

Third Annual Report
OF THE
Federal Maritime Commission



Fiscal Year Ended June 30, 1964

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

June 30, 1964

JOHN HARLEE, *Chairman*

THOMAS E. STAKEM, *Vice Chairman*

ASHTON C. BARRETT, *Member*

JAMES V. DAY, *Member*

JOHN S. PATTERSON, *Member*

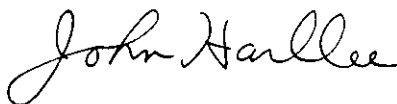
THOMAS LISI, *Secretary*

LETTER OF TRANSMITTAL

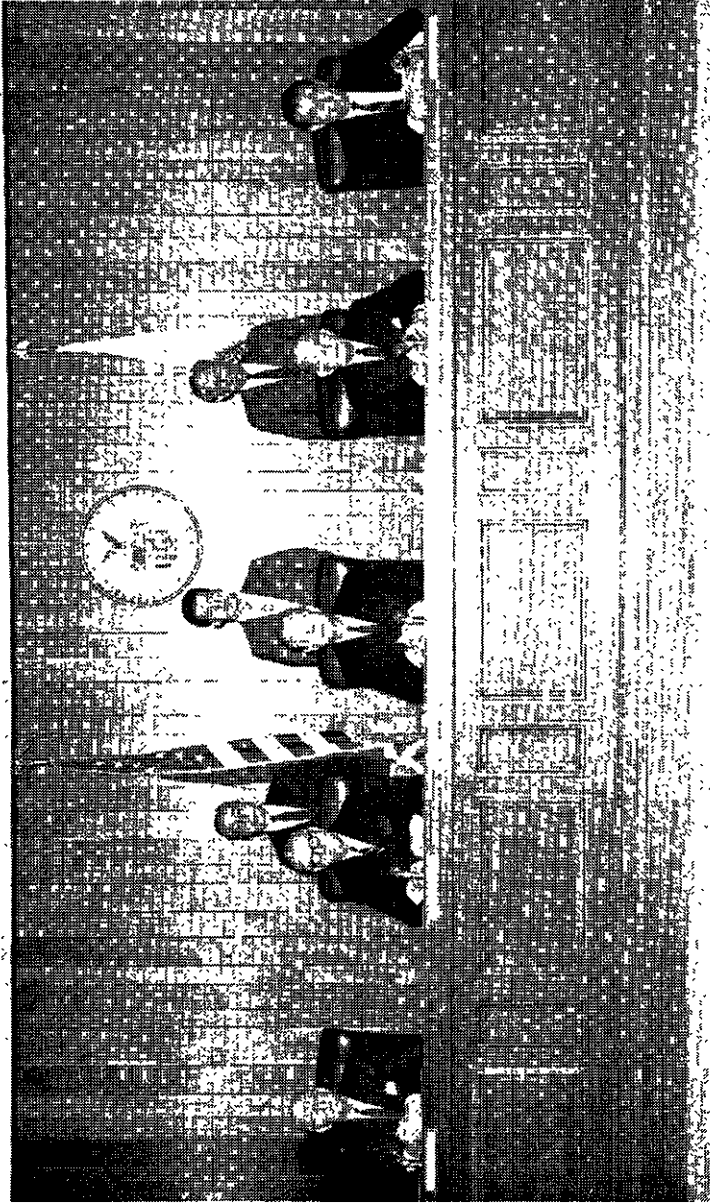
FEDERAL MARITIME COMMISSION,
Washington, D.C., 20573,
November 12, 1964.

To the Senate and the House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, I respectfully submit the Annual Report of the Federal Maritime Commission for the fiscal year 1964.

A handwritten signature in cursive script that reads "John Harlee".

JOHN HARLEE,
Chairman.



Federal Maritime Commissioners (left to right first row) : Ashton C. Barrett, James V. Day (Vice Chairman), Rear Admiral John Harllee (Chairman), John S. Patterson, George I. Hearn; (second row) : Thomas Lisi (Secretary), Timothy J. May (Managing Director), James L. Pimper (General Counsel)

