

First Annual Report
of the
**Federal Maritime
Commission**



Fiscal Year Ended June 30, 1962

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

THOS. E. STAKEM, *Chairman*

JOHN HARLLEE, *Vice Chairman*

ASHTON C. BARRETT, *Member*

JAMES V. DAY, *Member*

JOHN S. PATTERSON, *Member*

THOMAS LISI, *Secretary*

PREFACE

The material in this report deals with the period July 1, 1961, to June 30, 1962, unless otherwise indicated by the narrative. Accordingly, the coverage of the report includes a resumé of all activities involved in the regulation of the waterborne foreign and domestic off-shore commerce of the United States, which have been the responsibility of the Federal Maritime Commission since its establishment on August 12, 1961, and the responsibility of the Commission's predecessor organization, the Federal Maritime Board, during the period July 1, 1961, through August 11, 1961. A statement of appropriations and aggregate obligations for the fiscal year ended June 30, 1962, is contained in Appendix A of this report.

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LETTER OF TRANSMITTAL

FEDERAL MARITIME COMMISSION,
Washington 25, D.C.,
November 30, 1962.

To the Senate and the House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, I have the honor to submit the first annual report of the activities of the Federal Maritime Commission for the fiscal year ended June 30, 1962.



THOS. E. STAKEM,
Chairman.

REPORT OF THE
FEDERAL MARITIME COMMISSION

Transportation Highlights

The most significant events which occurred during fiscal year 1962, were those concerning the establishment of the Federal Maritime Commission as an independent regulatory agency and the enactment of new legislation for the regulation of the waterborne foreign and domestic off-shore commerce of the United States.

The Federal Maritime Commission was established by Reorganization Plan No. 7 effective August 12, 1961, to administer the functions and discharge the regulatory authorities under the shipping statutes (e.g., the Shipping Act, 1916; Merchant Marine Act, 1920; Intercoastal Shipping Act, 1933; and Merchant Marine Act, 1936). The basic objective of Reorganization Plan No. 7, as stated in the President's Message to the Congress, is "to strengthen and revitalize the administration of our Federal programs concerned with the promotion and development of the U.S. Merchant Marine by concentrating responsibility in separate agencies for the performance of regulatory and promotional functions".

The Commission is composed of five members, appointed for 4-year terms by the President, by and with the advice and consent of the Senate, with no more than three members appointed from the same political party. One member is designated by the President to be the Chairman, and he is the chief executive and administrative officer of the Commission.

The Commission's authorities and responsibilities under the shipping statutes embrace five principal functional areas: (1) regulation of services, practices, and agreements of common carriers by water and other persons (as defined in the Shipping Act, 1916) engaged in the foreign commerce of the United States; (2) receipt and review of tariffs of freight rates of common carriers by water and conferences of such carriers engaged in the foreign commerce for conformance with the requirements of statute or the Commission's rules and regulations; (3) regulation of rates, fares, charges, classifications, tariffs, and practices of common carriers by water in the domestic off-shore trade of the United States; (4) investigation of discriminatory rates, charges, classifications and practices in the waterborne foreign and domestic off-shore commerce; and (5) rendering decisions, issuing orders, and making rules and regulations governing and affecting com-

mon carriers by water, terminal operators, freight forwarders and persons subject to the shipping statutes.

The mandate given the new agency to effectively administer and discharge its regulatory responsibilities had an immediate and far reaching impact upon common carriers by water engaged in the foreign and domestic off-shore commerce of the United States, conferences of such carriers, and other persons subject to the shipping statutes.

This impact was accented toward the end of the fiscal year as the Commission organized and geared itself to fulfill its statutory responsibilities under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933.

The Commission's regulatory responsibilities were enlarged by enactment on September 19, 1961, of Public Law 87-254 and on October 3, 1961, of Public Law 87-346.

The first of these laws, Public Law 87-254, provides for the licensing of independent freight forwarders and regulation thereof.

The latter law, Public Law 87-346, provides for (a) enlarged responsibility of the Commission over approval of section 15 agreements and new responsibilities with respect to exclusive patronage contract/non-contract dual rate contract systems; (b) modification of existing section 15 agreements, as may be required, to comply with the standards of the new statute and approval thereof by the Commission; (c) modification of existing dual rate contracts to comply with the new statutory provisions and approval thereof by the Commission; (d) filing, and review by the Commission of, both inbound and outbound rates charged by common carriers and conferences in the waterborne foreign commerce of the United States in accordance with the requirements of statute and the Commission's rules and regulations; (e) inspection of and availability of tariffs to any person at a reasonable charge; (f) issuance of regulations by the Commission prescribing the form of tariff filings; (g) disapproval by the Commission of any rate or charged which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States; and (h) permission for the Governor of any State, Commonwealth or possession of the United States to file a protest against any rate, rule, or regulation that he alleges is unjustly discriminatory against that State, Commonwealth or possession.

The Commission during fiscal year 1962, instituted nine proposed rule-making proceedings of major importance to carry out the provisions of the newly enacted statutes, as well as the existing provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. These proceedings, coupled with the concentrated efforts of the Commission to apply the shipping statutes resulted in the development of a number of major problems and issues, of national and international significance, the solutions of which were being pursued at the close of the fiscal year.

There is reflected in detail in subsequent sections of this report the Commission's activities in the administration of its regulatory responsibilities.

Organization of the Federal Maritime Commission

Internal Organization

The Commission immediately after its establishment took steps to implement Reorganization Plan No. 7 of 1961, through an evaluation of its program responsibilities and organizational structure. As a result of this evaluation there was established a new organizational structure consistent with the provisions of section 105 of Reorganization Plan No. 7 of 1961, and sections 1 and 2 of Reorganization Plan No. 6 of 1949. The major organizational components are outlined below:

- 1 Office of the Chairman of the Federal Maritime Commission
- 2 Offices of the Members of the Federal Maritime Commission
- 3 Office of the Secretary
- 4 Office of the General Counsel
- 5 Office of Hearing Examiners
- 6 Office of International Affairs
- 7 Executive Director
 - Office of Administrative Management
 - Office of Information Services
 - Bureau of Foreign Regulation
 - Bureau of Domestic Regulation
 - Bureau of Administrative Proceedings
 - Bureau of Investigation
 - Bureau of Financial Analysis
 - Offices of District Managers

Delegation of Authorities

Coincident with the establishment of the internal organization of the Commission, the Commission delegated certain of its authorities to appropriate officials and heads of the major organizational components. The delegations made were consistent with section 105, Reorganization Plan No. 7, which provides authority in the Commission to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an individual employee or employee board, provided that nothing so delegated shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act, as amended. In this connection the Commission retains a discretionary right to review the action of delegates in such a manner as shall be prescribed by Commission rule. The Commission delegations were published in Manual of Orders, Commission Order No. 1 (Amended) on Janu-

ary 26, 1962, and subsequently amended on August 23, 1962, and are enumerated as follows:

1. The *Executive Director* was delegated:

(a) Authority to accept or reject tariff filings of domestic off-shore carriers or common carriers in the foreign commerce of the United States, or conferences of such carriers for failure to meet the requirements of statute or the Commission's requirements, or for lack of completeness and clarity of the rules and regulations governing the tariff, or noncompliance with Special Permission or other order of the Commission.

(b) Authority to approve Special Permission applications submitted by domestic off-shore carriers or carriers in the foreign commerce of the United States, or conferences of such carriers for relief from a statutory and/or Commission tariff requirement, provided the relief sought is limited to one or more of the following: (1) permission to deviate from prescribed tariff format; (2) permission to correct a clerical or typographical error; (3) permission to postpone the effective date of a previously submitted filing; or (4) permission to cancel or withdraw protested matter.

(c) Authority to review and determine the validity of alleged or suspected violations, exclusive of formal complaints, of the shipping statutes and rules and regulations of the Commission by common carriers by water in the domestic off-shore trade or the foreign commerce of the United States, terminal operators, freight forwarders, and other persons subject to the provisions of the shipping statutes; authority to determine corrective action necessary with respect to violations and conduct negotiations and obtain compliance by the violating parties, except where violations involve major questions of policy or major interpretations of statutes, or orders, rules and regulations of the Commission, or acts having material effect upon the commerce of the United States.

(d) Authority to approve, within the framework of prescribed Commission policy and criteria, applications for licenses, and issue licenses to all persons, partnerships, corporations, or associations desiring to engage in ocean freight forwarding activities and to recommend denial to the Commission of those that appear to warrant denial of licenses.

(e) Authority to develop, prescribe and administer programs to assure compliance with the provisions of the shipping statutes of all persons subject thereto, including without limitation those programs for: (1) the submission of regular and special reports, information and data; (2) the administration of a plan for the field audit of activities and practices of common carriers by water in the domestic off-shore trade and the foreign commerce of the United States, conferences of such carriers, terminal operators, freight forwarders, and other persons subject to the shipping statutes; and (3) the conduct of rate studies.

(f) Authority to approve, pursuant to section 15, Shipping Act, 1916, unprotested, cooperative working arrangements between inde-

pendent ocean freight forwarders eligible to carry on the business of forwarding pursuant to section 44, Shipping Act, 1916.

2. The *Special Permission Committee* (Secretary, Executive Director, and the Director, Office of International Affairs) was delegated:

(a) Authority to approve Special Permission applications for relief from a statutory and/or Commission tariff requirement for any relief sought beyond that delegated to the Executive Director.

(b) The Deputy Executive Director and the Assistant Secretary were authorized to act as members of the Committee in the absence of the Executive Director or the Secretary. In the absence of the Director, Office of International Affairs, the Director, Bureau of Financial Analysis was authorized to act in his stead.

(c) The Executive Director was authorized to act as Chairman of the Special Permission Committee with authority to prescribe rules for the conduct of Committee activities, including the recording of actions and recommendations.

3. The *Secretary* was delegated authority to approve applications for permission to practice before the Federal Maritime Commission and to issue admission certificates to approved applicants.

4. The *Secretary, General Counsel, Chief Examiner, Director, Office of International Affairs* and the *Executive Director* were delegated authority to exercise all functions and take all actions necessary, to direct and carry out the duties and responsibilities assigned to the Office of the Secretary, Office of the General Counsel, Office of Hearing Examiners, Office of International Affairs, and the Executive Director in accordance with their functional assignments.

