

50TH ANNUAL REPORT

FEDERAL MARITIME COMMISSION



FISCAL YEAR 2011

**FEDERAL MARITIME
COMMISSION**

**50th
ANNUAL REPORT**

for

Fiscal Year

2011



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FEDERAL MARITIME COMMISSION

WASHINGTON, D.C. 20573-0001

March 31, 2012

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, at 46 U.S.C. §306(a), I am pleased to submit the 50th Annual Report of the activities of the Federal Maritime Commission for fiscal year 2011.

Sincerely,

Richard A. Lidinsky, Jr.
Chairman

MEMBERS OF THE COMMISSION



Richard A. Lindsy, Jr.
Chairman
Appointed 2009
Term Expires 2012



Joseph E. Brennan
Commissioner
Appointed 1999
Term Expired 2008



Rebecca F. Dye
Commissioner
Appointed 2002
Term Expires 2015



Michael A. Khouri
Commissioner
Appointed 2009
Term Expires 2016



Mario Cordero
Commissioner
Appointed 2011
Term Expires 2014

SENIOR COMMISSION OFFICIALS

Chief of Staff.....*Lowry A. Crook*
Counsel to Commissioner Brennan*Steven D. Najarian*
Counsel to Commissioner Dye*Edward L. Lee, Jr.*
Counsel to Commissioner Khouri.....*John A. Moran*
Counsel to Commissioner Cordero.....*Mary T. Hoang*
General Counsel*Rebecca A. Fenneman*
Secretary.....*Karen V. Gregory*
Chief Administrative Law Judge.....*Clay G. Guthridge*
Director, Office of Consumer
Affairs and Dispute Resolution Services.....*Vern W. Hill*
Director, Office of
Equal Employment Opportunity*Keith I. Gilmore*
Inspector General*Adam R. Trzeciak*
Managing Director.....*Ronald D. Murphy*
Deputy Managing Director.....*Florence A. Carr*
Director, Bureau of Certification
and Licensing*Sandra L. Kusumoto*
Director, Bureau of Enforcement*Peter J. King*
Director, Bureau of Trade Analysis.....*Austin L. Schmitt*

Mission

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



I

THE COMMISSION

A. FUNCTIONS

The Federal Maritime 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 principal statutes administered by the Commission are the Shipping Act of 1984 (1984 Act), the Foreign Shipping Practices Act of 1988 (FSPA), section 19 of the Merchant Marine Act, 1920 (1920 Act), and sections 2 and 3 of Pub. L. No. 89-777, 80 Stat. 1350. These statutes are now codified in Title 46 of the U.S. Code at sections 40101 through 44106.

The Commission's regulatory responsibilities include:

- Reviewing and monitoring agreements among ocean common carriers and marine terminal operators (MTOs) relating to service in the U.S. foreign oceanborne trades, to ensure that they do not cause substantial increases in transportation costs or decreases in transportation services. Under the Shipping Act, the general antitrust laws do not apply to certain agreements between or among ocean common carriers and marine terminal operators. The Commission conducts preliminary reviews and performs ongoing oversight of such agreements and can take action to address agreement activity that does not meet the requirements of the Shipping Act, or that cause effects prohibited by the Shipping Act.
- Maintaining and reviewing confidentially filed service contracts and NVOCC Service Arrangements between ocean common carriers and shippers to guard against detrimental effects to shipping in the U.S. foreign trades.

- 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 and otherwise cause economic harm.
- Ensuring common carriers' tariff rates and charges are published in private, automated tariff systems and electronically available to the shipping public.
- Monitoring rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable.
- Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay claims for personal injury or death, and to reimburse passengers in the event of nonperformance of a voyage or cruise.
- Licensing ocean transportation intermediaries (OTIs) in the U.S. to protect the public from unqualified, insolvent, or dishonest companies.
- Ensuring that OTIs maintain financial responsibility to protect the shipping public from financial loss.
- Protecting the shipping public from economic harm by investigating rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the United States, and acting to stop unjust or unlawful practices that violate the Shipping Act.
- Taking action to address unfavorable conditions arising out of foreign government or business practices in the U.S. foreign shipping trades.

The Commission carries out its regulatory responsibilities by conducting informal and formal investigations. It holds hearings, considers evidence, renders decisions, and issues appropriate orders and regulations. The Commission also adjudicates and mediates disputes involving regulated entities, the shipping public, and other affected individuals or interest groups.

B. ORGANIZATION

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

The Commission's organizational units consist of: Office of the General Counsel; Office of the Secretary (including the Library); Office of Consumer Affairs and Dispute Resolution Services; Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Inspector General; Office of the Managing Director; the Offices of Human Resources, Budget and Finance, Management Services, and Information Technology; the Bureaus of Certification and Licensing, Enforcement, and Trade Analysis; and the Commission's Area Representatives. In fiscal year 2011, the Commission had a total appropriation of \$24,086,730. That appropriation supported the actual employment of 128 full-time equivalent positions during the fiscal year. The majority of the Commission's personnel are located in Washington, D.C., with Area Representatives in Houston, Los Angeles, New Orleans, New York, Seattle, and South Florida.

II

THE YEAR IN REVIEW

In 2011, the Federal Maritime Commission marked its 50th year since its establishment as an independent agency by President John F. Kennedy. The Commission commemorated the anniversary year with a series of events, including a Chairman's Roundtable that featured seven current and former FMC Chairmen discussing past, present, and future issues faced by the FMC, as well as an awards ceremony luncheon with current and past FMC employees.

The commercial ocean transportation system returned to a more normal state in fiscal year 2011, as vessel capacity returned to service in the U.S. inbound and outbound trades, reflecting the recovery begun in fiscal year 2010 from the industry's worst recession in over 60 years. As additional vessel capacity was brought back on line, foreign container manufacturers brought plants back on line and began producing shipping containers again, after being shut down as a result of the recession. The shortage of both vessel capacity and containers in fiscal year 2010 had severely impacted U.S. importers and exporters, who as a result of the shortages encountered difficulty arranging for shipment of their cargo. In addition, shippers frequently faced rapid and substantial increases in transportation costs from the lows of 2009, often with little advance warning. Throughout the first three quarters of fiscal year 2011, carriers relieved that strain on our transportation system by deploying additional vessels and containers. By the end of the fourth quarter of fiscal year 2011, however, carriers began again to scale back vessel capacity, stating that existing capacity exceeded demand. At the same time, alarms were sounded that soon shippers would again encounter significant container shortages.

To more closely monitor concerted activity, the Commission in 2010 imposed additional reporting requirements on the major outbound and inbound transpacific rate discussion agreements and in early 2011 imposed additional reporting requirements on global alliances. The Commission then extended the reporting requirements for the transpacific rate discussion agreements through April 2012. The Commission has devoted significant staff time to close monitoring of those agreements and alliances.

The Federal Maritime Commission'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 highlighted actions under each of the Commission's strategic goals provide an overview of agency activities in pursuit of its mission. Central to all of these actions were recognition of the ever changing economic environment and avoiding reoccurrence of capacity issues and shipping difficulties encountered during the recovery from the severe maritime industry recession of fiscal year 2009.

Strategic Goal 1: Maintain an Efficient and Competitive International Ocean Transportation System

The FMC is charged with ensuring competitive and efficient ocean transportation services for the shipping public. Competition in U.S. trades helps to foster competitive rates and encourage diverse service offerings for the benefit of U.S. exporters and importers, and ultimately consumers. The Shipping Act of 1984 grants ocean carriers and marine terminal operators limited antitrust immunity for activities pursuant to agreements they file with the Commission. The Commission conducts preliminary reviews and performs ongoing oversight of such agreements. The Commission can take action to address activities of such agreements that do not meet the requirements of the Shipping Act or that cause effects prohibited by the Shipping Act.

Fiscal year 2011 was an active year for the Commission, which continued to concentrate on facilitating U.S. exporters' access to foreign markets via ocean transportation, supporting the economic recovery, protecting U.S. consumers, encouraging a sustainable ocean transportation industry, enhancing safety and security, and monitoring foreign practices to protect U.S. jobs. The Commission's Bureau of Trade Analysis focused on collecting and analyzing data for the Commission's study of the impact of the October 2008 European Union (EU) repeal of its block competition law exemption for liner conferences. Data analyzed included information regarding changes in carrier market structures, competition, services, vessel capacity, rates, and surcharges. The Commission also established a dialogue with officials of the European Commission, Directorate-General for Competition.

The Commission increased its monitoring of concerted activities of carriers, particularly in the transpacific trades, to ensure that agreement members did not cause unreasonable increases in rates or unreasonable reductions in service. In addition, the Commission assessed the impact of slow steaming practices in reducing fuel consumption and carbon emissions, as well as the question of whether fuel costs savings accrued from slow steaming were passed on to the shipping public.

Supporting U.S. Exports and the Economic Recovery: Following the worst year in the maritime industry since the invention of the containership, fiscal year 2010 began with a recovery in ocean trade that was stronger than many anticipated. Demand for cargo space and containers outstripped supply, and U.S. exporters and importers saw supply chain disruptions such as abruptly cancelled bookings, cargo rolled to the next sailing, and successive surcharges and price increases. Early in 2010, President Obama also announced his National Export Initiative to double exports over the next five years, directing agencies "to use every available federal resource" in pursuit of that goal. During fiscal year 2011, exports in goods continued to show strong growth, on pace to meet the National Export Initiative's goal, while vessel capacity and container availability met or exceeded demand.

Addressing Supply Chain Problems: The FMC conducted an aggressive search for solutions to supply chain problems that threatened to impede the growth of exports and the continued recovery. In fiscal year 2010, the Commission initiated Fact Finding Investigation No. 26, *Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades*, and the investigation continued into fiscal year 2011. The fact finding team held more than 170 interviews with a wide variety of companies and organizations involved in international ocean shipping, led a series of best-practices discussion meetings between shippers and carriers, and began internet-based collaborative efforts to develop solutions to container

availability issues. During fiscal year 2011, the fact finding officer issued her final report, which led to the Commission taking several recommended steps:

- **Rapid Response Teams:** The Commission established ongoing Rapid Response Teams to provide prompt solutions for commercial disputes between carriers and their customers. Major ocean carriers named high-level liaison officials to work with the Rapid Response Teams to cut through red tape and respond to specific shipper concerns within 24 hours. The Commission has strongly encouraged shippers, ocean transportation intermediaries, and ocean carriers to contact the Commission's Rapid Response Teams with commercial issues or disputes that need immediate attention.
- **Increased TSA and WTSA Oversight:** Throughout fiscal year 2011, the Commission closely monitored activities of the rate discussion agreements in the United States' largest trade lane -- the inbound Transpacific Stabilization Agreement (TSA) and the outbound Westbound Transpacific Stabilization Agreement (WTSA). Verbatim transcripts of agreement meetings were required and reviewed by Commission staff. The transcript requirement has enabled the Commission to better evaluate assertions by many shippers that member carriers may have been improperly discussing issues, such as collective capacity reductions, that are not authorized by their agreements.
- **Increased Carrier Alliance Oversight:** In fiscal year 2011, the Commission increased its oversight of global vessel alliances, which have authority to set capacity collectively. The Commission required the major alliances to submit minutes of certain meetings, monthly capacity reports, and advanced notice of capacity changes. Staff reviewed the submissions for potential capacity shortages and to ensure compliance with agreement authority.

- **Service Contract Enhancement Project:** The Commission also determined to assist small U.S. exporters and importers improve their service contracting practices through education and outreach.

In addition, the Commission has been assisting ocean carriers, the U.S. Department of Agriculture's Agricultural Marketing Service, and agricultural exporters on a pilot project to give more transparency and visibility to the chronic problem of locating empty containers for exports. The Agricultural Marketing Service has completed the pilot project to show container availability at 18 U.S. port and inland locations. Beginning in February 2012, the Agricultural Marketing Service plans to collect container availability data from at least ten leading ocean carriers, which will assist U.S. exporters determine weekly container availability, as well as container availability projections two weeks in the future.

Economic Relief to Small Businesses: In fiscal year 2011, the Commission approved a rule change to conditionally exempt more than 3,500 licensed non-vessel-operating common carriers (NVOCCs) from the costs and burdens of publishing in tariffs the rates they charge for cargo shipments. Most NVOCCs are small businesses who could see significant savings from the exemption.

Marine Environmental Committee and Clearinghouse: The FMC has seen environmental issues become increasingly central to the agreements and shipping practices we monitor. The Commission's Marine Environmental Committee reviews filings at the agency for best environmental practices that the Commission can put forward as models for adoption by other ports and companies. The Commission also has created a webpage to serve as an environmental issues clearinghouse for information on maritime environmental issues, news, resources, laws and regulations, and best practices. The Commission is monitoring decisions of the International Maritime Organization's Marine Environment Protection Committee for their potential impacts on the U.S. ocean transportation industry.

Encouraging An Efficient, Sustainable Ocean Transportation System: In fiscal year 2010, the Commission allowed TSA's member lines to work together to implement slow steaming and other environmental initiatives. Slow steaming, or operating at reduced speeds, allows vessels to save fuel, which reduces their emissions and affords substantial cost savings. TSA member lines have indicated that they may also use their new authority to work to increase use of alternative fuels, cold ironing, and other pollution-reducing technologies. In fiscal year 2011, the Commission reviewed the impact of these practices to ensure that they do not cause unreasonable constraints on the supply chain, and to determine whether fuel cost savings were passed on to shippers.

EU Study: The Commission was actively engaged in gathering and analyzing data for its study of the impact of the October 2008 EU repeal of its block competition law exemption for liner shipping conferences. Data include information regarding changes in carrier market structures, competition, services, vessel capacity, rates and surcharges. A dialogue also was established with officials of the European Commission, Directorate-General for Competition. The Commission will issue the results of its study to Congress and the public during the second quarter of fiscal year 2012.

Coordination with the International Trade Administration, U.S. Department of Commerce: Commission staff coordinated with the International Trade Administration (ITA) to support export growth and discuss means of addressing exporters' challenges in obtaining containers or vessel space for their shipments.

Container Freight Rate Indices and Derivatives: In fiscal year 2011, the Commission began receiving service contracts with rates that adjusted based on container freight rate indices, and some players in the industry began engaging in derivative transactions based on those indices. In response, the Commission launched a Container Freight Index and Derivatives Working Group that studied how index-based contracts and derivatives impact the ocean transportation industry and comport with Commission statutes and regulations.

Strategic Goal 2: Protect the Public from Unlawful, Unfair, and Deceptive Practices and Resolve Shipping Disputes

The FMC has a wide variety of responsibilities to protect the public from financial harm, including assisting in the resolution of disputes related to the shipment of goods or the carriage of passengers, investigating and prosecuting unreasonable or unjust practices, and ruling on formal complaints alleging violation of the Shipping Act. The FMC also contributes to the integrity and security of the nation's supply chain and transportation system by (1) identifying unlicensed operations and licensing only those OTIs with appropriate character and financial responsibility, (2) ensuring financial responsibility of cruise vessel operations so that in the event of non-performance, passengers do not forfeit deposits made to the cruise lines, and (3) enforcing prohibitions against mislabeling cargo shipped to or from the United States. In carrying out these regulatory responsibilities, the Commission undertook a number of significant actions during fiscal year 2011 to address issues affecting U.S. consumers who ship their personal goods overseas or take cruises.

Key Accomplishments in Fiscal Year 2011

Household Goods Shipments: The Commission conducted Fact Finding Investigation No. 27, *Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades*, to identify and address issues that individual consumers have experienced when shipping their personal household goods overseas. Each year, the FMC receives a substantial number of complaints from individuals who have experienced problems with their international household goods shipments. Between 2005 and 2009, the Commission received over 2,500 such consumer complaints related to household goods, moving companies transporting personal effects and vehicles. In fiscal year 2011, the Fact Finding Officer concluded the investigation with a report containing a number of recommendations, which were adopted by the Commission, including:

- **Consumer education:** The Commission determined to upgrade its website to better assist customers shopping for international shipping options; engage in formal cooperation with other governmental agencies who protect consumers moving household goods; enhance cooperation with trade associations representing household goods movers; develop information for ocean transportation intermediaries to distribute to consumers moving household goods; target outreach to local communities that regularly ship household goods overseas; and encourage household goods movers to link their websites to the FMC's website for consumer information.
- **Industry best practices and model forms:** The Commission also voted to work with industry groups and consumers to develop a set of best practices and model shipping forms that address issues consumers have encountered when shipping household goods.
- **Licensing issues:** As the Commission works to update its licensing regulations, it will include recommendations for adjustments that specifically address issues with household goods shipments.
- **Enforcement:** Commission staff worked to enhance joint law enforcement efforts to protect consumers and also address problem household goods movers. An interagency memorandum of understanding (MOU) was under negotiation with the Federal Motor Carrier Safety Administration (FMCSA) to address household goods issues. The Commission also voted to develop enforcement strategies targeted to entities offering services related to household goods shipments.
- **Alternative Dispute Resolution (ADR):** The Commission also decided to move forward with initiatives to better promote its Ombuds and other ADR services to assist consumers who experience problems when moving their household goods overseas.

Passenger Vessel Non-performance Coverage: After considering extensive input from cruise lines, the Commission determined to increase protections available to passengers, while reducing the burden of Commission coverage requirements on smaller vessel operators. A proposed rule to that effect was issued in late fiscal year 2011. The Commission also worked to ensure compensation of passengers affected by the demise of Cruise West, a cruise line with significant sailings from the Pacific Northwest to Alaska.

Monitoring Foreign Practices to Protect U.S. Jobs: The Commission was also vigorous in carrying out its charge to monitor and prevent practices by foreign governments or entities that adversely affect U.S. commerce. Following concerns raised by U.S. shippers, the FMC's Chairman visited the Shanghai Shipping Exchange (SSE) to seek and obtain assurances regarding protections for confidential information of U.S. companies that must be filed with the Exchange. The Commission followed up by raising these issues and the concerns of U.S. NVOCCs in October 2010, as part of the U.S. delegation to bilateral consultations with the Chinese Ministry of Transport under the U.S.-China Maritime Agreement. A reciprocal visit of the SSE to the FMC took place in early fiscal year 2012. The Commission will continue to follow developments and work with China and our other major trading partners to ensure that no unreasonable conditions exist that would impair U.S. commerce.

Dispute Resolution: During fiscal year 2011, 565 complaints were received that necessitated the opening of cases to provide dispute resolution services. This was a 33% increase over the volume of cases in fiscal year 2010 and included 127 passenger complaints about cruise line issues, 250 complaints with respect to household goods shipments, and 188 complaints involving other cargo shipment matters.

Participation of the parties in confidential ADR services can provide a means for immediate, cost-effective resolution through cooperation between parties. Cargo shipment complaints are increasingly complex. Problems involving ocean transportation intermediaries with overextended finances and inability to complete ocean transportation continued to be an issue. In addition, many household goods complaints pertained to initial charges quoted vis á vis the actual charges billed, often due to measurement discrepancies.

Enforcement Actions to Protect the Shipping Public and Address Market Distorting Activities: The Commission's Bureau of Enforcement and Area Representatives continued their efforts to investigate and prevent practices that are unfair and deceptive. The targeted violations included misdescription of cargo, which also poses a serious safety and security risk because it prevents vessel operators and port officials from knowing when dangerous goods are being transported on vessels into the United States.

During 2011, the Commission collected \$2.1 million in penalties for such violations. The Commission concluded a compromise agreement with a major Japanese-flag shipping line, resolving alleged Shipping Act violations affecting more than 1,000 shipments. Violations included providing transportation services to intermediaries that did not have the required tariff, license, or bond; misdescribing cargo; allowing shipment under service contracts by persons who were not parties to those contracts; and providing transportation that was not in accordance with the rates and

charges set forth in published tariffs or service contracts. Commission staff alleged that these practices persisted over a period of several years and involved numerous service contracts. Under the settlement, the ocean common carrier terminated those activities, and paid \$1,200,000 in civil penalties to the Commission. Two major formal investigations were concluded during fiscal year 2011 when formal settlement agreements were approved in FMC Docket Nos. 10-09, *Sinicway International Logistics Ltd. and 11-04, Worldwide Logistics Co., Ltd.* The investigations addressed whether certain Shanghai-based NVOCCs used intentional misdescriptions of commodities as an unfair device or means to obtain ocean transportation at less than the rates that would otherwise apply, in violation of section 10(a) of the Shipping Act. The settlements resulted in payment of substantial civil penalties by each of the NVOCCs, and termination of alleged violative practices. In conjunction with formal proceedings instituted against an unlicensed freight forwarder in FMC Docket No. 11-06, *Indigo Logistics LLC, et al*, the Commission also sought and obtained a Federal court order enjoining the Indigo Logistics defendants from further unlawful activities.