TABLE OF CONTENTS

	<i>Page</i>
HIGHLIGHTS OF THE YEAR	1
SCOPE OF AUTHORITY AND BASIC FUNCTIONS	6
INTERNATIONAL COMMERCE	7
Carrier Agreements	7
Exclusive Patronage (Dual Rate) Contracts	8
Freight Rates	10
International Relations	13
DOMESTIC OFFSHORE COMMERCE	15
Regulatory Activity	15
Special Studies	16
Noteworthy Developments in Industry	16
TERMINAL OPERATORS	17
FREIGHT FORWARDING	18
Licensing	18
Agreements	19
Rulemaking Proceedings	19
FINANCIAL AND ECONOMIC ANALYSIS	20
ENFORCEMENT AND COMPLIANCE	21
Informal Complaints	21
Matters Referred by Antitrust Subcommittee of the House Committee on the Judiciary	24
Factfinding Proceedings	25
Field Investigations	25
Formal Proceedings	26
PROCEEDINGS BEFORE HEARING EXAMINERS AND FEDERAL MARITIME COMMISSION	26
Final Decisions of the Commission	27
Decisions of Hearing Examiners	29
RULEMAKING PROCEEDINGS	33
ACTION IN THE COURTS	34
LEGISLATIVE DEVELOPMENTS	35
ADMINISTRATION	35

APPENDIX

A Statement of Appropriation and Obligation for the Fiscal Year Ended June 30, 1964	37
--	----



REPORT OF THE
FEDERAL MARITIME COMMISSION

Highlights of the Year

The Federal Maritime Commission, in fiscal year 1964, passed some important milestones and developed a number of significant benchmarks to guide the regulatory course of the agency, pursuant to the shipping statutes which it administers. The Commission met its initial obligations under the most recent legislative enactments, Public Laws 87-254 and 87-346, and made substantial progress in updating the administrative machinery for discharging its responsibilities under the various shipping statutes.

Activities Receiving Primary Emphasis

Program activity included (1) approval of dual rate contract systems; (2) licensing of independent freight forwarders; (3) approval of new agreements or modification of existing section 15 agreements; (4) selected review of inbound and outbound ocean freight rates; (5) the conduct of studies, institution of formal investigations and fact-finding investigations, and the issuance of section 21 orders concerning the freight rates charged for the movement of specific commodities in the foreign commerce of the United States by common carriers and/or conferences of such carriers; (6) compliance, investigation and enforcement programs; (7) formal investigation and hearings; (8) negotiation for elimination of discriminatory practices of foreign governments against United States-flag shipping; and (9) promulgation and issuance of regulations and rules to carry out the provisions of the statutes.

Although substantial results were achieved in all areas, particular significance was attached to the following by the Federal Maritime Commission, the industry, and the shipping public.

Dual Rate Contracts

Intensified effort was devoted to fulfilling the Commission's responsibility for the approval of exclusive patronage or dual rate contracts under the provisions of Public Law 87-346, enacted on October 3, 1961. The law authorizes such contracts, upon approval of the Commission, provided the contracts contain express provisions as to (1)

prompt release; (2) notice of rate increases; (3) legal right to select the carrier; (4) natural routing; (5) damages for breach; (6) termination by the shipper; (7) reasonable spread between ordinary and contract rate; (8) exclusion of certain bulk cargoes; and (9) such other provisions not inconsistent with the act as the Commission shall require or permit. The law also provides that contracts lawfully in effect upon enactment of the statute would remain lawful provided they were amended to comply with the statute and filed with the Commission by April 3, 1962; and that the Commission was to approve, disapprove, or modify the contracts so filed by April 3, 1963 (subsequently extended by the Congress to April 3, 1964).

Sixty-one amended forms of dual rate contracts were the subject of formal docketed proceedings. Notices of the filing of these amended agreements were published in the Federal Register during May and June 1962. This resulted in 538 sets of comments from shippers, carriers, government agencies, and foreign governments.

The amended contracts and comments were analyzed and evaluated, and on April 10, 1963, the Commission instituted formal proceedings and hearings. Sixty-one cases were consolidated into 23 separate proceedings and assigned to eight hearing examiners. Hearings commenced on July 30, 1963, and continued through 1963. Seven of the amended dual rate systems were terminated or discontinued by the parties in the course of proceedings. By January 10, 1964, the hearing examiners had issued initial decisions in all other cases.

On March 27, 1964, the Commission, after considering exceptions to the decisions of the hearing examiners and hearing oral argument thereon, issued a single report approving all of the proposed contracts with certain modifications. In connection with its report, the Commission by interpretive ruling granted the conferences and carriers a period of 90 days ending July 3, 1964 (subsequently extended to September 1, 1964) which permitted the conferences, carriers and shippers to continue their dual rate contract relationship under the terms of the new contract until such contract could be executed—provided the shipper signed a "binder" with the conference or carrier.

At the close of the year, suits for judicial review of the Commission's Report and Orders, filed by the Pacific Coast European Conference, Latin American/Pacific Coast Steamship Conference, Pacific Coast River Plate Brazil Conference, and the Pacific Straits Conference, were pending in the United States Court of Appeals for the Ninth Circuit.

In addition to the amended contracts filed pursuant to Public Law 87-346, four new dual rate systems and four modifications to such systems were approved during the year.

