freight forwarder in 1958.

On June 14, 1968, PepsiCo, Inc., a holding company, acquired 100 percent of the capital stock of North American. PepsiCo also owns all of the stock of Pepsi-Cola and Frito-Lay, Inc., both of which export cargoes in the foreign commerce of the United States by oceangoing common carriers. The Commission found that continued operation by North American as an independent ocean freight forwarder was inconsistent with sections 1 and 44, of the Shipping Act, 1916, and after extensive hearings North American's freight forwarder license was revoked.

Bank Situation Cited

Several large banking institutions have shown a keen interest at various times in obtaining an independent ocean freight forwarder license or purchasing the control or outright ownership of a licensed freight forwarder.

Inasmuch as banking institutions are, as a rule, normally involved in financing export shipments or having a beneficial interest in ocean

export cargoes, they have been advised informally that they are not qualified for licensing.

None have thus far sought to test this informal ruling before the Commission.

Tighter "Coordination" Sought

There have been some slight indications that two or more licensed freight forwarders may be uniting to purchase domestic surface carriers who hold Interstate Commerce Commission premits or certificates so that collectively they are in the position to control and coordinate the inland transportation of the goods to shipside and to overseas destination if possible. However, in recent years large domestic transportation companies under the jurisdiction of the ICC have also been expanding their operations by acquiring customhouse brokers, domestic ICC freight forwarders and licensed independent ocean freight forwarders so that they too can offer coordinated services from point of origin to foreign destination.

The Commission is keeping these trends under scrutiny.

Trends of the Forwarding Industry

It appears that containerization is making inroads into the ocean freight forwarder's traditional port areas of operation and documentation of shipments.

Intermodal transportation complexes are attracting greater amounts of small shipments direct from the factory to inland terminals, where such shipments are consolidated into container loads and moved by related inland carriers to port.

Thus, many exporters no longer find it necessary to deal directly with ocean freight forwarders to arrange for factory-to-port movements by separate intermediate carriers.

In addition, some intermodal complexes provide some or all of the necessary documentation, thereby eliminating the basic services traditionally provided by ocean freight forwarders.

Modernization Encouraged

The impact of containerization has not yet reduced the number of active licensed independent ocean freight forwarders. However, it is generally recognized, by representatives of the forwarding industry and others knowledgeable in ocean shipping practices, that the independent ocean freight forwarders must find ways to modernize

traditional operating methods to remain competitive with the large transportation complexes, or face serious adversity in the traditional role of the ocean freight forwarder.

The Commission will assist the ocean freight forwarding industry wherever possible in this transitional period.

Passenger Indemnity—Certification

The Commission approved 34 applications for certificates of financial responsibility. They consisted of 11 new applications for Certificates of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation; 11 new applications for Certifications of Financial Responsibility to Meet Liability Incurred for Death or Injury; and, 12 amendments to existing certificates.

The Commission also revoked 12 certificates during the year covering vessels no longer operated in the U.S. trades or now operated under different ownership.

During fiscal year 1971, the Commission approved a new agreement submitted by eight foreign-domiciled Protection and Indemnity Clubs (insurance associations) regarding the maintenance of their assets in the United States to permit them to qualify as acceptable guarantors under section 2 and section 3 of Public Law 89–777.

Responsibility Clarified

On December 16, 1970, the Commission served amendment 4 of General Order 20 which implements Public Law 89–777.

This amendment, which became effective on February 1, 1971, authorizes the Secretary of the Commission to be deemed an agent for service of process where a designated agent cannot be served because of death, disability, or unavailability.

This amendment also clarifies the responsibilities of a holder of a performance certificate with respect to fares and deposits collected by agents or other authorized persons or organizations.

If a certificant does not wish to assume responsibility for passenger fares or deposits collected by any persons or organizations, the certificant must advise such persons or organizations of the certification requirements of Public Law 89–777, and not permit use of the certificant's name or tickets until such persons or organizations qualify for a performance certificate.

In addition, amendment 4 establishes a new subpart C entitled *Assessment, Remission, and Mitigation of Civil Penalties* implementing the civil penalty provisions of Public Law 89–777.

Fees Are Proposed

On March 20, 1971, the Commission published in the *Federal Register* a Notice of Proposed Rule-Making to establish fees for various licensing and regulatory activities, including passenger vessel application and certification fees and agreement filing fees.

Reporting Requirements

The Commission has established various reporting requirements under General Order 20. They are as follows:

1. An amendment to an application must be filed no later than 5 days following a material change, when the evidence of financial responsibility has decreased below Commission requirements or when it must be increased to meet Commission requirements.

2. Semiannual statements required of each holder of a certificate regarding changes in information contained in his application or supporting documents.

3. Semiannual statements of unearned passenger revenue where insurance, escrow account, guaranty, or surety bond submitted as evidence of financial responsibility, is less than $5 million.

4. Charter arrangements by each vessel owner, or by the charterer in the event of a subcharter.

5. Arrangements, including charter and subcharter, made by the holder (or its agent) of a performance certificate with any person or organization pursuant to which the certificant does not assume responsibility for all passenger fares or deposits collected.

6. Self-insurers are required to file quarterly and annual balance sheets and statements of income and surplus; an annual credit rating report; an annual statement of assets located in the United States; and a list of contractual requirements or other encumbrances relating to the maintenance of working capital and net worth.

Evidence of Coverage

The Commission accepts duplicate copies of policies, furnished by the issuing office of the insurer, as evidence of insurance coverage. However, as interim evidence of renewal of such coverage, the Commission will accept from established insurance brokers letter or telegraphic advice followed by a cover note, certificate of insurance, or binder.

The Commission requires that insurers must have securities and assets in the United States to meet their commitments. Accordingly, trustees or custodians of the funds of foreign protection and indemnity associations and foreign insurance companies submit semi-annual reports of the securities and assets in the accounts of qualifying foreign insurers.

