

Federal Maritime  
Commission

53rd Annual  
Report

for

Fiscal Year  
2014



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# Letter of Transmittal



FEDERAL MARITIME COMMISSION  
800 North Capitol Street, N.W.  
Washington, DC 20573-0001

March 31, 2015

To the United States Senate and House of Representatives:

On behalf of the Commission, and pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, 46 U.S.C § 306(a), I am pleased to submit the 53rd Annual Report covering activities of the Federal Maritime Commission for fiscal year 2014.

The Commission is committed to maintaining an efficient and competitive international transportation system and enhancing trade efficiency. The FMC Annual Report highlights the Commission's role in oversight of concerted activities by ocean common carriers and marine terminal operators in light of continued expansion in the world economy and a substantial shift in the way the shipping industry is organized. The Annual Report also details the ongoing entrance of new ocean transportation intermediaries into the business through licensing, the continuing volume of service contract and amendment filings, and the results of the FMC's enforcement actions in which a total of \$3,053,000 in civil penalties were collected. The Commission has made a goal of more effective use of IT systems through ongoing upgrades and this year progress was made toward what will become the sole repository for critical data collections adding great efficiency.

The Commission continued its focus to assist in supporting U.S. exports, the economic recovery, and job growth. Congestion at U.S. ports is a recurring problem that threatens that growth and will be a priority for the Commission in the future. The Commission provides regulatory relief where possible and commits resources to protect the public against potentially unlawful, unfair or deceptive ocean transportation practices related to the movement of goods and personal property in U.S. foreign oceanborne trades.

These are just a few of the accomplishments which can be found in the Annual Report. The Commission stands ready to provide any further information you may require.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mario Cordero', with a stylized flourish at the end.

Mario Cordero  
Chairman

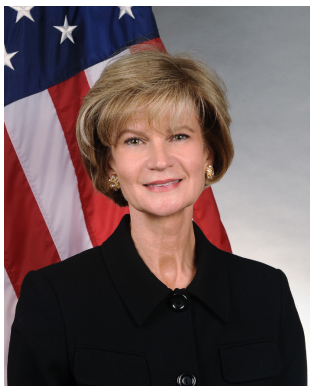
# Members of the Commission



Mario Cordero  
Chairman  
Appointed 2011  
Term Expired 2014



Richard A. Lidinsky, Jr.  
Commissioner  
Appointed 2009  
Term Expired 2012



Rebecca F. Dye  
Commissioner  
Appointed 2002  
Term Expires 2015



Michael A. Khouri  
Commissioner  
Appointed 2009  
Term Expires 2016



William P. Doyle  
Commissioner  
Appointed 2013  
Term Expired 2013

# FMC Mission, Strategic Goals and Functions

The Federal Maritime Commission (FMC or Commission) is an independent agency responsible for the regulation of oceanborne transportation in the foreign commerce of the United States for the benefit of U.S. exporters, importers, and the U.S. consumer.

The FMC's **Mission** is:

- To foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.

The FMC's **Vision** is:

- Fairness and Efficiency in the U.S. Maritime Commerce.

## FMC Mission

To foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.

## Strategic Goal 1

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**Maintain an efficient and competitive international ocean transportation system.**

The FMC ensures competitive and efficient ocean transportation services for the shipping public by:

- Reviewing and monitoring agreements among ocean common carriers and marine terminal operators (MTOs) serving the U.S. foreign oceanborne trades to ensure that they do not cause substantial increases in transportation costs or decreases in transportation services
- Maintaining and reviewing confidentially filed service contracts and

Non-Vessel-Operating Common Carrier (NVOCC) Service Arrangements to guard against detrimental effects to shipping

- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce
- Ensuring common carriers' tariff rates and charges are published in private, automated tariff systems and electronically available
- Monitoring rates, charges, and rules of government-owned or controlled carriers to ensure they are just and reasonable
- Taking action to address unfavorable conditions caused by foreign government or business practices in U.S. foreign shipping trades

## Strategic Goal 2

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Protect the shipping public from unlawful, unfair and deceptive ocean transportation practices and resolve shipping disputes.

The FMC protects the public from financial harm, and contributes to the integrity and security of the U.S. supply chain and transportation system by:

- Helping resolve disputes involving shipment of cargo, personal or household goods, or disputes between cruise vessel operators and passengers
- Investigating and adjudicating complaints regarding rates, charges,

classifications, and practices of common carriers, MTOs, and ocean transportation intermediaries (OTIs), that violate the Shipping Act

- Licensing shipping companies with appropriate character and adequate financial responsibility
- Identifying and holding regulated entities accountable for mislabeling cargo shipped to or from the United States
- Ensuring that cruise lines maintain financial responsibility to pay claims for personal injury or death, and to reimburse passengers when their cruise fails to sail

## Statutory Authority

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The principal statutes administered by the Commission, now codified in Title 46 of the U.S. Code at sections 40101 through 44106, are:

- The Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (Shipping Act)

- The Foreign Shipping Practices Act of 1988 (FSPA)
- Section 19 of the Merchant Marine Act, 1920 (1920 Act)
- Sections 2 and 3 of Pub. L. No. 89-777, 80 Stat.1350



# Year in Review

In fiscal year 2014, world economic output continued to expand, producing a 5 percent growth in worldwide container trade. U.S. container trade reached a record volume of 30.9 million loaded TEUs, with import growth again outpacing export growth.

As the expert regulatory agency for liner shipping in U.S. trades, the Commission facilitates growth in ocean commerce by helping to ensure fair, efficient and reliable maritime transportation services while minimizing regulatory burden. Trade growth gives businesses engaged in international ocean commerce the confidence to hire more American workers. The Commission supports these efforts by actively seeking ways to facilitate the competitiveness of our Nation's ports and its liner shipping system, and by providing maritime businesses regulatory relief.

As a result of increasing container cargo volumes, greater operational collaboration among shipping lines, the use of much larger and more fuel-efficient vessels, and other contributing factors, container terminals at our nation's ports began to present significant congestion problems late in FY 2014.

At the end of the fiscal year, the Commission announced it would hold a series of regional public forums at several ports to help crystallize the problems and facilitate solutions. Congestion-related issues are expected to continue into FY 2015, and the Commission will remain vigilant in using its authorities and expertise to support affected industry stakeholders and promote the smooth flow of ocean commerce.

During FY 2014, liner shipping underwent a substantial change in the way the industry is organized through the formation of several new

large-scale operational partnerships and alliances. In light of significant industry re-structuring, the Chairman convened an international regulatory summit in Washington, DC, with the FMC's counterparts in the People's Republic of China (PRC) and the European Union in December 2013.

The purpose of the summit was to assess rapidly emerging international maritime developments, and to discuss the potential ramifications of widespread cooperation among the largest shipping companies. The summit provided an opportunity to compare regulatory approaches, share views on global regulatory challenges, and to begin a dialogue on major liner shipping issues affecting the U.S. economy and those of our major trading partners.

The world's top three liner shipping companies, A.P. Moller-Maersk (Maersk), Mediterranean Shipping Company (MSC), and CMA CGM, accounted for 37 percent of global container-ship fleet capacity in 2014. Those three lines proposed an operational agreement that would have allowed them to share vessels in a highly coordinated network involving the large-volume East/West trades. Consequently, the FMC undertook an extensive review of likely effects of the proposed operational agreement, known as the "P3 Agreement," on rates and services in the U.S. Trans-Pacific and Trans-Atlantic trades.

That review, completed in March 2014, led the Commission to conclude that the P3 Agreement was unlikely to reduce competition substantially in the relevant U.S. liner markets and produce an unreasonable increase in transportation costs or an unreasonable reduction in transportation services.

However, the P3 Agreement, which authorized the parties to share vessels and engage in related cooperative operating activities in the trades between the U.S. and Asia, North Europe, and the Mediterranean, failed to achieve regulatory clearance in China and was withdrawn by the parties before any P3 services were implemented. Two of the parties to the Agreement subsequently proposed a more limited operational agreement, the Maersk/MSK Vessel Sharing Agreement, also known as the “2M Agreement.”

This fiscal year, the Commission also undertook a comprehensive review of another major proposed expansion in operational cooperation among liner companies. A proposed amendment to the G6 Alliance Agreement was subject to an extensive competition analysis. That review included consideration of extensive data and documentation received from the parties in response to a Commission request for additional information, as well as comments provided by shipper organizations and other industry stakeholders.

The amended agreement between the six parties, American President Lines, Hapag Lloyd AG/USA, Hyundai Merchant Marine, Mitsui OSK Lines, Nippon Yusen Kaisha, and Orient Overseas Container Line, expanded their geographic scope to allow G6 operational cooperation in the trades between Asia and the U.S. West Coast,

and between North Europe and all U.S. coasts. The Agreement became effective as scheduled on April 4, 2014.

Throughout FY 2014, the Commission continued to monitor equipment sharing agreements, such as the Consolidated Chassis Management Pool Agreement (CCM), which aim to enhance intermodal transportation efficiency. Similarly, the Commission took note of the increasing importance of innovative technologies and systems affecting our ocean container transportation system and the logistics supply chains it supports – such as PierPass, an agreement among terminal operators in the ports of Los Angeles and Long Beach that addresses multi-terminal issues such as congestion, security, and air quality.

Under PierPass, international container terminals in America’s largest port complex, Los Angeles/Long Beach, established expanded gate hours in conjunction with a traffic mitigation fee on peak hour gate movements that is meant to incentivize shippers and truckers to make greater use of off-peak hours at marine terminals. The Commission continues to monitor PierPass to ensure it does not contravene Shipping Act requirements.

The following presents a detailed summary of the Commission’s activities during fiscal year 2014.

# Efficiency and Competition

## Strategic Goal 1

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Maintaining an efficient and competitive international ocean transportation system and enhancing trade efficiency through the review of various types of agreement authority is a primary function of the Commission. An efficient and competitive transportation system facilitates commerce, economic growth, and job creation. Competition among participants in U.S. liner trades fosters competitive rates and encourages a variety of service offerings for the benefit of U.S. exporters and importers, and ultimately consumers.

The Shipping Act allows competitors to meet and discuss (and in some cases agree on) certain business issues, but first they must file a written agreement with the Commission. The Commission reviews these agreements using traditional competition principles and economic models before they may go into effect. The initial review and analysis of a proposed agreement and subsequent monitoring of the members' activities under the agreement, should it become effective, are designed to identify and guard against possible abuse of the filed authority, avoid unreasonable increases in transportation costs or decreases in transportation services, and address other activities prohibited by the Shipping Act.

The Shipping Act is itself a federal competition law applicable to the industry of international liner shipping. It contains provisions similar to those found in the Sherman Act of 1890, the 1914 Clayton Act, and the Robinson-Patman Act of 1936 concerning various prohibitions of discriminatory or unfair business practices and standards regarding business combinations. The Act creates a separate regulatory regime from antitrust law under which collective carrier or MTO activity is both evaluated when the agreement is initially filed and closely monitored thereafter for any adverse impact on competition in the trade.

Provided the regulated entity complies with the statutory and regulatory proscriptions of the Act, the other federal antitrust statutes generally do not apply. Conversely, if a regulated entity violates the Shipping Act, it would be subject to penalties set forth in the Act, and may under certain circumstances be subject to investigation and prosecution under the full array of federal antitrust statutes.

