

# 23<sup>rd</sup> annual report

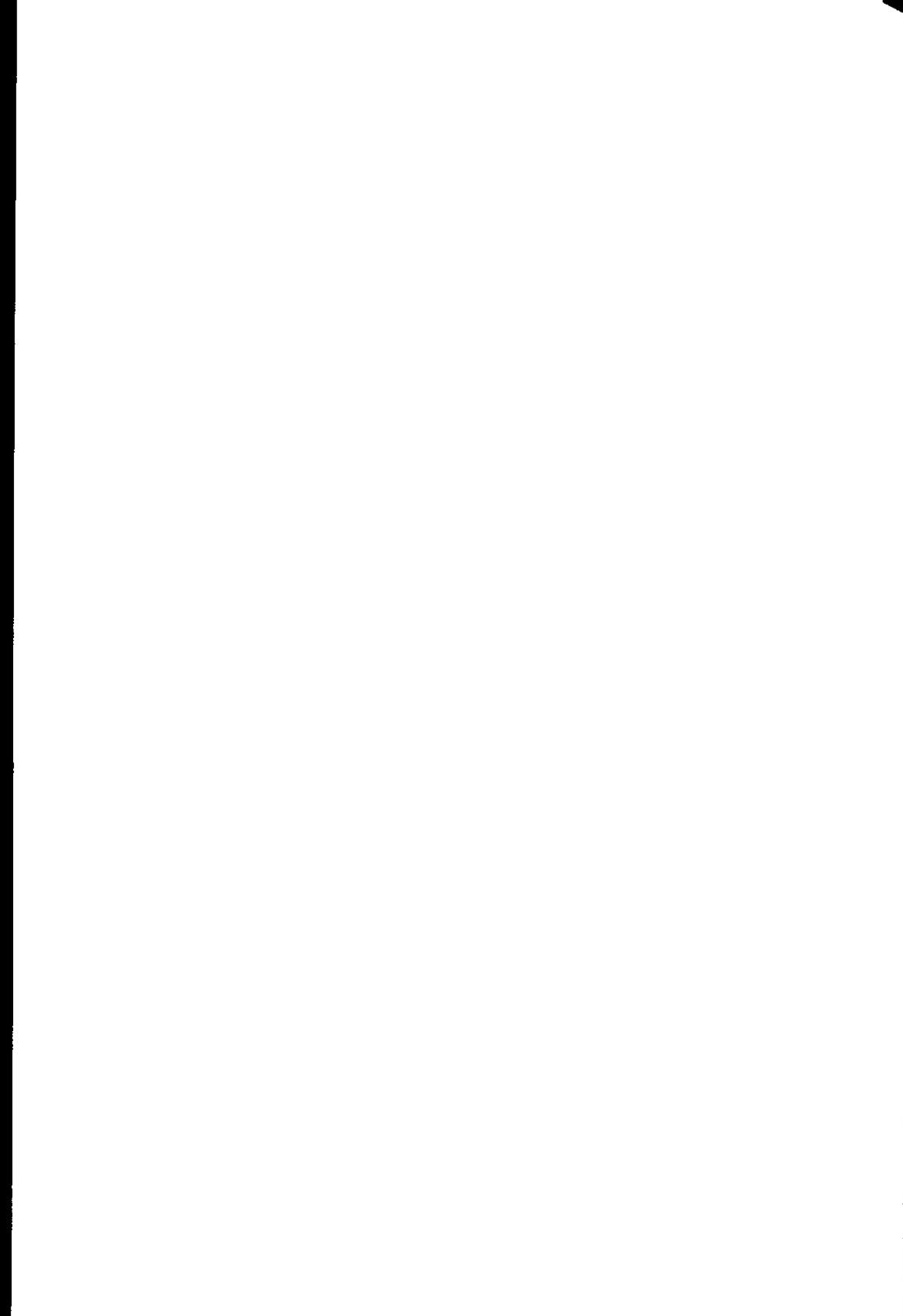
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FEDERAL MARITIME COMMISSION

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Fiscal Year 1984

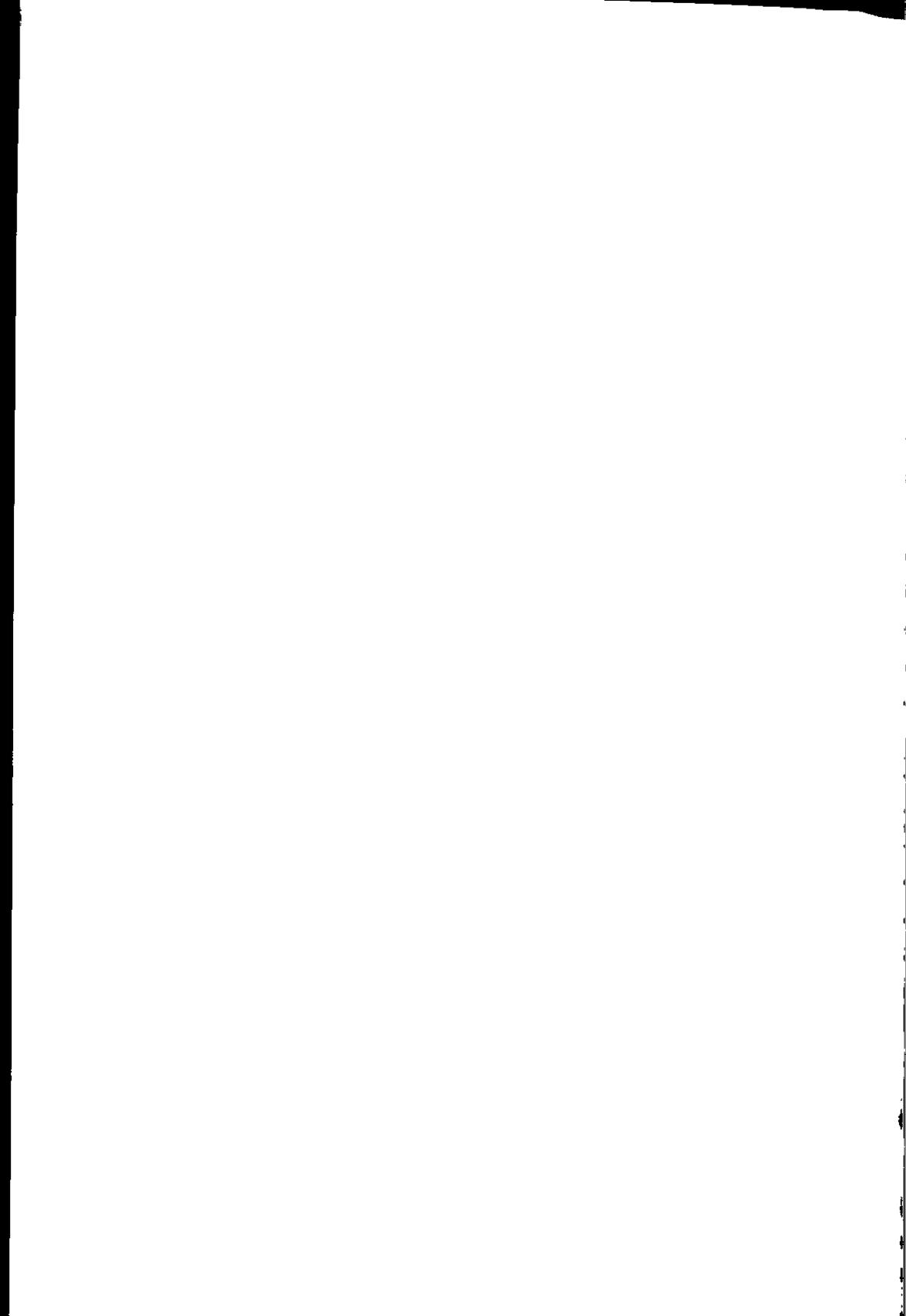


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Federal Maritime Commission  
Washington, D. C. 20373

Office of the Chairman

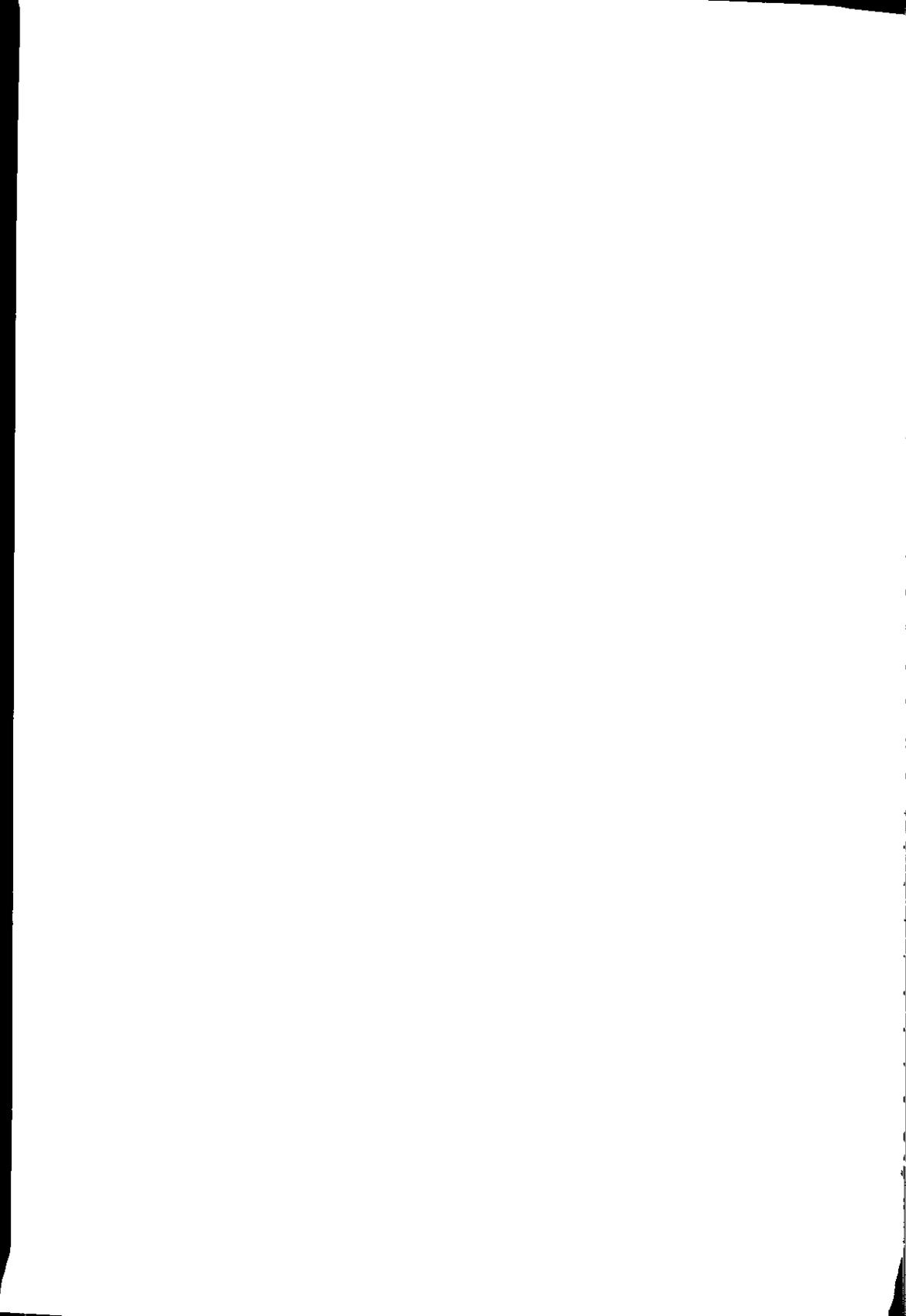
To the U.S. Senate and House of Representatives:

Pursuant to section 103(e)(2) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the twenty-third annual report of the activities of the Federal Maritime Commission for fiscal year 1984 (ending September 30, 1984).

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Green, Jr.", written in a cursive style.

Alan Green, Jr.  
Chairman



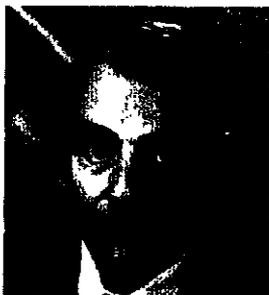
# MEMBERS OF THE COMMISSION



**Alan Green, Jr.**  
Chairman  
Appointed 1981  
Term Expires 1986  
(R) Oregon



**James J. Carey**  
Vice Chairman  
Appointed 1981  
Term Expires 1985  
(R) Illinois



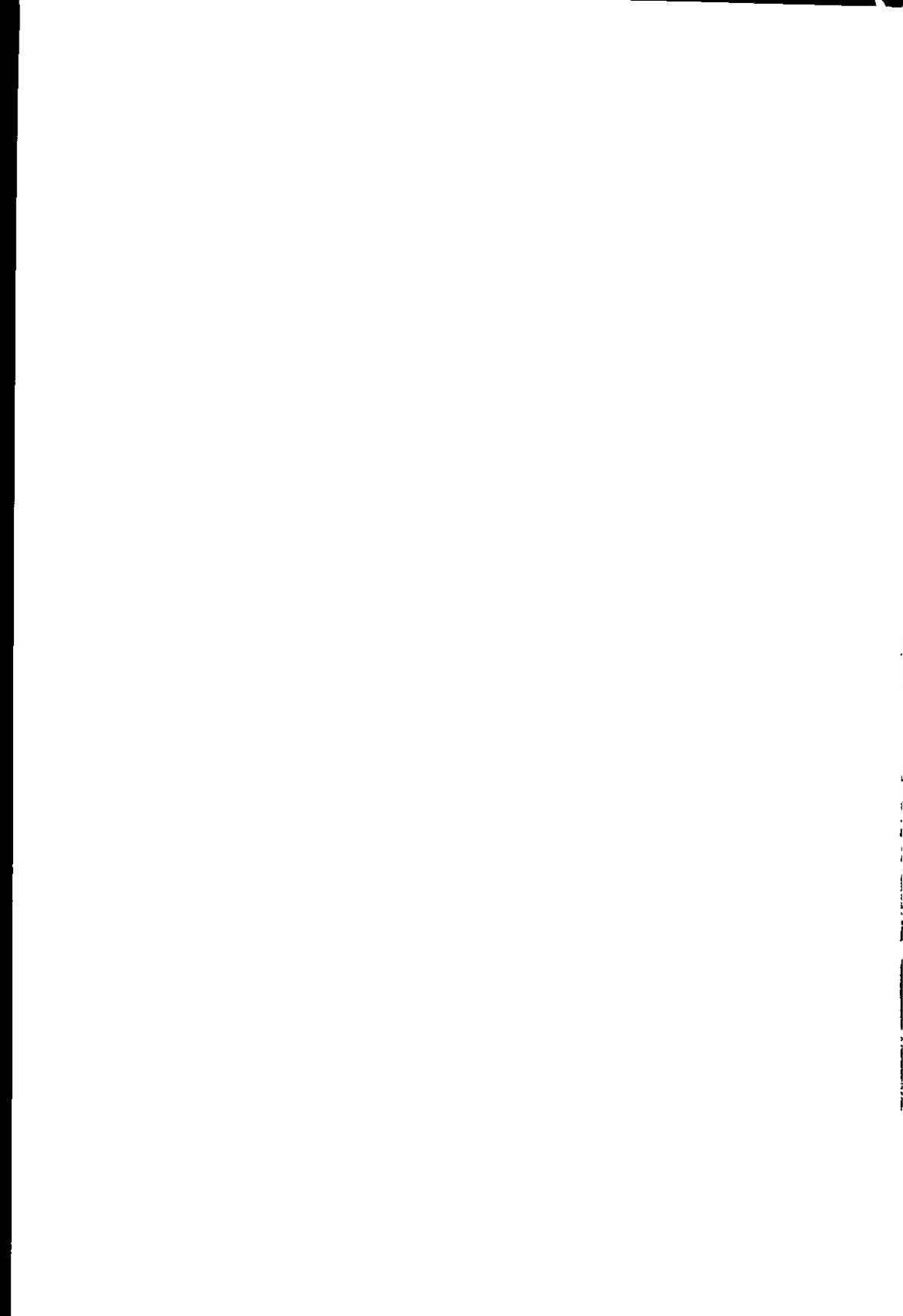
**Robert Setrakian**  
Commissioner  
Appointed 1983  
Term Expires 1987  
(D) California



**Thomas F. Moakley**  
Commissioner  
Appointed 1977  
Term Expires 1988  
(D) Massachusetts



**James V. Day**  
Commissioner  
Appointed 1962  
Term Expires 1984  
(R) Maine



## I

### THE COMMISSION

#### History

The Federal Maritime Commission was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. As successor to the Federal Maritime Board, the Commission was charged with the administration of the regulatory provisions of the Shipping Act, 1916. The shipping laws of the United States were thus separated into two categories -- regulatory and promotional -- with the responsibilities associated with promotion of an adequate and efficient U.S. Merchant Marine being assigned to the Maritime Administration, now located within the Department of Transportation. The Federal Maritime Commission was given responsibility over the regulation of the ocean commerce of the United States.

#### Function

The Federal Maritime Commission is responsible for the administration of varying portions of a number of Federal statutes. Chief among these are the Shipping Acts of 1984 and 1916, the Intercoastal Shipping Act of 1933, and the Merchant Marine Acts of 1920 and 1936. The Shipping Act of 1984 represents a major change in the regulatory regime facing shipping companies involved in the oceanborne commerce of the United States.

The Commission's principal regulatory responsibilities are as follows:

- \* Oversight of certain agreements of U.S.- and foreign-flag common carriers by water and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.
- \* Receipt and review of tariff filings (but not the regulation of rates) by U.S.- and foreign-flag common carriers by water engaged in the U.S. foreign commerce.
- \* Guarding the rights of U.S. shippers, and carriers engaged in the foreign commerce of the United States from restrictive or non-market oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the United States.
- \* Maintaining the rights of U.S.-flag shipping companies to transport cargoes in the foreign-to-foreign trades.
- \* Regulation of rates, charges, classifications, tariffs and practices of U.S. ocean common carriers in the domestic offshore trades of the U.S.
- \* Licensing of international ocean freight forwarders.

- \* Issuance of passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.
  
- \* Investigations of discriminatory rates, charges, classifications, and practices of U.S.- and foreign-flag ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the United States.
  
- \* Rendering decisions, issuing orders, and adopting rules and regulations governing common carriers by water in U.S. foreign and domestic offshore commerce, terminal operators, freight forwarders, and other persons subject to shipping statutes of the United States.

One of the Commission's primary responsibilities involves the administration of agreements filed under section 5 of the Shipping Act of 1984. Section 7 of the Act grants ocean common carriers exemption from U.S. antitrust laws (as contained in the Sherman and Clayton Acts) once agreements filed with the Commission become effective. The FMC reviews and evaluates certain major agreements to ensure that they do not exploit the grant of antitrust immunity, and to ensure that the agreement would not result in unreasonably high prices for shipping services or unreasonably low levels of service.

Beyond the Commission's section 5 responsibility to regulate the activities of competing ocean carriers in the commerce of the United States, the FMC is also concerned with the treatment of the shipping public by ocean carriers and conferences. The Shipping Act of 1984 prohibits carriers and conferences from undue discrimination or preferential practices in dealing with shippers or other parties engaged in U.S. commerce. The law also requires carriers and conferences to make their rates and practices (commonly known as tariffs) publicly available, and that the applicable rates and charges indicated in the tariff are actually charged for service rendered. Only those rates on file with the Commission can be charged. Except in the case of certain state-controlled shipping lines, the Commission has no authority to disapprove rates in tariffs lawfully filed in the U.S. foreign commerce. The FMC does not limit entry into the oceanborne commerce of the United States.

Generally, the Commission is responsible for ensuring equity and stability in the conduct of U.S. oceanborne commerce. Given the large percentage of U.S. foreign trade that is transported by ocean liner shipping services or facilitated by other entities under the regulatory purview of the Commission, the Commission's role must be to promote efficiency and economy in the U.S. foreign commerce commensurate with commercial requirements, as well as to protect the U.S. shipping public.