Technology and Stewardship of Resources: Strategic management of the FMC's human resources, property management, financial, and procurement practices and other vital support activities is essential to meet the agency's regulatory and programmatic goals. The FMC continued its efforts to use new information technology (IT) to improve agency business processes and augment the accessibility of the public conducting licensing or legal business with the agency. In fiscal year 2011, it became apparent that significant systems were outdated and in need of substantial updating and revision to comply with government-wide standards and to improve efficiency of operations. These systems are critical to the Commission's ability to carry out its mission, especially in an era of increasing demands but declining human resources. After reviewing its IT needs, the Commission determined to terminate an existing major IT contract and proceed to recompetete for services to meet more defined needs, considering improved technologies.

On the human resources front, the Commission designed a new performance appraisal system for Non-Senior Executive Service (SES) personnel, obtained approval from OPM, provided training to all employees, and implemented the new system for the appraisal period beginning September 1, 2011. The revised system demands greater communication between staff and managers and explicitly identifies at least twenty standards of performance for each employee. It was developed by an internal task force composed of supervisory and non-supervisory personnel, equally distributed.

III

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. WORLDWIDE

The world's container trade expanded by approximately 7 percent in fiscal year 2011 compared to an expansion of almost 10 percent in 2010. As the fiscal year came to a close, 156 containerships lay idle, representing 2.5 percent of the total fleet capacity measured in TEUs (twenty-foot equivalent container units). In contrast, 128 ships, representing less than 2 percent of the containership fleet capacity, lay idle at the end of fiscal year 2010.

Container volumes in the U.S. liner trades in fiscal year 2011 expanded 7 percent to 29.5 million TEUs, compared to 27.7 million last year. The U.S. share of the world's container trades was 19 percent. U.S. container imports continued to increase, expanding by 5 percent to 17.6 million TEUs, compared to 16.8 million in 2010. This was still well below the record of 19.4 million TEUs reached in fiscal year 2007. U.S. container exports grew by 9 percent to 11.9 million TEUs compared to 10.9 million in 2010 - pushing U.S. exports to a new record high. The U.S. container imbalance improved slightly; for every 100 loaded containers exported from the U.S. 148 were imported, compared to 154 imported in fiscal year 2010.

On a worldwide basis, the containership fleet expanded at about the same pace as the demand for global container shipping. This fiscal year, the containership fleet's nominal capacity grew by just over 7 percent compared to last year. At the end of September 2011, 4,926 containerships, with a fleet capacity of 15.2 million TEUs, were available to serve the world's container trades. Net of vessels scrapped, only 81 containerships were added to the world fleet, a significant decrease from last year's 145. As of September 30, 2011, there were orders worldwide for 655 new containerships with an aggregate capacity of 4.5 million TEUs. This amount of ship capacity on order is equivalent to 30 percent of the existing fleet capacity.

The world's container shipping industry became slightly more concentrated during fiscal year 2011. At the end of fiscal year 2011, the top five container operators controlled 46 percent of the world's containership fleet capacity, the top ten controlled nearly 66 percent, and the top twenty controlled almost 88 percent (compared to 43, 61 and 83 percent, respectively, last year). In contrast to the last two years, the carriers comprising the top five operators changed with COSCO Container Lines and Hapag-Lloyd entering the top flight by displacing Evergreen Line and APL.

B. ASIA

In fiscal year 2011, Asia accounted for 63 percent of all U.S. inbound and outbound containerized trade by volume. Seventy-one percent of all U.S. container imports originated from Asia, and the region received 52 percent of all U.S. container exports. The Ports of Los Angeles and Long Beach handle one-half of all containerized U.S. imports from and exports to Asia.

The *Transpacific Stabilization Agreement* (TSA), a fifteen member rate discussion agreement with voluntary pricing authority, operates in the inbound container trade from northeast and southeast Asia to all of the United States.³ During fiscal year 2011, TSA's share of the U.S. inbound Asia trade was approximately 89 percent, down from 93 percent the previous fiscal year. This decrease in market share was due mainly to new entrants to the trade in 2010 and 2011, including The Containership Company, Companhia Sud Americana De Vapores, Grand China Shipping Co., Hainan Pan

³The TSA's geographic scope also includes parts of the Indian Subcontinent (Bangladesh, Pakistan, and Sri Lanka, but not India).

Ocean Shipping Co., Horizon Lines, and T.S. Lines. However, due to unfavorable market conditions in fiscal year 2011, most new entrants either reduced services, suspended operations, or left the trade altogether.

For fiscal year 2011, container imports from Asia grew by nearly 3 percent, as compared to a 12 percent growth in the prior fiscal year. Northeast Asia accounted for 87 percent of transpacific imports, with most originating in China. During the fiscal year, the United States imported 12.5 million TEUs of Asian goods, compared to 12.1 million TEUs last year.

Prior to the annual service contract season that began on May 1, 2011, TSA lines proposed a general rate increase (GRI) per FEU (forty-foot equivalent container units) of \$400 to the U.S. West Coast and \$600 to the U.S. East Coast. TSA lines also proposed a peak season surcharge of \$400 per FEU, effective from June 15, 2011 through November 30, 2011, subject to adjustment based on changing market conditions. Press reports indicate that TSA carriers were unsuccessful in achieving the full proposed GRIs.

In July 2011, TSA modified its bunker adjustment factor (BAF) formula to reflect net fuel cost reductions gained from the carriers' practice of slow steaming.⁴ In August 2011, TSA published two revenue indexes, one to the U.S. West Coast and the other to the U.S. East and Gulf Coasts.⁵ TSA launched these indexes to support multi-year service contracts with rates that fluctuate based on changes in these indexes.

⁴The BAF surcharge is added to the base freight rate to compensate for fluctuations in the price of fuel oil. Carriers slow steam vessels in order to cut fuel costs and greenhouse gas emissions.

⁵The indexes are based on the weighted average revenue per FEU for twelve of the fifteen TSA members and, except for the BAF, they are inclusive of all assessorial charges collected.

The major rate agreement in the outbound transpacific trade is the *Westbound Transpacific Stabilization Agreement* (WTSA). Like TSA, the 10-member WTSA operates as a forum for the exchange of information among its members that enables them to propose rate actions for U.S. exports to Asia. WTSA's geographic scope covers all U.S. outbound shipments to northeast and southeast Asia.⁶ During fiscal year 2011, WTSA's share of the U.S. outbound Asian trade was approximately 64 percent.

U.S. exports to Asia increased by 9 percent during fiscal year 2011. The U. S. exported 6.2 million TEUs of goods to the region compared to 5.7 million TEUs in the previous fiscal year. Eighty-four percent of all U.S. container exports to Asia are destined for northeast Asia, which includes all of China, Taiwan, South Korea, and Japan.

WTSA members adopt GRIs for various commodity groups at different times during the year rather than a single, annual GRI. This practice is dictated by the seasonality of major U.S. agricultural export crops, which have different harvest seasons and peak shipping seasons. WTSA members proposed several GRIs during the fiscal year, but reportedly were largely unsuccessful in achieving their revenue goals. Like TSA, WTSA modified its BAF formula to take into account carriers' practice of slow steaming.

C. AUSTRALIA AND OCEANIA

The Oceania trade includes the nations and territories of Australia, New Zealand, Papua New Guinea, Western Samoa, and other South Pacific Islands. In fiscal year 2011, U.S. exports to the region grew by 8 percent. The top U.S. exports included general cargo, auto parts, paper, and grocery products. In the inbound trade, container imports from Australia/Oceania

⁶ Like TSA, WTSA's geographic scope also includes parts of the Indian Subcontinent (i.e., Bangladesh, Pakistan and Sri Lanka, but not India).

were down by 2 percent. Imports of meat and wine, the top two commodities from the region, accounted for 36 percent of the total import cargo volume in TEUs. Overall, U.S. exports shipped in the outbound trade direction exceeded imports. For every import TEU that moved inbound from the region, 1.7 TEUs of U.S. export cargo moved outbound. Hamburg Sud was the largest carrier operating in the trade with a market share of over 30 percent in each trade direction.

Carriers providing direct service in the trade are linked through a network of agreements. There are two main rate discussion agreements that cover the trade. In the outbound direction, six carriers participate in the USADA, and in the inbound direction, five carriers participate in the ANZUSDA. A sizable portion of the trade is made up of carriers who provide service through transshipment arrangements. In addition, five carriers serving the Pacific Islands participate in the *Pacific Island Discussion Agreement*. The carriers that participate in these rate discussion agreements are also involved in a series of vessel sharing agreements.

In June 2011, Pacific International Line (PIL) extended its weekly China transpacific service calling at the port of Long Beach by adding direct calls at ports in Australia and New Zealand. MSC announced plans for the start of the next fiscal year to offer direct calls in the trade at U.S. Pacific and Atlantic ports by obtaining space through the vessel sharing agreements of the established carriers. In turn, the carriers in the vessel sharing agreements announced plans to add more capacity by upgrading the size of their vessels.

D. INDIAN SUBCONTINENT AND THE MIDDLE EAST

For fiscal year 2011, U.S. container exports to the Indian Subcontinent grew by 9 percent, the same rate as in fiscal year 2010. U.S. container exports to the Middle East grew by 12 percent in fiscal year 2011, compared

to a 10 percent increase in the previous fiscal year. The United States exported approximately 444,000 TEUs to the Indian Subcontinent, and 582,000 TEUs to the Middle East. Also, the United States container imports from the Indian Subcontinent increased by 8 percent, and by 9 percent from the Middle East. The U.S. imported approximately 660,000 TEUs from the Indian Subcontinent and 163,000 TEUs from the Middle East in fiscal year 2011.

WTSA is the only major rate discussion agreement that operates in the U.S. export trade in the region. WTSA's geographic scope covers U.S. exports to the Indian Subcontinent countries of Bangladesh, Pakistan, and Sri Lanka (but not India or the Middle East).¹ For the fiscal year, WTSA's market share for U.S. exports to Bangladesh, Pakistan, and Sri Lanka was only 32 percent, down slightly from 35 percent in the previous fiscal year. No major rate discussion agreement covers U.S. exports to the Middle East.

TSA is the only major rate discussion agreement that operates in the U.S. import trades from the Indian Subcontinent countries of Bangladesh, Pakistan and Sri Lanka.² For the fiscal year, TSA lines had a 93 percent combined market share for U.S. imports from the countries of Bangladesh, Pakistan and Sri Lanka. During the fiscal year, Maersk Line, along with its subsidiary Safmarine, and APL moved nearly half of all container imports from the three Indian Subcontinent countries to the United States. No major rate agreement covers Middle East imports to the United States.

E. NORTH EUROPE

In fiscal year 2011, the U.S. and North Europe saw a sizable increase in container cargo growth in both trade directions. Compared to

¹ WTSA's geographic scope also includes northeast and southeast Asia.

² Like WTSA, TSA's geographic scope also includes northeast and southeast Asia.

fiscal year 2010, U.S. exports grew by 12 percent. In terms of commodities, containers of (used) automobiles rebounded from the recessionary slump to retake the position as the top U.S. liner export in the trade. Auto exports having surged by over 125 percent from the 2010 fiscal year levels. Other top container exports included paper, wood pulp, and auto parts. In the inbound trade, the volume of liner imports from North Europe grew by 10 percent. Beer and ale remained the top liner import from North Europe, accounting for 10 percent of the total cargo volume of imports in TEUs. Other top container imports from North Europe included auto parts, paper, furniture, and beverages. Continued growth is expected in both directions.

There were a number of service and agreement changes that added vessel capacity to the trade. Compania Sud Americana de Vapores S. A. (CSAV) entered the trade by launching a weekly loop service with CMA CGM under the CMA CGM/CSAV Victory Bridge Vessel Sharing Agreement. Orient Overseas Container Line Limited (OOCL) opted to charter space on the new service under the CMA CGM/OOCL Victory Bridge Space Charter Agreement. Compania Chilena De Navegacion Interocceania, S. A. (CCNI) also entered the trade by forming a weekly loop service with Hamburg Sud under the HSDG-CCNI USWC-Europe Vessel Sharing Agreement. In March 2011, Hapag Lloyd resumed its suspended Atlantic Express Shuttle between New York, Hamburg, and Antwerp. Mediterranean Shipping Company (MSC) upgraded the size of the vessels that it deploys in both of the service loops that it operates in the trade. By the end of the fiscal year, total annualized vessel capacity increased by 11 percent in each direction. The increase in vessel capacity was matched by the increase in cargo volume. The average utilization of vessel capacity for the fiscal year was reported to have been in the high 80 percent range in both trade directions.

During the fiscal year, many of the major carriers proposed general rate increases (GRIs) of \$125 to \$350 per TEU. According to reports by industry analysts, Freight-All-Kinds (FAK) per FEU increased from \$2,500

to \$2,750 in the inbound direction, and from \$1,500 to \$1,700 in the outbound direction. Additional GRI proposals were announced for the beginning of next fiscal year.

In December 2010, the World Liner Data Agreement (WLDA) took effect. WLDA, a new carrier information exchange agreement, replaced the Container Trade Statistics Agreement (CTSA), which was formed in October 2008 as an information exchange agreement among carriers operating in the liner trades between the U.S. and the European Union. WLDA has the same authority as CTSA to collect and disseminate trade data. However, its geographic scope includes all of the U.S. liner trades worldwide. CTSA was formally terminated in June 2011.

F. MEDITERRANEAN

Despite the financial uncertainty facing eurozone nations in South Europe, there was positive cargo volume growth in both trade directions in fiscal year 2011. Overall, container exports to the Mediterranean grew by 3 percent. Leading U.S. exports included paper, cotton, wood pulp, and lumber. In particular, U.S. exports of cotton to the region rose by 28 percent due to production losses in other parts of the world. Much of that cotton was shipped to textile manufacturers in Turkey. In the inbound direction, container imports from the Mediterranean grew by 12 percent. Shipments of wine, the top container import, were notably robust, increasing by 28 percent and accounting for 9 percent of the total import cargo in TEUs. The future outlook for cargo growth is positive but expected to be weaker due to the ongoing eurozone crisis.

The top four carriers in the trade (MSC, Hapag Lloyd, Maersk Line, and Zim) moved 70 percent of the total container cargo. Throughout the fiscal year, these major carriers proposed GRIs ranging from \$100 to \$300 per TEU in both directions of the trade. A number of notable service and agreement changes also occurred during the fiscal year. Specifically, MSC

initiated a new weekly loop service between the U.S. Pacific Coast and South Europe with port calls in Panama. Maersk Line and Hapag Lloyd began exchanging vessel space on their services between the U.S. Atlantic/Gulf and South Europe under the Maersk Line/HLAG West Med Slot Exchange Agreement. Further, Maersk Line terminated the U.S. leg of its pendulum service between the U.S. Pacific Coast, Asia, and the Mediterranean and removed vessel space from the trade. Service changes over the course of the fiscal year resulted in a slight increase in vessel capacity of 2 percent in each direction.

G. AFRICA

Cargo volumes between the United States and Africa increased by 10 percent in fiscal year 2011. The increase in cargo volumes included an 11 percent increase in U.S. exports to Africa from the previous fiscal year to 267,800 TEUs. Imports from Africa increased about 8 percent from the previous fiscal year to about 90,200 TEUs. South Africa dominates the U.S. liner trade with Africa, accounting for about 27 percent of the overall container volume and 46 percent of the imported containers. Nigeria is the United States' second largest trading partner in the region, with 15 percent of container volumes, and Ghana and Morocco are the third and fourth largest partners with about 10 percent and 6 percent, respectively.

There were no significant mergers, acquisitions, or changes in liner services during the fiscal year. Maersk Line, Safmarine (wholly owned by Maersk Line), and MSC continued to operate their joint weekly AMEX service under the authorities of the Southern Africa Agreement, formerly the Southern Africa/Oceania Agreement. This service, which sails from the U.S. East Coast to Port Elizabeth, Durban, and Cape Town, utilizes eight vessels of about 2,400 TEUs in size. Those three carriers are the top carriers in the Africa trade, carrying approximately 72 percent of the containers traveling between the United States and Africa.

H. CENTRAL AMERICA AND THE CARIBBEAN

In fiscal year 2011, U.S. export cargo to Central America increased 9 percent to 569,353 TEUs. Imports from Central America increased 8 percent to 695,003 TEUs. Waste paper accounted for the largest share of U.S. containerized exports at 11.7 percent. The second largest export commodity category was fabrics, yarns, and raw cotton, accounting for 11.6 percent. Grocery products, apparel, and used automobiles accounted for about 5 percent each. Fresh fruit made up for over half of all imports from the region, three-quarters of which consisted of bananas. The second largest import category was clothing and apparel with nearly 19 percent of the total.

Most of the largest carriers in the U.S./Central America trade participate in the *Central America Discussion Agreement* (CADA). In fiscal year 2011, the combined market share of CADA members was 69 percent for exports and 72 percent for imports.

In the liner trade between the United States and the Caribbean, U.S. exports, mainly of food, consumer goods, and manufactured products, remained largely unchanged at 516,861 TEUs. Imports to the United States increased a dramatic 28 percent to 171,884 TEUs.

Carriers in the U.S./Caribbean trade participate in four rate discussion agreements covering discrete trades: (1) the *Caribbean Shipowners Association*, (2) the *Florida-Bahamas Shipowners and Operators Association*, (3) the *Aruba Bonaire and Curacao Discussion Agreement*, and (4) the *Bermuda Discussion Agreement*.

I. SOUTH AMERICA

In fiscal year 2011, U.S. containerized exports between the United States and South America increased 12.5 percent to 1,012,459 TEUs from the previous fiscal year. Import cargo from South America to the U.S. increased 6.6 percent to 825,733 TEUs.

The South America region is generally divided between the West Coast and East Coast. Just over 48 percent of the U.S./South America cargo moved between the United States and the West Coast of South America in fiscal year 2011. U.S. export cargo to the West Coast of South America increased 13 percent to 434,000 TEUs, and imports from the region grew almost 7 percent to 451,705 TEUs. Waste paper accounted for the largest share of U.S. containerized exports at 12 percent. The second and third largest export commodities were synthetic resins and general cargo at 11 percent and 4 percent, respectively. Fresh fruit accounted for 31 percent of imports from the West Coast of South America. The second and third largest import commodities from the region were veneers/plywood and still wines at about 5 percent of total imports each.

By the end of fiscal year 2011, annualized vessel capacity in the U.S./West Coast of South America trade had increased 34 percent to 1,153,000 TEUs in the northbound trade, and increased 35 percent to 1,202,000 TEUs in the southbound trade.

Most of the carriers that provide direct service to the West Coast of South America are members of the *West Coast of South America Discussion Agreement* (WCSADA). There were two changes to membership during this fiscal year. CMA CGM joined the agreement in April 2011 and Maersk Line left the agreement in June 2011. At the time CMA CGM joined, it had a minor presence in the trade with only 2 percent market share of exports and less than a 1 percent share of imports. At the time Maersk Line left, its market share was 13 percent and 9 percent for exports and imports, respectively. The overall net effect of these changes in agreement membership was a 9 percent decrease in market share (to 70 percent) for cargo moving southbound and a 6 percent decrease (to 61 percent) for cargo moving northbound.