Freight Forwarder Licensing Program

Public Law 87-254, enacted on September 19, 1961, provided for the licensing and regulation of independent ocean freight forwarders. On July 1, 1963, there were 896 applications pending initial licensing

under this law. During the fiscal year, 45 new applications were received.

Of the cumulative workload of 941 applications, 452 were acted upon by issuance of licenses—85 by denial of license or withdrawal of application—and 106 by notification to the applicants of (1) the conditional approval of their applications subject to furnishing a bond or (2) the Commission's intent to deny a license. The remaining 298 pending applications represent a carryover of the more complex cases in the initial licensing program under Public Law 87-254. They involved (a) 167 full field investigations to verify information which might adversely affect the qualifications of applicants to be licensed; (b) 23 cases contingent upon the outcome of final rulemaking proceedings; and (c) 108 cases in process of final negotiation for the purpose of resolving issues prior to the issuance of a license.

Freight Rate Disparities

Pursuant to its obligations under section 212(e) of the 1936 Act, sections 17 and 18(b)(5) of the 1916 Act, the Commission initiated a number of actions to guard against unfair practices and unjust discriminations. In November 1963 and January 1964, the Commission requested certain steamship conferences and nonconference lines in the foreign commerce of the United States to explain or make appropriate adjustments in freight rates which appeared to discriminate against American exporters. In this connection, the Commission served formal orders, pursuant to the authority granted by section 21, Shipping Act, 1916, on 38 nonconference steamship lines and on eight outbound and eight inbound conferences. The conferences and their member lines (230 carriers) and the nonconference steamship lines were directed to furnish data and documents required for an analysis of the disparity between inbound and outbound rates on specific commodities.

The Commission's action was resisted by the steamship industry, particularly the large segment represented by the foreign-flag lines engaged in the U.S. foreign commerce. This resistance came in the form of protests from foreign governments and in the form of review suits in the U.S. courts of appeals and applications for interlocutory injunctions against the effectiveness of the Commission's orders.

Following a formal protest to the President, the Chairman and the Managing Director of the Federal Maritime Commission met in February and June 1964, in Paris, France, with representatives of the maritime nations of Europe and Japan. They explained the United States shipping laws, the Commission's responsibilities under these laws, and the reasons the requested information and data was necessary to the discharge of the Commission's responsibilities under the shipping statutes. At the close of the year, it appeared that the United States and the foreign maritime nations might well reach an amicable settlement concerning the matter.

The eight outbound conferences filed review suits in the U.S. Courts of Appeals for the District of Columbia and the Ninth Circuit. At the

close of the fiscal year, injunctions had been denied in all cases in which they were sought. One case had been dismissed on the Commission's motion and seven cases were pending the filing of briefs. Two other cases for review of the Commission's orders against inbound conferences were filed and pending at the close of the fiscal year. In these cases, injunctive relief was not sought because the Commission had voluntarily stayed the effective date of the orders under review.

In addition to the foregoing the Commission initiated the following formal investigations and factfinding investigations concerning freight rates and charges.

(a) Docket 1155—Investigation of Imposition of Surcharge on Cargo to Manila, Republic of Philippines, instituted on October 23, 1963.

(b) Docket 1171—Investigation of Outbound Rates Affecting the Exportation of High-Pressure Boilers (Utility type), Parts and Related Structural Components, instituted on March 12, 1964.

(c) Docket 1174—Investigation of Freight Rates on Liquor and Distilled Spirits, North Atlantic-United Kingdom and Baltic Trade, instituted on March 17, 1964.

(d) Factfinding Investigation No. 6—Investigation Into the Effects of Steamship Conference Organization, Procedure, Rules, Regulations and Practices (including conference rates), instituted on October 22, 1963.

(e) Factfinding Investigation No. 7—Investigation of Possible Violations of the Shipping Act, 1916, Resulting from Rates on Plywood, instituted on March 24, 1964.

(f) Factfinding Investigation No. 8—Project Rates and Practices Related Thereto, instituted on June 16, 1964.

Rulemaking

The Commission, during fiscal year 1964, accelerated its program for promulgating rules and regulations to achieve more effective administration of the provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. Twenty rulemaking proceedings were in process during the year. Six of these were published as final rules; ten were published as proposed rules, inviting comments; and one proceeding was discontinued.

The six final rules concerned: (1) Admission, Withdrawal and Expulsion Provisions of Steamship Conference Agreements; (2) Rules Governing the Right of Independent Action in Agreements; (3) Self-Policing Systems; (4) Green Hide Weighing Practices; (5) Reports of Rate Base and Income Account by Vessel Operating Common Carriers in the Domestic Offshore Trades; (6) Practices of Licensed Independent Ocean Freight Forwarders, Ocean Freight Brokers, and Ocean Going Common Carriers (Amendment of section 510.24 of the published rules).

