

20th ANNUAL REPORT
of the
FEDERAL MARITIME COMMISSION



FISCAL YEAR ENDED
SEPTEMBER 30, 1981



TABLE OF CONTENTS

I.	LETTER OF TRANSMITTAL	V
II.	THE COMMISSION	VI
	Membership	VI
	History and Functions	1
	Administration	3
III.	FISCAL YEAR 1981 IN REVIEW	17
IV.	FOREIGN COMMERCE	21
	Agreements	21
	1. Processing of Agreements	21
	2. Surveillance	22
	3. Cancellation	23
	4. Types of Agreements	23
	5. Analysis of Agreements by Trade Areas..	30
	6. Self-Policing of Agreements	32
	Tariff and Rate Matters	34
	1. Temporary Tariff Filings	34
	2. Aggregate Time/Volume Rate Contracts ..	34
	3. Intermodal Rates	35
	4. Bunker Surcharges	36
	5. Used Household Goods Tariff Filing Regulations	37
	6. Military Rates	37
	7. Controlled Carriers	38
	8. Anti-Rebate Certification Program	39
	Rulemaking Proceedings	40
V.	DOMESTIC COMMERCE	42
	Significant Commission Activities by Trade Areas	42
	1. U.S. Mainland/Puerto Rico/Virgin Islands	42
	2. U.S. Mainland/West Coast/Hawaii	44
	3. U.S. Mainland/Northern Mariana Islands.	44
	Terminal Operations	45
	Revision of Financial Reporting Requirements ...	45

VI.	CERTIFICATION ACTIVITIES.....	47
	Freight Forwarders	
	Financial Responsibility for Water Pollution ..	50
	Passenger Vessel Financial Responsibility	53
VII.	FINAL DECISIONS OF THE COMMISSION	55
VIII.	COURT LITIGATION AND ENFORCEMENT ACTIVITIES.....	62
IX.	LEGISLATION	69
APPENDICES		
	A. Organization Chart	75
	B. Civil Penalty Settlements for Violations of the Shipping, Act, 1916	76
	C. Bureau of Hearings and Field Operations Field Investigations	79
	D. Statistical Abstract of Filings	80
	E. Statement of Appropriation and Obligation for FY 1981	83



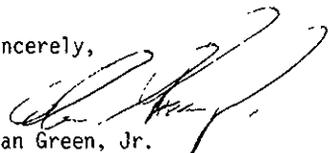
Federal Maritime Commission
Washington, D. C. 20373

Office of the Chairman

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

In accordance with the provisions of section 103(3)(2) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I respectfully submit the Annual Report of the Federal Maritime Commission for the fiscal year 1981.

Sincerely,



Alan Green, Jr.
Chairman

II. The Commission

Membership

<u>Members</u>	<u>Appointed</u>	<u>Current Term Expires</u>
Alan Green, Jr. Chairman (R) Oregon	July 1, 1981	June 30, 1986
Thomas F. Moakley Vice Chairman (D) Massachusetts	November 4, 1977	June 30, 1983
James V. Day Commissioner (R) Maine	February 12, 1962	June 30, 1984
Richard J. Daschbach Commissioner (D) New Hampshire	August 24, 1977	June 30, 1982
James J. Carey Commissioner (R) Illinois	September 16, 1981	June 30, 1985



James V. Day



James J. Carey



Alan Green, Jr.



Thomas F. Moakley



Richard J. Daschbach

History and Functions

The Federal Maritime Commission was established as an independent regulatory agency on August 12, 1961 by Reorganization Plan No. 7. The Shipping Act, 1916, and subsequent laws governing the regulation of the U.S. domestic offshore and foreign waterborne commerce are enforced under the jurisdiction of the FMC.

The statutory authorities and functions of the Commission embrace the following principal areas: (1) Regulation of services, practices, and agreements of common carriers by water and certain other persons engaged in the foreign commerce of the United States; (2) acceptance, rejection, or disapproval of tariff filings of common carriers engaged in the foreign commerce of the United States; (3) regulation of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water in the domestic offshore trades of the United States; (4) licensing independent ocean freight forwarders; (5) investigation of discriminatory rates, charges, classifications, and practices in the waterborne foreign and domestic offshore commerce; (6) issuance of certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages or cruises; (7) issuance of certificates evidencing financial responsibility of vessel owners, charterers and operators to meet the liability to the United States for the discharge of oil and hazardous substances; and (8) rendering decisions, issuing orders, and making

rules and regulations governing and affecting common carriers by water, terminal operators, and freight forwarders.

The Commission's most visible activities occur through its enforcement of section 15 of the Shipping Act. Section 15 exempts ocean carrier conferences from the Sherman and Clayton antitrust laws. In order to prevent abuses of concerted ratemaking authority, the FMC evaluates all agreements between or among entities subject to the Shipping Act.

The functions and authority of the FMC are very often confused with those of the Interstate Commerce Commission and the Maritime Administration. The FMC, unlike the ICC, has very limited authority to set rates or to disapprove tariffs already lawfully filed in the U.S. foreign commerce. The FMC also does not have authority to limit entry into the U.S. ocean commerce.

The Maritime Administration, under the U.S. Department of Transportation, is a promotional agency which develops, subsidizes, and promotes the U.S.-flag merchant marine. The FMC is strictly regulatory and has no responsibility for promoting the U.S.-flag merchant marine or shipbuilding industry. The Commission's responsibility is to ensure stability and equity in the U.S. ocean commerce. Since over 95 percent of U.S. foreign trade is waterborne, the Commission plays a vital role in protecting the shipping public and the consumer, as well as promoting efficiency and economy in our foreign commerce.

Administration

There are five Commissioners on the FMC, each appointed by the President, with the consent of the Senate, to serve five-year terms. Not more than three of the members may belong to the same political party. The President designates one Commissioner as Chairman, the chief executive and administrative officer of the agency.

The FMC has a final total authorization of 306 permanent positions, with the majority of its personnel located in the Commission's Washington, D.C. headquarters. The Commission also has field offices located in Washington, New York, Chicago, San Francisco, Los Angeles, New Orleans, Miami, and San Juan, Puerto Rico.

During FY 1981, the Commission made adjustments in a recently implemented reorganization of its programs and personnel. The Commission's new organizational structure is geared to meet its statutory goals and objectives with the greatest possible efficiency, effectiveness, and economy, through the use of existing resources.

The Commissioners oversee all activities in the agency's sixteen bureaus and offices. The responsibility for the FMC's daily activities and operations is divided among the following offices:

- ° The Office of the Managing Director is responsible for the direct administration of Commission staff, activities and programs. The Managing Director coordinates and

directs staff activities to ensure the timely accomplishment of Commission goals and objectives.

- The Office of the General Counsel advises the Commission on legal issues and provides it with legal counsel on matters under consideration. The General Counsel's Office reviews the legality of proposed Commission rules, renders formal and informal written opinions on pending adjudicatory matters, and prepares draft decisions and orders for ratification pursuant to Commission action. Finally, the General Counsel's Office represents the Commission in matters before the courts.
- The Administrative Law Judges conduct hearings and render decisions in adjudicatory proceedings held after receipt of a complaint or instituted by the Commission itself. The Commission has seven administrative law judges under the direction of a Chief Judge. Proceedings which come before the Administrative Law Judges include the approvability of section 15 agreements, adjudication of discriminatory practices between various parties subject to the Shipping Act, adjudication of shipper complaints under section 18(b)(3) of the Act, and domestic rate cases.

Administrative Law Judges have the authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken; regulate the course of

the hearing; hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests or similar matters; make decisions or recommend decisions; and take any other action authorized by agency rule consistent with the Administrative Procedure Act.

At the beginning of FY 1981, 73 proceedings were pending before Administrative Law Judges. During the year, 171 cases were added, including 5 cases which were reopened and remanded for further proceedings. The judges held 36 prehearing conferences, conducted hearings in 15 cases, issued 33 initial decisions in formal proceedings, and 89 initial decisions in special docket applications.

Cases otherwise disposed of involved 21 formal proceedings, 1 informal proceeding, and 1 special docket proceeding.

- ° The Office of the Secretary functions similar to a clerk of court. Its responsibilities include: (1) preparing the Commission agenda for weekly meetings; (2) receiving and processing formal complaints involving alleged violations of shipping laws; (3) issuing orders and notices of Commission action; (4) maintaining all official files and records of Commission proceedings; (5) administering the Freedom of Information and Government in the Sunshine Acts; (6) responding to information requests from the Commission staff, the ocean shipping

industry, and the public; and (7) providing copies of decisions of the Administrative Law Judges, Commission reports, publications, and miscellaneous documents to interested parties.

- The Office of Regulatory Policy and Planning is a new organizational unit designed to increase the Commission's planning capabilities, monitor regulatory reform initiatives undertaken throughout the government, as well as those specifically affecting the FMC, and enhance the agency's responsiveness to new developments and trends in the U.S. ocean commerce and the liner shipping industry. The office is responsible for the following basic functions:

- 1) Serving as focal point for Commission long-range policy planning and analysis, defining and ranking both short and long-range goals and objectives in coordination with other FMC bureaus and offices;
- 2) Monitoring current Commission programs and activities, and coordinating them with long-range policy objectives;
- 3) Developing long-range policy plans for the Commission on at least an annual basis for incremental periods of 2, 3, 4, and 5 years;
- 4) Developing special planning studies and analyses for the formulation of proposed Commission policies and objectives;

- 5) Analyzing and reviewing current Commission policies to determine their impact on regulated industries and the U.S. ocean commerce; and
- 6) Coordinating Commission activities regarding government programs that may affect Commission policy, particularly in the areas of regulatory reform, consumer activities, energy and environmental analysis, and government budget policy.

During FY 1981 the Office provided economic analysis for numerous agreements, rulemakings, and general rate increase requests which came before the Commission. The Office also began special planning studies in diverse areas such as: the Commission's tariff filing system, the UNCTAD Code of Conduct for Liner Conferences and a study of liner shipping in the U.S./Australian trade. The Commission designated staff of the Office to represent it on the Cabinet Council on Commerce and Trade Special Task Force studying the development of a U.S. strategy vis-a-vis the UNCTAD Code. Along these same lines the Office was responsible for overseeing and monitoring a study performed by an outside consultant on the impact of cargo sharing in the East Asian trades. During the Fiscal Year the staff commenced work on the development of the first long-range plan to be submitted to the Commission to assist it in the formulation of

strategies to ensure that the Commission correctly anticipates future events which may occur in liner shipping.

- The Office of Consumer Affairs coordinates the Commission's consumer affairs activities, with particular responsibility for implementation of Executive Order 12160, which mandates increased agency awareness of the impact of its programs and policies on the nation's consumers.

The Office also coordinates and monitors the Commission's consumer complaint system; advises the Commission of the impact of its proposed rules, policies, programs, and legislation on consumers; represents the consumer perspective in the planning and development of agency policies; meets with shippers and carriers to resolve complaints, problems, and matters of mutual concern; and monitors consumer-related legislation in the Congress, consumer initiatives by the Administration, and consumer activities in other government agencies.

- The Office of Management Evaluation and Review was formed to conduct internal management audits designed to assess efficiency and economy in the use and management of Commission resources; to determine if desired results and objectives are being effectively achieved; and to determine if applicable laws, regulations, and Commission policies are receiving full compliance.

The Office has also been charged with the development and implementation of the Commission's Program Management Information System, which includes the collection, maintenance, and analysis of workload statistics. Other duties of this office include providing expertise on records/information management; coordinating internal policies and procedures through the issuance of Commission Orders and Managing Directives; serving as liaison with other government agencies for the clearance of Commission forms, records, and other paperwork, and participating in the Office of Personnel Management's Federal Productivity Improvement Program. Finally, the Office Director serves as Inspector General of the Commission.