Regulatory Activities

Conference and Other Agreements

A prime responsibility of the Commission is the regulation of activities of common carriers by water in the foreign commerce of the United States, insofar as they enter into agreements which fix rates, control competition, pool or apportion earnings or traffic, allot ports or regulate sailings, regulate freight or passenger traffic, or otherwise enter into exclusive, preferential, or cooperative working arrangements. Under section 15 of the Shipping Act, 1916, any such agreements must be filed with and approved by the Commission before they can be lawfully carried out. Any such agreement must be disapproved if found after hearing to be unjustly discriminatory, detrimental to the commerce of the United States, contrary to the public interest, or in violation of any provision of the Shipping Act, 1916. At the close of the fiscal year, there were 700 approved agreements on file with and being administered by the Commission. These consisted of: 131 conference and rate agreements; 63 joint service agreements; 42 pooling agreements; 24 sailing agreements;

and 440 transshipment and miscellaneous cooperative working arrangements. (In addition there were administered 37 terminal agreements and 201 freight forwarder agreements.)

Public Law 87-346, effective October 3, 1961, substantially enlarged the duties of the Commission in the approval of section 15 agreements, and created new responsibilities with respect to exclusive patronage contract/non-contract dual rate systems. The statute authorizes the Commission to disapprove any agreement between carriers not members of the same conference or conferences of carriers serving different trades which otherwise would be competitive unless the right of independent action by each party is retained. Further, all conference agreements are required to provide reasonable and equal terms and conditions for admission and readmission of qualified carriers to conference membership. In addition the new statute provides that the use of contract rate systems may only be permitted by the Federal Maritime Commission when, after notice and hearing, the Commission finds that the particular contract meets requirements set forth in the new statute.

Public Law 87-346 also provides that all existing agreements which had been lawful immediately prior to the enactment of the new statute on October 3, 1961, remain lawful unless disapproved, cancelled, or modified by the Commission. The statute contains an important proviso to the effect that all such existing agreements which did not meet the standards of the new statute and would therefore be rendered unlawful by the provisions of the new Act, must be amended to comply with the provision of such Act. Further, if such amendments were filed for approval with the Commission within six months after the enactment of the Act, such amended agreement would be lawful for a period of not to exceed one year after such filing. The Commission is required during such year to approve, disapprove, cancel or modify all such amended agreements.

Three rule-making proceedings were instituted to implement the new statutory requirements: (1) Docket No. 981, *Rules Governing Admission, Withdrawal and Expulsion Provisions of Steamship Conference Agreements*, published in the Federal Register of March 21, 1962; (2) Docket No. 982, *Rules Governing The Right of Independent Action in Agreements*, published in the Federal Register of March 21, 1962; (3) Docket No. 983, *Rules Governing Contract Rate Systems in the Foreign Commerce of the United States*, published in the Federal Register of March 21, 1962. The review and analysis of comments of interested parties were in progress at the close of the fiscal year and it is anticipated that promulgation and publication by the Commission of final rules will be forthcoming in fiscal year 1963. In addition to the foregoing rule-making proceedings, the Commission prepared proposed rules governing self-policing systems to be used by steamship conferences. This proceeding was identified as Docket No. 986, *Rules Applicable to Self-Policing and Self-Regulating*, provisions in conference agreements, and was published in the Federal Register on March 24, 1962.

Finally, Public Law 87-346 provides that dual rate contracts, lawfully in use on October 2, 1961, be modified to comply with the provisions of the new Act and filed with the Commission by April 3, 1962. The Commission processed the filing of 62 such contracts, published notices of such filings in the Federal Register, and handled numerous questions and inquiries regarding implementation of the new dual rate legislation. Final action on these contracts will be forthcoming in fiscal year 1963.

In addition to the heavy volume of work entailed in implementing Public Law 87-346, there were processed and approved 107 new agreements under section 15 of the Shipping Act, 1916, 60 modifications to such agreements, and 39 cancellations of such agreements. Of the 107 agreements approved, 4 were new conference agreements, 3 were joint service agreements, 5 were pooling agreements, 5 were allocation of sailing agreements, 87 were transshipment agreements and 3 were miscellaneous cooperative working arrangements. Pending action at the end of the fiscal year were 64 new agreements, 62 modifications to existing agreements, and 26 cancellations of agreements.

Rates—Foreign

Public Law 87-346 amended the Shipping Act, 1916, by adding a new section 18(b), providing essentially that:

(1) All rates, inbound and outbound, charged by common carriers by water and conferences of such carriers in the foreign commerce of the United States, and rules and regulations governing the application of such rates, must be filed with the Commission.

(2) Rate increases and new or initial rates must be filed 30 days in advance of the effective date of the increase, unless the Commission for good cause grants special permission for a rate increase on less than the statutory notice, and rate decreases may become effective upon filing.

(3) No common carrier by water or a conference of such carriers shall charge or demand or collect a greater, less or different compensation than the rates on file with the Commission.

(4) Copies of tariffs shall be made available to any person and a reasonable charge may be made therefor.

(5) The Commission shall by regulations prescribe the form of tariff filing.

(6) The Commission shall disapprove any rate or change which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

The statute also amended the Shipping Act, 1916, by providing that the Governor of any State, Commonwealth or possession of the United States may file a protest against any rate that he alleges is unjustly discriminatory against that State, Commonwealth or possession, in which event the Commission must determine within 180 days whether the rate should be set aside.

Pursuant to the new statutory provisions, the Commission prepared proposed rules and regulations and these rules were published in the Federal Register on December 23, 1961, as Docket 964, *Filing of Tariffs by Common Carriers by Water in Foreign Commerce of the United States and by Conferences of Such Carriers*. At the close of the fiscal year, the comments from carriers, conferences and interested shippers were being analyzed for the purpose of finalizing these rules.

As a result of the new legislation tariff filings have increased from an average of approximately 110 per working day to approximately 300 per working day.

During the period January 3, 1962, to June 30, 1962, the Commission rejected 108 tariff filings for failure to comply with the notice provisions of the new law. One hundred and forty-one requests for special permission to file new rates or rate increases on less than 30 days notice were processed by the Commission, of which 118 were granted and 23 denied.

Rates—United States Domestic Off-Shore

Continued efforts were devoted to the application of the regulatory responsibilities of the Commission with respect to the regulation of domestic off-shore rates and practices of common carriers by water, pursuant to the Intercoastal Shipping Act of 1933.

In this connection it was necessary during fiscal year 1962 to examine 4,012 schedules of tariff charges; to reject 276 of them; to obtain from carriers 455 corrections of deficiencies of filings; and to make 56 of the filings the subject of memoranda to the Commission for the institution of action, including formal investigation and/or suspension. In addition, 82 special permission applications were received, of which 71 were approved; 4 denied; and 7 were withdrawn.

Related to the foregoing, the following studies were initiated during the year: (1) development of rules for the filing of temporary rates; (2) review and cancellation of inactive tariffs from the files; (3) development of rules for the filing of tariffs covering mixed freight moving in containers (freight all kinds); (4) revision of rules for the filing of rates, schedules and protests thereto, to provide better notice to the public and a longer period of time for agency determination; and (5) preparation of a revised tariff circular.

Early in the fiscal year, a chain of rate reductions broke out in the Puerto Rican trade. The Commission in an effort to avoid a rate war, ordered an investigation, Docket No. 954, of the reasonableness of the rate changes. Hearings were held and detailed cost analysis figures applicable to all rate changes were put into the record by each of the carriers in the trade. The proceeding was not completed by the end of the year.

Several matters of special significance took place in the domestic off-shore trade. They were:

1. Bull Steamship Co., Inc., one of the two major carriers in the Puerto Rican trade curtailed service and ultimately abandoned operation in the trade. The formerly over-tonnaged trade became under-tonnaged and shippers began to find it difficult to obtain shipping space. To meet the space shortage resulting from Bull's curtailment of service, Sea-Land Service, Inc., the other major carrier in the trade, purchased from Bull Lines two vessels which the latter carrier had under conversion. The Commission approved the purchase agreement between the carriers.

2. The Alaskan trade was served in fiscal year 1962 by Alaska Freight Lines, Inc., Alaska Steamship Company, Aleutian Marine Transport Company, Inc., Griffiths Line-James Griffiths & Sons, Inc. Pacific Inland Navigation Company, Inc., Puget Sound-Alaska Van Lines (division of Puget Sound Tug & Barge Company) and Wagner Tug Boat Company. Alaska Steamship Co., increased rates during the year, principally to ports in Northwestern Alaska and these increases were under investigation (Docket No. 969) at the close of the year.

3. The most significant technological advance in the domestic offshore trade was the trend toward containerization. In the Puerto Rican trade, Sea-Land Service, Inc. purchased two vessels from Bull Lines which were converted to carry about half of their cargo capability in containers; and Transamerican Shipping Co. ordered a new container vessel to replace the break-bulk vessels it presently operates; and at the end of the fiscal year there were indications that Bull Line's break-bulk service might be replaced by a container service operated by Grace Lines, Inc. or a rail car carrier service operated by Sea-Train Lines. In the Alaskan trade, Alaska Steamship Co. utilized conventional vessels which had been converted for container operations; Puget Sound Tug and Barge Co., and many of the smaller carriers, who operate tug and barge services, carried most of their traffic in containers. In the Hawaiian trade the containerization program which Matson Navigation Co. instituted in 1960 continued through fiscal year 1962. In fiscal year 1962, Matson also instituted a specialized automobile carrier vessel.

4. During the year Matson also introduced a departure from normal rate-making concepts in order to keep the important pineapple cargo moving from Hawaii to the Gulf and North Atlantic coasts. Matson entered into arrangements with various pineapple companies to provide a lower schedule of rates to pineapple shippers who would agree in advance to tender their shipments more or less equally throughout the year, in optimum pallet proportions, and to a limited number of berths. The new tariffs incorporating the pineapple forward booking arrangements appeared to be necessary for survival of adequate common carrier service between ports on the Atlantic and Gulf coasts and ports in Hawaii, and not to discriminate unjustly against any shipper. Accordingly, they were allowed to go into effect.

Freight Forwarding

Public Law 87-254 enacted on September 19, 1961, amending the Shipping Act, 1916, provides for the regulation and licensing of freight forwarders by the Federal Maritime Commission and permits the payment of compensation by ocean-going common carriers to licensees who certify to such ship lines that they have performed certain dispatching services.

