



FEDERAL MARITIME COMMISSION

**2004**

MANAGEMENT DISCUSSION AND ANALYSIS

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## A MESSAGE FROM THE CHAIRMAN



It is my pleasure to present the Federal Maritime Commission's Management Discussion and Analysis for FY 2004.

Our great country was founded on trade. A defining moment occurred in 1773, when the Boston Tea Party was the colonists' response to preferential tax treatment of a British company at the expense of colonial importers and merchants. Today, such an issue likely would fall under the Commission's jurisdiction as a foreign shipping practice. The United States, recognizing the vital importance of fair shipping practices, created the Commission's predecessor agency in 1916 to oversee international waterborne commerce. Since 1961, the Commission has effectively administered Congress's directives for the ocean transportation industry, and its long-standing expertise and experience have been recognized by Congress, as well as by the industry the Commission oversees, courts, and other Nations.

As a transportation/trade regulatory agency, we do not drive changes in the marketplace and we aim not to create new challenges for the industry: the drivers are the industry and its customers. Working with the industry, we have developed a regulatory system that allows for necessary oversight with minimal disruption to the efficient flow of U.S. imports and exports. The FMC's mission is generally to ensure that fair competition exists in the ocean transportation industry. We do so by ensuring that there are no undue controls, influences, or non-market barriers imposed by any nation, carrier, cargo owner or intermediary, which can adversely affect U.S. oceanborne trade. Our mandate is to help remove impediments to fair competition and thereby allow the industry to conduct business as effectively as possible.

Developing greater management accountability within the context of a more fully collaborative strategic planning process was an integral focus during FY 2004. I am also pleased to advise that the Commission completed implementation of an agency realignment in August 2004, which you will see reflected in this report. The new organizational structure allocates agency resources to maximize the effectiveness of the staff and facilitate agency efforts to better serve the ocean transportation industry.

The Commission remains committed to rigorously pursuing its goal to attain better government business practices and to improve the services it provides to the public and our stakeholders.

Sincerely,

A handwritten signature in blue ink that reads "Steven R. Blust". The signature is written in a cursive, flowing style.

Steven R. Blust  
Chairman, Federal Maritime Commission

## Commission at a Glance

The Federal Maritime Commission was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. Prior to that time, the Federal Maritime Board was responsible for both the regulation of ocean commerce and the promotion of the United States Merchant Marine. Under the reorganization plan, the shipping laws of the U.S. were separated into two categories -- regulatory and promotional. The newly created FMC was charged with the administration of the regulatory provisions of the shipping laws. The Commission is responsible for the regulation of ocean-borne transportation in the foreign commerce of the U.S. The passage of the Shipping Act of 1984 brought about a major change in the regulatory regime facing shipping companies operating in the U.S. foreign commerce. The subsequent passage of the Ocean Shipping Reform Act of 1998, with its deregulatory amendments and modifications to The 1984 Act, further signaled a significant paradigm shift in shipping regulations.

## Commission Functions

- Monitor activities of ocean common carriers, marine terminal operators, conferences, ports, and ocean transportation intermediaries (OTIs) who operate in the U.S. foreign commerce to ensure they maintain just and reasonable practices.
- Maintain a trade monitoring and enforcement program designed to assist regulated entities in achieving compliance, and to detect and appropriately remedy malpractices and violations set forth in section 10 of the 1984 Act.
- Monitor the laws and practices of foreign governments which could have a discriminatory or otherwise adverse impact on shipping conditions in the U.S.
- Enforce special regulatory requirements applicable to carriers owned or controlled by foreign governments.
- Process and review agreements and service contracts.
- Review common carriers' privately published tariff systems for accessibility and accuracy.
- Issue licenses to qualified OTIs in the U.S. and ensure all maintain evidence of financial responsibility.
- Ensure passenger vessel operators demonstrate adequate financial responsibility for casualty and non-performance.

## Principle Statutes or Statutory Provisions Administered by the Commission

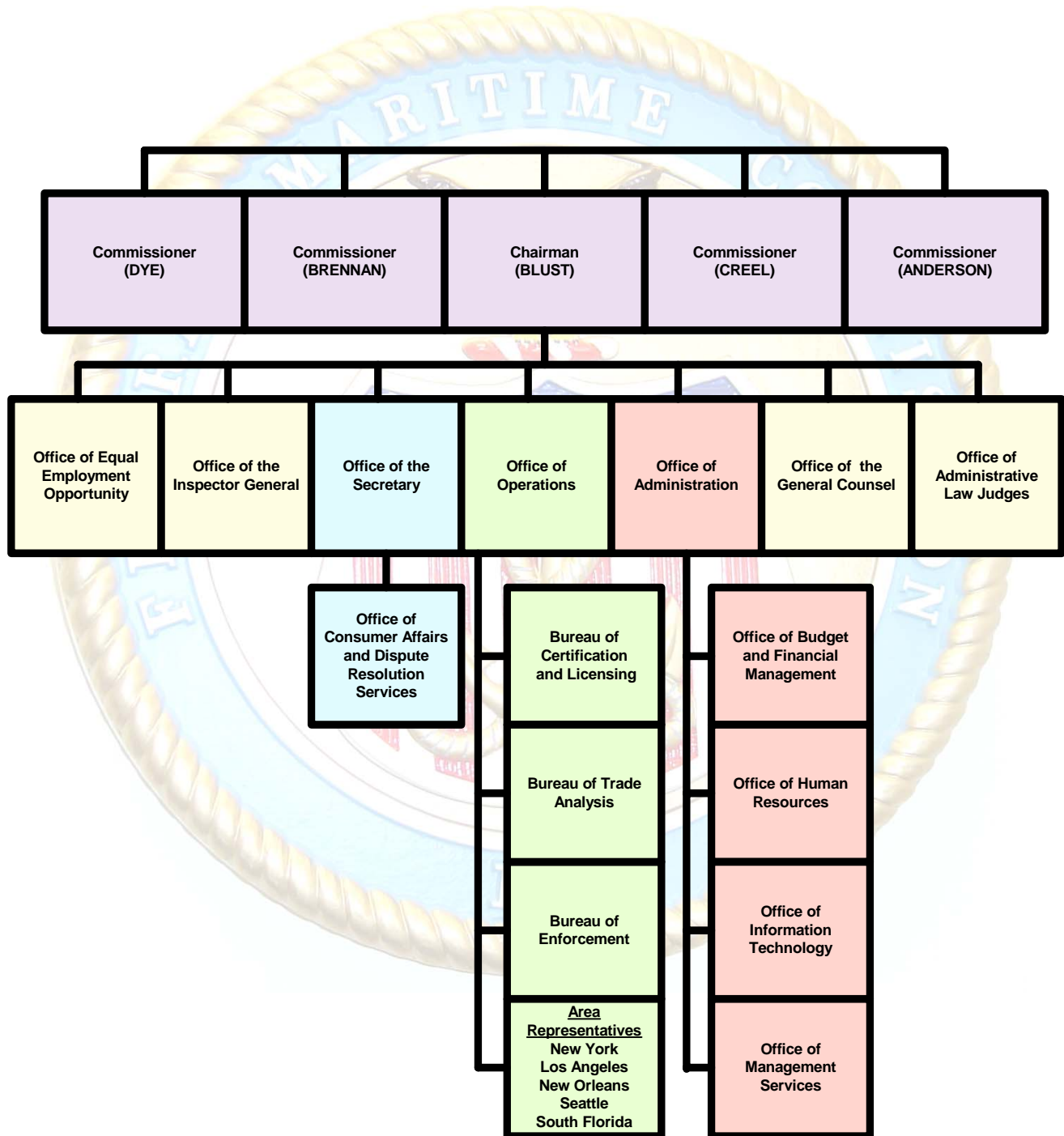
- The Shipping Act of 1984
- The Foreign Shipping Practices Act of 1988
- Section 19 of the Merchant Marine Act, 1920
- Public Law 89-777
- The Ocean Shipping Reform Act of 1998

## Current Picture

- **The Commission:** The Chairman and four Commissioners are appointed by the President with the advice and consent of the Senate.
- **Commission Employees:** The Commission has 130 full time employees, and is headquartered in Washington D.C. with area representatives in Los Angeles, New Orleans, Miami, Seattle, and New York.
- **Website:** The Commission Homepage can be found at [www.fmc.gov](http://www.fmc.gov)

# Federal Maritime Commission Organizational Chart

## As of 09/30/04



## A Message from the CFO

I am pleased to share the Federal Maritime Commission's FY 2004 audited financial statements, as required under the Accountability of Tax Dollars Act.