Other Significant Activities

In other regulatory activities the Commission in fiscal year 1964: instituted on its own motion 51 formal proceedings under statutory provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933; issued 42 final decisions involving 120 formal proceedings; approved under provisions of section 15 of the 1916 Act, 235 carrier agreements, 72 terminal agreements, and over 1,400 freight forwarder cooperative working agreements; handled 90,000 tariff filings; granted 340 and denied 31 special permission requests to effect new or increased freight rates in advance of the statutory filing time; initiated action to resolve in excess of 600 informal complaints and concluded its action with respect to over 500 such complaints; participated in 42 cases in litigation before the courts involving the decisions and orders of the Commission; and concluded in excess of 800 field investigations, including those concerning violations of the shipping statutes and those involving the qualifications of applicants for freight forwarder licenses.

On March 26, 1964, the Chairman appeared before the Congressional Joint Economic Committee for the purpose of reporting to the committee the progress made, and the actions taken, by the Commission to implement the recommendations made by the committee in June 1963. The Chairman reported the initiatory action taken by the Commission to remove discriminations against U.S. foreign commerce and assure the free flow of goods in that commerce, unencumbered by restrictive or discriminatory practices.

The Commission's fiscal year activities are set forth in more detail in subsequent sections of this report.

Special Activities of Commissioners

During the fiscal year, the Chairman made two trips to Paris, France, to meet with representatives of the maritime nations of Europe and Japan to advise them of the Commission's statutory responsibilities in formally asking their carriers and the conferences to which their lines belong to furnish data deemed essential for the Commission's analysis of export and import rates affecting our commerce. A Commissioner also made a special trip to the State of Alaska to survey the extensive damage to dock and harbor facilities caused by the earthquake in order to insure that the Commission would be fully aware of these conditions pertaining to the State's waterborne commerce which is regulated by the Commission.

The Chairman and members of the Commission also made several visits to the Commission's field offices and the major ports in this country to obtain current and factual information from the regulated industry and the interested public as to local shipping conditions.

The Chairman and Commission members delivered 16 addresses during the year explaining the agency's policies, programs, and objectives. These engagements—in various sections of the country—were

before interested groups of port authorities, carrier officials, freight forwarders, shippers, and various trade associations. Through such endeavors the Commission constantly strives to keep in close communication with the various areas and entities which are within the purview of its concern in preserving and promoting the public interest.

Scope of Authority and Basic Functions

The Federal Maritime Commission was established by Reorganization Plan No. 7, effective August 12, 1961, as an independent agency, to administer the functions and discharge the regulatory authorities under the Shipping Act, 1916; Merchant Marine Act, 1920; Intercoastal Shipping Act, 1933; and Merchant Marine Act, 1936.

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

The statutory authorities and functions of the Commission embrace the following principal areas: (1) Regulation of services, practices, and agreements of common carriers by water and other persons engaged in the foreign commerce of the United States; (2) acceptance, rejection, or disapproval of tariff filings of common carriers engaged in the foreign commerce; (3) regulation of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water in the domestic offshore trade of the United States; (4) investigation of discriminatory rates, charges, classifications, and practices in the waterborne foreign and domestic offshore commerce; and (5) rendering decisions, issuing orders, and making rules and regulations governing and affecting common carriers by water, terminal operators, freight forwarders, and other persons subject to the shipping statutes. The broad areas of responsibility are more specifically defined under the following headings:

Agreements.—The Commission approves or disapproves agreements filed by common carriers, including conference agreements, interconference agreements, and cooperative working agreements between common carriers, terminal operators, freight forwarders, and other persons subject to the shipping laws; and reviews activities under approved agreements for compliance with the provisions of law and the rules, orders and regulations of the Commission.

Practices.—The Commission regulates the practices of common carriers by water and other persons engaged in the foreign and domestic offshore commerce of the United States, and conferences of such common carriers in accordance with the requirements of the shipping statutes and the rules, orders and regulations of the Commission.

Tariffs.—The Commission accepts or rejects tariff filings of domestic offshore carriers and common carriers engaged in the foreign commerce of the United States, or conferences of such carriers, in

accordance with the requirements of the shipping statutes and the Commission's rules and regulations; in the domestic offshore trade, the Commission has the authority to set maximum or minimum rates or suspend rates. It approves or disapproves Special Permission applications submitted by domestic offshore carriers and carriers in the foreign commerce, or conferences of such carriers, for relief from the statutory and/or Commission tariff requirements.