The statute was precipitated by an extensive investigation by the Commission's predecessor of the practices of freight forwarders and payment of brokerage to forwarders. The investigation disclosed various malpractices by certain forwarders such as: (1) dummy forwarders, i.e., collection of brokerage by a shipper through a dummy forwarding corporation; (2) waiving or reducing forwarding fee for purpose of securing control of cargo and hence brokerage; (3) unearned brokerage payments, i.e., payment of brokerage to a forwarder who has not serviced the shipment. These malpractices were found to be motivated by receipt of brokerage by freight forwarders from carriers. It was further found that many times freight forwarders' services were performed for export shippers rather than for carriers.

After reviewing the problem, Congress decided that the alleged malpractices in the freight forwarder industry could be controlled by a licensing program rather than the elimination of brokerage and accordingly, enacted Public Law 87-254. The net effect of the legislation is to recognize the problems that had been found to exist with respect to freight forwarding, and to vest the Commission with responsibility and authority to correct these problems through the implementation of broader and more intense regulation. Payment of brokerage by carriers to freight forwarders is to be allowed only under conditions prescribed in the Act.

The Federal Maritime Commission promulgated and published proposed rules prescribing conditions under which freight forwarders would be licensed. These rules were promulgated by the Commission after seeking the recommendations of an advisory group appointed by the freight forwarder industry. The rules and an accompanying application styled Form FMC-18, "Application for A License As An Independent Ocean Freight Forwarder" were the subject of a proposed rule-making proceeding in Docket No. 961, *General Order 4, Licensing of Independent Ocean Freight Forwarders*, which were subsequently adopted by the Commission.

Immediately prior to enactment of Public Law 87-254, there were 1,721 ocean freight forwarders "registered" with the Commission pursuant to FMB General Order No. 72. As of midnight January 17, 1962, the cutoff date for "grandfather rights" under the new statute, 918 applications had been filed in the Commission's offices by former registrants. By February 3, 1962, with very few exceptions, all such applications were preliminarily examined and license application numbers were assigned, and the eligible applicants notified that they were authorized to continue to carry on the business of forwarding

until further ordered by the Federal Maritime Commission. An additional 81 applications were filed by persons who are not authorized to engage in the business of freight forwarding either because they were not registered pursuant to General Order No. 72 or because their applications were filed subsequent to January 17, 1962. The statute requires applicants in this category to be bonded before they can be licensed. Preliminary negotiations and discussions were immediately commenced with surety associations for the purpose of devising and promulgating an acceptable surety bond for use by new applicants.

During the year a rule-making docket was instituted for the purpose of devising substantive rules pertaining to the duties, obligations and business practices of the licensees. This proceeding is known as Docket No. 973, *General Order 4, Amendment 1, Practices of Licensed Independent Ocean Freight Forwarders, Ocean Freight Brokers, and Oceangoing Common Carriers*. It prescribes a practical and ethical code of conduct for licensees and the carriers who pay them commissions. Forty-seven controversial and technical comments were submitted in connection with this rule-making proceeding, and they were under analysis at the close of the fiscal year.

In order to expedite the processing of freight forwarder applications, the Commission has delegated to its Executive Director authority to approve, within the framework of prescribed Commission policy and criteria, applications for licenses, and to issue licenses to all persons, partnerships, corporations, or associations desiring to engage in ocean freight forwarding activities and to recommend denial to the Commission of those that appear to warrant denial of licenses.

Terminal Operators

The Commission in April 1962 instituted a program for the purpose of developing new rules for the regulation of terminal operators. These rules will, if adopted, among other things, prescribe the filing of tariffs of terminal rates with the Commission 30 days in advance of effectuation, and standardize definitions of terminal services and charges to be included in all tariffs filed pursuant to the rule. The proposed rules were being finalized at the end of the year. A rule-making proceeding to prescribe proposed rules governing free time and demurrage applicable during seaman strikes was held in abeyance pending a decision by the Court of Appeals for the District of Columbia with respect to similar rules governing free time and demurrage applicable during longshoreman strikes. The Court, in May 1962, rendered its decision concerning the rules to be observed during strikes of longshoremen and this decision was being studied to determine its effect upon the pending rules of the Commission.

The Commission also instituted a proceeding (Docket No. 965) to investigate practices of Pacific Coast terminals relating to free time, demurrage and storage charges. Notice of investigation and proposed rules were published in the Federal Register and comments received as a result thereof were being analyzed at the end of the fiscal year.

The decision of the Court of Appeals for the Fifth Circuit in *Greater Baton Rouge Port Commission, and Cargill, Incorporated v. United States of America and Federal Maritime Board*, 287 F. 2d 86 (1961), has resulted in the submission to the Commission of a large number of lease agreements between port authorities and terminal operators. The problem concerns whether such agreements are subject to section 15, Shipping Act, 1916, and if so, whether they should be approved pursuant to the standards of that section. Approximately 50 such agreements were received during the fiscal year of which 22 agreements were processed.

The Commission examined 2,656 terminal filings during the fiscal year; processed 26 informal complaints of which 16 were concluded; and policed the activities of 14 terminal conferences consisting of 130 terminal operators. Practices at all terminals in the United States were regulated by inspection of tariffs and by response to complaints by interested persons.

Enforcement and Compliance

The establishment of the Federal Maritime Commission as an independent regulatory agency pursuant to Reorganization Plan No. 7, on August 12, 1961, carried with it the mandate that there shall be a more effective administration of the shipping statutes. In this connection particular efforts were expended by the Commission in the following areas of enforcement and compliance.

Formal Proceedings

The Commission on its own motion instituted during the year 15 investigations as to the propriety of rates under the provisions of the Intercoastal Shipping Act, 1933; 9 rule-making proceedings pursuant to the Shipping Act, 1916, and the Intercoastal Shipping Act of 1933; 60 proceedings for dual rate contract determinations under the Shipping Act, 1916; and 9 investigations of malpractice in the shipping industry. The volume and progress with respect to these proceedings are reflected in the tabulations below:

	Beginning fiscal 1962	New dockets	Concluded fiscal 1962	Pending beginning fiscal 1963
Rates.....	9	15	7	17
Rule-making.....	3	9	1	11
Dual Rate Contract Determinations.....	-----	60	-----	60
Other investigations.....	38	9	24	23
TOTALS.....	50	93	32	111

The following are some of the more important proceedings disposed of during fiscal year 1962:

In *Unapproved Section 15 Agreements—South African Trade*, Docket No. 882, (April 10, 1962), the Commission found that respondents were in violation of section 15 of the Shipping Act because of their failure to file and because of their effectuation of a nonauthorized agreement fixing freight rates in the trade between the United States and South and East Africa. That decision is particularly significant because it contains important evidentiary rulings as well as a clear and concise explanation of the Commission's regulatory responsibility.

In *Pacific Coast/Hawaii and Atlantic-Gulf/Hawaii, General Increases in Rates*, Dockets No. 869, 935, and 941, (June 28, 1962), the Commission determined the fairness and reasonableness of rates for ocean transportation between the United States and the State of Hawaii. This case settled for the future many important rate-making issues which should enable subsequent proceedings to be conducted more expeditiously and at less expense to the parties and to the Commission.

In *Practices and Agreements of Common Carriers by Water in Connection with the Payment of Brokerage or Other Fees to Ocean Freight Forwarders and Freight Brokers*, Docket No. 831 (January 23, 1962), the Commission made its first determination under Public Law 87-254 and determined that brokerage, payable to freight forwarders under the statute was permissive only. However, agreements among carriers prohibiting brokerage or limiting the amount to less than 1¼ percent were found to be detrimental to commerce and contrary to the public interest in violation of section 15 as amended by Public Law 87-346.

In *States Marine Lines/Hohenberg Brothers, Violation of Section 15*, Docket No. 892 (October 9, 1961), the Commission found that a shipper knowingly and willfully by an unjust or unfair means obtained ocean transportation at less than the rate otherwise applicable in violation of section 16. The common carrier respondent was also found to have allowed a person to obtain transportation at less than the regular rates by means of false billing in violation of section 16.

Field Investigations

There were 153 pending investigative cases as of July 1, 1961. During fiscal year 1962 investigative cases totaling 1016 were opened and 150 cases were closed, leaving a pending workload on June 30, 1962, of 1019 cases. This pending workload consisted of 912 freight forwarder matters, 55 matters of alleged malpractices (rebates, misclassification, mismeasurement, etc.), 6 common carrier status matters and 46 matters in which active investigation has been completed but pending action of other Commission components and Government agencies.

The 912 freight forwarder matters consist entirely of applicants for a license as an independent ocean freight forwarder. The Commission during its investigation of these freight forwarder matters has uncovered a number of violations of law. These violations have been found to consist primarily of false statements in the applications of applicants who have been operating as ocean freight forwarders without a license. These violations are referred to the Department of Justice for appropriate action.

During the fiscal year the investigative activity resulted in 11 convictions for criminal violations of the shipping statutes and fines aggregating \$111,290 were assessed. There were at the close of the year seven other matters pending with the Department of Justice for the institution of court action.

Matters Referred by Antitrust Subcommittee of the House Committee on the Judiciary

As a result of the investigations and hearings of the subject congressional committee, conducted during 1959, 1960 and 1961, there were 236 possible violations of the shipping statutes developed either by the Subcommittee or independently listed by the former Federal Maritime Board for review and appropriate action. By the close of fiscal year 1962, 24 of the items were referred to the Department of Justice, of which five were referred after formal hearings by the Commission. In addition, 19 other formal agency hearings were instituted and general rule-making proceedings were instituted with respect to 32 other items, on the basis that this approach offered the best solution to curb the questionable practices involved. The remainder, other than those that were time-barred insofar as prosecution was concerned, were under staff review and attention at the close of the fiscal year.

Conference Minutes Review

Conference agreements of carriers operating in the foreign commerce or the domestic off-shore commerce of the United States require the filing with the Commission of true and complete copies of minutes of all conference meetings and other matters requiring concerted action.

During the fiscal year in excess of 3,000 minute filings were examined. Of this number in excess of 700 items were questioned, of which 175 required an exchange of correspondence. This effort resulted in compliance on the part of the parties concerned in 73 matters involving practices which could have led to violations of the statutes if not corrected. Five other items were scheduled for field investigation and 3 were under legal consideration at the close of the year. All other items were resolved upon satisfactory explanation by the conference chairman or secretary.