Cruise Trade Grows

The passenger public can look forward to being served by the planned entry of 11 additional vessels in the U.S. foreign and cruising trade.

Passenger Conference and Carrier Agreements

During the 1971 fiscal year the Commission approved a complete revision of the Trans-Pacific Passenger Conference Agreement.

This Agreement (No. 131), which had been modified some 250 times since its original approval, was updated and recodified without major changes to its basic precepts.

Terminal Pact Approved

The Commission approved agreement No. 9851, establishing the New York Passenger Terminal Users' Association.

This is an arrangement between 14 passenger-carrying steamship lines to consult and agree among themselves on common positions to be taken in their negotiations with the City of New York and the Port of New York Authority regarding a prospective consolidated passenger terminal to be constructed in the future, and for the purpose of negotiations with labor concerning commercial customs and practices to be employed at such terminal.

Passenger-Ship Talks Approved

The Commission also approved Agreement No. 9853, filed by American Export Isbrandtsen Lines, Moore-McCormack Lines, Prudential-Grace Lines, and United States Lines, providing for the joint development of a program for the operation of designated passenger vessels under the American flag.

Pursuant to the agreement, the lines shall undertake discussions with the appropriate Maritime Unions and shall attempt to develop a coordinated passenger-ship program for future presentation to the

Congress of the United States and the Maritime Administration. This could have a significant impact on the carriage of passengers by American-flag ships.

Other Pacts Approved

In addition, the Commission approved six passenger conference agreements (modifications) concerned with travel agency matters, internal conference operations, and compliance with the self-policing provisions of General Order 7 (revised).

At the close of the year, four passenger agreements were pending Commission approval.

SPECIAL STUDIES AND PROJECTS

Costs, Rates and Charges for the Carriage of Military Cargo of the Military Sealift Command (MSC)

In the face of marked declines in the rates for the carriage of military cargoes on the privately owned U.S. merchant marine, and rising allegations that the practices and policies of the Military Sealift Command had depressed rates to unreasonably low levels, the Commission undertook an examination of the effects of military cargo procurement practices on the financial viability of the American merchant marine.

In February 1971, the Commission joined the Maritime Administration, U.S. Department of Commerce, in a joint study project, the Sealift Procurement Analysis and Review (SPAR) Study.

Revenue Data Collected

Detailed operating cost and revenue data for 11 U.S.-flag carriers were collected, correlated, audited, programmed for computer processing and analyzed. This produced probably the most comprehensive compilation of industry operating statistics ever assembled. The preliminary conclusions of the SPAR Study pointed to widespread instances of non-compensatory rates and strong indications of serious financial detriment to the carriers participating in the traffic.

Accordingly, Docket 71–35, Investigation of Competitive Procurement Practices on Military Cargo, was instituted formally on April 7, 1971.

On April 13, 1971, the Department of Defense announced that it would undertake a comprehensive review of its sealift procurement policy to determine whether the Competitive Negotiated Procurement System jeopardized the capability of the U.S. merchant fleet to respond to future defense contingencies. The Federal Maritime Commission and the Maritime Administration were invited to join the

Office of the Assistant Secretary of Defense in conducting the study and review both at the working group and senior policy levels.

With the participation of the Federal Maritime Commission, the Maritime Administration and representatives of the steamship industry, a work plan was developed for the Sealift Procurement and National Security (SPANS) Study. The SPANS Study commenced on May 8, 1971, and is currently scheduled for completion before the end of calendar 1971.

The study consists of four principal divisions: First, an analysis of the current system of procurement and its effects on the American merchant marine; second, projection of the future size and composition of the merchant fleet; third, the capability of the merchant fleet to perform wartime shipping requirements under various emergency contingencies; and fourth, the structuring and evaluation of alternative procurement systems and/or subsidy programs conducive to the national defense interest.

The Commission is hopeful that the high degree of interagency cooperation and interaction represented by the SPAR and SPANS projects will lead to the resolution of the long-standing problem of reconciliation of our defense shipping requirements and the maintenance of a vital and competitive American merchant fleet in international commerce.

Fuel-Surcharge Problem

In the fall of 1970, common carriers by water in the foreign commerce of the United States began filing in their commercial tariffs, surcharges to offset extraordinary increases in the cost of fuel. Although a substantial amount of United States defense cargo is carried by the American flag lines for account of the government under the Military Sealift Command's contract rate bidding system, the Request for Rate Proposals for fiscal year 1971 did not provide for the reimbursement of such unforeseen additional operating expenses and the American flag lines, accordingly, refrained from filing compensating rate surcharges on military cargoes with this Commission.

It was alleged by numerous parties that commercial cargo was being required to bear an unfair burden for the higher fuel expense in possible violation of section 17 of the Shipping Act, 1916. The Commission instituted a formal proceeding (Docket No. 71–17) to

resolve the issue and this action ultimately prompted the Military Sealift Command to revise the terms of request for rate proposals No. 600 for fiscal year 1972.

The new agreement provides for the Department of Defense to assume responsibility for payment of any material increase in the cost of fuel to the carriers following the date upon which the bids were entered.

North Atlantic Rate War

Indications that vessel tonnage capacity was considerably in excess of cargo availability in the North Atlantic trade was of major concern to the Commission during fiscal year 1971.

Rumors were persistent that the trade, particularly in inbound portions, was plagued by rebating and other carrier malpractices. Some knowledgeable steamship sources were referring to the situation as a rate war. These unstable conditions in the trade appeared to be further complicated by the exceptionally low rates tendered by the American-flag carriers in the trade for the movement of military cargoes. For example, certain of the lines offered military rates on containerized shipments as low as $7 to $8 per ton.

The Commission was concerned as to whether these military rates were so low as to be causing serious economic harm to our American Merchant Marine and, at the same time, whether they might be disrupting the stability of one of our most important international trade routes.