Licenses.—The Commission issues or denies the issuance of licenses to persons, partnerships, corporations, or associations desiring to engage in ocean freight forwarding activities.

Informal Complaints.—The Commission reviews and determines the validity of alleged or suspected violations of the shipping statutes and rules and regulations of the Commission by common carriers by water in the domestic offshore and the foreign commerce of the United States, terminal operators, freight forwarders, and other persons subject to the provisions of the shipping statutes. After investigation, it concludes such complaints by administrative action, formal proceedings, referral to the Department of Justice, or by achieving voluntary agreement between the parties.

Formal Adjudicatory Procedure.—The Commission conducts formal investigations on its own motion and adjudicates formal complaints pursuant to the Administrative Procedure Act.

Rulemaking.—The Commission promulgates rules and regulations to interpret, enforce and assure compliance with the shipping statutes of common carriers by water and other persons subject to the statutes.

Field Investigation, Inspection, and Audit.—The Commission prescribes and administers programs to assure compliance with the provisions of the shipping statutes of all persons subject thereto, including without limitation those for: (a) The submission of regular and special reports, information, and data: (b) the conduct of a plan for the field investigation and audit of activities and practices of common carriers by water in the domestic offshore trade and the foreign commerce of the United States, conferences of such carriers, terminal operators, freight forwarders, and other persons subject to the shipping statutes; (c) rate and related financial analysis studies, economic studies, and the preparation of reports reflecting the various trade areas, the extent and nature of competition, commodities carried, and future commodity trends.

Foreign Discriminations.—The Commission, in conjunction with the Department of State, conducts activities to effect the elimination of discriminatory practices on the part of foreign governments against United States-flag shipping.

International Commerce

Carrier Agreements

Section 15 of the Shipping Act, 1916, requires, in substance, that all agreements and modifications of agreements among common carriers in the waterborne commerce of the United States, which fix

rates, control competition, pool or apportion earnings or traffic, allot ports or regulate sailings, regulate freight or passenger traffic, or otherwise provide for exclusive, preferential or cooperative working arrangements, be filed with and approved by the Commission. Such agreements or modifications are examined and analyzed to determine whether they are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between American exporters and their foreign competitors; whether they will operate to the detriment of the commerce of the United States and the public interest or will violate any provision of the Shipping Act. The Commission must approve the agreement or modification or institute a hearing to determine whether, based upon criteria established by said section 15, to disapprove, cancel, or modify such agreements or modifications of existing agreements.

At the close of the fiscal year, there were 791 approved agreements on file with and being administered by the Commission. These consisted of 135 conference and rate agreements; 59 joint service agreements; 33 pooling agreements; 32 sailing agreements; and 532 transshipment and miscellaneous cooperative working arrangements.

Activity in Processing Section 15 Agreements Fiscal Year 1964

At the commencement of fiscal year 1964, there were pending Commission action 84 agreements filed for approval under section 15, consisting of 35 new agreements and 49 modifications to existing approved agreements. During the 1964 fiscal year, 351 additional agreements were filed (139 new agreements and 212 modifications). The Commission approved 210 agreements; 41 were withdrawn by the parties as a result of informal discussions requesting clarification or revision of the agreements; and the remainder, at the end of the fiscal year, were in process of analysis or docketed proceedings.

The following table reflects docketed proceedings instituted to determine whether agreements filed pursuant to section 15, should be approved, disapproved, or modified:

	Agreements	Modifications	Total
Pending July 1, 1963.....	4	6	10
Ordered fiscal year 1964.....	5	14	19
Approved after hearing.....	3	2	5
Proceedings discontinued or withdrawn.....	1	3	4
Pending June 30, 1964.....	5	15	20

Exclusive Patronage (Dual Rate) Contracts

Section 14b of the Shipping Act, 1916, enacted by Public Law 87-346, effective October 3, 1961, authorizes the Commission to permit, with certain specified safeguards, the use by carriers or conferences of a

contract system, available to all shippers and consignees equally, which provides lower rates to a shipper or consignee who agrees to give all, or a fixed portion, of his patronage to such carrier or conference. Since such "dual rate" contracts may have a direct impact upon the commerce of the United States, it is essential to assure that freight rates that are assessed shippers and receivers of freight pursuant to such contracts are not discriminatory or prejudicial to our American exporters and importers and that approval of such contracts is not contrary to the public interest.

Under Public Law 87-346, existing agreements which did not meet prescribed standards became unlawful unless amendments in compliance with the act were filed with the Commission by April 3, 1962. Contracts so amended were lawful until April 3, 1963 (subsequently extended to April 3, 1964, by Public Law 88-5) during which period the Commission was required to take action of approval, disapproval, cancellation, or modification.