The Office of Management Evaluation and Review invested a great deal of effort this year in developing an implementation plan for the Paperwork Reduction Act of 1980, and subsequently in implementing the Act. Other FY 1981 activities included the following: the final phase of a Field Office Study was completed; Commission Orders regarding the Records Management Program, and the Organization and Functions of the Federal Maritime Commission were revised; progress of the Commission-wide ADP feasibility study was monitored, and assistance in evaluating the study and developing future ADP plans was given; approval for the Commission's Record Disposition Schedule was obtained from the Archivist of the United

States; information and word processing services were offered to various bureaus and offices; and the Office actively participated in developing, implementing, and monitoring the Commission's plan for reorganization.

- ° The Office of Data Systems is responsible for the effective administration of a management information system augmented by the development of an upgraded automatic data processing system (ADP). As a separate unit, the Office of Data Systems is expected to use the Commission's ADP system to measure agency performance and requirements at all levels. The Office reports directly to the Managing Director to enable those senior-level managers responsible for allocation of agency resources to perform their duties with the best available statistical information.

The principal project of the Office of Data Systems has been the continuing operation and maintenance of the Commission's computerized Marine Information System (MARIS). This system provides record management systems for the Offices of Water Pollution, Tariffs, Agreements, and Freight Forwarders, including management information systems for the Office of Water Pollution and the Office of Tariffs.

During FY 1981, the office developed a new budget subsystem for the Office of Budget and Financial Management; developed programs and procedures to automate the vessel certification renewal process for the Office

of Water Pollution; modified the Freight Forwarder subsystem to incorporate several new procedures; and developed a management information system for the Examiner Branch in the Office of Foreign Tariffs (TEMIS).

o The Office of Energy and Environmental Impact (OEEI)

handles the requirements placed upon the Commission by the National Environmental Policy Act of 1969 (NEPA) and the Energy Policy and Conservation Act of 1975 (EPACA). These acts require the Commission to complete analyses of the energy and environmental aspects of all section 15 agreements and docketed proceedings before it. In cases likely to have significant impacts upon energy conservation or the environment, the Commission must prepare formal impact statements following guidelines provided by the Council of Environmental Quality. The function of the OEEI is to complete these analyses, and when necessary, to prepare energy and environmental impact statements.

During FY 1981, the OEEI reviewed 335 section 15 agreements and docketed proceedings to determine the need for impact analysis. Two hundred-twenty of the cases were categorically excluded from consideration following the Commission's "Procedures for Environmental Policy Analysis." The remaining 115 actions were subject to analysis. One hundred-nine of the analyses resulted in Findings of No Significant Impact, and the remaining six are in preparation at this time. It was not necessary to

prepare energy or environmental impact statements during the year.

- The Bureau of Agreements' major responsibilities include the analysis and review of all agreements filed under section 15 of the Shipping Act, the evaluation of dual rate contract systems, and the development and standardization of procedures for streamlining the Commission's agreements' review process. Responsibility for the ongoing analysis of trade patterns, conference activities, self-policing contracts, pooling statements and operating reports represent a substantial portion of the Bureau's duties. The Bureau of Agreements also audits agreements approved by the Commission to determine whether the criteria under which an agreement was approved and current trade conditions warrant continued approval; monitors significant trade activities; and forecasts future competitive trade conditions in conjunction with the Office of Regulatory Policy and Planning.
- The Bureau of Tariffs is responsible for the analysis of foreign and domestic tariffs filed with the Commission, monitoring of trade conditions in conjunction with the Bureau of Agreements, periodic tariff audits to ensure their conformity with applicable Commission rules and regulations, administration of special projects involving regulation of the U.S. foreign commerce, and the processing of informal docket claims.

The Office of Financial Analysis has been shifted to this Bureau. The presence of accountants experienced in analysis of domestic tariff filings is expected to assist the Bureau's resolution of domestic rate problems, since the vast preponderance of domestic rate cases consist of contested tariff filings.

The transfer of the agency's accountants to the Bureau of Tariffs also lends that bureau necessary support in its administration of special projects, particularly the implementation of the controlled carrier law (P.L. 95-483). The accountants will provide the analysis of cost data essential to the successful administration of the controlled carrier statute.

- Bureau of Hearings and Field Operations is composed of an Office of Hearing Counsel, an Office of Investigations, and eight field offices.

The Office of Hearing Counsel participates as trial counsel in formal adjudicatory dockets, rulemaking, and other proceedings which are initiated by the Commission. Office attorneys serve as hearing counsel, where intervention is permitted, in formal complaint proceedings instituted under section 22 of the Shipping Act and handle prosecutorial and settlement activities relating to enforcement cases. The Office also furnishes legal advice on special Commission projects.

The Office of Investigation coordinates, monitors, and directs all investigations of violations of the shipping statutes and regulations administered by the Commission, as well as, taking final enforcement action resulting from such investigations.

As noted earlier, the Bureau has District offices located in New York City, Washington, D.C., Chicago, New Orleans, San Francisco, and San Juan, Puerto Rico. Sub-offices are located in Miami and Los Angeles. These offices represent the Commission within their geographical areas and provide liaison between the shipping industry and the Commission headquarters in Washington, D.C. In addition to investigating violations of the shipping statutes and regulations administered by the Commission, the field offices conduct compliance checks of ocean freight forwarders, receive and resolve informal complaints, and conduct audits of passenger vessel operators to determine the adequacy of performance bonds required by the Commission. They also furnish information, advice, counsel, and access to Commission public documents to the industry and other interested persons.

The Commission settled 64 malpractice cases totalling \$1,014,061 in civil monetary penalties during FY 1981. Civil penalty claims settled in FY 1981 exceeded the number settled in FY 1980 by 38%. See Appendix C for a complete listing of the settlements in FY 1981.

At the beginning of the year, 787 cases were under investigation. During the year, 898 new investigations were initiated into a wide variety of possible violations. Thus, a total of 1,685 cases were scheduled for investigation. Violations included carrier and shipper malpractices (rebates of freight charges, misclassification, misdescription or misdeclaration of shipments), unlawful common carrier rates in U.S. foreign and domestic offshore trades, unlawful agreements, unlicensed ocean freight forwarder activity, and other matters. Completed investigations totaled 968, leaving 717 cases pending at the end of the Fiscal Year as shown in Appendix D.

- The Bureau of Certification and Licensing certifies vessels under various Federal anti-pollution laws to ensure liability for spills of oil and hazardous substances. The Commission has jurisdiction over 26,000 vessels in its administration of section 311 of the Federal Water Pollution Control Act (FWPCA), the Trans-Alaska Pipeline Authorization Act (TAPAA), and the Outer Continental Shelf Lands Act of 1978 (OCSLA). The Bureau also has responsibility for the licensing and regulation of independent ocean freight forwarders and the certification of passenger vessels for liability incurred by casualties and non-performance of scheduled voyages.
- The Office of Budget and Financial Management is responsible for optimal utilization of the Commission's

physical, fiscal, and manpower resources. The office formulates recommendations and interprets budgetary policies and programs, prepares budget justifications for the Congress and the Office of Management and Budget, and administers systems of internal control for agency funds. The Office of Budget and Financial Management is also responsible for the FMC's financial management policies, procedures and planning, and administration of the FMC's cash management program.

- The Office of Administrative Services provides most physical resources for the Commission and its field offices. Some of the services performed include printing, duplicating, mail room services, building services, safety programs, and records storage and retrieval.
- The Office of Personnel Management plans and administers personnel management programs, including recruitment, placement, employee training and development, position classification, employee relations, and equal employment opportunity.

PART III
FISCAL YEAR 1981 IN REVIEW

On August 12, 1981, the Commission marked the 20th anniversary of its establishment as an independent regulatory agency. In noting this milestone, the agency was cognizant of the need to continue to reexamine the way in which it performs its statutory responsibilities. During FY 1981, this examination resulted in the elimination of regulatory burdens where it was possible to do so in a manner that was consistent with statutory duties.

One way of reducing regulatory burdens is through the use of the exemption authority contained in section 35 of the Shipping Act, 1916. During the year, the Commission took final action to exempt several types of agreements from the filing and approval requirements of section 15 of the Act. The types of agreements exempted from these requirements included joint cargo inspection and/or joint self-policing agreements (Docket No. 81-3); agreements relating to routine administrative or housekeeping matters (Docket No. 81-6); agreements providing for an agent's solicitation and booking of cargoes, and signing contracts of affreightment and bills of lading, on behalf of a common carrier by water (Docket No. 81-16); agreements covering the collection, compilation and exchange of credit information (Docket No. 81-18); agreements covering non-exclusive equipment interchange (Docket No. 80-34); and leases or arrangements of terminal facilities located in foreign countries (Docket No. 80-32). In addition, during FY 1981, the Commission initiated a proceeding to exempt exclusive equipment interchange agreements (Docket No. 81-40).

With regard to tariff matters, during FY 1981 the Commission published regulations exempting from filing requirements tariff material covering the transportation of used military household goods and personal effects by non-vessel operating common carriers (Docket No. 80-37). In addition, the Commission exempted from the filing requirements of section 18(b), all tariff matter covering the movement of cargo between foreign countries, that is either transshipped at U.S. ports or transported overland through the United States.

In the domestic trades area, the Commission undertook a detailed review of the financial reporting requirements imposed on carriers operating in these trades. As a result of this review, major changes in these requirements were proposed, with emphasis on the elimination of reports where possible. A proposed rule was issued, and comments are being analyzed.

In addition to taking steps to ease regulatory burdens through exemptions and reevaluation of filing requirements, the Commission acted to set precise standards by which applications for intermodal ratesetting authority would be judged. In several decisions [e.g., U.S. Atlantic and Gulf/Australia-New Zealand Conference (Agreement No. 6200-20 - Intermodal Authority); Italy, South France, South Spain, Portugal, U.S. Gulf and Puerto Rico Conference (Agreement No. 9522-44 - Intermodal Authority); and Continental/U.S. Gulf Freight Association (Agreement No. 9986-8 - Intermodal Authority)], the Commission set out the showings that should be made to justify a conference's ability to publish intermodal rates, and the type of evidence which might be used to make these showings.

During FY 1981, the Commission made further changes in the internal reorganization program which was implemented during the previous year. The Bureau of Investigation and Enforcement was renamed the Bureau of Hearings and Field Operations, and was consolidated with the field offices; the Office of Informal Dockets was placed under the Office of the Secretary; and the Office of Economic Analysis was merged into the Office of Regulatory Policy and Planning. The primary thrust of these changes was to increase the agency's operational efficiency within the current budgetary and personnel restrictions.

Despite a hiring freeze and declining personnel ceiling, the Commission increased its productivity during FY 1981. The agency issued 392 final decisions, surpassing the 346 final decisions issued in FY 1980, and the 193 decisions issued in FY 1978. In addition, the Commission awarded \$1,983,867 to shippers for freight overcharges by carriers which were waived or refunded under section 18(b)(3) of the Shipping Act. This amount represents an increase of \$613,972 over reparations awarded during FY 1980. Finally, The Commission settled 64 malpractice cases which resulted in \$1,014,061 in civil monetary penalties during FY 1981. Civil penalty claims settled during the year exceeded the number settled in FY 1980 by 38%.

In summary, FY 1981 was a year during which the Commission acted to improve the efficiency and effectiveness of its regulatory activities, both in terms of its current statutory framework, and in terms of its responses to proposed legislation which would alter that framework. The agency's efforts to streamline its operations within budgetary and personnel limits, were successful and resulted in increased productivity

during the year. During FY 1982, the Commission will continue to improve its operations within the current statutory framework, and will be prepared to make necessary changes when new legislation goes into effect.

SECTION IV
FOREIGN COMMERCE

AGREEMENTS

1. Processing

At the beginning of the FY 1981, there were 178 applications for section 15 approval on file with the Commission. During the year, 394 additional applications were received, resulting in a total of 572 applications available for processing. The Commission approved 232 section 15 agreements during the year. Other than those agreements which were approved under delegated authority, the overwhelming majority of Commission approvals were conditional, requiring that the agreement parties refile the agreements to meet specific conditions imposed by the Commission. In such cases, should the parties fail to meet the conditions, the approvals would be null and void. Conditions are imposed by the Commission in order to protect the public interest or provide information required to maintain adequate surveillance over the activities of the parties.