Stability Plea Made

The Commission urged the carriers to take all possible steps to return stability to the trade, including a cessation of malpractices, otherwise, the Commission suggested, it would consider appropriate formal action.

To give the carriers an opportunity to meet and discuss the problems and their remedies, on November 24, 1970, the Commission approved Agreement No. 9899, permitting the lines section 15 authority to discuss the situation, but giving them no authority to take action without prior Commission approval.

We understand that the carriers have been considering asking the Commission to approve the establishment of a cargo pooling agree-

ment which would greatly diminish carrier competition. The Commission is hopeful that the problems of instability are nearing resolution.

FORMAL PROCEEDINGS

Adjudicatory Proceedings Before Hearing Examiners and Federal Maritime Commission

Hearing Examiners preside at hearings held after receipt of a complaint or institution of a proceeding on the Commission's own motion. FMC Examiners have the authority to administer oaths and affirmations; issue subpenas; rule upon motions and offers of proof and receive evidence; take or cause depositions to be taken whenever the ends of justice will be served thereby; regulate the course of hearings and hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests; issue decisions; and take any other action authorized by agency rule or the Administrative Procedure Act.

At the beginning of the fiscal year 1971, 94 proceedings were pending before Hearing Examiners. During the year, 186 cases were added, which included nine cases reopened and remanded to Examiners for further proceedings. The Examiners held 19 prehearing conferences, conducted hearings in 19 cases, and issued 19 initial decisions in formal proceedings, six initial decisions in special docket applications, and 127 decisions in small claims proceedings.

Cases otherwise disposed of involved 30 formal proceedings and 23 small claims. The Commission adopted four formal decisions, six special docket decisions, and two small claims decisions. The Commission determined not to review 74 small claims decisions.

Decisions of Hearing Examiners (in Proceedings Not Yet Decided by Commission)

Docket No. 68-44—*Malpractices—Brazil/United States Trade.* Several foreign common carriers by water were found to have engaged in malpractices in the U.S. Atlantic and Gulf coast and Brazil trade by allowing shippers to obtain transportation at less than regular rates through rebating in violation

of section 16 Second, and by receiving less or different compensation for transportation of coffee than specified in their tariffs in violation of section 18(b) (3) of the Shipping Act.

Docket No. 69–55—*Alaska Village Electric Cooperative, Inc.* v. *Northland Marine Lines, Inc.* Rates on shipments of bulk oil tanks and tank tops from Seattle, Wash., to Alaska were found inapplicable despite the fact the tanks were shipped "nested"; they nevertheless were not eligible for the lower rate on "knocked down" shipments, but rather were properly carried under the higher commodity rate as "set up." In the instance where four tank tops were billed separately the shipper was overcharged at the tank rate rather than under the lower commodity rate of "tank ends" and the Examiner determined the applicable rate. Finally the rate on bulk oil tanks was found unreasonably high under section 18(a) of the Shipping Act, a reasonable rate was determined, and reparation awarded.

Docket No. 69–56—*Agreement No. 9827 Between United States Lines, Inc., and Sea-Land Service, Inc. (and Walter Kidde & Co., Inc. and R. J. Reynolds Tobacco Co., Guarantors)*. An agreement wherein one common carrier by water would charter the entire fleet of containerships from another such common carrier for 20 years; lease its container equipment; obtain its offices and facilities in the Orient; and have the option to purchase the containerships at the expiration of the charter, was found not unjustly discriminatory or unfair as between carriers; not operating to the detriment of the commerce of the United States; not contrary to the public interest; and approvable under section 15 of the Shipping Act. After further hearing, a supplemental initial decision found that a containership service subsequently instituted by one of the carrier parties to the agreement affording two-way carriage of cargo between Europe and the Orient, which included the intercoastal trade, was no impediment to the approval theretofore given to the agreement because this new service operated in conjunction with the charterer's superior cargo system would be correspondingly more valuable to shippers.

Docket No. 70–1—*Sea-Land Service, Inc. Increases in Rates in the U.S. Pacific Coast/Puerto Rico Trade.* Concerns an indirect service where vessels returning from the Orient to Seattle were used to carry cargo to Oakland for transfer to vessels operating in a regular service in the West Coast/Puerto Rico trade. An arbitrary was properly imposed for the Seattle/Oakland leg, to defray the cost thereof which was not ordinarily part of the regular service and the burden was on the protestants to demonstrate its unlawfulness. The increased rates of the respondent were found not unjust or unreasonable or otherwise in violation of the Shipping Act.

Docket No. 70–3—*United Stevedoring Corp.* v. *Boston Shipping Association.* In this proceeding the complaint was dismissed because the respondent (a corporation with a membership composed of stevedoring contractors, terminal operators, steamship agents, steamship companies, and others, whose purposes were to promote harmonious relations between shippers, freight forwarders, and all other individuals, firms, and corporations engaged in

or affiliated with maritime interests in Boston), was not another person subject to the Act and hence could not be found to have effectuated an unapproved agreement in violation of section 15, nor to have violated either section 16 or 17 of the Shipping Act.

Docket No. 70–4—*York Forwarding Corp., J. B. Wood Shipping Co., and Edwards Fuge Corp.* Respondents York and Wood, licensed by the Commission as independent ocean freight forwarders, were found to be shipper connected and controlled through the receipt of "loans" from a shipper which were not repaid and by direction through a common chief executive officer of both forwarder and shipper. Respondents were also found to be parties to an unfiled exclusive cooperative working arrangement in violation of section 15, and the shipper was found to have obtained transportation for property by water at less than the rates and charges which would otherwise be applicable through shared forwarding fees with the forwarders.