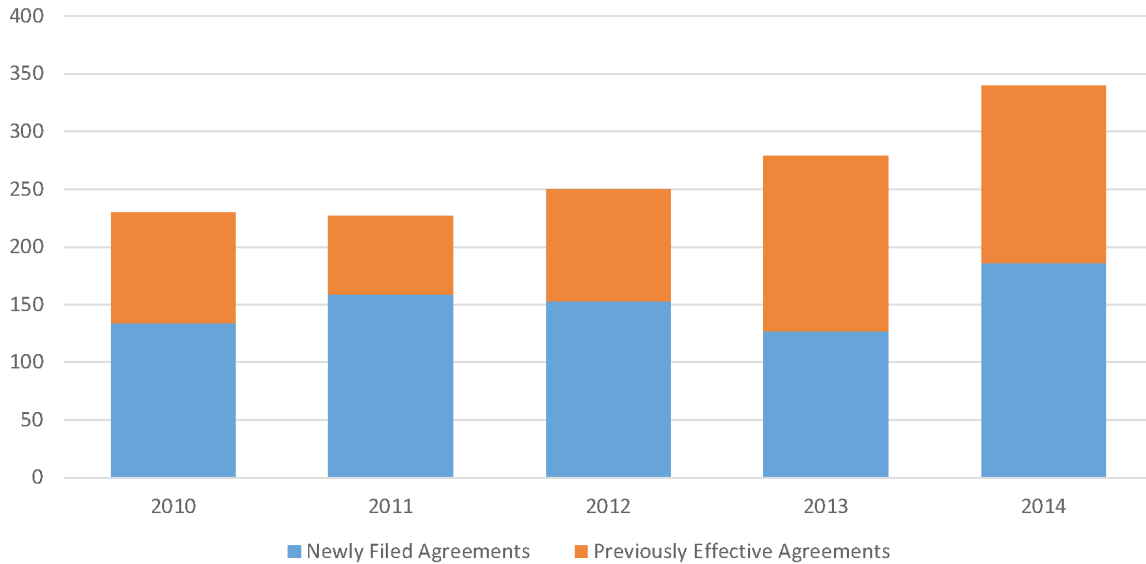
## Agreement Filings and Review

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Under sections 4 and 5 of the Shipping Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo revenue, allot ports or regulate sailings, limit or regulate the volume or character of cargo (or passengers) to be carried, control or

prevent competition, or engage in exclusive or preferential arrangements, are required to be filed with the Commission. Except for certain exempted categories, agreements among marine terminal operators and among one or more MTOs and one or more ocean common carriers also are

Agreements on File by Year



required to be filed with the Commission. Generally, an agreement becomes effective 45 days after filing, unless the Commission has requested additional information to evaluate the competitive impact of the agreement. These agreements are reviewed pursuant to the standard set forth in section 6(g) of the Shipping Act, 46 U.S.C. §41307(b)(1). Effective agreements are exempt

from U.S. antitrust laws, and instead subject to Shipping Act restrictions and Commission oversight.

In fiscal year 2014, the Commission received 186 agreement filings, an increase of 46 percent from the previous year. The Bureau of Trade Analysis (BTA) analyzed and processed 193 agreement filings during the fiscal year, which included some pending from FY 2013.

## Types of Carrier Agreements

*Conference agreements* are distinguished from all other types of agreements because they allow members to collectively discuss, agree, and fix freight rates and practices.

*Rate discussion agreements (RDAs)* also focus on rate matters,

Conference or price fixing agreements have become largely irrelevant to U.S. liner shipping.

but unlike conferences, any consensus on rates is non-binding on the members.

*Operational agreements* do not contain authority to discuss or fix rates. They include vessel-sharing

agreements (VSAs), joint service agreements (JSAs), cooperative working agreements (CWAs), and discussion agreements.

- VSAs typically authorize some level of service cooperation with the goal of reducing an individual line’s operating costs.
- Under JSAs, two or more carriers operate a combined service under a single name in a specified geographic scope.
- Many CWAs deal with unique operational considerations relating to acquisitions, sharing of administrative services, or internet portal management. Other CWAs include agency, sailing, trans-shipment, and equipment interchange (including chassis pooling) agreements.
- Discussion agreements allow members to discuss matters of mutual interest other

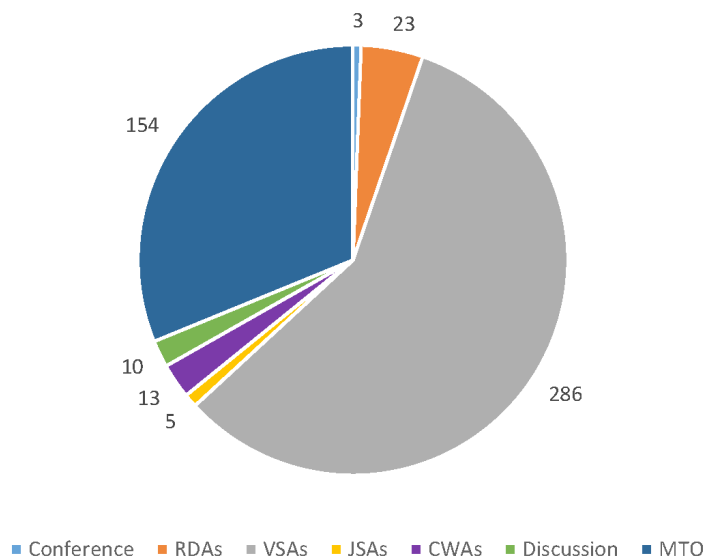
than rates. Typically, these agreements focus on macro-economic, regulatory, safety or security issues.

*MTO agreements* are agreements between MTOs (operated by both public and private entities) that provide facilities, services, and labor for the interchange of cargo and passengers between land and ocean carriers, and for the receipt and delivery of cargo from shippers and consignees.

Conference or price fixing agreements have become largely irrelevant to U.S. liner shipping. No new carrier conference agreement has been filed with the Commission since fiscal year 2000. The remaining three conferences cover only government cargoes.

Today, RDAs are the primary pricing forum in U.S. trade lanes. Since fiscal year 2000, the number of RDAs on file have declined from 36 to 23 agreements. During the fiscal year, RDA filings involved, for the most part, membership changes. One existing RDA was terminated last year.

Agreements in Effect by Type (FY 2014)



At the end of the fiscal year, operational agreements accounted for 92 percent of all carrier agreements on file. VSAs account for the vast majority in this category - 82 percent at the end of the fiscal year, and 76 percent of all carrier agreement filings during FY 2014. No new JSAs were filed last year. At the end of the year, there were 13 CWAs on file; a net decrease of 3 CWAs compared to the preceding fiscal year.

As the fiscal year came to a close, the Commission anticipated receiving filings for two more operational discussion agreements that reportedly would have as members some of the largest carriers, involve extensive operational cooperation, and cover multiple geographic regions. One would add Evergreen to the CKYH alliance, and the other (termed the “Ocean Three Alliance” by the trade press) would involve a new cooperative arrangement among CMA-CGM, China Shipping

VSAs account for the vast majority in this category - 82% at the end of the fiscal year, and 76% of all carrier agreement filings.

Container Line, and the United Arab Shipping Company.

A major focus of many MTOs at present is on reducing the effects of congestion at terminals, particularly with regard to chassis availability and

truck turn-times. The Commission analyzed a proposed amendment to the Consolidated Chassis Management Pool Agreement that would allow CCM to provide software and management services to third-party chassis pools. The Oakland MTO Agreement filed an amendment that would allow the parties to discuss a possible extended gate-hours program to help ease congestion.

## Competitive Impact and Monitoring

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During FY 2014, while systematically monitoring common carrier activities and commercial conditions in the U.S. foreign trade, the Commission took the following specific measures to assess the competitive impact of certain agreements.

***P3 Network Vessel Sharing Agreement:*** Issued Request for Additional Information (RFAI), conducted a competitive impact analysis, and developed specific monitoring report requirements for the major operational shipping alliance formed under the P3 Agreement. Note that while the Commission cleared the P3 agreement after an extensive competitive analysis, as a result of not getting regulatory clearance in China, the P3 agreement was withdrawn before any services were implemented and was replaced by the Maersk/MSC Vessel Sharing Agreement.

***G6 Alliance Agreement:*** Issued RFAI, conducted a competitive impact analysis, and established reporting requirements for the amendment expanding the geographic scope and cooperative services under the *G6 Alliance Agreement*.

***Seattle Marine Terminal Operators/Port of Seattle Discussion Agreement:*** Conducted a competitive impact analysis, and established reporting requirements for the discussion agreement between MTOs formed under the agreement.

***United States/Australasia Discussion Agreement:*** Conducted a competitive impact analysis on the amendment adding Pacific International Lines (PIL) as a member to the agreement.

*Port of Seattle and Port of Tacoma Discussion Agreement:* Conducted a competitive impact analysis of this agreement which allows the two ports to engage in formal collaborations to help improve the competitiveness of the Puget Sound gateway.

*OVSA/PIL Space Charter and Cooperative Working Agreement:* Issued RFAI, and conducted a competitive impact analysis on capacity in the trade lane from the U.S. Pacific to Australia/New Zealand as a result of cooperation under the agreement.

*Consolidated Chassis Management Pool Agreement:* Monitored developments and the availability of chassis equipment under the agreement as carriers divest their chassis fleets and discontinue providing chassis service.

*West Coast MTO Agreement:* Monitored the PierPass program under the agreement to ensure its operational features are in conformity with the U.S. shipping statutes.

*Transpacific Stabilization Agreement:* Conducted biannual meetings with representatives of the TSA agreement to review major developments in the ocean liner trade between the U.S. and Asia.

BTA also continued its multi-year review of regulations in 46 CFR parts 530, 531, and 535 as part of the Commission's *Plan for Retrospective Review of Existing Rules*. This project involves reviewing and making recommendations to update these regulations, including recommendations to update the Commission's agreement monitoring program to improve oversight of major rate discussion and alliance agreements.

## Tariffs, Service Contracts, NSAs, & MTO Schedules

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### Tariffs

The Shipping Act requires common carriers and conferences to publish their tariffs containing rates, charges, rules, and practices, electronically in private systems. For ease of public access, the Commission publishes the web addresses of those tariffs on its website. At fiscal year end, 5,355 tariff location addresses were posted. Of that number, 5,029 tariff addresses were for NVOCCs.

The Commission provides regulatory relief, allowing licensed and foreign registered NVOCCs to "opt out" of the requirement to file rate tariffs providing they use NVOCC Negotiated Rate Arrangements (NRAs) exclusively. By the end of fiscal year 2014, it is estimated that more than 900 NVOCCs had filed prominent notices or a rule in their respective tariff indicating that they have invoked the exemption – up 70 percent from

525 in FY 2013. It is anticipated that NVOCCs will continue to take advantage of this opportunity, thereby significantly reducing the number of rate tariffs that the Commission must review to ensure compliance with applicable regulations.

### Service Contracts and NSAs filed in 2014

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- Newly filed service contracts: 44,208
- Amendments to service contracts: 573,208
- Newly filed NSAs: 1,538
- Amendments to NSAs: 1,864

### *Service Contracts*

Service contracts are an alternative to transportation of cargo under tariff rates. Between 90 and 95 percent of the total cargo moving in the U.S. liner trades moves under service contracts, not tariffs. Service contracts enable the parties to tailor transportation services and rates to their commercial and operational needs and to keep these arrangements confidential. During fiscal year 2014, the Commission received 44,208 new service contracts, compared to 48,802 in fiscal year 2013, and 573,208 contract amendments, compared to 556,285 in fiscal year 2013. During the fiscal year, 6,213 records filed into the Commission's automated service contract filing system, SERVCON, were corrected by filing parties.

### *NVOCC Service Arrangements (NSAs)*

Commission rules allow NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers, rather than under a published tariff. During the fiscal year, 1,583 NSAs and

1,864 amendments to NSAs were filed by 92 NVOCCs. Of the 1,282 NVOCCs that are registered with the Commission to file NSAs, only 224 (about 17 percent) have done so. Those 224 NSA users represent approximately 4 percent of all registered NVOCCs.

### *Marine Terminal Schedules*

A MTO may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. During the fiscal year, 252 MTOs filed Form FMC-1, which reports the electronic location of an MTO's terminal schedule, with 145 MTOs electing to voluntarily publish their terminal schedules. The internet addresses of these MTO terminal schedules are posted on the Commission's website.