In addition to the agreements approved, 4 were disapproved during the year and 19 were withdrawn. Action was also completed during the year on 126 miscellaneous filings, including agreements which were ultimately determined to be not subject to section 15 of the Shipping Act, 1916, and various petitions. Section 15 applications on hand at the close of the Fiscal Year numbered 191, or 13 more than were on hand at the start of the Fiscal Year.

In October 1980, the Bureau of Agreements was reorganized, essentially to improve and streamline processing procedures and to eliminate a substantial backlog of pending agreements. It was apparent that procedures needed to be streamlined so that no agreement application would be pending for an inordinate period. Accordingly, procedures were implemented to accomplish these goals. A policy was established that agreement applications should be presented to the Commission no more than six-months after being filed. By the end of March 1981, there were only 4 agreement applications over six months old which had not been submitted by the staff for Commission consideration. In the case of these 4 exceptions to the six-month policy, there were circumstances beyond the control of the Commission's staff which prevented Commission consideration in a more timely manner. As a result of the six-month policy, the Bureau of Agreements closed the Fiscal Year without a backlog of section 15 agreement applications.

2. Surveillance

Once agreements are approved, the Commission has a statutory duty to maintain adequate surveillance over the activities of the parties. This assures that the parties do not operate beyond their section 15 authority and at the same time do not act concertedly in a manner which is otherwise contrary to the statutes. Conferences and other rate agreements are therefore required to file with the Commission minutes of all of their meetings or other discussions. They are also required to file reports with the Commission of their actions with respect to shippers' requests and complaints. Also, all conferences and rate agreements must file semi-annual reports of their self-policing

activities. The monitoring of these reports plays a significant role in meeting the Commission's obligation to maintain effective surveillance over the activities of the agreement parties.

3. Cancellation of Agreements

The Commission has established simplified procedures to cancel agreements which are either inactive or involve changed circumstances which bring into question the appropriateness of continued approval. Agreements are constantly being reviewed by the staff in the light of trade intelligence and other changing developments and where indicated, correspondence is instituted with the parties to inquire whether approval should continue. During FY 1981, the Commission terminated 63 previously approved agreements through this program.

4. Types of Agreements

° Marine Terminal and Shoreside Agreements

Marine terminals, operated by both public and private entities, provide the facilities and labor for the interchange of cargo between land and sea carriers, and for the receipt and delivery of cargo to shippers and consignees. Agreements entered into between terminal operators and other persons subject to the Shipping Act (e.g., those involving the lease, license or other use of property, dock or berthing space, or for services to be performed for carriers) may require the approval of the Commission under section 15 of the Act. In addition, the Commission maintains surveillance over the activities of parties to terminal agreements.

There has been a significant increase in the number of filed agreements relating to bulk product marine terminal facilities. The facilities covered by these agreements handle such commodities as grain, phosphoric acid, coal, petroleum, ammonia, and cement. The increase in the level of activity experienced in this area during the FY 1981 may well be an indication not only of current volatile conditions in the bond market, but also of longer-term trends and realignments in U.S. bulk commodity markets. The financing of terminal facilities is frequently based upon the issuance of Industrial Revenue Development Bonds, such bonds being generally affected by unusually high rates of interest.

A significant Terminal Operators Agreement which came before the Commission in FY 1981 was Agreement No. T-3856 involving the Mid-Gulf Marine Terminal Conference, the Terminal Operators Conference of Hampton Roads, and the South Atlantic Marine Terminal Conference. The Agreement provides for inter-conference discussion of matters of common interests, including rates and charges. The Commission approved the Agreement on April 16, 1981, with the condition that the parties delete from its provisions the discussion of rates and charges. The parties have requested a hearing to demonstrate to the Commission that the agreement should be approved unconditionally, and the matter was pending at the close of the FY 1981.

Several controversial agreements providing for concerted activity by FMC-regulated freight forwarders, vessel agents and carriers in the domestic offshore trades were filed for Commission approval during FY 1981. Agreement No. 10405, which would establish the New York Ocean Freight Forwarders Discussion Group, was commented upon by a total of 32

carrier conferences, as well as some NVOCC interests. It is currently pending investigation and hearing before final Commission action is taken. Agreement No. 10415, a cooperative working agreement among 22 common carriers or agents for common carriers, to be known as the South Florida Regional Shipping Group, has elicited comments in opposition from the Department of Justice. It is currently pending action by the Commission. Agreement 10416, another cooperative working agreement, between the Puerto Rico Maritime Shipping Authority and Trailer Marine Transport, Inc., has been protested by the Government of the Virgin Islands and the Puerto Rico Manufacturers Association, and is pending Commission review.

The Commission is also charged with handling a certain limited number of labor-management agreements pursuant to the Maritime Labor Agreements Act of 1980 (P.L. 96-325, 94 Stat. 1021). That Act provides that such agreements, to the extent they provide for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized, shall be deemed approved upon filing with the Commission. During FY 1981, 16 labor-management agreements of this type were filed.

° Pooling and Equal Access Agreements

Pooling agreements provide for apportioning of cargo and/or revenues by a number of carriers in a given trade, enabling the participants to benefit from the increased efficiency and economy which results from the pooling of vessels, equipment, and other resources. Various sailing requirements and other features relating to service

efficiency are often included in pooling agreements. Equal access agreements are designed to ensure that national-flag carriers maintain access to cargo whose movement is controlled by the government of the reciprocal trading partner through cargo preference laws, import quotas, or other restrictions. Several section 15 agreements contain both pooling and equal access provisions.

At the end of FY 1981, there were ten pooling agreements, three equal access agreements, and seven combined pooling/equal access agreements, approved and in effect. The preponderance of these agreements apply to the U.S./South American Trades and are designed both to reduce the impact of various impediments to market entry imposed by several of America's trading partners and to maximize energy conservation, rationalization of sailings, and efficient vessel deployment accruing from various pooling arrangements. Fifteen such agreements affect the U.S. ocean commerce with Argentina, Brazil, Colombia and Peru. The five remaining agreements, which are strictly pooling arrangements, involve several trade areas: the Israel/U.S. North Atlantic Pool (No. 9233); the U.S. Pacific/Japan Pool (No. 10116); the U.S. Atlantic/Japan Pool (No. 10274); the Italy/U.S. North Atlantic (WINAC) Pool (No. 10286); and the Calcutta and Bangladesh/U.S. Pool (No. 10333).

During FY 1981, the Commission took several substantive actions regarding pooling and equal access agreements. Three northbound Brazilian pools and three southbound Brazilian pooling/equal access agreements were extended through December 31, 1983. The terms of Pooling Agreement No. 10028, which was a national-flag pool in the Brazil/U.S. Atlantic trade, were incorporated into Basic Pooling

Agreement No. 10027, with Agreement No. 10028 being permitted to expire on December 31, 1980. Additionally, a petition for reconsideration involving the Brazil/U.S. Gulf Pool (No. 10320) was rendered moot by the amendment and extension of Basic Agreement No. 10320. Also, the U.S. Atlantic/Peru (No. 10041) and U.S. Gulf/Peru (No. 10044) southbound pooling/equal access agreements were extended through December 31, 1982, and the two Japanese pools obtained final Commission approval for their extension through August 22, 1983.

Docket No. 80-45, involving the Argentina/U.S. Gulf (No. 10382) and Argentina/U.S. Atlantic (No. 10386) pooling agreements, was pending final disposition by the Commission at the end of this Fiscal Year. Also, review of the operations under the Calcutta Pool (No. 10333) revealed potential improprieties, which resulted in the initiation of Docket No. 81-39 to examine the continued approvability of the entire agreement. Finally, the pooling/equal access agreements in the southbound U.S./Chile trade (Nos. 9941 and 9942) expired on December 31, 1980, with the parties not proposing to extend its terms.

° Space Charter Agreements

Space charter agreements involve the charter (or cross-charter) of space or container slots between or among ocean carriers. Space chartering agreements are designed to ensure that a carrier is assured of vessel accommodation beyond that which would be otherwise available. There were twelve active space charter agreements in effect at the end of FY 1981. Eight space charter arrangements involve the trade between the U.S. and the Far East. The remaining four agreements involve the trades between the U.S. and the Caribbean, the Mediterranean, Europe, and the Ivory Coast.

Several space charter agreements were the subject of Commission consideration during FY 1981. A space charter agreement in the trade from the Ivory Coast to the U.S. Atlantic (No. 10412) was approved, and became effective September 16, 1981. The Commission also granted final approval to the extension of the four Japanese space charter agreements, through August 22, 1983. The initial decision of the Administrative Law Judge was issued in Docket No. 80-52, an investigation of the Korean space charters. The docket was pending Commission disposition of a petition to reopen the proceeding at the end of the Fiscal Year.

The Commission also voted to conditionally approve a space charter agreement (No. 10420) among five U.S.-flag carriers in the U.S./Far East trades. Final action on this agreement will take place early in FY 1982. Also, a space charter agreement (No. 10422) applicable to the U.S./Far East, Arabian Gulf, and Australian trades was filed to supersede one of the Korean space charters (No. 10186) involved in Docket No. 80-52. This agreement will also be considered in FY 1982.

° Agreements Covering Intermodal Movements

The development of intermodalism continued to play a significant role in marine transportation during FY 1981. At the close of the year there were 40 conference or rate agreements with intermodal authority, affording such rate groups the capability of offering through intermodal services, with through routes and through rates.

In FY 1981, the Commission issued several orders which denied certain conferences the authority to concertedly offer intermodal services at through intermodal rates. For example, in Docket No. 79-74, Japan/Korea Atlantic and Gulf Conference (Agreement No. 3103-67), in

which the proponent conference lines serve the Far East from U.S. Atlantic and Gulf Coast ports, the Commission found the lines had failed to show that they would actually implement a commercially viable intermodal service to U.S. inland points. In taking this action, the Commission clearly indicated its full support for this developing technology, but at the same time made it clear that no rate group would be granted such authority unless there is a clear manifestation that the public interest is best served by allowing concerted activity rather than leaving the development of intermodal services to the individual carriers. In addition, the Commission prescribed a series of standards under which it would judge future applications for intermodal authority. Near the close of the Fiscal Year, the Commission approved intermodal authority for one rate group on the basis that the prescribed standards were satisfied.

It should be noted that the Commission's authority to grant intermodal authority to conferences under section 15 of the Act has been challenged by the Justice Department. During the Fiscal Year, the Department persuaded the D.C. Court of Appeals to reconsider its prior decision in USA v. FMC, D.C. Cir. No. 79-1299, affirming the Commission's jurisdiction in this area. The Court will conduct an en banc review of that decision.

A major change in intermodal ratemaking which occurred during FY 1981, resulted from the Interstate Commerce Commission's (ICC) decision in Ex Parte No. 230 (Sub-No. 5), Improvement of TOFC/COFC Regulations, which deregulated trailer-on-flat-car (TOFC) and container-on-flat-car (COFC) rail rates on international intermodal traffic. This rule eliminated the requirement that rail TOFC/COFC rates be filed with the

ICC. The ICC's decision has prompted several ocean conferences to apply or reapply for intermodal ratemaking authority. It also caused the Commission to temporarily waive its intermodal tariff filing requirement that intermodal tariffs breakout the port-to-port rate. This rule represented an effort by the FMC to accommodate the ICC's action within the FMC's tariff filing requirements.

5. Analysis of Agreements By Trade Area

° The United States/North Europe Trade

The commercial and competitive problems affecting the North Atlantic westbound trade for most of FY 1980 continued into the early part of FY 1981. Cargoes and rates continued to decline causing a second U.S. carrier, Farrell Lines, to discontinue service in the North Atlantic in November, 1980. Seatrain had previously left the trade in September, 1980.

In an effort to stabilize the competitive situation, several North Atlantic conferences took certain measures to eliminate various abuses. Specifically, those that had previously established an interim right of independent action revoked it and almost all strengthened their anti-rebating measures.