Docket No. 70–9—*Bolton & Mitchell, Inc.—Independent Ocean Freight Forwarder License No. 516.* Respondent, a licensed independent ocean freight forwarder, was found to have a beneficial interest in shipments it handled because it purchased commodities as principal and retained the markup or profit thereon, thus operating as a shipper, seller, and purchaser. It was further found that respondent had violated section 16 of the Shipping Act by knowingly obtaining transportation at less than the rates or charges which would otherwise be applicable because it received forwarding fees on its own shipments. Revocation of its license was recommended.

Docket No. 70–12—*Commodity Credit Corporation, and United States Agency for International Development* v. *American Export Isbrandtsen Lines, Inc. et al.* Respondents as conference members serving U.S. Great Lakes ports and Canadian St. Lawrence River ports, did not violate sections 15, 16 First, 17, or 18(b)(5) of the Shipping Act, when, as members of a Canadian conference, they reduced rates on Canadian relief cargoes but did not reduce the rates on similar U.S. relief cargoes because there was a substantial difference in the competitive situation for obtaining Canadian and United States relief cargoes, and respondents, as members of the American Great Lakes Mediterranean Eastbound Freight Conference, were under no obligation to reduce their rates.

Docket No. 70–18—*Sacramento-Yolo Port District* v. *Pacific Coast European Conference, et al.* Respondent conference's agreement and rules did not ordinarily allow absorptions and transshipments, the effect of which, it was alleged, was to prevent any member line from utilizing the container barge service of the Port of Sacramento. As there was no evidence that any conference member desired to serve Sacramento, and particularly to use its barge service, or that any member line was prevented from serving Sacramento, section 205 of the Merchant Marine Act of 1936, was not violated. With respect to section 15 of the Shipping Act, the nonabsorption rule was not found to be detrimental to commerce or the public interest because use of the barge

service would result in loss of revenue not only to the ocean carriers but to inland carriers who would experience shorter hauls.

Docket No. 70–41—*Independent Ocean Freight Forwarder License—Key Air Freight.* Respondent was found to have violated section 44(a) of the Shipping Act by functioning as an ocean freight forwarder without a license. However because its former owner was the only one aware of the fact that it could not engage in freight forwarding without a license; because its subsequent management erroneously believed that it could gratuitously engage in forwarding without a license when acting only as an agent for its air freight clientele; and finally because no public solicitation was involved, the Examiner found the applicant fit to engage in ocean freight forwarding provided the former owner disposed of his stock in the company within not more than 60 days from the date of the decision. The Examiner recommended that past violations nevertheless be referred to the Department of Justice for prosecution under section 32 of the Shipping Act.

Examiners also issued initial decisions in Dockets Nos. 69–23, 70–11, 70–24, 70–44, 70–46, 70–47, SD–425, SD–426 and SD–427, described under "Decisions of the Commission."

Pending Proceedings

At the close of fiscal year 1971 there were 75 pending proceedings, of which 35 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints by common carriers by water, conferences, port authorities or districts, a railroad, shippers, terminal operators, trade associations, the United States, and others.

FINAL DECISIONS OF THE COMMISSION

In proceedings other than rulemaking, the Commission heard 11 oral arguments and issued 26 decisions involving 31 formal proceedings.

Of these proceedings five were discontinued without report, and three were referred or remanded to the Chief Examiner for hearing.

Decisions Completed

Docket No. 1092—*Agreement No. 8660—Latin America/Pacific Coast Steamship Conference and Proposed Contract Rate System.* Respondent conference's dual rate contract system requiring shippers to commit exclusive patronage to conference in all outbound trade areas found unapprovable under section 14b of the Shipping Act, 1916. The Commission required separate contracts in each trade area the Conference serves.

Docket No. 68–10—*Inter-American Freight Conference Cargo Pooling Agreements Nos. 9682, 9683, and 9684.* Commission was found to be lacking jurisdiction under section 15 of the Shipping Act, 1916, over the cargo pooling agreement in question, inasmuch as original signatories to the agreement had withdrawn from the pool and no semblance of an "agreement" remained for Commission consideration.

Docket No. 68–47—*Valley Evaporating Company* v. *Grace Line, Inc. et al.* Complainant was awarded reparation in the amount of $8,876 as a result of respondents' violation of section 16 of the Shipping Act, 1916, which resulted from failure to retain a commodity rate on dried fruit and subsequent unjust prejudice to complainant's shipments of that commodity. The Commission subsequently affirmed its decision on reconsideration.

Docket No. 68–48—*Independent Ocean Freight Forwarder License No. 790, North American Van Lines.* Respondent was found, as a result of its acquisition by PepsiCo Inc., to be owned and controlled by a shipper in foreign commerce of the United States. The shipper connection was deemed to disqualify respondent for a license as an independent ocean freight forwarder within the meaning of sections 1 and 44 of the Shipping Act, 1916.

Docket No. 69–5—*In the Matter of Agreement No. T–2227 Between the San Francisco Port Authority and States Steamship Company.* Examiner's determination that the public terminal lease agreement was compensatory was

found not supportable on the record. Additional financial information relating to bonded indebtedness and the interest thereon was required to be submitted by respondents to permit informed judgment on the compensatoriness issue.

Docket Nos. 69–13/69–23—*General Increases in the U.S. Gulf/Puerto Rico Trade.* Examiner's decision in 69–13, finding increased rates of Lykes Bros. Steamship Co., Inc., to be just and reasonable, was upheld by the Commission. Similar proceeding regarding Gulf Puerto Rico Line (69–23) was remanded to the Examiner and consolidated with a new investigation into additional increases by the same carrier (Docket No. 71–49).

Docket No. 69–21—*Transconex Inc.—General Increase in Rates in the U.S. South Atlantic/Puerto Rico–Virgin Islands Trade;* Docket 69–29—*Consolidated Express, Inc.—General Increases in Rates in the U.S. North Atlantic/Puerto Rico Trade.* The rate increases of two nonvessel operating common carriers were determined not to be unjust or unreasonable or otherwise unlawful.