This is the second year the Commission has prepared a Management Discussion and Analysis. In FY 2002 the agency entered into an agreement with the Bureau of Public Debt to provide accounting and financial services beginning in FY 2003.

While the Bureau of Public Debt operates a JFMIP-approved accounting system, the Commission's previous provider did not. Thus, in FY 2003, even though granted a waiver by OMB, and with only one year's data able to be audited, the Commission determined to comply with the spirit of the Accountability of Tax Dollars Act and submit a report. In that year, the accounting firm of Clifton Gunderson LLP, which audited our financial statements, issued an opinion on our balance sheet only. Still, we were very pleased that the agency achieved an unqualified opinion from the accounting firm for FY 2003. In FY 2004, for the first time, the Commission has two years of data in our JFMIP-approved accounting system, and the auditor, which is again Clifton Gunderson LLP, has been able to issue an opinion on all of the Commission's financial statements. **(Add line to acknowledge outcome of audit)**

During FY 2004, for the first time in the Commission's history, the agency's budget was allocated among its bureaus and offices. This process has both enhanced management accountability for expenditures and led to a deeper involvement by management officials in the full range of the budget and planning process. Further, during FY 2004 the Commission began shifting the focus of its strategic planning process, making FY 2004 the last year in which the agency's performance plan goals were primarily program activity-specific. The Commission's Revised Final FY 2005 and Initial FY 2006 Performance Plans are based on agency-wide goals and cover one hundred percent of agency activities, i.e., both specific goals and steady state activities. As we begin FY 2005, the agency looks forward to achieving another important step in its continuing efforts to link planning, budgeting and performance.

The Commission looks forward to the challenge of achieving unqualified opinions for all financial statements in FY 2005 and in the years that follow.

Sincerely,

A handwritten signature in blue ink that reads "Bruce A. Dombrowski". The signature is written in a cursive, slightly slanted style.

Bruce A. Dombrowski  
Chief Financial Officer, Federal Maritime Commission

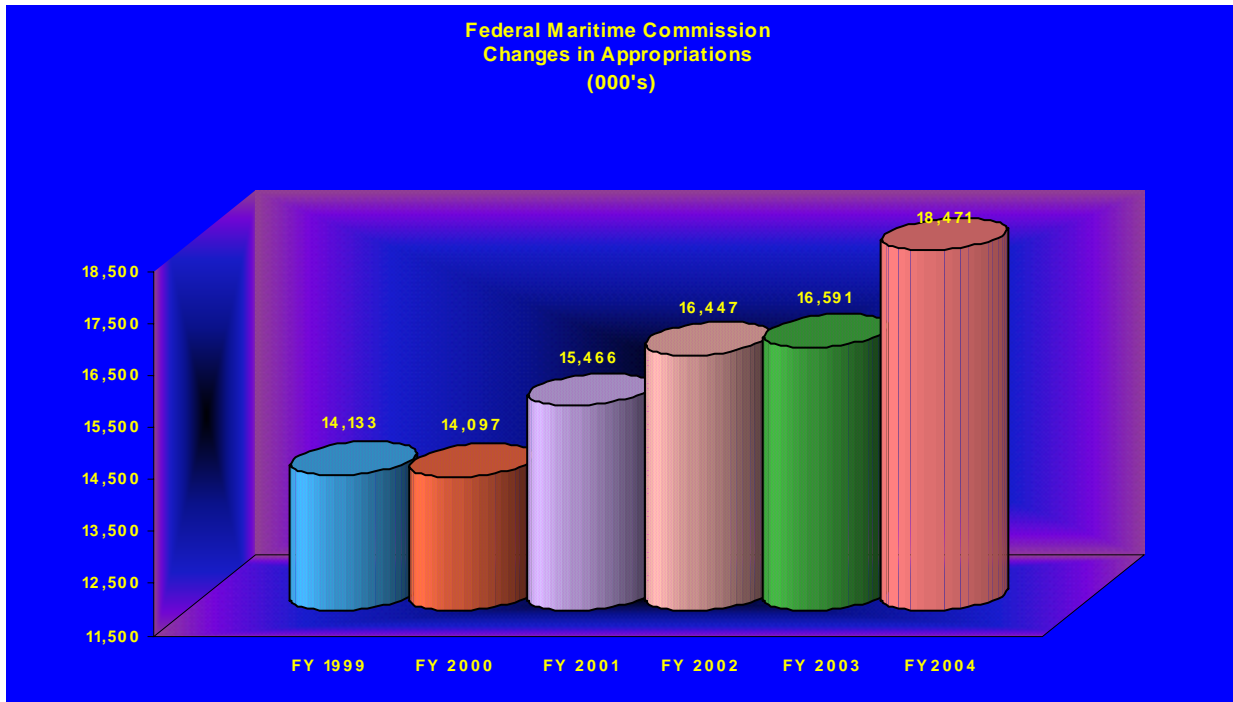
# FINANCE in FOCUS

## APPROPRIATIONS

The Federal Maritime Commission ("FMC") receives funding through an annual (single year) appropriation. The FMC is not authorized to use any multi-year funding, no-year funding, revolving funding, or borrowing funds. The FMC does not engage in grants, loans, or securities. The funding the FMC receives cannot be rolled over, or used in subsequent fiscal years. The FMC, like all Government entities/agencies, maintains records for the current fiscal year, as well as the prior four, as required by law. On September 30<sup>th</sup> of each calendar year, the financial books are closed for any new activity.



The average increase in appropriations received by the FMC from one fiscal year to the next is 5.6%. As depicted in the following graph, the FMC received a .025% reduction in appropriations from FY99 to FY00, a 9.71% increase over FY00 in FY01, a 6.34% increase over FY01 in FY02, a .88% increase over FY02 in FY03, and lastly an 11.33% increase over FY03 in FY04.

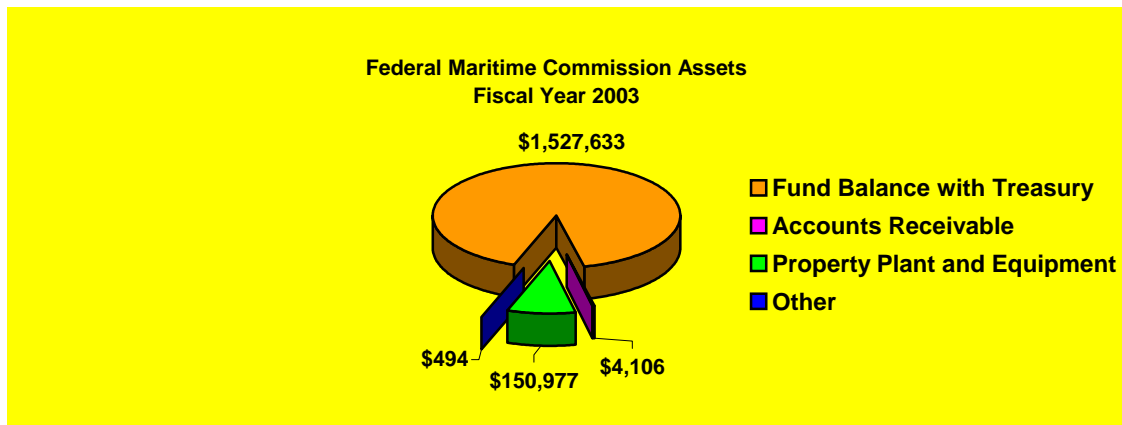




## ASSETS

The assets with which the Federal Maritime Commission is entrusted are a combination of Intragovernmental funds (fund balance with Treasury), Intragovernmental accounts receivable resulting from reimbursable agreements with other Governmental agencies, general property plant and equipment (capitalized, depreciable assets), as well as accounts receivable from non-Governmental entities. The assets itemized on the Consolidated Balance Sheet are a summation of the four prior fiscal years, and the reported year. A brief description of asset types follows:

- Fund Balance with Treasury is the remaining balance of the appropriation received by the FMC. For FY04 the balances contain FY04 as well as FY00, FY01, FY02, and FY03.
- The Intragovernmental accounts receivable, or reimbursable agreements, are vehicles for one Government agency to receive reimbursement from another agency for services. These resources, when received, will become available for the FMC's use.
- General property plant and equipment are those assets that make up the capitalized and depreciable assets belonging to the FMC. The FMC uses a straight line, five-year depreciation schedule for all capitalized assets. The dollar value threshold for all capitalized assets was \$5,000.00, and has been increased to \$25,000.00 in FY 2005.
- The non-Governmental accounts receivable represent monies owed to the FMC by the private sector. These entities are billed in accordance with the FMC's user fee schedule for goods or services rendered, which is located on our web site. Although the receivables are considered assets on the balance sheet, the FMC does not have the use of these funds. When payments are received, the FMC deposits these funds to the General Fund of the U.S. Treasury.