°Mediterranean/U.S. Trade

The Mediterranean/U.S. trade is served by a large number of carriers using many types of vessels: breakbulk, container,

semi-container, Lash, and Ro-Ro. There are approximately eight conferences serving the Mediterranean/U.S. trades. The trade is generally imbalanced in that more goods are exported from the U.S. than are imported from the Mediterranean. Many of the lines that serve this trade also serve other routes such as northern Europe, the Persian Gulf, India/Pakistan, and West Africa. Consequently, the Mediterranean trade continues to show signs of being overtonnaged and highly competitive.

Intermodal service competition in the Mediterranean continues to grow and appears to be a root cause of many conference problems. During FY 1981, three conferences applied to the Commission for intermodal rate authority. Two applications were denied for lack of sufficient justification. Currently, there are five conferences serving the Mediterranean/U.S. trades that have requests for intermodal authority pending Commission action.

° East Asian Trade

Overtonnaging, rate instability, and growth of intermodalism continued to characterize the East Asian trade in FY 1981. The eastbound portion of the trade in particular is extremely competitive and unstable and rates have continued to decline. As a result a number of lines suffered financial losses and membership in some conferences has continued to decline. In response to this situation a proposal providing for rate initiative has been submitted to the Commission by the Trans-Pacific Freight Conference of Japan/Korea. The proposal would allow as few as three conference members to establish a new lower rate for the entire conference, if certain competitive conditions exist. The matter was pending before the Commission at the close of FY 1981.

During the past year the trade almost saw the demise of the Philippines/North America Conference. Some of the carriers proposed the creation of a new conference to serve the trade. Among the factors contributing to this situation were the inability of the members to agree on an amendment to comply with General Order 7 (Self-Policing) and the inability to obtain intermodal authority. The future of this conference is still uncertain.

Other developments in the trade during the past year include the bankruptcy of a carrier, two mergers and a new rate agreement. Seatrain filed for bankruptcy in early 1981, Seapac merged with Orient Overseas Container Line, and Knutsen Line merged its Pacific operations with the East Asiatic Company. A new rate agreement covering the trade from The Peoples Republic of China to the U.S. was conditionally approved in September of 1981.

Also during the year the Commission granted the Pacific Westbound Conference indefinite approval of its intermodal authority and for the first time since early 1979, it approved an initial grant of intermodal authority in favor of the parties to a rate agreement in the Hong Kong/United States trade (Agreement No. 10107).

Finally, the Commission is currently conducting a Fact-Finding investigation of bloc voting in the Far East trade.

6. Self Policing

The Commission's revised rules establishing minimum standards for judging the adequacy of conference neutral body self-policing systems became effective January 1, 1979. General Order 7, Revised (46 CFR 528), requires that all ratemaking agreements, except those between only

two parties, contain provisions describing the methods and standards used by independent policing authorities to investigate, adjudicate, and penalize breaches of the agreement. In addition, those conferences/ratemaking groups subject to the requirements of the General Order are required to file for the Commission's information and review a semiannual report which covers that group's self-policing and adjudicatory activities during the six-month period immediately preceding the respective reporting month, i.e., January or July. General Order 7 does provide for exemption from its requirements based on certain showings. The validity of the Commission's neutral body self-policing rules was affirmed in a decision by the U.S. Court of Appeals for the D.C. Circuit and upheld by the U.S. Supreme Court in its denial of a petition for certiorari on May 20, 1981.

On September 30, 1981, there were 89 conferences or ratemaking groups subject to the requirements of General Order 7, Revised. On that date, 48 conference/ratemaking groups were in full compliance with the self-policing rules, 34 did not conform, and 7 were under staff review. The Commission will take appropriate action for the purpose of achieving full compliance with the requirements of General Order 7. In addition, the Commission has established a working group to analyze present General Order 7 exemption criteria and to report to it recommended changes to such criteria.

TARIFF AND RATE MATTERS

1. Temporary Tariff Filings

On September 3, 1981, the Commission stayed the effective date of its final order in Docket No. 80-56. This proceeding was initiated in response to petitions filed by several ocean carrier conferences and the Commission's efforts to seek more efficient methods of transmitting tariff material. The decision would have discontinued the practice of accepting the filing of temporary amendments to tariffs in the foreign commerce of the United States, effective September 8, 1981. The effective date was stayed so the Commission would have the benefit of a full staff analysis and recommendation on issues which were raised by petitioners subsequent to the issuance of the Commission's final order in this matter. Petitioners are of the opinion that the final order was published contrary to the Commission's Rules of Practice and Procedures in that the Commission's Notice of Proposed Rulemaking did not set forth the issues later relied on by the Commission in promulgating its final rule. It is anticipated that the Commission will be able to reconsider this matter in the first quarter of FY 1982.

2. Aggregate Time/Volume Rate Contracts

During the past Fiscal Year, the Commission reviewed the comments solicited in FY 1980, on time/volume rates. The Commission concluded that time/volume rates are necessary to accommodate the interests of American exporters and importers, and voted unanimously to continue accepting time/volume rates. The Commission did, however, direct staff to formulate proposed rules which would provide guidelines to carriers

and conferences desiring to offer time/volume rates. The proposed guidelines have been completed and will be submitted for Commission consideration early in the next Fiscal Year.

3. Intermodal Rates

Several changes in intermodal ratemaking occurred during FY 1981, as a result of decisions issued by the ICC. In Ex Parte No. 261 (Sub-No. 1), In the Matter of Tariffs Combining Joint Rates and Through Routes - Freight Forwarders and Non Vessel Operating Common Carriers by Water (NVO), 365 I.C.C. 136 (1981), the ICC decided to permit NVOCC's to participate in establishing joint through rates with carriers subject to ICC jurisdiction. The primary reason for this change in policy was the fact that the Motor Carrier Act of 1980, Public Law 96-296, specifically authorized ICC regulated freight forwarders to establish joint through rates, and the ICC implemented this provision in Ex Parte No. 364 (Sub-No. 1), Freight Forwarders Contract Rates - Imp. of P.L. 96-296, 364 I.C.C. 413 (1980). Since the ICC's prior determination to prohibit NVOCC's from establishing joint through rates was based on its desire to prevent NVOCC's from diverting traffic from freight forwarders who could not establish such rates, and since this latter prohibition was reversed in the Motor Carrier Act of 1980, the ICC saw no reason to continue the prohibition vis-a-vis NVOCC's.

As a result of these two ICC decisions, NVOCC's can enter into joint through rates with ICC carriers, and freight forwarders can enter into joint rates with FMC carriers. Tariffs are now being filed with both the ICC and the FMC, establishing these new kinds of through rates. This policy shift should facilitate intermodal through movements.

During FY 1981, the ICC issued another decision involving intermodal through rates, Ex Parte No. 230 (Sub-No. 5), Improvement of TOFC/COFC Regulation, in which it exempted from practically all regulation TOFC and COFC movements provided by rail carriers as part of a continuous intermodal movement. The ICC specifically included ex-ocean traffic within the movements covered by the exemption. Because this decision affected ocean carriers subject to FMC jurisdiction, the Commission published an interim rule which waived its requirement that port-to-port divisions for through intermodal movements be published. As a result of this change, ocean carriers are currently filing only the through intermodal rate with the FMC. The Commission will consider any permanent changes in its tariff filing regulations covering through intermodal movements during FY 1982.

4. Bunker Surcharges

Bunker fuel prices remained a major operating expense for the steamship industry and the carriers continued to recoup these additional expenses by the assessment of bunker surcharges. The Commission instituted a study of bunker surcharge levels in the North Atlantic European trade based on a complaint alleging that the conferences in the trade continued to increase their bunker surcharge levels when oil prices were relatively stable or dropping. Information as to the allegation was developed by the staff from various sources and a report was submitted to the Commission.

The staff found that, contrary to allegations in the complaint, when fuel prices actually did decrease the carriers reflected the decrease by reducing their bunker surcharges. In some instances, the

bunker surcharge levels were reduced and incorporated into the ocean freight rates. It was the staff's conclusion that bunker surcharges were not overstated and that a disparity did not exist.

The Commission's staff intends to continue the monitoring of world fuel oil prices and the impact upon international freight rates.

5. Used Household Goods Tariff Filing Regulations

During this Fiscal Year, the Commission issued an order in Docket No. 80-37, in which it exempted non-vessel operating common carriers of used military household goods and personal effects from the tariff filing requirements of section 18 of the Shipping Act, 1916, and section 2 of the Intercoastal Act, 1933. The exemption, therefore, affects both foreign and domestic offshore commerce of the United States. Amendment No. 9 to the Commission's General Order 13, and Amendment No. 3 to General Order 38 reflect the specific provisions of the exemption.

The issue of revising the tariff filing regulations on used non-military household goods and personal effects has been deferred for possible consideration in a future proceeding. Further, the Commission has decided not to require, that rates for used household goods and personal effects established by vessel operating common carriers be stated on a weight or per container basis, or that the weight of each shipment be substantiated by a public weigher's certificate furnished by the shipper.

6. Military Rates Review

The program of systematically reviewing rates offered by commercial carriers to the Military Sealift Command (MSC) continued. Two such

reviews were made during the year. In addition, the Bureau of Tariffs completed its comprehensive examination of military rates. This examination was undertaken to determine what action, if any, the Commission should take with respect to its regulations governing the level of military rates. The promulgation of these regulations in 1972 resulted from a serious concern with the drastic downward trend of these rates. The Commission's General Order 29 provided a basis for determining a level below which rates would be considered detrimental to the commerce of the United States. As a result of this examination, and with a view towards lessening the regulatory burden on U.S. flag operators engaged in the carriage of military cargoes, the Commission suspended its regulations regarding military rates for the year beginning October 1, 1981. A determination as to whether this suspension should be made permanent will be made in early 1982.

7. Controlled Carriers

The staff continues to monitor the activities of controlled carriers under the Ocean Shipping Act of 1978 (P.L. 95-483). One of the most significant restrictions on the activities of controlled carriers contained in P.L. 95-483 is the provision that their rates and charges shall not, without special permission from the Commission, become effective within less than 30 days following the date of filing with the Commission. As a consequence of this requirement, 27 special permission applications were received and processed by the staff during FY 1981. Twenty-one were granted, five were denied, and one was withdrawn. As 53 special permissions were processed in FY 1980, controlled carrier activity in our foreign commerce has lessened during the past Fiscal Year.

Only one case involving controlled carrier activities was scheduled for hearing during FY 1981, Docket No. 80-60, FESCO Possible Violations of Sections 16, Second Paragraph, 18(b)(3) and 18(c), Shipping Act 1916. In addition, the Commission found China Ocean Shipping Company (COSCO) to be a controlled carrier, based on its cross-trade service from U.S. Atlantic and Gulf and U.S. Pacific ports, respectively, to Hong Kong. The Commission published a notice of this determination in the Federal Register on June 29, 1981.

8. Anti-Rebate Certification Program

When the Shipping Act Amendment of 1979 (P.L. 96-25) was enacted and signed into law on June 19, 1979, it provided that the chief executive officer of every vessel operating common carrier by water in the foreign commerce file with the Commission a periodic, written certification under oath attesting to (1) a policy prohibiting the payment, solicitation or receipt of any rebate unlawful under the Act, (2) the fact that such policy has been promulgated recently to each owner, officer, employee, and agent thereof, (3) the details of the efforts made to prevent or correct illegal rebating and (4) full cooperation with the Commission in its investigation of illegal rebating or refunds. The intent of the law is to remove the inability of the Commission to deal realistically with present day circumstances under which foreign governments protect their flag carriers from investigations into illegal rebating by an agency of the U.S. Government. General Order 43, effective February 27, 1980, requires an annual filing of the above certification and requires that such carriers

also file a provision in each of their tariffs advising that they have a policy against the payment of any unlawful rebate.

On October 24, 1980, in Docket No. 80-77, 180 carriers who failed to file their certifications for 1980 were required to show cause why they should not be found in violation of the above certification filing requirements. The opening brief was filed by the Bureau of Hearings and Field Operations on January 8, 1981. Final action in the proceeding was pending at the close of FY 1981.