## Port Congestion

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In May 2014, responding to numerous informal inquiries concerning certain congestion surcharges announced in tariff rules by ocean carriers, the Commission published an advisory notice reminding the industry that increased costs cannot be imposed earlier than 30 days after publication and that the rules applicable to a shipment are those in effect on the date the cargo is received by the common carrier or agent. Subsequently, in June 2014, representatives of the port trucking industry briefed the Commission on the growing challenge of congestion at ports and the impact on drivers, and

consequently, the state of the trade. Reports in the press and comments by industry leaders over the summer expanded on the negative impact of the congestion. The Commission also heard concerns from shippers about demurrage charges and charges related to storage of containers at marine terminals beyond the allotted free time.

In September, the Commission announced a series of forums to be held at U.S. ports with a goal to promote dialogue on the causes and implications of congestion at U.S. ports. Industry stakeholders, regulators, and the general public were encouraged to take part. Commission





Chairman Cordero at the 2014 West Coast Port Forum

mediation services were on hand in the event that participants wished to discuss possible causes of congestion problems and work on solutions on the spot. Chairman Mario Cordero hosted the first forum at the Port of Los Angeles on

September 15, 2014. Three more public forums were scheduled during the first quarter of FY 2015 at the Ports of Maryland, Charleston and New Orleans.

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## International Cooperation

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### *Global Regulatory Summit*

Maritime regulators from the United States, the People's Republic of China and the European Commission met and conferred in Washington, D.C. on December 17, 2013 to consider the evolving international maritime landscape. The officials discussed their differing regulatory frameworks and the potential effects of carrier cooperation on international trade. The EU delegation was led by Mr. Hubert de Broca, Head of Unit, Directorate General for Competition, Anti-trust-Transport, Post and Other Services; and Mr. Li Hongyin, Deputy Director-General, Bureau of Water Transport, Ministry of Transport

headed up the Chinese delegation. FMC Chairman Cordero led the U.S. delegation, with the participation of each of the FMC Commissioners.

### *U.S.-China Bilateral Consultation*

Commissioner Doyle participated as a member of the U.S. delegation to the Annual U.S. Bilateral Maritime Consultation with the People's Republic of China held in Chicago, IL., on October 28, 2013. The Commissioner led meetings concerning tax matters and NVOCC issues. The consultation resulted in the issuance by the PRC of Circular 106 retroactively creating an



Participants in the Meeting with China's Supreme People's Court

exemption for shipping transportation from the PRC's Value Added Tax (VAT) law implemented in Circular 37.

#### *Meeting with China's Supreme People's Court*

The Commission's Chief Administrative Law Judge Clay G. Guthridge and Administrative Law Judge Erin M. Wirth, along with a representative from the Commission's Office of the General Counsel (OGC), met in November 2013 with a delegation of maritime judges of China's Supreme People's Court at the FMC headquarters in Washington, DC, for a discussion on U.S. administrative law and practice as it pertains to Commission proceedings and comparison and contrast with jurisdiction of maritime judges in China.

#### *U.S.-Japan Bilateral Maritime Meeting*

On August 15, 2014, Chairman Cordero participated in a U.S.-Japan Bilateral Maritime Meeting, hosted by the U.S. Department of

Transportation, Maritime Administration in Washington, DC. Maritime Administrator Paul Jaenichen, who headed the U.S. Delegation, welcomed maritime delegates from the United States and Japan who conferred throughout the day to consider the evolving international maritime landscape. The officials discussed such topics as the Panama Canal expansion, environmental issues, liquefied natural gas (LNG)-fueled vessels, port development, anti-piracy measures, and education efforts aimed at increasing visibility of the maritime industry. Participants agreed coordination on these maritime issues is valuable for promoting mutual interests in international ocean transportation and commerce.

#### *Trade In Services Agreement Negotiations*

The OGC, on behalf of the Commission, acted as a maritime technical advisor to two ongoing trade negotiations, Trade in Services Agreement (TiSA) and Transatlantic Trade and Investment Partnership (T-TIP).

# Protecting the Public

## Strategic Goal 2

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The FMC engages in a variety of activities that protect the public from financial harm, including licensing of ocean transportation intermediaries; helping resolve disputes about the shipment of goods or the carriage of passengers; investigating and prosecuting unreasonable or unjust practices, and ruling on private party complaints alleging Shipping Act violations. These activities are paramount to the integrity and security of the nation's import and export supply chains and ocean transportation system. In addition, the FMC ensures that passenger vessel operators maintain proper financial coverage to reimburse cruise passengers in the event their cruise is cancelled or to cover liability in the event of death or injury at sea.

## Licensing

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OTIs are transportation middlemen for cargo moving in the U.S. foreign oceanborne trades. There are two types: Non-vessel-operating common carriers and ocean freight forwarders (OFFs). An NVOCC is a common carrier that holds itself out to the public to provide ocean transportation, issues its own house bill of lading or equivalent document, but does not operate the vessel by which ocean transportation is provided. An ocean freight forwarder domiciled in the U.S. arranges for the transportation of cargo with a common carrier on behalf of shippers and process documents related to those shipments. Both NVOCCs and OFFs must be licensed by the Commission if they are located in the U.S. and must establish financial responsibility. The licensing process is a primary activity of the Commission in protecting the public. Unlicensed activity is of concern both to shippers who risk cargo or financial loss and also to our nation's security. NVOCCs doing business in the U.S. foreign trades but located outside the U.S. (foreign NVOCCs) may choose to become FMC-licensed, but are not required to do so. If not licensed under the

### Licensing Activity in FY 2014

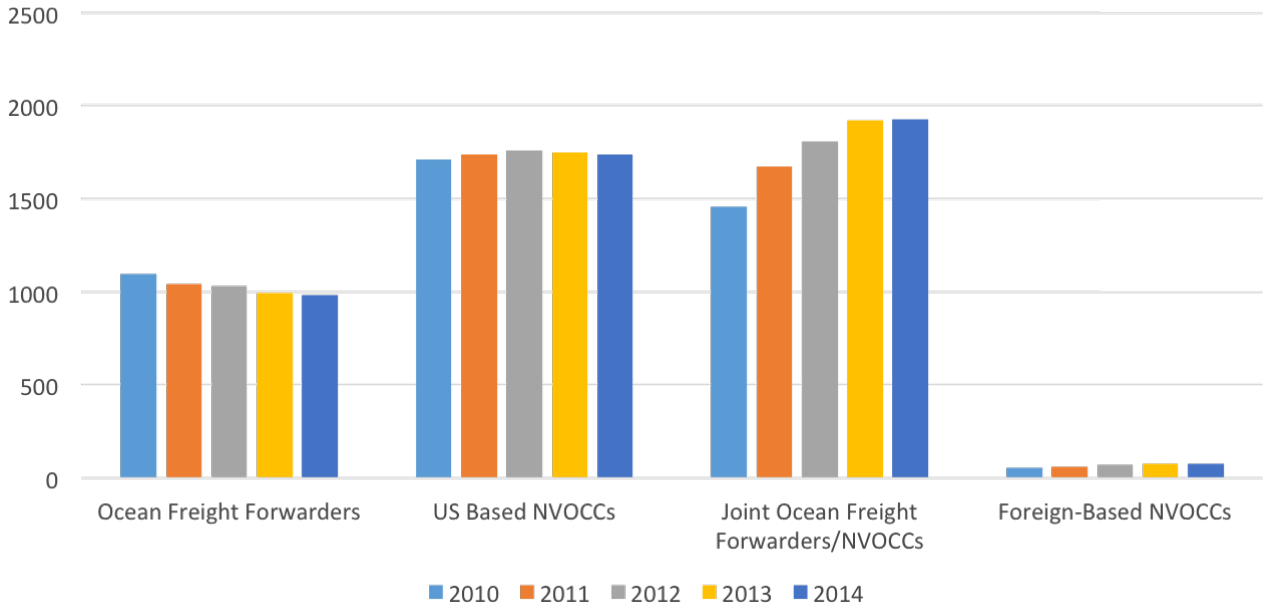
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- New OTI applications accepted: 367
- Amended applications accepted: 256
- New OTI licenses issued: 232
- Amended licenses issued: 107
- Licenses revoked: 270
- Licenses voluntarily surrendered: 87

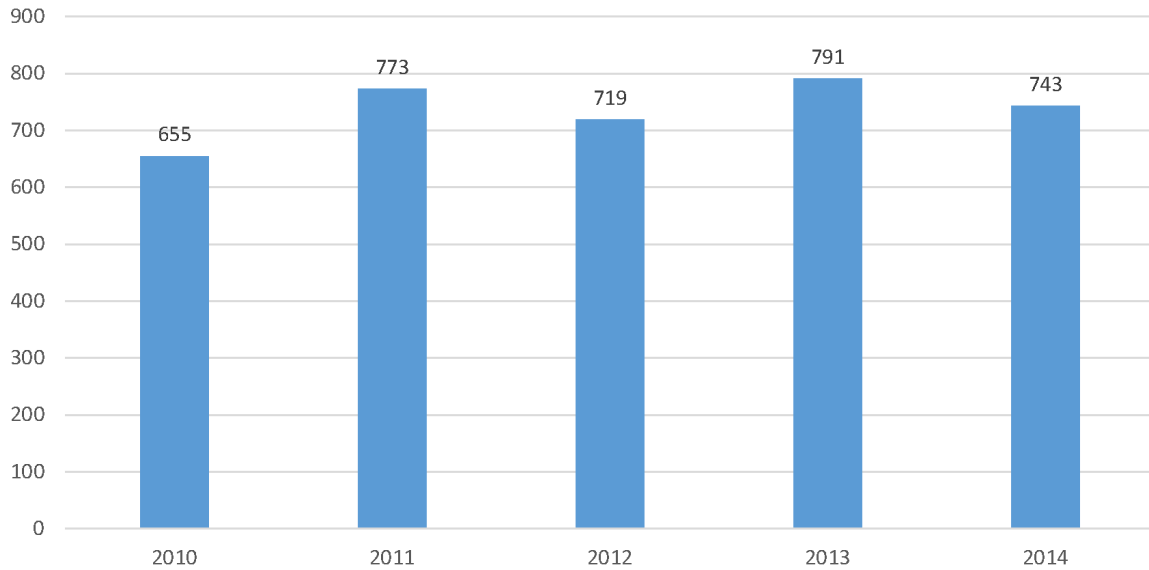
FMC's program, foreign-based NVOCCs must register with the Commission and establish financial responsibility.

NVOCCs wishing to serve in the U.S.-China trade may file an Optional Rider for Additional NVOCC Financial Responsibility to meet the Chinese government's financial responsibility requirements. This rider adds an additional \$21,000 to the NVOCC bond. The rider amount

### Active OTI Licenses by Fiscal Year



### OTI Applications Received by Fiscal Year



is available to pay fines and penalties for activities in the U.S.-China trades imposed by the Chinese government. This rider is accepted as a convenience to U.S. NVOCCs. In FY 2014, 81

China Bond Riders were received and 28 were terminated. Presently 415 U.S. NVOCCs hold China Bond Riders.

## Proposed Revisions to Licensing Rules

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During the fiscal year the Commission approved issuance of a Notice of Proposed Rulemaking (NPR) in Docket 13-05, proposing revisions to the Ocean Transportation Intermediary regulations at 46 CFR 515 after considering the extensive comments submitted to its earlier Advanced Notice of Proposed Rulemaking (ANPR). The proposed rule is designed to adapt to changing industry conditions, improve regulatory oversight, improve transparency, streamline FMC business processes, and reduce regulatory burdens on the industry. Among other revisions, most significantly the NPR proposes:

- a requirement to renew licenses and registrations every 3 years through an on-line and more user-friendly process;
- a requirement that common carriers verify OTI licenses and registrations, tariff publication and financial responsibility, provided such verifications can be made at a single location on the Commission's website; and
- a new expedited hearing procedure that would streamline the current procedures for denial, revocation, or suspension of an OTI license.