During fiscal year 1964, seven of the amended dual rate contract systems pending consideration by the Commission in docketed proceedings were terminated or discontinued by the parties. The remaining 54 amended forms of dual rate contracts were approved by the Commission on March 27, 1964, in the Dual Rate Cases decision. To give the parties sufficient time to review the contracts prior to signing and to assure continuation of the advantages of the dual rate system to shippers, carriers, and conferences without interruption after the statutory deadline of April 3, 1964, the Commission issued interpretive rulings which continued the dual rate contract terms without execution of the new contract until September 1, 1964. This extension was granted provided the shipper signed a "binder" with the carrier covering this interim period to final execution of the new contracts.

In addition to the contracts comprising the Dual Rate Cases decision, the Commission in 1964 approved four new dual rate contracts and four modifications.

Shippers' Requests and Complaints

The statute requires the Commission to disapprove an agreement, after notice and hearing if it finds that the parties have failed or refused to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints. In discharging these responsibilities, the Commission in fiscal year 1964 circularized all outbound conferences requesting them to provide information on the conference handling of shippers' requests and complaints. Due to the reluctance of certain conferences to respond to this request, the Commission served section 21 orders on 23 conferences which had either refused or failed to comply. Several of the conferences complied with the orders but 13 conferences contested them. The 13 contested section 21 orders were being litigated at the end of fiscal year 1964.

Freight Rates

The statutory requirements with respect to the filing of ocean freight rates by common carriers by water in the foreign commerce of the United States and conferences of such carriers are set forth in section 18(b) of Public Law 87-346 which section became effective on January 2, 1962. For the purpose of insuring the establishment of rates only after public notice and to guard against rates and practices which are unjustly discriminatory, the statute essentially provides that (1) all rates, charges, classifications, rules, or regulations governing the transportation of property shall, prior to assessment, be published and filed with the Commission; (2) new or initial rates and changes in rates, charges, classifications, rules or regulations which result in an increase in cost to the shipper shall become effective not earlier than 30 days after the date of filing with the Commission; except that the Commission may, in its discretion and for good cause, grant special permission for earlier effective dates, and rate changes which result in a decrease in cost to the shipper may become effective upon publication and filing with the Commission; (3) no common carrier or conference shall charge, demand, collect, or receive a compensation which is different than that which is published, on file with the Commission, and in effect; (4) the Commission shall by regulations prescribe the form and manner in which tariffs shall be published and filed and is authorized to reject any tariff which is filed and fails to conform with section 18(b) or the Commission's regulations; and (5) the Commission shall, after hearing, disapprove any rate or charge which it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

Tariff Filings

At the start of the fiscal year, 1,651 individual carrier and conference tariffs were on file with the Commission. At the close of the fiscal year, there were 1,967 tariffs on file. During the year 79,598 tariff filings were received. Of these 78,326 were accepted and 1,272 were rejected for failure to comply with statutory requirements. Rate changes averaged 2.5 per page at the beginning of the fiscal year and increased to 6.46 changes per page at the close of the year. The number of new or initial rates appearing on tariff filings maintained a constant average of 1.34 per page.

Investigation of Freight Rate Disparities in Principal United States Inbound-Outbound Foreign Trades

In keeping with its legal responsibility to further the foreign trade and commerce of the United States and to guard against unfair practices and unjust discriminations, the Commission requested certain steamship conferences in the foreign commerce of the United States to explain, or make appropriate adjustments in, freight rates which appeared to discriminate against American exporters. Implementing this request the Commission served formal orders issued under section

21 of the Shipping Act, 1916, on eight outbound steamship conferences and the corresponding reciprocal inbound steamship conferences. Under these orders the 16 conferences and the member lines thereof were directed to furnish certain data and documents considered relevant to analysis of the disparity between inbound and outbound rates. Orders were directed to the 16 conferences named below and the 230 carriers comprising the membership of these conferences as well as to 38 nonconference steamship lines serving in the same trades as the conferences:

- North Atlantic Continental Freight Conference (Outbound)
- Continental North Atlantic Westbound Freight Conference (Inbound)
- North Atlantic United Kingdom Freight Conference (Outbound)
- North Atlantic Westbound Freight Association (Inbound)
- North Atlantic Mediterranean Freight Conference (Outbound)
- West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference (Inbound)
- North Atlantic French Atlantic Freight Conference (Outbound)
- French North Atlantic Westbound Freight Conference (Inbound)
- North Atlantic Baltic Freight Conference (Outbound)
- Scandinavian and Baltic/U.S. North Atlantic Westbound Freight Conference (Inbound)
- Pacific Westbound Conference (Outbound)
- Trans-Pacific Freight Conference of Japan (Inbound)
- Far East Conference (Outbound)
- Japan-Atlantic and Gulf Freight Conference (Inbound)
- Pacific Coast European Conference (Outbound)
- Outward Continental North Pacific Freight Conference (Inbound)

The Commission's section 21 orders asked for information and documents related to the transportation of approximately 100 commodities carried in the various world-wide trades involved. These commodities were selected because of the wide freight rate disparity, actual or potential tonnage movement, and because they were the subject of protest by exporters or investigation by the Joint Economic Committee of the Congress or the Department of Commerce.