Informal Complaints

On June 30, 1961, there were pending 77 informal complaints alleging violations of the shipping statutes and during fiscal year 1962, there were received an additional 201 complaints. During the year there were 130 processed to conclusion, of which 86 were found not to be violations of the statutes and 44 were settled by adjustment between the parties. Of the remainder, 10 were found to warrant possible formal proceedings, 28 were set down for field investigation, 2 referred to the Department of Justice for criminal action, and 108 were pending on June 30, 1962.

The subject matter of the complaints included alleged violations of the Shipping Act, 1916, and the Intercoastal Shipping Act of 1933 and included, but were not limited to, those concerning claims for damages or overcharges, violations of section 15 agreements, protests against rates, unjust or unfair discriminatory or preferential practices, passenger service complaints and disclosure of confidential information in violation of section 20, Shipping Act, 1916.

Financial and Economic Analysis

An organizational entity whose sole responsibility was the conduct of financial and economic analysis was recognized by the new Commission as an extremely important tool in its administration of its regulatory functions. With the establishment of such a unit efforts have been directed during the past year to the planning of reporting systems, devising a revised uniform system of accounts for carriers by water, and planning for a field audit program.

Reporting

On January 24, 1962, the Commission promulgated regulations, in the form of General Order No. 5, requiring all persons engaged in the operation of vessels in the common carriage of persons or property in the domestic off-shore trades to file semi-annual financial statements with the Commission. These regulations have application to 36 domestic off-shore common carriers.

Financial and Economic Analysis

Resources of the staff were applied to specific areas involving financial and economic aspects of immediate concern to the Commission in the exercise of its regulatory functions and responsibilities.

During the year 14 summary statements were prepared for the use of the Commission and its program staff offices reflecting the financial position of 7 major domestic off-shore operators subject to regulation

by the Commission and the results of their operations over a ten year period. Significant elements of the statements were set forth separately to show trends and material changes in the financial status of these operators or in their operating results. In addition, sets of statements were devised to portray the financial and accounting positions of parties to 4 rate cases.

Preliminary work was undertaken toward revising and modernizing the uniform system of accounts for carriers by water heretofore prescribed by the Interstate Commerce Commission and Maritime Administration. The assistance of the industry was and will continue to be obtained, particularly where evolution in the shipping industry requires the modification of prescribed accounting systems to keep them adequate and abreast of new developments such as containerization and automation.

In the coming fiscal year it is planned that a field audit program will be developed prescribing the performance required of its field auditors in their verification of financial data submitted to the Commission. A uniform audit program, applicable to all operators in all domestic off-shore trades is essential for the proper conduct of the Commission's regulatory function. Further, study of the capital market will be carried on to determine a reasonable rate of return for both borrowed and equity capital in the domestic off-shore trade. This study will require an analysis of the capital market and the returns earned on capital employed in many industries to determine the reasonable return under current conditions in industries of similar capital requirements and subject to similar risks. Also the Commission will participate with representatives of the Interstate Commerce Commission and Maritime Administration in the development of cost accounting formulae for the purpose of segregating and allocating costs and expenses between various types of cargo and trades. This study, with the assistance of representatives of the industry, will be actively pursued during the coming year.

International Activities

Foreign Reactions to Public Law 87-346

The passage of Public Law 87-346 amending the Shipping Act, 1916 was received with considerable misgivings by West European maritime nations as well as by Japan. These countries regarded the law as an attempt by the United States to unilaterally regulate shipping in international trade; a step which they professed to have avoided because of the complications and conflicts which would ensue.

Resistance on the part of foreign governments was displayed over various steps taken by the Federal Maritime Commission to carry out the law. The issuance of proposed regulations for the filing of freight tariffs brought forth protests from ten governments in Europe and

from Japan. Proposed rules applicable to self-policing provisions in conference agreements resulted in a protest jointly presented by nine European countries with separate notes from the Governments of Greece and Japan. These protests were followed by a series of meetings in Paris and London participated in by shipping officials of the Governments of Great Britain, Belgium, Denmark, France, West Germany, Greece, Italy, Norway, the Netherlands and Sweden with the stated purpose of considering collective action against provisions of the United States law. Opposition to the United States regulation of shipping in its foreign trade was increased by demands made by the Federal Maritime Commission for documents from foreign flag lines who were alleged to have violated the United States shipping statutes. These documents were deemed necessary to a fair consideration of the allegations.

In this connection the Chairman of the Federal Maritime Commission was designated to head the United States delegation to the meeting of the Maritime Transport Committee of the Organization for Economic Cooperation and Development scheduled to be held in Paris July 5, 1962, for the purpose of obtaining first-hand the position of the European members, of explaining the new law to them, and of answering questions pertaining to its administration. While this meeting may not resolve the points at issue, it presents a hope that it will lead to a better understanding as between the United States and its European associates in the field of shipping.

Foreign Discriminations

One of the responsibilities of the Federal Maritime Commission is the elimination of discriminatory practices on the part of foreign governments against United States flag shipping.

During the year the Federal Maritime Commission has considered the practices of fourteen foreign governments, located in South America, Europe and Asia, which could be regarded as discriminatory. Corrective steps have been undertaken with respect to eight. Some degree of correction or relaxation having been obtained as to four; with the remaining four still under negotiation or discussion at the close of the year. The practices of six foreign governments, although discriminatory in nature, were found to have little or no effect on United States flag shipping services. These however are being closely watched for any change which would have an impact on United States flag carriers.

In this area the Federal Maritime Commission acts in conjunction with the Department of State in the conduct of negotiations with representatives of foreign governments and the preparation of formal notes of protest. If these protests do not produce satisfactory results they are followed by other steps including, where appropriate, the drafting of offsetting rules and regulations under authority of section 19 of the Merchant Marine Act of 1920.

Rule-Making Proceedings

During fiscal year 1962, the Commission instituted the following rule-making proceedings to implement and effectuate continuing and new provisions of the shipping statutes for the regulation of common carriers by water in the foreign and domestic off-shore commerce of the United States, and other persons subject to the shipping statutes.

DOCKET No. 875—*Filing of Tariffs by Terminal Operators*

DOCKET No. 955—*Rules Covering Free Time and Demurrage Applicable During Seamen's Strike*

DOCKET No. 964—*Filing of Tariffs by Common Carriers by Water in Foreign Commerce of the United States and by Conferences of Such Carriers*

DOCKET No. 965—*Investigation of and Proposed Rules Relating to Practices of Pacific Coast Terminals in Granting Free Time and Collecting Wharf Demurrage and Service Charges*

DOCKET No. 973—*Practices of Licensed Independent Freight Forwarders, et al.*

DOCKET No. 981—*Rules Governing Admission, Withdrawal and Expulsion Provisions of Steamship Conference Agreements*

DOCKET No. 982—*Rules Governing The Right of Independent Action in Agreements*

DOCKET No. 983—*Rules Governing Contract Rate Systems in the Foreign Commerce of the United States*

DOCKET No. 986—*Rules Applicable to Self-Policing and Self-Regulating Provisions in Conference Agreements*

At the close of the fiscal year comments with respect to the foregoing proposed rules submitted by interested and/or affected parties were being analyzed for the purpose of issuing final rules of the Commission in fiscal year 1963. In addition, efforts were also devoted to proceedings to provide rules to (a) govern agreements filed pursuant to section 15, Shipping Act, 1916; (b) clarify procedures to be followed in the filing of temporary rate changes in the domestic off-shore trade; and (c) govern practices, charges and services, definitions, and agreements of terminal operations at Atlantic and Gulf ports.

There were published during the fiscal year final rules and orders of the Commission on the following subjects: (a) General Order No. 1, Continuance of Functions, Powers, and Duties Transferred by Reorganization Plan No. 7 of 1961; (b) General Order No. 2, Official Seal of the Federal Maritime Commission; (c) General Order No. 4 and General Order No. 4 (Amendment 2), Licensing of Independent Ocean Freight Forwarders; (d) General Order No. 5, Reports by Common Carriers by Water in the Domestic Off-shore Trades; and (e) Manual of Orders, Commission Order No. 1 and Commission Order No. 1 (Amended), Organization and Functions of the Federal Maritime Commission. Commission Order No. 1, also included the initial delegations of authority by the Commission to its staff officials.

Litigation Involving Commission Orders

The Commission experienced a substantial volume of litigation during the fiscal year attacking its decisions and orders relating to the regulation of rates and practices of common carriers by water and others in the foreign commerce of the United States and the off-shore domestic trades. All indications are that this volume may be expected to continue or to rise as a result of the Commission's intensified regulatory program. There were 56 cases before the courts in fiscal 1962 involving actions by the Commission or its predecessor. Forty-six of these, including 26 so-called "class" cases which challenged one or more of three related rate filing and tariff distribution orders, had been disposed of by the end of the year.

Among the more significant decisions by the courts were the following:

Trans-Pacific Freight Conf. of Japan, et al. v. F.M.C. and U.S.A., 302 F. 2d 875 (D.C. Cir.) in which it was held that the Commission lacks the power to issue an interim cease and desist order to maintain the status quo pending its findings and decision on a controversy before it.

Anchor Line Ltd., et al. v. F.M.C. and U.S.A., 299 F. 2d 124 (D.C. Cir.), in which it was held that the pendency of a petition for court review of a Commission proceeding does not automatically bar the Commission from reopening the proceeding, although such action should by appropriate motion be brought to the court's attention.

Flota Mercante Grancolombiana, S.A., et al. v. F.M.C. and U.S.A., 302 F. 2d 887 (D.C. Cir.), in which the court (1) upheld the agency's finding that a common carrier by water cannot discriminate among qualified shippers of a commodity (bananas) by denying some of them any space on its vessels, (2) held that the Commission, in awarding reparations for violation of the Shipping Act, 1916, has discretion to reach an equitable result under all the circumstances, and (3) held that the Court of Appeals has jurisdiction, under the Review Act of 1950, 5 U.S.C. 1031, to determine the validity of a reparations order whether at the instance of the party seeking the reparations or the party ordered to pay them.

Swift & Co., et al. v. F.M.C. and U.S.A., 306 F. 2d 277 (D.C. Cir.), in which the court made clear that an agreement under section 15 of the Shipping Act, 1916, is not simply a private contract but one that exists legally only because approved by the Commission and which can and must be interpreted by the Commission with respect to its scope and its effect on commerce and the public interest; and further held that arbitration provided for by an approved section 15 conference agreement cannot negate the Commission's statutory power to determine the validity of the agreement.