RULEMAKING PROCEEDINGS

As part of its continuing effort to achieve meaningful regulatory reform, the Commission is limiting the exercise of its authority over agreements to those areas where it is clearly necessary and productive. This is consistent with the Commission's desire to avoid any unnecessary regulation and to limit its activities to the most productive areas. For example, during the past Fiscal Year, the Commission took final action to exempt the following five types of agreements from the filing and approval requirements of section 15 of the Shipping Act, 1916:

- | | |
|---|------------------|
| 1. Joint Cargo Inspection and/or Self-Policing Agreements | Docket No. 81-3 |
| 2. Administrative and Housekeeping Agreements | Docket No. 81-6 |
| 3. Sales Agency Agreements | Docket No. 81-16 |
| 4. Credit Information Agreements | Docket No. 81-18 |

A final rule to exempt certain routine rate actions from the reporting requirements of General Order 18 was also issued by the Commission.

In addition, the Commission initiated proceedings to exempt exclusive equipment interchange agreements (Docket No. 81-40) from the filing and approval requirements of section 15. Industry comments on this rulemaking are being analyzed. At year's end the Commission was considering the exemption of four additional categories of section 15 agreements from its regulatory jurisdiction.

Earlier in the Fiscal Year, the Commission amended its General Order 17 to change its advance notice requirements for the modification or extension of previously approved section 15 agreements from 60 to 120 days. This change was necessary to realistically reflect the time needed to satisfy notice requirements, to obtain from the parties to the agreements necessary data and to provide time to fully analyze the request for modification or extension.

The Commission also initiated another rulemaking proceeding (Docket No. 81-54) to modify the Uniform Merchants Contract published under its General Order 19 to allow a third rebuttable presumption that the merchant paying the freight charges has the legal right to select the carrier.

SECTION V
DOMESTIC COMMERCE

The Intercoastal Shipping Act, 1933, and sections 17 and 18(a) of the Shipping Act, 1916, require the filing of rates, charges and rules describing the practices of common carriers in the U.S. domestic offshore trades, and terminal operators.

In order to carry out the duties of ensuring just and reasonable rates and practices, the staff reviews and analyzes tariff filings of such common carrier and terminal operators; rejects improper or incorrectly filed tariffs or recommends alternate appropriate actions; acts upon applications for special permission to waive tariff filing rules and regulations; and prepares recommendations to the Commission regarding tariff filing activities.

The Office of Domestic Tariffs has on file 235 domestic offshore tariffs filed by 288 carriers, and 580 terminal tariffs filed by 560 terminal operators. There were approximately 21,500 domestic tariff revisions and 6,000 terminal tariff revisions filed during the year.

SIGNIFICANT COMMISSION ACTIVITIES BY TRADE AREA

1. U.S. Mainland/Puerto Rico/Virgin Islands

In Docket No. 81-10, Docket No. 81-10 - Sea-Land Service, Inc., Trailer Marine Transport Corporation, Gulf Caribbean Marine Lines, Inc. and Puerto Rico Maritime Shipping Authority, Proposed General Rate Increases in the Puerto Rico and Virgin Islands Trades, the Commission

had before it rate increases of 16 percent filed by GCML, effective January 29, 1981; 16 and 18 percent filed by PRMSA, effective February 27, 1981; 18 percent filed by Sea-Land, effective February 27, 1981; and 16 percent filed by TMT, effective March 3, 1981. All of the proposed increases were permitted to become effective, but were placed under investigation. On July 20, 1981, the Administrative Law Judge issued an Initial Decision holding that all the carriers, with the exception of TMT, had adequately established the reasonableness of their proposed rate increases. Determination of the reasonableness of TMT's rate increases was withheld in order to allow TMT a further opportunity to justify its rates and allow the Commission to determine their reasonableness.

On September 25, 1981, the Commission issued its Order in Docket No. 81-10, in which it found that the increases of GCML, Sea-Land and TMT were just and reasonable. The rate increases of PRMSA were found to be unjust and unreasonable to the extent they exceeded an average of 14.5 percent. Therefore, the Commission ordered PRMSA to cancel its proposed increases and to implement instead a 14.5 percent average general rate increase within thirty days from September 25, 1981, which could become effective immediately upon filing. Because PRMSA's rate increases had been in effect during the investigation, the order required the carrier to refund amounts equal to that portion of the increase found to be not just and reasonable. Such refund payments were also to include interest.

2. U.S. Mainland West Coast/Hawaii

Matson Navigation Company, Inc. (Matson) published an 8.5 percent general rate increase effective January 1, 1981, on all commodities moving in its Pacific Coast/Hawaii trade, both eastbound and westbound, except for movements of bulk sugar and bulk molasses which move under terms of a contract containing escalation clauses. The Commission determined at its meeting on December 17, 1980, that there was no reason to suspend or investigate this increase and it was allowed to become effective as scheduled.

During the Fiscal Year, Matson was also allowed overall increases of 2.28 percent and 1.58 percent which were specifically related to increased fuel costs. Matson did not include any fuel cost increases in projecting the costs involved in the 8.5 percent general increase published earlier in the year.

3. Mainland U.S./Northern Mariana Islands

The Commonwealth of the Northern Mariana Islands filed a petition with the Commission requesting exemption under section 35 of the Shipping Act, 1916, from the domestic offshore tariff filing requirements and the financial reporting requirements. The Commission determined that the Commonwealth had not provided sufficient justification for such an exemption. In addition, it was determined that the carriers involved in this trade had other means within the Commission's regulations to gain the relief they were requesting. The carriers in this trade were notified of the Commission's decision to deny the petition and were requested to submit the requested tariff filings and financial statements.

TERMINAL OPERATIONS

In Docket No. 79-69, Richmond Transfer & Storage Co., D/B/A Richmond Export Service and International Cargo Services, Possible Violations of sections 16, First and 17, Shipping Act, and General Order 15, The Commission determined that off-dock container freight stations are "other persons" carrying on the business of furnishing warehouse and other terminal facilities in connection with common carriers by water in the commerce of the United States and are therefore subject to the Shipping Act, 1916. It was determined that these container freight stations must file tariffs with the Commission, in accordance with section 17 of the Shipping Act, 1916 and General Order 15.

REVISION OF FINANCIAL REPORTING REQUIREMENTS

With a view towards lessening the regulatory burden on carriers subject to Commission jurisdiction, a detailed review of the agency's financial reporting requirements was undertaken by the staff. As a result of this review, major changes in these requirements were proposed. These changes would result in the elimination of the General Order 5 report and significant revision of the General Order 11 reporting requirements. A proposed rule, balancing the desire to provide regulatory relief with the Commission's mandated regulatory responsibilities, was published in the Federal Register on July 22, 1981. This proposal received broad support from the maritime community, which offered several meaningful suggestions. Having taken into account the comments received, the staff was in the process of developing a

final rule at year end which will achieve the twin goals of providing regulatory relief while maintaining the Commission's ability to carry out its regulatory responsibilities.

SECTION VI
CERTIFICATION ACTIVITIES

FREIGHT FORWARDERS

Section 44 of the Shipping Act, 1916, vests the Commission with authority for the licensing and regulation of independent ocean freight forwarders. The ocean freight forwarding industry is comprised of persons who serve export shippers by arranging for the transportation of their cargo by oceangoing common carriers, and handling the incidentals related to such exports. Payment is received from the exporters as well as from the carriers.

A Congressional finding in 1961 that exporters were forming their own "dummy" forwarding firms in order to receive illegal rebates from the carriers led to the enactment of section 44. The Congress found that licensing and regulation of forwarders was necessary to eliminate such rebates and insure that forwarders were qualified and responsible. The qualifications and financial responsibility of a forwarder are currently assured by means of a license issued by the Commission and a surety bond which is required to be maintained on file with the Commission. The amount of the bond depends upon the number of offices through which a forwarder provides ocean freight forwarding services.

During the year the Commission issued completely revised regulations (General Order 4, 46 CFR 510) which govern the licensing and operation of independent ocean freight forwarders. This is the first extensive revision of General Order 4 since it was initially issued in December, 1961. Commission and industry experience had indicated that

the rules needed updating to reflect changes that have occurred in international transportation over the last twenty years. The Commission also wished to minimize regulation of this industry, to the extent its statutory duties permitted. The revision of General Order 4 is intended to accomplish these purposes and, at the same time, balance the differing interests of freight forwarders, export shippers, and oceangoing common carriers.

There have also been changes in legislation which affect freight forwarders. On August 13, 1981, the President signed into law the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) which included amendments to sections 1 and 44 of the Shipping Act, 1916. The amendment to section 1 removed the twenty-year old prohibition against affiliations between independent ocean freight forwarders, on the one hand, and shippers, consignees, sellers, or purchasers of shipments from the United States, on the other hand. The amendment to section 44 was intended to codify the already existing ban on a forwarder's receipt of compensation (brokerage) from oceangoing common carriers when such compensation would amount to rebating. The Commission is considering further revisions to its regulations to reflect these statutory changes.

During FY 1981, the Commission received 328 applications for independent ocean freight forwarder licenses, in addition to the 63 applications pending from FY 1980. One hundred seventy-one of these applications were approved, eight were denied, seven were withdrawn, and 147 incomplete applications were returned. Fifty-six previously issued licenses were revoked, primarily because the forwarders failed to maintain valid surety bonds as required by the Shipping Act, 1916.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed forwarders comply with the provisions of the Shipping Act, 1916, and Commission regulations. During the year these investigations produced the following results: (1) 58 warning letters were sent to licensees in connection with minor infractions, explaining how to avoid recurring violations; (2) nine formal proceedings were instituted to determine whether a revocation or suspension action was warranted; and (3) 55 cases involving violations of the Shipping Act, 1916, and/or the Commission's regulations were referred to the Commission's Bureau of Hearings and Field Operations for the assessment of appropriate civil penalties.

Other activities during the year included the approval of 141 branch offices through which a forwarder can provide forwarding services, and the approval of 93 transfers of licenses. At the end of the Fiscal Year, there were 1,506 licensed forwarders.

FINANCIAL RESPONSIBILITY FOR WATER POLLUTION

During the year the Commission continued its administration of the vessel financial responsibility provisions of three water pollution statutes: the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977; the Trans-Alaska Pipeline Authorization Act; and the Outer Continental Shelf Lands Act Amendments of 1978. Pursuant to those laws and delegations of authority from the President, domestic and foreign vessel operators are required to maintain on file with the Commission evidence of their financial ability to meet potential liability for cleanup costs and certain other damages resulting from spills of oil and hazardous substances. Vessel operators who are unable or unwilling to demonstrate their ability to meet such liability are prohibited from operating in U.S. waters.

April 3, 1981, marked the Commission's ten-year anniversary of administering the vessel financial responsibility provisions of the Federal Water Pollution Control Act. To date, all of the data available to the Commission indicates that the program has been successful. In the last ten years, cleanup cost reimbursements as a result of claims by the U.S. Government against vessel operators have amounted to about \$35 million, with substantial claims still pending. More importantly, it is estimated that during the last ten years an additional \$200 million has been spent by vessel operators and their underwriters in cleaning up spills without direct government involvement. Thus, to a significant extent the U.S. Treasury has been relieved of the burden of bearing cleanup costs and repairing damage to the marine environment as a result of spills by vessels.

Pursuant to the above-mentioned laws, vessel operators submit and keep on file with the Commission satisfactory evidence of insurance, surety bonds, guarantees, or self-insurance which will guarantee reimbursement to the U.S. Government and other damaged parties, up to the limits required by law. The Commission issues Certificates of Financial Responsibility (Pollution) for vessels which meet the financial responsibility requirements and, under a related program, cooperates with the U.S. Customs Service and Coast Guard to assure compliance with the requirement that such certificates be carried on board the subject vessels. Failure of a vessel to carry a certificate results in automatic detainment of the vessel until such time as the Commission advises the involved enforcement official that the vessel has complied with the law.