## Organization

The Federal Maritime Commission is composed of five Commissioners appointed by the President for five-year terms with the advice and consent of the United States Senate. Not more than three members of the Commission may belong to the same political party. The President designates one of the Commissioners to serve as Chairman. The Chairman is the chief executive and administrative officer of the agency.

Six offices are directly responsible to the Chairman -- Office of Administrative Law Judges, Office of the General Counsel, Office of the Secretary, Office of Policy Planning and International Affairs, Office of the Managing Director and Office of Equal Employment Opportunity. Four operating Bureaus report to the Director of Programs and are responsible for the Commission's regulatory programs. The administrative offices report to the Director of Administration. Appendix A gives a graphic representation of the Commission's organization.

In fiscal year 1984, the Federal Maritime Commission was authorized a total of 240 full-time equivalent positions and had a total appropriation of \$10,946,000. The majority of the Commission's personnel are located in Washington, D.C. with field offices in New York, Chicago, San Francisco, Los Angeles, New Orleans, Miami, and San Juan, Puerto Rico.

## II

### THE YEAR IN REVIEW

The Federal Maritime Commission's twenty-third year of existence was dominated by a single event, the Shipping Act of 1984. A significant proportion of the Commission's activities centered around working with the Congress to ensure the successful enactment of this new legislation. Following enactment, the Commission dedicated its resources to the development of interim and final rules to implement the Shipping Act of 1984. The Shipping Act of 1984 is discussed extensively in this section; the discussion of the rulemaking activity of the Commission is covered in part III of this report in the section on the activities of the Office of the General Counsel.

A major reason for the enactment of the Shipping Act of 1984 was to expedite the agreements process. The regime established under the Shipping Act of 1916 had resulted in significant delays between the time certain agreements were filed and the time they were approved by the Commission. The reasons for these delays were complex but many believed that a series of decisions had placed such a burden on the proponents of certain anticompetitive agreements that parties opposed to a particular agreement could demand that the Commission hold an investigation before approving the agreement. This legal process could and did result in significant regulatory lag.

This section contains a lengthy discussion of the new process established by the Shipping Act of 1984 and the

implementation of the new agreements processing procedures by the Bureau of Agreements and Trade Monitoring. Following this discussion is a review of developments in the major U.S. foreign trades. Under the new scheme, trade monitoring for detection of potential problems should replace pre-approval "crystal balling" of agreements.

Finally, fiscal-year 1984 witnessed the initiation of a major effort by the Commission, led by Vice Chairman James Carey, to enhance the automation of the tariff filing process. The tariff automation project was begun during the last few months of the fiscal year and it is expected that this effort will become a major source of activity for the Commission's staff during the next several years.

#### **THE SHIPPING ACT OF 1984**

The Shipping Act of 1984 (P.L. 98-237, 46 U.S.C. app. 1701-1720) was signed into law by President Reagan on March 20, 1984 and became effective on June 18, 1984. It is the product of several years of legislative consideration, and may be the most significant reform of the United States shipping statutes since the original Shipping Act was enacted in 1916. The stated purposes of the Act are to: 1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs; 2) provide an efficient and economic transportation system in the ocean

commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices; and 3) encourage the development of an economically sound and efficient U.S.-flag liner fleet capable of meeting national security needs. Some of the more significant aspects of the Act are discussed below.

### **Agreements Subject to the Act**

The Act applies to agreements by or among ocean common carriers to engage in seven enumerated categories of conduct. The only activities which are different from those covered by the Shipping Act, 1916 are the fixing of through rates and the regulation of service contracts. Certain agreements among marine terminal operators are also included within the scope of the Act. Significantly, however, agreements among non-vessel-operating common carriers and among freight forwarders are no longer subject to the Commission's jurisdiction.

### **Agreement Processing**

Since 1916, Congress has permitted ocean common carriers to band together and act concertedly without fear of antitrust prosecution. However, agreements authorizing such activities had to be filed with the Commission and approved by it before they could be implemented. The burden was on the parties to certain of these agreements to justify them under what had been criticized by some as a vague, public interest standard. The implementation of agreements was often delayed for a considerable period of time, particularly if protested.

The Shipping Act of 1984 superseded the Shipping Act, 1916 with respect to the regulation of agreements by or among ocean common carriers, and certain other persons, in the foreign commerce of the United States. The 1984 Act made significant changes with regard to: 1) the kinds of agreements that are within its scope; 2) the mandatory content of certain kinds of agreements; 3) the procedures for filing, processing, and reviewing agreements; and 4) the parameters of the antitrust immunity which it confers on agreements. Other areas of significant change include new statutory definitions, and a somewhat modified exemption authority.

Under the 1984 Act, agreements take effect automatically, without Commission approval, 45 days after filing, unless: 1) the agreement is rejected for failure to meet certain format requirements; 2) the Commission seeks more information concerning the effects of the agreement; or 3) the Commission obtains an injunction against the operation of the agreement. The Commission is also authorized to shorten the 45-day statutory review period to not less than 14 days after notice of the agreement's filing is published in the Federal Register.

The broad public interest standard against which the competitive impact of agreements was measured has been replaced by a new general standard. This standard puts at risk only those agreements which reduce competition to the point where shippers' costs are unreasonably increased or shippers' service unreasonably decreased. If the Commission believes that an agreement will operate "in violation" of the general standard, it

can go to district court and seek to enjoin the operation of the agreement. Under such circumstances, the burden of proof is squarely on the Commission and no intervenors are allowed in the court action.

### **Independent Action**

Under the 1916 Act, conferences did not have to allow their individual members to take independent action on rates, if the member was dissatisfied with the conference rate and was unable to change it within the conference system. Some conferences permitted independent action and some did not.

The 1984 Act requires all conference agreements to contain a provision stating that a conference member can take independent action on any rate or service item, on not more than 10 calendar days' notice to the conference. This statutory right of independent action does not apply to conference service contracts. The new law allows a conference to permit, restrict or prohibit its members from entering into service contracts.

### **Antitrust Immunity**

The 1984 Act clarifies and expands somewhat the antitrust immunity granted to agreements. Under the Act, antitrust immunity applies to any agreement which has been filed and becomes effective. It also applies to activities of carriers undertaken with a "reasonable basis to conclude" that they were pursuant to an effective or exempt agreement. In addition, any exemption granted from the Act's filing requirement carries with

it antitrust immunity. The new Act also precludes private parties from suing for treble damages or injunctive relief under the antitrust laws with respect to violations of its provisions.

### **Intermodal Authority**

The 1984 Act authorizes vessel operating carriers to enter into conference and other agreements establishing intermodal rates and extends antitrust immunity to these arrangements. Under the 1916 Act, the Federal Maritime Commission had authorized a number of conferences to set through intermodal rates between points in this country and points abroad. The Department of Justice had challenged this action on jurisdictional grounds, but the matter was never fully resolved. The 1984 Act clarifies this situation by expressly including "the fixing of through rates" within the activities to which conference members can agree.

### **Tariffs**

The 1984 Act retains the requirement that common carriers and conferences file with the Commission tariffs showing all their rates and charges. However, bulk cargo, forest products, recycled metal scrap, waste paper and paper waste have been excepted from this requirement. Common carriers may also offer rates in their tariffs which vary with the volume of cargo offered over a specified period of time, i.e., time/volume rates.

## **Service Contracts**

Service contracts are arrangements by which a shipper commits to a minimum amount of cargo over a fixed period and an ocean common carrier or conference commits to a rate or rate schedule and a defined service level. The contract must be filed confidentially with the Commission and a concise statement of its essential terms must be published in tariff format. The essential terms must also be made available "to all shippers similarly situated." The essential terms include: 1) the origin and destination port ranges or geographic areas; 2) the commodity involved; 3) the minimum volume; 4) the line-haul rate; 5) the duration; 6) service commitments; and 7) liquidated damages for nonperformance, if any.

The variables which can be manipulated pursuant to service contracts are infinite. They thus give carriers and shippers significant freedom to tailor transportation arrangements suitable to their commercial needs.

## **Shippers' Associations**

The Shipping Act of 1984 recognizes shippers' associations for the first time as entities in international ocean transportation. They are defined in the Act as groups of shippers which, on a non-profit basis, consolidate their cargoes to secure volume rates or enter into service contracts. The Act expressly requires that carriers and conferences negotiate with shippers' associations. It also provides that such associations can enter into service contracts on behalf of their members.

Shippers' associations have not been granted antitrust immunity under the 1984 Act.

### **Loyalty Contracts**

A loyalty contract, or dual-rate contract as they were previously known, is a contract by which an ocean common carrier or conference offers a lower rate for all or a fixed portion of a shippers' cargo. They were formerly permitted and granted antitrust immunity under the 1916 Act, if approved by the Commission. The Commission had approved 33 such contracts, all but one for use by conferences.

The 1984 Act prohibits the use of a loyalty contract, except in conformity with the antitrust laws. The Act's legislative history indicates that contracts offered by a single carrier may be acceptable, but that concerted use of a loyalty contract by a conference is likely to violate the antitrust laws.

### **Access to Cross Trades**

Section 13(b)(5) authorizes the Commission to suspend the tariffs of foreign-flag carriers or take other appropriate action when such carriers or their host nations unduly impair access of U.S.-flag carriers in a foreign-to-foreign trade, or cross-trade. Section 13(b)(5) is intended to complement section 19 of the Merchant Marine Act of 1920, which gives the Commission broad authority to counter discriminatory actions by foreign governments and foreign-flag carriers in the U.S. trades. Section 13(b)(5) reflects a Congressional concern about the

impact of the UNCTAD Code of Conduct for Liner Conferences, particularly its cargo sharing features, on U.S.-flag carriers' continued ability to lift cargo in cross-trades where the Code applies.

With the advent of more productive container ships, more efficient and effective intermodal networks, and round-the-world and other extended service patterns, the cross trades have or will become an essential element of a liner operator's service. Therefore, section 13(b)(5) may become one of the more important features of the new Act to U.S.-flag carriers.

#### **Controlled Carriers**

The 1984 Act retains the same requirements for state-owned or controlled carriers which applied as a result of the Ocean Shipping Act of 1978. These include, in addition to other procedural requirements, the requirements that controlled carrier rates not become effective sooner than 30 days after they are filed and that such rates be just and reasonable.

#### **Prohibited Acts**

Section 10 sets forth certain activities which are prohibited by the Act. These essentially restate prior proscribed activities, e.g., that carriers adhere to their tariff rates, that no one obtain transportation at other than the tariff rates, or that carriers not discriminate against shippers or ports. They also include some new ones, e.g., using a loyalty contract not in conformity with the antitrust laws, refusing to

negotiate with a shippers' association, boycotting or taking other concerted action which results in an unreasonable refusal to deal, engaging in conduct that unreasonably restricts the use of intermodal services, and engaging in any predatory practice designed to eliminate the participation or deny entry in a particular trade.

### **Complaints, Investigation, and Reparations**

Any person may file a complaint alleging a violation of the Act, except for section 6(g), and may seek reparations therefor. The Commission may on its own motion investigate any conduct or agreement which it believes may be in violation of the Act. The Commission or a complainant may seek an injunction in district court against any activity thought to be in violation of the Act. If the complainant loses, reasonable attorney's fees shall be awarded to the respondent.

For any complaint filed within three years of the accrual of the cause of action, the Commission can award the complainant reparations for actual injury (including loss of interest) plus reasonable attorney's fees. If the injury was caused by violation of certain prohibited acts, the award could be as much as twice the amount of actual injury.

### **Penalties**

Violations of the Act, regulations issued thereunder, or Commission orders, can result in a civil penalty not to exceed \$5,000 for each violation, except where otherwise provided for in

the Act. If the violation was willfully and knowingly committed, the amount of civil penalty could be as much as \$25,000 for each violation. Each day of a continuing violation is a separate offense. In addition, the Commission may suspend a common carrier's tariff or its right to use a conference tariff, for violations of certain provisions of the Act.

### **Ocean Freight Forwarders**

No person may act as an ocean freight forwarder unless licensed by the Commission. Licenses may be issued to any person who is qualified by experience and character to render forwarder services and furnishes an acceptable bond. A person whose primary business is the sale of merchandise may forward shipments for its own account without a license. However, a forwarder who has a direct or indirect beneficial interest in a shipment may not be compensated therefor.

### **Data Collection and Studies**

For a period of five years following enactment of the Act, the Commission must collect data on the impact of the Act on: 1) increases or decreases in the level of tariffs; 2) changes in the frequency or type of common carrier service; 3) the number and strength of independent carriers; and 4) the level, frequency, and cost of proceedings before the Commission. The Commission must consult with the Department of Justice (DOJ), Department of Transportation (DOT) and Federal Trade Commission (FTC) on this data collection effort and must provide them access to the data.

An Advisory Commission on Conferences in Ocean Shipping will be established 5½ years after enactment of the Act. At that time, the Commission must submit to Congress and the Advisory Commission an analysis of the impact of the Act. DOJ, DOT, and FTC must submit their analyses 60 days later.

One year after the Advisory Commission is established, it must provide Congress a comprehensive study on conferences in ocean shipping and must recommend whether conferences should be prohibited, remain open, or become closed. For additional information on the five-year study and the steps taken thus far in fiscal year 1984 to comply with this mandate, see the discussion of the section 18 study at the end of the section on the Office of Policy Planning and International Affairs.

#### **PROCESSING AGREEMENTS UNDER THE NEW ACT**

The Shipping Act of 1984 governing the regulation of common carriers by water, conferences of such carriers and other persons as defined therein, operating in the foreign, oceanborne commerce of the United States, became effective on June 18 of 1984. With this new law, procedures applicable to the processing of agreements were radically changed. Under the old statute (Shipping Act, 1916) and its applicable precedents, many months, occasionally years would pass between the time that an agreement was filed and the final Commission action. Recognizing the burden of these delays, the Commission had pursued internal reform to expedite the agreement processing procedures.

Nevertheless, because of various legal requirements, the more complex agreements would take several months before they could be considered for Commission action. Accordingly, the shipping industry was being denied the ability to develop commercial arrangements, with the immunity from the antitrust laws that followed with Commission approval of an agreement.

Under the Shipping Act of 1984 agreements are not approved by the Commission. They are filed and unless the Commission takes action to delay or prevent their effectiveness, they become effective 45 days after the date they are filed.

The normal review period of 45 days can be extended if the staff requests additional information. The Commission also has the authority to seek injunctive action in the district court on the basis of demonstrating that the agreement will reduce competition to the extent of resulting in an unreasonable increase in rates or an unreasonable decrease in service. The burden of convincing the court that an agreement will produce one or both of the above results is on the Commission. The legislative history of the Shipping Act of 1984 makes it clear that Congress did not intend that the Commission seek injunctive action except in exceptional and extreme situations. As of the initial effective date of the Act and the close of fiscal year 1984, a period of about 3½ months, no action was taken by the Commission to seek an injunction.

In order to prepare for the new legislation, agreement processing procedures were established prior to its effective date. The Bureau of Agreements and Trade Monitoring was restructured to meet the rigid statutory demands of time so that

agreements could proceed rapidly through the system. At the same time, it was also necessary to ensure the existence of a staff organization with the ability to monitor conditions in various important trades to prevent excessive market power which could result in an unreasonable increase in rates or unreasonable decrease in service.

Under the new law when agreements are initially filed with the Commission they quickly flow through a reception procedure. They are receipted, numbered, examined for technical compliance with the administrative aspects of the Commission rules, and a notice of the agreement is prepared for forwarding to the Federal Register. The law requires that such notice be forwarded to the Federal Register not later than seven days following the date the agreement is filed.

The new statute gives the Commission the authority to reject any agreement which fails to conform with its regulations. Thus far the Commission has not rejected any agreements for technical rule deficiencies. Rather, every effort is made to work with the filing parties to quickly correct deficiencies on an informal basis. This avoids imposing unnecessary burdens upon the industry and obtains compliance in a more expedited manner.

Under the new legislation, once the initial stages of agreement processing are complete, a notice is forwarded to the Federal Register inviting public comment. This notice normally is published on a 10 or 15 day public comment basis, depending upon the relative importance of the agreement. Under the old law once a public protest against approval of an agreement was filed,

an ex parte situation was created whereby the Commission's staff could not discuss the agreement provisions with any of the involved parties without their opponents being privy to the same record. However, under the new law no ex parte situation is created because the Commission cannot prevent an agreement from becoming effective on its own but rather must seek a court injunction. One of the primary benefits of this situation is the staff's ability to negotiate issues with the parties to agreements on an informal basis, thereby frequently resolving issues without the necessity of a long, protracted and costly hearing.

The new statute does provide for procedures whereby the Commission can shorten the otherwise prescribed 45-day review period between the time an agreement is filed and its effective date. Specifically, it is authorized to shorten the review period to as little as 14 days after notice in the Federal Register. Additionally, the statute also allows the Commission to extend the 45-day review period in situations where the Commission believes that additional review time is necessary in order to obtain additional information to fulfill its regulatory responsibilities of agreement review. During the first 3½ months under the new Act, the Commission extended the 45-day review period in only four situations involving a total of 13 agreements. However, 25 agreements were handled on a shortened review basis. Most of these were agreements considered to be of a less significant nature.

The initial impact of the Shipping Act of 1984 on the agreements process can be seen in the following comparison of agreement activity immediately prior to and after the effective date of the Act. In the approximate 8½ month pre-1984 Act period, (October 1, 1983 to June 17, 1984) 108 agreements were on file with the Commission pending disposition at the start of the fiscal year, 192 were received during the period, making a total of 300. Of these, 18 were withdrawn, 10 were rejected, 8 were determined not subject to the act, 32 were terminated by the parties, 226 were approved or conditionally approved with changes and 5 were in the category of miscellaneous completions. This accounts for 299 agreements, leaving 1 pending disposition at the end of the fiscal year. (This involved an effective Labor-Management agreement which is the subject of a formal complaint.)

On June 18, 1984, the new Act took effect. During the 3½ month period of the fiscal year 108 agreements were filed with the Commission. Of these, 4 were withdrawn, 1 was determined not subject to the Act, 3 were terminated by the parties, 2 were approved (domestic agreements approved under the Shipping Act of 1916), and 98 were permitted to become effective pursuant to the statute. At the end of the fiscal year, a total of 55 agreements were pending disposition by the Commission.

The Bureau of Agreements and Trade Monitoring has been for some time developing and using work tracking systems on a fully, automated basis. Future plans call for the introduction of personal computers to improve the Bureau's monitoring capabilities.

## **DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES**

### **Transatlantic Trade**

During fiscal year 1984, the conferences in the North Atlantic trade attempted to stem the downward slide of rates which they experienced during the past few years. Beginning in November 1983, the North Atlantic east and westbound conferences implemented a series of general rate increases in an attempt to recapture ground lost through the gradual erosion of freight rates since the beginning of 1982. The position of the conferences was strengthened by the approval of their intermodal authority amendments and the addition of a previous independent carrier, Trans Freight Lines.

Subsequent to the passage of the Shipping Act of 1984, the transatlantic trade was the first to experience a reorganization of the conference system. In August 1984, two new conferences, one eastbound and one westbound, were established to replace 7 conferences in the North Atlantic trade and 2 conferences in the South Atlantic trade. These new conferences became effective on October 12, 1984, replacing a total of 9 previously existing conferences.

During fiscal year 1984, three major carriers operating in the trade began implementing expansion plans by the introduction of larger vessels and new services in the trade. Atlantic Container Line introduced the first of 5 large G-3 vessels in the trade. Barber Blue Sea Line introduced 3 new large Ro/Ro vessels

in its round-the-world service and began to phase out less efficient vessels. United States Lines started to display the first of its new larger vessels. United States Lines intends to operate an eastbound round-the-world service. Another large infusion of new capacity came from Evergreen Line, which began using 16 vessels in east and westbound round-the-world services.

Four of the conferences serving the Mediterranean Sea area and the U.S. Atlantic were planning to merge at the end of fiscal year 1984. Specifically, those conferences serving the U.S. inbound portion of the trade expect to merge into a single rate group. It is expected that more conferences will consider consolidation or merger which should increase their operating efficiency and at the same time allow substantial administrative economies.