Docket No. 69–48—*Independent Ocean Freight Forwarder License No. 1092—Speed Freight Inc.* Respondent's license as a freight forwarder was revoked as a result of connection with a shipper in foreign commerce; submitting false statements in its application; being without qualified personnel; and failure to report to the Commission required changes of facts.

Docket No. 69–56—*Agreement No. 9827 Between United States Lines, Inc. and Sea-Land Service, Inc. (and Walter Kidde & Co., Inc. and R. J. Reynolds Tobacco Co., Guarantors).* Subsequent to the Examiner's initial decision recommending approval of an agreement for the 20-year charter to Sea-Land of 16 containership vessels of U.S. Lines, the Commission remanded proceedings to the Examiner for additional evidence. A supplemental initial decision issued and time for filing exceptions to the Examiner's initial decisions was postponed indefinitely pending completion of proceedings in Docket No. 70–51—*Agreement of Merger No. 9827–1 Among R. J. Reynolds Tobacco Co., RJI Corp., Sea-Land Service, Inc.; and Walter Kidde & Co., Inc., United States Lines, Inc.* involving a subsequent agreement for a complete merger of Sea-Land and U.S. Lines.

Docket No. 69–57—*Agreement No. T–2336—New York Shipping Association Cooperative Working Arrangement.* New York Shipping Association agreement providing for an assessment formula to meet certain obligations in collective bargaining agreements with the International Longshoremen's Association was found approvable under section 15 of the Shipping Act, 1916, subject to certain modifications. Upon petition for reconsideration, proceedings were subsequently remanded to the Examiner for further hearings.

Docket No. 70–11—*Pacific Coast European Conference Rules 10 and 12, Tariff No. FMC 14.* Tariff rules limiting the number of loading terminals in the San Francisco Bay area found subject to section 15 of the Shipping Act, 1916, and found unapprovable since they prevent or attempt to prevent carriers from serving federally improved ports in contravention of section 205, Merchant Marine Act, 1936.

Docket No. 70–13—*North Atlantic French Atlantic Freight Conference Petition for Declaratory Order.* Commission determined that a conference of carriers could not lawfully, under section 15 of the Shipping Act, 1916, prevent a member line from withdrawing from the conference and operating independent service in the trade. Failure of the withdrawing line, however, to comply with the notice requirement in the conference agreement is found to be a breach of the agreement.

Docket No. 70–16—*Modification of Article 8, Agreement No. 5850—North Atlantic Westbound Freight Association.* As a result of the show cause proceeding the conference amended its agreement to remove any unanimity voting requirement in regard to the establishment of through intermodal service. A three-quarters voting requirement was ultimately approved by the Commission. A petition for reconsideration was denied.

Docket No. 70–17—*American Export Isbrandtsen Lines, Inc.—Order to Show Cause.* An agreement among common carriers concerning operating differential subsidies for military carryings, as agreed to in hearings before the Maritime Administration, found to be subject to filing and approval under section 15 of the Shipping Act, 1916, inasmuch as it constitutes a cooperative working arrangement, a special privilege or advantage, and controls or regulates competition.

Docket No. 70–22—*In the Matter of Agreement No. T–2323 Between the Port of Seattle and Japan Line, Ltd.: Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Showa Shipping Co., Ltd.; and Yamashita-Shinnihon Steamship Co., Ltd.* Subsequent to the Examiner's decision recommending approval of a preferential assignment of marine terminal facilities, all protests were withdrawn and the Commission found the agreement approvable and so ordered.

Docket No. 70–24—*Agreement No. 9835—Japanese Lines' Pacific Northwest Containerships Service Agreement.* An agreement among carriers providing for joint containership service between Japan and ports in the States of Oregon and Washington was found to represent the full and complete agreement of the parties and to be approvable under all the standards of section 15 of the Shipping Act, 1916.

Docket No. 70–30—*Agreement Nos. 9847 and 9848—Revenue Pools, U.S./Brazil Trade.* Sitting *en banc*, the Commission determined that agreements between carriers calling for the apportionment of freight revenue on cargo shipped between U.S. Atlantic and Brazil and U.S. Gulf and Brazil were approvable under all the standards of section 15 of the Shipping Act, 1916. Upon reconsideration, the Commission modified reporting requirements it had earlier imposed as a condition of approval.

Docket No. 70–42—*Agreement No. 9905.* An agreement providing for the purchase of four vessels by American Export Isbrandtsen Lines, Inc. from Moore-McCormack Lines, Inc. was approved under section 15 of the Shipping Act, 1916.

Docket No. 70–43—*Atlantic and Gulf/West Coast of South America Conference Imposition of a Bunker Surcharge on Less Than 90-Day Tariff Filing Notice.* Imposition of a bunker surcharge in response to rising fuel costs on less than 90-day notice was found to be violative of section 14(b)(2) of the Shipping Act, 1916 and the Conference's Merchant Freighting Agreement.

Docket No. 70–44—*United States of America* v. *Hellenic Lines Limited.* The Commission adopted the initial decision of the Examiner awarding reparation to complainant in the amount of $6,034.15 as a result of misapplication of freight rates on shipments carried by respondent.

Docket No. 70–46—*Independent Ocean Freight Forwarder License No. 1132—Mario J. Macchione.* The Commission adopted the decision of the Examiner, the effect of which was to suspend respondents' independent ocean freight forwarder license for a period of 90 days as a result of violation of Commission rules governing activities of freight forwarders.

Docket No. 70–47—*Union Carbide Inter-America* v. *Norton Line.* The Commission adopted the decision of the Examiner awarding reparation to complainant in the amount of $1,514.50 as a result of misapplication of freight rates on shipments carried by respondents.

Docket No. 71–28—*Surcharge of North Atlantic Westbound Freight Association on Commodities Moving Under Wine and Spirits Contract.* A bunker surcharge imposition by respondent was found to be violative of the dual rate contract inasmuch as it was determined that rising bunker costs did not constitute an "extraordinary condition" within the meaning of the contract and increased costs did not unduly impede, obstruct or delay the carriers service within the context of the contract clause.