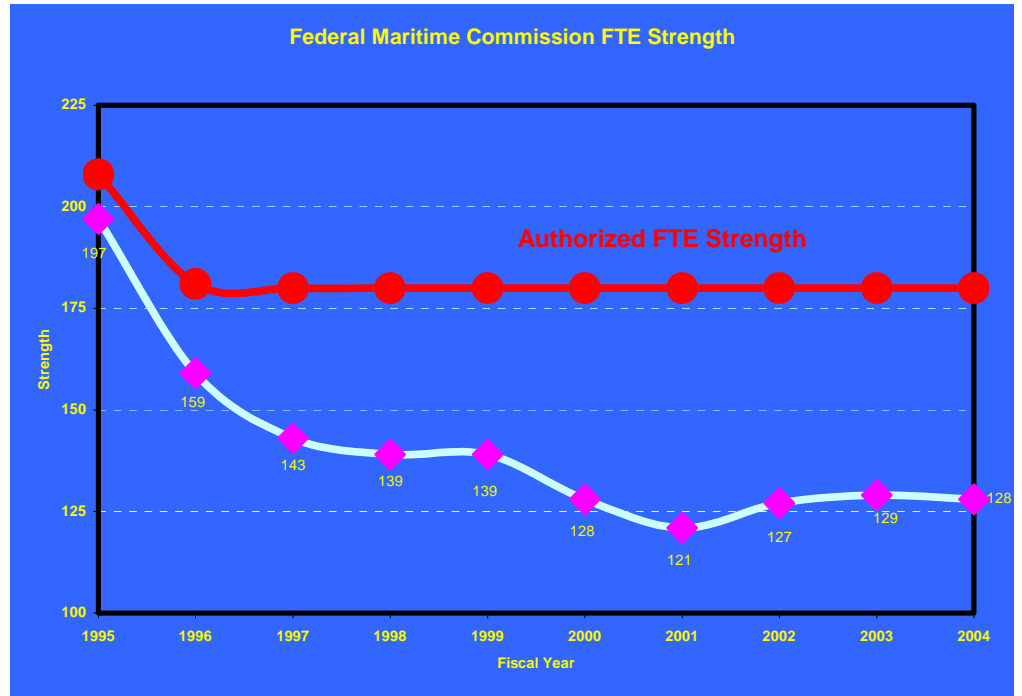


## PERSONNEL STRENGTH HISTORY

The Commission is composed of five Commissioners appointed for five-year terms by the President with the advice and consent of the Senate. The President designates one of the Commissioners to serve as Chairman. The Chairman is the chief executive and administrative officer of the agency.

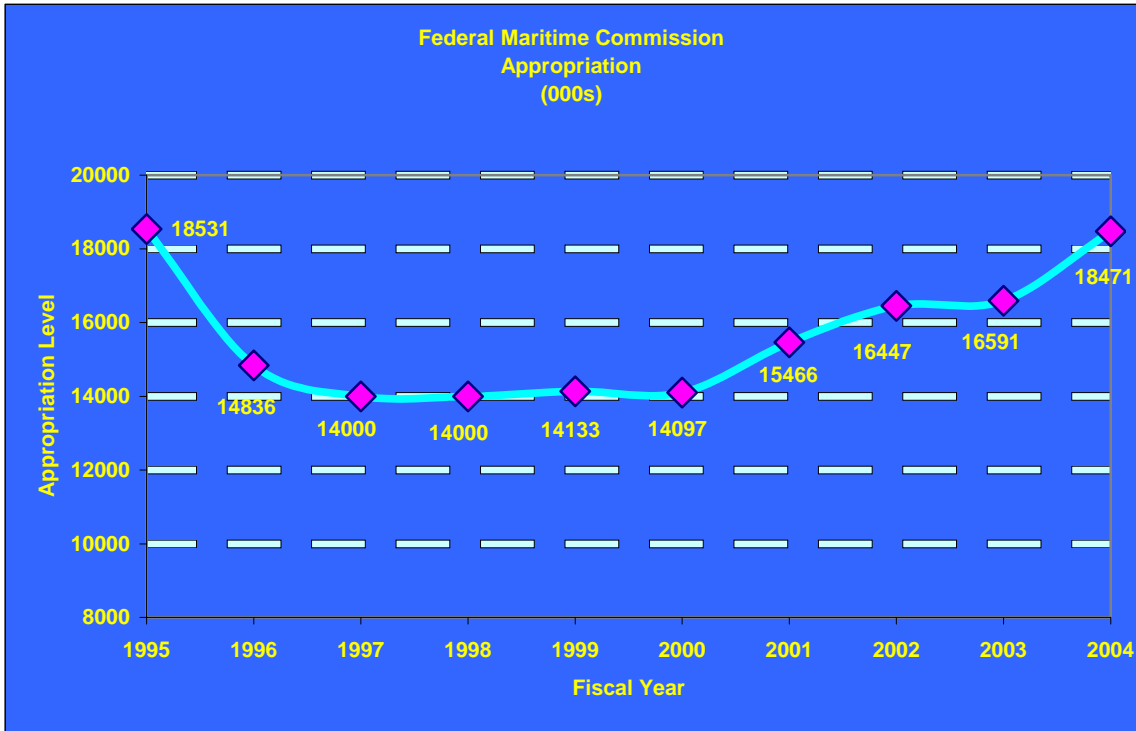
The Commission's organizational units consist of the Office of the Secretary; Office of the General Counsel; Office of the Inspector General; Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of Administration; and Office of Operations. These offices are responsible for the Commission's regulatory programs or provide administrative support.

In recent fiscal years, the Commission has been authorized a total of 180 full-time equivalent positions. Due to appropriation levels, the Commission has been required to maintain full time personnel levels much lower than authorized. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in New York, New Orleans, Los Angeles, Miami and Seattle. During FY 2004, the Commission completed an agency-wide realignment to maximize the effectiveness of the staff and facilitate agency efforts to better serve its stakeholders.



## APPROPRIATION HISTORY

Appropriations are expensed in three main categories: salaries and benefits, travel, and administrative expenses. Of the total appropriation, salaries and benefits average 74.2%, administrative expenses average 25.1%, and travel expenses average .7%.



The Commission's appropriation in FY95 was \$18,531,000. In FY96, the Commission experienced a considerable reduction in appropriations, with a funding level of \$14,836,000. Despite this 20% decrease in funding, the FMC lost no statutorily mandated programs or functions. To accommodate the dramatically lower funding level, the FMC took a number of actions, including closing its field offices and taking reduction-in-force actions, affecting a number of employees.

After several fiscal years of near straight-line budgets, the Commission, working with OMB and the Congress, has achieved incrementally larger appropriations which have allowed the agency to re-establish a presence in major port cities and to conduct more outreach, as well as to assist the maritime industry in achieving and maintaining compliance with statutory requirements.

## Strategic Focus and Program Performance

The Federal Maritime Commission is committed to its mission statement and strategic goals. In order to best accomplish these, the Commission is divided into five program areas: Formal Proceedings, Equal Employment Opportunity, Inspector General, Operational, and Administrative. Below are charts showing the budgeted amount and number of FTEs per program area. The following section outlines the Commission's Mission Statement, Strategic Goals, highlights of FY2004, and performance breakdown by program.