In the North Atlantic/Europe trade, a space charter agreement between Star Shipping A/S and Atlantic Cargo Services AB (No. 217-010603) was filed and became effective under the 1984 Act. In the South Atlantic-Gulf-Caribbean/Europe trade, the CAROL Lines Joint Service (No. 10168) was extended under the 1916 Act; and the former Gulf Europe Express Service arrangement (No. 10266) was reconfigured into a space charter/rationalization agreement and extended under the 1916 Act. In the West Coast/Europe trade, the Johnson Scanstar Joint Service (No. 9973) was extended under the 1916 Act; the former Euro Pacific Joint Service (No. 9901) was reconfigured into a combination space charter/joint service arrangement and extended under the 1916 Act; and a new joint service between Italia Line and d'Amico Line (No. 10482) was approved under the 1916 Act.

## **Transpacific Trade**

Fiscal year 1984 was dominated by a severe cargo imbalance between the eastbound and westbound trades. The continuing strength of the U.S. dollar and an expanding economy fueled import demand, while American exports experienced a slackening of demand. As a result, incoming vessels tended to be laden to capacity, and outgoing vessels commonly sailed with large volumes of unused cargo space. The continued deterioration of the westbound trade also contributed to the logistical problems of many carriers. For example, the demand for empty containers in certain areas of the Far East often conflicted with the supply made available from incoming westbound cargoes.

Diminished cargoes combined with a proliferation of transpacific carriers, prompted the dissolution of the sixty-one year old Pacific Westbound Conference (PWC). The Conference's cargo share had fallen sharply in recent years, and the PWC's membership of ten included only one-third to one-quarter of the total number of carriers operating within the Conference's scope. Competitive pressures applied by non-Conference carriers and independent actions taken by PWC lines interacted with what many carriers characterized as an antiquated, expensive, and Bureaucratic conference structure. This situation resulted in an understanding near the end of fiscal 1984 to dissolve the PWC on November 1, 1984.

The immediate cause of this action was apparently a dispute over reefer pricing levels, but it appears that many carriers had

concluded that the PWC could no longer serve the purposes of the membership. Although the dissolution was to result in independent status for all operators as of November 1, it was anticipated that an attempt would be made to develop some type of more flexible framework on which to build a new conference. Further, it is expected that the demise of the PWC will afford the trade an opportunity to consolidate and merge its geographic scope with that of other conferences in the transpacific westbound trade.

Entry into and exit from the transpacific trades continued to be fluid during fiscal year 1984. Some carriers introduced or upgraded services in response to high eastbound cargo levels, while others experienced severe financial difficulties, including bankruptcies, partly as a result of weak westbound carryings. A new factor that promises to increase the current westbound capacity levels began to make its presence felt in July 1984: Evergreen Line's Round-the-World Service (RWS). By 1986, Evergreen will have assigned twenty-four vessels of 2,728 twenty-foot equivalent container units each to that service, and twelve of these will cross the Pacific in a westbound direction. Observers fear that the current situation will be greatly exacerbated, and that the survival of a number of weaker carriers may be at stake. A second RWS was being planned as the fiscal year closed, but it is reported that this new service of United States Lines will operate only in the eastbound direction.

Another matter that had some impact on the transpacific trades concerned Philippine government attempts to impose a

cargo-sharing regime on the bilateral trade with the United States. Pressure exercised by the Commission appears to have been a major factor in the alleviation of this problem, and shippers have expressed widespread support for Commission actions directed toward the preservation of free trade.

Finally, it should be noted that a number of rationalization ventures had been implemented or were rumored to be in the late planning stages as the fiscal year drew to a close. The major factors encouraging such ventures are trade conditions and the opportunities presented by the Shipping Act of 1984.

This trade probably has had more new inter-carrier activity than any other since the 1984 Act became effective. Toward the conclusion of the 1916 Act, the Commission approved a new space charter/rationalization agreement between Nippon Yusen Kaisha and Showa Line in the U.S. West Coast/Korea-Taiwan-Hong Kong trade (No. 10500). A modification to authorize chartering on a reservation/dedication basis and to indefinitely extend the American-flag Common Carrier Charter Agreement (No. 10420) was filed at the conclusion of the fiscal year.

In addition, a number of new space charter, rationalization and joint service agreements were filed and became effective under the 1984 Act, including a new space charter/rationalization agreement between Neptune Orient Lines and Orient Overseas Container Line (No. 213-010601), which authorizes the operation of a fleet of up to seventeen 2550-TEU vessels in the U.S./Australasia trade; new joint service in the Pacific Northwest/Japan-Korea trade among Westwood Shipping Lines, Partrederiet

Hoegh Miranda and Partrederiet Hoegh Minerva (No. 207-010602); and a new 9-vessel space charter/rationalization arrangement (No. 217-010614) between Seawinds and the East Asiatic Company.

### **Africa**

The African trade continues to exhibit a trend whereby national-flag carriers in Morocco, the Cameroons and the Ivory Coast charter space westbound on existing non-African-flag carrier services. Although this type of agreement in the past was limited to charters between U.S.-flag carriers and African-flag carriers, the first arrangement involving a third-flag carrier in the Ivory Coast trade (No. 10494) was filed during the fiscal year and was approved under the 1916 Act. Such arrangements facilitate commercial participation in U.S. commerce by developing nations' national-flag carriers, while deferring the substantial capital commitments that would be otherwise necessary in deploying their own national-flag vessels until such time as they have acquired commercial experience in these trades. At this juncture, it is anticipated that a growing number of similar "third-flag" space charter arrangements in LDC trades will be filed, particularly since these arrangements can serve as vehicles whereby experienced third-flag operators can participate in the carriage of substantial amounts of the cargo. Two other similar agreements in the Cameroon trade involving U.S.-flag carriers (Nos. 10477 and 10480) were also approved under the 1916 Act.

## South America

The South American trades were very active during fiscal year 1984.

The ten revenue pooling, sailing and equal access agreements in the U.S./Argentine-Brazil trades (Nos. 9847, et al.) engendered considerable controversy under both the 1916 and 1984 Acts in connection with the Commission's review of the modifications which were filed to revise the agreements' terms and extend their duration. These filings elicited adverse comment from both shipper and carrier interests in these trades. Although these agreements raised differing substantive issues under the two Acts, the central problem related to the effects of the cargo reservation policies of our trading partners on third-flag carriers operating in these trades, both with regard to the third-flag operators themselves as well as the U.S. shippers who prefer their services. The agreements were initially scheduled to expire December 31, 1983, and, to avoid the disruptive impact that a lapse of these agreements would have on these trades, the Commission authorized two short-term extensions in order to allow sufficient time to assess the difficult issues involved, particularly in the light of the significantly different standards which would be applied under the 1984 Act. Significantly "toned-down" versions of these agreements were subsequently filed under the 1984 Act, which nonetheless drew a new round of shipper and carrier opposition, and resulted in the Commission formally requesting additional information under section 6(d) of the 1984 Act in order to more fully assess the

agreements' competitive effects under the new "general standard." After careful analysis of the issues of fact and law presented by the general controversy surrounding these agreements, the Commission determined not to take any action to further delay or prevent the agreements' effectiveness, deciding to investigate conditions affecting U.S. foreign commerce in these trades under section 19 of the Merchant Marine Act of 1920.

#### **TARIFF AUTOMATION**

In September of 1984, a Task Force headed by Vice Chairman James Carey was formed to explore the feasibility of an Automated Tariff Filing and Information System (AFTI). Since 1961 when foreign tariffs were required by statute to be filed with the Commission, the annual volume of filings has increased more than tenfold. It is projected that more than 600,000 tariff pages will be filed during fiscal year 1985, most of which will modify existing pages. The Commission issued a report in March 1983, which summarized the results of several surveys of shippers, carriers, conferences, and freight forwarders. That report demonstrated widespread interest within the maritime community for automated filing and retrieval of tariff information.

On November 14, 1983, the Commission issued a Notice of Inquiry pertaining to implementation of an electronic tariff filing. Comments received from members of industry and government indicated significant interest in developing an automated tariff filing and information system which would be

responsive to the needs of both the public and private sectors. To facilitate electronic filing of tariffs, the Commission, since June 1983 has accepted hard copy machine output of information electronically transmitted to a tariff watch service terminal located within the Commission's offices.

The Task Force is now reviewing the possibility of developing a pilot automated tariff filing system. This involves defining the needs of industry and government. Several objectives have been established for any eventual system: 1) it should be operated by the private sector but under Commission control; 2) it should be financially self-sufficient over the long-run, with the system being paid for through user fees charged to users of the system; 3) the system should ultimately enhance competition within the industry through improved availability of pricing information; and 4) the system should not supplant existing private sector firms providing tariff watch services.

### III

#### SIGNIFICANT COMMISSION ACTIVITIES DURING THE YEAR

The Commission's statutory responsibilities are chiefly carried out through various bureaus and offices within the agency. Six offices are directly responsible to the Chairman -- Office of Administrative Law Judges, Office of the General Counsel, Office of the Secretary, Office of Policy Planning and International Affairs, Office of the Managing Director and Office of Equal Employment Opportunity. Four operating bureaus report to the Director of Programs and are responsible for the Commission's regulatory programs. The entire Commission receives management and administrative support from other Commission offices. Appendix A indicates the Commission's organization at the close of fiscal year 1984.

#### OFFICE OF THE SECRETARY

The Office of the Secretary is responsible for preparing a regular weekly agenda of matters subject to consideration by the Commission and recording subsequent action taken by the Commission on these items; receiving and processing formal complaints involving violations of the shipping statutes and other applicable laws; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving and responding to subpoenas directed to Commission personnel and/or records; administering

the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; authenticating instruments and documents of the Commission; issuing agency publications and documents related to formal proceedings before the Commission; and compiling and publishing bound volumes of Commission decisions. The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, the ongoing evaluation of the efficiency of the Commission's organizational structure, and implementation of legislative changes to the shipping statutes.

During fiscal year 1984, this Office finalized compilation of Volume 23 of the Commission's decisions; reviewed regulations implementing the Freedom of Information, Privacy, and Government in the Sunshine Acts; revised rules of procedure due to legislative changes and revised procedures for adjudication of small claims; assumed control of the agency's procurement, and administrative and management services activities; and supervised development of the agency-wide word processing system.

#### **Informal Dockets Activity**

This Activity is responsible for the initial adjudication of claims filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the United States. These claims must be predicated upon violations of the Shipping Act of 1984, or the Intercoastal Shipping Act, 1933, for

which reparation of less than \$10,000 is sought. The vast number of claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers. During fiscal year 1984, the Informal Docket Activity received 56 new cases and issued orders or decisions disposing of 58 informal docket claims.

#### **Office of Informal Inquiries and Complaints**

This Office coordinates the informal complaint handling system throughout the Agency. The Office processed 973 complaints and information requests during Fiscal Year 1984, nearly 20% more complaints and inquiries than during the previous year. From this activity, complainants recovered nearly \$262,000 through savings and refunds in fiscal year 1984.

The Office acted as liaison between shippers, carriers, forwarders, conference executives and the other offices and bureaus within the Agency, enabling meetings with industry representatives and appropriate Commission officials.

During the latter part of the year, the Office was active in informing the maritime industry about the new Shipping Act of 1984. During one month alone, over 80 separate requests for information about the legislation were processed.

#### **Office of Energy and Environmental Impact**

This Office ensures Commission compliance with the National Environmental Policy Act of 1969 and the Energy Policy and Conservation Act of 1975. These Acts require the Commission to

complete analyses of the energy and environmental aspects of all agreements and docketed proceedings before it. Where Commission action is likely to have a significant impact upon energy conservation or the environment, the Office is called upon to complete an analysis of the situation, and when necessary, to prepare energy and environmental impact statements. During fiscal year 1984, the Office reviewed 210 agreements and 41 docketed proceedings. Of these, 179 were categorically excluded from any environmental analysis, 62 required no formal action, and analysis of the remaining 10 resulted in "findings of no significant impact." It was not necessary to prepare any formal energy or environmental impact statements during the year.

#### **Administrative Services Activity**

This Activity was reestablished this fiscal year under the Office of the Secretary, after the Office of Management Services was dissolved. This Activity provides and administers physical resources and facilities support for the Commission and its field offices. It is responsible for: managing Commission space, property, supply, communications, and mail operations; furnishing contracting, procurement, duplicating, printing, and graphics services; safety and emergency evacuation; and, transportation and parking control.

Although in existence for less than a full quarter of fiscal year 1984, the Activity was responsible for reactivating the Commission's micrographics services contract and program, along with implementing Phase I of the Commission's ADP procurement

plan. The Activity is scheduled to: re-solicit the Commission's Reporting Services contract; complete the remaining phases of the Commission's ADP procurement plan; and, automate the property/inventory, communications, parking, and supply functions of the Office.

#### **Management Analysis Activity**

This Activity was also reestablished under the Office of the Secretary this fiscal year due to the dissolution of the Office of Management Services. This Activity is responsible for obtaining Office of Management and Budget clearances of reporting and recordkeeping requirements imposed on the public, and otherwise implementing the Paperwork Reduction Act of 1980. The Activity also is responsible for records management, conducts internal management studies and audits to assess efficiency, effectiveness, and economy in the management of agency resources, and determines if desired program objectives are effectively achieved. The Activity acts as liaison with other government agencies with respect to Federal Emergency Preparedness, the Federal Civilian Work Force Productivity project, the Unified Agenda of Federal Regulations, the Catalog of Federal Domestic Assistance, and the U.S. Government Manual.

In fiscal year 1984, the Activity: participated in an information/automation requirements analysis project; conducted a study of contracting practices under OMB Circular A-76 including printing/photocopying and data processing; performed an internal controls/vulnerability assessment and certification; and, audited the agency's travel program and personnel actions.

### **Final Decisions of the Commission**

During fiscal year 1984, the Commission heard oral argument in three formal proceedings and issued decisions concluding 25 formal proceedings. Seven formal proceedings were discontinued or dismissed without decision (including determinations not to review Administrative Law Judge orders terminating proceedings). Twelve Administrative Law Judge initial decisions in formal proceedings became administratively final upon passage of the time for the Commission to determine whether to review.

The Commission also concluded 137 special docket applications and 58 informal dockets involving claims against carriers for less than \$10,000.

In rulemaking proceedings, the Commission issued seven final rules and discontinued eight proceedings without decision. Certain of these rulemakings were instituted to implement the Shipping Act of 1984, while several additional rulemakings initiated this fiscal year to implement portions of the new Act will be finalized early in fiscal year 1985.

### **OFFICE OF ADMINISTRATIVE LAW JUDGES**

Administrative Law Judges preside at hearings held after receipt of a complaint or institution of a proceeding on the Commission's own motion.

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 whenever the ends of justice would be served thereby; 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 fiscal year 1984, 51 proceedings were pending before Administrative Law Judges. During the year, 172 cases were added, which included 2 proceedings remanded to Administrative Law Judges for further proceedings. The judges held 26 prehearing conferences, conducted hearings in 12 cases, and issued 18 initial decisions in formal proceedings, and 135 initial decisions in special docket applications.

#### **Commission Action**

The Commission adopted 10 formal decisions and 121 special docket decisions.

#### **Decisions of Administrative Law Judges (in proceedings not yet decided by the Commission)**

Docket No. 83-48 - Alaska Maritime Agencies, Inc., et al. v. Port of Anacortes, et al. Twenty-four complainants alleged that thirty-two respondents violated sections 15, 16 and 17 of the Shipping Act, 1916, by filing tariffs which would have held agents liable as principals for certain port/terminal charges. The respondent denied the allegations. The parties were allowed

to enter settlement agreements which called for the filing of new tariffs with which all parties agreed so that upon approval by the Commission the complainants would file a motion to withdraw the complaints and dismiss the proceeding. This proceeding is a good example of a case in which the thorough development of the issues in the early stages of the case by prehearing and close supervision, resulted in a settlement that saved great time and expense in discovery, trial, etc.

Docket No. 83-50 - Jacksonville Maritime Association, Inc., Amoco Transport Company and McGiffin & Company, Inc. v. The City of Jacksonville. The complainants alleged that the City of Jacksonville's ordinance, providing for a user fee on vessels anchored in storage over 58 hours in the Saint John's River, was in violation of section 17 of the Shipping Act, 1916, which requires that every person subject to the Act establish, observe, and enforce just and reasonable regulations and practices related to or connected with the receiving, handling, storing or delivering of property. Five ships of the complainants were subjected to the user fee. Delta Steamship Lines, Inc., Trailer Marine Transportation Corporation, and Crowley Towing and Transportation Co. intervened as additional complainants on the possibility that in the future their ships would be subjected to the user fee. Hearing Counsel also intervened.

It was found that the language of the user-fee ordinance was imprecise; that as to the five specific vessels, the City was not furnishing terminal facilities, and therefore was not an "other person" subject to the Act; the complaint was dismissed as to the five vessels; the complaint was not dismissed as to possible use

of terminal facilities by vessels receiving, handling, storing, or delivering of property but should the user fee ordinance be amended or clarified by the City so as to provide that it did not apply to common carriers by water engaged in the normal course of their business of receipt or delivery of property, then the complaint would be dismissed in its entirety.

Docket No. 84-7 - Tariff Compliance International (Acting on Behalf of A & A International, a Division of Tandy Corporation) v. The Kawasaki Kisen Kaisha, Ltd., Steamship Company. This case involved an issue of tariff interpretation which was resolved in favor of the carrier because of a failure of proof on the part of complainant.

Docket No. 84-10 - The Coca-Cola Export Corporation v. Peruvian Amazon Line. In another case involving an issue of tariff interpretation, the question of whether cargo on pallets could receive the palletized rate even though the pallets were then placed in boxes was answered in the negative.

Docket No. 84-14 - Fil-American Trading Co., Inc. v. The Maersk Line Steamship Company. This case involved the proper application of a tariff rule in the measurement of shipments of palletized cargo. The complainant was allowed to amend his complaint once but when, late in the proceedings, the complainant sought to amend the complaint again, permission was denied and the case ultimately was dismissed in part because of the statute of limitation and in part because of failure of proof.

Judges also issued initial decisions in Docket Nos. 82-49, 82-54, 83-1, 83-7, 83-9, 83-12, 83-14, 83-23, 83-25, 83-28, 83-31, 83-39, 83-47, Special Docket Nos. 1038, 1040, 1044, 1060,

1061, 1067, 1070, 1071, 1075, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1086 through 1114, 1116 through 1128, 1130 through 1151, 1153, 1154, 1155, 1156, 1157, 1158, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1169 through 1185, 1187, 1188, 1189, 1190, 1192, 1193, 1194, 1196, 1197, 1198, 1199, 1200, 1203, 1204, 1205, 1208, 1209, 1210, 1212, 1213, 1214, 1217, 1219, and 1223 described under "Decisions of the Commission."

### **Pending Proceedings**

At the close of fiscal year 1984 there were 58 pending proceedings, of which 3 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

### **OFFICE OF THE GENERAL COUNSEL**

The Office of the General Counsel advises the Commission on legal issues and provides it with legal counsel on matters under consideration. The Office reviews the legality of proposed Commission rules, drafts proposed rules to implement Commission policy, renders formal and informal written opinions on pending adjudicatory matters, and prepares draft decisions and orders for Commission ratification. The Office of the General Counsel is also responsible for defending and enforcing Commission orders in court. This litigation work largely consists of representing the

Commission upon petition of review of its orders filed with the Circuit Courts of Appeal. This Office also represents the Commission or its employees before other tribunals where the Commission's interest may be affected by litigation. Finally, the Office is responsible for preparing or presenting testimony to Congress on various maritime regulatory matters. The following is a brief summary of the Office's activities during the last fiscal year.