Trade between the United States and the West Coast of South America is highly competitive. The U.S. inbound trade includes four carriers outside WCSADA membership (Dole Ocean Cargo Express, Great White Fleet, Network Shipping and Banacol Colombia) that mainly carry proprietary cargo of fresh fruits and vegetables. There are also global carriers, such as NYK, which serves the WCSA trade directly with its Asia Latin America Express service via port calls to the U.S. Pacific Coast, and Evergreen, MOL, and Hapag Lloyd. The latter three serve the trade via transshipment hubs in Panama, Mexico, and the Caribbean. Further competition exists from several regional carriers, including Tropical Shipping, Antillean Lines, Maruba S.C.A., Isabella Shipping, SCM Lines, Industrial Maritime Carriers, West Coast Industrial Express, and Swordfish Shipping.

Liner cargo in the trade between the U.S. and the East Coast of South America accounted for almost 52 percent of the U.S./South America liner cargo. U.S. exports to the East Coast of South America increased 12 percent

to 578,500 TEUs during fiscal year 2011. Imports from the region increased 4 percent to 367,900 TEUs during the same period. The top export commodity was auto parts at 8 percent. Waste paper was the second top export commodity at 4 percent. Logs and lumber was the top import commodity at 7 percent. The second and third top commodities from the region were granite and coffee at 6 percent each.

Unlike the West Coast of South America trade, there are no active rate discussion agreements in the East Coast of South America trade.



IV

**THE FOREIGN SHIPPING
PRACTICES ACT OF 1988**

A. IN GENERAL

The Foreign Shipping Practices Act of 1988 (FSPA), which became effective on August 23, 1988, directs the Commission to investigate and address adverse conditions affecting U.S. carriers in U.S. oceanborne trades, when such conditions do not exist for foreign carriers in the United States under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the United States.

In fiscal year 2011, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no direct FSPA action was necessary.



**B. 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 2010. 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 2010. The figures in Table 1 represent each country’s total U.S. liner imports and exports combined in thousands of TEUs.

**Table 1: Top Twenty U.S. Liner Cargo
Trading Partners (2010)**

Rank	Country	TEUs (000s)
1	China (PRC)	10,763
2	Japan	1,419
3	South Korea	1,324
4	Taiwan (ROC)	1,063
5	Hong Kong ⁷	1,010
6	Germany	714
7	India	686
8	Vietnam	659
9	Brazil	573
10	Indonesia	537
11	Belgium and Luxembourg	517
12	Thailand	507
13	Italy	479
14	Netherlands	413
15	United Kingdom	383
16	Malaysia	333
17	Guatemala	308
18	Honduras	307
19	Australia	287
20	Chile	282

⁷Although, Hong Kong reverted to Chinese control in July 1997, PIERS continues to report data separately for Hong Kong because of its status as a major transshipment center.

There was an 11 percent year-to-year increase in liner volumes in the United States' bilateral trade with its top 20 trade partners. The membership of the top 20 list remained the same as in 2009, and the top 8 countries remained identical. Allowing for some shifts in their individual rank order, the top 6 countries have topped the list for the past decade. Two of the top 20 countries posted year-to-year volume increases of over 20 percent – Belgium & Luxemburg and Brazil. China, whose U.S. trade volumes gained 11 percent from last year, easily led the field again in 2010. Indeed, China's trade volumes exceeded the combined total for the next 15 largest U.S. trading partners. Only 2 of the top 20 countries posted year-to-year volume decreases – Guatemala and Australia.



V

SIGNIFICANT ACTIVITIES

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. In General

The Office of the Secretary (OS) serves as the focal point for matters submitted to and emanating from the Commission. It is the public's main contact point with the FMC. The Office receives and processes a variety of documents filed by the public, including: complaints initiating adjudicatory proceedings for alleged violations of the shipping statutes and other applicable laws; special docket applications and requests to correct clerical or administrative errors in service contracts or NVOCC Service Arrangements (NSAs); all communications, petitions, notices, pleadings, briefs, or other legal instruments in administrative proceedings; and subpoenas served on the FMC, its members, or employees.

The Office is responsible for organizing Commission Sunshine Act meetings, oral arguments, and public hearings; preparing and submitting regular and notation agenda matters for consideration by the Commission, and preparing and maintaining the minutes of actions taken on these agenda and notation matters; and issuing orders and notices of actions of the Commission. The office processes requests and ensures compliance with the Freedom of Information, Government in the Sunshine, and Privacy Acts; responds to information requests from the maritime industry and the public; issues publications; and authenticates instruments and documents of the Commission; publishes Commission historical decisions; and maintains and promulgates the Commission's regulations. The Office maintains a public reference/law library and a docket activity library; oversees the maintenance, organization, and content of the Commission's website; develops, monitors, and reports on the agency's Strategic Plan; develops and implements the agency's Plain Writing Plan; manages the agency's document scanning program; and participates in the development and coordination of agency-wide public relations/outreach strategies and initiatives.

During fiscal year 2011, the OS continued to administratively process and direct all filings addressed to the Commission and its component offices, including agreements filed under section 5 of the 1984 Act. The Office also issued 86 orders and notices in docketed proceedings on behalf of the Commission.

The Office serves as the Commission's public information/press office. Accordingly, it prepares or coordinates the preparation of Commission news releases; responds to public and press inquiries or directs inquiries to the appropriate Commission bureau/office; and monitors the trade press for matters of agency interest for referral to the Chairman, Commissioners, and staff.

The Secretary was designated as the agency's Performance Improvement Officer (PIO) in February 2010. Subject to the direction of the Chairman, and in consultation with the Managing Director, the PIO oversees the Commission's performance management activities, including development of performance goals, plans, and reports. During fiscal year 2011, the PIO secured OMB clearance and implemented revisions to the 2010-2015 Strategic Plan. These revisions further streamline the plan to focus all resources on mission-oriented goals. The Secretary held quarterly meetings with all agency components to measure progress toward specific performance targets set out in the Strategic Plan. The impact of potential budgetary reductions on the agency's ability to achieve annual performance targets was assessed by the PIO. While some reductions and shifts in contractor and staff resources occurred during the fiscal year, the Commission was able to meet its FY 2011 performance targets. The Commission's FY 2012 budget is slightly less than its FY 2011 budget. The PIO will continue to hold quarterly meetings with all agency components to track and quickly identify any potential issues that could potentially impact the Commission's ability to meet its FY 2012 targets.

The Office is significantly involved with the Commission's ongoing objective to enhance public awareness of the agency, its programs, and services. The Office promotes transparency and accountability on behalf of the Commission by evaluating, developing, and implementing improvements to the Commission's website. During this fiscal year, the Office increased the amount of information available on specific topics and issues related to the agency's activities and important to stakeholders and the media. For example, the Office worked with other Commission components and sometimes

other agencies to provide information on such hot topics as moving personal household goods, cruise passenger information, passenger vessel financial responsibility, U.S. export and import capacity issues, China's new shipping policies, maritime environmental issues, the impact on maritime commerce of issues at the nuclear reactors in Fukushima, Japan following an earthquake and typhoon, and Negotiated Rate Agreement guidance. These informative online resources provide easy public access to useful information and resources, increase public awareness of how the FMC is involved with daily events, and help to underscore our mission to oversee oceanborne transportation in the foreign commerce of the U.S.

In late FY 2011, the Office began working with an outside vendor to redesign the Commission's website. This project will include a new graphical design and layout for the Homepage and interior pages, significantly improve content organization that will render a more citizen-centered website, enhance navigation, provide more social networking/communications capabilities, and add further improvements in search engine optimization to increase public visibility of the Commission's website and services. During the latter part of fiscal year 2011, the Office developed and implemented the Commission's Plain Writing Plan, trained key Commission staff in best practices for plain writing, and led an agency-wide team to begin systematic review and enhancement of website content. These efforts will continue during 2012.

The process of electronically scanning/imaging Commission records is an ongoing function of the Office. The Office electronically converts all official Commission files (both current and historical); and is responsible for planning, scheduling, and systematically scanning documents for other agency components. This Document Management Program supports the agency's initiatives for Continuity of Operations (COOP) and disaster recovery by: improving preservation of, and staff access to, Commission documents, improving staff response time to public inquiries, and providing direct public access to electronic files. As a result of its scanning program, the Office continued to make key documents filed in formal proceedings available through its website.

During the fiscal year, the Office continued to electronically compile contents of 28 bound volumes of historical Commission decisions issued between the years 1919 and 1987 into “electronic volumes”. It is anticipated that these electronic volumes will be completed and ready for posting to the Commission’s website during late fiscal year 2012. These historical decisions are no longer in publication in bound volume form, however with the completion of this project, the entire body of historical Commission decisions will be available on the FMC’s website. Making this information readily available to the public in electronic form has proven to be a useful and cost effective resource, especially for attorneys practicing before the Commission. During fiscal year 2011, the Office also completed scanning of FMC Annual Reports from 1917 to 1999, and made this historical information available to the public via the FMC website.

In support of the Commission’s strategic goal to protect the public from unlawful, unfair, and deceptive ocean transportation practices and resolve shipping disputes, during fiscal year 2011 the Office led an agency-wide team to begin the process of reviewing the Commission’s Rules of Practice and Procedure. Emphasis is on evaluating the Commission’s procedures against current Federal Rules of Civil Procedure and updating Commission procedures where appropriate. A final rule was published in February 2011 which relieved filing burdens on the public and parties to Commission proceedings, reduced the Commission’s reliance on paper submissions, and enhanced privacy protections for the public. The team will continue to meet and further develop revised rules for the Commission’s consideration during FY 2012.

2. Library

The OS also oversees the Commission’s Library. The Library serves the needs of both the Commission and the public for research and information. It is a specialized repository of current and basic materials primarily covering the shipping industry, the history of shipping, and regulations covering all phases of shipping in the U.S. foreign trade. It contains a variety of books, directories, encyclopedias, journals, magazines, reports, microforms, and videos. The Library also contains material on several related fields such as engineering, economics, political science, and a collection of legal publications. The Library collection includes law encyclopedias, engineering textbooks, legal treatises, legislative materials, and selected titles of the National Reporter system. The Library’s holdings consist of approximately 8,700 volumes and numerous microfiches, CD-ROMs, and online services.

B. OFFICE OF THE ADMINISTRATIVE LAW JUDGES

1. In General

Under the direction and management of the Chief Administrative Law Judge, the Office of Administrative Law Judges (ALJ) holds hearings and renders initial or recommended decisions in formal rulemaking and adjudicatory proceedings and other matters assigned by the Commission as provided in the Shipping Act of 1984 and other applicable laws in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure.

The Office of ALJs has the authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken; regulate the course of hearings; hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests or similar matters; make decisions or recommend decisions; and take any other action authorized by agency rule consistent with the Administrative Procedure Act.

At the beginning of fiscal year 2011, fourteen formal proceedings were pending (on hand) before the ALJs (07-01, 08-03, 08-04, 08-06, 09-01, 09-08, 10-01, 10-05, 10-06, 10-07, 10-08, 10-09, 1896(F), and 1898(F)). During the year, twelve new formal proceedings were added (10-10, 10-11, 11-04, 11-06, 11-07, 11-08, 11-11, 11-12, 11-13, 11-14, 11-15, and 1923(F)) and one formal proceeding was remanded pursuant to Commission Order (08-04).

The ALJs issued initial decisions or orders subject to review by the Commission in twelve proceedings: initial decisions resolving three contested proceedings (08-04, 1896(F), and 1898(F)); initial decisions approving settlements in four proceedings (10-01, 10-09, 10-10 (two initial decisions approving two settlements), and 11-04); orders of voluntary dismissal of claims against respondents in two proceedings (10-07 (three respondents) and 10-10 (one respondent)); an order granting partial summary judgment for respondent in one proceeding (08-03); an order granting summary judgment for respondent in one proceeding (10-07); an initial decision on attorney's fees in one proceeding (08-04); an order granting a motion for leave to appeal an interlocutory order denying a motion to dismiss based on sovereign immunity in one proceeding (09-08); an order dismissing a claim for double damages in one proceeding (10-06); and an order dismissing a counterclaim in one proceeding (11-07).

2. Final Action by the Office of Administrative Law Judges on Initial Decisions and Orders Subject to Review.

Maier Terminals, LLC v. 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) has and continues unreasonably to refuse to deal or negotiate with Maier, and (d) has and 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. Maier and APM signed their leases in 2000. On February 28, 2011, PANYNJ filed a motion for summary judgment on the portions of the Complaint "based on supposed unreasonable discrimination in lease terms, on the ground that all such claims are barred by the Shipping Act's three-year statute of limitations," (46 U.S.C. § 41301(a)), arguing that the claim for a reparation award and the claim for a cease and desist order are barred. On May 16, 2011, the Administrative Law Judge issued an Initial Decision finding that the claim for a reparation award based on alleged discrimination against Maier in the negotiations that resulted in its lease and in the terms of the lease itself is barred by the statute of limitations. The Administrative Law Judge also found that the claim for a cease and desist order is not barred. The dismissal of the claim for a reparation award is subject to Commission review pursuant to Rule 227. Pursuant to Rule 153, the Administrative Law Judge certified the denial of the motion for summary judgment on the claim for the cease and desist order for review by the Commission.

Tiانشan, Inc. v. Tianjin Hua Feng Transport Agency Co., Ltd. [Docket No. 08-04]

On August 19, 2008, Tiانشan filed a Complaint alleging that Tianjin Hua Feng violated section 10(d)(1) of the Shipping Act, 46 U.S.C. § 41102(c), by refusing to give Tiانشan, the consignee of a shipment, the original bill of lading that would permit it to take delivery of the shipment. On March 9, 2011, the Administrative Law Judge issued an Initial Decision finding that

Tianjin Hua Feng violated the Act and entering a reparation award in the amount of \$16,944.00 plus interest. Neither party filed exceptions to the Initial Decision, and on April 12, 2011, the Commission issued a Notice not to Review. On April 29, 2011, Tienshan filed a petition for attorney's fees. On June 17, 2011, the Administrative Law Judge issued an Initial Decision awarding \$50,433.75 in attorney's fees. On July 20, 2011, the Commission issued a Notice not to Review.

La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre v. Natural Freight Ltd./Skytruck, Agility Logistics, and Hansa Transports SAC [Docket No. 1896(F)]

On January 13, 2009, the Complainants, La Torre's Enterprises, Cesar La Torre, Kaskamach SRL, Jaime La Torre, and Jennifer La Torre (collectively "La Torre") filed a claim alleging that the Respondents, Natural Freight Ltd./Skytruck, Agility Logistics, and Hansa Transports SAC violated section 10(d)(1) of the Shipping Act, (46 U.S.C. § 41102(c)). The case stemmed from the 2006 shipment of two forty-foot containers by La Torre from California, USA, to Callao, Peru. The bill of lading incorrectly described the inventory as used monitors. The containers were seized by Peruvian customs officials who rejected an attempt to correct the description. Complainants sought compensation for the loss of the shipment. On February 11, 2011, the Administrative Law Judge issued an Initial Decision dismissing the claim with prejudice. On March 15, 2011, the Commission served a Notice not to Review.

DSW International, Inc. v. Commonwealth Shipping, Inc., and Abou Merhi Lines, LLC, and Abou Merhi Lines, SAL [Docket No. 1898(F)]

On March 31, 2009, DSW International, Inc., filed a Complaint alleging that Respondents violated several sections of the Shipping Act when

they failed to deliver two cars that DSW International shipped from Texas to Nigeria. DSW International requested informal adjudication of the Complaint pursuant to 46 C.F.R. Part 502, Subpart S. On May 27, 2009, Commonwealth stated that it did not consent to informal adjudication pursuant to Subpart S and requested that the matter be resolved pursuant to Subpart T. Therefore, on May 27, 2009, the Secretary referred this matter to the Office of Administrative Law Judges. On March 29, 2011, the Administrative Law Judge issued an Initial Decision finding that Abou Merhi Lines, SAL, violated the Act and entering a reparation award in the amount of \$11,434.30 plus interest. The Administrative Law Judge dismissed the claims against Commonwealth, Abou Merhi Lines, LLC, and Abou Merhi Lines (USA), LLC, an entity identified in the body of the Complaint and Amended Complaint, but not the caption. On April 5, 2011, the Commission issued a Notice to Review.

SSA Terminals, LLC and SSA Terminals (Oakland), LLC v. The City of Oakland, Acting by and Through its Board of Port Commissioners [Docket No. 09-08]

On December 16, 2009, Complainants SSA Terminals, LLC and SSA Terminals (Oakland), LLC filed a Complaint alleging that Respondent, the City of Oakland, acting by and through its Board of Port Commissioners (hereinafter "the Port"), violated the Shipping Act (46 U.S.C. §§ 41106(2) and (3) and 41102 (c)) by: (1) imposing an undue or unreasonable prejudice or disadvantage with respect to the Complainants; (2) giving an undue or unreasonable preference or advantage to an unrelated non-party; (3) refusing to deal or negotiate with the Complainants; and (4) failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, and storing or delivering property. Complainant maintained that as a consequence of the Port's agreement with the unrelated non-party, Complainant had sustained and continued to incur injuries, including lost business, higher rents, and other payments and obligations to the Respondent, thereby suffering damages in the millions of

dollars. On November 8, 2010, the Administrative Law Judge issued an Order denying a motion to dismiss on Eleventh Amendment sovereign immunity grounds. On December 21, 2010, the Administrative Law Judge issued an Order granting the Respondent's motion for leave to appeal to the Commission and Respondent's motion to stay the proceedings during the appeal. The Commission heard oral argument on the appeal on September 8, 2011.

AMC USA, Inc. v. International First Service S.A. a/k/a IFS S.A.; International First Service Argentina a/k/a AR-IFS; International First Service USA, Inc. a/k/a IFS USA, Inc.; Global Wine Logistics USA Inc. a/k/a GWL USA, Inc.; Anita McNeil; and Ipsen Logistics GmbH [Docket No. 10-01]

On February 4, 2010, the Complainant AMC USA filed this action alleging violations of the Shipping Act, including violations of sections 8, 10, and 19. AMC's Complaint asserted that the Respondents violated the Shipping Act by failing to keep open to the public in an automated tariff system, tariffs showing all rates, charges, classifications, rules, and practices between all points and ports on its route and on any through transportation that has been established; failing to file with the Commission the service contracts entered into with vessel operating common carriers; engaging in a willful and deliberate fraudulent scheme to steal customers, employees, and proprietary information from Complainant in order to gain an unfair business advantage and/or in order to provide ocean transportation for property for less than the rates and/or charges that would otherwise have applied; operating under agreements that were required to be filed under the Shipping Act that were not effective pursuant to the Shipping Act; working together to allow parties to obtain transportation for property at less than the rates or charges that would have applied by unjust and unfair means; failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, and delivering property; and knowingly and willfully accepting cargo for the account of an ocean transportation intermediary that does not have a tariff and a bond, insurance, or other surety. AMC's Complaint also alleged that the Respondents acted as ocean transportation intermediaries in the United States without a license in violation of the Shipping Act and the Commission regulations.

On March 8, 2010, Respondents IFS S.A. and IFS USA filed their Verified Answer and Affirmative Defenses. IFS S.A.'s Counter Complaint alleged that AMC's knowingly disclosing, offering, soliciting, and receiving information concerning the nature, kind, quantity, destination, consignee, and routing of the property tendered or delivered to the common carriers without the consent of the shippers or consignees and using that information to the detriment and disadvantage to IFS S.A., a common carrier, and inappropriately disclosing that information to competitors, constituted a violation of Section 10(b)(13) of the Shipping Act, (46 U.S.C. § 41301(a)), and that AMC's allowing for the payment of rebates constituted a violation of Section 10(b)(1) of the Shipping Act (46 U.S.C. § 41104(1)), which prohibits common carriers from allowing such rebates not otherwise provided in their tariff or NVOCC service arrangement.

On October 4, 2010, the Administrative Law Judge approved a settlement agreement among AMC, IFS USA, IFS S.A., and Anita McNeil and approved a motion to dismiss International First Service Argentina a/k/a AR-IFS without prejudice. On November 5, 2010, the Commission served a Notice not to Review.