This action of the Commission was resisted by the steamship industry, particularly the large segment represented by the foreign-flag lines. Opposition came in the form of protests from foreign governments and in the form of review suits in the U.S. courts of appeals. In due course, the courts denied the injunctive relief sought and all but one of the suits were still pending at the close of the fiscal year.

In view of the protests from European maritime nations and pending completion of discussions with representatives thereof to clarify the intent of its request, the Federal Maritime Commission on February 26, 1964, postponed, pending further order of the Commission, the compliance date for the section 21 orders for the 8 inbound conferences and their member lines, the member lines of the outbound conferences, and the nonconference carriers.

Rate Disparity Studies

Further, the Commission instituted a program of pilot studies of selected commodities to determine the effect of inbound-outbound disparities on the exportation of such commodities in our foreign commerce. Commodities were selected on the basis of the following criteria: (a) Commodities moving in volume or identified by the Department of Commerce as having an export potential; (b) commodities which are subject to declining overseas markets and/or increased imports; (c) commodities where the outbound freight rate is a high percentage of landed costs; and (d) commodities for which complaints were received either by the Commission or by the Department of Commerce or other sources.

On this basis the commodities selected for study were: Plywood; canned meats; sulfuric acid; household appliances; automobiles and trucks; wood pulp; electric motors; bicycles and motorcycles; soda ash; superphosphate fertilizer; nitrogenous fertilizer; potash fertilizer; sulfur; canned fruits and vegetables; canned and frozen fruit juices; electrical machinery; radios, photographs and parts; walnut logs; construction machinery; standard newsprint; railroad locomotives, cars and parts; electric light bulbs and batteries; medicinal and pharmaceutical preparations; printing machinery; costume jewelry; textile machinery; books; textile products; hardwood lumber.

As part of this program, representatives of the Commission attended a number of industry meetings sponsored by the Business and Defense Services Administration of the Department of Commerce. At some of these meetings the subject of ocean freight rates as a possible deterrent to U.S. exports was discussed. Information received from shippers is being considered along with all other information developed in connection with the pilot commodity studies programed by the Commission.

From these meetings it was found that shippers generally are concerned with many factors affecting their ability to export, of which the export freight rate is only one. The following are some of the significant factors which, in varying degrees, tend to restrict the ability of American exporters to compete in specific foreign markets: (a) foreign import duties; (b) prohibitions against imports; (c) currency restrictions; (d) national habits and preference; (e) substantially lower cost of production in foreign countries; (f) lower ocean freight rates from other foreign manufacturing areas, as compared with the rates from the United States; (g) the establishment of foreign manufacturing subsidiaries by American companies; (h) U.S. aid programs for assisting foreign governments in establishing their own manufacturing industries; and (i) foreign national programs to develop domestic industries to the exclusion of foreign imports.

In general, U.S. exporters appear to be more concerned with the problem of competitive freight rates from other foreign sources of supply than with the lower inbound rate to the United States.

Surcharges and General Rate Increases

Because of local conditions which result in increased costs for carriers and conferences at certain ports, surcharges are often established by the carriers and conferences in order to offset the added operational expense. The Commission is concerned with these increases in the cost of ocean transportation because of their potential adverse effect upon the commerce of the United States. In various instances in which conferences, maintaining a dual (contract/noncontract) rate system, scheduled general increases and/or surcharges to become effective, the Commission took the position that the increased rates could not be lawfully assessed for a prior period of 90 days. As a result, a considerable number of proposed surcharges were postponed by conferences to meet statutory requirements. In view of the serious concern expressed by the Commission, those conferences to which the Commission addressed itself were urged to and did voluntarily defer, suspend, or cancel intended surcharges or increases in previously published surcharges.

International Relations

Two special meetings in Europe and one in Washington, as well as continuing consultations with the foreign shipping attachés in Washington, have marked the increased problems in the international field brought about by the Federal Maritime Commission's implementation of the United States shipping statutes.

The problems were intensified by the Commission's request for information through section 21 orders on the disparity between outbound and inbound freight rates and by the Commission's approval of the dual rate contracts.