### **Adjudicatory Matters**

Docket No. 78-32 - Pacific Westbound Conference - Equalization Rules and Practices, 22 S.R.R. 946 (1983). The Commission found that the Pacific Westbound Conference's equalization and absorption practices, insofar as those practices affected the Port of Portland, Oregon, did not violate section 205 of the Merchant Marine Act of 1936 or section 15, 16 and 17 of the Shipping Act, 1916. The agency reaffirmed that section 8 of the Merchant Marine Act of 1920 does not create a basis for Commission investigations of carrier equalization practices. The Commission also commented on the general status of equalization practices and the historical concept of "naturally tributary" cargo under the statutes administered by the FMC.

Docket Nos. 79-2 and 79-3 - Agreement No. 10293 and Agreement No. 10295, 22 S.R.R. 965 (1984). The Commission determined that Andino Chemical Shipping Co. and Maritima Transligna S.A. were acting as common carriers by water in the United States Colombia trades in that they provided a regular service to the shipping public, issued sailing schedules, took

responsibility for the cargo and provided the ship and controlled its loading and navigation. The Commission also found that these carriers had implemented unapproved agreements with Flota Mercante Grancolombiana in the Colombian trade and that these agreements could not be approved under the standards of the Shipping Act, 1916.

Docket No. 79-83 - Investigation of Unfiled Agreements in the U.S. North Atlantic Trades, 22 S.R.R. 1064 (1983). The Commission terminated an investigation into unapproved rate-fixing, on the ground that no useful regulatory purpose would be served by continuing it. Respondents had paid \$50 million to shippers in settlement of civil antitrust actions. They had also cancelled or substantially modified the discussion agreements that allegedly had facilitated their unlawful rate-fixing, and had implemented strict new procedures for administration of conference business which were designed to ensure antitrust compliance. Finally, the Commission's staff had obtained and reviewed information regarding the respondents' operations that was sufficient to meet any foreseeable regulatory need.

Docket No. 82-3 - South Atlantic-North Europe Rate Agreement (Agreement No. 9984-23) Gulf European Freight Association (Agreement No. 10270-2), 22 S.R.R. 1047 (1984). The Commission approved Agreement No. 10270-2 including its U.S. microbridge authority for an unlimited term, subject to modifications clarifying its geographic scope and deleting its minibridge authority, to be filed with the next amendment to the agreement.

Docket No. 83-7 - Atlantic & Gulf/West Coast of South America Conference, et al. v. Empresa Maritima Del Estado, 22 S.R.R. 791 (1984). The Atlantic & Gulf/West Coast of South America Conference filed a complaint contending that Empresa Maritima Del Estado had violated sections 15, 17, 18(b)(1) and 18(b)(4) of the Shipping Act, 1916. The presiding administrative law judge served an Initial Decision finding no violations. Upon review, the Commission adopted the Initial Decision. It found that there was no agreement between Empresa and any other carrier which would have been subject to the filing requirements of section 15. In addition, it found that Empresa had committed a technical tariff filing violation, but imposed no penalty.

Docket Nos. 83-9 and 83-12 - Prudential Lines, Inc. v. Farrell Lines, Inc., 22 S.R.R. 1054 (1984). The Commission found that Farrell Lines, Inc. has provided a service that was not authorized by the conference agreement to which it was a member and, therefore, had violated the tariff requirements of section 18(b)(1) and (3) of the Shipping Act, 1916. The Commission denied reparation to complainant, Prudential Lines, Inc., however, for failure to show a causal connection between the violation and its failure to carry the cargo moved by Farrell's service.

Docket No. 83-16 - Terry Marler and James Beasley d/b/a Titanic Steamship Line - Possible Violations of Section 3(a) of Public Law 89-777, 22 S.R.R. 798 (1984). In a proceeding instituted to determine whether respondents advertised or offered passage on a passenger vessel from a U.S. port without having first obtained a certificate of financial responsibility as

required by section 3(a) of P.L. 89-777 (46 U.S.C. 1817e), the Commission held that the publications circulated by respondents were "market tests" and not advertising within the meaning of the statute. The Commission held that the materials and circumstances surrounding the publications did not convey an intent to book passage or collect money. The proceeding was dismissed.

Docket No. 83-26 - Pacific Coast European Conference (Agreement No. 5200), 22 S.R.R. 629 (1984). The Commission instituted this proceeding to examine the lawfulness of the Conference's independent action provision regarding intermodal rates. The Commission found a 120-day advance notice provision on intermodal rate offerings to be contrary to the public interest within the meaning of section 15 of the Shipping Act, 1916 and ordered it to be deleted from the agreement.

Docket No. 83-45 - Actions to Adjust Or Meet Conditions Unfavorable to Shipping In the United States/Republic of the Philippines Trade, 22 S.R.R. 1143 (1984). This proceeding was instituted in response to certain allegations of unfavorable shipping conditions in the United States-Philippines trade. Following the withdrawal of the Philippine government order implementing the waiver program, the Commission discontinued this proceeding without prejudice to instituting a new proceeding should there be future indications of unfavorable conditions in this trade.

Docket No. 83-53 - U.S. Atlantic & Gulf/Australia - New Zealand Conference (Agreement No. 6200-24 - Application for U.S.

Intermodal Authority), 22 S.R.R. 1049 (1984). The Commission approved an application for U.S. intermodal authority on condition that no advance notice be required of individual intermodal offerings not covered by a Conference tariff, and that a provision in the agreement be deleted which would have authorized collective arrangements with inland carriers.

Docket No. 84-2 - Amendment of Certain Regulations Governing Common Carriers by Water in the Domestic Offshore Commerce of the United States, 22 S.R.R. 1195 (1984). This proceeding was instituted in response to a petition filed by Sea-Land Service, Inc., to eliminate the 60-day advance notice, financial data and rate-of-return regulations applicable to general rate increases by common carriers serving the U.S. Mainland/Puerto Rico and Virgin Islands domestic offshore trades. The Commission published Sea-Land's request as a proposed rulemaking to obtain the benefit of comments by affected interests on the practicality and legality of the suggestions. Commenters were divided on the desirability of the deregulation initiative. The Commission concluded that it could not adopt the rule changes and still comply with the requirements of the Intercoastal Shipping Act, as amended by Congress in 1978.

#### **Litigation**

National Association of Recycling Industries, Inc. v. American Mail Line, Ltd., et al., 9th Cir. No. 83-551, 730 F.2d 618 (1983). The United States Court of Appeals for the Ninth Circuit affirmed the dismissal of the plaintiffs' complaint under

the antitrust laws. Plaintiffs had contended that the defendant shipping lines' rates on wastepaper were unreasonably high and unjustly discriminatory in violation of the Shipping Act, 1916 and that the defendants were therefore liable for treble damages under the antitrust laws even though they had set their wastepaper rates pursuant to a Commission-approved conference agreement. Because the theory of law advanced by the plaintiffs threatened the viability of the Commission's authority under section 15 of the Shipping Act, 1916 to exempt price-fixing by shipping lines from the antitrust laws, the Commission filed an amicus curiae brief with the Court urging dismissal of the complaint. The United States Supreme Court subsequently denied the plaintiffs' petition for certiorari.

California Cartage Company, Inc. v. U.S.A. and FMC, 9th Cir. No. 83-7102, 721 F.2d 1199 (1983). The Court of Appeals reversed the Commission's determination in Docket Nos. 82-1 and 82-10, California Cartage Company, et al. v. Pacific Maritime Association, and held that operators of off-pier consolidation facilities had standing under the Maritime Labor Agreements Act, 1980 to challenge the reasonableness of assessments paid by their on-pier competitors to fund fringe benefits for on-pier employees. The United States Supreme Court denied certiorari.

Dart Containerline Co., Ltd. v. F.M.C., D.C. Cir. No. 82-12403, 722 F.2d 750, 22 S.R.R. 547 (1983). The Court of Appeals affirmed the Commission's conditional approval of an amendment which substituted a new party to agreement No. 9745. The Court initially rejected Dart's contention that the Commission did not have jurisdiction over the particular

amendment. It then concluded that the Commission did have the requisite authority to impose capacity limitations on the arrangement and that the limitations imposed were supported by substantial evidence.

Insurance Company of North America v. S.S. American Argosy, United States Lines and Transmodal Cargo Carriers, No. 83-7719, 2nd Cir. The Commission appeared as amicus curiae in appeal of a decision of the U.S. District Court for the Southern District of New York holding the S.S. AMERICAN ARGOSY, a United States Lines vessel, liable in rem for damage to cargo under an NVOCC bill of lading. The NVOCC bill of lading was for shipment from New York to Yemen. U.S. Lines carried the cargo from New York to Rotterdam where it was transshipped by the NVOCC via another carrier, and was discovered to be damaged upon arrival in Yemen. The District Court held the U.S. Lines' vessel liable in rem on the grounds that the vessel had "ratified" the NVOCC's bill of lading to Yemen by sailing with the cargo on board, citing a line of admiralty cases. The Court of Appeals reversed, holding that application of the admiralty concept of "ratification" to a situation involving common carrier liner service would be inconsistent with the Shipping Act, 1916 and the obligations of a regulated common carrier.

### **Legislative Developments**

The passage of the Shipping Act of 1984 was the primary focus of legislative activity during fiscal year 1984, but the agenda of the second session of the 98th Congress included other legislation of Commission interest.

On May 23, 1984, the Commission's General Counsel, Robert D. Bourgojn testified before the House Subcommittee on Merchant Marine on H.R. 1511, the so-called "Cargo Diversion" bill. H.R. 1511 addressed the issue of diversion of United States cargoes through ports in countries bordering on the United States. The Merchant Marine Committee reported the bill favorably. The measure was debated in the House and was defeated by a roll call vote. A companion measure in the Senate, S. 205, was not considered by the Senate Commerce Committee.

On October 30, 1984, the President signed H.R. 5833 into law. Section 3 of P.L. 98-595 amends the Shipping Act of 1916 and the Shipping Act of 1984. The amendments to the Shipping Act of 1984 were intended to correct certain technical errors and to clarify provisions of the new shipping statute. The amendments to the Shipping Act, 1916 removed the activities of foreign freight forwarders operating in the foreign trades of the United States from the ambit of that Act, thereby subjecting them only to the Shipping Act of 1984. As a result of the passage of P.L. 98-595, foreign freight forwarders will not be able to obtain Commission approval and antitrust immunity for concerted activities.

#### **Rulemakings to Implement the 1984 Act**

Following enactment of the Act, on March 20, 1984, the Commission was faced with the task of filling in the details so that the broad guidelines set out by Congress could become workable in practice. During this process, the Commission's

overriding concern was to establish an efficient and effective regulatory system which would result in a minimum of government intervention in the day-to-day operations of the ocean shipping industry. The Commission took the opportunity occasioned by the Act to completely reorganize its existing rules which were contained in Title 46 of the Code of Federal Regulations.

The Commission's new regulations covered the areas of ocean freight forwarders, service contracts, time/volume rates, tariffs, loyalty contracts, anti-rebating certifications, agreements, and U.S.-flag access to cross-trades. Because it would have been impossible to adopt final rules in these areas pursuant to normal Administrative Procedure Act rulemaking procedures prior to the effective date of the Act, the Commission issued interim rules pursuant to section 17 of the Act which were able to take effect immediately. These interim rules also served as proposed rules and the Commission solicited public comment on them. One hundred-eighty-seven comments were received from all segments of the ocean transportation industry.

Taking into account these comments, the Commission ultimately adopted final rules in fourteen separate docketed proceedings, all of which will become effective on or before December 15, 1984.

The following is a review of the major aspects of some of these final rules.

### **Service Contracts**

The final rule requires that a copy of a service contract and statement of its essential terms be filed simultaneously with

the Commission. Within 15 days of their submission, the Commission can return a contract or statement of essential terms which does not conform to its requirements. The parties then have 15 days to refile the document.

The essential terms may not be modified during the term of the contract except to the extent that there are express provisions for deviations set forth in the contract. However, service contracts may be terminated by mutual agreement of the parties at any time. If they are terminated, cargo already carried must be re-rated under the applicable tariff, unless an alternative procedure has been spelled out in the contract.

Though carriers and conferences must maintain contract shipment records for five years, they need not appoint a U.S. resident agent to do so.

When the Commission initially promulgated its interim rule in this area, it treated service contracts and time/volume contracts separately, with their own regulatory requirements. Emergency comments convinced the Commission otherwise, however, and, as a result, the final rule treats time/volume contracts as but a type of service contract. One important result of this approach is that non-vessel-operating common carriers are precluded from offering service contracts to shippers, though they can enter into them as shippers.

#### **Time/Volume Rates**

The final rule requires that, once a time/volume rate offering is accepted by one shipper, it must remain in effect in

the carrier's or conference's tariff for the time specified, without amendment. A shipper indicates its acceptance of such a rate by giving notice to the carrier prior to the first shipment. Notice may be accomplished by any method acceptable to the carrier. Records supporting time/volume rates must likewise be retained for a least 5 years.

### **Loyalty Contracts**

The Commission initially published an interim rule which prohibited the use of any existing loyalty contract after September 18, 1984, unless it was supported by a Business Review Letter (BRL) issued by the Department of Justice stating that Justice did not intend to prosecute the parties to the contract under the antitrust laws. At the time the interim rule became effective, there were 34 loyalty contracts on file with, and approved by, the Commission. Thirty-three of these involved conferences of carriers. All were cancelled prior to September 18, 1984.

The interim rule also proposed to make the BRL requirement applicable to new loyalty contracts filed after the 1984 Act became effective. However, upon reflection, the Commission decided to modify this procedure by deleting the mandatory BRL requirement in the final rule. The filing of a BRL was made permissive, with BRL's creating a presumption of legality under the Act.

This amended procedure leaves the Commission free to address the merits of individual loyalty contracts on a case-by-case basis, upon complaint or its own motion.

### **Shippers' Associations**

On May 23, 1984, the Commission published a Notice in the Federal Register stating that it did not, at that time, intend to issue any rules concerning the formation or operation of shippers' associations under the Shipping Act of 1984. The Commission noted that Congress indicated that the legal issues which arise from the formation of such entities are matters falling within the jurisdiction of other federal agencies. The Commission did state, however, that, to the extent that shippers' associations become involved in activities which may be subject to the Act, any matters arising therefrom would be addressed on an ad hoc basis.

### **Tariffs**

The basic requirement that common carriers in the United States foreign commerce file their rates and charges in tariffs with the Commission has remained basically unchanged under the 1984 Act. However, several important changes and clarifications in the tariff filing obligations of common carriers are reflected in the final rule. The regulations clarify that foreign-based non-vessel-operating common carriers (NVOCC's) in the U.S. foreign commerce are subject to the Shipping Act of 1984 and are, therefore, required to file tariffs with the Commission. Check sheets for updating tariff changes have been made optional, in response to many comments urging their retention. Similarly, carriers have been accorded the option of filing rates on

commodities otherwise exempted from tariff filing requirements by the 1984 Act.

The terminology and filing requirements applicable to intermodal tariffs have been substantially modified and streamlined. These changes not only reflect the provision of the 1984 Act which ended the requirement that inland carrier rate divisions be separately stated, but also the Commission's ongoing efforts to reduce the advance notice requirements for new or initial intermodal rate offerings. Carriers have also been permitted to file multiple tariffs in the same trade, subject to cross-referencing, to allow flexibility in the publication of port-to-port, intermodal and special purpose (e.g., class rates) tariffs. Similarly, more flexibility was permitted in intermodal tariff cargo origin and destination designations (allowing the use, e.g., of zip code designations).

However, in light of concerns of many commenters regarding potential rate cutting by state-owned carriers, the Commission determined that controlled carriers would be strictly held to the existing statutory notice provisions on rate changes, except in the context of conference rate actions where the controlled carrier was a member of the conference. In those circumstances, a conference can continue to file on behalf of a controlled carrier open rates or independent action rates on less than 30 days' notice.

## Agreements

The agreements' rules are intended to establish procedures which ensure an orderly and expeditious review of filed agreements in accordance with the statutory deadlines set forth in the Act. Format and organizational requirement for agreements have been established to facilitate the expedited review of agreements under the Act. These requirements as to form do not affect the substance of an agreement, and the rules allow parties the freedom to develop innovative commercial relationships. In addition, it is the policy of the Commission that parties to conference agreements are permitted to draft their own mandatory provisions in accordance with the requirements of section 5(b) of the Act. The rules also require that certain trade information accompany the filing of certain types of agreements. However, only that information which is necessary and relevant to the review of an agreement under the general standard is required. The rules also establish certain recordkeeping and reporting requirements to enable the Commission to fulfill its maritime regulatory responsibilities. The rules further the goal of avoiding the private and public cost of unnecessary regulation by exempting certain maritime agreements from filing requirements. Finally, the rules implement the Commission's policy that filed agreements must be complete and definite.

An Information Form is included as an appendix to the agreements' rules. The purpose of the Form is to obtain certain economic information concerning the parties to an agreement and the particular trade involved which is necessary and relevant to

the Commission's review of an agreement under the general standard. Information concerning the nature of the agreement, market share of the parties, market competition, service plans and foreign government involvement in the particular trade is required depending on the nature of the agreement. Parties may, if they wish, enumerate the benefits of the agreement. Parties are also required to identify certain reports and studies, to identify certain contact persons, and to certify the truth and completeness of the information provided.

#### **Section 13(b)(5)**

The final rules pertaining to this section set forth the factors which would indicate the existence of conditions which unduly impair access of a U.S.-flag vessel to a cross-trade. They also delineate the contents of any petition for relief under section 13(b)(5).

A proceeding under section 13(b)(5) may be initiated by the Commission either following a complaint by a U.S. carrier unable to compete in a foreign-to-foreign trade, or upon the Commission's own motion. In some situations, the problem may be more effectively resolved by diplomatic means, in which case the Commission may seek the assistance of the State Department.

The actual proceeding which will be conducted in such situations has been left flexible so that the Commission can move quickly to resolve petitions. After notice of the proceeding and an initial response period, the Commission can either issue a decision or order further hearings. The rule also sets out the various sanctions which the Commission can impose. If the

Commission does impose sanctions, that decision must be transmitted to the President who may, within 10 days, disapprove it for reasons of national defense or foreign policy.

#### **OFFICE OF POLICY PLANNING AND INTERNATIONAL AFFAIRS**

The Office of Policy Planning and International Affairs is responsible for a wide range of international affairs activities, strategic planning, policy briefings, economic analysis, public affairs projects and information systems to support the Commission in its statutory mission. In its planning function, the Office ensures that the Commission is aware of current developments and can anticipate future trends likely to affect liner shipping and the maritime trades. Major activities of the Office include: Monitoring the actions of foreign governments -- laws, decrees, and cargo preference policies -- affecting ocean shipping in the foreign trades; providing technical assistance regarding U.S. maritime regulatory policy in intragovernmental, government-to-government and multilateral discussions of international shipping policy; forecasting trade developments and world economic trends; and analyzing legislative actions, and operational and structural changes in the shipping industry that may influence the environment of international liner shipping. The Office carries on economic research and analysis, conducts studies, and develops trade information to enable the Commission to meet its regulatory responsibilities. The Office also provides expert economic testimony in the Commission's formal

administrative proceedings. Newly assigned Office functions include responsibility for developing and coordinating the Commission's data resources and information systems, speech preparation and other public affairs activities, including representing the Commission at public functions and in maritime forums.

### **Policy Planning Issues**

The following are major policy planning issues where the Office of Policy Planning and International Affairs was heavily involved during the fiscal year. With the exception of the Port Regulation Inquiry, expected to be concluded in FY 1985, Office involvement in these issues will continue for the foreseeable future.

### **Shipping Act of 1984**

Several provisions in the Shipping Act of 1984 are of particular relevance to the Commission's planning functions carried out by the Office of Policy Planning and International Affairs.

Section 6 sets forth the procedures for Commission review of all proposed and existing agreements. This section requires that proposed agreements be approved within 45 days after filing with the Commission or 30 days after publication in the Federal Register, whichever is later. Agreements can be approved on short notice, but the notice period must be no less than 14 days after the notice of the filing of the agreement is published in

the Federal Register. Subsection 6(g) pertaining to substantially anticompetitive agreements provides that, at any time after the filing or effective date of an agreement, if the Commission finds that an agreement is likely, by a reduction in competition, to result in an unreasonable increase in costs or an unreasonable reduction in service, it may seek injunctive relief in district court. However, the burden of proof is on the Commission and third parties cannot intervene in such cases.