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]

On July 14, 2010, the Complaint was served alleging that Respondents violated the Shipping Act. Inter alia, the Complaint sought double damages pursuant to 46 U.S.C. § 41305, which permits the Commission to order the payment of additional amounts, not to exceed twice the amount of the actual injury, for violation of sections 41102(b), 41104(3), 41104(6), 41105(1), or 41105(3). On March 10, 2011, respondents Hapag-Lloyd A.G. and Hapag-Lloyd America, Inc. filed a motion to dismiss and/or for summary judgment, arguing that the Complainants did not allege violations of the sections for which double damages are permitted; therefore, the Complaint failed to state a valid claim for double damages. On May 24, 2011, the motion to dismiss was granted and Complainants' claim for double damages was dismissed. On June 24, 2011, the Commission issued a Notice not to Review. The other allegations in the Complaint remained pending.

Rendezvous International v. Chief Cargo Services, Inc., Kaiser Apparel, Inc., Edco Logistics, Inc., Oriental Logistics, Inc., and Razor Enterprise [Docket No. 10-07]

On July 19, 2010, Rendezvous International filed a Complaint alleging that Respondents violated several sections of the Shipping Act by fraudulently and unlawfully/wrongfully releasing three separate shipments to a customer without requiring presentation of bills of lading. On September 17, 2010, the Administrative Law Judge issued an Initial Decision approving a settlement with Chief Cargo Services, Inc. The proceeding against the other Respondents continued before the Administrative Law Judge. On October 19, 2010, the Commission served a Notice not to Review.

On October 15, 2010, the Administrative Law Judge issued an Initial Decision granting the request of Rendezvous International to dismiss without prejudice the Complaint against Kaiser Apparel, Inc., Edco Logistics, Inc., and Razor Enterprise, and granting the motion for summary judgment filed by Oriental Logistics, Inc., and dismissing the Complaint against it, finding that the material facts as to which there is no genuine dispute establish that Oriental Logistics, Inc., was not involved in the shipment. On November 16, 2010, the Commission served a Notice not to Review.

Sinicway International Logistics Ltd. – Possible Violations of Sections 10(a)(1) and 10(b)(2) of the Shipping Act of 1984 [Docket No. 10-09]

By Order of Investigation and Hearing dated August 20, 2010, the Commission commenced this proceeding to determine: 1) whether Sinicway violated section 10(a)(1) (46 U.S.C. § 41102(a)) of the Shipping Act by obtaining transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means; 2) whether Sinicway violated

section 10(b)(2) (46 U.S.C. § 41104) of the Shipping Act by providing service other than at the rates, charges, and classifications set forth in its published non-vessel-operating common carrier (NVOCC) tariff or applicable NVOCC service arrangement; 3) whether, in the event violations of the Shipping Act are found, civil penalties should be assessed against Sinicway and, if so, the amount of penalties to be assessed; 4) whether, in the event violations of the Shipping Act are found, the tariff(s) of Sinicway should be suspended; and 5) whether, in the event violations are found, an appropriate cease and desist order should be issued. On June 6, 2011, the Administrative Law Judge issued an Initial Decision approving a proposed settlement agreement between the parties and dismissing the proceeding. On March 25, 2011, the Commission served a Notice not to Review.

Damco USA, Inc., Damco A/S, A.P. Moller-Maersk A/S, Glencore Ltd., and Allegheny Alloys Trading, L.P. [Docket No. 10-10]

Draft Cargoways filed a Complaint on October 29, 2010, alleging that the Damco/Maersk respondents violated sections 8(a)(1), 10(b)(2) (A), 10(b)(11), 10(b)(13), and 10(d)(1) of the Shipping Act, (46 U.S.C. §§ 40501(a)(1), 41104(2), 41104(11), 41103(a), and 41102(c)). Draft Cargoways alleged that the Shipping Act was violated by the attempt to collect demurrage charges from it through a civil action originally filed by Damco USA, Inc. in the United States District Court for the Eastern District of Virginia. On December 28, 2010, Damco/Maersk filed its Answer, denying the allegations in the Amended Complaint, and asserting a variety of defenses. On June 6, 2011, the Administrative Law Judge issued an Order granting the parties' motion for approval of a confidential settlement agreement and dismissing, with prejudice, Respondents Damco USA, Inc., Damco A/S, and A.P. Moller-Maersk A/S. On April 27, 2011, the Commission served a Notice not to Review.

Allegheny Alloys Trading, L.P., was named a party in an Amended Complaint served on December 8, 2010. The Amended Complaint alleged that Allegheny Alloys violated section 10(a)(1) of the Shipping Act (46 U.S.C. § 41102(a)). Allegheny Alloys did not file an Answer to the Amended Complaint. On March 7, 2010, the Administrative Law Judge issued an Order granting dismissal, with prejudice, of Allegheny Alloys. On April 7, 2011, the Commission served a Notice not to Review.

The Amended Complaint served on December 8, 2010, also named Glencore as a party. Draft Cargoways alleged that Glencore violated section 10(a)(1) of the Shipping Act (46 U.S.C. § 41102(a)), by failing to pay demurrage/detention charges. On January 27, 2011, Glencore filed a motion to dismiss for failure to state a claim in lieu of an Answer to the Amended Complaint. On April 1, 2011, the Administrative Law Judge issued an Order granting a motion for approval of a settlement agreement and dismissal, with prejudice, of respondent Glencore. On May 3, 2011, the Commission served a Notice not to Review.

Worldwide Logistics Co., Ltd. – Possible Violations of Sections 10(a)(1) and 10(b)(2) of the Shipping Act of 1984 [Docket No. 11-04]

On March 30, 2011, by Order of Investigation and Hearing, the Commission commenced this proceeding to determine: 1) whether Worldwide Logistics violated section 10(a)(1) of the Shipping Act (46 U.S.C. § 41102(a)) by obtaining transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means; 2) whether Worldwide Logistics violated section 10(b)(2) of the Shipping Act (46 U.S.C. § 41104) by providing service other than at the rates, charges, and classifications set forth in its published non-vessel-operating common carrier tariff or applicable NVOCC service arrangement; 3) whether, in the event violations of

the Shipping Act are found, civil penalties should be assessed against Worldwide Logistics and, if so, the amount of penalties to be assessed; 4) whether, in the event violations of the Shipping Act are found, the tariff(s) of Worldwide Logistics should be suspended; and 5) whether, in the event violations are found, an appropriate cease and desist order should be issued. On July 21, 2011, the Administrative Law Judge issued an Initial Decision approving a proposed settlement agreement between the parties and dismissing the proceeding. On August 24, 2011, the Commission served a Notice not to Review.

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 Exports LLC (DNB) and AFI Elektromekanik Ve Elektronik San. Tic. Ltd. Sti. (AFI) commenced this proceeding by filing a Verified Complaint with the Secretary of the Commission alleging that Barsan Global Lojistiks Ve Gumruk Musavirligi A.S. (BGL), Barsan International, Inc. (Barsan Int'l), and Impexia Inc. (Impexia) violated section 10(b)(13) of the Shipping Act of 1984 (46 C.F.R. § 41103(a)). BGL and Barsan Int'l jointly filed a counterclaim alleging that DNB and AFI breached their contract with Barsan Int'l by failing to pay Barsan Int'l for transportation services provided to DNB and AFI. DNB and AFI filed a motion to dismiss the counterclaim, arguing that BGL and Barsan Int'l did not allege a violation of the Shipping Act and had not attempted to rebut the presumption that the claim is no more than a simple breach of contract claim over which the Commission does not have subject matter jurisdiction. BGL and Barsan Int'l did not file a response to the motion to dismiss the counterclaim. On July 7, 2011, the Administrative Law Judge dismissed the counterclaim for lack of subject matter jurisdiction. On August 9, 2011, the Commission served a Notice not to Review.

3. Pending Proceedings

At the end of fiscal year 2011, sixteen formal proceedings were pending (07-01, 08-03, 09-01, 10-05, 10-06, 10-08, 10-11, 11-06, 11-07, 11-08, 11-11, 11-12, 11-13, 11-14, 11-15, and 1923(F)). During fiscal years 2012 and 2013, the Office will conduct hearings and render decisions on adjudicatory proceedings and on such rulemaking proceedings as may be referred to the Office.

C. OFFICE OF THE GENERAL COUNSEL

The General Counsel provides legal counsel to the Commission. This includes reviewing staff recommendations for Commission action for legal sufficiency, drafting proposed rules to implement Commission policies, and preparing final decisions, orders, and regulations for Commission review. In addition, the Office of the General Counsel (OGC) provides written and oral legal opinions to the Commission, its staff, and the general public in appropriate cases. As described in more detail below, the General Counsel also represents the Commission before courts and Congress and administers the Commission's international affairs program.

1. Rulemakings and Decisions

The following are rulemakings and adjudications representative of matters prepared by the General Counsel's Office:

Rulemakings by the Commission

NVOCC Negotiated Rate Arrangements [Docket No. 10-03], 31 S.R.R. 1724 (March 2, 2011)

A notice of proposed rulemaking was published in the Federal Register on May 7, 2010. 75 FR 25150, Commission Docket 10-03. A public meeting was requested and held on May 24, 2010. Written comments were received through June 4, 2010. The final rule was posted on the Commission's website on February 25, 2011 and published in the Federal Register on March 2, 2011. On April 8, 2011, the Commission published a correction

to the final rule in the Federal Register. The final rule became effective on April 18, 2011.

The regulation allows licensed NVOCCs to enter into negotiated rate agreements (NRAs) with their shipper customers. An NRA is defined “a written and binding arrangement between a shipper and an eligible NVOCC to provide particular transportation service for a particular shipment at a particular rate prior to the receipt of the cargo by the common carrier or its agent (including originating carriers in the case of rates for through transportation).” The regulation exempts licensed NVOCCs who enter into NRAs from the following requirements of the Shipping Act: the requirement in Section 8(a), codified at 46 U.S.C. §§ 40501(a)-(c), that each common carrier keep open to public inspection in an automated tariff system tariffs showing all its rates; Section 8(b), codified at 46 U.S.C. § 40501(d)(time volume rates); Section 8(d), codified at 46 U.S.C. § 40501(e) (tariff rate increase may not be effective on less than 30 days’ notice but decrease effective immediately); Section 8(e), codified at 46 U.S.C. § 40503 (carrier application to grant refunds); and Section 10(b)(2)(A)’s requirement of adhering to the published tariff rate, codified at 46 U.S.C. § 41104(2)(A). Licensed NVOCCs entering into NRAs must still comply with the prohibitions contained in Section 10(b)(4) of the Shipping Act, codified at 46 U.S.C. § 41104(4)(prohibiting common carriers from unfair or unjustly discriminatory practices in service pursuant to a tariff), and Section 10(b)(8), codified at 46 U.S.C. § 41104(8)(prohibiting common carriers from undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage for tariff service). The Commission determined not to extend the ability to enter into NRAs to foreign-based NVOCCs who are unlicensed but bonded pursuant to 46 C.F.R. § 515.21(a)(3) but intends to issue a Notice of Inquiry requesting further information on ways to make the tariff filing exemption provided to licensed NVOCCS in 46 C.F.R. Part 532 more useful, including its possible extension to foreign-based NVOCCS not licensed by the Commission.

Decisions by the Commission

EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. – Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission’s Regulations at 46 C.F.R. § 515.27 [Docket No. 06-06], 31 S.R.R. 1257 (February 26, 2010)

This proceeding was instituted by Order of Investigation and Hearing served May 11, 2006, to determine whether respondents violated section 10(b)(11) of the Shipping Act and the Commission’s regulations at 46 C.F.R. § 515.27, by knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that did not have a tariff and bond as required by sections 8 and 19 of the Act. With regard to EuroUSA, the ALJ approved a Settlement Agreement between EuroUSA and the Bureau of Enforcement (BOE) on October 9, 2009. With regard to Tober Group (Tober), the ALJ issued an Initial Decision (ID) in which he concluded that BOE did not prove that the unlicensed intermediaries with whom Tober did business operated as NVOCCs, and therefore Tober did not violate section 10(b)(11) of the Shipping Act. The ALJ also concluded that Tober violated section 10(b)(2)(A) of the Act by providing service in the liner trade that was not in accordance with the rates and charges in its published tariff, but did not assess a penalty for these violations. BOE filed exceptions to the ALJ’s ID, and the Commission’s decision is pending. Finally, with regard to Container Innovations, the ALJ concluded that it violated section 10(b)(11) and should be subject to a civil penalty of \$390,000 for 13 knowing and willful violations of the Shipping Act. The ALJ’s decision regarding Container Innovations became administratively final on January 7, 2010. The case is currently pending before the Commission. The date for issuance of the Commission’s final decision has been extended to February 29, 2012.

Parks International Shipping Inc., Cargo Express International Shipping Inc., et al. – Possible Violations of Sections 8(a) of the Shipping Act and the Commission’s Regulations at 46 C.F.R., Parts 515 and 520 [Docket No. 06-09], 31 S.R.R. 1166 (February 5, 2010)

This proceeding was instituted by Order of Investigation and Hearing served September 19, 2006, to determine whether respondents violated sections 8(a) and 19 of the Shipping Act and the Commission’s regulations at 46 C.F.R. Part 520 and 46 C.F.R. Part 515. On February 5, 2010, the Administrative Law Judge issued an Initial Decision finding that on twelve shipments, Parks International Shipping, Inc. violated section 8(a) by operating as a common carrier without publishing tariffs showing all of its active rates and charges, and violated section 19 by operating as an ocean transportation intermediary without obtaining a license from the Commission and without providing proof of financial responsibility. The ALJ also found that on fourteen shipments, Cargo Express International Shipping, Inc. violated section 8(a) by operating as a common carrier without publishing tariffs showing all of its active rates and charges and violated section 19 by operating as an ocean transportation intermediary without obtaining a license and without providing proof of financial responsibility. The ALJ imposed civil penalties on both of these parties, and ordered them to cease and desist from violating the Shipping Act. The ALJ dismissed Bronx Barrels & Shipping Supplies Shipping Center, Inc. and Ainsley Lewis a.k.a. Jim Parks from the proceeding. On April 6, 2010, the Commission filed a notice indicating its intention to review the ALJ’s Initial Decision. The case is currently pending before the Commission. The deadline for issuance of the Commission’s final decision has been extended to January 31, 2012.

Anderson International Transport and Owen Anderson – Possible Violations of Sections 8(a) and 19 of the Shipping Act [Docket No. 07-02], 31 S.R.R. 1232 (February 23, 2010)

This proceeding was instituted by Order of Investigation and Hearing served March 22, 2007, to investigate whether respondents violated sections 8, 19(a), and 19(b) of the Shipping Act and the Commission’s regulations at 46 C.F.R. Part 515 and Part 520. On August 28, 2009, the Administrative Law Judge issued an Initial Decision finding that respondents violated section 19(a) of the Shipping Act by operating as an ocean transportation intermediary without obtaining a license, and also violated section 19(b) by operating as an ocean transportation intermediary without providing proof of financial responsibility. The ALJ ordered respondents to cease and desist from violating the Shipping Act. The ALJ did not impose a penalty, finding that the Bureau of Enforcement failed to introduce evidence regarding respondents’ ability to pay a civil penalty. On December 8, 2009, the Bureau of Enforcement filed a petition to reopen the proceeding for the purpose of taking further evidence regarding respondents’ ability to pay. The Commission granted this request and remanded the case to the ALJ for further consideration. On February 23, 2010, the ALJ issued an order on remand imposing a penalty on respondents. On March 9, 2010, the Commission filed a notice to review the ALJ’s decision, and on March 15, 2010, the Bureau of Enforcement filed exceptions to the ALJ’s decision. The case is currently pending before the Commission. The deadline for issuance of the Commission’s final decision has been extended to January 31, 2012.

2. Litigation

The General Counsel represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the Commission upon petitions for review of

its orders filed with the U.S. Courts of Appeals, the General Counsel also participates in actions for injunctions, enforcement of Commission orders, actions to collect civil penalties, and other cases where the Commission's interest may be affected by litigation.

The following is representative of matters litigated by the Office:

Federal Maritime Commission v. Indigo Logistics, LLC; Liliya Ivanenko; and Leonid Ivanenko, U.S. District Court for the Northern District of Georgia, Case No. 1:11-cv-01134-TCB

On April 8, 2011, the Commission filed a Complaint and Motion for a Preliminary Injunction against Indigo Logistics, LLC; Liliya Ivanenko; and Leonid Ivanenko (Defendants) in U.S. District Court for the Northern District of Georgia requesting that the court enjoin Defendants from violating the Shipping Act by acting as an ocean freight forwarder without a Commission license and without providing proof of financial responsibility. In connection with a Commission investigation, the Commission is authorized by 46 U.S.C. § 41307 to bring a civil action to enjoin conduct in violation of the Shipping Act. Any injunction brought under this section remains in effect for a period not to exceed 10 days after the Commission has issued an order disposing of the issues under investigation. The basis for the Commission's injunction is Docket No. 11-06, Indigo Logistics, LLC; Liliya Ivanenko; and Leonid Ivanenko – Possible violations of Section 19 of the Shipping Act of 1984 and the Commission's regulations at 46 C.F.R. Part 515. The Order initiating Docket 11-06 alleges that Indigo Logistics, LLC has been providing services as an ocean freight forwarder since at least 2008 without a license issued by the Commission and without furnishing evidence of financial responsibility to the Commission.

On April 15, 2011, an order was issued granting the Commission's motion for a preliminary injunction. The order provides that Defendants, their agents, servants, employees, and attorneys, and those in active concert or participation with them, are restrained and enjoined from violating 46 U.S.C. §§ 40901(a) and 40902(a) by acting and operating as an ocean transportation intermediary without a valid Commission ocean freight forwarder license and without furnishing a bond, proof of insurance or other surety in the amount of \$50,000. On October 20, 2011, the Administrative Law Judge assigned to Docket 11-06 approved a settlement agreement between the Commission's Bureau of Enforcement and the Defendants. On December 2, 2011, the Commission issued a notice not to review the Administrative Law Judge's decision and, in accordance with the settlement agreement, also issued an cease and desist order barring Defendants from acting as an ocean transportation intermediary, or as an agent of an ocean transportation intermediary, for a period of five years. On December 6, 2011, the District Court dissolved the preliminary injunction.

Federal Maritime Commission v. All-In-One Shipping, Inc., et al., U.S. District Court for the Southern District of Florida, Case No. 06-60054

On January 12, 2006, the Commission filed a Complaint for Injunctive Relief with the U.S. District Court for the Southern District of Florida to enjoin four household goods moving companies and three individuals from operating as NVOCCs in violation of the Shipping Act of 1984 by accepting cargo for transportation, and for advertising for or soliciting cargo while operating as an ocean transportation intermediary without a valid license, bond or other security on file with the Commission. The District Court issued the requested preliminary injunction by order dated January 17, 2006. Injunctive relief remains in force pending conclusion of agency enforcement proceedings in FMC Docket No. 06-01.

On August 16, 2010, the ALJ issued an Initial Decision in Docket No. 06-01 finding violations of the Shipping Act and imposing civil penalties on the corporate and individual parties. No parties filed exceptions to the Initial Decision. The Commission determined to review the Initial Decision, and its final decision is pending.

3. Legislative Activities

The OGC represents the Commission's interests in all matters before Congress. This includes preparing testimony for Commission officials, responding to Congressional requests for information, commenting on proposed legislation, and responding to the Office of Management and Budget requests for views on proposed bills and testimony.

During fiscal year 2011, 105 bills, proposals, and congressional inquiries were referred to the OGC for review or comment. OGC prepared and coordinated testimony for the agency's fiscal year 2012 budget authorization hearing held before the U.S. House of Representatives' Committee on Transportation and Infrastructure's Subcommittee on Coast Guard and Maritime Transportation. In addition, OGC helped prepare two nominees for confirmation hearings before the Senate Committee on Commerce, Science and Transportation. On April 14, 2011, the Senate confirmed those nominees.

In fiscal years 2012 and 2013, OGC will continue to lead in providing assistance and technical advice to Congress regarding issues for possible legislative consideration. The Office may also recommend legislative amendments as necessary to ensure uniformity with other Federal initiatives to promote efficient and secure flow of ocean transportation.