## Leveraging Technology

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Reducing both agency and industry operating costs by automating and streamlining processes is an ongoing challenge for the FMC with its limited budget. However, as funds become available and savings are realized in other areas that can be applied to upgrading its IT systems, the agency continues to implement its long-range information technology plan. At the center of this plan is the development and phased implementation of an enterprise platform solution that will improve data collection, storage and retrieval to support all Commission programs and enhance both internal and external interface with its electronic systems and databases.

During the fiscal year, a major milestone was met on the first of several phases to upgrade the Commission's IT systems. The enterprise

solution's foundation - the "enterprise store" - was completed during the fiscal year, which will become the sole repository for the Commission's critical data collections. Full implementation of the enterprise store will eliminate duplicate data entry and reduce resources needed to support the multiple systems currently in use.

An example of the type of critical data that will reside within this new repository is the licensing information the Commission collects and maintains from OTIs. Currently, 92 percent of all incoming OTI license applications and supporting documents are received electronically. While the existing system is a vast improvement over the past paper filing system, this filing process still resembles its legacy paper process - not a fully automated filing system. Efforts are

ongoing to create a more robust and efficient OTI licensing system that will integrate a number of agency databases, increasing efficiency and reducing both industry and agency costs.

As a cost saving initiative, the Commission leveraged its existing website to notify the public about OTI licensing matters. Through a direct final rule, Docket No. 14-08, the Commission changed the method it historically used to

provide public notice about OTI license applications, revocations and suspensions by publishing this information on the FMC's official public website, rather than publishing the same information in the *Federal Register*. This change provides more timely public notification of official FMC action on OTI licensing matters, simplifies the Commission's business processes, and reduces agency administrative and publication costs.

## Passenger Vessel Program

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### PVO Program Participants

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- 45 PVOs are certified under the Commission's program
- 213 vessels are certified
- 11 new Casualty Certificates issued in FY 2014
- 9 new Performance Certificates issued in FY 2014

### PVO Program Coverage

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- \$446 million aggregate evidence of financial responsibility for nonperformance
- \$744 million aggregate evidence of financial responsibility for casualty

The Commission administers the passenger vessel operator (PVO) program as described under 46 U.S.C. §§ 44102-44103, which requires evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers

at U.S. ports and territories. Certificates of performance cover financial responsibility used to reimburse passengers in the event their cruise is cancelled. Certificates of casualty are required to cover liability that may occur for death or injury to passengers or other persons on voyages to or from U.S. ports.

During last fiscal year, the Commission updated its rules to incrementally increase the maximum financial coverage requirement from \$15 to \$30 million per cruise line over a 2-year period. This increase reflected the effects of inflation and the growth of the cruise industry since the cap was set nearly 25 years ago.

At the close of fiscal year 2014, 213 vessels owned by 45 passenger vessel operators were certified under the Commission's program. The combined evidence of financial responsibility for nonperformance of transportation for all cruise vessels in the program is \$446 million. Approximately \$774 million in aggregate financial responsibility for casualty coverage is evidenced under the Commission's program. In FY 2014, 9 new performance certificates and 11 casualty certificates were issued. No cruise operator stopped operation with unperformed cruises during this fiscal year.

The current nonperformance coverage required under the Commission's program is not to exceed \$22 million per cruise line. On April 2, 2015 the maximum coverage requirement will increase to \$30 million per cruise line over a two-year period, with an adjustment to the cap thereafter every two years based on the Consumer Price Index for All Urban Consumers (CPI-U).

The Commission offers information and guidance to the cruising public on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages, as well as other cruise difficulties, such as itinerary changes. During the fiscal year, a new cruise brochure was designed and published that provides information and resources to help passengers avoid problems that may commonly arise during a cruise vacation. The brochure will be widely distributed in FY 2015 to travel agents and associations, and other federal agencies working in partnership with the Commission to educate and protect the cruising public.

In April, Chairman Cordero issued his Earth Day Award to Richard D. Fain, Chairman and CEO of Royal Caribbean Cruises Ltd, acknowledging his efforts to increase environmental stewardship through innovations in vessel



technology, onboard practices and an ongoing partnership with the University of Miami Rosenstiel School of Marine and Atmospheric Science.

## Consumer Affairs and Education

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### *Dispute Resolution*

The Commission, through its Office of Consumer Affairs and Dispute Resolution Services (CADRS), provides ombuds and mediation services to assist parties in resolving international ocean shipping disputes, including a Rapid Response Team especially focused on addressing problems exporters may encounter. Such services are available to the shipping public at any stage of a dispute regardless of whether

litigation has been filed at the FMC or another jurisdictional forum. The Commission's mediation services help parties avoid the expense and delay inherent in litigation, and facilitate the flow of U.S. foreign commerce.

During this fiscal year the FMC:

- Closed 1,664 *ombuds* matters: 1,449 household goods matters; 136 commercial cargo matters; 77 cruise matters; and 2 other Shipping Act related matters.

- Provided mediation services in 9 matters.
- Developed and led a coalition comprised of federal, state, and local agencies, the Columbian consulate in Miami, a non-profit organization, and an NVOCC that resulted in the return of approximately 104 abandoned household goods shipments to consumers.
- Issued 14 Informal Docket Decisions pursuant to 46 CFR Part 502, Subpart S which provides a small claims procedure for allegation of Shipping Act violations under \$50,000.
- Issued 3 Special Docket Decisions pursuant to 46 CFR Part 502, Subpart Q in which filers seek to waive or refund a portion of ocean freight as a result of clerical processing errors.

#### *Area Representatives*

In support of the Commission's ongoing outreach and education efforts, the Commission's Area Representatives (ARs) who operate in certain port regions nationwide reached out to the public, consumer groups, trade associations, and other government agencies to achieve regulatory compliance and protection for the shippers of household goods and personal effects. The ARs were instrumental in the publication of public service announcements for each major port area, warning consumers against the use of unlawful transportation providers and intermediaries. The ARs also made a number of presentations to interested industry audiences in their geographic areas, explaining OTI licensing requirements, the

Commission's Advance Notice of Proposed Rule-making with respect to bonding and licensing of OTIs (Docket No. 13-05) and OTI compliance with the recent tariff rate exemption applicable to Negotiated Rate Arrangements (NRAs).

#### *FMC Website*

One of the Commission's major cost-effective outreach tools is its public website. Based on user feedback, the website content and organization was significantly improved to render a more citizen-centered experience. During FY 2014, for example, a free, downloadable list of licensed and bonded OTIs was made available which now includes location information, bonding information and DBAs. Shippers or the general public, looking for a licensed and bonded OTI to help ship their cargo or personal household goods now have direct and free access to this enhanced information in a searchable, downloadable list.

Payment for Commission services can now be made online using the Commission's website. This system upgrade reduces the transaction costs for both the Commission and the public.

The Commission leveraged its website to warn consumers about complaints against certain household goods movers. In addition, the Commission provided timely updates on the operational status of certain international cruises that had run into operational issues either prior to or during the course of the cruise. For example, the Commission published a comprehensive notice to passengers when an oil spill impaired access to the Houston Ship Channel and several cruises were impacted.



## Enforcement, Audits and Penalties

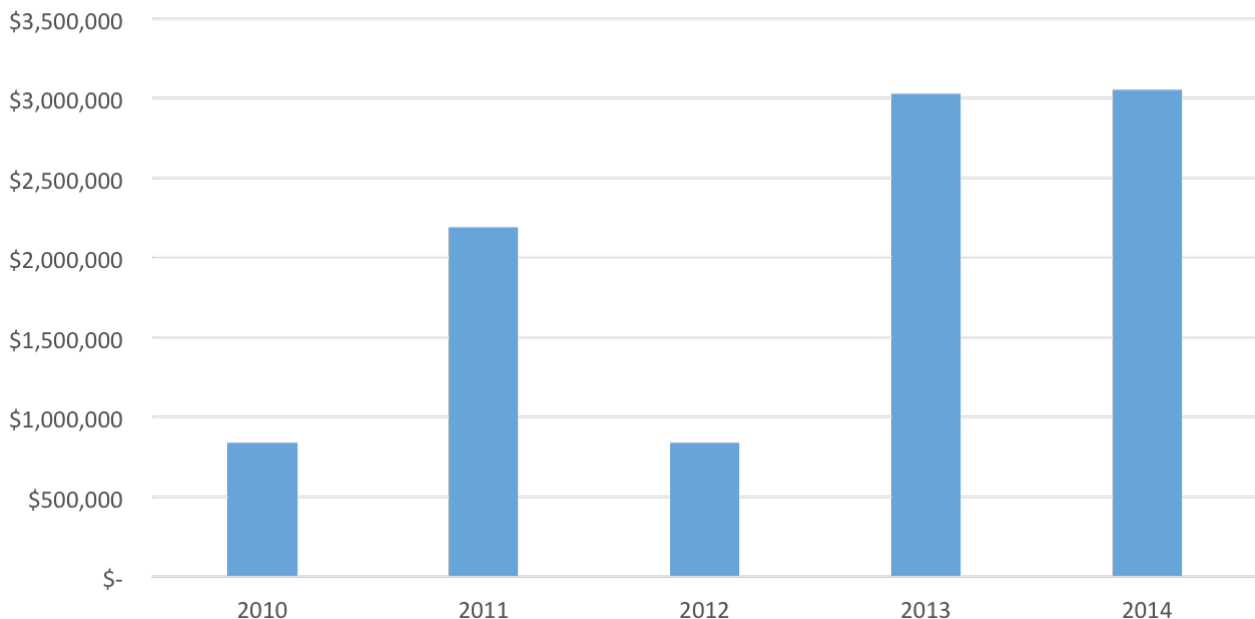
During the fiscal year, the Commission, through its Bureau of Enforcement (BOE) and Area Representatives, investigated and prosecuted possible illegal practices in many trade lanes, including the Transpacific, North Atlantic, West Africa, Central and South American and Caribbean trades. These market-distorting activities included various forms of unfiled agreements, rebates and absorptions, misdescription of commodities and misdeclaration of measurements, and unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs.

During the fiscal year, 15 new cases were referred by Area Representatives for enforcement action or informal compromise; 18 were compromised and settled, administratively

closed, or referred for formal proceedings; and 10 enforcement cases were pending resolution at fiscal year's end.

Major investigations undertaken or completed during fiscal year 2014 addressed VOCCs seeking to operate pursuant to agreements that were not filed with the Commission, as well as deceptive or fraudulent practices of certain OTIs operating in the highly competitive China-U.S. inbound trades. Of note, BOE's efforts in pursuing inquiries regarding the major car carriers in the Japan-U.S. trades (and in other U.S. trades inbound as well as outbound), culminated in two separate settlements related to unfiled carrier agreements. Penalties against the three carriers involved netted \$1.9 million. In addition, the Commission collected nearly \$300,000 in penalties against two smaller carriers for operating under an unfiled space charter

Civil Penalties Collected



## FMC works with Federal and State Law Enforcement to Protect the Public:

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- Helping victims of domestic moving fraud
- Assisting state and Federal criminal investigation of stolen vehicles
- Commencing investigations of FMC-licensed or regulated entities
- Stopping unlawful imports and exports
- Joint consultation on problematic carrier practices, procedures, or documentation
- Using shared confidential U.S. export data for FMC law enforcement purposes
- Coordinating law enforcement efforts with the National Intellectual Property Rights Coordination Center

agreement affecting their container and break-bulk services. Civil penalties were also pursued in several noteworthy formal proceedings before the Commission's Administrative Law Judges which are summarized in the Formal Investigations section below.