Section 13(b)(5) empowers the Commission to investigate potentially unfair actions by a carrier or a foreign government that unduly impair access of a U.S.-flag carrier in the ocean trade between foreign ports and to take appropriate action, up to and including tariff suspension. The President may veto such Commission action, under section 13(b)(6), for reasons of national defense or U.S. foreign policy.

Section 18 requires that, for a period of five years following enactment of the Act, the Commission shall monitor the impact of this legislation on the international ocean shipping industry. A comprehensive analysis of section 18 and a review of progress to date is included at the end of the section on this Office.

### **Regulation of Ports and Marine Terminal Operators**

The Commission issued its "Notice of Inquiry and Intent to Review Regulations of Ports and Marine Terminal Operators" (Docket 83-38) in compliance with the Regulatory Flexibility Act's requirement to review Commission regulations periodically.

The Notice reflects the concern that regulation of the port industry be updated to keep pace with the changing legal, economic, and technological environment in which the industry operates. The Notice also addresses the need for continued antitrust immunity for the port industry. The Commission in the inquiry, presided over by Commissioner Robert Setrakian, invited comments from the port industry, the shipping public, and all interested parties. The results in this proceeding may necessitate certain amendments to the Commission's Final Rules for Marine Terminal Operations issued to implement the Shipping Act of 1984. Section 4 of the Act applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to discuss, fix, or regulate rates or other conditions of service and engage in exclusive, preferential, or cooperative working arrangements.

#### **Tariff Automation**

Section 8 of the Shipping Act of 1984 requires each common carrier in the U.S. foreign commerce, and conferences of such carriers, to file and maintain tariffs with the Commission except for bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste. The tariffs must indicate all rates, charges, classifications, rules, and practices between all points and ports on the route and on any through transportation route that has been established. At the beginning of the fiscal year, approximately 4,500 tariffs were on file at the Commission. New and replacement tariff pages are filed at a rate of nearly

600,000 annually and this number is expected to grow. Given this massive and increasing volume of tariff pages, the Commission has stepped up its planning efforts for an automated tariff system to facilitate the filing, retrieval and analysis of ocean freight tariffs. The Office of Policy Planning and International Affairs, in its study, "Tariff Automation: A Survey of Industry Views", concluded that there was widespread support for tariff automation in the shipping industry. Currently, under the direction of Vice Chairman James Carey, the Commission is conducting a study to determine the costs and benefits of such a system. The Office will remain actively involved in the planning process to implement an automated tariff system at the Commission to expedite the flow of tariff information.

### **International Affairs**

In our increasingly interdependent world, the actions of one nation can affect the vital interests of a trading partner or even a group of trading partners. As a consequence, the Commission must be cognizant of world political and economic events and remain abreast of technological developments that can dramatically reshape the structure of the liner shipping industry. Foreign governments have become more active in implementing all sorts of cargo sharing regimes, through laws and decrees, and by becoming increasingly involved in the pricing decisions and regulation of the activities of carriers and conferences operating in their liner trades.

The laws and decrees of foreign governments have gained the appearance of legitimacy with the entry into force of the UNCTAD Code of Conduct for Liner Conferences in October 1983. These cargo preference schemes often reserve large shares, or in some instances, specific commodities for transport by national-flag lines and the carriers of the reciprocal trading partner. Usually, such schemes provide for the use of third-flag carriers under a system of waivers. These trade restrictions serve to limit the options of shippers to select the carriers offering the lowest rates and the best service. The Commission has broad statutory authority, under section 19 of the Merchant Marine Act of 1920, to protect the interests of carriers and shippers in the U.S. foreign trades. Such authority has been recently exercised on a number of occasions to resolve complaints filed with the Commission. These section 19 cases are briefly discussed below.

The cargo preference regimes of foreign nations can also serve to bar the entry or restrict the operations of U.S.-flag carriers in the cross-trades. A new provision in the Shipping Act of 1984 empowers the Commission to impose retaliatory sanctions against the carriers of nations that discriminate against U.S.-flag carriers in the foreign-to-foreign trades. Specifically, under section 13(b)(5), the Commission has the authority to investigate potentially unfair actions by a carrier or a foreign government that unduly impair the access of a U.S.-flag carrier in the ocean trade between foreign ports and to take appropriate action, up to and including tariff suspension. This legislative provision will augment and strengthen the Commission's role in its efforts to preserve and protect an

efficient transportation system and ensure the carriage of cargoes at competitive rates in the liner trades.

During the year, Commission staff members served as technical advisors to the Interagency Maritime Policy Group. This government policy group is composed primarily of representatives from the Departments of State, Transportation, Commerce and Justice, and the U.S. Trade Representative and is designed to formulate and coordinate U.S. shipping policy. The Commission has also been represented by staff members in a technical capacity in U.S. discussions with European and Japanese government officials in the Consultative Shipping Group (CSG). The CSG members meet to discuss and seek solutions for problems facing the international shipping community. With the entry into force of the UNCTAD Liner Code, and the proliferation of cargo preference regimes, the CSG and the U.S. have continued their dialogue about approaches designed to maintain open and competitive access to the world's liner trades. The Commission has also been represented by the staff in bilateral shipping policy discussions between U.S. and foreign government officials from Ecuador, Japan and Malaysia during the year. The Commission was actively involved in a number of ways in the field of international affairs during fiscal year 1984. These activities are also expected to continue into fiscal year 1985 and beyond. The principal areas of concentration are outlined below.

## Restrictive Cargo-Sharing Decrees and Laws of Foreign Governments - Section 19 Activities

The trend towards cargo preference legislation to develop and maintain national-flag fleets has been increasingly evident during the past decade. In large part, this can be attributed to the stimulus of the UNCTAD Code -- with its emphasis on cargo sharing -- which entered into force in October 1983. The United States can expect continued pressures from its trading partners in the developing world to conclude all sorts of bilateral maritime agreements that reserve significant shares of their liner trades for the national-flag carriers. Several foreign governments have enacted laws, decrees, and other cargo preference legislation or implemented onerous trade restrictions on oceanborne cargoes which discriminate against U.S. and third-flag carriers in the U.S. liner trades. These limitations have, in certain instances, served to reduce the options of shippers to obtain the best available service at the most favorable rates; thereby adversely affecting the U.S. export and import commerce. Complaints about such discriminatory activities have resulted in Commission actions designed to remove conditions unfavorable to shipping in the U.S. liner trades. Under section 19 of the Merchant Marine Act, 1920, the Commission possesses significant authority to retaliate against all acts of discrimination by foreign carriers and governments. The cargo preference regimes of foreign nations may also serve to limit the activities -- or bar the presence -- of U.S.-flag carriers in the trades between foreign ports. Under its new authority contained in section 13(b)(5), the Commission can now protect our carriers seeking to

enter the cross-trades. While this authority has yet to be tested, it represents a significant addition to the Commission's powers to safeguard U.S. foreign trade interests.

a. Section 19 Activities During The Year

The Commission has employed its section 19 authority in several instances during fiscal year 1984 to respond to complaints about discriminatory actions by foreign carriers and governments in the U.S. liner trades. These cases involved our trades with the Philippines, Venezuela, Trinidad and Tobago, Ecuador, and Guatemala.

The Philippine Maritime Industry Authority (MARINA) was instructed in Executive Order 769 to ensure that 80 percent of all Philippine export and import liner cargoes -- not already reserved as government-sponsored cargo under Presidential Decree 1466 -- be reserved for the national-flag carriers of the Philippines and its bilateral trading partner, and shared equally. MARINA issued Memorandum Order No. 3 in July 1982 to implement this cargo sharing scheme in the U.S./Philippine liner trades. A great number of complaints by shippers and third-flag carriers about the Philippine government's discriminatory actions ensued and resulted in a section 19 proceeding by the Commission in Docket No. 83-45. Subsequently, MARINA revoked M.O. No. 3 and the Commission discontinued Docket 83-45 in August 1984. In doing so, however, the Commission decided to continue to monitor the Philippine cargo preference laws and decrees -- especially P.D. 1466 -- to protect the interests of carriers and shippers in this trade. The Commission also acted on petitions filed by

Delta Steamship Lines, Inc. and Coordinated Caribbean Transport, Inc., in 1982, and found in Docket 82-58 that these U.S.-flag carriers were generally adversely affected by the Venezuelan government's cargo reservation law. The Commission considered imposing remedial sanctions in response to these complaints under section 19. However, the proceeding was suspended on January 14, 1983, pending the outcome of diplomatic negotiations to resolve this issue. These negotiations resulted in the grant of associate carrier status for the two U.S.-flag lines by Venezuela on an interim basis pending the conclusion of a formal bilateral maritime agreement between the U.S. and Venezuela. Concorde/Nopal later filed a complaint with the Commission alleging that Venezuelan government exchange controls made all import liner cargoes subject to Venezuela's cargo reservation decrees and effectively precluded their carriage by third-flag lines in the trade. Following consideration of this complaint, and subsequent to further diplomatic efforts, Concorde/Nopal was also granted associate status in the trade by the Venezuelan government on a provisional basis pending conclusion of a maritime agreement between the U.S. and Venezuela. On December 30, 1983, the Commission discontinued its rulemaking proceeding under Docket 82-58 following Concorde/Nopal's request that action on its petition be suspended.

In three other undocketed proceedings, the Commission considered section 19 actions during fiscal year 1984. A petition was filed by the U.S. Atlantic and Gulf Southeastern Caribbean Conference on February 16, 1984, pursuant to section

19, alleging that the Port Authority of Trinidad and Tobago had established a docking system at Port of Spain under which vessels of the West Indies Shipping Corporation Ltd. (WISCO) received priority berthing. The petition informed the Commission that this created special conditions unfavorable to shipping in the U.S. foreign trade and resulted in discriminatory burdens on U.S.-flag vessels at Port of Spain. Following withdrawal of this petition by the U.S. Atlantic and Gulf Southeastern Caribbean Conference, the Commission issued an Order, on June 29, 1984, discontinuing any further proceedings in the case. A petition was filed by Coordinated Caribbean Transport, Inc. (CCT) on December 12, 1983, pursuant to section 19, and requested that the Commission issue rules to remedy conditions unfavorable to shipping in the U.S./Ecuador trades. The petition alleged that the Government of Ecuador had acted discriminatorily in denying CCT the right to call at the Port of Guayaquil. CCT complained that this action discriminated in favor of Ecuadorian-flag carriers. Following consideration of this complaint by the Commission, and diplomatic efforts by the Department of State, CCT withdrew its petition on April 17, 1984. The Commission, thereafter, discontinued its proceeding on May 29, 1984. A petition filed by the Guatemala, Honduras and El Salvador Rate Agreement on July 12, 1984, also pursuant to section 19, called for an investigation of the trading practices of Central America Trailers (CAT Line). The Commission rejected this petition on August 15, 1984.

As the fiscal year came to a close, two other section 19 proceedings were being considered by the Commission. In Docket 84-33, the Commission on its own motion initiated a proceeding pursuant to section 19 to investigate whether conditions unfavorable to shipping exist in the U.S. trades with Argentina and Brazil. In a separate, but related, action under Docket 84-34, the Commission will consider a petition filed by Ivaran Lines -- a third-flag carrier -- under section 19 which alleges that conditions unfavorable to shipping exist in the U.S./Argentine trades.

b. Cargo Promotion Reporting Program

The Commission embarked on a new cargo promotion reporting program during the fiscal year which is designed to provide it with information about the actions of foreign governments which may result in complaints and petitions filed by carriers and shippers under section 19 of the Merchant Marine Act, 1920, and section 13(b)(5) of the Shipping Act of 1984. These reports contain substantive information on foreign government cargo preference laws and decrees, implementation practices relating to access to cargoes, indirect trade practices, and countermeasures available in the event of discrimination against national-flag or foreign carriers in the nation's trade. Currently, reports documenting the cargo promotion policies of the Philippines, Venezuela, Indonesia, Japan, and Ecuador have been prepared.

## **The UNCTAD Code of Conduct for Liner Conferences**

The UNCTAD Code of Conduct for Liner Conferences entered into force on October 6, 1983. As of January 1984, a total of 59 countries, accounting for 28.68 percent of the world's liner tonnage, had become contracting parties to the Code. The fundamental objectives and basic principles of the Code reflect the underlying desire that it serve as a universally acceptable regulatory instrument that takes into account the special needs and problems of the developing countries. The objectives of the Code are to ensure the right of participation of national lines in the trade to permit them to carry a substantial share of their nation's foreign trade, to balance the interests of shippers and shipowners, and to facilitate the orderly expansion of the liner trades. The major provisions of the Code regulate the relationship between member carriers of conferences, in particular the rights of admission of national shipping lines to conferences serving their nation's foreign trade, and set forth rules for the establishment of pools or other types of cargo sharing arrangements in conferences as well as for such conference activities as self-policing. The Code regulates the relationship between shippers and liner conferences by establishing principles for the use of loyalty arrangements as well as requiring conferences to hold consultations with shippers or their representative organizations on such matters as freight rates, loyalty contracts, and the imposition of surcharges. The Code also provides rules to govern freight rate increases, promotional freight rates, surcharges and currency adjustment factors.

The U.S. remains one of the few major trading nations that opposes the Code and will not ratify it. The Code, itself, is expected to eventually affect much of world's liner trades except for the U.S. trades and the trades between the OECD member countries where its provisions will not apply under reservations made by these signatory nations in acceding to this instrument. Nevertheless, given its implementation, the Commission must continue to monitor the Code and has placed a high priority on evaluating its potential for affecting U.S. interests in the trades governed by the Code and its indirect impact on our own liner trades.

As the UNCTAD Code gains wider acceptance by the major trading nations, open competition in ocean shipping may be greatly reduced and access to the world's liner trades severely restricted. The Commission, however, possesses the necessary statutory authority to ensure that the U.S. liner trades remain open and that the interests of its carriers in the foreign-to-foreign trades are also protected. It is expected that the Commission will be called upon with greater frequency in the future to assert its regulatory authority to safeguard U.S. interests in the foreign oceanborne commerce. The U.S. Interagency Maritime Policy Group, in intra-government agency discussions, seeks to formulate and coordinate U.S. shipping policy measures to ensure that the world's liner trades under the Code remain open and competitive to the maximum possible extent.

## **U.S./Consultative Shipping Group (CSG) Discussions**

The U.S. continued its discussions with the Consultative Shipping Group (CSG). A number of discussions about shipping policy issues of vital importance to the major trading nations were held during the past year. The CSG is a multi-national body composed of Western Nations (except the United States) and Japan. In their discussions about measures needed to preserve the maximum degree of freedom of access in the liner trades, the U.S. & CSG countries have focused on guarantees of reciprocal competitive access for U.S. and CSG vessels operating in their respective trades with developing nations which are parties to the UNCTAD Code. The U.S. is primarily concerned that U.S. carriers may be barred from, or limited in their access to, the trades between the CSG countries and the Codist developing nations due to the restrictive policies of some developing country governments or because of the commercial practices of certain conference lines. The CSG nations, on the other hand, are concerned that the U.S., which is not a party to the Code, will enter into bilateral agreements with developing countries and thereby restrict the access of CSG vessels to the U.S. trades with these nations.

During the fiscal year, Commission staff members participated in the discussions between the U.S. and the CSG. During these meetings, and in the planning and preparatory sessions of the U.S. Interagency Maritime Policy Group, Commission representatives provided technical advice and counsel on the authority of the FMC in pertinent matters under discussion.

## **Bilateral Negotiations**

The liner shipping policies of the U.S. and certain developing countries have clashed on a number of occasions in the past few years and resulted in increased activity in the area of government-to-government bilateral negotiations and discussions. During the year, Commission staff members served as technical advisors in the U.S./Malaysian discussions about a proposed maritime agreement between the two nations. In addition, the Commission was represented at the U.S./Japan negotiations in Tokyo in April, and again in Washington, D.C., in May 1984. The purpose of these meetings was to discuss such trade irritants as Japanese road restrictions on the movement of high-cube containers, the movement of U.S. leaf tobacco exports on Japanese-flag carriers, Japanese intermodal and port service restrictions on foreign liner operators. Other topics of discussion in the U.S./Japanese meetings concerned Japan's decision to ratify the UNCTAD Code and their concerns about the Shipping Act of 1984.

The Commission's participation in bilateral discussions will probably increase in the future as the UNCTAD Code begins to take hold and as more and more developing countries attempt to unilaterally impose and enforce cargo preference schemes in their liner trades.

## **Foreign Maritime Laws and Regulations**

The Commission has continued to develop and update its reference files on foreign maritime laws, decrees, regulations

and regulatory structures. Conflicts involving the Commission and its foreign government counterparts are expected to become more prevalent as carriers, and shippers, are forced to compete in a more complex regulatory environment where, increasingly, developing countries unilaterally adopt restrictive shipping laws and trade practices in favor of their own national-flag carriers. By augmenting and updating its files with current information about counterpart agencies abroad, the Commission can more readily respond to regulatory problems and conflicts arising with our trading partners. The Commission is continuing to monitor the progress of the EEC's Proposed Regulation on Maritime Transport, and the maritime regulatory activities of a number of developing countries.

#### **Foreign Visitors at the FMC**

The Commission receives a number of foreign visitors each year concerned with its regulation of the U.S. liner trades. Many of these visitors are interested in various aspects of the Commission's underlying regulatory authority, specific provisions of the Shipping Acts, or seek information about the agency, itself, and its organizational structure and operating plans. The Office of Policy Planning and International Affairs, frequently, serves as a host for these foreign visitors on behalf of the Commission and coordinates such visits by arranging briefings or meetings with appropriate staff officials to respond to their inquiries and immediate concerns.

## Information Resources

The information resources program was established as a major component of the Office of Policy Planning and International Affairs, in July 1984, to provide automation planning and to coordinate the management information efforts of the Commission. With recent innovations in microcomputer technology, the concept of decentralizing data processing operations to the Commission's operating divisions was adopted. The relative small size of the Commission, potential size of data sets, and the management style at the Commission all contributed to the decision to decentralize. A comprehensive plan for hardware, software, telecommunications, and training were nearing completion by the end of the fiscal year. The objective is to position computer equipment and data base responsibilities closest to those who need information the most -- the users. Anticipated results include improved accuracy and flexibility of systems, while offering long-run savings to the Commission.

A major use of the microcomputer equipment scheduled in the plan will be to support the section 18 study regarding the effects of recently enacted legislation on common carrier prices, services, freight movements, and surveillance activities undertaken to protect U.S. interests from unreasonable commercial practices and undue government interference in liner shipping. Other automated systems planned for development include information regarding service contracts, freight forwarders, and agreements.

Office automation efforts were continued this year with the installation of an office automation network for word processing,

telecommunications, and some information processing. Equipment was installed at the Commission and at the New York, New Orleans, and San Francisco field offices. The equipment includes the capability to electronically transfer documents between these offices.

#### **Future Plans and Proposed Activities**

For the coming year the Office plans to increase its efforts to collect and analyze data required for the five-year study mandated by the Shipping Act of 1984. It is expected that freight rate indexes for the major trades will be completed. These indexes will be computerized and updated for the remainder of the study period. Data bases will also be prepared to electronically evaluate service patterns at various U.S. ports and the extent of nonconference competition. To accomplish this effort, additional resources will be required to acquire both computers and external data bases.

In the area of international affairs, it is projected that the laws, decrees, and regulations of additional countries will be compiled and added to the existing data bases. Continued participation in the U.S./CSG dialogue and in bilateral discussions is also contemplated. The increasing number of contracting parties to the UNCTAD Code will doubtless require more surveillance over developments in the Codist world. It is anticipated that there will be additional activities under section 19 of the Merchant Marine Act of 1920 and section 13(b)(5) of the Shipping Act of 1984.

A major portion of the Office's activities in the next few years will involve the preparation of the five-year study required by section 18. This study is discussed in detail in the following section.