Because vessel detainments are costly, the Commission maintains a seven-day per week program, during normal working hours, to process telephone inquiries received from enforcement officials in the field. This joint FMC/Coast Guard/Customs Service enforcement program was implemented to make enforcement more effective and less burdensome on the vessel operating industry. The geographic scope of the enforcement program ranges from Alaska to Maine and from the Pacific Trust Territories to the U.S. Virgin Islands. During FY 1981 the Commission received and processed 1,740 enforcement inquiries. Only 30 of the vessels which were the subjects of those enforcement inquiries suffered actual detainment (i.e., detainment beyond the vessels' intended sailing time) for noncompliance with the law. In the remaining 1,710 cases, the Commission was able to preclude actual detainment by confirming to the enforcement officials that the vessels were in at least substantial

compliance with the law even though certificates were not on board, e.g., the certificates were misplaced by the vessel operators or applied for too late to be placed on board before the vessels entered U.S. waters.

During FY 1981, the Commission received 6,214 requests for certificates. An additional 676 requests for certificates were carried over from FY 1980. Over 6,460 requests for certificates were processed, and 2,954 certificates were revoked due to sale of the vessels, scrapping, sinking, etc. At the end of the year, there were 26,504 vessels of all types and flags carrying valid certificates.

PASSENGER VESSEL FINANCIAL RESPONSIBILITY

The Commission is charged with the responsibility of administering sections 2 and 3 of Public Law 89-777. Those sections of the law apply to owners and charterers of American and foreign passenger vessels which have 50 or more berth or stateroom accommodations and which embark passengers at United States ports. The law requires those persons to demonstrate to the Commission that they are financially able to meet potential liabilities for death or injury to passengers or other persons, and to indemnify passengers in the event of nonperformance of voyages or cruises.

The Commission's implementing regulations (46 CFR 540) permit the demonstration of financial responsibility by means of insurance, surety bonds, escrow accounts, guaranties, and evidence of self-insurance. Certificates of Financial Responsibility are issued to persons who, using one or more of those methods, satisfactorily demonstrate the prescribed amounts of financial responsibility. Passenger vessels which are not able to present such Certificates at the intended place of departure from the United States are refused clearance by the U.S. Customs Service until the Commission confirms that compliance has been achieved. No detentions were necessary during the year.

During FY 1981, the Commission approved 15 new applications for performance certificates, 10 new applications for casualty certificates and 36 applications for amendments to existing certificates. In addition, 34 certificates were revoked as vessels were withdrawn from service, sold, scrapped, etc. At the end of the year over 100 vessels remained certified under this program.

Over one million persons took cruises out of U.S. ports during FY 1981 with only one major incident of failure to perform prepaid transportation. The Commission had required the involved operator to obtain and file a bond in the amount of 1.6 million dollars before monies were collected from prospective passengers. Accordingly, means are available to satisfy the numerous claims which have been filed against the operator. Since this program began in 1967, the Commission has been unaware of any unremunerated losses suffered by passengers.

Effective February 20, 1981, the Commission amended its rules for the purpose of increasing to \$10,000,000 the maximum amount of surety bond or other coverage that can be required of holders of performance certificates. The previous maximum of \$5,000,000 had been established in 1967. In FY 1981, 13 cruise operators found it necessary to increase their amount of coverage on file with the Commission to the new ceiling amount. Two additional cruise operators found it necessary to increase their coverage beyond the previous \$5,000,000 ceiling, but less than the new ceiling.

SECTION VII
FINAL DECISIONS OF THE COMMISSION

During FY 1981, the Commission heard oral argument in one formal proceeding and issued decisions concluding 40 formal proceedings. In one of these proceedings, the Commission also disposed of a subsequent petition for reconsideration. Twenty-five formal proceedings were discontinued or dismissed without decision, including determinations not to review Administrative Law Judge orders terminating proceedings. Thirteen Administrative Law Judge initial decisions in formal proceedings became administratively final upon passage of the time for the Commission to determine whether to review. Two proceedings were remanded to the Office of Administrative Law Judges.

The Commission also concluded 88 special docket applications and 222 informal dockets involving claims against carriers for less than \$5,000.00. In rulemaking proceedings, the Commission issued 15 final rules, and discontinued three proceedings without decision. Some of the more significant final decisions in formal proceedings are described below:

Docket No. 81-22 - Interest in Reparation Proceedings, 20 S.R.R. 1511 (September 3, 1981).

The Commission promulgated a rule which required the payment of interest on certain classes of freight overcharge awards at the average six-month Treasury bill rate for the reparation period.

Docket No. 81-10 - Sea-Land Services, Inc., Trailer Marine Transport Corp., Gulf Caribbean Marine Lines, Inc., Puerto Rico Maritime Shipping Authority - Proposed General Rate Increases in the Puerto Rico and Virgin Islands Trades, 20 S.R.R. ____ (September 25, 1981).

The Commission conducted the first trade-wide domestic offshore rate proceeding under the recent amendments to the Intercoastal Shipping Act, 1933, utilizing recently promulgated guidelines to determine a reasonable rate of return for carriers in domestic offshore trades, and concluded the proceeding within the statutory time limits.

Docket No. 80-74 - Agreement No. 5850 DR (W&S); North Atlantic Westbound Freight Association Wines and Spirits Dual Rate Contract, 20 S.R.R. 1163 (June 9, 1981).

The Commission determined that a commodity specific dual rate contract which provided for rate negotiations with only one segment of the affected shipper industry, and with which the Conference did not comply, was contrary to the public interest in violation of the Shipping Act, 1916, and ordered the contract amended.

Docket No. 80-63 - West Coast of Italy, Sicilian and Adriatic Ports, North Atlantic Range Ports Conference -- Tariff Rule 26, 20 S.R.R. 1489 (August 21, 1981).

The Commission cancelled a rule in the WINAC Conference tariff which assessed penalties and remeasurement fees "against the cargo" whenever the Conference discovered a cargo misdescription resulting in the initial assessment of lower freight rates than would otherwise have applied. The Commission held that the WINAC rule was vaguely stated and

permitted the carrier to employ its possessory cargo lien to collect penalties from innocent consignees. The Commission did not, however, invalidate the use of carrier-imposed penalties per se.

Docket No. 80-56 - Temporary Tariff Filings in the Foreign Commerce, 20 S.R.R. 1217 (June 30, 1981).

The Commission published a rule prohibiting the practice of filing temporary amendments to tariffs by carriers and conferences in the foreign commerce. The Commission subsequently postponed the effectiveness of the prohibition pending further consideration.

Docket No. 80-40 - Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States, 20 S.R.R. 868 (February 13, 1981).

The Commission issued a final rule which amended its foreign tariff filing requirements to provide for the publication, filing, justification and suspension of controlled carrier tariff matter. This rule implemented provisions of the Ocean Shipping Act of 1978 which concern the regulation of rates and charges of certain state-owned or controlled carriers operating as "cross-traders" in the United States foreign commerce.

Docket No. 80-37 - Tariff Filing Regulations Applicable to Used Household Goods, 20 S.R.R. 1223 (June 30, 1981).

The Commission published regulations exempting from filing requirements tariff material covering the transportation of used

military household goods and personal effects by non-vessel operating common carriers.

Docket No. 80-34 - Exemption of Non-Exclusive Equipment Interchange Agreements, 20 S.R.R. 609 (November 24, 1980).

The Commission published regulations exempting non-exclusive equipment interchange agreements from the filing and approval requirements of section 15 of the Shipping Act, 1916.

Docket No. 80-33 - Exemption of Tariff Matter Covering the Movement of Cargo Between Foreign Countries, 20 S.R.R. 861 (February 12, 1981).

The Commission published regulations exempting from the filing requirements of section 18(b) of the Shipping Act, 1916, all tariff matter covering the movement of cargo between foreign countries either transshipped at U.S. ports or transported overland through the United States.

Docket No. 80-32 - Exemption of Leases or Arrangements Solely Involving Terminal Facilities Located in Foreign Countries, 20 S.R.R. 435 (October 2, 1980).

The Commission published regulations exempting leases or arrangements of terminal facilities located in foreign countries from the filing and approval requirements of section 15 of the Shipping Act, 1916.

Docket No. 80-21 - Independent Ocean Freight Forwarder License No. 0778 - Crescent Navigation, Inc., 20 S.R.R. 1471 (August 13, 1981).

The Commission determined that actions on the part of a freight forwarder to assist a shipper in circumventing its obligations under dual rate contracts violates various regulations promulgated pursuant to the Shipping Act, 1916, and assessed civil penalties for such violations.

Docket No. 80-13 - Licensing of Independent Ocean Freight Forwarders, 20 S.R.R. 1227 (July 9, 1981).

The Commission published revised regulations governing the licensing of independent ocean freight forwarders. This was the first comprehensive revision of the Commission's General Order 4. Major changes included separate licensing of branch offices, increase in bond amounts, elimination of the "pay over rule," and increase in license fees. The Commission subsequently postponed the effectiveness of those portions of the rules covering compensation to agents acting as forwarders and the prohibition against free or reduced rates to charitable organizations and relief agencies pending further consideration.

Docket No. 80-6 - Specific Commodity Rates of Far Eastern Shipping Company in the Philippines/U.S. Pacific Coast Trade and U.S. Gulf/Australia Trade, 20 S.R.R. 460 (1980).

The Commission disapproved a controlled carrier's rates on burl furniture and beer as being unjust and unreasonable. The carrier was

found to have significantly penetrated the market for the carriage of these commodities due in part to the past and present disparities.

Docket No. 79-74 - Japan/Korea Atlantic and Gulf Conference (Agreement No. 3103-67), 20 S.R.R. 1173 (June 17, 1981).

An amendment to a conference ratemaking seeking a fifth extension of intermodal ratemaking authority was denied. The conference lines serve the Far East from U.S. Atlantic and Gulf Coast ports and failed to demonstrate that they would actually implement a commercially viable intermodal service to U.S. inland points via these ports. Proponents were unable to establish that their proposed activities would stabilize competition from U.S. Pacific Coast intermodal carriers. A majority of the proponents performed both all-water service from U.S. Atlantic and Gulf Coast ports and intermodal service via U.S. Pacific Coast ports.

Docket Nos. 78-15, 78-17, 78-18 and 78-19 - United States Lines, Inc. v. Maryland Port Administration, 20 S.R.R. 646 (December 15, 1980).

The Commission found three tariff provisions of the Maryland Port Administration unlawful in that they relieved the Port from liability for its own negligence. The Port was directed to correct the situation.

Docket No. 77-19 - Consolidated Forwarders Intermodal Corporation (Agreement No. 10235), 20 S.R.R. 571, ____ (June 15, 1981).

An agreement among 39 licensed ocean freight forwarders operating in the New York City area, some of whom were also nonvessel operating ocean carriers, to form a jointly-owned and managed corporation to

perform freight consolidation and nonvessel operating carrier services, was disapproved. The Commission concluded that it had not been shown that this joint venture was required by a serious transportation need, important public benefit or valid regulatory purpose.

SECTION VIII
COURT LITIGATION & ENFORCEMENT CLAIMS

The General Counsel's Office is responsible for defending and enforcing Commission orders in court, and about 70 percent of this outside litigation work consists of representing the Commission in appeals of its orders in the Circuit Courts. While most of these appeals are brought in the U.S. Court of Appeals for the District of Columbia, appeals have been filed in U.S. Circuit Courts in New York, New Orleans, and San Francisco. Other litigation handled by the General Counsel's office consists of orders for enforcement, injunction suits and assisting the Department of Justice in civil penalty actions and other prosecutions in the U.S. District Courts. The Commission or its employees are also represented by the General Counsel's office in proceedings occasionally brought in the State Courts and before other government agencies.

At the close of FY 1981, 22 of the 49 appeal cases that were carried over or filed during the year were decided or terminated, either through settlement or by withdrawal of the review petitions. Of the 8 cases in District Court, half were resolved by decision or settlement. Two Supreme Court cases, two ICC proceedings and one State Court action comprised the balance of the litigation work handled by the General Counsel's office during this fiscal period.