Program By Activities	2004 Cost (\$000)	2004 Actual FTE
Formal Proceedings	4,431	30
EEO	136	1
Inspector General	443	3
Operational	3,579	68
Administrative	2,812	26
Total Direct Program	16,591	128



## MISSION STATEMENT

*Advance the Nation's interests by fostering an efficient, competitive, secure, market-driven, and nondiscriminatory ocean transportation system that is free of unfair foreign maritime trade practices and market-distorting activities.*

## VISION STATEMENT

*Fairness and efficiency in U.S. maritime commerce.*

## Looking Ahead: Strategic Goals

OSRA had a significant impact on the ocean shipping industry. As the industry continues to restructure its operations to adapt to economic conditions, emerging trends, and maritime security efforts, international trade remains dependent upon an efficient ocean transportation system. Therefore, it is imperative for the FMC to ensure that its oversight activities produce a competitive trading environment in U.S. ocean commerce that is in harmony with and responsive to international shipping practices, and permits fair and open commerce. We focus our energies and efforts on this mission, and assure that the agency operates in a manner best suited to accomplish it with a minimum of government intervention and regulatory cost. Accordingly, the FMC established the following five strategic goals to carry out its statutory mandates:

“Our mandate is to help remove impediments to fair competition and thereby allow [the industry] to conduct business as effectively as possible.”

~ Steven R. Blust,  
Chairman

**1. *Efficient Regulatory Process:*** Provide a timely, efficient and decisive regulatory process, including alternative dispute resolution, to enable all segments of the industry to operate more effectively, with a minimum of regulatory costs.

**2. *Compliance:*** Promote efficiency and fairness in U.S. foreign waterborne commerce through various means, including outreach and monitoring, to protect the public and assist stakeholders in achieving compliance with ocean transportation statutes administered by the FMC.

**3. *Balanced Enforcement:*** Foster economic efficiencies, reliance on marketplace factors and maritime security by administering U.S. shipping statutes in a balanced and equitable manner to redress excessive anticompetitive actions and other unlawful activities.

**4. *Technological Efficiencies:*** Employ technological enhancements to improve efficiency and to facilitate the exchange of information.

**5. *Management Capabilities:*** Ensure the FMC has the appropriate organizational framework and management systems to carry out its statutory mandates.

## Linkage Between Strategic Goals and Mission Statement

Our strategic goals address essential FMC statutory, programmatic, and management responsibilities. They were developed with a specific focus on accomplishing the basic purposes of our mission and attaining the competitive, nondiscriminatory shipping environment envisioned by the 1984 Act, as amended by OSRA. During the fiscal year, the FMC implemented a refocusing of its performance planning process, shifting from a program activity-specific process to one which is based on agency-wide goals and encompasses all agency activities.

**Strategic Goal #1:** The primary intention of Strategic Goal 1 is to minimize regulatory costs by maintaining timely and decisive regulatory processes, and providing various dispute resolution services. This will render the FMC more effective in addressing matters that perpetuate discrimination or preclude industry efficiency, while reducing the costs of pursuing matters before the Commission.

**Strategic Goal #2:** Strategic Goal 2 centers on achieving compliance with the substantive provisions of the shipping statutes the FMC administers, and protecting those involved in U.S. ocean commerce from unfair practices. We address this goal particularly by interacting with all sectors of the industry, and by vigilant monitoring of ongoing commercial activities.

**Strategic Goal #3:** Strategic Goal 3 is designed to foster economic efficiencies, assist maritime security initiatives, promote reliance on marketplace factors, and redress excessive anticompetitive practices harmful to international commerce. This is a direct link to our mission statement's call for an efficient, secure, competitive, market-driven ocean transportation system.

**Strategic Goal #4:** Strategic Goal 4 focuses on making effective use of advancements in IT to improve the efficiency of our operations and enhance our exchange of information with external parties. Dynamic changes continue to be made in this area, and the Commission intends to take advantage of any improvement that can enable it to perform its functions more effectively.

**Strategic Goal #5:** Strategic Goal 5 addresses Commission management and operations. In order to achieve the objectives of our mission, we must maintain effective processes that enhance efficiency, without serving as ends in themselves. It is essential that we manage for results, and that we effectively tie our budget needs to our performance. This strategic goal serves as the internal underpinning that enables us to accomplish the policy objectives set forth in our mission statement.



Photo courtesy of the Port of Tacoma's Website Photo Gallery



## FY2004 Highlights

- Received petitions seeking relief from the Shipping Act's restrictions on NVOCCs entering into confidential contracts with their customers. Several petitioners then filed a motion to allow supplemental comments which reflect an updated, unified version of various forms of relief requested in the original petitions. The Commission will consider this matter early in FY 2005.
- Continued to monitor potentially restrictive shipping practices of the Governments of the People's Republic of China ("PRC") and of Japan.
- Implemented a realignment of the agency effective August 23, 2004.
- Continued a series of informational seminars conducted by the agency's Area Representatives and other personnel at locations around the country, and invited industry leaders to Commission headquarters to conduct briefings in order to promote the exchange of ideas and improve the agency's understanding of industry business practices.
- Issued a Notice of Proposed Rulemaking to seek comments regarding possible rules changes governing ocean common carrier and MTO agreements filed with the Commission. This matter will also be considered early in FY 2005.
- Denied as unwarranted a petition seeking implementation of truck detention regulations in the New York/New Jersey Port District.
- Submitted a report to Congress regarding the Commission's current IT initiatives and long-term technology improvements.
- Updated the Commission's user fee schedule.
- Updated security features in the agency's headquarters.

## Looking Forward

- The petitions regarding restrictions on NVOCC contracting have cited the evolution of the ocean shipping marketplace and concerns about the efficacy of the current regulations. The Commission will examine all relevant issues to ensure that its ultimate determinations are legally sound and foster equitable trading conditions.



## Formal Proceedings Program

The Offices of Commissioners, Secretary, General Counsel and Administrative Law Judges comprise the Formal Proceedings Program. Within this program, the Commission conducts hearings, renders formal decisions in the disposition of docketed cases, compiles and maintains all official documents arising from proceedings, and conducts external representation activities before the Congress, courts of law, and other agencies.

### Office of the Commissioners

Five Commissioners are appointed by the President with the advice and consent of the Senate. The President designates one of the Commissioners to serve as Chairman. The Chairman has exclusive authority over agency personnel matters, organization and supervision, distribution of business, and use of funds for administrative purposes.

The Chairman and the other four Commissioners are responsible for deciding cases in which parties must have the opportunity to be heard. During FY04, the Commission issued 29 final decisions in formal proceedings. Of these, 27 were formal proceedings and 2 involved special docket applications. The Commission also issues rules to implement the statutes it administers. During FY 04, the Commission instituted 3 rulemakings. One of these rulemakings was finalized during the fiscal year.

#### 2004 Decisions

The following is representative of the matters decided by the Commission:

• *Petition of the Association of Bi-State Motor Carriers, Inc. to Investigate Truck Detention Practices of the New York Terminal Conference at the New York/New Jersey Port District [Petition P3-02], 30 S.R.R. 104 (February 20, 2004).* The Commission denied a petition requesting implementation of truck detention regulations applicable to marine terminal operator members in the New York/New Jersey Port District. Bi-State had claimed that New York Terminal Conference's truck detention provisions were deliberately crafted and executed to avoid the fair calculation of truck detention penalties, thus violating the Shipping Act. Bi-State had requested that the Commission initiate an investigation, and also reconsider its 1994 decision to eliminate truck detention penalty requirements for the port from Commission regulations. In the early '90s, the Commission had undertaken a review of those regulations and determined that technological advancements had altered operations in such a way that removal of the regulations was justified. The Commission determined that the petition failed to establish sufficient facts to warrant the initiation of an investigation or reconsideration concerning the former truck detention rules.