**Section 18: The Mandate for a Five-Year Study of the Effects of the Shipping Act of 1984 and FMC Progress in Preparing this Report**

Section 18 of the Shipping Act of 1984 [Act] directs the FMC for a period of five years following the enactment to collect and analyze information concerning the impact of the Act upon the international ocean shipping industry. Congress specified that the information the FMC collects should include data on (1) increases or decreases in the level of tariffs; (2) changes in the frequency or type of common carrier services available to specific ports or geographic regions; (3) the number and strength of independent carriers in various trades; and (4) the length of time, frequency, and cost of major types of regulatory proceedings before the Commission.

Section 18(b) of the Act also states that the FMC shall consult with the Department of Justice (DOJ), the Department of Transportation (DOT), and the Federal Trade Commission (FTC) annually concerning data collection, and that these agencies "shall at all times have access to the data collected under this section to enable them to provide comments concerning data collection."

Within six months after expiration of the five-year period of data collection, the Commission shall report the information,

with an analysis of the impact of the Act, to Congress, to the Advisory Commission on Conferences in Ocean Shipping (Advisory Commission) and to the DOJ, DOT and FTC. The Advisory Commission will be established by Congress at that time. The three aforementioned agencies will also submit their own analyses of the impact of the Act 60 days after the FMC submission.

The Act further specifies, in section 18(c), that the following three topics should be addressed in the above analyses:

- (a) the advisability of adopting a system of tariffs based on volume and mass of shipment;
- (b) the need for antitrust immunity for ports and marine terminals; and
- (c) the continuing need for the statutory requirement that tariffs be filed and enforced by the Commission.

The Advisory Commission is charged with conducting a comprehensive study of, and making recommendations concerning, conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Advisory Commission shall, within one year after its establishment, make its recommendations to Congress.

From the FMC's perspective, the section 18 mandate involves three major areas of responsibility. The first is the collection of data, the second is ongoing consultation with the DOJ, DOT and FTC concerning data collection, and the third is the analysis of the data in order to determine the impact of the 1984 Act on the ocean transportation industry.

One interpretation of the section 18 data collection mandate is that the Congress is concerned with gathering any relevant information that will enable it to make an assessment of how the ocean transportation industry was affected by the Shipping Act of 1984. From an economic perspective, the evaluation of an industry should generally include an analysis of price and output levels in that industry. In this sense, section 18(a)(1) can be viewed as being concerned with pricing behavior in the liner shipping industry, and section 18(a)(2) being concerned with changing output levels (i.e., levels of service). Such an examination should include an analysis of changes in both the level and type of service offered. Section 18(a)(3) is primarily concerned with the impact of the Act on competition in liner shipping. As such, in referencing 18(a)(3), the "number" of independents is interpreted to mean the number of individual liner operators who are not members of a conference in various trades, while the "strength" of independents can be interpreted in a number of ways (for example, market share of cargo actually transported, or the number and capacity of vessels operated by independents).

In addition, the FMC will collect data which will enable it to address the three topics specified in section 18(c)(3) of the Act.

Thus, the FMC is not confining itself to price and service information alone, but will attempt to collect all data it believes relevant to an assessment of the impact of the Act on the industry. For example, although costs of liner operators

were not specifically mentioned in section 18 of the Act, it is felt that this information is very important to an assessment of the impact of the Act on the industry. Conclusions concerning the reasonableness of changes in the level of freight rates would be much more valid when made in light of information on changes in the level of costs.

### **FMC Progress to Date**

In February 1984, when it became clear that section 18 would likely become part of the Shipping Act of 1984, the FMC prepared a preliminary operational plan which identified six major milestones that the agency would hope to meet over the remainder of the fiscal year.

The following six milestones, as identified in the operational plan, were met in fiscal year 1984.

- Establish an Interagency Group of representatives from the DOJ, DOT, FMC, and FTC.
- Make an initial assessment of the magnitude of the data collection mandate -- identify major issues and problems.
- Brief the industry on the FMC's perceptions of the mandate and approaches to a solution.
- Gather information on potential private sector support for the project (i.e., Notice to Determine Availability of Private Commercial Sources).
- Research the usefulness, reliability, accessibility and cost of known data bases (i.e., briefings to the Interagency Group by data base managers).
- Begin a pilot data collection effort.

1. The Establishment of an Interagency Group of Representatives

On May 22, 1984, the Chairman of the FMC asked the heads of the DOJ, DOT and FTC to "appoint an individual within your respective agency to coordinate with and act as a permanent liaison" to the FMC during the data collection period prescribed in section 18. The FMC held its initial consultative meeting with the section 18 Interagency Group on June 8, 1984. In that meeting, the FMC distributed a lengthy document addressing issues and problems associated with the Section 18 mandate. The intent was to give the other agencies the FMC's initial views on the magnitude and complexity of data collection under section 18 and provide them with a vehicle for expressing their own views on the scope of the data collection effort.

Although the legislation specifies that the FMC "shall consult...annually concerning data collection," there were seven interagency consultative meetings chaired by the FMC in FY 1984. A wide range of topics was discussed, from confidentiality problems of certain data sources, to interpretations of what Congress specifically wanted under section 18.

2. An Initial Assessment of the Data Collection Mandate

The FMC's initial assessment of the data collection mandate focused on sections 18(a)(1), (2), and (3) of the new Act, and examined conceptual issues and problems associated with data collection pursuant to each section. Schematic overviews of information requirements required by each section were also provided. An example of the type of problem discussed is in

reference to section 18(a)(1), and the problem of constructing a tariff rate index which would capture service contracts, time volume rates, currency adjustment and bunker surcharges, open rates, independent action rates, intermodal vs. all-water rates by conference and non-conference operator on a time-series basis.

### 3. Section 18 Industry Briefings

On July 31, 1984, the Chairman of the FMC contacted shipper representatives, carrier representatives and conference chairmen and invited them to a briefing by the FMC on section 18. The Chairman stated that "although section 18 does not specifically require consultation or discussions with the carrier/shipper industry, I feel it is extremely important that you be advised and briefed on the Commission's efforts to date."

The FMC held two identical briefings on August 23 and 28. Their purpose was to make the industry we regulate fully aware of the section 18 mandate, and inform them of the Commission's data collection plans. The briefings consisted of the FMC giving an overview of the section 18 mandate, a discussion of the conceptual issues/problems involved in data collection and the construction of a rate index, and the FMC's preliminary plans and progress to date under section 18. The members of the section 18 Interagency Group were also present at these briefings.

### 4. Notice to Determine Availability of Private Commercial Sources

In an effort to determine potential sources of data and expertise which might be of value to the section 18 effort, the

FMC on August 22 requested the Commerce Business Daily to publish a Notice to Determine the Availability of Private Commercial Sources. In the Notice, the FMC explained the section 18 mandate and sought "the qualifications of persons who believe that they can provide the agency assistance in these areas." The FMC has received over two dozen responses to date.

5. Investigation of Known Data Bases

As part of the FMC's effort to keep the Interagency Group as informed as possible, the FMC sponsored four presentations on major data bases. The scope, content, availability and reliability of each data base was covered. These presentations focused on explaining the difficulties in capturing and using statistical information on the ocean transportation industry.

6. Begin Pilot Data Collection Effort

In February of 1984, the FMC began investigating data sources it believed would be of particular value to the section 18 mandate.

On March 12, the Commission entered into a contract with the Bureau of the Census to provide the FMC with U.S. import and export liner operator cargo movement data in a form tailored to section 18 needs. The FMC entered into another contract on March 6, 1984 with the Journal of Commerce Trade Information Service to procure additional cargo movement information on an individual shipper basis.

The FMC has commenced a pilot data collection effort for the North Atlantic/U.K. trades. In this trade, two pilot rate indices are being constructed. The first involves stratified sampling of the tariff information on file with the FMC, and the second is a sampling of the rates on major commodities in the same trade. Information on service levels and competition is also being gathered as part of the pilot analysis.

#### **BUREAU OF AGREEMENTS AND TRADE MONITORING**

##### **Surveillance**

Under the present statutory authority, the Commission is responsible for maintaining adequate surveillance over the activities of parties to filed agreements and others subject to its jurisdiction in order to ensure continued compliance with the Shipping Act, 1916, the Shipping Act of 1984 and Commission rules. The Office of Trade Monitoring, in the Bureau, has been charged with the responsibility for monitoring these activities. Appendix C indicates the various types of agreements filed with the Commission.

Under the 1984 Shipping Act, it is clear that unless a given agreement is subject to rejection or is contrary to the standards of section 6(g) of the Act, the agreement should be permitted to take effect, with the Commission maintaining adequate surveillance over the concerted activities. In order to satisfy this statutory need, the Commission is presently refining its surveillance activities to ensure adequate effectiveness in the

monitoring area. We must be alert to developments so that we can make the necessary determination whether regulated parties are meeting statutory and regulatory requirements. As agreements become effective with a substantial degree of market power, staff monitoring will be increased accordingly. Additionally, effective surveillance will require the systematic development and analysis regarding competitive events in the major maritime trades.

To provide the Commission with adequate industry reporting for surveillance purposes, the conferences are being required to file with the Commission, on a quarterly basis, an index of all documents related to those subjects which meet our regulatory needs. Minute requirements are being expanded to include such entities as Joint Service, Consortia and Pooling/ Equal Access Agreements.

During the fiscal year, the Office of Trade Monitoring has completed two trade profiles involving the trades between the United States and the Far East and Northern Europe. These profiles include data on all liner carriers operating in the subject trades, including vessels by name, flag, TEU capacity, frequency of service and trade routes. Additional information is included on the conferences that operate in each trade, carrier membership in conferences by trade segment, carrier addresses, NVOCC operators in the trade, pertinent non-conference agreements, import and export tonnage by country and major FMC proceedings in these trades. As operator market share data becomes available, it will also be incorporated into future profiles.

During the fiscal year, the Office initiated 24 inquiries and projects concerning activities relating to possible unfiled agreements and to activities of parties which could be outside the scope of a filed agreement. These inquiries included monitoring of trade conditions in the U.S./Philippines trade to ascertain any unfavorable change from the status quo; reviewing the application of section 15, Shipping Act, 1916, and the Shipping Act of 1984 to certain relationships of 1) Barber Steamship Lines as agent for Nordana Lines and Barber Line, 2) the Park Lines Joint Venture, 3) Jeuro Transpacific Container Services, 4) Westwood Transpacific Service, 5) Javeline Line, 6) Hoegh Lines Joint Service, and 7) Bank and Savill Joint Service Agreements; overlapping rate making authority on minibridge movements involving Sea-Land, Hapag-Lloyd and Trans Freight Lines; the offering of intermodal service by Star Shipping without specific authority in its joint service Agreement No. 9955-1, as well as the chartering of the vessel STAR EAGLE without a filed agreement; possible unfiled terminal agreements by Maher Terminals Inc. and an inquiry concerning the trade conditions which prompted Japan Lines to terminate its membership in the Pacific Straits Conference.

A particular aspect of adequate surveillance by the Office of Trade Monitoring is the careful review of reports to ensure that the regulated entities authorized to act concertedly do so in accordance with the applicable statutory standards. These reports include: the minutes of meetings, shippers' requests and complaints reports, and Ad Hoc reports resulting from a specific Commission order.

For the first two quarters of fiscal year 1984, a total of 1,375 minutes of meetings were filed with the Commission, mostly by parties to Conference and Rate Agreements. These minutes keep the Commission informed of the activities of the parties to approved agreements and aid in the detection and prevention of possible statutory violations. The Office also reviewed 75 shippers' requests and complaints reports. These reports are required by rule and indicate the degree to which Conference and Rate Agreements (except two-party agreements) are maintaining effective procedures to fairly and promptly consider shippers' requests and complaints (usually concerning freight rates). Appendix C includes a statistical summary of the reports filed with the Commission in FY 1984.

During the fiscal year, a proposed rule with request for comments was prepared. The rule's purpose is to clarify the Commission's policy regarding certain transshipment agreements where one party to the agreement provides service in the domestic offshore commerce of the United States and the other party provides service in the foreign commerce of the United States.

## **Types of Agreements**

### **a. Conference and Ratemaking Agreements**

Conference and ratemaking agreements provide for the collective discussion, agreement and establishment of ocean freight rates and practices by groups of ocean carriers. Such agreements are limited to a geographic area or trade route, with the basic distinction between "conference" and "rate" agreement being that a "conference" agreement is usually a more formal

institution exercising a dominant influence on rates within the trade, whereas a "rate" agreement is loosely structured and has a lesser influence on rates.

During fiscal year 1984, the Commission concluded the processing of 133 conference and rate agreements or amendments to such agreements. One hundred and four were processed pursuant to the Shipping Act, 1916, and 29 were processed pursuant to the Shipping Act of 1984.

Because of the widespread introduction of intermodal freight services by ocean common carriers and changing regulatory standards during the period, 18 conferences received authority to fix intermodal through rates both in the United States and abroad. Almost every conference agreement on file with the Commission now has some degree of intermodal rate authority.

At the close of the fiscal year, all conferences -- and rate agreements -- were in substantial compliance with the mandatory provisions of the 1984 Act and the Commission's rules.

b. Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in given trades which provide for the pooling and apportionment of cargo and/or revenues. These agreements also often set forth sailing requirements and other features relating to overall service efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo which is controlled by the governments of reciprocal trading partners as a result of cargo preference laws, import quotas or other restrictions.

At the conclusion of fiscal year 1984, there were seven pooling agreements, three equal access agreements and five combined pooling/equal access agreements in effect. The preponderance of these agreements continue to apply to the U.S./ South American trades. Thirteen agreements of this type have a significant impact on U.S. ocean liner commerce with Argentina, Brazil, Chile and Colombia.

c. Space Charter Agreements

Space charter agreements authorize the chartering (or cross-chartering) of vessel space or container slots between or among vessel operators. The essential objective of arrangements of this type is to facilitate carrier access to vessel accommodation in given trade routes beyond that which would otherwise be available. Space chartering arrangements are generally entered into for one of two purposes: (1) force majeure space charters authorize chartering only when circumstances beyond a carrier's control prevent it from shipping cargo on its own vessels, thus avoiding unnecessary delays and/or expenses for consignees; and (2) strictly commercial space chartering arrangements, which are operational undertakings among carriers to facilitate the rationalization of overall fleet operations and to reduce overtonnaging in a given trade. This latter category also generally contains authority to agree on schedules, itineraries and the exchange of equipment. At the end of fiscal year 1984, there were 27 active space charters in effect.

d. Discussion Agreements

Discussion agreements provide authorized forums for common carriers by water and other persons subject to the Commission's jurisdiction, or conferences thereof, to meet, exchange views and recommend action on matters of industry concern. Discussion agreements do not as a rule, however, authorize the implementation of agreements on specific actions concerning matters discussed without further specific Commission approval. At the conclusion of fiscal year 1984, there were 14 such agreements in effect.

e. Joint Service Agreements

Joint service and consortia agreements generally establish a new and separate line or service to be operated by otherwise independent liner operators as a joint venture in a given trade. The resulting line or service operates as a single carrier, generally fixing its own rates, publishing its own tariffs and issuing its own bills of lading; however, its authority is strictly confined to that specifically set forth in the agreement authorizing its operation.

At the conclusion of fiscal year 1984, 19 joint service and consortia agreements were in effect, covering virtually every major U.S. foreign trade with services varying from specialized automobile carrier operations to containerized and ro/ro services.

f. 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 carrier, 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, 1916 (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 Shipping Act, 1916. With the enactment of the Shipping Act of 1984, the majority of these agreements -- which are still required to be filed with the Commission -- no longer require its approval. Absent some intervention by the Commission or injunctive court action, they become effective 45 days subsequent to filing. However, the Commission is investigating the possibility of exempting certain of these terminal agreements on the basis that effective regulation would not be impaired by such action.

During fiscal year 1984, the Bureau processed to completion 142 agreements and agreement modifications providing for the use and provision of port and terminal services and facilities.

The Commission is also charged with handling certain labor-management agreements pursuant to the Maritime Labor Agreements Act of 1980 (P.L. 96-325, 94 Stat. 1021). The 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 effective upon filing with the Commission. During fiscal year 1984, 12 labor-management agreements of this type were filed.

## **BUREAU OF TARIFFS**

The Bureau of Tariffs plans, develops, administers and analyzes programs and activities in connection with the pricing of services provided by common carriers by water, conferences of such carriers and terminal operators in the foreign and domestic offshore commerce of the United States; reviews, files and rejects tariff filings; approves or disapproves special permission applications; and initiates recommendations, collaborating with the Bureau of Hearing Counsel and other elements of the Commission as warranted, for formal action and proceedings by the Commission. The Bureau is also responsible for the licensing of ocean freight forwarders under the provisions of the Shipping Act of 1984; and under Public Law 89-777, the certification of the financial responsibility of owners and operators of passenger vessels to satisfy liability incurred by nonperformance of voyages or resulting from injury or death. The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations with respect to its program activities.

During the fiscal year it was necessary to amend the Commission's rules pertaining to tariff filing by carriers in the foreign commerce and those relating to the issuing of licenses to

freight forwarders to bring them into conformance with the Shipping Act of 1984. The significant changes brought about by the Shipping Act of 1984 were the introduction of service contracts, the prohibition of loyalty contracts unless such contracts are in conformance with antitrust laws, the requirement that NVOCCs file anti-rebate certifications and changes in the licensing and regulation of ocean freight forwarders. In addition, under the provisions of the Shipping Act of 1984, carriers are no longer required to separately state or otherwise reveal in intermodal tariffs the inland divisions of a through rate.

## **Foreign Commerce**

### **a. Tariff Activity**

In fiscal year 1984, the number of tariff pages filed increased by 14,339 or approximately 2.5 percent. The number of official tariffs on file increased by 313 or approximately 8% over the previous fiscal year.

During the fiscal year the Commission continued its program to place cancelled tariffs on microfiche for permanent record keeping purposes in lieu of the physical transfer of such files to government storage facilities. In addition, cancelled pages to active tariffs were also transferred to fiche due to limited shelf space in the tariff library. By the end of fiscal year 1984, a total of approximately 2 million cancelled tariffs and active tariff cancelled pages had been recorded on microfiche. Additional tariff activity is summarized in Appendix D.

b. Service Contracts

The Shipping Act of 1984 formally introduced the use of service contracts into the ratemaking process in the United States foreign commerce. It is expected that service contracts will play a significant role in this process. A service contract is defined in the Act as ". . . a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level -- such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party."

Between the effective date of the Shipping Act of 1984 on June 18, 1984 and the end of fiscal year 1984, 160 service contracts were filed. These contracts were filed by 29 individual ocean common carriers and 5 conferences. They involved 155 primary and 34 secondary shippers. A primary shipper is the person or firm signing the contract, and a secondary shipper is the person or firm included under the contract as a subsidiary or affiliate of the signatory shipper. Of the 160 service contracts filed, 52 were filed by a single carrier.

The service contracts filed covered from one to over 100 commodities including "freight all-kinds." The geographic scopes of the contracts included the Atlantic, Pacific and Gulf coasts

of the United States and the Far East, Australia, Europe, Africa, and South America, both inbound and outbound. The largest number of contracts were filed in the Transpacific trades.

The Commission's interim rules with respect to service contracts became effective on June 18, 1984 and the final rules were scheduled to become effective on December 15, 1984.