Cumulatively, in FY 2014 the Commission collected more than \$3 million in penalties for Shipping Act violations, closely matching the penalty collections in FY 2013. A list of parties and the penalties paid can be found in Appendix D. Most of these investigations were resolved informally, some with compromise settlements and civil penalties.

The compliance audit program continued during the fiscal year. This program, conducted by BOE staff primarily by mail, reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also includes review of entities holding themselves out as VOCCs, but where there is no indication of current vessel operations. During the fiscal year, 124 audits were commenced, 122 audits were completed (including audits carried over from fiscal year 2013), and 14 remained pending on September 30, 2014.

## Inter-Agency Cooperation

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The Commission works regularly with a number of other federal, state and local transportation and law enforcement agencies, either through established memoranda of understanding (MOU) or collaborations to address specific transportation related issues or incidents in both the U.S. domestic shipping arena and international liner shipping.

CADRS advanced interagency cooperation between the FMC and the Federal Motor Carrier Safety Administration (FMCSA) under an MOU through continued participation in the FMCSA's Moving Fraud Task Force and Moving Fraud Partnership initiatives. CADRS also provided a presentation at the FMCSA's Moving Fraud

Conference, and negotiation and mediation training to FMCSA field staff to support their efforts to assist victims of domestic moving fraud.

The ARs continue to work closely with a number of law enforcement agencies, including local jurisdictions such as the New York City Police Department, New Jersey State Police, and Houston Police Department, in matters relating to international shipping, such as the export of

stolen motor vehicles. The ARs also participated in various enforcement initiatives sponsored by Federal law enforcement agencies: the U.S. Department of Justice; Alcohol, Tobacco and Firearms; Federal Bureau of Investigation; the Department of Homeland Security including Customs and Border Patrol and Immigration and Customs Enforcement; Department of Commerce; and the FMCSA. These include criminal



FMC Joins the Homeland Security Investigations-led National Intellectual Property Rights Coordination Center (IPR Center)

and civil investigations of entities licensed or regulated by the Commission, interdiction of illicit imports and exports, consultation on carrier practices, procedures and documentation relating to shipping and international trade, and coordinated action seeking to protect the shipping public from deceptive and unfair practices.

The Commission also serves as a charter member of the International Trade Data System, a task force of 47 Federal agencies coordinating development of the Automated Commercial Environment (ACE), the “Single Window” through which the trade community will report imports and exports.

BOE completed its second year under a formal MOU with the Census Bureau, U.S. Department of Commerce, providing FMC with access to the Census’ Automated Export System (AES) database. The completed MOU accommodates Census’ ongoing concerns for data security by limiting such use of confidential U.S. export shipment data only for FMC law enforcement purposes. BOE also commenced an initiative to gain membership in the Homeland Security Investigations-led National Intellectual Property Rights Coordination Center (IPR Center), a partnership of 21 Federal and international agencies targeting intellectual property- and trade-related crimes.

# Developments in Major U.S. Foreign Trades

## Worldwide

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The world's container trade expanded by nearly 5 percent in fiscal year 2014 compared to only 2 percent growth in 2013. As the fiscal year came to a close, 131 containerships lay idle, representing 1.1 percent of the total fleet capacity measured in TEUs (twenty-foot equivalent container units). In contrast, 185 ships representing 2.4 percent of the containership fleet capacity lay idle at the end of fiscal year 2013.

The world's container shipping industry remained as concentrated during fiscal year 2014 as it had been in prior years. At the close of the fiscal year, the top three container operators controlled 37 percent of the world's containership capacity; the top five container operators controlled 47 percent; and the top ten controlled almost 64 percent. The world's top three operators are: A.P. Moller-Maersk A/S (15.1 percent), Mediterranean Shipping Company SA (13.5 percent) and CMA CGM S.A. (8.7 percent).

Container volumes in the U.S. liner trades in fiscal year 2014 expanded 3.1 percent to roughly 31 million TEUs, compared to 29.9 million last year. The U.S. share of the world's container trades was 17 percent. U.S. container imports continued to grow, expanding 4.7 percent to 18.4 million TEUs, compared to 17.9 million in 2013. This was still below the record of 18.6 million reached in fiscal year 2007. U.S. container exports also rose, albeit by less than 1 percent to 12.1 million TEUs. As a result, the U.S. container imbalance worsened slightly; for every

### Worldwide

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- For the fifth consecutive year, worldwide container trade grew – expanding by nearly 5%.
- For the second year in a row, fewer container ships lay idle at year's end.
- The world's top three operators controlled 37% of the worldwide vessel capacity: A.P. Moller-Maersk (15.1%); Mediterranean Shipping (13.5%); and CMA CGM (8.7%).

### U.S. Liner Trades

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- Container volumes in the U.S. liner trades (imports & exports combined) grew for the fifth consecutive year.
- While both U.S. imports and exports grew during the fiscal year, imported cargo continued to outpace exports.

100 loaded containers exported from the U.S., 156 were imported, compared to 150 imported in fiscal year 2013.

The world's containership fleet continued to expand in FY 2014. The fleet's nominal capacity grew by approximately 5 percent. At the end of the fiscal year, 5,017 containerships, with a total fleet capacity of 18.1 million TEUs, were

available to serve the world's container trades. As of September 30, 2014, there were orders worldwide for 488 new containerhips with an aggregate capacity of 3.6 million TEUs, which is equivalent to 19.7 percent of the existing fleet capacity. Vessels with nominal capacities

exceeding 7,500 TEUs comprised 37 percent of the existing containerhip fleet capacity and 83 percent of the orderbook's fleet capacity at year end, reflecting the increasing size of containerhips being ordered.

## Asia

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In terms of container cargo volume, Asia is our largest trading region. In fiscal year 2014, Asia was responsible for 62.3 percent of U.S. container trade volumes (exports and imports combined). Northeast Asia accounted for 53.3 percent of all U.S. container cargo and Southeast Asia accounted for nine percent.

Sixty-nine percent of all U.S. containers originated from Asia and the region received 52 percent of all U.S. container exports. Approximately 52 percent of all containers originating from or destined to Northeast and Southeast Asia are handled by the Ports of Los Angeles and Long Beach.

The U.S. imported 12.9 million TEUs of merchandise from Asia, which is a 4.6 percent

increase over the previous fiscal year. Reciprocally, the U.S. exported 6.3 million TEUs of goods to the Far East, which is less than a one percent increase over the last fiscal year.

The *Transpacific Stabilization Agreement* (TSA) is the major agreement in the transpacific trade.

It is a fifteen-member discussion agreement with voluntary pricing authority. TSA covers the inbound and outbound container transpacific trade lanes. TSA's geographic scope also includes parts of the Indian Sub-continent (i.e., Bangladesh, Pakistan and Sri Lanka, but not India). During fiscal year

2014, TSA's share of the U.S. inbound and outbound Asia container trades was approximately 91 and 93 percent, respectively.

TSA's share of the U.S. inbound and outbound Asia container trades exceeded 90%.

## Australia and Oceania

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The Oceania trade includes the nations and territories of Australia, New Zealand, Papua New Guinea, Western Samoa, and other South Pacific islands. Overall, growth in container cargo volume improved from the previous fiscal year. U.S. container export growth in fiscal year 2014 was modest at 3 percent, compared to a 3 percent decline in the preceding period. Container imports from the region to the U.S. grew by 10 percent, compared to 3 percent growth

in the preceding period. Container imports of meat and wine, the top two commodities from the region, accounted for 37 percent of the total import cargo volume. U.S. exports, however, exceeded imports with 1.6 containers moving outbound for every one container moving inbound. Hamburg Sud was the largest carrier operating in the trade with a market share of 35 percent in each trade direction.

The major service and agreement activity during the fiscal year centered around Pacific International Lines (PIL). Having entered the trade in June 2011, for nearly 3 years, PIL was the only direct service operator serving the trade. In March 2014, PIL joined the outbound discussion agreement, the *United States/Australasia Discussion Agreement*, increasing the collective market share of the agreement from 67 percent to 82 percent. Subsequently, in August 2014, PIL withdrew its vessels from the trade and entered into a slot charter agreement with the members of the *U.S. Pacific Coast-Oceania Agreement*, which operates two service strings between

U.S. Pacific ports and ports in Australia and New Zealand. To date, all of the carriers that operate direct services in the trade cooperate in a few operational agreements. Given these market conditions, the Commission closely monitors the competitive conduct of the carriers to ensure that their activities under agreements remain in compliance with the Shipping Act.

The market share of the major outbound discussion agreement increased to 82% when PIL joined the agreement.

## Indian Subcontinent and Middle East

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The growth rate of U.S. container trade with the Indian Subcontinent (exports and imports combined) was just over 4 percent during the fiscal year. However, the growth rate of the U.S. and the Middle East container market (exports and imports combined) declined by more than 3 percent in fiscal year 2014. The region accounted for just over 6 percent of total U.S. container volumes.

The U.S. imported 728,000 TEUs from the Indian Subcontinent and 175,000 TEUs from the Middle East, which represented a 7 and 3 percent increase respectively over the prior fiscal year. The U.S. exported 467,000 TEUs to the Indian Subcontinent and 584,000 TEUs to the

Middle East, which was a decrease of less than 1 percent and 5 percent, respectively, over the preceding fiscal year.

In this region, TSA is the rate discussion agreement covering part of the U.S. inbound and outbound container trade lanes. Its geographic scope covers the Indian Subcontinent countries of Bangladesh, Pakistan, and Sri Lanka, but not outbound to India or to the Middle East. For the fiscal year, TSA's market share for imports from and exports to Bangladesh, Pakistan, and Sri Lanka were 94 and 90 percent, respectively. There are no major rate discussion agreements covering the trade lanes between the U.S. and India or the Middle East.

## North Europe

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During fiscal year 2014, growth in container cargo volume improved moderately from the previous fiscal year in the U.S. liner trade with North Europe. Both container exports and imports grew by 5 percent as compared to 2 percent in

the preceding fiscal year. Over 50 percent of the containers were moved by the top four ocean carriers serving the trade, which in ranking order were Mediterranean Shipping Company, Hapag Lloyd, A.P. Moller-Maersk A/S, and APL Co. Pte

Ltd. (APL). The deployment of vessel capacity expanded by 5 percent in each trade direction, and the average utilization of vessel capacity for the fiscal year was 94 percent in the inbound trade lane from North Europe and 83 percent outbound. It was reported that freight rates inbound remained stable at approximately \$1,700 per container, while outbound rates stayed low.

Carriers serving the trade rearranged their cooperative partnerships under agreements. Notably, in April 2014, members of the *G6 Alliance Agreement* expanded their geographic scope to include North Europe and combined their operations to form three loop services and two pendulum services. The G6 carriers formerly competed under two separate alliance agreements, the *New World Alliance Agreement* and the *Grand Alliance Agreement II*. Hamburg Sud withdrew its vessel from the trade to charter space on two of the new G6 loop services under

Carriers' cooperative partnerships through agreements were substantially rearranged in the North Europe/U.S. liner trade.

the *G6/HSDG Atlantic Space Charter Agreement*. Also, in April 2014, Hapag Lloyd began its acquisition of the container service operations of Compania Sud Americana de Vapores S.A. (CSAV). Consequently, CSAV withdrew from its vessel sharing arrangements with CMA CGM and MSC and began chartering space from Hapag Lloyd on the G6 services under the *HLAG/CSAV Trans-Atlantic Space Charter Agreement*. These developments caused a realignment of services among the other carriers serving the trade. CMA CGM and Maersk increased their space allocations under their slot exchange agreement, and CMA CGM also began chartering space from MSC. Significantly, Maersk and MSC entered into the *Maersk/MSC Vessel Sharing Agreement* to coordinate their services. Under this agreement, the two major carriers plan to replace their current services in the trade with three loop services starting in the next fiscal year.