#### 2004 Rulemakings

The following is representative of rulemakings addressed by the Commission:

• *The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 [Docket No. 03-15], (December 1, 2003).* The Commission issued a Notice of Proposed Rulemaking to seek comments from interested parties regarding possible changes to the Commission's rules governing ocean common carrier and marine terminal operator agreements filed with the Commission in accordance with the 1984 Act. The NPR proposed changes to current requirements regarding agreement content, information and data filed to enable the Commission to monitor the use of antitrust immunity, the filing of agreement meeting minutes, and the filing of transshipment agreements. Comments were received from carriers, shippers, and other interested parties. The staff currently is preparing recommendations for the Commission's consideration.

## Other Activity

The following is representative of other significant matters considered by the Commission in FY04:

• *Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts [Petition No. P3-03];* *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984 [Petition No. P5-03];* *Petition of Ocean World Lines, Inc., for a Rulemaking to Amend and Expand the Definition and Scope of "Special Contracts" to Include All Ocean Transportation Intermediaries [Petition No. P7-03];* *Petition of BAX Global Inc. for Rulemaking [Petition No. P8-03];* *Petition of C.H. Robinson Worldwide, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Confidential Service Contracts [Petition No. P9-03],* *Petition of Danzas Corporation D/b/a Danmar Lines Ltd.; Danzas AeI Ocean Services and; Dhl Danzas Air and Ocean for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as Amended [Petition No. P1-04],* *Petition of BDP International, Inc. for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as amended [Petition No. P2-04];* *Petition of FEDEX Trade Networks Transport & Brokerage, Inc. for Exemption from the Tariff Publishing Requirements of Sections 8 and 10 of the Shipping Act of 1984, as Amended [Petition No. P4-04],* 30 S.R.R. 30 (November 13, 2003). Seven NVOCCs and one national trade association representing NVOCCs filed petitions with the Commission seeking relief from the Shipping Act's restriction on NVOCCs from offering service contracts in their capacity as carriers with their shipper customers and the requirement that NVOCCs adhere to the rates published in their tariffs. The Commission sought comment on the petitions from interested persons. On August 2, 2004, the National Industrial Transportation League, UPS, BAX, FEDEX, Transportation Intermediaries Association, C.H. Robinson Worldwide, Inc., and BDP International, Inc. filed a Motion for Leave to file Joint Supplemental Comments Requesting Expedited Adoption of a Conditional Exemption from Tariff Publication. The moving parties sought acceptance of their Supplemental Comments into the record, as the comments reflect an updated, unified version of the various forms of relief requested in the original individual petitions. The Commission granted the Motion for Leave and reopened the comment period until September 30, 2004. This matter will be addressed early in FY 2005.



## Office of the Secretary

The Office of the Secretary serves as the focal point for all matters submitted to and emanating from the Commission. Accordingly, the Office is responsible for 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; receiving and processing formal and informal complaints involving violations of the shipping statutes and other applicable laws; receiving and processing special docket applications and applications to correct clerical or administrative errors in service contracts; issuing orders and notices of actions of the Commission; maintaining official files and records of all proceedings; receiving all communications, petitions, notices, pleadings, briefs, or other legal instruments in regulatory and quasi-judicial proceedings and subpoenas served on the Commission or members thereof; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the maritime industry, the public, and Commission staff; issuing publications and authenticating instruments and documents of the Commission; compiling and publishing Commission decisions; maintaining and promulgating official copies of the Commission's regulations; and maintaining the Commission's Library and website. The Secretary's Office also participates in the implementation of legislative changes to the shipping statutes. Further, the Secretary's office oversees the administration of the Office of Consumer Affairs and Dispute Resolution Services.



### Looking Back: 2004

- In FY04, the Office of the Secretary processed 29 docketed proceedings, 6 non-docketed proceedings, 109 agenda items, 118 pages of minutes, 282 Federal Register Notices, and 50 FOIA requests. The Office also initiated the redesign of the agency's website, to enhance its appearance and usability.

### Looking Ahead: 2005

- In FY05, the Office will develop options for updating the Commission's Rules of Practice & Procedure, including exploring the use of technology for electronic filing.
- The Office also will move forward with plans to create a more efficient and comprehensive website design.





## Office of Consumer Affairs and Dispute Resolution Services

The Office of Consumer Affairs and Dispute Resolution Services ("CADRS") implements the Commission's Alternative Dispute Resolution ("ADR") program, and provides *ombuds* services and responds to inquiries and complaints. Under this program, parties to a dispute are encouraged to avail themselves of services provided by the Commission to resolve disputes through mediation or *ombuds* services. The Director of the Office is the Commission's Dispute Resolution Specialist. The Director and other trained office staff serve as third party neutrals in proceedings in litigation. CADRS personnel provide mediation services for a broad range of disputes, from informal, pre-litigation disputes to those involving significant matters in litigation. *Ombuds* services are provided to resolve a variety of immediate concerns involved with cargo shipments and cruise matters. Should a matter not be resolved through *ombuds* services, or through more formal mediation services, a claimant may choose to initiate an informal docket proceeding, alleging a 1984 Act violation. This is a form of arbitration, with both sides agreeing to be bound by the decision of the CADRS settlement officer. Claimants who prefer formal docket procedures may opt to file a formal complaint and fully litigate the dispute before the Commission's Administrative Law Judges. Mediation services may also be provided in such formal proceedings. In addition, the ADR program provides for arbitration services. Also, CADRS staff review and decide special docket applications, which are requests to waive or refund charges.

### Looking Back: 2004

- CADRS received 7,550 inquiries by phone, e-mail, and fax. Out of these, over 800 informal complaints became *ombuds* cases and 6 became informal dockets.
- The CADRS resolved 3 informal dockets and issued 2 special docket decisions.

### Looking Ahead: 2005

- A goal for FY05 is to promote the use of ADR and to provide conflict resolution training to Commission managers.
- Another goal in FY05 is to expand outreach programs to make the shipping industry more aware of the agency's ADR services.



Photo courtesy of the Port of Tacoma's Website Photo Gallery

## 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 recommending and preparing final decisions, orders, and regulations for Commission adoption. In addition, the Office of the General Counsel 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 the courts, Congress, and other government agencies and administers the Commission's international affairs program.

### Looking Back: 2004 International Affairs Program

- In FY04, General Counsel produced 35 reports, policy papers, briefings, or controlled carrier recommendations, 15 speeches, articles, or presentations, 30 instances of interagency and international group participation, and responded to 275 requests for information.
- In FY04, the Commission continued to monitor potentially restrictive shipping practices of the Governments of Japan and the People's Republic of China ("PRC").

### 2004 Legislative Activity

- During FY04, 135 bills, proposals and Congressional inquiries were referred to the Office of the General Counsel for comment. The Office prepared and coordinated testimony for one Congressional hearing. The Office also worked closely with Congressional staffs on proposed legislation that affected the Commission.

### Looking Ahead: 2005

- In FY05 the Office will increase relationships with other agencies with responsibilities related to maritime security.
- The Office also will analyze prospective changes in the Commission's Rules of Practice & Procedure.

### 2004 Litigation

- The General Counsel represents the Commission in litigation before courts and other administrative agencies. The following is representative of matters litigated by the Office.

- *New Orleans Stevedoring Co. v. Federal Maritime Commission and United States of America*, D.C. Cir. No. 02-1259. NOS sought review of the Commission's order in Docket No. 00-11 issued on June 28, 2002, dismissing its complaint against the Port. NOS had alleged that the Port had violated the Shipping Act by unreasonably refusing to deal or negotiate and by providing an unreasonable preference or advantage. The Commission participated in oral argument before the Court of Appeals, and the court affirmed the Commission's decision on September 29<sup>th</sup>, 2003. NOS filed a petition for rehearing on November 13, 2003. The petition was denied on November 20, 2003.



## Office Of Administrative Law Judges

Administrative Law Judges ("ALJs") regulate the course of proceedings, conduct hearings, approve settlements, and render decisions in adjudicatory proceedings held after receipt of a complaint, or when instituted by the Commission. ALJs have authority to administer oaths and affirmations; issue subpoenas; rule upon motions and offers of proof; receive evidence; authorize depositions; regulate the course of hearings; hold pre-hearing conferences for the settlement or simplification of the issues involved; refer matters to mediation when appropriate; dispose of procedural requests; act as settlement judges in particular cases; and take any other action authorized by agency rule or the Administrative Procedure Act. In FY04, the ALJs handled 11 formal proceedings.