4. Foreign Shipping Restrictions and International Affairs

The OGC is responsible for the administration of the Commission's international affairs program. The OGC monitors potentially restrictive foreign shipping laws and practices, and makes recommendations to the Commission for investigating and addressing such practices. The Commission has the authority to address restrictive foreign shipping practices under section 19 of the 1920 Act and the Foreign Shipping Practices Act. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the U.S.

In fiscal year 2011, the Commission continued to monitor potentially restrictive shipping practices of the Government of Japan, including the effects of amendments to the Port Transportation Business Law enacted in 2000 and 2005. On January 26, 2011, the Commission discontinued its proceeding and semi-annual reporting requirements from United States-flag and Japanese-flag vessels operating in the trades with Japan in Docket No. 96-20, Port Restrictions and Requirements in the United States/Japan Trade.

The OGC also pursued informally several matters that involved potentially restrictive foreign practices including implementation by the People's Republic of China of new requirements on carriers to file tariff and service contract rates with a quasi-governmental entity and for that entity to establish a freight index. OGC served as a technical advisor to the U.S. delegation regarding rate filing at the quasi-governmental entity and related issues at the 4th U.S. - People's Republic of China Consultations on the Maritime Bilateral Agreement held in Dalian, China in October 2010.

The OGC also presented at a maritime experts group workshop relating to guidelines for the regulation of non-ratemaking agreements among vessel-operating common carriers for the purpose of discussion on behalf of the United States' delegation at the Asian-Pacific Economic Cooperation meeting of the Maritime Experts Group at the Transportation Working Group meeting in Japan in October 2010.

Another responsibility of the OGC is the classification of controlled carriers subject to section 9 of the Shipping Act. Common carriers that are owned or controlled by foreign governments are required to adhere to certain requirements under the Act, and their rates are subject to Commission review. The OGC investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The OGC, in conjunction with other Commission components, also monitors the activities of controlled carriers.

The OGC continues to take the lead in accomplishing the agency's performance goals relating to eliminating restrictions that unjustly disadvantage U.S. interests. OGC monitors foreign laws and practices to determine whether there are any unjust non-market barriers to trade. Where appropriate, the OGC will recommend Commission action.

5. Designated Agency Ethics Official

The Ethics Official is designated by the Chairman and located in the OGC. The position is performed as a collateral duty by the attorney designated as Ethics Official.

The Commission's Ethics Official is responsible for administering public and confidential financial disclosure systems in order to prevent conflicts of interest from arising in the execution of the agency's regulatory functions. The Ethics Official also conducts annual training and offers day-to-day advice and guidance to ensure compliance with the standards of ethical conduct that apply to Executive Branch officials.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

The Federal Maritime Commission Office of Equal Employment Opportunity Program (EEO) follows Federal EEO and personnel management laws, concepts, procedures and regulations to develop, implement and manage a comprehensive program of equal employment opportunity. The program is statutorily mandated with required activities in complaints processing, adjudication, affirmative employment program planning, workforce diversity management, special emphasis programs, community outreach, monitoring and evaluation.

The Chairman of the Federal Maritime Commission is responsible for ensuring equal opportunity in the Commission. The Chairman has delegated this authority to the Director of Equal Employment Opportunity. Operational responsibility for compliance with EEO policies and programs lies with the Commission's front line managers. The Director of EEO (DEEO) works independently under the direction of the Chairman to provide advice to the Commission's senior staff and management in improving and carrying out its policies and program of non-discrimination, workforce diversity and affirmative employment program planning. The DEEO arranges for EEO counseling or ADR for employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness. In addition, the DEEO represents the agency on several intergovernmental committees, coordinates all affirmative program planning efforts, directs programs of special emphasis, and coordinates the activities of the Selective Placement and Federal Equal Opportunity Recruitment Coordinators. The DEEO also supervises two collaterally-assigned EEO counselors.

The Office works closely with senior management and with the Commission's Office of Human Resources (OHR) to: (1) monitor affirmative employment programs; (2) expand outreach and recruitment initiatives; (3) improve the representation, career development and retention of women, minorities and persons with disabilities; (4) provide adequate career counseling; (5) facilitate early resolution of employment-related problems; and (6) develop program plans and progress reports.

E. OFFICE OF THE INSPECTOR GENERAL

The Inspector General Act of 1978, as amended, establishes the responsibilities and duties of an Inspector General. The Inspector General Act was amended in the 1980's to increase the number of agencies with statutory inspector generals (IG), culminating in 1988 with the establishment of Office of Inspectors General (OIG) in smaller, independent agencies, including the Federal Maritime Commission. Currently, there are 74 statutory IGs within executive and legislative departments and agencies. The mission of the OIGs, as identified in the IG Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.
- Promote economy, effectiveness and efficiency within the agency.
- Prevent and detect fraud and abuse in agency programs and operations.
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.
- Keep the agency head and Congress informed of problems in agency programs and operations.

To ensure objectivity, the IG Act empowers independent IGs to determine what reviews to perform; to access all information deemed by the IG to be relevant to the reviews; and to publish findings and recommendations based on the reviews.

During fiscal year 2011, the OIG issued the following audit reports and evaluations:

Audit Report Number	Subject of Audit
A11-01	Evaluation of FMC Implementation of the Federal Information Security Management Act for FY 2010
A11-01A	Review of FMC's Data Protection and Privacy Act Implementation for FY 2010
A11-02	Audit of FMC's FY 2010 Financial Statements
A11-02A	FY 2010 Management Letter to the Financial Statements
OR11-01	Review of the Office of Consumer Affairs and Dispute Resolution Services, Informal Docket Processing
OR11-02	Review of the Federal Maritime Commission's Office of Transportation Intermediaries, Financial Responsibility Program

In addition to these completed audits and reviews, the OIG performed fieldwork on the FY 2011 financial statement audit and the Federal Information Security Management Act evaluation, which includes privacy and data protection. The OIG also began a review of the Bureau of Enforcement's Compliance Audit Program.

The OIG investigations unit received 59 complaints in fiscal year 2011. The OIG responded to 31 of the complaints and forwarded 23 complaints to the appropriate FMC program area for disposition. Five complaints were forwarded to other agency OIGs or programs with jurisdiction over the subject matter. The OIG opened no new investigations and referred no matters to prosecutorial authorities during this period.

In addition to these audit and investigative activities and outcomes, the OIG performed a peer review of the audit operations at another Federal OIG. The OIG also initiated meetings with House and Senate staff with jurisdiction over the FMC to establish new relationships and maintain existing ones; and continued to respond to consumers victimized by an internet scam operation using FMC indicia; assisted another Federal OIG in awarding contracts for financial statement audits and FISMA evaluations; worked with the agency's OGC to develop coordination guidelines for the investigation of ethics matters and to amend two Commission Orders dealing with OIG activities; and consulted with the agency about its proposed actions in response to an employee who alleged a privacy breach. Also, during the reporting period, in accordance with the Inspector General Reform Act, the OIG provided legal services, on a reimbursable basis, to both the Architect of the Capitol OIG and the United States Capitol Police OIG, pursuant to a Memorandum of Understanding.

The OIG responded to an OIG community-wide request for information from the Chairman of the House Committee on Oversight and Government Reform, regarding open (unimplemented) OIG recommendations, and a request from the Government Accountability Office pertaining to OIG independence and effectiveness. The OIG Counsel/Chief Investigator participated in an OIG-community working group to develop and present training on IG legal authorities, which was sponsored by the Council of Inspectors General on Integrity and Efficiency (CIGIE) Training Institute to provide training to OIG attorneys to address the unique legal needs of the OIG community.

OIG staff participated in several activities associated with the CIGIE, including actively serving on the (1) Legislation Committee where OIG staff reviewed and commented on several legislative initiatives affecting the OIG community; and (2) Integrity Committee, where staff reviewed allegations of administrative (non-criminal) misconduct against inspectors general and designated senior staff members of the OIG.

During FY 2012, the OIG will continue to place a high priority on audits and reviews with the objective of improving agency programs and operations. The OIG will complete statutorily-required reviews to include separate audits of the FMC's FY 2012 Financial Statements and an evaluation of the agency's information security program and privacy assurance controls, as required by the FISMA, continue site visits to FMC area offices to better understand regulatory and program issues and concerns from a field office perspective and continue to focus on reviews of FMC mission-based programs.

The OIG will continue to actively participate in IG community activities and maintain membership in the CIGIE, the Council of Counsels to Inspectors General (CCIG) and the Federal Audit Executive Council (FAEC). The OIG will continue to work with the OMB, CIGIE, CCIG and FAEC on joint projects which affect the IG community. The Office will also continue to keep the Chairman, Commissioners, OMB, and the Congress fully informed regarding its audit and investigative activities.

F. OFFICE OF CONSUMER AFFAIRS AND DISPUTE RESOLUTION SERVICES

The Office of Consumer Affairs and Dispute Resolution Services (CADRS) is responsible for developing and implementing the Commission's Alternative Dispute Resolution (ADR) program. Through this program, the Commission provides services to assist parties in resolving shipping disputes. The Office provides a range of services designed to avoid the expense and delay inherent in litigation, and to facilitate the flow of U.S. ocean commerce. With respect to matters already in litigation, or moving toward litigation, parties to a dispute are encouraged to avail themselves of mediation or other ADR processes to resolve their disputes. The Commission makes trained neutrals available to facilitate resolution at all stages. Outside neutrals also may be employed as needed. During fiscal year 2011, Commission mediators provided services in a number of matters, especially assisting parties in overcoming obstacles that prevent delivery of transported goods.

CADRS also provides ombuds services to participants in ocean shipping transactions. Typical complaints include situations in which an NVOCC or VOCC has placed a hold on cargo in its possession, often for sums owed under a different contract of carriage. Other cases occur when an NVOCC has received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Urgent resolution may facilitate delivery of shipments to avoid additional demurrage/detention/storage charges. Household goods shippers often use unlicensed entities that demand additional payment and/or abandon the goods and refuse to communicate with the consumer. Tracking the location of a shipment can be difficult, and often additional charges have accrued, necessitating payment of additional funds to obtain release of the shipment. CADRS also receives a significant number of complaints involving issues with cruise lines.

Another function of CADRS includes the adjudication of small claims through informal proceedings under the Commission's Rules of Practice and Procedure at 46 CFR Part 502, Subpart S. Office personnel serve as Settlement Officers in such cases, which involve complainants seeking reparations up to \$50,000 for violations of the shipping statutes. Those claims generally involve alleged prohibited acts in connection with the international transportation of goods, or the failure to establish, observe, and enforce just and reasonable regulations and practices.

During fiscal year 2011, 565 complaints were received that necessitated the opening of cases to provide dispute resolution services. These included 127 passenger complaints about cruise line issues, 250 complaints with respect to household goods shipments, and 188 complaints involving other cargo shipment matters. Cargo shipment complaints continued to be increasingly complex. Problems involving ocean transportation intermediaries with overextended finances and inability to complete the ocean transportation continued to be an issue. In addition, many household goods complaints pertained to initial charges quoted vis á vis the actual charges billed, often due to measurement discrepancies.

One issue that arose during fiscal year 2011 involved Cruise West, a U.S.-based cruise line that ceased operations in September 2010. The Commission issued a press release and periodic updates to inform affected parties of possible reimbursement options for passenger fare deposits. CADRS assisted 37 individuals with inquiries and complaints related to the closure of this cruise line. In addition, CADRS participated in discussions with agency staff regarding possible revisions of the passenger vessel financial responsibility regulations.

The Commission concluded Fact Finding Investigation No. 26 into conditions and practices in the U.S. liner trades, and potential impediments to the flow of oceanborne import and export trades. This inquiry generated a number of complaints and concerns from both the import and export communities. CADRS continued its "Rapid Response Team" activities established under Fact Finding Investigation No. 26, including meeting with vessel operators to establish points of contact for each carrier to respond to CADRS' inquiries on behalf of shippers. CADRS also supported implementation of the Fact Finding No. 26 recommendations through public outreach and promotion of service contract dispute resolution through CADRS. Public outreach efforts included developing brochures and other outreach materials, meetings with other agencies regarding joint outreach opportunities and the potential sharing of resources for ADR activities, participating in industry/shipper meetings and issue-solving activities, making ADR presentations to industry groups, and attending ADR conferences and meetings with government ADR groups.

CADRS also continued its participation in the Commission's Fact Finding Investigation No. 27, involving the review of potentially unlawful, unfair, or deceitful practices in the international shipment of household goods by water. Complaints to CADRS were the basis for initiating the fact finding and CADRS' staff continued their efforts to resolve disputes involving household goods. A significant increase in household goods complaints occurred during fiscal year 2011. Numerous complaints were received regarding a formerly licensed NVO shipping household goods to the Philippines. CADRS assisted affected consumers in locating cargo in the Philippines and provided guidance regarding the filing of claims against the NVO's surety bond. With the conclusion of Fact Finding Investigation No. 27, CADRS is participating in implementing the fact finding's recommendations, including targeted outreach, cooperative efforts with other government and industry entities, and the use of ADR to address household goods shipment issues. CADRS has been actively engaged in supporting these initiatives on an ongoing basis.

G. OFFICE OF THE MANAGING DIRECTOR

The Managing Director (MD) serves as the Commission's senior executive responsible for the management and coordination of the Commission's operating bureaus, exercising administrative direction or guidance over all units of the Commission. In addition to the major operating bureaus, the Managing Director oversees the Commission's Area Representatives and all administrative offices.

The MD is the Commission's Chief Operating Officer and is responsible to the Chairman for the management and coordination of the following:

- **Bureau of Certification and Licensing**
- **Bureau of Enforcement**
- **Bureau of Trade Analysis**
- **Area Representatives**
- **Office of Budget and Finance**
- **Office of Human Resources**
- **Office of Information Technology**
- **Office of Management Services**

The MD thus is responsible for implementing the regulatory policies of the Commission, as well as the administrative policies and directives of the Chairman.

In addition, the MD provides administrative guidance to the:

- **Office of the Secretary**
- **Office of the General Counsel**
- **Office of Consumer Affairs and Dispute Resolution Services**
- **Office of Administrative Law Judges**

and administrative assistance to the:

- **Offices of the Commissioners**
- **Office of the Inspector General**
- **Office of Equal Employment Opportunity**

The MD's responsibilities include serving as the FMC's Chief Acquisition Officer (CAO), and Chief Financial Officer, among myriad other administrative responsibilities. The Deputy Managing Director serves as the Managing Director's Deputy with respect to all operational and administrative programs, as well as having primary responsibility for many efforts, including serving as the Commission's Competition Advocate.

The Director of Field Investigations (DFI) is located within the Office of Managing Director (OMD) and is responsible for managing and coordinating all investigative activities performed by Area Representatives (ARs) in the field. This includes extensive coordination among ARs and the Bureau of Enforcement, and coordinating the collective establishment of investigative priorities and goals.

In managing the day-to-day operations of the Commission, the OMD provides direction and coordination among Commission administrative and program components to assure coordinated and cohesive efforts to achieve the Commission's strategic goals. The OMD initiates recommendations for long-range plans, new or revised policies and standards, and rules and regulations, while issuing internal directives to Commission staff.

During fiscal year 2011, the OMD coordinated with CADRS to explain compliance with reduced tariff publication requirements and to assist in implementation of Rapid Response Teams to quickly resolve shipping problems.

OMD staff participated in Fact Finding Investigation No. 27, *Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades*, and OMD developed plans for implementation of the report's recommendations. The MD approved civil penalty compromises in a number of cases and established a system of internal directives (Managing Directives) to guide staff operations, particularly with respect to administrative programs.

By directive, the MD established an Information Technology Advisory Board (ITAB) and initiated an assessment of the agency's information technology (IT) program. The assessment was deemed necessary after reduced funding impeded the development of efforts to improve efficiency through the use of information technologies. The ITAB will ensure coordination among technology-operational staff managers to establish IT plans, priorities and initiatives.

The OMD's key objectives for fiscal years 2012 and 2013 include: (1) increasing the visibility of ARs to the shipping industry, importers and exporters to resolve issues affecting the flow of the nation's oceanborne trade; (2) identifying ways to use modern technology within limited funds to achieve greater efficiencies in Commission operations; (3) implementing the agency's Human Capital Management Plan, particularly with respect to succession planning for the departure of highly skilled personnel; (4) increasing, through ARs and CADRS, the use of enhanced dispute resolution mechanisms to quickly address industry disputes; (5) continuing to refine and enhance agency administrative programs and operations; and (6) overseeing the review and updating of Commission regulations, especially those governing OTIs and passenger vessel operators (PVOs).

1. Area Representatives

The Commission's Area Representatives (ARs) act as liaisons with the shipping industry at a local level and as a resource to all bureaus and offices of the Commission. Through its ARs, the Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York, Houston, and Seattle. These ARs also serve other major port cities and transportation centers within a wider geographic range, representing the Commission, resolving complaints and issues involving international oceanborne shipping (often coordinating with CADRS), investigating alleged violations of the shipping statutes, and providing liaison to the shipping public. The ARs provide information to the maritime industry while acting as an intelligence resource to Commission headquarters. They provide advice and guidance to the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. The ARs frequently cooperate and coordinate with other governmental agencies and departments, Federal, state and municipal, providing expertise and assistance as needed to law enforcement agencies, as well as relaying information about Commission statutes, rules and policies to the shipping industry and the public.

In fiscal year 2011, hundreds of informal complaints were handled by the ARs. These complaints often involved unlawful activity. Where possible, compliance with statutory and regulatory requirements was achieved informally. In other instances, investigative cases were opened and the ARs conducted thorough investigations to determine the extent of unlawful activity. The ARs conducted a number of investigations in fiscal year 2011 of unlawful shipping practices, including unlicensed OTI activities, misdescription of commodities by shippers, and illegal service contract activities by ocean carriers. The investigative actions by the ARs led to the development of several enforcement cases that were referred to the Bureau of Enforcement and resulted in civil penalties. Investigative activity by the ARs assists the FMC in ensuring fair competition access to shipping in the trades to and from the United States.

The ARs were instrumental in the publication of public service announcements (PSAs) for each major port area in fiscal year 2011, warning consumers against the use of unlicensed OTIs. The ARs identified appropriate local publications, including those that would reach various ethnic communities that have been particularly vulnerable to fraudulent activity by unlicensed entities. The PSAs resulted in numerous inquiries and reports to the ARs regarding improper activity by both licensed and unlicensed OTIs, and appear to have helped educate consumers to be more alert to unlawful operators, saving many from significant losses.

During fiscal year 2011, the ARs made a number of presentations to interested industry audiences in their areas, explaining OTI licensing requirements and compliance with the new NRA Tariff Rate Exemption. ARs also worked 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, as well as Federal agencies, including the Federal Bureau of Investigation (FBI) in South Florida. In addition, the South Florida ARs provided valuable expertise and assistance to the Export-Import Bank of the United States (Ex-Im Bank) to facilitate the investigation by Ex-Im Bank's IG Office and subsequent prosecution of several cases of fraud against the U.S. government.

The ARs participated in task forces and initiatives sponsored by local law enforcement agencies, the U.S. Department of Justice, the Department of Homeland Security including Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE), the Department of Commerce (DOC) and the FMCSA. This assistance and sharing of information contributed to the investigation of a wide range of unlawful activities.

ARs also provided valuable assistance in Commission Fact Finding Investigation No. 27, *Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades* (FF No. 27). In the FF No. 27

proceedings, ARs assisted the Fact Finding Officer in arranging for the appearance of impacted witnesses, answered inquiries from shipping industry participants, and provided advice and suggestions through the Managing Director with respect to the conduct of the proceedings. The ARs have also been actively involved in carrying out the recommendations of FF No. 27 by reaching out to the public, consumer groups, trade associations, and other government agencies in efforts to achieve regulatory compliance and protection for the shippers of household goods and personal effects.

In fiscal years 2012 and 2013, the ARs will continue to function in several key roles for the FMC by representing the agency, educating and assisting the shipping public, facilitating the resolution of informal complaints and disputes, and investigating unlawful practices in ocean shipping. All of these activities support the FMC's mission of fostering a fair, efficient and reliable international ocean transportation system and protecting the public from unfair and deceptive practices.