## Mediterranean

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After years of weak cargo volume growth in the U.S. Mediterranean trade, cargo container volumes rebounded during the fiscal year. Both inbound and outbound trade volumes jumped 10 percent over the preceding fiscal year. Wine, furniture, tiles and marble were some of the major commodities imported from the region, while paper, cotton, wood pulp and edible nuts were among the top U.S. export commodities. The trade remained highly concentrated with over 50 percent of the total container cargo transported by MSC and Hapag Lloyd. There were some significant service and agreement changes

during the fiscal year. Hapag Lloyd replaced its shared service that it operated with CMA CGM with a slot exchange arrangement with Zim Integrated Shipping Services, Ltd. (Zim). CMA CGM continued to operate the service independent of Hapag Lloyd using its own vessels. Under their new vessel sharing agreement, Maersk and MSC

Both inbound and outbound trade volumes jumped 10% in FY 2014.



plan to replace their current services in the trade with two vessel strings separately serving U.S. Atlantic and Gulf ports and ports in the

Mediterranean. By the end of the fiscal year, vessel capacity in the trade increased by around seven percent in each trade direction.

## Africa

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The results in the volume of container cargo between the U.S. and nations in Africa were mixed for the fiscal year. Compared to the preceding period, U.S. exports to Africa were down by 8 percent, while imports from the continent grew by a similar amount. Nonetheless, U.S. container exports continued to exceed imports; for every container moving inbound, 1.6 containers moved outbound. Major container export commodities

included automobiles (mostly used), poultry and grocery products, while cocoa beans and apparel were among the top import commodities. Over 50 percent of the container cargo in the trade was carried by MSC and Maersk. The Republic of South Africa is the largest U.S. liner trading nation on the continent, accounting for 21 percent of the total container cargo.

## Latin America

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### *Central America and the Caribbean*

In fiscal year 2014, U.S. export cargo volumes to Central America decreased by 2 percent to 583,600 TEUs and U.S. import cargo volumes remained virtually constant at 780,200 TEUs. Waste paper accounted for the largest share of U.S. containerized exports. Other major export commodities included fabrics, yarns, and raw cotton. Grocery products, used automobiles and apparel were also significant exports. On the import side, fresh fruit made up a majority of all imports from the region. Roughly three quarters of fresh fruit imports consisted of bananas. The second largest commodity imported from this region was clothing and apparel.

Five of the largest regional carriers in the U.S./Central America trade participated in the *Central America Discussion Agreement*: Seaboard Marine, Crowley Latin America Services, King Ocean Services, Dole Ocean Cargo Express, and Great White Fleet.

In the liner trade between the U.S. and the Caribbean, U.S. exports, mainly of food, consumer goods, and manufactured products increased almost 3 percent to 475,300 TEUs. Imports to the U.S. remained stable at approximately 170,000 TEUs.

Carriers in the U.S./Caribbean trade participated in three rate discussion agreements covering discrete trades: (1) the *Aruba Bonaire and Curacao Discussion Agreement*, (2) the *Bermuda Discussion Agreement*, and (3) the *Caribbean Shipowners Association*.

### *South America*

U.S. containerized trade with South America (exports and imports combined) was 1.8 million TEUs during the fiscal year, a 3.4 percent decrease from the previous year. Roughly 54 percent of that total volume was U.S. exports to the region, and 46 percent was U.S. imports. U.S. export cargo to South America included waste paper, synthetic resins, and general merchandise

cargo. On the U.S. import side, fresh fruit, wines, coffee, logs and lumber and fresh vegetables were major moving commodities.

Many of the carriers providing service to the West Coast of South America are members of the *West Coast of South America Discussion Agreement* (WCSADA). Membership consists of eight regional carriers: Compania Chilena De Navegacion Interoceania, Seaboard Marine, Trinity Shipping, Ecuadorian Line, Frontier Liner Services, King Ocean Services, Interocean Lines and SC Line; and four global carriers Hamburg Sud, MSC, CSAV, and CMA CGM.

In addition to being served by members of WCSADA, a number of independent carriers serve the U.S. inbound trade, including Dole Ocean Cargo Express and Great White Fleet, that mainly transport proprietary cargo such as fresh fruits and vegetables. WCSADA also faces competition from Nippon Yusen Kaisha Line, Maersk, Evergreen, Mitsui O.S.K. Line, Hapag-Lloyd, Zim and several regional carriers.

There were no active rate discussion agreements in the trade between the U.S. and the East Coast of South America during the fiscal year.

# Top Twenty U.S. Liner Cargo Trading Partners

Pursuant to the Foreign Shipping Practices Act, the FMC must include in its annual report to Congress “a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States,” 46 U.S.C. § 306 (b)(1).

The Journal of Commerce’s Port Import Export Reporting Service (PIERS) database was used to derive the Commission’s list of top twenty trading partners. The most recent complete calendar year for which data are available is 2013. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the United States in 2013. The figures in the table represent each country’s total U.S. liner imports and exports combined in thousands of loaded TEUs.

There was a 3 percent year-to-year increase in liner volumes in the United States’ bilateral trade with its top-twenty liner cargo partners. The top twenty U.S. liner cargo trading partners has remained the same since 2009. This year, for the first time since 2009, changes in ranking occurred among the top-eight countries. Hong Kong dropped from 5<sup>th</sup> to 8<sup>th</sup>, reflecting a loss in cargo volume of almost 10 percent. Germany rose in the ranking from 6<sup>th</sup> to 5<sup>th</sup>, and Vietnam rose from 8<sup>th</sup> to 6<sup>th</sup> on gains in volume of 3.5 and 9.8 percent, respectively. Six trading partners in the top-twenty had negative growth – Hong Kong, Australia, Japan, South Korea, Malaysia, and Honduras but not enough to dislodge them from their respective rankings. (While Hong Kong reverted to Chinese control in July 1997, PIERS continues to report data separately as it is a major transshipment center.)

## Top Twenty U.S. Liner Cargo Trading Partners (CY 2013)

<b>Rank</b>	<b>Country</b>	<b>TEUs (000)</b>
1	China (PRC)	11,536
2	Japan	1,450
3	South Korea	1,317
4	Taiwan (ROC)	1,107
5	Germany	859
6	Vietnam	805
7	India	789
8	Hong Kong	759
9	Brazil	609
10	Belgium & Luzembourg	588
11	Indonesia	538
12	Italy	526
13	Thailand	485
14	Netherlands	467
15	United Kingdom	414
16	Guatemala	381

<b>Rank</b>	<b>Country</b>	<b>TEUs (000)</b>
17	Malaysia	346
18	Honduras	344
19	Chile	344
20	Australia	312

# Foreign Shipping Practices Act

The Commission has the authority to address restrictive foreign shipping practices under section 19 of the Merchant Marine Act of 1920 and the Foreign Shipping Practices Act of 1988. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the United States.

The Commission, through its Office of the General Counsel, pursued several matters informally involving potentially restrictive foreign practices. This included interpretations of existing legislation, foreign legislation and administrative law, and regulations of non-domestic carriers' terminal handling charges. However, no formal FSPA action by the Commission was necessary.

# Controlled Carriers

A controlled carrier is an ocean common carrier that is, or whose operating assets are, owned or controlled directly or indirectly by a foreign government. The Shipping Act provides that no controlled carrier may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts. In addition, tariff rates, charges, classifications, rules, or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication.

The Commission's staff monitors U.S. and foreign trade press and other information sources

to identify controlled carriers and any unjust or unreasonable controlled carrier activity that might require Commission action. In fiscal year 2014, four controlled carriers operated in the U.S. trades:

- (1) American President Lines, Ltd. and APL Co., Pte. – Republic of Singapore;
- (2) COSCO Container Lines Company, Limited People's Republic of China;
- (3) China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Company, Ltd. - People's Republic of China; and
- (4) Hainan P.O. Shipping Co., Ltd. – People's Republic of China.



# Formal Investigations, Private Complaints and Litigation

Adjudicative proceedings before the Commission are commenced by the filing of a complaint, or by order of the Commission upon petition, or upon its own motion. Types of docketed proceedings include:

- *Private complaints:* Any person may file a formal complaint alleging violations of specific sections of the Shipping Act, found at 46 U.S.C. Chapter 411. Formal complaints are generally assigned to an FMC Administrative Law Judge (ALJ) who issues an initial decision which is then reviewed by the Commission.
- *Small claims complaints:* For claims of \$50,000 or less, an informal complaint may be filed. The complaint is handled by a settlement officer for resolution using informal procedures that do not tend to include discovery or motions practice.
- *Investigative proceedings:* The Commission may investigate the activities of ocean common carriers, ocean transportation intermediaries, unlicensed

entities operating as OTIs, marine terminal operators and other persons to ensure effective compliance with the statutes and regulations administered by the Commission. Formal orders of investigation and hearing are assigned to an ALJ for an initial decision which is then reviewed by the Commission.

In FY 2014, 4 new formal investigations were opened and 3 new formal private party complaints were filed. The Office of Administrative Law Judges (OALJ) issued 10 initial decisions, including 2 dismissals, during the fiscal year, leaving 6 formal proceedings pending for FY 2015. The Commission issued 14 final orders in formal docket complaint proceedings, 9 orders in small claims complaints and 11 notices that they would not review the decision of the settlement officer or ALJ.

The following summarizes the results of docketed proceedings concluded during FY 2014 by the FMC Administrative Law Judges and the Commission.

## Formal Investigations

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### *OC International Freight, Inc.; OMJ International Freight, Inc.; and Omar Collado [Docket No. 12-01]*

On April 2, 2012, the Commission issued an order directing the ALJ to consider Respondents' appeal of the denial of an application for an OTI license. The Commission combined that order with an Order of Investigation and Hearing to determine whether Respondents knowingly and

willfully obtained ocean transportation at less than the rates and charges that would otherwise be applicable by permitting unrelated entities to unlawfully access OMJ's service contracts, or operated as an OTI without a license and bond. On March 26, 2013, the ALJ issued an Initial Decision affirming the denial of the OTI license. The judge also found violations of Section 19 but

did not find a violation of Section 10(a)(1) of the Shipping Act, 46 U.S.C. § 41102(a). On July 22, 2013, the Commission issued an Order Remanding for Further Proceedings. The Commission affirmed the Section 19 violations, the issuance of a cease and desist order, and denial of the license application. The Commission vacated the determination that Respondents did not violate Section 10(a)(1) and the civil penalty and remanded the proceeding. On October 13, 2013, the ALJ issued an Initial Decision on Remand finding that Respondents violated section 10(a)(1) and imposed a civil penalty of \$226,000. On November 22, 2013, Respondents filed exceptions to the decision. On July 31, 2014, the Commission affirmed the Initial Decision on Remand and discontinued the preceding.

***United Logistics (LAX) Inc. – Possible Violations of Sections 10(a)(1) and 10(b)(2)(A) of the Shipping Act of 1984 [Docket No. 13-01]***

On January 25, 2013, the Commission issued an Order of Investigation and Hearing to determine whether respondent, United Logistics, knowingly and willfully obtained ocean transportation at less than the rates and charges that would otherwise be applicable by the device or means of unlawfully accessing service contracts to which it was neither a signatory nor an affiliate, and by providing transportation in the liner trade that was not in accordance with the rates, charges, classifications, rules, and practices contained in its published tariff. After United Logistics failed to respond to a notice of default and order to show cause, on November 26, 2013, the ALJ entered an Initial Decision finding that United Logistics knowingly and willfully violated sections 10(a)(1) and 10(b)(2)(A) of the Shipping Act, 46 U.S.C. §§ 41102(a) and 41104(2)(A). The judge imposed a civil penalty of \$2.7

million, revoked United Logistics' OTI license, and ordered it to cease and desist from operating as an OTI. On December 24, 2013, the Commission served a notice that it would review the decision. On February 6, 2014, the Commission affirmed with modifications and discontinued the preceding.