Royal Netherlands Steamship Co., et al. v. F.M.C. and U.S.A., 304 F. 2d 938 (D.C. Cir.), in which it was held that the character of an article is not changed by the fact that it may be put to a different use

and that its character and "controlling use" determine the classification and applicable transportation rate for the article under a carrier's tariff, and further held that, while the shipper and freight forwarder in this case were correctly found to have knowingly and wilfully obtained by false classification transportation at less than the applicable rate, in violation of section 16 of the Shipping Act, 1916, the carriers were not shown to have had any notice and could not be found to have "knowingly and wilfully" allowed transportation at less than the applicable rates merely because they failed to discover the false classification.

In addition to the foregoing, the Commission assisted the Department of Justice in connection with a number of suits the Department instituted for the recovery of penalties provided by the Shipping Act. In most of these cases the Department filed criminal informations and the defendants, after entering pleas of guilty or *nolo contendere*, were fined by the courts.

Legislation and Legislative Activities

The Commission was concerned with a number of legislative matters during the past year. Of major interest to the Federal Maritime Commission were Reorganization Plan No. 7 of 1961, Public Law 87-254 and Public Law 87-246, which provided for the establishment of the Federal Maritime Commission as an independent regulatory agency and increased responsibilities of the Commission for the regulation of the waterborne foreign and domestic off-shore commerce of the United States. These matters are covered in detail in the first section of this report titled "Transportation Highlights".

Legislative Recommendations

The Commission has under consideration a number of legislative proposals. Those referred to below are recommended at this time. They have the purposes of (a) benefiting the waterborne foreign and domestic off-shore commerce of the United States; (b) facilitating the exercise by the Commission of its regulatory responsibilities; (c) clarifying certain sections of the shipping statutes; and (d) improving and speeding-up the administrative procedural processes of the Commission. The proposals are stated here in outline form only. The Commission will furnish full justification when it submits draft legislation to implement the proposals.

1. Section 22 of the Shipping Act, 1916, should be amended so as to authorize the filing of complaints against any person who has violated any section of the Act.

Section 22 provides that "any person may file with the Commission a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act" but the definition

of other persons subject to this Act in section 1 thereof as presently written, does not include shippers and consignees. Thus, while carriers and others, such as forwarders and terminal operators may be complained against by violating the Act, the Commission cannot entertain complaints by third parties against shippers and consignees who violate the Act.

2. The immunity provision of section 28 of the Act should be limited so that a natural person who has been subpoenaed must expressly claim the right to remain silent in order to be entitled to immunity from prosecution.

As now worded this section has been construed to give a very broad immunity to a natural person who has been subpoenaed whether or not he claims the right to remain silent. This proposal conforms to other recent legislation which requires that a person must claim his immunity.

3. An appropriate provision should be inserted in the Shipping Act to authorize the Commission to conduct preliminary investigations and in aid thereon, to exercise the power of subpoena, to swear witnesses, and to take and record testimony antecedent to the filing of any complaint on the Commission's own motion.

The Commission is utilizing a rule, promulgated by its predecessor, which provides for informal inquiries and preliminary investigations to obtain information needed in the carrying out of its duties (46 CFR, Part 201, Subpart S). The Commission believes the general authority contained in section 22 of the Act sanctions this procedure. It is felt, however, that insertion in the Act of express language covering the procedure would be desirable, particularly to make clear that in aid of such investigations the Commission may exercise the power of subpoena, swear witnesses, etc. Somewhat similar authority is vested in the Federal Trade Commission.

4. The Commission should be given the authority to fix and assess penalties for violation of the Shipping Act, 1916, or to remit penalties for good cause, subject to judicial review by the courts of appeals. In this connection, the criminal penalties provided by the Act should be changed to civil penalties.

The Act does not authorize the Commission to impose any sanction, although it may, upon proper complaint, award reparations for injury suffered as the result of a violation. The force of the Act can be increased if the Commission is given the power to determine and adjudge penalties. This would eliminate the necessity of a *de novo* district court penalty suit, as is presently required, and would enable the Commission to relate the penalty directly to the Act's regulatory objectives. In addition, the statute should be amended so as to provide in all instances for the maximum penalty which may be imposed, leaving discretion for the assessment of any lesser amount that may be deemed appropriate in the particular case.

5. In connection with the foregoing, the Commission should also be vested with the authority to enter, prior to hearing and with the consent of the person proceeded against, an order to cease and desist

from practices alleged to be unlawful, or to pay a penalty in the amount assessed by the Commission, or both.

6. In addition, the Commission should be authorized to enter cease and desist orders of an interlocutory nature prior to the completion of full evidentiary hearings. These should be enforceable in the Federal district courts.

This recommendation would enable the Commission to maintain the status quo where conduct of questionable legality is under review by the Commission, and there is occurring meanwhile substantial injury to the public interest, or irreparable harm to public or private interests. The power sought is similar to that now possessed by other regulatory agencies. As noted under Litigation, the U. S. Court of Appeals for the District of Columbia has recently held that the Commission lacks such authority.

7. Section 18(a) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, should be amended to make clear that a water carrier in the domestic off-shore trade may file single-factor rates which include charges for terminal area pickup and delivery service when that service is performed by a motor carrier otherwise under the jurisdiction of the Interstate Commerce Commission.

Savings to water carriers in the domestic off-shore trade resulting from the recent innovation of container services are dependent to an important extent upon pickup and delivery of freight by motor carriers acting as agents of the water carriers. The amendments would make it clear that the Commission has jurisdiction of pickup, delivery and other services when such services are incidental to or a part of the water transportation.

8. Section 2, paragraph 2 of the Intercoastal Shipping Act, 1933, should be amended to require that new or initial rates of common carriers by water in the domestic off-shore trades must be filed 30 days in advance of the effective date of the rate, unless permission to file on short notice is obtained from the Commission.

Section 2, paragraph 2 of the Intercoastal Shipping Act, 1933, states that rate changes must be filed 30 days in advance of the effective date unless special permission to file on short notice is received from the Commission, but no mention is made of initial filings of rates. Filings of the latter on short notice, sometimes less than one day, have caused confusion to shippers, competitive carriers, and even the filing carriers and have resulted in the submission of ambiguous or unreasonable tariffs which would have been rejected or suspended if sufficient time were afforded. A similar requirement respecting new or initial rate filings by common carriers by water in foreign commerce was recently added to section 18(b) of the Shipping Act, 1916 (Public Law 87-346, 75 Stat. 762, 765).

9. The Shipping Act should be amended to specifically require that all terminal operators in the United States file with the Commission and keep open to public inspection tariffs containing all their rates, charges, rules and regulations for the receiving, handling, storing or delivering of property; that changes and amendments to such

tariffs must be filed and published 30 days in advance of the effective date thereof; and that the rates and charges so published and filed shall be the lawful rates and charges and no others may be charged collected, or imposed.

This proposal would put terminal operators on a par with carriers in giving users of their services public notice of their rates, charges, rules and regulations, and would remove areas of uncertainty regarding the payment of rebates or the granting of special privileges, absorptions or allowances by terminal operators.

10. Judicial review and enforcement of reparation orders entered by the Commission should be clarified.

This proposal is desired so as to reduce the number of court actions that are apparently necessary before a reparation matter is finally disposed of. This problem was recently pointed up by the U. S. Court of Appeals for the District of Columbia in *Flota Mercante Gran-colombiana, et al., v. FMC and USA*. 302 F. 2d 887 (1962). It was there recognized that even though an order for the payment of reparations is upheld by the court of appeals, upon review under the Review Act of 1950 (5 U.S.C. 1031), it may be necessary for the party in whose favor the order was entered to bring still another suit, in a district court, to obtain enforcement of the order under section 30 of the Shipping Act, 1916, and that such suit would be largely a trial *de novo* in which the result might vary considerably from the reparations order theretofore judicially affirmed by an appellate court.

11. Section 14(b) of the Shipping Act, 1916, should be amended so as to permit conferences of carriers using dual rate systems to open rates, or otherwise permit conference members to publish a rate, on less than 90 days' notice so long as the individual carrier members publish and file a rate which is lower than the last effective conference contract rate.

Section 14(b) as it now stands permits the termination of a dual rate system "in whole or with respect to any commodity" only upon 90 days' notice. The opening of a rate removes the commodity on which the rate is opened from the conference tariff and thus from the coverage of the conference dual rate contract. Accordingly, the contract rate system, with respect to such commodity, would be terminated. Rates are generally opened in order to meet competition on a day to day (or sometimes hour to hour) basis and result in reductions which stimulate the flow of our foreign commerce.

12. Section 18 of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, should be amended to authorize the Commission to cancel tariffs on file upon a finding that service under the tariffs has been discontinued.

Maintenance in the files of the Commission of the tariffs of carriers no longer serving a trade can only cause confusion to the public and needlessly encumber the files of the Commission. The Commission should be specifically authorized to cancel tariffs of carriers who are not providing service to the shipping public.

13. Section 43 of the Shipping Act should be amended to include a civil penalty for the violation of a Commission rule or regulation, and the Commission should be given authority to assess and mitigate the amount of penalty. In addition, section 29 of the Act should be amended to include suits to enforce Commission rules and regulations.

The Commission believes that penalties for violation of its rules and regulations are provided for in the Merchant Marine Act of 1936 (Secs. 204 and 806(d)). However, it is felt that specific language should be included in the Shipping Act itself to remove any doubt as to the penalty for violation of rules and regulations of the Commission. It is to be noted that most regulatory statutes contain such specific provisions.

14. The Federal Maritime Commission, along with the Interstate Commerce Commission and the Civil Aeronautics Board should be authorized to participate in joint boards for the purpose of coordinating the efforts of Federal agencies engaged in the regulation of transportation.

The establishment of joint boards would facilitate an integrated transportation system for the movement of trade in an unbroken transit by rail, truck, air or water as may be necessary to reach the point of final destination. Different regulatory laws as applied by the different regulatory agencies often handicap this objective. The joint board concept would bring to a common forum the specialized knowledge and experience of each of the regulatory agencies.

Although, through routes and joint rates in the off-shore domestic trades with Alaska and Hawaii are now subject to the jurisdiction of the Interstate Commerce Commission, the Commission believes that a joint board would be of value in coordinating its continuing responsibilities for the regulation of water carrier services with the responsibility of the Interstate Commerce Commission for rail and truck services in the continental United States. Moreover, the problem of through routes for Puerto Rico and other territories and possessions and the development of through routes involving several means of transportation in our foreign trade are unsolved. The establishment of joint boards would be in conformity with the President's Transportation Message of April 5, 1962, in which he recommended that Congress declare as a matter of public policy that through routes and joint rates should be vigorously encouraged and that all Federal transportation agencies be authorized to participate in joint boards.