2. Office of Budget and Finance

(a) General Office Responsibilities

The Office of Budget and Finance (OBF) administers the Commission's financial management program and is responsible for offering guidance on optimal use of the Commission's fiscal resources. OBF is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications. The Office also administers internal control systems for agency funds, travel, work years, and cash management. Additionally, OBF manages the Commission's Travel Charge Card Program and administers all budget execution functions.

(b) Achievements

During fiscal year 2011, OBF:

- Collected and deposited \$2,446,630 to the U.S. Treasury from fines and penalty collections, publications, reproductions, and user fees.
- Worked with Bureau of Public Debt (BPD) staff and the Commission's independent auditors regarding the audits of fiscal years' 2010 and 2011 financial statements. The Commission received unqualified opinions for both fiscal years.
- Developed a new methodology for calculating user fee costs and revised procedures and calculations used to estimate the cost of annual performance goals.
- Began migration from Paper Check Conversion system of depositing remittances received from FMC customers to Treasury's new Over the Counter Channel Application (OTCnet).

- Began working with BPD regarding implementation of Treasury's new Internet Payment Platform (IPP), which will create efficiencies in the Commission's accounts payables.
- Processed the Commission's accounts payable documents in accordance with the Prompt Payment Act and prepared official travel documents in accordance with applicable Federal Travel Regulations.

(c) Future Plans

Goals in fiscal year 2012 include: implementation of Pay.gov to enable electronic collections processing using Internet technologies, thereby improving the agency's Cash Management Program; continuing to pursue initiatives leading to economy and efficiency in budget and financial operations, including conversion to OTCnet and IPP; updating relevant Standard Operating Procedures, Commission Orders and procedural documents.

3. Office of Human Resources

(a) General Office Responsibilities

The Office of Human Resources (OHR) administers a complete human resources management program, including recruitment and placement, position classification and pay administration, occupational safety and health, employee assistance, employee relations, workforce discipline, performance management and incentive awards, employee benefits, career transition, retirement, employee development and training, and personnel and information security.

(b) Achievements

During fiscal year 2011, OHR:

- Monitored activities of the agency's payroll/personnel service provider, the National Finance Center (NFC), and worked with Administrative staff to ensure security, continuity and accuracy of payroll and personnel services.
- Addressed talent/leadership management and succession planning by initiating individual development of those recruited and selected to participate in the Senior Executive Service Candidate Development Program and providing technical guidance regarding developmental activities, special projects, and training of candidates.
- Conducted a comprehensive training program in accordance with the agency's budget and strategic and performance plans, promoting e-learning and on-line training opportunities, continuing the college tuition reimbursement program, ensuring training for new employees on the No Fear Act, participating in the SAC Training Program, and introducing more agency mission-critical training (e.g., Bills of Lading Workshop).
- Planned, implemented, and promoted programs for Retirement-Readiness, Personal Financial Literacy Education, and Volunteer/Community Service Awareness and issued newsletters highlighting appropriate information and activities.
- Conducted a comprehensive personnel and information security program, including initiating and adjudicating security investigations for new and reinvestigated employees and incorporating new security regulations into agency policy.

- Revised the agency Human Capital Plan to ensure consistency with revisions to the agency Strategic Plan's goals and objectives.
- Coordinated with OPM, OMB, and the Small Agency Human Resources Council on human capital and related initiatives including, e.g., Hiring Reform, potential government shut-down and related furlough activities, and Voluntary Early Retirement Authority.
- Conducted a comprehensive performance management and incentive awards program, including working with the agency Performance Appraisal System Taskforce (PAST) to document policy changes, obtain OPM approval, coordinate training, and otherwise ensure successful implementation of a revised performance appraisal system for non-SES.
- Participated in the online Federal Competency Assessment Tool for managers and HR staff to update FMC's skill gap analysis, identify gaps in leadership competencies, support mission accomplishment, and guide planning for training and development.
- Conducted comprehensive recruitment and classification and position management programs, including coordinating assignments and evaluating contractor performance.
- Managed and conducted employee benefits and charitable contributions programs and Open Seasons, such as the Combined Federal Campaign, Long-Term Care Insurance Program, Flexible Spending Accounts, the annual Benefits Open Season and FMC Health Fair.
- Conducted a proactive retirement program that included computing benefits, providing access to retirement seminars, related training and one-on-one counseling, and timely processing all retirements, as well as determining the need, requesting and receiving OPM approval, and informing the workforce regarding Voluntary Early Retirement Authority.

- Coordinated with other administrative units and the General Services Administration's Managed Service Office on matters pertaining to Homeland Security Presidential Directive 12 (HSPD-12) and the issuance of Federal employee credentials, including activities to implement logical access provisions.
- Coordinated with OPM in the administration of the Federal Employee Viewpoint Survey (FEVS), analyzed results, prepared interpretation and trend analysis, worked with senior management to identify and reinforce successful activities and develop strategies to address areas of improvement, and worked with the Partnership for Public Service in connection with metrics and utilizing results of the Best Places to Work rankings.
- Continued to administer E-gov initiatives and implementation of the Enterprise Human Resources Integration Project and worked with the Small Agency Human Resources Consortium, OPM and Northrop Grumman Integic officials to complete program activities to implement the electronic Official Personnel Folder (eOPF).
- Enhanced workplace flexibilities and provided recommendations to OPM regarding the agency's work/life program and best practices.
- Promoted the Preventive Health and Awareness Program and OPM's Healthier Feds initiatives, publicized and hosted wellness seminars sponsored by the Employee Assistance and Federal Occupational Health Programs and coordinated with other administrative units on matters pertaining to the Automatic External Defibrillator (AED) program and Health Unit (clinical) services.
- In concert with OPM's hiring reform initiative, established agency Rapid Response (SWAT) team and undertook activities to simplify the Federal application process and enhance recruitment efforts, including developing streamlined vacancy announcement templates, mapping agency hiring processes to reduce the time-to-hire, and developing an action plan to identify and address required activities to implement and monitor hiring reform initiatives.

- Maintained the partnership for acquisition of assistive devices through the Department of Defense's Computer/Electronic Accommodations Program and continued work with information technology personnel to complete the design and agency-wide implementation of an automated training data management reporting system.

(c) Future Plans

In fiscal year 2012, OHR plans to continue to: advise agency management and staff on all human resources matters and maintain a sound and progressive human resources program; implement pertinent portions of the agency's strategic, training and related performance plans, particularly performance goals related to the management of human resources; explore and implement simplification, flexibility, and accountability of human resources management programs, and explore high-tech solutions to address program requirements, including, e.g., a fully automated training evaluation system and automated staffing system; partner with agency officials in concert with the Administration's goal to build a transparent, high-performance government specifically with respect to Federal hiring reform and improving employee satisfaction and wellness; continue with eOPF implementation and conversion of performance, payroll, benefits and other HR records to electronic format, and execute action plan for full production and employee roll-out; continue to monitor database modernization efforts of the NFC in conjunction with e-Governance and ensure timely and accurate payroll and personnel services; continue to review and update various policy statements to implement Executive Orders and related regulatory requirements; continue to administer and assess results from the FEVS to gauge employee satisfaction with work/life and benefits programs, agency leadership, developmental opportunities, etc., and use these metrics to strategically implement, monitor, measure, assess progress in achieving, ensure accountability, and report on human capital management goals pursuant to the agency's Human Capital, Workforce, Succession and Accountability Plans; and evaluate the revised performance appraisal system for non-SES employees against OPM's Performance Appraisal Assessment Tool (PAAT) and monitor employee perceptions regarding performance management through continued analysis of the FEVS.

4. Office of Information Technologies

(a) General Office Responsibilities:

The Office of Information Technology (OIT) provides management support to the program and administrative operations of the Commission with respect to information technology (IT), and thus is responsible for ensuring that the Commission's IT program is administered in a manner consistent with applicable rules, regulations, and guidelines.

The OIT Director serves as the Commission's Chief Information Officer (CIO), IT Officer, Telecommunications Manager, Help Desk and Database Administration Manager, and oversees the IT security program. The OIT Director plans, coordinates, and facilitates the use of automated information systems.

(b) Achievements

During fiscal year 2011, OIT:

- Contracted with a third party to conduct an assessment of the current state of the Commission's IT systems, to be completed in the first quarter FY 2012, critical to the completion of the Enterprise Architecture Plan.
- Established an Information Technology Advisory Board (ITAB) to provide direction and leadership in the acquisition, management and use of IT resources.
- Expanded the agency's critical servers into a virtual server system to reduce costs associated with procuring dedicated hardware for each system.

- Continued implementation of the HSPD-12 initiative; acquired and implemented a light activation kit to allow for in-house card activations, certificate updates, and PIN unlocks; finalized on-site login testing and network smart card group policy; developed an HSPD-12 agency directive and initiated the phased implementation approach.
- Initiated the Pay.gov implementation process and is currently in the technical implementation phase of the project.
- In efforts to comply with the government-wide marketplace for data center availability in the OMB 25 Point Implementation Plan to reform Federal IT, the agency has actively been working with other agencies that provide for sharing IT resources. OIT is in the process of evaluating the agreement process to acquire COOP and disaster recovery services from other Federal agencies. This initiative will decrease IT spending for COOP and ensure security compliance.

(c) Future Plans

Major OIT initiatives for fiscal year 2012 include: advance work on the agency Enterprise Architecture Plan; exploration of ways to leverage shared IT resources such as cloud computing and shared data centers to reduce costs and promote efficiency; and support the Pay.gov and HSPD-12 initiatives.

5. Office of Management Services

(a) General Office Responsibilities

The Office of Management Services (OMS) directs and administers a variety of management services functions that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office serves as the Commission's Contracting Officer.

The Office's support programs include procurement of administrative goods and services, property management, space management, printing and copying management, mail and record services, facilities and equipment maintenance, and transportation. The Office's major functions are to secure and furnish all supplies, equipment and services required in support of the Commission's mission, and to formulate regulations, policies, procedures, and methods governing the use and provision of these support services in compliance with the applicable Federal guidelines.

(b) Achievements

During fiscal year 2011, OMS:

- Negotiated with GSA's National Capital Region personnel to establish a new Occupancy Agreement for executing a lease for FMC's Headquarters (HQ) office space.
- Coordinated with FPS and GSA to assess and update the HQ building's Occupant Emergency Plan (OEP) and arranged for a variety of emergency preparedness seminars/training for the building's population.
- Traveled to Los Angeles to facilitate the renovation of the field office, and negotiated with GSA's real estate officials on establishing a new Occupancy Agreement for renewal of the office space lease.
- Coordinated with OMD on the completion of the management evaluation and review of the BTA program.
- Expanded the FMC's recycling program to include the field locations and issued new guidelines and individual office receptacles for trash disposal and shredding of documents and materials.

(c) Future Plans

In fiscal year 2012, the Office's objectives include: continuing to work with GSA as required to execute new Occupancy Agreements for the agency's leased office throughout the nation; continuing to work with GSA, FPS, and other tenant agencies at our HQ facilities and field locations to upgrade and/or improve the buildings' security measures and emergency preparedness; in conjunction with the agency's other administrative offices, for the enhancement and improvement in support services; continuing to work with BPD's Administrative Resource Center on the transfer of procurement services and files back to FMC for streamlining our acquisition and contracting program for better efficiency; and continuing to provide advice and assistance regarding innovative support-service approaches to FMC activities.

H. BUREAU OF CERTIFICATION AND LICENSING

1. In General

The Bureau of Certification and Licensing has responsibility for the Commission's ocean transportation intermediary (OTI) licensing program and passenger vessel certification program. The Bureau:

- Licenses and regulates OTIs, including ocean freight forwarders and non-vessel-operating common carriers (NVOCCs).
- Issues certificates to owners and operators of passenger vessels that have evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages or for death or injury to passengers and other persons.
- Manages programs assuring financial responsibility of OTIs and passenger vessel operators, by developing policies and guidelines, and analyzing financial instruments and financial reports.
- Develops and maintains information systems that support the Bureau's programs and those of other Commission entities.

The Bureau is organized into two offices: the Office of Transportation Intermediaries and the Office of Passenger Vessels and Information Processing. The former reviews and approves applications for OTI licenses, and maintains and updates records about licensees. The latter reviews applications for certificates of financial responsibility with respect to passenger vessels, manages all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and develops and maintains all Bureau databases and records of OTI applicants and licensees.

2. Licensing of Ocean Transportation Intermediaries

OTIs are transportation middlemen for oceanborne cargo moving in the U.S.-foreign trades. There are two types: NVOCCs and ocean freight forwarders. NVOCCs are common carriers who do not operate the vessels by which transportation is provided. Ocean freight forwarders in the United States arrange for the transportation of cargo with a common carrier on behalf of shippers and process documents related to those shipments. Both NVOCCs and ocean freight forwarders must be licensed by the Commission if they are located in the U.S. NVOCCs doing business in the U.S. foreign trades but located outside the United States (foreign NVOCCs) may choose to become licensed, but are not required to do so. Whether licensed or not, foreign NVOCCs must establish financial responsibility. All NVOCCs must publish electronic tariffs which contain the NVOCC's rates, charges, rules and practices.

To become licensed by the Commission, an OTI must establish that it has the necessary character to render OTI services as well as establish its financial responsibility by means of a bond, insurance, or other instrument and through its Qualifying Individual (QI), has a minimum of three years of experience in ocean transportation intermediary activities in the United States. An investigation of the applicant's qualifications address such issues as accuracy of information provided in the application; integrity and financial responsibility of the applicant; character of the applicant and its QI; and length and nature of the QI's experience handling OTI duties. Licensed ocean freight forwarders must establish financial responsibility in the amount of \$50,000, and licensed NVOCCs, \$75,000. An additional \$10,000 of coverage is required for each unincorporated branch office in the United States other than the one used to establish a presence.

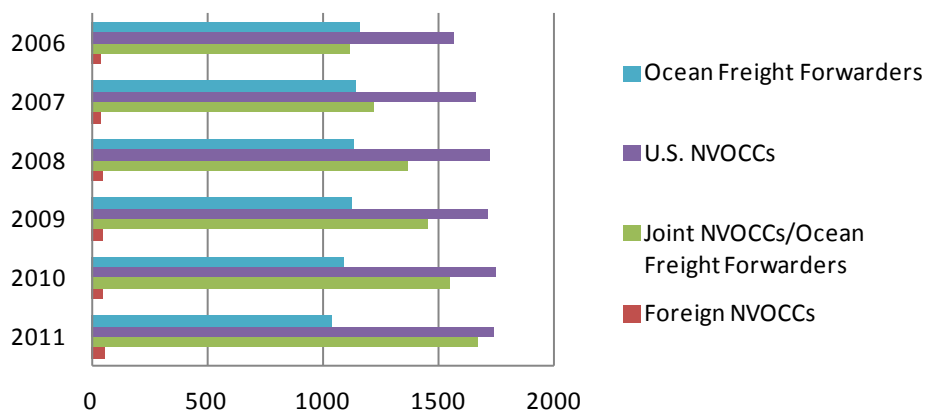
If an OTI is a licensed NVOCC, it must file a Form FMC-1 and publish a tariff. Furthermore, non-U.S.-based NVOCCs that do not wish to be licensed must provide the Commission with proof of financial responsibility in the amount of \$150,000, file a Form FMC-1, and ensure a tariff is published at the site listed on the Form FMC-1. A non-U.S.-based NVOCC

must list in its tariff an agent for service of process in the United States, and it must use a licensed OTI for any OTI services performed on its behalf in the United States. The financial instrument must be available to pay claims against the OTI arising from its transportation-related activities, any order of reparation assessed under the Shipping Act, and any judgments for damages against an OTI arising from its transportation-related activities under the Shipping Act.

During FY 2011, the Commission received 496 new OTI applications and 277 amended applications, issued 459 OTI licenses, and revoked 310 licenses. At the end of the fiscal year, 1,042 OFFs, 1,737 U.S. NVOCCs, 1,670 joint NVOCC/OFFs, and 60 foreign NVOCCs held active OTI licenses. An additional 1,190 foreign NVOCCs maintained proof of financial responsibility on file with the Commission, but chose not to be licensed. Overall, there has been a gain of 187 licensed and/or bonded OTIs, representing approximately a 3.4 percent increase from 5,512 OTIs in fiscal year 2009 to 5,699 in fiscal year 2011. U.S. NVOCCs may file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government. The Commission received 96 riders providing optional proof of financial responsibility for NVOCCs serving the U.S.-China trade. Figure 1 shows the number of freight forwarders and NVOCCs that held active OTI licenses over the past five fiscal years from 2006 through 2011.

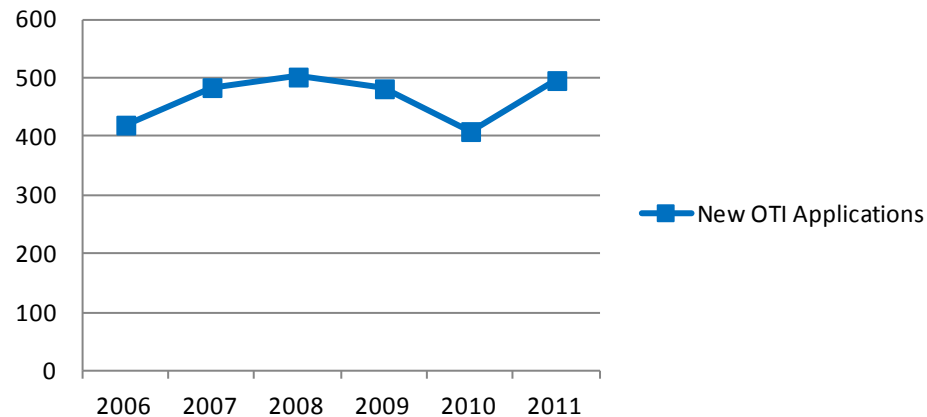
The Bureau worked during the fiscal year to streamline the OTI licensing process and reduce the time needed to reach a licensing decision. The Commission's goal was to complete 60 percent of all OTI license applications within 60 calendar days during fiscal year 2011. Despite reductions in staffing, the Bureau completed over 75 percent of all OTI applications within 60 business days, exceeding the goal set by almost 20 percent. Additionally, BCL made significant progress in reducing the number of applications processed with incomplete data submissions from applicants. The Bureau continues to review its procedures in order to improve the timeliness of licensing determinations.

Figure 1: Ocean Freight Forwarders, NVOCCs That Held Active OTI Licenses 2006 - 2011



The automated Form FMC-18, *Application for an Ocean Transportation Intermediary License*, permits filers to complete an OTI application online, scan and attach required documents, and submit the application electronically. The filing system incorporates significant security features for the purpose of protecting applicant data, and detecting and preventing unauthorized system intrusion. The Bureau seeks additional efficiencies in its OTI licensing program through future improvements in the automated Form FMC-18 system. At the present time, approximately 93 percent of all incoming OTI applications received are from the electronic system. Figure 2 shows the number of new applications processed by FMC over each of the last five fiscal years, 2006 through 2011.

Figure 2: New Ocean Transportation Intermediaries Applications Received 2006 - 2011



3. Passenger Vessel Certification

The Commission administers 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. The program now encompasses 199 vessels and 41 operators, which have aggregate evidence of financial responsibility coverage in excess of \$293 million for nonperformance and over \$293 million for casualty. Certificates of performance cover financial responsibility for the indemnification of passengers for nonperformance of transportation. This requirement also helps prevent unscrupulous or financially weak operators from operating from U.S. ports. The required levels of coverage

for nonperformance are determined by Commission regulation, which do not currently require coverage exceeding \$15 million per entity. Even after an operator has ceased operations and dissolved its corporate existence, the evidence of financial responsibility is still valid and available to claimants against the guarantor. Certificates of casualty are required to meet liability that may occur for death or injury to passengers or other persons on voyages to or from U.S. ports in the amounts established by the statute. The law provides for \$20,000 coverage per person for the first 500 passengers, and the scale decreases to \$5,000 per person for passengers in excess of 1,500. U.S. Customs and Border Protection is directed to refuse clearance to any vessel which does not comply with the FMC's evidence of financial responsibility requirements for casualty and nonperformance. During fiscal year 2011, the Commission approved and issued 22 casualty certificates and 24 performance certificates.