The Commission also issued six decisions involving special docket applications and 110 decisions involving informal dockets (claims against carriers in the amount of $1,000 or less).

Rulemaking

The following rulemaking proceedings instituted during fiscal year 1971, are still in progress.

Docket No. 71–22—*Schedule of Fees and Charges.* Proposed rules published March 20, 1971.

Docket No. 71–33—*Informal Procedure for Adjudication of Small Claims.* Proposed rules published April 4, 1971.

Docket No. 71–63—*Reports of Rate Base and Income Account By Vessel Operating Common Carriers in the Domestic Offshore Trades.* Proposed rules published June 5, 1971.

The following rules were published during the fiscal year as a result of rulemaking proceedings.

General Order 7 (Revised)—*Self Policing Systems; Mandatory Provisions*—Docket No. 69–38.

General Order 20; Amdt. 4—*Security for the Protection of the Public* (Assessment of Civil Penalties)—Docket No. 70–20.

General Order 27—*Financial Responsibility for Oil Pollution Cleanup*—Docket No. 70–25.

General Order 27; Amdt. 1—*Financial Responsibility for Oil Pollution Cleanup* (Application and Certification Fees)—Docket No. 70–39.

General Order 27; Amdt. 3—*Financial Responsibility for Oil Pollution Cleanup* (Barge Exclusion)—Docket No. 71–5.

General Order 27; Amdt. 2—*Financial Responsibility for Oil Pollution Cleanup* (Insurer's Rights and Defenses)—Docket No. 71–6.

General Order 27; Amdt. 4—*Financial Responsibility for Oil Pollution Cleanup* (Master Certificates)—Docket No. 71–14.

General Order 27; Amdt. 5—*Financial Responsibility for Oil Pollution Cleanup* (Uniform Endorsement)—Docket No. 71–27.

ACTION IN THE COURTS

During fiscal year 1971, eleven petitions to review Federal Maritime Commission orders were pending in various United States Courts of Appeals.

Six more petitions were filed during the fiscal year.

On June 30, 1971, twelve of the review proceedings were completed and the remainder were pending briefing, argument or decision by the court.

Significant court cases in which the Federal Maritime Commission was involved during the fiscal year were the following:

Appellate Court Proceedings

In *City of Portland, Oregon, et al.* v. *F.M.C. and U.S.A.*, 433 F. 2d 502 (D.C. Cir., 1970), Commission approval of a section 15 agreement among six Japanese carriers operating three new containerships between ports in Japan and in the States of Washington and Oregon was challenged by the City of Portland because of the carriers' failure to properly provide for service to Portland under the conference agreement. The Appellate Court stayed the Commission's approval until either service was provided or there was judicial review of the Commission's order. The matter was finally resolved by the Japanese carriers agreeing to provide a service to Portland and the petition for review was dismissed.

Now pending in the District of Columbia Circuit Court of Appeals is *Latin America/Pacific Coast Steamship Conference, et al.* v. *F.M.C. and U.S.A.* (D.C. Cir., No. 71–1107). This case involves a petition to review the validity of a Commission order requiring the Steamship Conference to amend its dual rate contract to allow shippers to execute such a contract for each separate, geographical trade area, as defined by the Conference for carrier membership on autonomous ratemaking committees. The Commission found that the existing conference dual rate system requiring signatory shippers to commit

their exclusive patronage to the Conference in all three outbound trade areas, and signatory receivers to give their exclusive patronage to the Conference in both inbound trade areas, was contrary to the public interest and cannot be given approval pursuant to section 14b of the Shipping Act, 1916.

In *Marine Terminal* v. *Rederi Transatlantic,* 400 U.S. 62 (1970), the Supreme Court reversed the Court of Appeals for the First Circuit which allowed, in a private action, a collateral attack upon a decision of the Commission. The Supreme Court ruled that a carrier which was represented by its agent in a proceeding before the Commission in which the validity of terminal charges had been determined by a final order could not challenge such order in a Federal district court. Such a final order could only be attacked under the Administrative Orders Review Act (28 U.S.C. § 2341, *et seq.*) in a direct review proceeding before the U.S. court of appeals. Since the time for review had run out, and the Commission's determination was no longer subject to attack, the Supreme Court found it unnecessary to determine whether the Commission had acted properly with respect to its determination as to the validity of the challenged terminal charges.

Pacific Westbound Conference and Far East Conference v. *F.M.C. and U.S.A.*, 440 F. 2d 1303 (5th Cir., 1971). The Fifth Circuit Court of Appeals upheld a final order of the Commission declaring supplemental agreements providing for the mechanics to implement the general ratemaking authority provided for in Agreement No. 8200, as approved by the Federal Maritime Board in 1952, required separate Commission approval under section 15 of the Shipping Act. A petition for certiorari has been filed with the Supreme Court by the petitioners to review this case.

A companion case to the *Pacific Westbound Conference* case cited above, *Port of New York Authority, et al.* v. *F.M.C. and U.S.A.*, 429 F. 2d 663 (5th Cir., 1970), upheld the Commission in determining that rates established by carriers and conferences operating between Pacific Coast ports and the Far East, which are designed to apply to cargo moving from the Mid-West United States (Overland/OCP Rates) and which were lower than ocean rates for cargo originating near the ports (Local Rates), were authorized as routine implementations under the conference's basic ratemaking authority in the approved section 15 agreements. Petitioners' petition for certiorari was denied by the Supreme Court.