At the close of the fiscal year the number of service contracts filed was increasing steadily. It is anticipated that the increased filings will continue into fiscal year 1985, especially after the final service contract rules become effective on December 15, 1984.

c. Electronic Tariff Filings

The Commission, at the present time, permits the electronic filing of tariff pages provided the receiving machines are physically located in its Washington, D.C. headquarters. Due to the increasing volume of tariff filings that are being submitted by carriers both electronically and via regular delivery, office space has become a problem. The Commission, therefore, proposed a rule which would amend its foreign and domestic offshore tariff filing rules by permitting the electronic receipt of filings outside of the Commission's offices but within the building where its offices are located. This rulemaking proceeding was pending at the close of the fiscal year.

d. Proposed ADP Indexing and Relabeling of Tariff Library

The Commission implemented a program to establish an ADP indexing of the tariff library which will provide data including (1) the name of every carrier with a current tariff on file; (2) the scope of each carrier's operation as reflected in its tariffs; and (3) the names of all participating carriers to each conference or agreement tariff. The ADP system will provide a complete and continually updated alphabetically arranged printout of all tariffs on file.

e. Significant Activities within Specific Trade Areas

The U.S. Atlantic/European trades, while experiencing a high degree of stability in fiscal year 1983, also underwent major structural changes. During fiscal year 1984, the North Atlantic/European conferences obtained intermodal authority and were successful in consolidating and cancelling the myriad member lines' individual intermodal tariffs. In December 1983, these member lines, who also served the U.S. South Atlantic/European trades as independents, created a new conference for this trade area. At the end of the fiscal year, agreements had been filed to merge the South Atlantic and North Atlantic conferences which would result in a single outbound and a single inbound rate tariff in the U.S. Atlantic/European trades.

With respect to rate increases in the North Atlantic trade, the North Atlantic outbound conferences implemented two general rate increases, while the inbound North Atlantic conferences established four general rate increases in fiscal year 1984.

f. Surcharge Activity

Following an extended period of relative stability with respect to the application of various surcharges, the Commission granted a surcharge on short notice as requested by carriers and the conference in the Persian Gulf Trade. This surcharge was necessary to offset the increase in vessel insurance premiums due to the hostilities occurring in the Persian Gulf.

New charges, identified as special operating service charges, were filed by conferences serving the U.S. Far East trades to be implemented for a 45-day period commencing October 1983. The tariffs did not indicate the purpose of the new charges or what the charges covered. The conferences were requested to submit a detailed report on the charges. These charges were postponed to January 15, 1984 and further postponed to February 20, 1984. None of these charges became effective since all were cancelled between February 15 and 18, 1984.

g. Proposed Rulemaking Proceeding - Docket No. 84 -27  
Publishing and Filing Tariffs by Common Carriers in the  
Foreign Commerce of the United States: Co-Loading  
Practices by NVOCCs

On July 25, 1984, the Commission published proposed rules relating to the practice of Non-Vessel-Operating Common Carriers (NVOCCs) combining cargo to attain full container loads, such practice being commonly known as co-loading. The intended rules would establish tariff filing regulations to require each NVOCC to describe in its tariffs the undertaking to offer or perform co-loading. Further, the rules would require that NVOCCs

document such shipments and provide the shipper with information which explains the liability of the involved NVOCCs. The rule would also prohibit special rates published by one NVOCC for the exclusive use of other NVOCCs.

The Commission received comments from shippers, NVOCCs, freight forwarders, conferences and ocean common carriers. The comments which were due September 24, 1984, will be considered by the Commission in fiscal year 1985.

h. Anti-Rebating Certification Program

On September 20, 1984, pursuant to Docket No. 84-25, the Final Rule to implement the Shipping Act of 1984 provision expanding the anti-rebate certification requirements was published in the Federal Register to be effective December 15, 1984. Previously, all vessel operating common carriers in the foreign commerce of the United States were required to file an anti-rebate tariff provision in all tariffs and file an annual anti-rebating certification by May 15th of each year. Effective December 15, 1984, all non-vessel-operating common carriers in the foreign commerce of the United States must also file such tariff provision and certification. Subsequent to calendar year 1984, all common carriers in the foreign commerce of the United States must file an anti-rebating certification by May 15th of each year.

i. Trade Monitoring

The increase in carrier competition in the Pacific Far East trade resulted in a determination by the members of the Pacific Westbound Conference to terminate their agreement and cancel the conference tariffs effective October 31, 1984. The former members are filing independent tariffs in the trade with published effective dates of November 1, 1984. The former conference was made up of 10 members participating in seven different tariffs. The former members are now each filing 1 to 2 tariffs each with a complete set of rules and a limited rate structure. It is anticipated that a considerable volume of specific rate pages will be filed to effect reductions to these limited rate structures before the November 1, 1984 effective date of the independent tariffs.

j. Special Permission Tariff Committee

The staff, during fiscal 1984, implemented a review of the various blanket and ongoing special permission waivers in effect that apply in both the foreign and domestic offshore commerce. Specific changes to these waivers were recommended and adopted by the Commission.

k. Loyalty Contracts

As of September 30, 1984, all conferences and one independent line had terminated their loyalty contracts (dual rate contracts) in order to conform to the Shipping Act of 1984 which prohibits the use of loyalty contracts except in compliance

with the antitrust laws. One independent carrier has not terminated its loyalty contract, but is endeavoring to obtain a Business Review Letter from the Department of Justice as evidence that its loyalty contract is not violative of the antitrust laws.

1. Controlled Carrier Program

The receipt of controlled carrier special permission applications decreased in fiscal year 1984. During the fiscal year, 141 controlled carrier special permission applications were processed as opposed to fiscal year 1983 when 255 controlled carrier special permission applications were processed.

On October 28, 1983, Malaysia International Shipping Corp. Berhard (MISC) filed a rebuttal to the Commission's July 31, 1983 notification that it was considering classifying MISC as a controlled carrier. Based on the information submitted, the Commission determined on December 7, 1983, that MISC's status at that time was not that of a controlled carrier.

On February 1, 1984, an Egyptian carrier, MISR Shipping Company, was added to the list of controlled carriers.

The Commission reviewed a petition filed on behalf of Compania Chilena de Navegacion Interoceanica S.A. (CCNI), requesting that the carrier be removed from the Commission's list of controlled carriers. The Commission determined that CCNI was no longer state-controlled due to the sale by the Chilean Government of half of its interest in CCNI to private investors. Therefore, CCNI was removed from the Commission's list of controlled carriers on February 7, 1984. With the deletion of

CCNI and the addition of MISR, the number of carriers classified by the Commission as controlled remains at twenty-four.

Flota Bananera Ecuatoriana S.A. was notified by the Commission by letter dated August 24, 1984, that it meets the criteria for classification as a controlled carrier within the meaning of sections 3(8) and 9 of the Shipping Act of 1984. Classification of Flota is expected early in fiscal 1985, absent a rebuttal from the carrier.

The staff is currently examining the National Shipping Corporation of the Philippines, a Philippine carrier, Nauru Pacific Line, a Republic of Nauru carrier, Saudi U.S. Line, a Saudi Arabian carrier, and Sudan Shipping Line Limited, a Sudanese carrier, to determine if they should be classified as controlled carriers. Determination as to the status of these carriers should be made early in fiscal year 1985.

#### **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, and requires the Commission to ensure that the rates and practices of domestic offshore carriers are just and reasonable. The staff reviews and analyzes tariff filings of such common carriers and terminal operators in the domestic offshore commerce between the U.S. Mainland and Alaska, Hawaii, Guam, Puerto Rico, American Samoa, U.S. Virgin Islands, Midway, Johnston, Wake and the Northern Mariana Islands.

a. Tariff Activity

The Office of Domestic Tariffs has on file 299 domestic offshore tariffs filed by 345 carriers, and 430 terminal tariffs filed by 328 terminal operators. There were approximately 13,000 domestic tariff revisions and 5,000 terminal tariff revisions filed during the year. In addition, 66 special permission applications were processed. The domestic tariff activity statistics are summarized in Appendix D.

b. Significant Commission Activities by Trade Area

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

A proposed general rate increase (GRI) of 13.5 percent filed by Sea-Land Service, Inc., with a scheduled effective date of January 16, 1984, was considered by the Commission and permitted to become effective as scheduled. The increase was reviewed in connection with protests submitted by interested parties and support data submitted by Sea-Land Service, Inc., (Sea-Land). It was found that the representations of the protestants were not sufficient to warrant suspension or investigation of the GRI. The GRI covered the trades between U.S. Atlantic and Gulf ports and ports in Puerto Rico.

On June 15, 1984, Sea-Land filed its Special Permission Application No. 514 for an indefinite extension of authority granted under FMC Special Permission No. 6699 which was scheduled to expire on June 30, 1984. The special permission previously granted permitted Sea-Land to file reductions to its Tariffs

FMC-F No. 34 and 53 on less than statutory notice in order to meet the rates of a competitor who is not subject to Federal Maritime Commission regulation.

The Commission considered Sea-Land's request for an indefinite extension on June 29, 1984. While an indefinite extension was sought, the Commission granted the extension for a period of one year to expire June 30, 1985. This action was designated as Special Permission No. 6765.

#### **U.S. Mainland/Alaska**

On October 19, 1983, the Commission considered the petition of Kugkaktlik Ltd., a common carrier serving the trade between Bethel, Alaska, and eight villages north of the Kuskokwim River in Alaska for an extension of its exemption from the tariff and regulatory rate requirements which was granted them on July 30, 1980. Kugkaktlik requested an extension of the exemption and an expansion of the exemption to include the four additional villages of Quinahagak, Goodnews Bay, and Platinum which are south of the Kuskokwim River and Mekoryuk on the north. The request also included the addition of two vessels utilized by Kugkaktlik.

The requested extension was protested and therefore the Commission instituted an investigative proceeding, Docket No. 83-54. By order served on June 5, 1984, the Commission granted a trade-wide exemption from the tariff filing requirements of section 18(c) of the Shipping Act, 1916 (46 U. S. C. §817(a)) and section 2 of the Intercoastal Shipping Act of 1933 (46 U. S. C. §844) to all common carriers providing service between Bethel, Alaska and villages in the Kuskokwim Bay region in the range from Platinum to Mekoryuk.

## Freight Forwarders

In 1961, section 44 of the Shipping Act, 1916 (46 U.S.C. 841b) vested the Commission with authority for the licensing and regulation of independent ocean freight forwarders. The ocean freight forwarding industry is comprised of persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders serve export shippers by arranging for the ocean transportation of cargo by common carriers, and by handling the paperwork and other incidentals related to such exports. Ocean freight forwarders receive payment for handling an export shipment from the exporter. Forwarders also receive booking compensation from the ocean carrier whose vessel was selected by the forwarder to carry the cargo.

Congressional findings in 1961, related to malpractices by ocean freight forwarders, led to the enactment of section 44 of the Shipping Act, 1916. At that time, malpractices in the export trades were rampant. Given the importance of maintaining a favorable climate for U.S. businesses, especially small businesses which lack the expertise to do their own exporting, Congress found that licensing and limited oversight of ocean freight forwarders was necessary to eliminate secret, illegally preferential rebates, and to ensure that unscrupulous, incompetent and financially irresponsible persons were prevented from operating as ocean freight forwarders. Although the number of ocean freight forwarders has increased since 1961, forwarder-initiated malpractices are now more the exception rather than the rule.

The continued maintenance of fiduciary responsibility, technical qualifications and financial responsibility of an ocean freight 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. Once issued, a license need not be renewed. The amount of the bond depends upon the number of offices through which an ocean freight forwarder provides ocean freight forwarding services.

With the enactment of the Shipping Act of 1984, the Commission's regulatory responsibilities were altered. The new statute deleted section 44 of the 1916 Act and placed the licensing of ocean freight forwarders under the 1984 Act. Under the new shipping statute, the basic licensing requirements remain essentially in place. However, the prohibition of export shippers from receiving a license has been dropped. Thus, any person (that is, individual, corporation or partnership) may receive a license if found qualified. However, licensed forwarders are barred from collecting compensation from carriers on shipments in which the forwarders may have a beneficial interest.

The determination of whether to issue a license to permit a person to act as an ocean freight forwarder in the foreign commerce of the United States is now based upon a person's past forwarding experience and that person's character rather than a "fit, willing and able" criterion that was spelled out in the now repealed section 44 of the 1916 Act.

The new statute also provides that persons operating as forwarders in the domestic off-shore trades of the United States are not required to obtain a license to do so, nor are such entities required to file a surety bond. Nevertheless, such forwarders are still subject to the applicable sections of the 1916 Act that now apply solely to the domestic trades of the United States.

Agreements by and among forwarders engaged in the foreign commerce of the United States are no longer required to be filed with the Commission for approval under the new statute. Hence, such agreements are not afforded antitrust immunity under the new statute.

During fiscal year 1984, the Commission received one hundred forty-five applications for ocean freight forwarder licenses in addition to the thirty-three applications pending from fiscal year 1983. One hundred twenty-eight of these applications were approved, one was denied, three were withdrawn during the processing stage, and thirty-two incomplete applications were returned to the applicants. One hundred and two previously issued licenses were revoked, primarily because the forwarders failed to maintain the surety bonds required by statute.

In addition to applications for new licenses, in fiscal year 1984 the Commission received one hundred twenty-five applications requesting approval of transfers of licenses and other organizational changes. Thirty-eight applications for transfers and other organizational changes were carried over from the previous fiscal year. One hundred fifty-six of these requests

were approved during fiscal year 1984. Eight requests were administratively closed as applicants did not wish to pursue their requests.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statute and the Commission's regulations. During the year, one hundred fifty-eight investigative reports were reviewed. One hundred and fourteen of these reports resulted in the issuance of warning letters or referral to the Bureau of Hearing Counsel for the assessment of appropriate civil penalties. Forty-four cases were determined to require no formal corrective action.

Other activities during the year included: (1) the processing of seven hundred thirty-two surety bond actions including new bonds, riders to bonds and the cancellation of bonds; (2) the review of twenty-six uniform fee schedules filed by ocean freight forwarders pursuant to the prior forwarder rules; (3) the review and processing of thirty-nine informal complaints concerning, in the majority of cases, the non-payment of freight charges by forwarders to carriers; (4) the receipt and review of eight hundred thirty-eight anti-rebate certifications required to be filed by forwarders pursuant to the shipping statute and the Commission's implementing regulations.

At the end of the year, there were one thousand six hundred twenty-seven licensed ocean freight forwarders, representing an increase of twenty-eight licensees over fiscal year 1983.

## Financial Analysis

The Office of Financial Analysis provides accounting and financial expertise to help ensure the reasonableness of rates for the transportation of cargo and other services provided by common carriers in the domestic offshore waterborne commerce of the United States. The Office also provides technical assistance to other activities within the Commission.

The Office of Financial Analysis made significant contributions to a study of Commission practices with respect to the compromise, assessment and settlement of illegal rebating penalties and to the development of a system to track these penalties.

In connection with the Commission's automation program, the Office participated in the development of a regulated person index and freight forwarder index. This program also included the geographics of tariffs and service contracts.

The Office continued to monitor the activities of carriers in the domestic offshore commerce of the United States. This effort involved the receipt and review of financial and operating data submitted in compliance with Commission General Order 11. The staff also evaluated the financial data submitted in support of a general rate increase in the Puerto Rico Trade.

It is anticipated that the Office will devote substantial efforts to the continuing automation program. Commission compliance with section 18(a) of the Shipping Act of 1984 will also require significant staff involvement.

The Federal Maritime Commission requires financial reports submitted by vessel operators engaged in the domestic offshore trades to be prepared in conformity with the chart of accounts promulgated by the Maritime Administration, U.S. Department of Transportation. The recent modification of this chart of accounts will require the amendment of General Order 11 and the revision of the forms used to report financial and operating data. These changes will result in a lessening of the regulatory burden imposed on carriers operating in the domestic offshore trades.

#### **Passenger Vessel Certification**

The Commission is responsible for administering sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817d and e), which have been implemented by the Commission's regulations found in 46 CFR 540 - "Security for the Protection of the Public". Owners, charterers and operators of American and foreign vessels having berth or stateroom accommodations for fifty or more passengers which embark passengers at United States ports, must establish that they are financially responsible (1) to meet any liability they incur for death or injury to passengers or other persons on voyages to or from United States ports and (2) to indemnify passengers (by refunding deposits and fares) in the event that they fail to perform voyages or cruises.

Section 2 of the law, as well as Commission rule 46 CFR 540.24(a), contain a schedule to determine the amount of coverage required for death or injury liability based upon the maximum

number of passenger accommodations aboard the vessel. A person meeting the requirements of section 2 and the Commission's regulations is issued a Certificate (Casualty).

Section 3 of the law places the responsibility with the Commission to determine the amount of coverage necessary for indemnification of passengers in the event of nonperformance of transportation. Such factors as the vessel's passenger capacity, itinerary, fare structure, number of voyages or cruises, trade served, type of operation, past experience and collection policy are considered by the Commission in determining the amount of evidence of financial responsibility required for a Certificate (Performance).

Persons must qualify separately for each certificate by means of insurance, surety bond, escrow account, guaranty or as a self-insurer. A different means of establishing financial responsibility may be selected for each certificate.

The certificates must be presented to the United States Customs officials at the port or place of departure of the vessel from the United States. Under the law, the U.S. Customs Service shall refuse clearance of the vessel if it does not have certificates on board until such time as the Commission confirms compliance with the law.

During fiscal year 1984, the Commission approved 12 new applications for performance certificates, 12 new applications for casualty certificates and 50 applications for amendments to existing certificates.

Also, 13 certificates were revoked with respect to vessels withdrawn from the U.S. trade or sold. At the end of the year over 100 vessels remained certified.

#### **BUREAU OF HEARING COUNSEL**

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory dockets, non-adjudicatory investigations, rulemaking proceedings when designated by Commission Order, and other proceedings initiated by the Commission. Bureau attorneys serve as Hearing Counsel, where intervention is permitted, in formal complaint proceedings instituted under section 22 of the 1916 Shipping Act and section 11 of the 1984 Shipping Act. In addition to the formal proceedings in which the Bureau participates as a party, the Bureau monitors all other formal proceedings in order to ascertain that all issues affecting the shipping industry and/or the general public, as distinguished from purely private disputes between the litigating parties, are adequately developed. On request, the Bureau also furnishes advice to the staff and the shipping public. On occasion, the Bureau participates in matters of court litigation by or against the Commission. Bureau attorneys review enforcement reports developed by the Bureau of Investigations, prepare and serve claim letters, and finalize the compromise and settlement of civil penalty claims for alleged violations of the shipping statutes and regulations. If settlement is not reached, the Bureau acts as prosecutor in formal Commission proceedings that may involve the assessment of such penalties.

During fiscal year 1984, the Commission settled or adjudicated 45 malpractice cases totaling \$558,080 in civil penalties. Appendix E provides a complete listing of the civil penalties assessed or settled.

As of the close of fiscal year 1983, the Bureau had 28 formal proceedings pending. During the year, 22 new proceedings were received and 33 were completed, resulting in 17 formal proceedings on hand as of September 30, 1984. The Bureau provided advice to the staff on more than 150 projects during the fiscal year.

The Bureau participated extensively in the development of rules and regulations for the implementation of the Shipping Act, 1984.

During the year, a new operating plan was developed for the Bureau. This plan will be fully implemented in fiscal year 1985, and will strengthen the Bureau's functions as legal advisor to the Commission's staff. In addition, the operating plan will provide for closer coordination with the Commission's other bureaus and offices in carrying out the Commission's regulatory responsibilities under the Shipping Act of 1984.

#### **BUREAU OF INVESTIGATIONS**

The Bureau of Investigations monitors the ocean commerce of the United States to curtail illegal rebating and other malpractices by carriers, shippers, consignees, and other persons subject to the Shipping Acts. In addition to the headquarters

office in Washington, D.C., offices are located in New York, San Francisco, New Orleans, San Juan, Chicago, Miami and Los Angeles. These offices represent the Commission within their geographical area, provide liaison between the Commission and the maritime industry and the shipping public, and investigate alleged violations of the statutes and regulations administered by the Commission. Such violations can include the following: carrier and shipper malpractices, such as illegal rebates of freight charges, and misclassification, misdescription or misdeclaration of cargo shipments; unlawful common carrier rates in U.S. foreign and domestic offshore trades; unlawful agreements among carriers or other persons subject to the Commission's jurisdiction; and unlicensed ocean freight forwarder activity.

Fiscal year 1984 was the first full year for the operation of the Investigative Record Information System (IRIS) established in July, 1983. This system generates timely information and reports to assist in investigative case management and program planning. In addition, use of automated equipment to provide commercial shipping data has facilitated surveillance of those entities subject to the jurisdiction of the Commission. Utilization of IRIS and other sophisticated automated information sources, coupled with the establishment of investigative priorities, has enabled the Bureau to maximize its resources and develop high profile, quality cases, which have the greatest impact in fulfilling the mission of the Bureau.