In conjunction with CADRS, the Bureau offers information and guidance to the cruising public throughout the year on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages. Over the past few years, a number of cruise operators discontinued operations or filed for bankruptcy. When cruise lines fail to perform because of bankruptcies or other failures, the Commission works closely with the cruise line and the financial responsibility provider, if necessary, to facilitate the refund process. The public is kept informed through press releases posted on the Commission's website and advice given to passengers who contact staff. During FY 2011, one operator, West Travel, Inc. doing business as Cruise West (Cruise West), ceased operations in September 2010 with unperformed cruises and filed for bankruptcy in December 2010. BCL and CADRS worked closely with Cruise West's claims processor and the United States Tour Operators Association to oversee the disbursement of funds to Cruise West passengers and addressed concerns from the public regarding this situation. Staff also continued to assist passenger vessel operators and financial responsibility providers during the fiscal year to resolve passenger claims for several cancelled cruises of other cruise operators.

The Bureau reviewed PVO activities and operations by monitoring current industry events and examine cruise lines' unearned passenger revenue (UPR) information. Oversight of cruise line operators' operations and activities ensures compliance with applicable statutes and Commission regulations. No on-site review was conducted this fiscal year because staff was involved in analyzing comments and testimonies received in response to a Notice of Inquiry and a hearing on PVO matters which was held on March 3, 2010.

Based on the information received, the Commission voted on July 14, 2011 to initiate a rulemaking to strengthen protections for cruise line customer deposits and prepayments and to reduce financial responsibility requirements for small cruise lines. The Notice of Proposed Rulemaking (NPRM) was issued on September 13, 2011 with a deadline of November 21, 2011 to submit comments. The NPRM would double the maximum coverage requirement for larger cruise lines from \$15 million to \$30 million, with a two year phase-in period; adjust the maximum coverage requirement automatically to account for inflation; give relief to smaller vessel operators by reducing their coverage requirements to account for alternative forms of financial protections available to their customers; revise the application form; add an expiration date to the Certificate (Performance); and make some technical adjustments to the regulations. BCL will provide its analysis of the comments and present options for the Commission's consideration in early fiscal year 2012.

4. Automated Database Systems

During FY 2011, BCL continued to modernize and expand the Regulated Persons Index (RPI), a database containing up-to-date records of licensed OTIs, ocean common carriers, and other entities. Among other data uses, the RPI is used to post on the Commission's website a list of compliant

OTIs so that carriers and others can ascertain whether an OTI is properly licensed, bonded, and if required, has posted the location of its automated tariff. The OTI list also indicates whether an NVOCC has filed an optional rider for additional proof of NVOCC financial responsibility. Additional report capabilities were implemented during the fiscal year to facilitate management of the OTI licensing program. Also, in conjunction with the agency's OIT, BCL continues to work towards automating the PVO Application Form FMC-131, *Application for Certificate of Financial Responsibility*, and to gather requirement analysis to facilitate the filing of PVO applications.

5. Future Plans

In fiscal year 2012, the Bureau will:

- Continue to develop and present options to the Commission for consideration to ensure that passenger vessel financial responsibility requirements for nonperformance provide appropriate protection for the public. The Bureau will take necessary steps to implement a decision reached by the Commission, including initiation of rulemakings or adjustments in PVO monitoring procedures.
- Generate for consideration suggested updates of rules and regulations regarding OTI licensing requirements to ensure continued protection of the shipping public in light of changed industry circumstances.
- Produce guidance for OTI applicants to assist in preparing OTI Application Form FMC-18.
- Improve the OTI list on the Commission's website enabling users to perform geographic searches to locate licensed OTIs, which will be particularly useful for individuals who plan to move overseas. Finding a licensed OTI in their local area can result in more accurate quotations for transportation of their household goods and will allow those consumers to make better informed decisions, rather than resorting to using unlicensed OTIs. The Bureau plans to expand contact information provided for all OTIs on the website as well.

- Continue efforts to advance the efficiency and productivity of the OTI licensing program through additional improvements to the current automated Form FMC-18 system, or in conjunction with the agency's Enterprise Content Management project.

I. BUREAU OF ENFORCEMENT

The Bureau of Enforcement is the primary prosecutorial arm of the Commission. Attorneys of the Bureau serve as trial attorneys in formal proceedings instituted under section 11 of the Shipping Act, and in investigations instituted under the FSPA. Bureau attorneys also may be designated investigative officers in nonadjudicatory fact-finding proceedings. The Bureau monitors all other formal proceedings, including relevant court proceedings, in order to identify major regulatory issues and advise the Managing Director and the other bureaus. The Bureau also participates in the development of Commission rules and regulations and serves on inter-bureau task forces and special committees. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court or other agency litigation to which the Commission is a party.

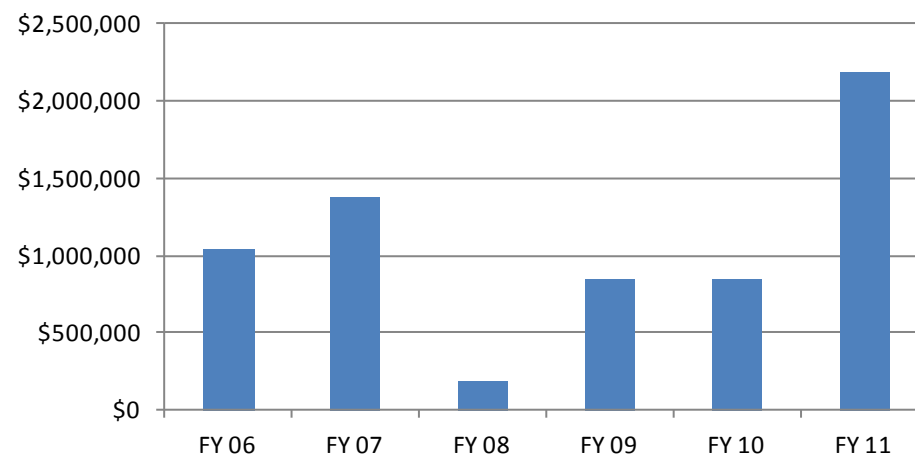
Through investigative personnel, and most often as the result of information provided by the industry and other government entities, the Bureau monitors and provides liaison and legal advice in investigations of the activities of ocean common carriers, OTIs, shippers, ports, and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission. Monitoring activities include: (1) service contract and NVOCC service arrangement (NSA) reviews to determine compliance with applicable statutes and regulations; (2) reviews and audits of ocean common carrier, NVOCC and ocean freight forwarder operations, including compliance with licensing, tariff, and bonding requirements; (3) audits of passenger vessel operators to ensure the financial protection of cruise passengers; (4) monitoring of agreements among ocean carriers and MTOs; and (5) various studies and analyses to support Commission programs. Investigations involve alleged violations of the full range of statutes and

regulations administered by the Commission, including: illegal or unfiled agreements; abuses of antitrust immunity; unlicensed OTI activity, including servicing of noncompliant OTIs by VOCCs and licensed NVOCCs; illegal rebating; misdescriptions or misdeclarations of cargo; untariffed cargo carriage; unbonded OTI and passenger vessel operations; and various types of consumer abuses, including failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers. The Bureau adheres to the agency's objectives of obtaining statutory compliance and ensuring equitable trading conditions.

The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty demands arising out of those violations. Other Bureau investigations may be resolved through compliance measures. If settlement is not reached, Bureau attorneys act as prosecutors in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other Commission units, in special enforcement initiatives, fact-finding investigations and rulemaking efforts.

During fiscal year 2011, the Bureau of Enforcement investigated and prosecuted possible illegal practices in many trade lanes, including the Transpacific, Oceania, North Atlantic, Mediterranean, West Africa, Central and South American, and Caribbean trades. These market-distorting activities included various forms of rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, and unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these investigations were resolved informally, some with compromise settlements and civil penalties. The following Figure 3 shows civil penalties collected by the FMC over the last five fiscal years.

**Figure 3: Civil Penalties Collected
FY 2006 - 2011**



Two major investigations, completed during fiscal year 2011, addressed whether certain Shanghai-based NVOCCs utilized intentional misdescriptions of commodities as an unfair device or means to obtain ocean transportation at less than the rates that would otherwise apply, in violation of section 10(a) of the 1984 Act. Docket Nos. 10-09 (*Sinicway International Logistics Ltd. – Possible Violations*) and 11-04 (*Worldwide Logistics Co. Ltd. – Possible Violations*) were discontinued upon approval of a formal settlement agreement, payment of substantial civil penalties by the NVOCC, and termination of the violative practices at issue. BOE also completed a major investigation of an ocean common carrier in the inbound China-U.S. trades believed to be providing transportation services to intermediaries that did not have tariffs, licenses, or bonds as required by the statute; and allowing use of service contracts by persons who were not parties to those contracts. That investigation culminated in a \$1.2 million penalty payment to the

Commission by Mitsui O.S.K. Lines Ltd., a Japanese-flag carrier, as well as that carrier's agreement to provide ongoing cooperation with any further Commission investigations or enforcement actions with respect to these activities. The Bureau also continued ongoing investigations of household goods movers allegedly operating as unlicensed OTIs, including investigation of the VOCCs and licensed NVOCCs that provided service to unlicensed movers. BOE activities included formal proceedings instituted against an unlicensed freight forwarder in Docket No. 11-06 (*Indigo Logistics LLC, et al – Possible Violations*), undertaken in coordination with efforts by the Office of General Counsel requesting that the Federal courts enjoin the Indigo Logistics' defendants from further illegal activities. Judge Timothy C. Batten, Sr. issued the preliminary injunction order in the U.S. District Court for the Northern District of Georgia on April 15, 2011.

Interaction between the Bureau, the Commission's Area Representatives, and the CBP with respect to the exchange of investigative information continues to be beneficial to all parties. Cooperation with CBP included staff interactions and joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation also has included local police and other government entities, including the U.S. Attorney's Office and the Federal Bureau of Investigation, when necessary.

In fiscal year 2011, the compliance audit program continued. This program, conducted from headquarters 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 with no indication of vessel operations. During the fiscal year, 100 audits were commenced, 106 audits were completed (including audits carried over from FY2010), and 9 remained pending in the Bureau on September 30, 2011.

At the beginning of fiscal year 2011, 12 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 7 formal proceedings, and there were 11 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 17 new cases were referred for enforcement action or informal compromise; 16 were compromised and settled, administratively closed, or referred for formal proceedings; and 13 enforcement cases were pending resolution at fiscal year's end. Also, 3 formal proceedings were initiated; 2 formal proceedings were completed, and 8 were pending at the end of the fiscal year. Additionally, the Bureau opened 5 matters involving monitoring or legal advice during the fiscal year, completed or closed 4 such matters, and 12 were pending in the Bureau on September 30, 2011.

In fiscal year 2012, the Bureau will continue to investigate market-distorting, fraudulent, and anticompetitive practices not in compliance with the statutes and regulations administered by the Commission, including the operations of licensed and unlicensed OTIs and possible non-compliance by the parties with the regulatory requirements for service contracts and NSAs. Cargo misdescription in the PRC trades and elsewhere will serve as an area of continuing focus for the Bureau's enforcement efforts during fiscal year 2012. BOE will continue enforcement and monitoring activities that address the unlawful operations of international household goods carriers, both licensed and unlicensed, which have increasingly caused economic harm to individual consumers, as well as competitive injury to those carriers operating lawfully.

J. BUREAU OF TRADE ANALYSIS

1. In General

The primary function of the Bureau is the oversight of concerted activity by ocean common carriers and marine terminal operators under the standards of the Shipping Act. Further, the Bureau administers the Commission's agreements, service contract, NSA, and Negotiated Rate Agreement (NRA) programs, and monitors the accessibility and accuracy of all published tariffs. The Bureau's major program activities include:

- Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in the major U.S. foreign trades, and to advise the Commission and its staff on current trade conditions, trends and regulatory concerns affecting oceanborne liner transportation.
- Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.
- Developing economic studies and analyses in support of the Commission's regulatory responsibilities.
- Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.
- Processing and analyzing ocean common carrier and MTO agreements.
- Reviewing and processing service contracts, NSAs and amendments filed by ocean common carriers, conferences of such carriers, and NVOCCs, including service contract and NSA statements of essential terms published by such entities.
- Reviewing tariff publications in automated systems of carriers and conferences and ensuring that tariffs are accessible to the public and accurate, and overseeing application of the new NRA regulations.

2. Agreement Filings and Review

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 MTOs and among one or more MTOs and one or more ocean common carriers also are required to be filed with the Commission. Generally, an agreement becomes effective 45 days after filing, unless the Commission has requested additional information. 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.

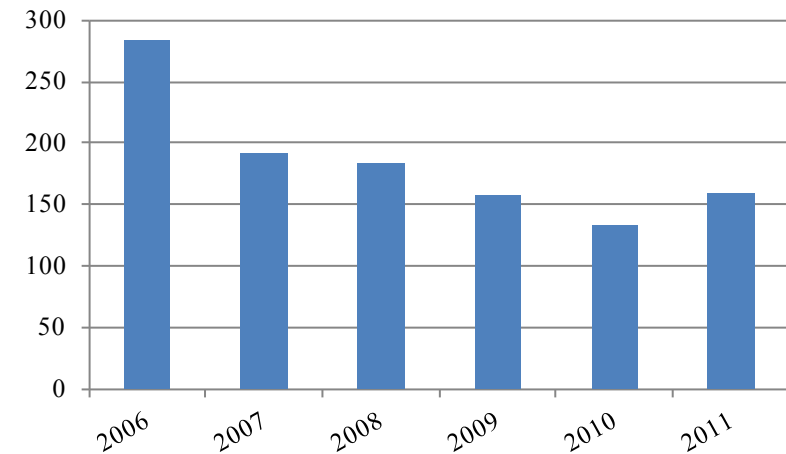
In fiscal year 2011, the Bureau received 159 agreement filings, an increase of 25, or 19 percent, from the previous year. The Bureau analyzed and processed 158 agreement filings during the year. Statistics on agreement filings for fiscal year 2011 are contained in Appendix C. The following Figure 4 graph illustrates the trend in agreement filings since FY 2006. Other than the increase in fiscal year 2011, the trend has been generally downward.

While the annual number of filings changes year to year, the number of effective carrier agreements (Figure 5) on file with the Commission has remained relatively constant, averaging about 225 over the last six years.

(a) Ocean Common Carrier Agreements

There are two broad categories of ocean common carrier agreements filed with the Commission: (1) pricing agreements, where the main focus is on rates, and (2) operational agreements, where the focus can range from the sharing of vessel space to the management of an internet portal. Descriptions of the two categories of agreements follow:

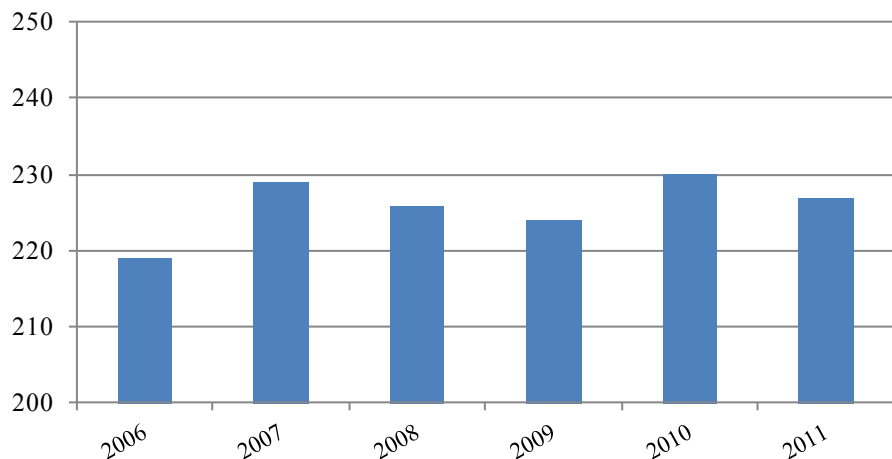
Figure 4: Agreement Filings
FY 2006 - FY 2011



(1) Pricing Agreements

There are two types of pricing agreements: conference agreements and rate discussion agreements (RDAs). Conference agreements provide for the collective discussion, agreement, and establishment of common ocean freight rates and practices by groups of ocean common carriers. Conferences publish a common rate tariff in which all the member lines participate. RDAs also focus on rate matters, but unlike conferences, any consensus on rates reached under RDAs is non-binding on the parties. RDA member lines each publish their own tariff. At the end of the fiscal year 2011, there were three effective conference agreements, and 22 RDAs on file.

**Figure 5: Effective Carrier Agreements
FY 2006 - FY 2011**



Conference 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. Last year, one conference, the South American Independent Lines Association, was terminated because the parties were no longer using the agreement. 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 22 agreements. During fiscal year 2011, RDA filings for the most part involved adding or removing members. No new RDAs were filed last year, and two were terminated, the Eastern Mediterranean Discussion Agreement and the Japanese Flag Far East-United States Discussion Agreement.

(2) Operational Agreements

Operational agreements include vessel-sharing agreements, joint service agreements, cooperative working agreements, and non-rate discussion agreements without rate authority. At the end of the fiscal year, operational agreements accounted for 89 percent of all carrier agreements on file.

Vessel-sharing agreements (VSAs) typically authorize some level of service cooperation with the goal of reducing individual line's operating costs. VSAs range from alliance agreements, which involve close operational cooperation across multiple trade lanes, to slot charter agreements, which require only minimal commitments. VSAs account for the vast majority of filed carrier agreements, 75 percent at the end of the fiscal year. They also accounted for 47 percent of carrier agreement filings received last year. Twenty-nine new VSAs were filed in fiscal year 2011, and 27 VSAs either were terminated or expired, bringing the total number of VSAs on file to 170 agreements.

Under joint service agreements (JSAs), two or more carriers operate a combined service under a single name in a specified trading area. The joint service issues its own bills of lading, sets its own rates, and acts as an individual ocean common carrier. At the end of the year, there were six JSAs on file, a decrease of one from last year. No new JSAs or amendments to existing JSAs were received last fiscal year.

Cooperative working agreements (CWAs) are non-pricing agreements that tend to deal with unique operational considerations relating to acquisitions, sharing of administrative services, or internet portal management. Other CWAs filed with the Commission include agency, sailing, transshipment, and equipment interchange (including chassis pooling) agreements. At the end of the year, there were 17 CWAs and other agreements on file, a decrease of one from last year. No new CWAs or other agreements were filed last fiscal year.

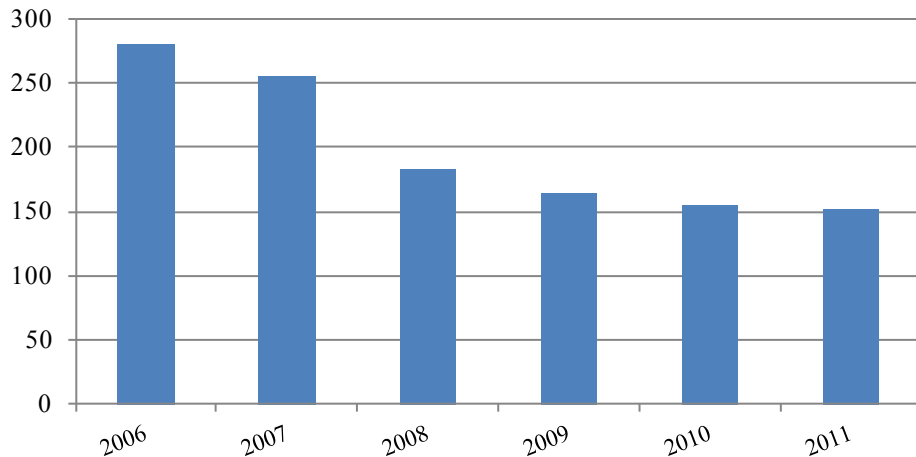
Discussion agreements without rate authority provide ocean common carriers a vehicle for discussing matters of mutual interest other than rates. Typically, these agreements focus on macro-economic, regulatory, safety, or security issues. At the end of the fiscal year, there were nine such agreements on file, no net change from the previous year. One new agreement was filed last year, a liner data collection agreement that replaced a similar earlier agreement.