Some of the more significant cases that were decided or are still pending resolution are listed below.

U.S. COURT OF APPEALS

Council of North Atlantic Shipping Association and New York Shipping Association v. FMC USA, D.C. Cir. No. 78-1776, involves a challenge to the FMC's order in Docket Nos. 73-17 and 74-40, which declared unlawful the tariff regulations of certain carriers in the United States/Puerto Rico trade, requiring stuffing and stripping by International Longshoremen's Association labor, of containers originating from or destined to points within 50 miles of mainland ports. The case was argued on September 30, 1981, and was pending decision by the Court at the end of FY 1981.

Dart Containerline Co. v. FMC & USA, 639 F.2d 808 (D.C. Cir. 1981), affirmed the Commission's decision in Docket No. 77-50 holding that Dart's practice of absorbing rates for inland transportation of tobacco between Wilmington, North Carolina, which it does not serve by water, and the Norfolk/Hampton Roads area, which it does, violates sections 16 and 17 of the Shipping Act, 1916.

Puerto Rico Maritime Shipping Authority v USA & ICC, 645 F.2d 1102 (D.C. Cir. 1981), affirmed an ICC order accepting for filing and asserting exclusive jurisdiction over, joint motor/water rates in the U.S./Puerto Rico trade. The FMC had intervened in support of petitioner's challenge to exclusive ICC jurisdiction over such rates.

Trans Pacific Freight Conference of Japan/Korea, et al. v. FMC, D.C.Cir. No. 78-2172 and Sea-Land Service, Inc. v. FMC, D.C. Cir. 79-1062, involved a challenge by several conferences and carriers to the Commission's revised self-policing rules, promulgated as General Order 7 on September 21, 1978. The FMC's rules were affirmed by a panel of the U.S. Court of Appeals for the D.C. Circuit on September 11, 1980. The Supreme Court denied petitions for certiorari on May 18, 1981.

USA v. FMC, D.C. Cir. No. 79-1299, involves an appeal by the Antitrust Division of the Department of Justice which, inter alia, challenged the FMC's authority to approve section 15 agreements among ocean carriers which permit them to establish rates for through intermodal service in connection with inland carriers regulated by the Interstate Commerce Commission. Although the Court originally affirmed the FMC's authority to approve such intermodal agreements, it has granted rehearing en banc on this issue. This matter is pending decision.

Totem Ocean Trailer Express, Inc. v. FMC and USA, 9th Cir. No. 80-7721, involves a challenge to an FMC declaratory order that the FMC lacks jurisdiction over any portion of joint motor/water rates for transportation between points in the contiguous United States and points in the States of Alaska or Hawaii, of agricultural commodities exempt from economic regulation by the Interstate Commerce Commission. The case was argued on August 19, 1981, and was pending decision at close of FY 1981.

American Trucking Associations, Inc. et al. v. ICC, 5th Cir. No. 81-4045; Board of Commissioners of the Port of New Orleans, et al., 5th Cir. No. 81-4080 involved a challenge to the rules promulgated by the Interstate Commerce Commission in Ex Parte No. 230 (Sub No. 5) deregulating rates covering trailer-on-flat-car (TOFC) and container-on-flat-car (COFC) transportation, including joint rail-water movements participated in by FMC-regulated carriers. The FMC filed a Memorandum amicus curiae with the Court for the limited purpose of setting forth its position that the ICC's rules fall within the scope of rules "affecting shipping in the foreign trade" as set out in section 19, Merchant Marine Act, 1920 (46 U.S.C. 875), and thus required "final action" with respect to approval by the FMC before they could be implemented. The FMC did not contend that approval of the rules had been withheld. On September 21, 1981, the Court issued an opinion affirming the ICC's rules with one minor exception. The Court did not reach the question of the necessity of FMC approval under section 19 since it found there was substantial compliance with the requirements of section 19.

Continental Forwarding, Inc. v. United States and Federal Maritime Commission, D.C. Cir. No. 81-1305, involves a challenge to the Commission's decision to deny the ocean freight forwarder license application of Continental. Also being contested are the Commission's regulations which provide for the automatic revocation of licenses of forwarders that fail to file a surety bond in the form and amount required by the Commission. Continental's brief was filed June 17, 1981, and the Commission's brief on August 17, 1981.

Refrigerated Express Lines v. Federal Maritime Commission, D.C. Cir. No. 80-1436, involves a challenge to an order in which the Commission declined to find that Refrigerated Express Lines' exclusion from the Australian meat trade by the Australian Meat and Livestock Corporation created "conditions unfavorable to shipping the foreign trade . . . aris(ing) out of or result(ing) from foreign laws, rules or regulations . . ." under section 19 of the Merchant Marine Act, 1920. The U.S. Court of Appeals for the D.C. Circuit dismissed the case for lack of jurisdiction, under the Hobbs Act, 28 USC 2342, to review orders issued under the Merchant Marine Act, 1920. Subsequent to dismissal of the appeal in the D.C. Circuit, a complaint for review of the Commission's order was filed in the U.S. District Court for the District of Columbia, Refrigerated Express Lines v. Federal Maritime Commission, D.D.C. C.A. No. 81-1892. Plaintiff also moved for summary judgement reversing the Commission's order.

Sea-Land Service, Inc. v. FMC, D.C. Cir. No. 89-2493, involved an appeal of a Commission order approving certain agreements among carriers under section 15 of the Shipping Act, on condition that the agreements be restructured and modified in certain respects. The Court of Appeals held that the Commission's action violated the rights of parties opposed to the agreements by denying them an opportunity to review and comment upon the modifications imposed by the Commission. The Court vacated the Commission's order and remanded the matter to the Commission for further proceedings.

In Federal Maritime Commission & USA v. Mitsui O.S.K. Lines Ltd., et al, 9th Cir. No. 81-4325 and International Paper Co. v. Mitsui O.S.K. Lines, Ltd. et al, 9th Cir. No. 81-4263, the Commission and appellant, International Paper Co., seek reversal of a district court decision denying enforcement of subpoenas issued in a complaint proceeding before the Commission. Briefing of the case was completed in October 1981, and oral argument will be scheduled on an expedited basis.

Ship's Overseas Services, Inc. v. FMC & USA, D.C. Cir. No. 80-2421, involves a challenge to the FMC's orders in Docket No. 77-13, declaring that Ship's Overseas Services, Inc. acted as a non-vessel operating common carrier by water subject to the Shipping Act, and awarding reparation to a shipper.

NON-ADJUDICATORY MATTERS

As a result of the November, 1980, Commission reorganization and transfer of certain work functions, the responsibility for the Commission's civil penalty claim program was transferred from the General Counsel's office to the Bureau of Hearings and Field Operations. However, outstanding claims that were the subject of active negotiations were retained for disposition by the General Counsel. A part of these claims, together with those that were settled before this responsibility was transferred, produced a penalty recovery of over \$732,061.00 for FY 1981. Such settled claims involved illegal rebating activities by one foreign and three American-flag carriers, and five shippers. In addition, the Commission also settled nine other penalty claims,

totalling \$102,000.00, with carriers or forwarders for other violations of the shipping statutes. The one court settlement during FY 1981, United States v. Paper Fibres, Inc., resulted in the recovery of an additional \$100,000 in civil penalties from shippers and their principal company officers, who received illegal rebates from ocean carriers.

PART IX
LEGISLATION

The opening of the 97th Congress in January of 1981 brought many changes to the two congressional committees which have oversight authority over the Commission, both in leadership and legislative agenda. The House Merchant Marine and Fisheries Committee, formerly led by Representative John Murphy of New York, is now Chaired by the Honorable Walter B. Jones. Representative Paul McCloskey stepped down as the Committee's Ranking Republican. Representative Gene Snyder now holds that position. Congressman McCloskey retained his ranking minority seat on the Subcommittee on Merchant Marine, which is now under the direction of the Honorable Mario Biaggi of New York, former Chairman of the Subcommittee on Coast Guard and Navigation, now chaired by Representative Gerry Studds.

In the Senate Senator Bob Packwood assumed the chairmanship of the Senate Committee on Commerce, Science and Transportation. Senator Slade Gorton is the new chairman of the Subcommittee on Merchant Marine, with former chairman Senator Daniel Inouye serving as the Subcommittee's ranking minority member.

Maritime Legislation - Shipping Act Reform

Shortly after the opening of the 97th Congress, Senator Inouye again introduced his "Ocean Shipping Act", now designated S. 125. Aside from a few technical changes, the bill is identical to S. 2585 which was passed by the Senate during the 96th Congress. Senator Gorton also introduced a comprehensive Shipping Act reform bill this year. His proposal, S. 1593, was introduced on August 3, 1981. S. 1593 repeals the Shipping Act, 1916 as it relates to the foreign commerce. The bill continues the requirement for the filing and approval of agreements, but deletes the public interest standard for approval. It establishes a statutory grant of antitrust immunity for enumerated concerted activities, including agreements for conference intermodal transportation, closed conferences and the formation of shippers' councils. Time limits are placed on Commission action with respect to agreements. Under the bill, dual rate contracts are not subjected to Commission approval. Tariff filing requirements are continued, but licensing of freight forwarders is replaced by a bonding requirement applicable to both freight forwarders and NVOCC's. Provisions governing controlled carriers are included, but the provisions applicable to maritime labor agreements (see P.L. 96-325) were inadvertently omitted. The Commission's assessment and compromise authority is included in the bill, but the Section 21 information-gathering authority is not. Senator Gorton's bill also contains a provision authorizing the Commission to represent itself in court.

Soon after S. 1593 was introduced in the Senate, Representative Biaggi introduced his shipping reform proposal in the House. This measure, H.R. 4374, proposes a series of amendments to the Shipping Act,

specifically to sections 1, 15, 44 and certain penalty provisions. Like the Senate bill, the House bill also authorizes closed conferences, but it also contains a proviso that a conference must allow for membership of at least one U.S. flag carrier. It imposes time limits on Commission actions with respect to agreements and authorizes the formation of shippers' councils. Freight forwarders are not required to be licensed and forwarders and NVOCC's are required to be bonded.

Freight Forwarder Legislation

On August 13, 1981, Congress amended sections 1 and 44 of the Shipping Act, 1916 to eliminate the prohibition against a licensed freight forwarder's having a corporate affiliation with a shipper. At the same time, the amendment provided that while a forwarder may be "shipper-connected," it may not receive freight forwarder compensation from a carrier with respect to a shipment of cargo in which it has a beneficial interest. This change in the law (which was included in the Budget Reconciliation measure, P.L. 97-35) is effective until December 31, 1983. Six months prior to that time, the FMC is required to report to Congress on the effect of the change, including any enforcement problems that may have resulted.

Other Maritime Legislation

Earlier this session Congressman McCloskey introduced legislation that would outlaw certain restrictions on handling of containerized cargo. The bill, H.R. 2042, addresses practices of the type emanating from the International Longshoreman's Association's Rules on Containers,

commonly referred to as the "50 mile-rule." No action has been scheduled on this legislation.

Both the House and Senate are considering legislation that would encourage the formation of export trading companies. The Senate measure S. 734, passed the Senate on April 4, 1981. The House is considering similar proposals.

Hearings

In September of 1981, Chairman Green appeared before the Senate Subcommittee on Merchant Marine expressing Commission support for Senator Gorton's bill, S. 1593, and Senator Inouye's bill, S. 125. On behalf of the Commission, he presented the Subcommittee members with a letter detailing technical and substantive recommendations for the legislation.

Earlier this session, former acting Chairman Kanuk appeared before the House to voice the views of the FMC during the Merchant Marine Subcommittee's April hearings on the UNCTAD Code. In addition, Dr. Kanuk also appeared before the House Merchant Marine Subcommittee during hearings on three proposals (H.R. 566, H.R. 2467 and H.R. 3637) which addressed the issue of "cargo diversion" through Canadian ports.