# Operations Program

## Office of Operations

The Director of Operations is the senior staff official responsible to the Chairman for the management and coordination of Commission programs under the Bureau of Enforcement, the Bureau of Trade Analysis, and the Bureau of Certification and Licensing.

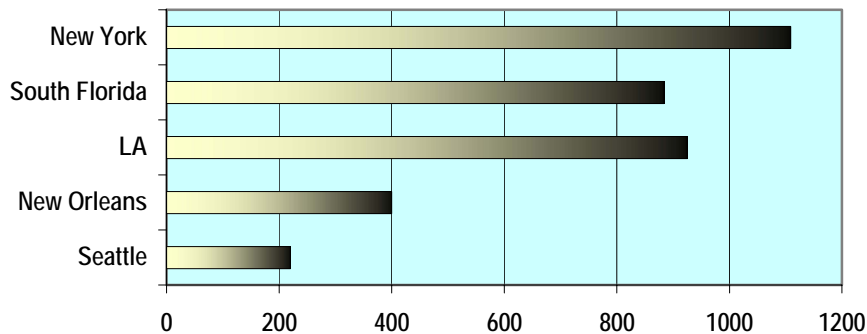
Program accomplishments are detailed in individual bureau sections. In addition, the Office of Operations oversees the Area Representatives.

## Area Representatives

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through Area Representatives based in each of those cities. These representatives serve other major port cities and transportation centers within their respective areas. In addition to monitoring and investigative functions, Area Representatives represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze intelligence of regulatory significance, and assess industry conditions. Liaison activities involve cooperation and coordination with other government agencies and departments, providing regulatory information and relaying Commission policy to the shipping industry and the public, plus handling informal complaints within each representative's area of responsibility.

Interaction between the Commission's Area Representatives and U.S. Bureau of Customs and Border Protection ("Customs") with respect to the exchange of investigative information continues to be beneficial to both parties. Cooperation with Customs has expanded into several joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Cooperative efforts also involved local police and the Bureau of Citizenship and Immigration Services, when necessary.

**Regulated Entities by Region\***



\* Seattle, New Orleans, LA, and New York are covered by 1 Area Representative each; Miami is covered by two Area Representatives. In addition to the area representatives under the Office of Operations, Bureau of Enforcement staff cover the mid-Atlantic consisting of 1,436 U.S. and foreign regulated entities.

## Bureau of Enforcement

The Bureau of Enforcement is the primary prosecutorial arm of the Commission. Attorneys of the Bureau of Enforcement participate as trial counsel in formal adjudicatory proceedings. The Bureau also participates in formal complaint proceedings where intervention is permitted. Bureau attorneys serve as legal advisors to the Director of Operations and other bureaus, and also may be designated Investigative Officers in non-adjudicatory fact finding proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Director of Operations and the other bureaus. The Bureau also participates in the development of Commission rules and regulations. Under the direction of the General Counsel, attorneys from the Bureau also may participate in matters of court litigation to which the Commission is a party.

### Looking Back: 2004

- At the beginning of FY04, 57 investigations were pending final resolution by the Bureau, the Bureau was party to 9 formal proceedings, there were 41 open civil penalty cases, and there were 80 matters pending the Bureau's legal advice. During the fiscal year, 50 new investigations were commenced; 60 were compromised and settled, administratively closed, or referred for formal proceedings; and 47 were pending resolution at fiscal year's end. Also, the Bureau participated in 4 new formal proceedings, 7 proceedings were completed, and 6 formal proceedings were pending at the end of the fiscal year. Thirty civil penalty cases were initiated and 35 were concluded, with 30 pending at year's end. Additionally, 50 matters involving legal advice were received during the fiscal year, 65 such matters were completed, and 65 were pending in the Bureau on September 30, 2004.
- During FY04, the Bureau worked to obtain statutory compliance in all major trades and with all segments of the transportation industry, i.e., carriers, carrier agreements, MTOs, PVOs, and OTIs.
- The Bureau also initiated enforcement action to address market-distorting activities such as various forms of secret rebates and absorptions, misdescriptions of commodities and misdeclarations or measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and





unbonded non-vessel operating common carriers, and joint carrier activities outside of the authority of existing agreements or pursuant to unfiled agreements.

### Looking Ahead: 2005

- In FY05, the Bureau will continue to pursue statutory compliance by entities regulated by the Commission, and the elimination of market-distorting, fraudulent and anticompetitive practices.
- The Bureau will work with vessel-operating common carriers to limit participation of unlawful entities in ocean transportation.
- During FY05, the Bureau will review the results of recent major enforcement actions to assess effectiveness of remedies.

## Bureau of Trade Analysis

The Bureau of Trade Analysis ("BTA") reviews agreements and monitors the concerted activities of common carriers by water under the standards of the 1984 Act. The Bureau also reviews and analyzes service contracts, monitors rates of government controlled carriers, reviews carrier published tariff systems under the accessibility and accuracy standards of the 1984 Act, and responds to inquiries or issues that arise concerning service contracts or tariffs. The Bureau also is responsible for competition oversight and market analysis, focusing on activity that is substantially anti-competitive and market distorting in violation of the 1984 Act. BTA strives to be an expert organization on the economics of international liner shipping and maritime agreements, especially with respect to issues of competition and unfair trade practices as they may affect the interests of the shipping public and U.S. international trade.

An integral part of BTA's responsibilities is the systematic surveillance of carrier activity and commercial conditions in the U.S. liner trades. Accordingly, BTA administers a variety of monitoring programs, and other research efforts, designed to apprise the Commission of current trade conditions, emerging commercial trends, and carrier pricing and service activities.



### Office of Agreements

The Bureau's agreement program activities consist of: (1) processing carrier and marine terminal agreement filings under the procedures of the 1984 Act as modified by OSRA; (2) conducting a comprehensive review and analysis of all pertinent legal and commercial facets of agreements to recommend appropriate action to the Commission on the disposition of filed agreements; (3) making appropriate recommendations on requests

for a waiver of Information Form and Monitoring Report filing requirements; (4) maintaining the Commission's official agreement archives; and (5) maintaining an agreement database that contains pertinent information on each carrier and marine terminal agreement filed with the Commission.

### Looking Back: 2004

- During FY04, the Bureau received 211 carrier agreement filings and 31 terminal agreement filings. The Bureau also received and reviewed minutes of meetings and reports filed by various agreement parties.
- As required by a settlement agreement reached between Transpacific Stabilization Agreement and the Commission, TSA amended their discussion agreement to, among other things, place limitations on the parties' ability to discuss and agree on rates and service contracts, remove discussion of capacity rationalization schemes, and set limits on information sharing regarding service contracts.
- The Commission allowed a docking and lease agreement for marine terminal facilities filed by the City of Portland, ME, to become effective while ordering an investigation of the agreement due to concerns about the probably competitive impact of the agreement.
- During FY04, the Bureau automated its agreement library.

### Looking Ahead: 2005

- In the future, the Bureau will continue to examine parties claiming vessel-operating common carrier status to ensure compliance and to develop any information regarding company relationships which may become relevant to homeland security.

### Office of Economics and Competition Analysis

To keep the Commission apprised of current trade conditions, emerging commercial and economic trends, and the impact of regulations affecting waterborne liner transportation, the Bureau prepares studies and profiles of major trades, monitoring reports, economic analyses, and agreement/carrier profiles, and undertakes special projects to identify and track relevant competitive and economic activity in major U.S. trade lanes. The Bureau's monitoring activities include surveillance programs to identify: (1) concerted activity without an effective agreement on file with the Commission, or concerted activity exceeding the scope or authority of an effective agreement; (2) activity contravening the mandatory conference agreement provisions required by sections 5(b) and 5(c) of the 1984 Act; (3) the potential for, or emergence of, unreasonable transportation service/cost impacts that contravene the section 6(g) general standard; (4) controlled carrier activity in areas relevant to the Commission's administration of section 9 of the 1984 Act; (5) the occurrence of prohibited acts proscribed under section 10; (6) economic harm associated with unfair trade practices of foreign governments; and (7) whether the continued operation of an effective agreement in its present form is consistent with the statutes and current Commission decisions, rules, and policies. The Bureau develops profiles of major trade areas to assess carrier behavior under agreements, to determine compliance with regulatory requirements, and to ascertain the competitive posture of carriers, shippers, and shippers' associations within each trade.