(b) Marine Terminal Operator Agreements

Marine terminals, operated by both public and private entities, 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. The Bureau is responsible for reviewing and processing agreements between and among MTOs.

During fiscal year 2011, the Bureau received 25 MTO agreement filings, including 4 terminations. At the end of the fiscal year, there were 151 marine terminal agreements on file, down from 155 the previous year. The Figure 6 graph below shows the trend of MTO agreements on file over the last six years.

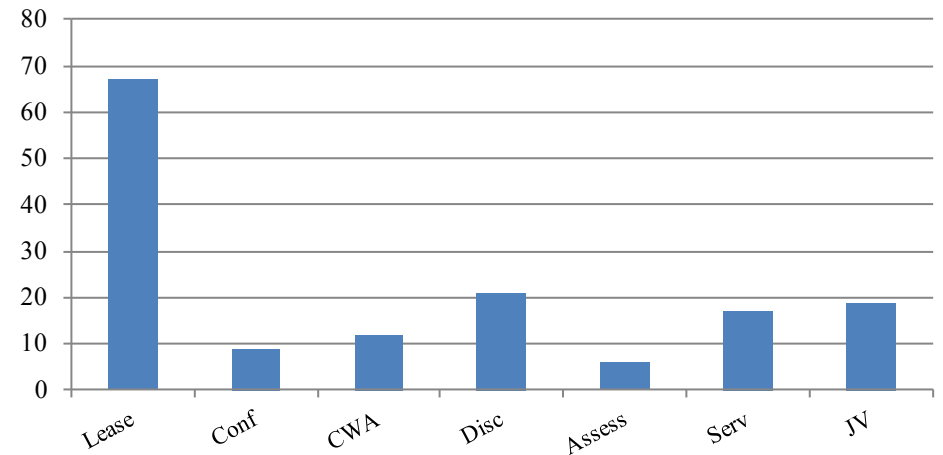
**Figure 6: MTO Agreements on File
FY 2006 - FY 2011**



Terminal leases accounted for most of the MTO agreements on file, followed by MTO discussion agreements, MTO joint ventures, and service agreements. Over the last five years, leases and services agreements experienced the deepest decline, falling 58 percent and 60 percent, respectively. These decreases are largely due to the filing exemption afforded under the Commission's regulations and notifications of previously unreported terminations. MTO discussion agreements experienced the largest increase in numbers over the last five years, going from 11 agreements in 2007 to 21 agreements at the end of 2011. This increase is due mainly to the MTOs' need to discuss environmental, infrastructure, security, and congestion issues that the ports are facing today.

The following Figure 7 graph, charts the types of MTO agreements on file at the end of fiscal year.

**Figure 7: MTO Agreements
as of Sept 30, 2011**



3. Monitoring and Economic Analysis

The systematic monitoring of common carrier activities and commercial conditions in the U.S. foreign trades is an integral part of the Commission's responsibilities under the Shipping Act. The activities of certain types of MTO agreements are monitored in a similar fashion. Monitoring helps ensure that carriers and marine terminal operators comply with the statutory standards of the Shipping Act and the requirements of relevant Commission regulations. The Bureau administers monitoring programs, and conducts research into current trade conditions, emerging commercial trends, carrier pricing and service activities, and other issues that may affect U.S. liner shipping.

The Commission's monitoring program examines carrier competition in individual U.S. trade lanes, including market share, concentration, barriers to market entry, and coordination among carriers. The program also examines alternative service options and alternative supply sources, cargo volume trends, congestion bottlenecks, commercial pricing practices, operational cost pressures, service offerings, vessel capacity utilization, service contracting activity, and shipper complaints.

Major projects begun or completed by the Bureau in fiscal year 2011 included: (1) assisting in the preparation of Commission Orders for special reporting requirements from strategic discussion and alliance agreements in connection with Fact Finding Investigation No. 26, *Vessel Capacity and Equipment Availability in the United States Export and Import Liner Trades*; (2) reviewing and monitoring the compliance of special reports submitted by agreements subject to the Commission's Orders; (3) providing presentations and reports to the Commission on the activities of the agreement parties subject to the Orders for special reports; (4) preparing a Commission Notice of Inquiry (NOI) to invite public comments on the impact of

slow-steaming vessels by carriers in the U.S. liner trades and a memorandum to the Commission on the responses; (5) completing a NOI to invite public comments on the repeal by the European Union (EU) of its block exemption for liner conferences and a memorandum to the Commission on the responses; (6) completing a draft report on the Bureau's study of the repeal of the EU block exemption. *Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law*; (7) providing presentations to the Commission on the proposed increase in the fees of the PierPASS program under the West Coast MTO Agreement and participating in a public forum on the issue; (8) preparing any necessary competitive impact analyses, along with requests for additional information, of new agreement filings and amendments to agreements, including the Port of NY/NJ - Port Authority/Marine Terminal Operators Agreement to implement a RFID system at the marine terminal facilities and an amendment to the Consolidated Chassis Management Pool Agreement to restructure the chassis pool operations of the parties; (9) conducting research for, and providing a presentation to, the Commission on the formulation and use of certain container freight indices; (10) providing the Commission with data and information on the extent of U.S.-bound container cargo moving via Canadian ports; (11) assisting with the computer programming of the SERVCON operating system to index and search service contracts; (12) updating and expanding the BTA intranet website with trade and agreement profiles and other relevant information; (13) participating in the Automated Commercial Environment (ACE) under the U.S. Customs and Border Protection; and (14) providing data and information on liner trade conditions and agreement matters in response to requests from within and outside the Commission.

The Bureau also provides economic expertise for Commission initiatives, including rulemaking proceedings. Bureau economists may prepare testimony in investigations and cases of unfair shipping practices under section 19 of the 1920 Act and the FSPA. The Bureau also provides briefings and supporting materials for senior agency officials on agreements and trade conditions for the Commission's hearings before Congress and the official speaking engagements of FMC Commissioners, and conducts outreach on behalf of the Commission to industry and the shipping public.

4. Tariffs

The Shipping Act requires common carriers and conferences to publish their tariffs electronically. These electronic tariffs contain rates, charges, rules, and practices of common carriers operating in the U.S. trades. The Bureau monitors the public accessibility of these private tariff systems and reviews published tariff material for compliance with the requirements of the Shipping Act. The Bureau also determines whether to grant applications for special permission to deviate from tariff publishing rules and regulations. During fiscal year 2011, the Bureau received and processed seven special permission applications.

The Bureau is also responsible for processing the electronic Form FMC-1, *Tariff Registration Form*, required to be filed with the Commission by common carriers, conferences, and MTOs. The data on this form identifies the location of common carrier tariffs, including common carrier and conference service contract essential terms publications or any MTO schedules. At the end of fiscal year 2011, 5,043 tariff location addresses were posted on the Commission's website. Of that number, 4,590 tariff addresses were for NVOCCs. The Bureau also collaborates with other Commission bureaus and offices to verify that VOCCs and NVOCCs comply with the Commission's licensing, bonding, and tariff publication requirements.

The Commission implemented 46 C.F.R. Part 532, NRAs, on April 18, 2011, which allows NVOCCs to "opt out" of having to file rate tariffs providing they use NRAs exclusively. NVOCCs are required to keep NRAs, which must be memorialized in writing, for a period of five years. Additionally, NVOCCs are required to maintain rules tariffs which must be made available free of charge.

5. Service Contracts

Service contracts are an alternative that has largely eclipsed transportation of cargo under tariff rates. Service contracts enable the parties to tailor transportation services and rates to their commercial and operational needs, and to keep such arrangements confidential.

During fiscal year 2011, the Commission received 49,103 new service contracts, compared to 45,342 in fiscal year 2010, and 467,169 contract amendments, compared to 350,310 in fiscal year 2010. The number of original contracts in fiscal year 2011 increased by 8.3 percent whereas amendments increased by 33 percent.

Original service contracts or NSA filings that contain clerical errors can be corrected within two business days by filing a "corrected transmission" copy into SERVCON. During the fiscal year, 5,346 records involving corrected transmission copies were filed into SERVCON.

6. NVOCC Service Arrangements

Commission rules allow NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers known as NSAs rather than under a published tariff. The Commission's rules implementing NSAs, 46 CFR Part 531, NVOCC Service Arrangements, became effective on January 19, 2005.

Since January 2005, when NSA filing began, 6,461 NSAs and 12,296 amendments have been filed with the Commission. In fiscal year 2011, 1,264 NSAs and 3,460 amendments to NSAs were filed by a total of 83 NVOCCs. Of the 1,108 NVOCCs that are registered with the Commission to file NSAs, 171 (about 15 percent) have done so.

7. 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 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. In fiscal year 2011, nine controlled carriers operated in U.S. trades.

- (1) American President Lines, Ltd. and APL Co., Pte. (RPI No. 000240) – Republic of Singapore;
- (2) Ceylon Shipping Corporation (RPI No. 016589) – Democratic-Socialist Republic of Sri Lanka;
- (3) COSCO Container Lines Company, Limited (RPI No. 015614) - People's Republic of China;
- (4) China Shipping Container Lines Co., Ltd. (RPI No. 016435) - People's Republic of China;
- (5) China Shipping Container Lines (Hong Kong) Company, Ltd. (RPI No. 019269) - People's Republic of China;

- (6) Compagnie Nationale Algerienne de Navigation (RPI No. 000787) - People's Democratic Republic of Algeria;
- (7) Sinotrans Container Lines Co., Ltd. (d/b/a Sinolines) (RPI No. 017703) – People's Republic of China;
- (8) Shipping Corporation of India Ltd., The (RPI No. 001141) – Republic of India; and
- (9) Hainan P.O. Shipping Co., Ltd. (RPI No. 022860) – People's Republic of China.

8. Marine Terminal Schedules

Pursuant to the Ocean Shipping Reform Act (OSRA), a marine terminal operator (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. MTOs must notify the Bureau of the electronic location of their terminal schedule by submitting Form FMC-1 before commencing operations. A total of 267 MTOs have filed Form FMC-1, of which 159 have elected to voluntarily publish their terminal schedules. Internet addresses for these MTO terminal schedules are posted on the Commission's website.

9. Automated Database Systems

The Bureau maintains and uses the following automated databases and filing systems: (1) Form FMC-1 System; (2) SERVCON, the system for filing service contracts and NSAs (as well as internal database systems related to SERVCON registration forms); and (3) the Agreement Profile Database.

At the end of fiscal year 2011, the Form FMC-1 System reflected the tariff location addresses of 289 VOCCs, 4,590 NVOCCs, 5 conferences, and 159 MTOs. The FMC-1 System also allows the Commission to track the status of any Form FMC-1 submitted.

SERVCON contains service contract and NSA data, most of which is available only to the Commission's staff due to confidentiality requirements. Carriers must register to file service contracts by submitting Form FMC-83, and NVOCCs must submit Form FMC-78 to file NSAs.

The Agreement Profile Database contains information about the status of carrier and terminal agreements, as well as related monitoring reports. These databases and filing systems provide support for many of the Commission's programs and the Bureau's monitoring efforts. Through specially tailored reports, the Commission makes certain database information available to the general public. The Bureau also maintains an electronic library of effective carrier and MTO agreements. This library is accessible through the Commission's website.

10. Future Plans

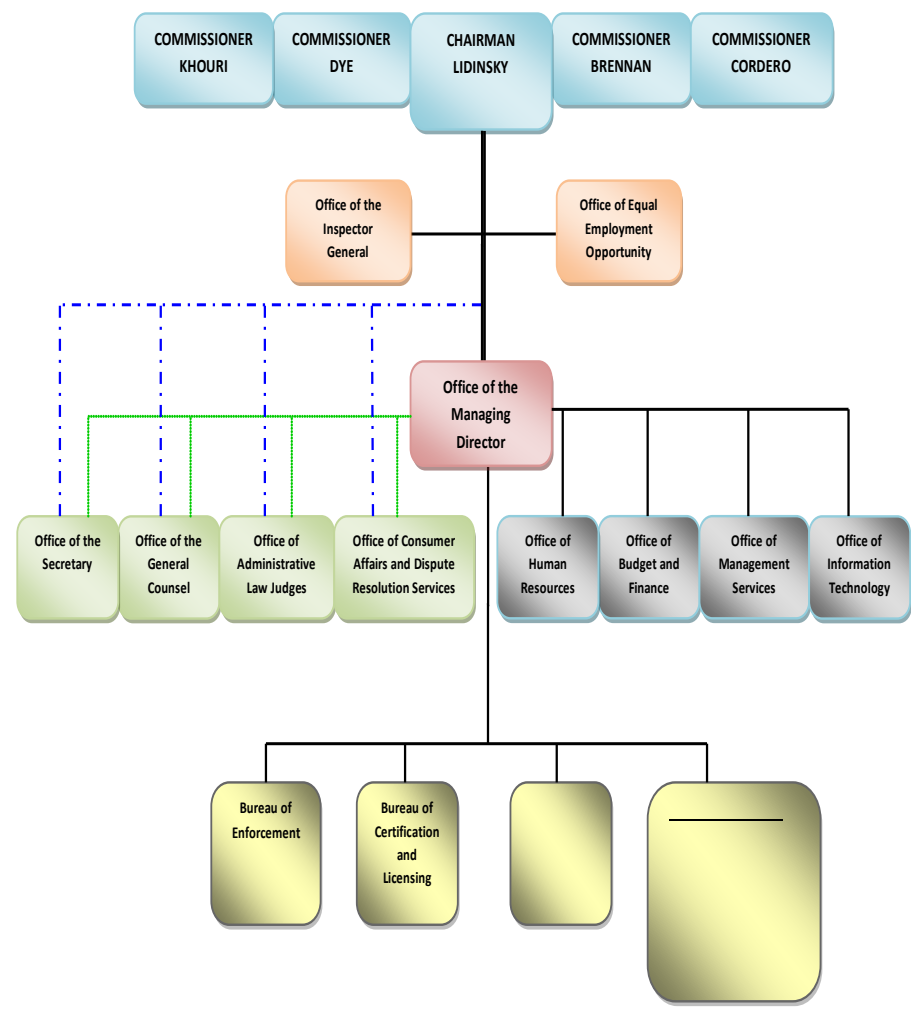
During fiscal year 2012, the Bureau will continue its regular review of new ocean carrier and marine terminal operator agreements and ongoing monitoring of existing agreements. The Consolidated Chassis Management Pool Agreement will be of special interest as it transitions to a new business model less dependent on chassis supplied by ocean carriers. In early 2012, the Bureau expects to publish its study of the 2008 repeal of the liner conference block exemption from European Union competition law. During fiscal year 2012, trends in rates, volatility, and concentration in the Far East/Europe and Far East/US trades may be further reviewed.

In addition, the Bureau will help respond to requests the Commission has received from two U.S. Senators and several Members of Congress to study the factors, such as the U.S. Harbor Maintenance Tax, that may contribute to container cargo destined for U.S. inland points moving via Canadian or Mexican seaports. The Bureau will also continue its enhanced oversight of the three global alliances and its ongoing monitoring of vessel capacity and equipment availability in the U.S. liner trades. Subject to the availability of resources, the Bureau plans to work with OIT to revise the internal architecture of the SERVCON system to allow the search functionality to keep pace with the rapid accumulation of records. The Bureau also will continue to maintain an accurate record of tariff publication locations by conducting periodic compliance audits of NRAs and of the operating status of VOCCs engaged in the U.S. liner trades.

The Bureau will continue to provide analytical support to other bureaus and offices, participate in Commission task force projects, oversee the filing of service contracts and the publication of tariffs, and conduct compliance studies and other research projects on liner shipping, marine terminal operations, and intermodal transportation in U.S. trades.

APPENDICES

**FEDERAL MARITIME COMMISSION
ORGANIZATION CHART**
as of
SEPTEMBER 30, 2011



— Administrative Direction
- - - - - Technical Direction

**APPENDIX B
COMMISSION PROCEEDINGS
Fiscal Year 2011**

Formal Proceedings	
Orders of Investigation Initiated	2
Formal Complaints Filed	11
ALJ Initial Decisions Issued*	5
Initial Decisions Reviewed	2
Exceptions Filed to Initial Decisions	1
Fact Finding Orders Issued (Final Report)	1
Rulemakings	
Proposed Rules	3
Final Rules	4
Informal Dockets	
Informal Complaints Filed	3
Settlement Officer Decisions Issued	2
Settlement Officer Decisions Reviewed	4
Notice of Inquiries Issued	3
Hearings Held (Public Forum)	1

*Initial Decisions includes four settlements approved and one dismissal.

**APPENDIX C
AGREEMENT FILINGS AND STATUS
Fiscal Year 2011**

Agreements Filed	
(including modifications and terminations)	
Carrier	134
Terminal.....	25
Total.....	159
Agreement Processing Categories	
Forty-Five Day Review.....	32
Expedited Review.....	6
Exempt-Effective Upon Filing.....	119
Rejection of Filing.....	0
Formal Extension of Review Period.....	1
Withdrawals.....	0
6(g) Injunction.....	0
Total.....	158
Carrier Reports Submitted for Commission Review	
Minutes of Meetings.....	797
Voluntary Service Contract Guidelines.....	104
Monitoring Reports.....	365
Total.....	1,266
Agreements on File as of September 30, 2011	
Conference.....	3
Rate Discussion.....	22
Non-Rate Discussion.	9
Joint Service.....	6
Vessel-Sharing.....	170
Cooperative Working & Other.....	17
Terminal.....	151
Total.....	378

**APPENDIX D
FORM FMC-1**

**TARIFF LOCATION ADDRESSES - SERVICE CONTRACT AND
NSA FILINGS AND SPECIAL PERMISSION APPLICATIONS
Fiscal Year 2011**

Form FMC-1 Filings

VOCCs.....	289
OTI/NVOCCs.....	4,590
MTOs.....	159
Conferences.....	5

Electronic Service Contract Documents

New Service Contracts.....	49,103
Service Contract Amendments.....	467,169

NVOCC Service Arrangement (NSA) Documents

New NSAs.....	1,264
NSA Amendments.....	3,460

Special Permission Applications

Granted.....	7
Denied.....	0
Pending.....	0
Withdrawn.....	0

**APPENDIX E
CIVIL PENALTIES COLLECTED
Fiscal Year 2011**

EuroUSA Shipping Inc.....	\$ 30,000.00
Prime Shipping International Inc.	45,000.00
Allied Transport Systems Inc. et al.....	150,000.00
Atlantic Express Corp.	70,000.00
Mitsui O.S.K Lines Ltd.....	1,200,000.00
Sinicway International Logistics Ltd.....	115,000.00
AE Eagle America Inc et al	87,500.00
Sinotrans Express Inc.....	50,000.00
MB Logistics International Inc.....	50,000.00
Ba-Shi Yuexin Logistics Development Co.....	85,000.00
Oceane Marine Shipping Inc	70,000.00
Orion Cargo Services Inc.	32,500.00
S.E.S. International Express Inc	62,500.00
Cargo Alliance Inc.	40,000.00
Worldwide Logistics Co. Ltd.	100,000.00
Total Civil Penalties Collected.....	\$2,187,500.00

APPENDIX F
 STATEMENT OF APPROPRIATIONS,
 OBLIGATIONS AND RECEIPTS FOR
 THE FISCAL YEAR ENDED
 SEPTEMBER 30, 2011

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 therefor, as authorized by 5 U.S.C. 5901–5902, \$24,135,000: Provided, That not to exceed \$2,000 shall be available for official reception and representation expenses.

Public Law 112-10	\$24,135,000
Government-wide Across-the-Board-Reduction	- 48,270
Reimbursable Authority	59,192
	<hr/>
Total Budgetary Resources Available	\$24,145,922

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2011.

\$24,061,355

STATEMENT OF RECEIPTS:

Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2011:

Publications and reproductions, fees and vessel certification, and freight forwarder applications	\$ 259,130
Fines and penalties	\$ 2,187,500
	<hr/>
Total general fund receipts	\$ 2,446,630