15. The authority of the Commission to authorize carriers to make voluntary refunds to shippers or to waive collection of charges from shippers for good cause such as bona fide mistake, should be made clear by amendment of existing law.

Common carriers by water subject to the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, are required to file with the Commission tariffs showing their rates and charges. These statutes prohibit charging more or less than the rates specified in the tariffs which are filed.

The Commission believes that it has authority to authorize relief

where through bona fide mistake, on the part of the carrier, the shipper would be charged more than he understood the rate to be. It is suggested however that the law be amended to make it clear that such authority exists. The discretion so granted the Commission would be similar to the special permission procedures granted to the Commission under section 18(b) (2) of the 1916 Act and section 2 of the 1933 Act regarding the 30-day filing period, and would be exercised only upon the filing of a proper application and for a good cause.

16. The Intercoastal Shipping Act, 1933, should be amended to specifically provide that the Federal Maritime Commission may prescribe the form of accounts to be kept by the carriers subject to the Intercoastal Shipping Act, 1933, and that duly authorized representatives of the Commission have authority to inspect and copy the accounts, books and records of such carriers.

In order that the Commission may effectively carry out its duties and responsibilities in connection with the regulation of water carriers subject to the Intercoastal Shipping Act, the statute should specify that such authorities, which is similar to that vested in other regulatory agencies, resides in the Commission.

The Commission, as appropriate, will submit additional legislative recommendations to the Congress following the conclusion of a series of meetings which the Federal Maritime Commission plans to hold during the forthcoming fiscal year with officials of American flag and foreign flag common carriers by water, shipping conferences and shipper organizations.

Management Activities

Appointment of Commissioners

Reorganization Plan No. 7 of 1961 provides that of the first five Commissioners appointed, one shall be appointed for a term expiring on June 30, 1962, one for a term expiring on June 30, 1963, one for a term expiring on June 30, 1964, and two for terms expiring on June 30, 1965. Further, the Plan provides their successors shall be appointed for terms of four years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he succeeds.

Upon establishment of the Commission, the President, on August 12, 1961, made the following interim appointments to the positions of Chairman and Commissioners: Acting Chairman, James L. Pimper, General Counsel of the Maritime Administration; and Acting Commissioners, Rear Admiral John Harlee (USN Ret.), former Federal Maritime Board Member; Frank L. Barton, Deputy Under Secretary of Commerce for Transportation; Thomas Lisi, Secretary of the former Federal Maritime Board; and Oscar H. Nielson, Office of Budget and Management, U.S. Department of Commerce. These interim appointments were made pursuant to section 302 of Re-

organization Plan No. 7 of 1961, and were terminated on October 8, 1961.

The President, pursuant to section 102 of the Plan, appointed by and with the advice and consent of the Senate the following as Commissioners for the periods of time prescribed by law:

Thos. E. Stakem of Virginia, appointed by the President on October 7, 1961, confirmed by the Senate on February 12, 1962, for the period expiring June 30, 1964. Mr. Stakem was designated Chairman, Federal Maritime Commission, by order of the President dated February 27, 1962.

John Harlee (Rear Admiral U.S. Navy Retired) of the District of Columbia, appointed by the President on October 7, 1961, confirmed by the Senate on February 12, 1962, for the term expiring June 30, 1965. Admiral Harlee was elected by the Commission as Vice Chairman for the period ending December 31, 1962.

Ashton C. Barrett, of Mississippi, appointed by the President on October 7, 1961, confirmed by the Senate on February 12, 1962, for the term expiring on June 30, 1963.

John S. Patterson of Maryland, appointed by the President on October 7, 1961, confirmed by the Senate on February 12, 1962, for the term expiring June 30, 1962. Mr. Patterson was reappointed by the President and confirmed by the Senate on June 29, 1962, for the term expiring June 30, 1966.

James V. Day of Maine, was appointed by the President on January 16, 1962, confirmed by the Senate on February 12, 1962, for the term expiring June 30, 1965.

Messrs. Stakem, Barrett and Patterson and Admiral Harlee served under Presidential recess appointments for the period October 9, 1961, to February 27, 1962.

Personnel and Budget

Pursuant to Reorganization Plan No. 7, \$1,266,000 was transferred to the Commission from the Federal Maritime Board/Maritime Administration. An additional \$40,000 was appropriated by Congress making a total of \$1,306,000 available to the Commission for fiscal year 1962.

On August 12, 1961, the effective date of Reorganization Plan No. 7, 106 employees were transferred to the Commission from the Federal Maritime Board/Maritime Administration and by June 30, 1962, a staff of 188 was attained within the funds made available for fiscal year 1962.

Methods and Procedures

Related to the establishment of the basic organization and the initial delegation of authorities as stated heretofore, efforts were directed to the: (1) establishment of Official Issuances consisting of General Orders, Manual of Commission Orders, Manuals of Pro-

cedures, and Circular Letters and Bulletins; and (2) development of internal operating and administrative procedures for the control and processing of workloads and the orderly conduct of the Commission's business.

Proceedings Before Hearing Examiners

At the beginning of the fiscal year, 97 formal regulatory proceedings were pending, and there were filed during the fiscal year 137 cases; 5 cases were returned to the docket for further proceeding by court remand; making a total of 239 cases. The Commission heard oral argument on 27 cases, and issued decisions in 36 cases, three of which were interlocutory decisions. Thirty-two cases were disposed of without report. The examiners conducted 26 hearings and issued 30 recommended or initial decisions.

Final Decisions of the Commission

Docket No. 726—*Isbrandtsen Co., Inc. v. States Marine Corporation of Delaware, et al.*—Docket No. 732—*H. Kempner v. Lykes Bros. Steamship Co., et al.*—Docket No. 733—*H. Kempner v. Lykes Bros. Steamship Co., Inc., et al.*—Docket No. 634—*Galveston Cotton Company v. Lykes Bros. Steamship Co., Inc., et al.*—Docket No. 735—*Texas Cotton Industries v. Lykes Bros. Steamship Co., Inc., et al.* It was determined in these proceedings, which were consolidated for hearing; the (1) exclusive patronage contracts and dual rate systems used by the Far East Conference and by the Gulf-Mediterranean Ports Conference were made pursuant to agreements filed with and approved by the Commission; (2) agreements filed by Far East Conference and Gulf-Mediterranean Ports Conference were not unjustly discriminatory or unfair as between shippers or carriers, or operated to the detriment of the commerce of the United States, or in violation of section 15 of the Shipping Act, 1916, as amended; (3) States Marine Corporation of Delaware, a common carrier by water, had demanded, charged, and collected a rate which is unjustly discriminatory between shippers in violation of section 17 of the Act; (4) Waterman Steamship Corporation, a common carrier by water, had demanded, charged, and collected a rate which is unjustly discriminatory between shippers in violation of section 17 of the Act; (5) Isbrandtsen Co., Inc. complainant, was entitled under section 22 of the Act, to reparation for the injury caused by the violation of said Act by States Marine Corporation of Delaware and Waterman Steamship Corporation in the amount of \$6,687.20; (6) Isbrandtsen Co., Inc. had not proven violations of the Act, including sections 14, 15 and 16 thereof by the Far East Conference or by any of its members; (7) Harris L. Kempner, Trustee, Galveston Cotton Co., and Texas Cotton Industries, Inc. shipper complainants, had not proven violations of the Act, including sections 14, 15, 16, and 17 thereof by the Far East Conference or by the Gulf-Mediterranean Conference or by any of the members thereof. Finally, it was determined that the motion of respondents, other than Isthmian Steamship Company, to remand the record and the recommended decision to the hearing examiner with directions to rule on additional findings, he denied.

Docket No. 807—*Atlantic & Gulf-Puerto Rico General Increase in Rates and Charges.* This proceeding was remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit in the case of *Commonwealth of Puerto Rico v. Federal Maritime Board*, 288 F. 2d. 419. The Commission, on the issue of proper rate base valuations adopted the prudent investment standard for rate base measurement, and found that the rate increases of the

respondents, United States Atlantic & Gulf-Puerto Rico Conference, Bull Insular Line, Inc., Lykes Bros. Steamship Co., Inc., Waterman Steamship Corporation, Alcoa Steamship Company, Inc., and Pan-Atlantic Steamship Corporation, under investigation were just and reasonable.

Docket No. 831—*Practices and Agreements of Common Carriers by Water in Connection with Payment of Brokerage or Other Fees to Ocean Freight Forwarders and Freight Brokers.* It was determined that (1) the compensation provisions of Public Law 87-254, amending the Shipping Act, 1916, to provide for licensing independent ocean freight forwarders, and for other purposes, were permissive; (2) the statute does not require common carriers by water to pay brokerage to freight forwarders nor forbid carrier agreements prohibiting or limiting brokerage payments to freight forwarders; and (3) though not forbidden by Public Law 87-254, carrier agreements prohibiting brokerage or limiting the amount thereof to less than 1¼% of freight charges in the outbound foreign commerce of the United States, were detrimental to the commerce of the United States and contrary to the public interest, in violation of section 15 of the Shipping Act, 1916, as amended. Accordingly, conferences or associations of common carriers by water engaged in such commerce, including the Pacific Coast European Conference, were directed to comply and a prior report and order in the proceeding were set aside and superseded to the extent inconsistent with the foregoing.

Docket No. 857—*Evans Cooperage Co., Inc. v. Board of Commissioners of the Port of New Orleans.* It was determined that the practice of assessing a wharf tollage charge on cargo transferred from barge to ocean vessel moored at respondent's wharf, without cargo moving across wharf, was not unreasonable or unduly prejudicial.

Docket No. 869—*Pacific Coast/Hawaii and Atlantic-Gulf/Hawaiian General Increase in Rates*—Docket No. 935—*Hawaii/Crockett and Hawaii/Galveston Bulk Sugar Rates*—Docket No. 941—*Hawaiian Rates—Ten Percent Increase (1961).* It was determined that the increased rates of Matson Navigation Company for the transportation of property between the Pacific, Atlantic, and Gulf coasts and Hawaii were not unreasonable.