***Huntington International, Inc., JC Horizon Ltd., and Judy Lee – Possible Violations of Sections 10(a)(1) and 19 of the Shipping Act of 1984 [Docket No. 14-05]***

On June 4, 2014, the Commission issued an Order of Investigation and Hearing to determine:

(1) Whether Huntington International, previously licensed as an ocean transportation intermediary (“OTI”):

(a) violated Section 19(a) and (b) of the Shipping Act, 46 U.S.C. §§ 40901, 40902, by continuing to operate as an OTI after its license had been revoked;

(b) violated section 19(e) of the Act, 46 U.S.C. § 40904, and the Commission's regulations, 46 CFR Part 515, by collecting freight forwarder compensation on shipments in which Judy Lee, an officer and director of the company, had a beneficial interest; and

(c) violated section 10(a)(1) of the Act, 46 U.S.C. § 41102(a) and the Commission's regulations, by sharing compensation with JC Horizon and Judy Lee; and

(2) whether JC Horizon and Judy Lee violated section 10(a)(1) of the Shipping Act by knowingly and willfully obtaining ocean transportation at less than the rates and charges that would otherwise apply by directing Huntington International to pay to Respondents monies derived from freight forwarder compensation paid by ocean common carriers that transported Respondent JC Horizon's shipments.



On July 7, 2014, Respondents Judy Lee and JC Horizon filed an Answer denying the allegations, asserting affirmative defenses, and filing a counterclaim under the Equal Access to Justice Act. Respondent Huntington International did not enter an appearance in this proceeding. On September 10, 2014, the ALJ issued an Initial

Decision granting the Bureau of Enforcement's motion to dismiss claims against Huntington International with prejudice and approving a settlement agreement with a \$300,000 monetary payment from the remaining respondents. At the conclusion of the fiscal year, this proceeding was pending before the Commission.

## Private Complaints

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### ***Maier Terminals, Inc. v. The Port Authority of New York and New Jersey [Docket No. 08-03]***

Maier leases land and facilities at the Elizabeth Port Authority Marine Terminal from the Port Authority of New York and New Jersey (PANYNJ) for use as a marine terminal. On June 3, 2008, Maier filed a complaint alleging that PANYNJ violated the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c), because PANYNJ:

(a) gave and continues to give an undue or unreasonable prejudice or disadvantage with respect to Maier as compared to APM Terminals North America, Inc. (APM), another marine terminal operator;

(b) gave and continues to give an undue or unreasonable preference or advantage with respect to APM;

(c) continues unreasonably to refuse to deal or negotiate with Maier; and

(d) continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

In January 2013, the Commission granted partial summary judgment to the Port, finding that some of Maier's requested relief was barred by the Commission's statute of limitations. Maier appealed this decision to the United States Court of Appeals for the D.C. Circuit. The Commission's

Office of General Counsel filed a motion to dismiss, and the D.C. Circuit dismissed the appeal in June 2013. The Commission subsequently denied Maier's motion for reconsideration of the summary judgment order, and again successfully defended its decision before the D.C. Circuit, which dismissed Maier's second appeal for lack of jurisdiction in July 2014, by granting the Commission's motion to dismiss. While the summary judgment issue was pending on appeal, the ALJ rejected Maier's claims on the merits in an Initial Decision dated April 25, 2014 determining that PANYNJ did not violate the Act and dismissed Maier's claims. Exceptions to the ALJ's decision were filed by Maier on July 23, 2014. At the conclusion of the fiscal year, this proceeding was pending before the Commission.

### ***Yakov Kobel and Victor Berkovich v. Hapag-Lloyd A.G., Hapag-Lloyd America, Inc., Limco Logistics, Inc., and International TLC, Inc. [Docket No. 10-06]***

This proceeding was initiated by a complaint filed with the Commission on July 6, 2010, alleging that Respondents violated various sections of the Shipping Act. After discovery, an evidentiary hearing, and briefing, on February 14, 2012, an Initial Decision was issued dismissing the complaint. On July 12, 2013, the Commission issued an Order Vacating Initial Decision In Part and Remanding for Further Proceedings. On July

30, 2014, the ALJ issued an Initial Decision on remand finding that the Respondents violated 46 U.S.C. § 41102(c) of the Shipping Act, and ordering that the Respondents be jointly and severally liable to the Complainants for a reparation award of \$126,072. On August 12, 2014, the Commission served a notice that it would review the decision. Exceptions to the ALJ's decision were filed on September 22, 2014. The proceeding is currently pending before the Commission.

***DNB Exports LLC, and AFI Elektromekanik Ve Elektronik San. Tic. Ltd. Sti. v. Barsan Global Lojistiks Ve Gumruk Musavirligi A.S., Barsan International, Inc., and Impexia Inc. [Docket No. 11-07]***

On April 14, 2011, Complainants -- DNB, a wholesale distributor of electrical goods in the Middle East, and AFI, its U.S. procurement agent -- filed a complaint alleging that Barsan Int'l, an NVOCC, Barsan Global (parent of Barsan Int'l), and Impexia, a competitor of DNB, violated section 10(b)(13) of the Shipping Act, 46 U.S.C. § 41103(a), by disclosing and using DNB's confidential information learned by Barsan Int'l while acting as a common carrier transporting DNB's cargo. On January 24, 2014, the ALJ issued an Initial Decision dismissing the claims against Barsan Global and Impexia because Complainants did not establish that they are common carriers governed by section 10(b)(13). The claims against Barsan Int'l were dismissed on the ground that Complainants had not established that Barsan Int'l disclosed protected information in violation of section 10(b)(13). On February 18, 2014, Complainants filed exceptions to the Initial Decision. On September 4, 2014, the Commission issued an order finding that Barsan Int'l violated section 10(b)(13), but

that Complainants had not proven actual injury resulting from the violation and were not entitled to a reparation award.

***Kawasaki Kisen Kaisha, Ltd. v. The Port Authority of New York and New Jersey [Docket No. 11-12]***

On August 5, 2011, nine vessel-operating common carriers filed a complaint alleging that the Port Authority of New York and New Jersey (PANYNJ) violated the Shipping Act by imposing a cargo facility charge. Eight complainants withdrew from the proceeding, leaving only Kawasaki Kisen Kaisha, Ltd. ("K" Line). On February 5, 2014, the ALJ dismissed the Complaint because "K" Line willfully failed to provide discovery. On March 31, 2014, "K" Line filed exceptions to the dismissal. At the conclusion of the fiscal year, this proceeding was pending before the Commission.

***SBI International, Inc. v. Mr. Howard Finkel c/o COSCO Container Lines Americas [Docket No. 12-10]***

On November 21, 2012, SBI, a shipper, filed a *pro se* complaint alleging that COSCO violated the Shipping Act when it failed to deliver chicken parts shipped to China. Because of lack of clarity of the Complaint, SBI was ordered to file an amended Complaint. The Amended Complaint alleging that COSCO violated several sections of section 10 of the Act was also insufficient, and SBI was ordered to file a second Amended Complaint. In its second Amended Complaint, SBI added a claim that COSCO violated the Act when it refused to enter into a new service contract with SBI. SBI then withdrew the first claim because COSCO delivered the chicken. SBI moved to dismiss the Complaint voluntarily. On December 5, 2013, the ALJ granted the motion to dismiss. On January 13, 2014, the Commission served a notice not to review.

***Streak Products, Inc., and SYX Distribution, Inc. v. UTi, United States, Inc. [Docket No. 13-04]***

On April 12, 2013, Streak, a shipper, filed a complaint alleging that UTi violated three sections of the Shipping Act: (1) 46 U.S.C. § 41104(2) by charging Streak rates greater than those stated in its published tariff; (2) 46 U.S.C. § 1104(4) by charging Streak rates greater than those it charged other shippers; and (3) 46 U.S.C. § 40501 by failing to keep open to public inspection in its tariff system tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and any through transportation route that has been established. Leave was granted to amend the Complaint to include Streak's affiliate SYX Distribution. On September 10, 2014, the ALJ entered an Initial Decision approving the parties' Confidential Settlement Agreement and General Release. At the conclusion of the fiscal year, this proceeding was pending before the Commission.

***Global Link Logistics, Inc. v. Hapag-Lloyd AG [Docket No. 13-07]***

On September 10, 2013, Global Link, an NVOCC, filed a Complaint alleging that Hapag-Lloyd, a VOCC, violated three sections of the Shipping Act: Section 41102(c) (failure to observe reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property); section 41104(3) (charging higher rates to Global Link than to other shippers); and section 41104(10) (unreasonable refusal to deal or negotiate) when it refused to renegotiate rates established by a service contract during the life of the contract. Hapag-Lloyd moved to dismiss the Complaint for failure to state a claim. On April 17, 2014,

the ALJ issued an Initial Decision granting the motion to dismiss, holding that the Complaint failed to state a claim of violation of the Act. On May 27, 2014, Global Link filed exceptions to the Initial Decision. At the conclusion of the fiscal year, this proceeding was pending before the Commission.

***Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc., [Docket No. 09-01]***

Mitsui O.S.K. Lines filed a complaint on May 5, 2009, against Respondents Global Link Logistics, Inc. and related entities (Respondents), alleging that Respondents violated sections 10(a)(1) and 10(d)(1) of the Shipping Act, 46 U.S.C. §§ 41102(a) and 41102(c) and the Commission's regulations at 46 CFR § 515.31(e), by engaging in a practice referred to as "split routing." Respondent Global Link is a licensed NVOCC, and Mitsui alleged that between 2004 and 2006, Global Link engaged in split routing on Mitsui shipments in violation of the Shipping Act. Split routing occurs when an NVOCC books cargo with a vessel-operating common carrier for shipment to one inland destination in the United States, while intending to deliver the cargo to a different inland destination. Mitsui alleged that it was injured as a result of Respondents' split routing practice and was entitled to reparations. The ALJ issued an Initial Decision on July 9, 2013, concluding that Mitsui knew of and encouraged the practice of split routing by Global Link; any monetary losses suffered by Mitsui were proximately caused by its own actions; and Mitsui did not carry its burden of proof as to bad faith or deceit by the Respondents. In an Order issued January 30, 2014, the Commission adopted the Initial Decision and discontinued the proceeding.

***Lisa Anne Cornell and G. Ware Cornell, Jr. v. Princess Cruise Lines, Ltd. (Corp), Carnival plc, and Carnival Corporation, [Docket No. 13-02]***

On January 30, 2013, complainants filed a complaint alleging that Respondent cruise ship lines refused to permit them to sail on their cruise ships in violation of section 10(b)(10) of the Act, 46 U.S.C. § 41104(10). The controversy stemmed from a dispute over a refund of money paid to a fine arts auction company that operates on the cruise ships after Lisa Cornell cancelled a purchase of works of art. Complainants had been involved in litigation for several years in Florida courts with the auction company, an affiliate of the cruise lines. Respondents filed a motion to dismiss or alternatively for summary judgment. On July 23, 2013, the ALJ issued a summary initial decision dismissing most claims, but found that respondent Princess violated section 10(b)(10) and entered a cease and desist order. The

ALJ found that Complainants did not meet their burden of offering evidence that they had suffered actual injury as a result of the violation. On August 14, 2013, both parties filed exceptions to the decision.

On August 28, 2014, the Commission issued an Order reversing in part, affirming in part, and vacating in part the Initial Decision and dismissing the complaint with prejudice on the ground that Princess Cruise Lines and other respondents did not violate the Shipping Act. The Commission determined that section 10(b)(10) of the Shipping Act, 46 U.S.C. § 41101(10) may be applicable only to common carriers of cargo, not to common carriers of passengers. The Commission further determined that even if section 10(b)(10) is applicable to Respondents, Respondents did not violate that section because they did not act unreasonably.

## Litigation

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The following docket matters were litigated during the fiscal year in United States Courts of Appeals by the Office of General Counsel on behalf of the Commission. At the conclusion of the fiscal year, these cases were pending before the U.S. Courts of Appeals.