### Looking Back: 2004

- The Bureau received 598 sets of minutes and 272 monitoring reports in FY04.
- The Bureau produced a variety of reports and analyses, including two editions of the Bureau's *Trade Profile* for the Commission, with data on ocean liner cargo growth, vessel capacity, etc., in the major U.S. trades, reports and expert witness testimony for a Commission enforcement proceeding involving tug franchises on the Lower Mississippi River, and analyses of petitions by NVOCCs requesting relief from provisions of the Shipping Act.
- In addition, the Bureau worked on several other projects, including classifying agreements to determine the monitoring report requirements for each agreement for the calendar year, conducting economic analyses of filed agreements and modifications, and reviewing quarterly controlled carrier reports.

### Looking Ahead: 2005

- During FY05, the Bureau will assist in a review of recent major enhancement actions which targeted anti-competitive practices of ports and ocean common carriers.
- The Bureau intends to focus on redesigning the internal agreement database to enable more efficient oversight of agreement activities, and updating a methodology to develop freight rate indices for major U.S. trade lanes.

### U.S. Containerized Cargo Volumes\*

Year	Total TEU Imports	Annual Growth	Total TEU Exports	Annual Growth
1999	10,061,410	12.1%	6,363,131	-0.3%
2000	11,261,101	11.9%	6,832,463	7.4%
2001	11,366,221	0.9%	6,614,139	-3.2%
2002	13,134,616	15.6%	6,668,727	0.8%
2003	14,149,145	7.7%	7,248,385	8.7%
2004	15,239,227	7.7%	7,958,433	9.8%

\*data source: PIERS/JOURNAL OF COMMERCE, TRADE HORIZONS (SUMMER 2004)

\*\*2004 figures include forecasts for 2nd thru 4th quarters.

### Office of Service Contracts and Tariffs

The 1984 Act allows ocean common carriers, either individually or through agreements, to negotiate and execute service contracts with one or more shippers or shippers' associations. Under service contracts, shippers make a commitment to provide a certain volume or portion of cargo over a fixed period of time and carriers commit to a specified rate and a defined service level. These contracts are filed confidentially with the Commission. A concise statement of certain contract terms, i.e., commodity or commodities involved, minimum volume or portion, duration, and origin and destination port ranges, is required to be published in carriers' or conferences' tariffs.

Service contracts offer an alternative to transportation under tariff terms. Contract flexibility enables carriers to tailor their transportation services to the specific commercial and operational needs of shippers. The confidentiality of contracts has spurred commercial innovations and brought greater

efficiencies in the movement of cargo. Overall, the use of service contracts has continued to increase significantly due primarily to the efficiency, flexibility, and confidentiality of one-on-one negotiation of contracts between shippers and carriers.

The 1984 Act, as amended by OSRA, requires carriers and conferences to publish their tariffs in private electronic systems. Tariffs are to be made available, typically through Internet access, to any person, without time, quantity, or other limitation. Carriers are permitted under law to charge a reasonable fee for providing public access to their tariffs. The Bureau reviews and monitors the accessibility and accuracy of the private systems and reviews published tariff material for compliance with the 1984 Act's requirements. The Bureau continues to act upon applications for special permission to deviate from tariff publishing rules and regulations and will continue to recommend Commission action on specific problems and concerns regarding the publication of tariffs.



## Looking Back: 2004

- During FY04, the Bureau received 45,100 new service contracts and 210,800 contract amendments.
- 3,670 active/current tariff location addresses for carriers, conferences, and MTOs were posted on the Commission's homepage during FY04. A total of 1,480 inactive/cancelled tariff location addresses were posted as well.
- The Bureau continued to monitor accessibility to tariffs published in carriers' automated tariff systems ("CATS"). Adjustments were made to some CATS to bring them into compliance.

## SERVCON

Since May 1999, due to OSRA, service contracts are filed in electronic format in the service contract filing system SERVCON available via the Commission's website. The statements of essential terms are published in the carriers' automated tariff systems. The SERVCON system was designed to allow carriers, conferences and agreements to use off-the-shelf computer software such as Microsoft Word, WordPerfect, and others, to easily transmit their service contract filings to the Commission. Since the initial start-up of SERVCON, however, changes were implemented and service contract documents now can be filed into the system in more than one hundred different software formats. A more powerful search engine was added. Most recently changes were implemented to permit the correction of an erroneous service contract filing by using the newly promulgated "Corrected Transmission" rule. In FY04, the Commission continued to work on system improvements to meet the needs of the industry and the agency, and improving search capabilities for retrievers and enhancing the integrity of documents filed into the system. More than 1,000,000 service contracts and amendments are hosted in SERVCON.

## Looking Ahead: 2005

- The Bureau intends to focus on enhancing the reliability and efficiency of SERVCON.
- The Bureau will continue to participate in activities to help identify any service contract provisions which may be significant to maritime security concerns.



**Federal Maritime Commission  
Electronic Filing System**

- ★ File Contracts
- ★ Search
- ★ Notices
- ★ Management
- ★ Help

**The New Federal  
Maritime Commission  
Electronic Filing System**

**NOTICE: Alternative Access to SERVCON**  
To file service contracts you may access the system via the SERVCON link on the FMC's Homepage. However, if you are not able gain entrance via that link (<http://servcon.fmc.gov/>), please go directly to: <https://198.87.233.132/>

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## Bureau of Certification and Licensing

The Bureau of Certification and Licensing ("BCL") (1) licenses and regulates OTIs, including ocean freight forwarders and NVOCCs; (2) issues certificates to owners and operators of passenger vessels that evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages or for death or injury to passengers and other persons and (3) manages programs assuring financial responsibility of OTIs and passenger vessel operators ("PVO"), by developing policies and guidelines, and analyzing financial documents. In carrying out these functions, the Bureau provides information and referrals in response to a wide array of informal inquiries, and provides guidance with respect to licensing and bonding.

### Office of Transportation Intermediaries

The Office of Transportation Intermediaries is responsible for reviewing and approving applications for OTI licenses, and maintaining and updating records about licensees. Without a license, an OTI may not legally operate in the United States. NVOCCs not domiciled in the U.S. are required to have a \$150,000 bond and designate a U.S. resident agent.

#### Looking Back: 2004

- During FY04, the Commission received 320 new and 225 amended OTI applications. 210 new and 115 amended licenses were issued, 280 licenses were revoked, and an additional 75 non-U.S.-based unlicensed NVOCC bonds were cancelled.

- As the result of Docket No. 04-02, *Options Rider for Proof of Financial Responsibility*, OTIs may file an optional rider for additional proof of financial responsibility for U.S.-domiciled licensed NVOCCs servicing the U.S./PRC trade, allowing them to meet financial responsibility requirements imposed on NVOCCs by the PRC. During FY 04, the Commission processed 20 PRC bond riders.

- The Commission continues its effort at outreach to the industry to increase awareness of licensing and bonding requirements for OTIs.

#### Looking Ahead: 2005

- The Bureau will continue its efforts in FY05 to design electronic forms, especially the FMC-18, and further explore integration of Commission databases and the feasibility of electronic payments, e-signature and e-bond capability.

- In FY05, the Bureau will continue its work to achieve the target of 30 days from receipt to completion of license applications. The current backlog is being cleared and a concerted effort is being made to process current applications between 30 and 45 days after receipt of all appropriate documentation.

- In FY05, the Bureau will enhance its efforts to directly inform active OTIs of licensing requirements and to assist small businesses in meeting the application and licensing requirements.