Regulatory Reform Legislation

Both the House and the Senate are considering proposals that would reform the regulatory process. The House measure, H.R. 746, has been the subject of extensive hearings by the Judiciary Subcommittee on Administrative Law and Government Relations, which is chaired by Representative Danielson (D-CA), who is the bill's author. The measure

was reported to the full Judiciary Committee on October 1, 1981. H.R. 746 includes in its provisions a two-house legislative veto which would allow Congress to veto agency rules; language that would abolish the presumption by the courts that an agency interpretation of a law is valid, the so called "Bumpers Amendment"; and a two-step economic review of proposed rules which would incorporate the use of cost-benefit analysis.

Senator Laxalt of Nevada is the author of the Senate's major regulatory reform proposal, S. 1080. Both the Judiciary Subcommittee on Regulatory Reform, which Senator Laxalt chairs, and the Agency Administration Subcommittee, chaired by Senator Grassley, held hearings on the bill. It was amended and reported to the full Committee, which in turn reported the bill in August. The full Committee on Governmental Affairs, chaired by Senator Roth, also held hearings on S. 1080 and reported the measure in September. Floor action is expected on S. 1080 late this year or early in January of 1982. Included among the provisions of the bill are:

- a requirement to evaluate on a non-mathematical basis the trade-offs of "major rules" and to determine that such rules are cost effective;
- language similar to that contained in H.R. 746 that would alter the presumption accorded agency actions during judicial review;
- language that clarifies the status of independent agencies with respect to OMB oversight authority;

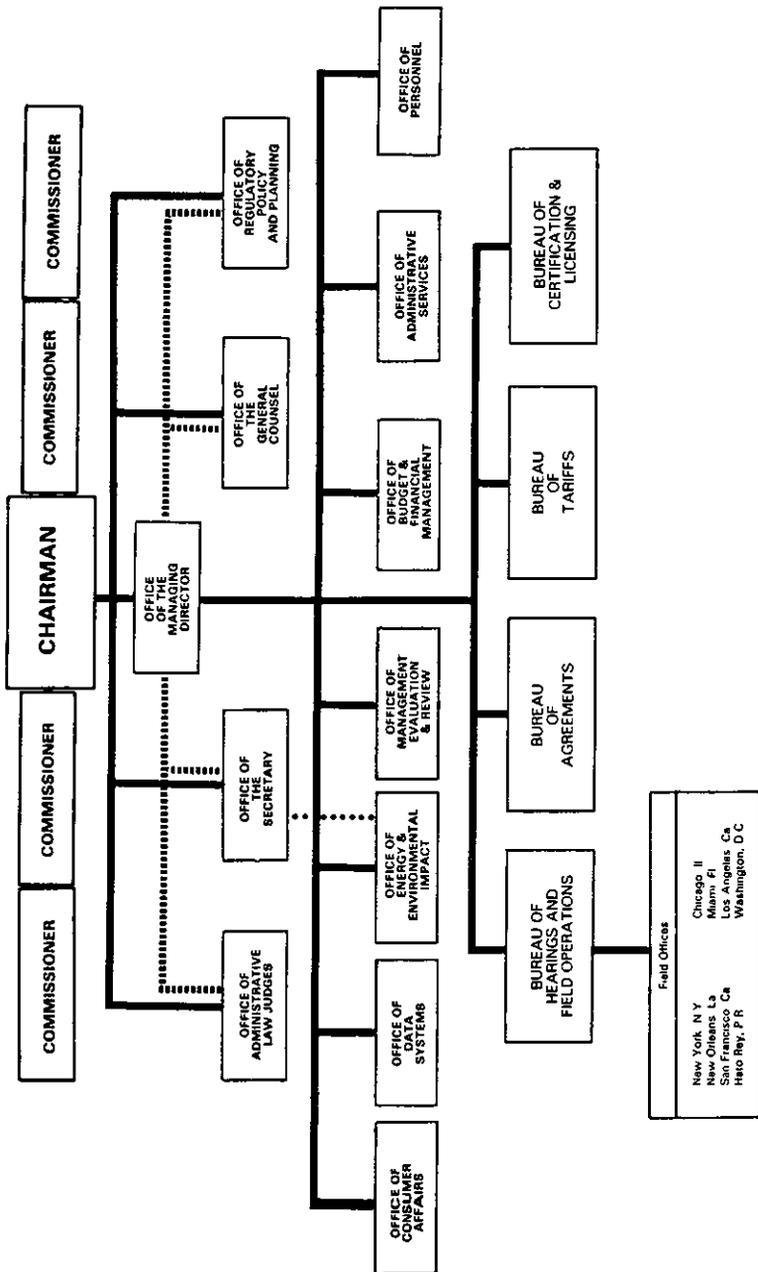
- a requirement to review major rules every ten years to determine if they should be revised or withdrawn;

- A requirement that agencies publish a semi-annual agenda of regulatory actions.

In sum, during its first session, the 97th Congress has shown an intense interest in regulatory reform, and the Merchant Marine Committees have indicated interest in reform of the Shipping Act, 1916, port development, cargo diversion, and the UNCTAD Code.

APPENDIX A

FEDERAL MARITIME COMMISSION



PROCEDURAL GUIDANCE
ADMINISTRATIVE MANAGEMENT
♦♦♦♦
001818

APPENDIX B
 CIVIL PENALTY SETTLEMENTS
 FOR VIOLATIONS OF THE SHIPPING ACT, 1916
 FY 1981

<u>COMPANY</u>	<u>SETTLEMENT</u>	<u>DATE</u>
Inter-Pacific	\$ 7,500	10-07-80
Johnson Scanstar	3,500	10-08-80
Waterman	25,000	10-09-80
Pacific Coast European Conference	2,500	10-21-80
Twin Fashions	5,000	10-22-80
Garren International	7,500	10-07-80
C&C Products	5,000	11-10-80
Kung's Trading	12,500	12-11-80
Farrel Lines	5,000	12-16-80
American Export Lines	20,000	12-22-80
PHS Van Ommereen	7,500	12-22-80
Victor Handal	5,000	12-28-80
Royal Hawaiian Cruises	5,000	12-31-80
Baltic Shipping	123,000	01-20-81
Bank and Savill Lines	60,000	01-21-81
Transytur Line	1,000	01-27-81
Wine Imports	12,000	01-27-81
P.J. Rhodes	10,000	01-30-81
Waterman	162,000	02-02-81
Lloyd Brasilerio	25,000	02-18-81

APPENDIX B
(continued)

<u>COMPANY</u>	<u>SETTLEMENT</u>	<u>DATE</u>
P.O. Strath	14,000	03-09-81
Shipco	5,000	03-12-81
Port of Seattle	1,000	03-12-81
Gorthon Lines	7,500	03-16-81
FESCO	200,000	03-18-81
Rafael M. Montejo	5,000	03-26-81
Common Market Forwarders	3,000	03-31-81
Trailer Marine Transport	6,000	04-07-81
Hapag-Lloyd AG	10,000	04-10-81
United Forwarders Service	5,000	04-13-81
William A. Marshall	2,500	04-15-81
Interford Corp.	5,000	04-16-81
Muran International	10,000	04-20-81
Transnuclear	2,000	05-04-81
RN Forwarding	5,000	05-08-81
Pro-Service Forwarding	3,000	05-12-81
Barber Blue Sea	5,000	05-15-81
Pentagon Freight Service	2,000	05-18-81
Imperial Toy Corp.	3,000	05-21-81
Dumont Shipping Co.	2,500	05-22-81
International Global, Inc.	2,000	05-27-81
Capitol Transportation, Inc.	2,000	06-08-81
KAB, Inc.	7,500	06-08-81
Meston and Brings	3,500	06-22-81

APPENDIX B
(continued)

<u>COMPANY</u>	<u>SETTLEMENT</u>	<u>DATE</u>
San Lorenzo	3,000	07-09-81
Panama Container	5,000	07-14-81
Behring Shipping	4,000	07-14-81
Toten Ocean Trailer Express	2,500	07-21-81
Corrigan Moving & Storage	2,000	07-23-81
Columbus Line	5,000	07-29-81
Jantzen International	2,500	07-30-81
Djakarta Lloyd, P.T.	7,500	08-10-81
Kyokuyo Co.	5,000	08-14-81
Gateway Express	2,500	08-14-81
Asia N. O'hallorans	3,500	08-17-81
A.B.C. Freight Consolidators	1,000	08-17-81
Constellation Line	4,000	08-24-81
Alltransport, Inc.	25,500	08-26-81
Marina Shipping Co.	12,000	08-26-81
Sylvan Shipping Co.	5,000	09-08-81
Suarez Shipping Services	7,500	09-16-81
William H. Muller	25,000	09-16-81
Prudential Line	75,000	09-24-81
James J. Gallegos	1,000	09-24-81
	<hr/>	
TOTAL	\$1,014,061	

APPENDIX C
 BUREAU OF HEARINGS AND FIELD OPERATIONS
 FIELD INVESTIGATIONS
 FY 1981

<u>INVESTIGATIONS</u>	<u>TOTAL</u>	<u>MALPRACTICES</u>	<u>TARIFF VIOLATIONS</u>	<u>FORWARDER & OTHER MATTERS</u>
Pending 09-03-80	787	385	107	295
Opened FY 1981	898	254	108	536
Completed FY 1981	968	350	96	522
Pending 09-03-81	717	289	119	309

APPENDIX D

STATISTICAL ABSTRACT OF FILINGS

Sections 14b and 15 Agreements Filed in FY 1981(including modifications)

Foreign and Domestic Commerce	246
Terminals	132
Labor-Management	16

Reports Review:

Shippers' Requests and Complaints	106
Minutes of Meetings	2737
Self-Policing of Conference and Rate Agreements	174
Pooling Statements	45
Operating Reports	44

APPENDIX D
(continued)

Approved Agreements on File as of September 30, 1981:

Conference	73
Rate	33
Joint Conference	11
Pooling	20
Joint Service	24
Sailing	30
Transshipment	71
Cooperative Working, Agency, and Container Interchange .	112
Dual Rate Contract Systems	47
Terminals	610
Labor-Management Approvals and Exemptions	226

Tariff Filings (Foreign)

Total Number of Tariff Filings Received	382,386
Total Number of Tariff Filings Rejected	4,314
Total Number of Tariffs on Hand October 1, 1980	3,507
Total Number of Tariffs on Hand October 1, 1981	3,891
Special Permission Applications Received	
During Fiscal Year 1980:	148
Granted	115
Denied	26
Withdrawn	7

APPENDIX D
(continued)

TARIFF FILINGS (Domestic)

Tariffs on File as of September 20, 1981:

Domestic Offshore	235
Terminals	580

Tariff Pages Filed During Fiscal Year:

Domestic Offshore	21,556
Terminals	6,045

Rejected Pages:

Domestic Offshore	1,198
-------------------	-------

Special Permission Applications:

Domestic Offshore	94
-------------------	----

Granted	79
Denied	6
Withdrawn	8
Pending	1

Investigation and Suspension Memorandum:

Domestic Offshore	9
-------------------	---

Completed	9
Pending	0

APPENDIX E

STATEMENT OF APPROPRIATION AND OBLIGATION FOR THE
FISCAL YEAR ENDED SEPTEMBER 30, 1981

APPROPRIATION:

Continuing Resolutions P.L. 96-536 and 97-12: For necessary expenses of the Federal Maritime Commission, including services as authorized by Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; Provided, that not to exceed \$1,500 shall be available for official reception and representation expenses	\$12,000,000
Public Law 97-12. 97th Congress, approved June 5, 1981: Supplemental Appropriation and Rescission Act, 1981 to cover increased pay cost	<u>100,000</u>
Appropriation availability	\$12,100,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1981	11,838,842
Unobligated balance withdrawn by Treasury	<u>\$ 261,158</u>

STATEMENT OF RECEIPTS: DEPOSITED WITH THE GENERAL FUND OF THE
TREASURY FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1981 1/:

Publications and reproductions	31,789
Water Pollution application and certificate fees	324,000
Fines and penalties	2,498,148
Miscellaneous	10,028
	<hr/>
Total general fund receipts	\$2,863,965

1/ Receipts do not agree with amounts reported by Treasury which are in error.