With continued reliance on new automated programs, in fiscal year 1985, it is expected that our ability to properly monitor the shipping industry will be enhanced.

At the beginning of fiscal year 1984, there were 365 field investigations in progress. During the year 231 new investigations were initiated, providing 596 cases on hand and scheduled for investigation. Completed investigations totaled 425, leaving 171 cases pending at the end of the fiscal year. Appendix F summarizes the Bureau's investigative activities.

## **ADMINISTRATIVE ACTIVITIES**

Several offices of the Commission are involved in the administrative support of the Commission's regulatory programs.

The Office of Personnel plans and administers personnel management programs, including recruitment, placement, employee training and development, position classification, occupational safety and health, and employee relations. In these efforts, the Office works closely with operating officials and employees to meet employee, organizational, program, and officials' needs. Significant achievements in these functional areas during fiscal year 1984 are outlined below:

### **Program Development**

During fiscal year 1984, the Office continued to monitor the actions taken and legislative proposals offered by the U.S. Office of Personnel Management with respect to contemplated regulatory changes in the areas of Reduction in Force, Performance Appraisal and Merit Pay, and the Federal Retirement System. Where new regulations were made final, the Office collaborated with staffers from OPM to implement the directed policies and procedures. A task group was organized within the Office to anticipate developments, trends, and regulatory changes affecting Commission personnel management programs. The Office also examined its procedural operations, in an effort to identify viable approaches to data automation. Significant among program developments was the development of a Commission Order on Part-Time Employment.

## Employee Relations

The Office continued its efforts to enhance the working environment of all Commission employees, offering numerous programs relating to health and safety. A comprehensive health fair was conducted, giving employees the opportunity to compare health plans and facilities prior to making their final decisions on the purchase of health insurance. Counseling services continued to be provided to those employees contemplating retirement, and included the offer to participate in a pre-retirement seminar. The Office advised employees on Hatch Act prohibitions and leave account restoration procedures. Significant new programs established during fiscal year 1984 included the publication of procedures for the collection of Post-1956 Military Service Credit Redeposit, and the provision of guidance to employees covered by changes in Social Security regulations. Efforts continued during 1984 to educate supervisors to their responsibilities in the areas of employee performance, conduct, awards, and discipline. In this connection, the Office issued memoranda discussing these matters and supervisory responsibilities, as well as recent case laws issued by the Merit Systems Protection Board. Supervisors were informally counseled with respect to particular or conduct-related problems, the Office worked closely with Commission legal advisors to ensure that employees affected by disciplinary or non-disciplinary adverse actions were accorded their due rights. The Office also administered the Commission's Incentive Awards

Program, granting awards to employees for outstanding performance or special achievements.

### **Performance Appraisal**

During fiscal year 1984, the Office administered the Commission's third annual Merit Pay evaluation and pay out. In addition, the Office refined and developed common standards for managerial and supervisory employees, and assisted supervisors in preparing new or revised performance standards, necessitated by changes in employee duties.

### **Personnel Reduction Programs**

During fiscal year 1984, the Office administered all aspects of a reduction in force in the Office of Data Systems, issuing comprehensive guidance to management on necessary procedures to be followed and providing detailed information on rights and benefits to all employees affected. In the absence of a Congressionally-approved operating appropriation, the Office was required to prepare for shutdown of all Commission operations until an appropriation bill was passed by the Congress and signed by the President.

### **Staffing**

In addition to on-going recruitment efforts, during fiscal year 1984, the Office responded to Commission needs to recruit to fill newly-established or redefined positions in offices whose missions were directly affected by enactment of the Shipping Act

of 1984. In anticipation of the Act's passage, new recruitment strategies were developed in traditionally hard-to-fill occupations. To cope with the continuing problem of attrition in its clerical ranks, the Office continued its overhire system, to ensure that loss of employees did not result in loss of continuity in Commission programs. Advice was provided on the feasibility of effecting internal reassignments to meet critical program needs. Efforts continued to provide human resources within funding limitations, including the use of summer employment, volunteer, and cooperative education programs.

### **Training**

After being able to provide only limited amounts of formal training for employees in previous years, the Office resumed an agency-wide training program during fiscal year 1984. In addition, in an effort to meet program responsibilities generated by the Shipping Act of 1984, the Office prepared work experience histories and academic profiles of the staff of various bureaus and offices, for the purpose of determining how employee skills could be enhanced.

### **Position Classification**

During fiscal year 1984, the Office participated in efforts to describe newly-created positions, and organize work in a number of realigned organizations. A major undertaking during the year was an initial assessment of positions in the GS/GM 11 through 15 grade range, and the preparation of a response to the

Office of Personnel Management which outlined steps the Commission would take to improve grade and position structures in this range, without sacrificing efficiency in program operations. The Commission continued its analysis of positions in connection with recommendations for employee promotions. For all positions reviewed, evaluation statements were prepared, and Office staff met with supervisors to discuss alternative job restructuring approaches to enhance certain positions.

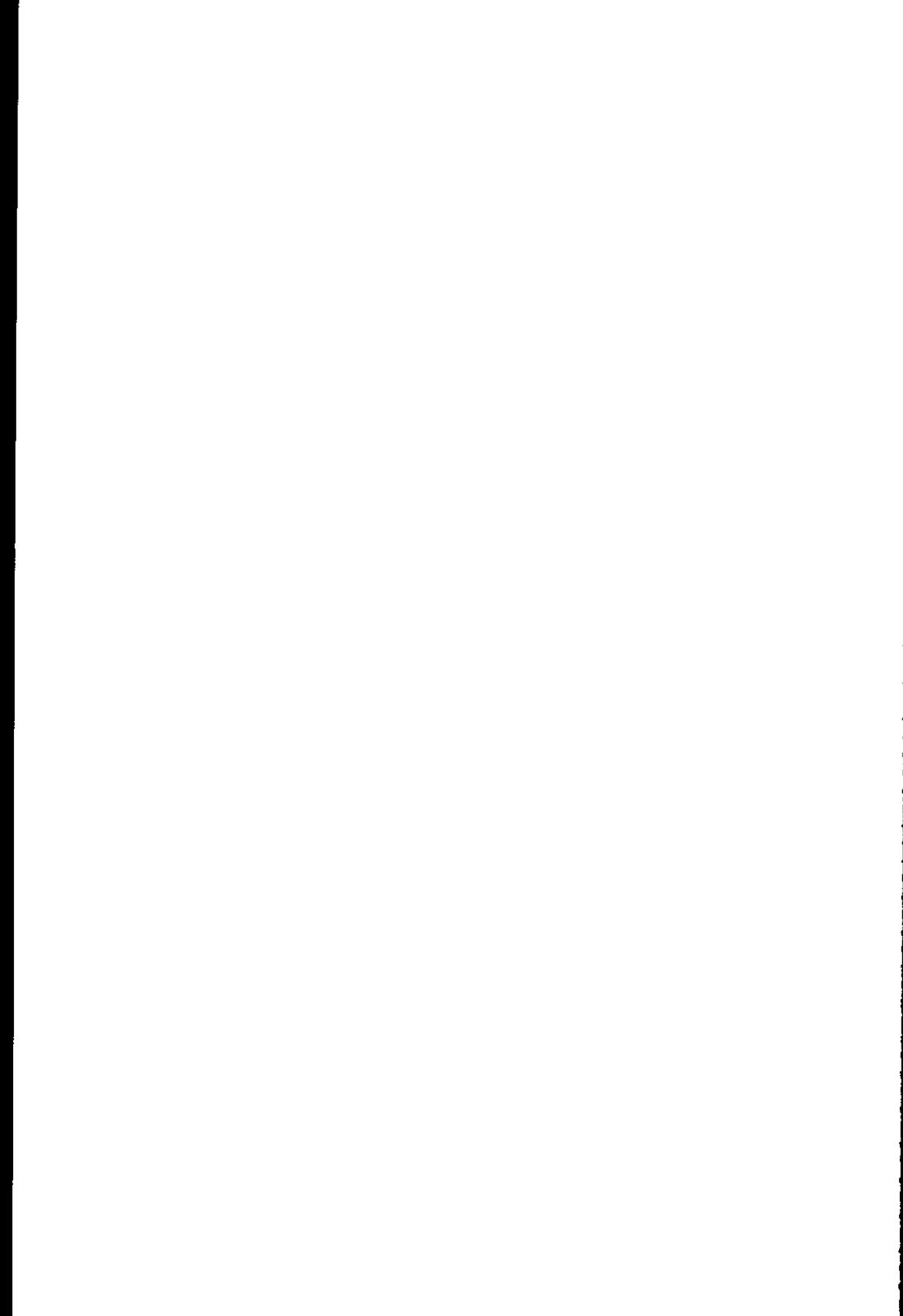
The Office of Budget and Financial Management administers the Commission's financial management program and is responsible for optimal utilization of the Commission's physical, fiscal, and manpower resources. The Office is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the Congress and the Office of Management and Budget. The Office also administers internal control systems for agency funds, and travel and cash management programs.

During fiscal year 1984, the Office implemented an electronic funds transfer system for fines and penalties deposits in order to speed up cash going into the Treasury and to reduce paperwork. Payments processing was improved to take better advantage of available discounts and to reduce the backlog of problem payments. An automated system recording obligations and payments was established to aid in cost projections and to facilitate efficient utilization of funds.

The Office continued to review its systems of internal control for accountability of agency funds, issuing guidelines where necessary, to prevent fraud and error. In this regard, procedures were established for the receipt, control and disposition of promotional materials received by agency personnel while on official travel. Promotional materials include reduced-fare coupons, "frequent-flyer" bonus trip mileage, cash compensation for denied boarding or reservation cancellation by the carrier, gifts, merchandise, trading stamps, etc. These procedures enable the Commission to achieve full utilization of travel funds whenever benefits in addition to direct travel are obtained from government funds used for that direct travel. In addition, a revised Commission Order on official passports was developed by this Office and implemented early in the fiscal year. The major impacts of the revised order were to centralize control over official passports and to provide a single secure repository for official passports when they were not being used between official travel assignments. A positive control system for signing-out and returning official passports is operative in addition to clear statements of procedures provided in the order for obtaining official passports. The Commission has effectively established a total system for official passport issuance, control, retrieval and cancellation which is in accordance with Federal efforts in controlling passports.

Appendix G summarizes appropriations, obligations and receipts for fiscal year 1984.

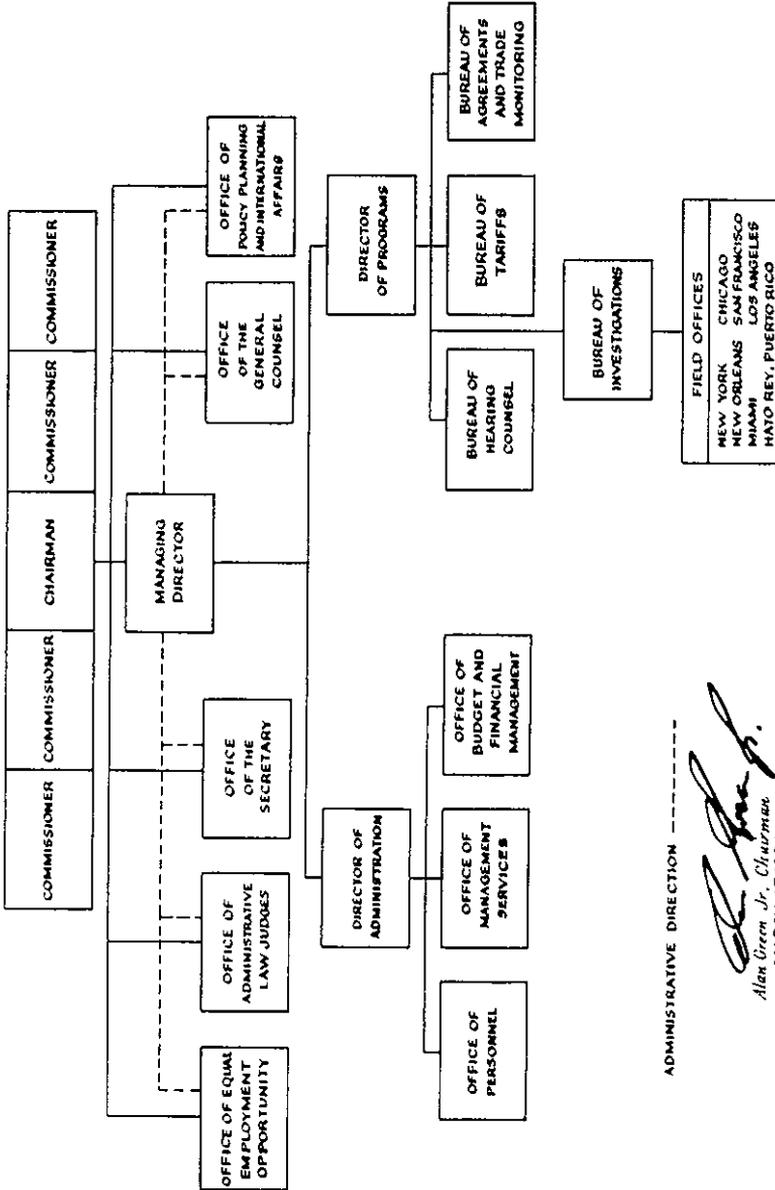
## APPENDICES



**APPENDIX A**

**ORGANIZATION CHART**

**FEDERAL MARITIME COMMISSION**



ADMINISTRATIVE DIRECTION -----

*Alan Green Jr.*  
 Alan Green Jr., Chairman  
 MARCH 15, 1984

APPENDIX B

COMMISSION PROCEEDINGS -- FISCAL YEAR 1984

**Formal Proceedings**

Decisions.....25  
Reconsiderations.....0  
Discontinuances & Dismissals....7  
Not Reviewed.....12  
Remand.....2

**Total** **46**

**Special Dockets** **137**

**Informal Dockets** **58**

**Oral Arguments** **3**

**Rulemakings**

Final Rules Issued.....7  
Discontinued.....8

**Total** **15**

APPENDIX C

**AGREEMENT FILINGS AND STATUS--FISCAL YEAR 1984**

**Agreements Filed in FY 1984 (including modifications)**

Foreign and Domestic Commerce.....	201
Terminals.....	141
Labor-Management.....	12

**Conference Reports Submitted for Commission Review**

Shippers' Requests and Complaints.....	82
Minutes of Meetings.....	2,675
Self-Policing of Conference and Rate Agreements.....	69
Pooling Statements.....	16
Operating Reports.....	73

**Agreements on File as of September 30, 1984**

Conference.....	110
Interconference.....	8
Pooling.....	21
Joint Service.....	23
Sailing.....	21
Transshipment.....	23
Cooperative Working, Agency & Container Interchange.....	64
Terminal.....	733
Labor-Management Agreements & Exemptions.....	<u>232</u>

**TOTAL**            1,235

APPENDIX D

**TARIFF FILINGS AND STATUS - FISCAL YEAR 1984**

Foreign Commerce

Total No. of Tariff Page Filings Received	581,087
Total No. of Tariff Page Filings Rejected	3,015
Total No. of Tariffs on Hand 10/1/83	4,231
Total No. of Tariffs on Hand 10/1/84	4,544

Special Permission Applications

Special Permission Applications Received	
Granted	334
Withdrawn	9
Denied	28

Domestic Commerce

Total Number of Tariff Pages Received	
Domestic Offshore	12,955
Terminals	5,170
Total Number of Tariff Pages Rejected	
Domestic Offshore	707
Total Number of Tariffs on Hand 10/01/83	
Domestic Offshore	288
Terminals	425
Total Number of Tariffs on Hand 10/01/84	
Domestic Offshore	299
Terminals	430

Special Permission Applications

<u>Domestic Offshore</u>	
Granted	60
Withdrawn	3
Denied	3
Pending	0

Investigation and Suspension Memoranda

<u>Domestic Offshore</u>	
Completed	1
Pending	0

APPENDIX E

**CIVIL PENALTIES ASSESSED OR SETTLED - FISCAL YEAR 1984**

<u>NAME</u>	<u>AMOUNT</u>
Greenbelt Cooperative, Inc.	\$30,000
TCI Carriers, Inc. (formerly Transocean Shipping, Inc.)	5,000
Pacific Atlantic Trading Company, Inc.	3,000
Black Sea Shipping, Co.	13,500
Unsworth & Co., Inc.	1,000
Costa Line Cargo Services	1,500
Boston Consolidation, Inc.	2,000
Venezuelan Line	2,000
Armand Ventura	10,000
T. J. Colbeck & Co., USA	2,000
Unlimited Cargo Service Co., Inc.	7,500
Valdez Line	5,000
Nippon Express USA (Illinois)	10,000
Miami Freight & Shipping Co.	2,500
Dieterle & Victory	750
Royal Cathay Trading Co.	3,330
Selax Transport Int'l FF & Co.	2,500
John Kane Sales Co.	2,500
Transportes Navieros Ecuatorianos (Transnave)	5,000
Honolulu Freight Services	3,000
Intercontinental Maritima S.A. d/b/a IMAR Lines	12,000

Appendix E (cont.)

<u>NAME</u>	<u>AMOUNT</u>
Transamerican Shipping Corp.	4,000
Pan American Container Corp.	2,400
Tierra MarAire	1,000
China Interocean Transport, Inc.	2,000
Conair Corp.	5,000
Nigerian Star Line	2,500
Associated Trade Development d/b/a Trans World Systems	4,000
Neptune Orient Lines, Inc.	95,000
Hong Kong Islands Shipping Corp., Ltd.	90,000
N Y K Line	4,000
Humphrey & MacGregor	2,500
Transeurope Shipping, Inc.	5,000
Jose Buenaventura d/b/a Philippine Express	10,000
BLG Swisstrans Inc.	7,500
Flota Mercante Grancolombiana	25,000
Andino Chemical Shipping Company	25,000
Maritima Transligra S.A.	25,000
Expeditors Int'l Inc.	7,500
Votainer Cons. Services (Southwest)	8,000
Hapag Lloyd AG	1,500
Hudsons Int'l Inc.	5,000
Movers Port Service (MPS)	100,000
Jeuro Container Inc. d/b/a Jeuro Container Line	7,500
Pracht Int'l	<u>5,000</u>
<b>CUMULATIVE TOTAL, (FY 84)</b>	<b><u>\$558,080</u></b>

APPENDIX F

FIELD INVESTIGATIONS--FISCAL YEAR 1984

<u>Investigations</u>	<u>Total</u>	<u>Malpractices</u>	<u>Tariff Violations</u>	<u>Forwarder and Other Matters</u>
Pending 10/1/83	365	109	87	169
Opened FY 1984	231	70	53	108
Closed FY 1984	425	105	102	218
Pending 9/30/84	171	74	38	59

APPENDIX G

**STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS**

**FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1984**

**Appropriations:**

Continuing Resolutions P.L. 98-107 and 98-166: For necessary expenses of the Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms or allowances therefore, 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.	\$10,756,000
Public Law 98-396, 98th Congress, approved August 22, 1984: Supplemental Appropriations Bill to cover increased pay cost.	<u>190,000</u>
Appropriation availability	\$10,946,000

**Obligations and Unobligated Balance:**

Net obligations for salaries and expenses for the fiscal year ended September 30, 1984	\$10,940,000
Unobligated balance returned to Treasury	6,000

**Statement of Receipts: Deposited with the General Fund of the  
Treasury for the Fiscal Year Ended September 30, 1984:**

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	\$ 157,617
Fines and penalties	<u>716,199</u>
Total general fund receipts	\$ 873,816

This report is the product of  
the efforts of the Offices and Bureaus  
of the Federal Maritime Commission.  
We would especially like to thank  
Jane E. Gregory, Kathleen L. LaMarre  
and Tonya M. Tinsley  
for their valuable secretarial and  
administrative services in the  
preparation of this report.