<b>Ocean Transportation Intermediary Statistics</b>					
	<b>Pre-OSRA</b>	<b>As of 9/30/01</b>	<b>As of 9/30/02</b>	<b>As of 9/30/03</b>	<b>As of 9/30/04</b>
<b>Freight Forwarders</b>	1,700	1,331	1,294	1,262	1,242
<b>NVOCCs</b>	2,200	1,251	1,298	1,317	1,401
<b>Freight Forwarder / NVOCC</b>	400	844	873	900	946
<b>Foreign NVOCC Unlicensed</b>	0	599	653	721	775
<b>Foreign NVOCC Licensed</b>	0	38	41	40	36
<b>TOTAL</b>	<b>4,300</b>	<b>4,063</b>	<b>4,159</b>	<b>4,240</b>	<b>4,400</b>

### Passenger Vessels and Information Processing (“OPVIP”)

The OPVIP has the responsibility of implementing the Commission’s Passenger Vessel Program in accordance with Public Law 89-777 (46 CFR 540). This program ensures that passengers are indemnified against casualty or non-performance from cruise lines. The OVPIP is responsible for reviewing applications for certificates of financial responsibility, managing all activities with respect to evidence of financial responsibility of passenger vessel owner/operators, and developing and maintaining all Bureau databases and records of OTI applicants and licensee.

### Looking Back: 2004

- The Passenger Vessel Program received 67 applications for Performance Certificates and processed 65, and received 83 and processed 85 applications for Casualty Certificates.
- In addition, OPVIP continued to work on cruise bankruptcies from recent years, and worked to ensure compliance by several cruise lines.
- A current list of licensed OTIs was maintained on the Commission’s Homepage. This protects carriers and individuals from dealing with an unlicensed OTI, protects licensed businesses from misunderstandings by carriers, and is helpful to Customs.

- *Passenger Vessel Financial Responsibility [Docket No. 02-15] (October 31, 2002).* Comments were received on the Notice of Proposed Rulemaking issued by the Commission to amend its rules regarding the establishment of passenger vessel responsibility under P.L. 89-777. The Bureau currently is working with the Commission to review the comments.



## Looking Ahead: 2005

- In FY05, the Bureau intends to continue working with the Commission to complete the rulemaking to ensure that the Passenger Vessel Program provides adequate consumer protection without being unduly burdensome on the industry.

- In FY05, the Bureau will work closely with the PVOs to implement new rules and financial responsibility requirements on a timely basis.





# Administrative Program

## Office of Administration

### Office of the Director

The Office of Administration provides administrative support or guidance to the program operations of the Commission. The Director of Administration is the Commission's Chief Financial Officer, Audit Follow-up Management (Internal Controls) Officer, and Chief Acquisition Officer. The Deputy Director serves as the agency's Chief Information Officer, and the agency's Competition Advocate.

### Looking Back: 2004

- In FY04, the Office coordinated administrative activities related to the agency's reorganization, including payroll changes, reconstruction and relocation.
- The Office also directed preparation of an update of the agency's five-year strategic plan, preparation of the Annual Performance Plan and the Annual Program Performance Report.
- Also, the Office prepared the agency's FAIR Act and FMFIA reports, and coordinated development of the agency's Annual Report.

### Looking Ahead: 2005

- In FY05, the Office will monitor the accomplishments of agency performance goals, guide the development of further technology improvements to the agency's IT infrastructure, and coordinate the further development of emergency preparedness and continuity of operations planning.
- The Office also will ensure conformance of agency systems with administration and Congressional security mandates.
- The Office will complete implementation of the strategic linkage of agency planning, budgeting and performance.

The following administrative offices are overseen by the Director of Administration:

- **Office of Budget and Financial Management ("OBFM")**

The OBFM administers the Commission's financial management program and is responsible for providing advice on optimal utilization of the Commission's fiscal resources.

In FY04, OBFM coordinated and prepared the FY05 Congressional Budget and the FY06 OMB budget request, instituted a new budget allocation process, and prepared a variety of budget-related reports.

- **Office of Human Resources ("OHR")**

The OHR plans and administers a complete human resources management program.

Significant accomplishments in FY04 include administering completion of and request for certification of candidates under the Agency's SES Candidate Development Program and conducting a comprehensive training program.

- **Office of Information Technology ("OIT")**

The OIT provides management support with respect to information technology to the program and administrative operations of the Commission.

FY04 accomplishments include: initiating the upgrade of the agency's network infrastructure and all work stations, and implementation of a new help desk process.

- **Office of Management Services (“OMS”)**

The OMS is responsible for procuring and furnishing all supplies, equipment and services necessary and required to support the day-to-day operations and overall mission objectives of the Commission.

Some FY04 accomplishments include coordinating the renovation of the agency's headquarters facilities, including physical security upgrades, and developing emergency preparedness manuals for all agency personnel.

**Looking Ahead 2005:**

- In FY05 the administrative offices will advise agency management and staff on all administrative matters and ensure maintenance of a sound and progressive administrative program.

Work will continue on alterations required by the agency's August 2004 realignment; on implementation of electronic commerce to automate the processing of travel documents, purchase orders, obligations and payments, and taking corrective actions to eliminate remaining weaknesses in the agency's IT security program.



# Equal Employment Opportunity Program

## Office of Equal Employment Opportunity

The Office of Equal Employment Opportunity ("EEO") develops, implements and manages a comprehensive program of equal employment opportunity for the FMC. The EEO program is statutorily mandated with required activities in complaints processing and adjudication, affirmative program planning, special emphasis programs, community outreach, monitoring and evaluation. The Director ("DOEEO") arranges for counseling of employees who raise allegations of discrimination; provides for the investigation, hearing, fact finding, adjustment, or early resolution/mediation of complaints of discrimination; and monitors and evaluates the program's impact and effectiveness. The DOEEO 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.



### Looking Back: 2004

- The EEO focused in FY04 on education of the workplace through seminars, briefings, and training for employees.

### Looking Ahead: 2005

- The EEO will continue to concentrate on programs to increase understanding of EEO concepts.



## Inspector General Program

### Office of the Inspector General ("OIG")

The IG works independently under the general supervision of the Chairman. The IG does not report to, and is not subject to supervision by, any other officer or employee of the FMC. The OIG has a memorandum of understanding ("MOU") with the FMC's Office of the General Counsel that provides for the furnishing of legal services. A similar MOU with the Social Security Administration's Office of Inspector General provides for the furnishing of criminal investigative assistance if the need should arise. In addition, the Office utilizes the expertise of outside consultants to assist in performing specialized audits and reviews.

In FY04, the OIG issued 5 audits. These included reviewing the agency's information security program pursuant to FISMA, and the agency's implementation of the Federal Acquisition Streamlining Act of 1994.

In FY05, the OIG will continue to conduct program evaluations in order to improve agency programs and operations, as well as statutorily required reviews.

## Systems, Controls, and Legal Compliance

Internal accounting and administrative controls are adequate to ensure that:

- Transactions are executed in accordance with budgetary and financial laws and other requirements, consistent with the purposes authorized, and are recorded in accordance with Federal accounting standards;
- Assets are properly acquired and used, safeguarded to deter theft, accidental loss or unauthorized disposition, and fraud; and
- Performance measurement information is adequately supported.

In FY03, the Commission completed its transition to a new, JFMIP-approved cross-servicing accounting provider, and the accounting firm of Clifton Gunderson, LLP audited our financial statements and issued an opinion on the balance sheet only, since only one year's data was available to be audited. The Commission achieved an unqualified opinion from the accounting firm for FY 2003. In FY2004, for the first time, the Commission had two years of data in our accounting system, thus FY 2004 is the first year in which all of the Commission's financial statements were audited.

The Federal Maritime Commission places a high level of importance on maintaining adequate controls. In line with requirements under the Federal Managers' Financial Integrity Act ("FMFIA"), the Commission advises that its financial systems provide reasonable assurance that the objectives of the FMFIA are being met, and that the Commission is in compliance with section 4 of the FMFIA. While the Commission will discuss certain material weaknesses in its full FMFIA report later this calendar year, these relate to its IT program, and do not result in waste, fraud or abuse. OMB has long held that the existence of material weaknesses does not preclude

statements of overall compliance, so long as the weaknesses, when considered together, are not sufficiently serious to prevent reasonable assurance of overall compliance. For reasons iterated in our FY03 FMFIA report, and which will be discussed in our FY04 FMFIA report, the Commission can provide reasonable assurance that the objectives of the FMFIA are being met and that the Commission, as a whole, is in compliance with section 2 of the FMFIA.