District Court Proceedings

In addition to the foregoing Appellate Court cases, the Commission was also directly involved in the following significant U.S. District Court proceedings:

In *Federal Maritime Commission* v. *Seatrain Lines, Inc.* D.N.J., Civil No. 1589–70, the Commission sought district court enforcement of its administrative order, issued pursuant to section 21 of the Shipping Act, 1916, calling for the production of certain documents for voyages which may have resulted in the giving of rebates or unlawful compensation in violation of the Shipping Act's provisions. Failure by Seatrain to produce certain foreign documents resulted in the Commission going back to the court for contempt citations. This matter is now pending hearing and decision by the New Jersey District Court.

United States v. *R. J. Reynolds Tobacco Co., et al.*, 325 F. Supp. 656 (D.N.J., 1971) involves an action brought by the United States against R. J. Reynolds, Sea-Land Service, Inc., Walter Kidde & Co. and United States Lines, for alleged violations of section 1 of the Sherman Act and section 7 of the Clayton Act because of agreements entered into for Reynolds' acquisition of United States Lines. The Commission intervened in this district court proceeding on the basis that it was currently conducting administrative proceedings on these agreements under section 15 of the Shipping Act. The district court allowed the Commission to intervene, but denied the Commission's motion to have the court proceedings dismissed or stayed until after an administrative determination was made by the Commission. A petition for certiorari to the Supreme Court has been filed to review this district court decision.

In *IML SeaTransit, Ltd.* v. *U.S.A. and I.C.C.*, N.D. of Cal., Civil Action No. C–70 2667 AJZ, the Commission moved and was allowed to intervene in this proceeding by a three judge Federal court to review an Interstate Commerce Commission final order directing a nonvessel owning common carrier by water, subject to the jurisdiction of the Federal Maritime Commission, to discontinue operating without being certified as a "freight forwarder" under the provisions of the Interstate Commerce Act. The Commission has intervened in this matter to clarify the authority for regulating nonvessel owning

common carriers by water in the foreign and off-shore intercoastal commerce of the United States. The case is now pending argument and decision.

Enforcement and Compliance

Proceedings Net $24,000

Under the provisions of the Federal Claims Collection Act of 1966, the Commission during fiscal year 1971 made claims against several carriers for alleged violations of the tariff provisions of section 18(b) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933. The claims were based mainly on failure by the carriers either to follow or to have tariffs on file for charges made on certain shipments.

The Commission received as a result of these claims approximately $24,000 during the fiscal year.

LEGISLATIVE DEVELOPMENT

Changes in Penalties for Violations of the Shipping Statutes

The Commission has proposed legislation which would change from criminal to civil, penalties for violations of certain provisions of the Shipping Act, 1916, and which also would place in the hands of the Commission, the authority to determine the amount of and assess the penalty for violation of any provision of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, which are subject to the Commission's jurisdiction for which a civil penalty is provided.

Such measures were introduced in the 91st Congress as Senate bill S. 3377 and House bill H.R. 15548. Both bills were pending at the end of the 91st Congress. An identical bill, H.R. 755, was introduced in the 92d Congress, in the House on January 22, 1971, on which hearings were held June 30, 1971, before the subcommittee on Merchant Marine of the House Merchant Marine and Fisheries Committee.

The changes proposed by this bill in the shipping statutes would provide the Commission with needed regulatory authority with which the Commission could more effectively administer such statutes.

Favorable action on this measure is anticipated.

Other Legislative Activity

In 1962, the Congress passed legislation which transferred from the Federal Maritime Commission to the Interstate Commerce Commission jurisdiction over a common carrier by water in the domestic offshore commerce of the United States between Alaska and Hawaii on the one hand, and the other States of the Union on the other when such carrier participates in a joint rate with a motor carrier of property. (Public Law 87–595).

This statute has been interpreted as nullifying the application of the shipping statutes, not only where that arrangement constitutes a true through route and joint rate involving two line hauls, but also

in those cases where the activities of the common carrier by motor vehicle are restricted to incidental pickup and delivery services in the port area of origin and delivery, if the parties thereto characterize the arrangement as a joint rate.

Recognized Practice

In actual practice the through bill is almost always tendered in the name of the ocean carrier and constitutes no more than a port-to-port rate which includes pickup and/or delivery services within the port area—a recognized practice.

If the participants do not elect to call this arrangement a joint rate, then the water carrier remains subject to the jurisdiction of this Commission and is governed by the various provisions of the shipping statutes.

The Commission believes that the "forum shopping" thus permitted is not conducive to regulatory control and anticipates proposing remedial legislation at an early date which will restore jurisdiction over the water carrier to the Federal Maritime Commission in those instances where pickup and delivery services only are performed by the motor carrier which are incidental to the predominant line haul of the water carrier.

Thus there would be restored to the Federal Maritime Commission the jurisdiction which historically it has exercised over port-to-port rates in the domestic offshore trades.

Legislation Studied

During fiscal year 1971, the Commission made studies of numerous bills introduced in the Congress and transmitted pertinent comments to the appropriate committees.

ADMINISTRATION

On June 3, 1970, the Senate confirmed President Nixon's reappointment of Mrs. Helen Delich Bentley to a full 5-year term as chairman expiring on June 30, 1975. Other members of the Commission during fiscal year 1971 were James F. Fanseen of Maryland, James V. Day of Maine, Ashton C. Barrett of Mississippi, and George H. Hearn of New York. Mr. Fanseen held the position of vice chairman until February 28, 1971; Mr. Barrett was elected vice chairman on March 1, 1971. Aaron W. Reese, of California, was managing director.

Field Office Established in Puerto Rico

Chairman Helen Delich Bentley, of the Federal Maritime Commission, on June 8, 1971, formally opened the area representative office in Puerto Rico and installed Mr. Hernan A. Defillo as Resident Representative of the Commission in Puerto Rico.