Docket No. 882—*Unapproved Section 15 Agreements—South African Trade.* It was determined that respondents, Louis Dreyfus Lines, Farrell Lines, Inc., Lykes Bros. Steamship Co., Inc. Nedlloyd Line, Robin Line (Division of Moore-McCormack Lines, Inc.), and South African Marine Corporation, Ltd., except Baron Iino Line, during the period 1954-1958 made and carried out an unfiled and unapproved cooperative working arrangement or agreement for the fixing of transportation rates and related matters affecting the trade between the United States and South and East Africa, in violation of section 15 of the Shipping Act, 1916. It was also determined that respondents entered into or carried out unfiled and unapproved agreements in the trade in violation of said section after September 10, 1958. It was further determined that respondents Farrell Lines and Robin Line, Division of Moore-McCormack Lines, did not operate vessels during 1957-1958 in the United States Atlantic/South and East African trade, in violation of section 14, Second, of the Shipping Act, 1916.

Docket No. 883—*Unapproved Section 15 Agreements—West Coast South America Trade.* It was determined that respondents, Atlantic and Gulf/West Coast of South America Conference, then comprised of Compania Colombia de Navegacion Maritima, S. A. (Coldemar Line), Compania Sud Americana de Vapores (Chilean Line), Flota Mercante Grancolombiana, S. A., Grace Line Inc. (Grace Line), Gulf & South American Steamship Co., Inc., Rederiet Ocean A/S and West Coast Line, Inc. (West Coast Line), and Pacific/West Coast of South America Conference, then comprised of Compagnie Generale Transatlantique (French Line), Compania Chilena de Navegacion Interocceanica, Compania Naviera Independencia, S. A. (Independence Line), Compania Naviera Rosaria, S. A. (Peru Line) Flota Mercante Grancolombiana, S. A., Grace Line Inc. (Grace Line), Kawasaki Kisen Kaisha, Ltd., Nippon Yusen Kaisha, Ltd., N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn," Royal Mail Line, Ltd., Westfal-Larsen & Company, A/S (Westfal-Larsen

Company Line), Wiel & Amundsen A/S (Latin America Line), were not shown to have been acting pursuant to an unfiled agreement or cooperative working arrangement in violation of section 15 of the Shipping Act, 1916, in the West Coast South America trade during the years 1956 and 1957.

Docket No. 892—*States Marine Lines—Hohenberg Bros.*—Violation of section 16. It was determined that respondent States Marine Lines, Inc., a carrier, and Hohenberg Bros. Company, a shipper, in refunding and accepting a refund respectively, on cotton shipped from San Francisco, to Bremen, Germany, in January 1958, knowingly and willfully violated section 16 of the Shipping Act, 1916.

Docket No. 898—*California Stevedore & Ballast Co., et al. v. Stockton Port District, et al.* It was determined that (1) agreements between Stockton Elevators, Inc., and Stockton Port District were subject to section 15 of the Shipping Act, 1916; (2) by said agreements and acting thereunder, respondents have put into effect a practice related to and connected with receiving, handling, and delivering property, which practice is unjust and unreasonable, operates to the detriment of the commerce of the United States, and is contrary to the public interest; and (3) putting into effect and carrying out that practice, respondents have failed to establish the just and reasonable practices required by section 17 of the Shipping Act, 1916.

Docket No. 904—*Puget Sound Tug and Barge Co. v. Foss Launch & Tug Company, et al.*—Docket No. 914—*Puget Sound Tug and Barge Co. v. Wagner Boat Company, et al.* It was determined that Foss Launch & Tug Company was a common carrier with respect to general cargo carried under agreements with Northland Freight Lines, and said agreements were held subject to section 15 of the Shipping Act, 1916. It was further determined that Northland Freight Lines is a non-vessel-owning common carrier subject to the jurisdiction of the Commission. The allegations of damages were not sustained.

Docket No. 906—*In the Matter of Agreements, Charges, Commissions and Practices of the North Atlantic Westbound Freight Association.* It was determined, in denying an appeal from the hearing examiner's ruling granting the motion of hearing counsel for discovery and production of certain documents alleged to be in the custody and control of the respondents, Anchor Line, Ltd., Bristol City Line, Cunard Steamship Co., Ellerman's Wilson Line, Furness, Withy & Co., Irish Shipping Ltd., Manchester Liners, Ltd., Ulster Steamship Co., Ltd., and United States Lines Co., and located outside the United States, that an investigation limited to the practices of the respondents as common carriers by water in the foreign commerce of the United States is within the jurisdiction vested in the Commission by the Shipping Act, and therefore the hearing examiner was empowered to make the ruling in question.

Docket No. 918—*Mitsui Steamship Co., Ltd.—Alleged Rebates to A. Graf & Co.* It was determined, in denying a motion to vacate an order of the Commission directing respondent to furnish certain information located in foreign countries, that an investigation into an activity of respondent as a common carrier by water in the foreign commerce of the United States is within the jurisdiction vested in the agency by the Shipping Act, 1916, and therefore the Commission was empowered to issue the order in question.

Docket No. 920 and Docket No. 921 (Sub. No. 1)—*States Marine Lines, Inc., and Global Bulk Transport Corporation v. Trans-Pacific Freight Conference of Japan, et al.* It was determined that respondents violated section 15 of the Shipping Act, 1916, by the establishment and operation of a Neutral Body self-policing system which did not conform to the agreement that was approved by the Commission. Respondents were ordered to cancel fines found to be unlawful and to cease and desist from attempting to collect these fines or any other fines assessed by the Neutral Body and to cease and desist from carrying out the Neutral Body amendment approved by the Commission to the conference agreement in any manner inconsistent with the amendment.

Docket No. 926—*Investigation of Increased Inter-Island Class and Commodity Rates Between Ports of Call Within the State of Hawaii.* It was determined that the increased class and commodity rates of Young Brothers, Ltd., between ports in the State of Hawaii were just and reasonable.

Docket No. 927—*West Indies Fruit Company and Dow Jenkins Shipping Company v. Flota Mercante Grancolombiana, S.A.* It was determined that respondent's rate on bananas from Ecuador to Galveston, Texas, was not unduly preferential or prejudicial between shippers or ports in violation of section 16 of the Shipping Act, 1916, nor unjustly discriminatory between shippers or ports in violation of section 17 thereof.

Docket No. 931—*In the Matter of Agreement No. 8555 Between Isbrandtsen Steamship Company, Inc., Isbrandtsen Company, Inc., and American Export Lines, Inc.* It was determined that (1) Agreement No. 8555 was properly filed pursuant to section 15 of the Shipping Act, 1916, and that it was not unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors; (2) said agreement was not in violation of the Act, would not operate to the detriment of the commerce of the United States, and was not contrary to the public interest. The agreement was approved.

Docket No. 947—*International Trading Corporation of Virginia, Inc. v. Fall River Line Pier, Inc.* It was determined that (1) respondent was subject to the Shipping Act, 1916, and subject to the jurisdiction of the Commission; (2) respondent had not violated section 16 or 17 of the Act, in the matter of berthing and storage charges; (3) respondent had violated section 16, First, and section 17 of the Act, in the matter of free time allowances and storage charges; and (4) complainant did not prove that the ten day billing requirement imposed on International Trading Corporation of New England was unlawful. The proceeding was remanded to the Hearing Examiner for the purpose of determining reparation, if any, due to complainant.

Docket No. 948—*Pacific Coast European Conference.* It was determined that the conference and its member lines had not shown cause why they should not comply with certain requests for information made by the Board, or in the alternative why Agreement No. 5200 should not be disapproved. The conference and its member lines were ordered to furnish the Commission prior to the close of business on January 22, 1962, specified information and documents, otherwise the Commission would withdraw approval of their basic conference agreement.

Docket No. 949—*Matson Navigation Company—Van Measurement/Heavy Cargo Rules.* It was determined that the rule of the Matson Navigation Company, application of which determines the rate on cargo shipped in vans from San Francisco Bay ports to Hawaii, is just, reasonable, and lawful.

Docket No. 951—*Investigation of Certain Rate Practices of Three Conferences for Traffic from Great Lakes to Europe.* In the initial decision of the Hearing Examiner, which was adopted by the Commission, it was determined that rates from Erie, Buffalo, Rochester, Oswego and Ogdensburg which are the same as rates from Cleveland, and higher than rates from Toronto and Hamilton, were not shown to operate to the detriment of the commerce of the United States or to be otherwise harmful.

Docket No. 954—*Investigation of Rates and Practices in the Atlantic-Gulf/Puerto Rico Trade.* It was determined that a motion for an immediate finding by the Commission that a proposed rate for carriage of zinc from continental United States to Puerto Rico be denied because the record was inadequate as a basis for a decision and the proceeding was remanded to the examiner for further hearing and initial decision.

Docket No. 972—*Order that A. H. Bull Steamship Co. Show Cause.* It was determined that respondent had not complied with the requirements of section 2 of the Intercoastal Shipping Act, 1933, in its attempt to impose an embargo on the carriage of sugar from ports in Puerto Rico to the United States North Atlantic Ports of Baltimore, Philadelphia, and New York; and on the carriage of all freight destined for Ponce and Mayaguez, Puerto Rico, from the ports of Baltimore, Philadelphia, and New York. The embargo notices were ordered withdrawn, and proper tariff schedules in lieu thereof filed.

Docket No. 988—*In the Matter of Agreements 8745 and 8745-1, Purchase of Vessels "ALICIA" and "DOROTHY".* It was determined that (1) agreements

8745 and 8745-1 were not unjustly discriminatory or unfair as between carriers, shippers, exporters, or ports, or between exporters from the United States and their foreign competitors; and (2) said agreements are not in violation of the Shipping Act, 1916, will not operate to the detriment of the commerce of the United States, and are not contrary to the public interest. Agreements 8745 and 8745-1 were approved pursuant to section 15 of the Shipping Act, 1916.

Special Docket No. 243—*Y. Higa Enterprises, Ltd. v. Pacific Far East Line, Inc.* It was determined that Pacific Far East Line had violated section 2 of the Intercoastal Shipping Act, 1933, by charging and collecting compensation for the transportation of vans, knocked down, from Honolulu, Hawaii, to Agana, Guam, between July 21, and August 8, 1961, at less than the rate specified in its tariff schedule on file with the Commission. Permission was granted to the respondent to abstain from collecting undercharge.