***The Auction Block Co. v. City of Homer, [Docket No. 12-03], United States Court of Appeals for Ninth Circuit.***

On April 2, 2012, Complainants, the Auction Block Company (Auction Block) and Harbor Leasing, LLC (Harbor Leasing) filed a complaint with the Commission against Respondents, The City of Homer (City) and the Port of Homer (Port), alleging violations of the Shipping Act, 46 U.S.C. § 40101 *et seq.* Complainants alleged that the City and Port were marine terminal operators

that violated the Shipping Act through unreasonable prejudice or preference, refusal to deal, and unfair practices, 46 U.S.C. §§ 41106(2)-(3), 41102(c). The dispute involves a lease between the City and Harbor Leasing, dated March 26, 2008, for terminal facilities utilized by Auction Block. Complainants alleged that the dispute centers around the lower rates charged to Iccle Seafood, Inc., under its lease with the City, and those charged to Auction Block under the terms of the tariff.

In the May 20, 2013 Initial Decision, the ALJ dismissed all of Complainants' claims against Respondents with prejudice, finding that the Commission lacked jurisdiction. On June 21, 2013, Complainants filed Exceptions to the ALJ's conclusions of law and certain findings

of fact and requested oral argument before the Commission on the Exceptions. On April 3, 2014 Oral Argument was held before the Commission and was limited to whether the Port is an MTO in connection with all dock/terminal areas including Fish Dock (the facility at issue), despite the fact that the terminal services in dispute do not involve common carriers.

On August 12, 2014, the Commission upheld the Initial Decision of the Administrative Law Judge dismissing Auction Block's complaint for lack of jurisdiction. On August 22, 2014 the Auction Block Company filed a Petition for Review of the Commission Order with the United States Court of Appeals for the Ninth Circuit. The Commission and the Department of Justice entered appearances in the case. The Court of Appeals granted leave for the City of Homer and the Port to intervene in the appeal.

*Chief Cargo Services, Inc. v. Federal Maritime Commission, [Docket No. 10-08], United States Court of Appeals for the Second Circuit.*

On November 1, 2013, Chief Cargo Services, Inc., filed a petition for review of the Commission's

Order in FMC Docket 10-08, *Bimsha International v. Chief Cargo Services, Inc. & Kaiser Apparel, Inc.*, upholding the ALJ's initial decision holding that by the release of three shipping containers, without requiring presentation of the original bills of lading, Chief Cargo failed to fulfill its obligations as a non-vessel-operating common carrier, thereby violating section 10(d) (1) of the Shipping Act. The ALJ also ordered Chief Cargo to "cease and desist releasing cargo without requiring presentation of an original bill of lading." On April 24, 2014, Chief Cargo filed its Joint Appendix, Brief, and Special Appendix. Chief Cargo questioned the jurisdiction of the Commission to hear and adjudicate Bimsha's claim of violations of the Shipping Act; argued that the Commission improperly found violations of the Shipping Act; and argued that the Commission improperly issued a cease and desist order. On June 20, 2014, the Commission and the United States filed a joint brief. Oral Argument was held on September 30, 2014.

## Procedural Rule Updates

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The Commission updated several of its procedural rules this year concerning proceeding and information requests filed with the Commission.

*Informal Procedure for Adjudication of Small Claims, Direct Final Rule, Docket No. 14-09, (79 FR 46714)*

The Commission amended Subpart S of 46 CFR Part 502, which sets forth its rules for the adjudication of small claims filed with the Commission seeking reparations in the amount of \$50,000 or less for violation of the Shipping Act of 1984. The new rules provide that claims less

than \$50,000 will be decided by a Small Claims Officer appointed by the Commission's Chief Administrative Law Judge.

*Amendments to Regulations Governing the Rules of Practice and Procedure for Dismissals of Action, Notice of Proposed Rulemaking, Docket No. 14-12 (79 FR 56546)*

The Commission proposed to amend its rules governing dismissals of actions by complainants, by order of the presiding officer, and by respondents when complainant fails to prosecute. This modification reflects the Commission's intent

to adhere to its long-standing policy of reviewing settlements by adding language to clarify that when a voluntary dismissal is based on a settlement agreement, the agreement must be submitted for approval by the Commission.

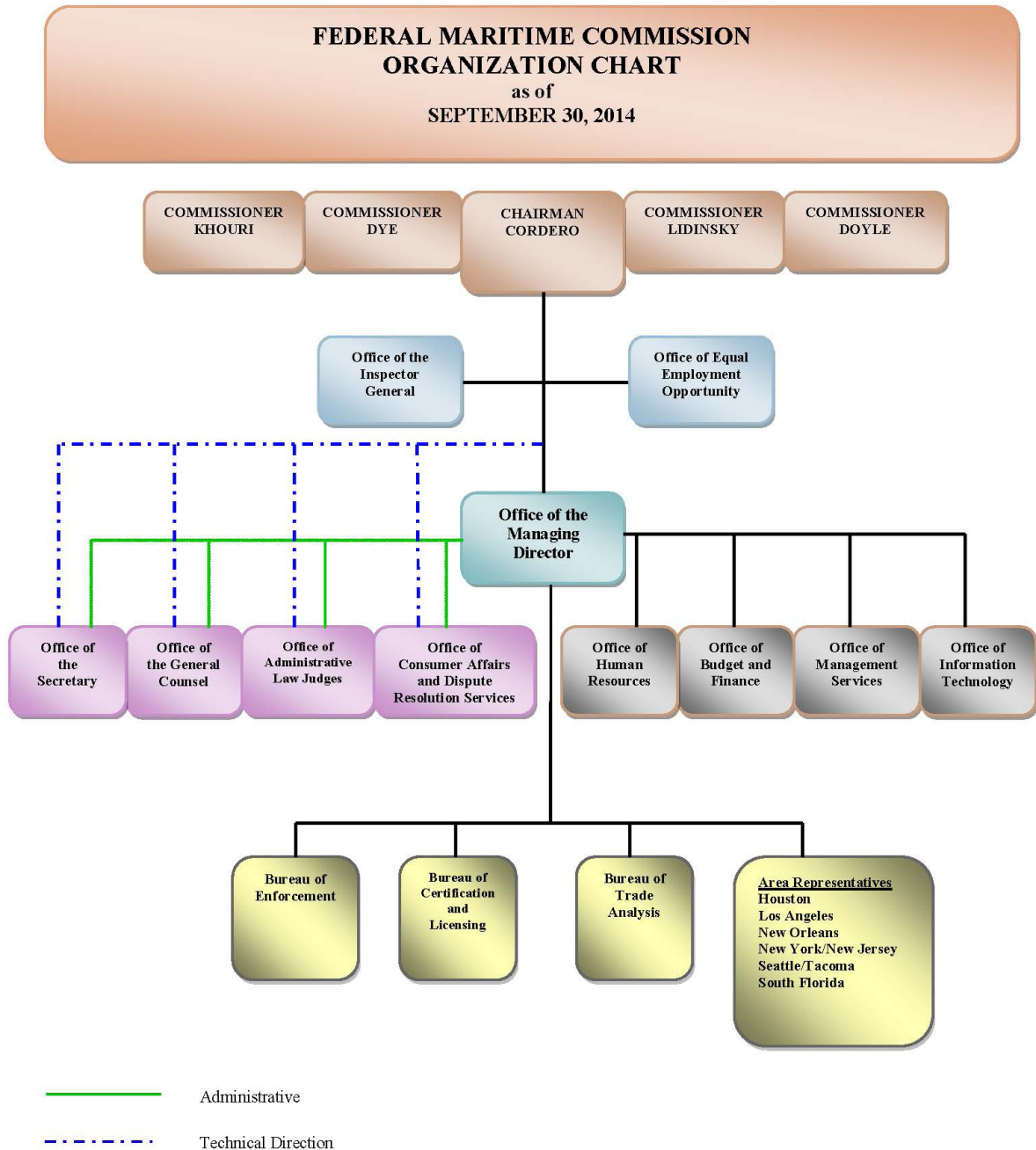
***Requests for Testimony by Employees Relating to Official Information and Production of Official Records in Litigation, Direct Final Rule, Docket No. 14-03, (79 FR 243501)***

The Commission promulgated regulations under Part 501 and 503 of the Commission's regulations, adding procedures for the production of testimony or documents in legal proceedings

when the Commission is not a party. The regulations, commonly called "Touhy" regulations, are named after the Supreme Court's decision *United States on behalf of Touhy v. Ragen*. The *Touhy* regulations create a predictable procedure for the Commission to determine what testimony and documents should or should not be released under subpoena. The regulations provide the procedure for dealing with information, and address how the Commission will procedurally respond to a subpoena or other request for testimony or documents that are served on a current or former employee.

# APPENDICES

## A - FMC Organization Chart



## B - FMC Senior Officials

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Chief of Staff.....	<i>Mary T. Hoang</i>
Counsel to Commissioner Dye.....	<i>Edward L. Lee, Jr.</i>
Counsel to Commissioner Lidinsky.....	<i>Jewel Jennings-Wright*</i>
Counsel to Commissioner Khouri.....	<i>John A. Moran</i>
Counsel to Commissioner Doyle.....	<i>David J. Tubman, Jr.</i>
General Counsel.....	<i>Vacant</i>
Secretary.....	<i>Karen V. Gregory</i>
Chief Administrative Law Judge.....	<i>Clay G. Guthridge</i>
Director, Office of Consumer Affairs & Dispute Resolution Services.....	<i>Rebecca A. Fenneman**</i>
Director, Office of Equal Employment Opportunity.....	<i>Keith I. Gilmore</i>
Inspector General.....	<i>Jon Hatfield</i>
Managing Director.....	<i>Vern W. Hill</i>
Deputy Managing Director.....	<i>Vacant</i>
Director, Bureau of Certification and Licensing.....	<i>Sandra L. Kusumoto**</i>
Director, Bureau of Enforcement.....	<i>Peter J. King</i>
Director, Bureau of Trade Analysis.....	<i>Florence A. Carr**</i>

\*Assumed position in August 2014

\*\* Assumed position in November 2013



# C - Statement of Appropriations, Obligations and Receipts

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## Appropriations

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 307), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902, \$24,669,000: Provided, That not to exceed \$2,000 shall be available for official reception and representation expenses.

Public Law 113-76	\$24,669,000
Total Budgetary Resources	\$24,669,000

## Obligations and Unobligated Balance:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2014.	\$24,650,789
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## Statement of Receipts:

Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2014:	
Publications and reproductions, fees and vessel certification, and freight forwarder applications	\$220,549
Fines and penalties	\$2,968,000
Total general fund receipts	\$3,188,549

## D - Civil Penalties Collected

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Mitsui O.S.K. Lines Ltd. and Nissan Motor Car Carrier Co.	\$1,275,000
Compania Sud Americana de Vapores S.A.	\$625,000
OBI Shipping Inc.	\$50,000
Benison Transport, Inc. and Shine International Transportation (Shenzhen) Ltd.	\$110,000
Rickmers-Linie GmbH.	\$190,000
Hayek Services Inc.	\$20,000
ABC Trucking and Logistics LLC	\$23,000
FCC Logistics Inc. dba GOF	\$70,000
Sea Central Shipping Corp.	\$85,000
China Container Line Ltd. and China Container Line (SHA) Ltd.	\$100,000
Orient Star Transport International Ltd.	\$100,000
Eastern Car Liner Ltd.	\$105,000
JC Horizon Ltd. and Judy Lee	\$300,000
<b>Total:</b>	<b>\$3,053,000</b>

Note: As of the end of fiscal year 2014, \$3,053,000 in civil penalties were assessed or compromised by the Commission for violations of the Shipping Act. Of this amount, \$85,000 was pending collection and deposit to the U.S. Treasury.