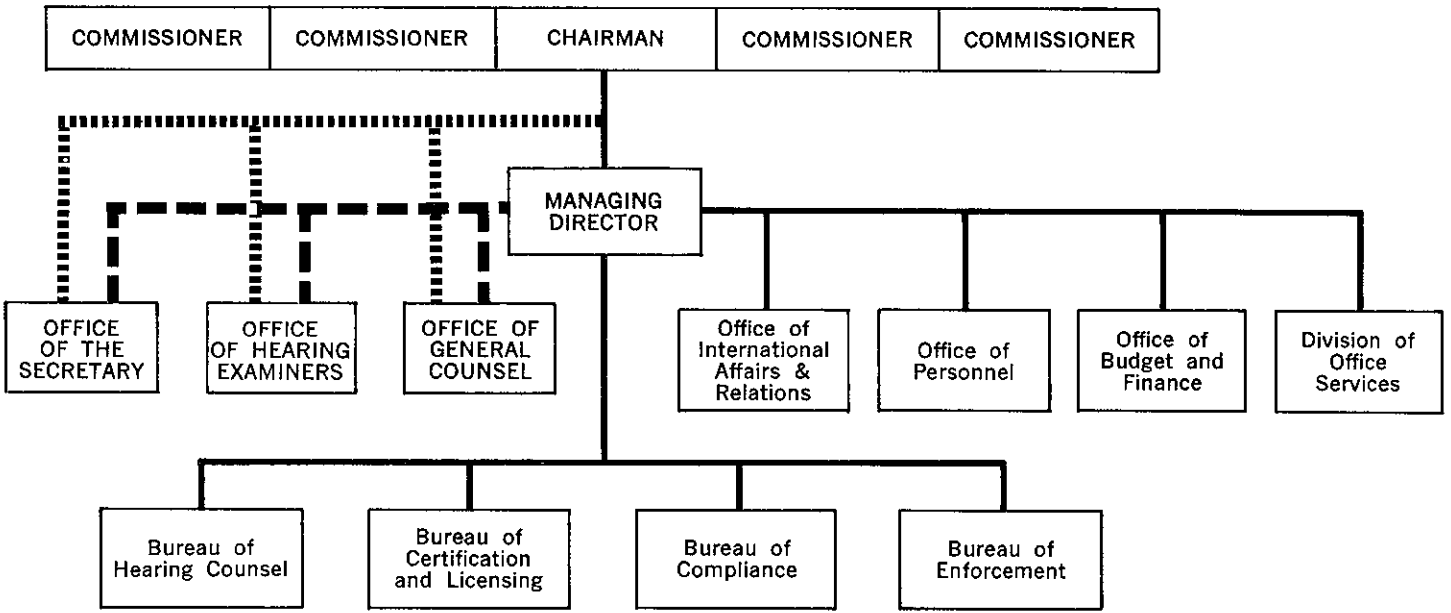
The mailing address of the new office of the Federal Maritime Commission is P.O. Box 3168. Old San Juan Station, San Juan, P.R. 00904.

Appropriate ceremonies were held at the office and were participated in by Governor Luis A. Ferre; Commissioner Jorge L. Cordova; the Most Reverend Archbishop of Puerto Rico Luis Aponte Martinez and Gaylord A. Brunelle, area representative of the Propeller Club of the United States.

Chairman Bentley, in opening the new office, said:

"We will judge our success by the growth of Puerto Rican prosperity and by the mutual ties of friendship and fraternity that grow and flourish through our efforts."

FEDERAL MARITIME COMMISSION



Technical Direction

Administrative Direction

July 1, 1971

Helen Delich Bentley
Chairman

FIELD OFFICES:
New York, N.Y.
New Orleans, La.
San Francisco, Calif.
San Juan, P.R.

Statement of Appropriation and Obligation for the Fiscal Year Ended June 30, 1971

APPROPRIATION:	
Public Law 91–472, 91st Congress, approved Oct. 21, 1970: For necessary expenses of the Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902	$4,479,000
Public Law 92–18, 82d Congress, approved May 25, 1971: Second Supplemental Appropriation Act, 1971, to cover increased pay cost	179,000
Appropriation availability	4,658,000
OBLIGATIONS AND UNOBLIGATED BALANCE:	
Net obligations for salaries and expenses for the fiscal year ended June 30, 1971	4,649,007
Unobligated balance withdrawn by the Treasury	8,993
STATEMENT OF RECEIPTS: DEPOSITED WITH THE GENERAL FUND OF THE TREASURY FOR THE FISCAL YEAR ENDED JUNE 30, 1971:	
Publications and reproductions	9,800
Freight forwarder license fees	5,600
Oil pollution application and certificate fees	650,086
Fines and penalties	120,131
Total general fund receipts	785,617

Appendix A

Statistical Abstract of Filings

Fiscal Year 1971

SECTION 15 AGREEMENTS:	
Foreign commerce	288
Domestic offshore	8
Terminal	100
SECTION 14b DUAL-RATE CONTRACTS:	
New systems	1
Modifications	11
REPORTS REVIEW:	
a. Shippers' requests and complaints—carrier agreements	354
b. Minutes of meetings	2,278
c. Self-policing of conference and rate agreements	177
d. Pooling and operating statements	27
APPROVED AGREEMENTS ON FILE AS OF JUNE 30, 1971:	
Conference	89
Rate	32
Joint conference	10
Pooling	20
Joint service	52
Sailing	27
Transshipment	357
Cooperative working, agency and container interchange	95
Domestic offshore	16
Terminals	224
Dual-rate contract systems	60
Total	982
TARIFFS:	
Foreign Filings	117,070
Rate changes (approx.)	272,000
Rejections	691
Domestic Filings	9,333
Rejections	505
Terminal Filings	6,922
SPECIAL PERMISSION APPLICATIONS:	
Foreign	128
Granted	100
Denied	21
Withdrawn	7
Domestic	142
Granted	130
Denied	10
Withdrawn	2
TARIFFS ON FILE AS OF JUNE 30, 1971:	
Foreign	2,718
Domestic	345
Terminal	517
Total	3,580

U. S. GOVERNMENT PRINTING OFFICE : 1972 O - 451-964