Decisions of Hearing Examiners

Docket No. 881—*General Increases in Alaskan Rates and Charges.* It was determined that (1) increased rates of Alaska Steamship Company, Coastwise Line, Garrison Fast Freight, Division of Consolidated Freightways, Inc., and Alaska Northern Express, Inc. (as later adopted by Alaska Freight Lines, Inc.) filed to become effective January 10, 1960, and later, were unjust and unreasonable for the future; (2) entry of an order requiring cancellation of the tariff schedules under investigation and discontinuance of the proceeding as to these respondents should be made; (3) the increased rates were determined not to have been unjust and unreasonable in the past; and (4) provisions of orders instituting the investigation requiring respondents to keep account of all freight moneys received by reason of the increased rates, and to make refund of any increased charges in excess of those determined to be just, reasonable, and otherwise lawful, should be vacated and set aside as unjustified. It was further determined that the rates of Puget Sound-Alaska Van Lines, Inc., were unjust and unreasonable for the future to the extent they exceed the rates maintained by Alaska Steamship Company on January 9, 1960, and that an order should be entered requiring this respondent to cease and desist from continued maintenance of the rates found unlawful. It was finally determined that individual rates of the respondents, to the extent assailed, were not shown to have been or to be unjust, unreasonable, or otherwise unlawful, except as specified above.

Docket No. 885—*Unapproved Section 15 Agreement—North Atlantic/Spanish Trade.* It was determined that respondents had not been shown to have been acting pursuant to an unfiled agreement or understanding in violation of section 15 of the Shipping Act, 1916, in the North Atlantic/Spanish Trade during the period from January 1, 1954, to September 22, 1956.

Docket No. 896—*Unapproved Section 15 Agreement—Coal to Japan/Korea.* It was determined that respondents, except two, had entered into and carried out an unfiled and unapproved agreement respecting transportation of coal from United States Pacific Coast ports to Korea in violation of section 15 of the Shipping Act, 1916. It was concluded, considering the technical nature of the violation, that the investigation should be discontinued without further proceedings.

Docket No. 901—*General Increases in Rates—Pacific-Atlantic/Guam Trade.* It was determined that the transportation of cement, in bulk, by Pacific Far East Line, Inc., from California to Guam was performed at less than the applicable rates and it was concluded that collection of the undercharges should be ordered. It was further determined that general increases in rates between Wake Island, Ebeye (Kwajalein Atoll), and Eniwetok, were just and reasonable.

Docket No. 903—*Pacific Coast-Puerto Rico General Increase in Rates.* It was determined that a rate increase of 15 per cent in the trade from Pacific Coast ports of the United States to Puerto Rico was just and reasonable, except that increased rates on roofing and paint were not shown to be just and reasonable.

It was concluded that the rates on roofing and paint should be canceled, and that respondents should be required to make refunds of increased freight charges on roofing and paint, such action to be without prejudice to the establishment of a rate increase of 5 per cent on paint.

Docket No. 905.—*United States Lines—Gondrand Brothers Violation of Section 16.* It was determined that Gondrand Brothers had knowingly and willfully obtained transportation by water from United States Lines Company of logs from North Atlantic Range ports to the ports of Antwerp, Amsterdam, and Rotterdam at less than the rates or charges which would otherwise have been applicable, during the period 1954 through 1959, by means of false billing, in violation of section 16 of the Shipping Act, 1916. It was further determined that United States Lines Company had allowed Gondrand Brothers to obtain transportation of logs between the same ports of less than the regular rates or charges then established and enforced on the line of such carrier, during the aforementioned period by means of false billing, in violation of section 16, Second, of the Act. It was concluded that the investigation should be discontinued.

Docket No. 909.—*Harbor Commission, City of San Diego, California v. Matson Navigation Company.* It was determined that the failure of Matson Navigation Company to provide a regularly scheduled service between San Diego and Hawaii had not given undue or unreasonable preference or advantage to Los Angeles, and had not subjected San Diego to undue or unreasonable prejudice or disadvantage, under section 16, First, of the Shipping Act, 1916. It was concluded that the complaint should be dismissed.

Docket No. 912.—*Matson Navigation Co.—Container Freight Tariffs.* It was determined that the tariff of Matson Navigation Company applicable to containerized cargo from California to Honolulu, publishing single-factor rates which included pick-up service in port terminal areas, ocean haul, and delivery at container freight station or container freight yard, is not subject to the Commission's jurisdiction and should be stricken from its files.

Docket No. 952.—*Investigation of Tariff Filing Practices of Carriers Between Contiguous States of the United States and Alaska.* It was determined that (1) William Shimmel had not conducted common carrier operations in interstate commerce and the investigation should be discontinued as to him; (2) Dan Starkweather, d/b/a Alaska Towing Co., Inc., had not been or was not conducting common carrier operations in interstate commerce and the investigation should be discontinued as to him; (3) Ghezzi Trucking Inc., had been conducting common carrier operations in interstate commerce without filing tariffs, in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended, prior to June 1961, when tariffs were filed; subsequent operations were determined to be in compliance with such section and it was concluded that the investigation should be discontinued as to this respondent. It was finally determined that Kimbrell-Lawrence Transportation, Inc., Alaska Outport Transportation Association, and Ketchikan Merchants Cooperative Association, Inc., had been and were conducting common carrier operations in interstate commerce without filing tariffs, in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended and an order should be entered requiring these respondents to cease and desist from further carriage until they have complied with such section by filing tariffs showing rates, fares and charges for transportation between ports in Alaska and ports in other states.

Docket No. 954 (Sub No. 2)—*Investigation of Increased Rates on Sugar, Refined or Turbinated, in Bags in the Atlantic/Gulf Puerto Rico Trade.* It was determined that the (1) proposed increased rates on sugar, refined or turbinated, in bags, from San Juan, Ponce, and Mayaguez, P.R., to New York, Philadelphia, and Baltimore, were just and reasonable; and (2) existing order of suspension should be vacated and the investigation discontinued.

Docket No. 967.—*Alcoa Steamship Company, Inc. v. Cia. Anonima Venezolana de Navegacion, et al.*—Docket No. 970.—*In the Matter of Agreements 8640 and 8640-1, Between Grace Line Inc., and Cia. Anonima Venezolana de Navegacion Covering Pooling in the North Atlantic-Venezuela Trade.* It was determined that (1) agreements 8640 and 8640-1 were unjustly discriminatory and unfair

as between carriers, shippers, exporters, importers, and ports; (2) such agreements operated to the detriment of the commerce of the United States and were contrary to the public interest; (3) such agreements subjected ports not served by Grace Line to undue and unreasonable prejudice and disadvantage and (4) subject agreements should be disapproved in Docket No. 970 and that the complaint in Docket No. 967 should be dismissed as having been satisfied by the discontinuance of the investigation.

Docket No. 974—*Puget Sound Tug & Barge Company v. Alaska Freight Lines, Inc.*—Docket No. 984—*In the Matter of Certain Tariff Practices of Puget Sound Tug & Barge Company and Alaska Freight Lines, Inc.* It was determined that the tariff rule of respondent Alaska Freight Lines, Inc., which provides for a land haul to be substituted for a portion of the water haul on shipments originating at or destined to points not served directly by respondent's vessels, was not unlawful. Accordingly, it was concluded that the complaint in Docket No. 974 should be dismissed, and the investigation in Docket No. 984 should be discontinued.

Docket No. 976—*Agreement 8492 Between T. F. Kollmar, Inc., d/b/a Northland Freight Lines, and Wagner Tug Boat Company in the Alaskan Trade.* It was determined that (1) agreement 8492 was not unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors; (2) said agreement was not in violation of the Shipping Act, 1916, would not operate to the detriment of the commerce of the United States, and was not contrary to the public interest; and (3) pursuant to section 15 of the Shipping Act, 1916, agreement 8492 should be approved.

Special Docket No. 244—*Martin & Rossi, S.P.A. et al. v. Lykes Bros. Steamship Co., Inc.* It was determined that an application by respondent for authority to waive collection of undercharges on shipments transported from Italy to the United States could not be entertained because the Commission was not empowered to grant such authority and accordingly, the application should be denied.

Examiners also issued decisions in Docket Nos. 882, 883, 898, 904, 914, 920, 920 (Sub. No. 1), 926, 927, 947, 949, 951, SD 243, and S-128, all except S-128, described above under "Final Decisions of the Commission".

Pending Proceedings

At the close of the fiscal year there were 172 pending proceedings, of which 114 were initiated on the Board's/Commission's own motion, and the remainder were formal complaints and special docket applications.

Under Reorganization Plan No. 7, effective August 12, 1961, the Federal Maritime Board was abolished, those functions which it formerly performed in connection with operating-differential subsidies were transferred to the Department of Commerce, and the Federal Maritime Commission was created to deal with purely regulatory matters. By agreement between Maritime Administration of the Department of Commerce and the Federal Maritime Commission, four subsidy proceedings under the control of examiners of the Federal Maritime Board who transferred to the Federal Maritime Commission at the time of the reorganization, were continued under their control until the issuance by them of initial decisions.

APPENDIX A

STATEMENT OF APPROPRIATION AND OBLIGATION FOR THE FISCAL YEAR ENDED JUNE 30, 1962

APPROPRIATION :

Transferred from "Salaries and expenses, maritime activities", Department of Commerce as provided in Reorganization Plan No. 7 of 1961-----	\$1, 266, 000
Supplemental Appropriation Act, 1962, Public Law 87-332, 87th Congress, approved September 30, 1961: For necessary ex- penses of the Federal Maritime Commission, including services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates for individuals not to exceed \$75 per diem; hire passenger motor vehicles; and uniforms, or allow- ance therefor, as authorized by the Act of September 1, 1954, as amended (5 U.S.C. 2131)-----	40, 000
Appropriation availability-----	<u>\$1, 306, 000</u>

OBLIGATIONS AND UNOBLIGATED BALANCE :

Net obligations for salaries and expenses for the fiscal year ended June 30, 1962-----	<u>\$1, 302, 822</u>
Unobligated balance withdrawn by the Treasury-----	<u>\$3, 178</u>

**STATEMENT OF RECEIPTS FROM FEES AND CHARGES DURING THE FISCAL
YEAR ENDED JUNE 30, 1962 :**

Duplication of records and other documents-----	\$94
Freight forwarder license fees :	
Deposited to account of Treasury-----	100
Retained in suspense account pending approval-----	102, 800
Total receipts from fees and charges-----	<u>\$102, 994</u>