In the two meetings in Europe, the Chairman and the Managing Director explained the U.S. shipping laws and the reason that the Commission must have certain information in order to make a decision on these rate disparities.

Juridical handling and patience appeared to be producing results, and it was expected that the United States and the shipping countries of Europe and Japan would reach an amicable settlement concerning the requested information. However, these discussions have indicated that much closer government cooperation and liaison will be required in the future on such problems.

The European shipping countries and Japan raised certain jurisdictional questions concerning the dual rate contracts. As a result of the meeting with the representatives of these countries, the Federal Maritime Commission agreed that it would, upon request, remove six of the seven items objected to. To further assist the European countries, the Commission extended until September 1, 1964, the date for the completion of these contracts.

The major difficulty arises from a difference in the international shipping philosophies of the United States and the other major ship-

ping countries of the world. The laws of the United States require the regulation of the waterborne commerce of the United States; however, the other major shipping interests of the world feel these laws are an attempt to unilaterally regulate international shipping. Accordingly, they consider the U.S. regulation of shipping in the U.S. international commerce to be an infringement on their sovereign rights and prerogatives. This belief was so strong that there were indications that the United Kingdom would introduce into the House of Commons a proposed law which would counteract actions taken by the Federal Maritime Commission under current legislation.

Foreign Discriminations

The Federal Maritime Commission, under the provisions of section 19 of the Merchant Marine Act of 1920, is responsible for correcting foreign shipping discriminations. This requires that the Commission have close surveillance of the various laws and regulations issued by foreign governments to determine whether these laws contain discriminatory provisions applicable to U.S. shipping services to those countries.

Preferences granted to national flag carriers often discriminate against U.S. flag carriers and deprive them of the opportunity to compete for all cargo which may be moving. The ensuing loss of traffic can cause a serious loss in revenue, sufficiently heavy in some instances, so as to endanger the successful operation of U.S. flag shipping services.

A proposed discriminatory action currently pending continues to receive careful attention. It concerns a maritime convention under consideration by the Latin American Free Trade Association (LAFTA) (composed of the governments of Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, and Uruguay). The Transportation Advisory Committee of LAFTA has drafted a proposed convention which, among other things, would restrict a large portion of the movement of inter-LAFTA or "way-to-way" cargo to ships of member countries. This agreement is still in the drafting stage and has not been approved by LAFTA. The United States is following the course of this convention closely and will be prepared to take steps necessary to insure an equally competitive opportunity for U.S. shipping lines to participate in the movement of these cargoes.

Liaison

The Federal Maritime Commission maintains liaison with the other U.S. Government agencies in handling international shipping problems, as well as with international organizations and foreign shipping attachés. Close liaison with the Department of State is required on all types of international shipping matters of concern to the United States. The Commission must be currently informed and initiate timely action in respect to foreign operations and regulatory matters, port charges, port conditions, international transportation conferences

and related matters which might affect the operation of U.S. shipping services and the foreign commerce of the United States.

Domestic Offshore Commerce

The Commission regulates rates and practices of domestic offshore common carriers by water that serve the trades between continental United States and Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands, pursuant to the provisions of the Intercoastal Shipping Act of 1933 and the Shipping Act, 1916.

Regulatory Activity

Tariff Filings

The Intercoastal Shipping Act of 1933 requires that carriers file with the Commission and keep open to public inspection schedules showing all the rates, fares, and charges for, or in connection with, transportation between ports served in the domestic offshore trades. The Commission accepts or rejects tariff filings in accordance with the requirements of the statute and the Commission's rules and regulations.

In fiscal year 1964, the Commission received and examined 10,312 freight and passenger tariff filings. The Commission rejected 298 tariff pages and accepted the remainder. Examination of the rates and other tariff provisions contained in the accepted pages resulted in the institution by the Commission of 30 formal proceedings placing tariff matters under investigation and/or suspension.

Special Permission Applications

Under the provisions of section 2 of the Intercoastal Shipping Act of 1933, no change may be made in tariff provisions except by publication, filing, and posting of new tariff schedules. Such changes become effective not earlier than 30 days after the date of filing with the Commission. However, upon application of the carrier, the Commission may in its discretion and for good cause shown allow changes to become effective upon less than 30 days. The Commission approved 134 applications for special permission, denied 7, and 7 were withdrawn by the applicants.

Significant Rule Changes

During fiscal year 1964, the Commission approved revisions of its Tariff Circular No. 3, which had not been amended since 1948. A significant change is the requirement that a carrier entering a trade in the first instance must file its tariff on full statutory notice of 30 days. Prior to the adoption of this rule, such a carrier was permitted to file its tariff virtually without notice and to begin operations immediately. The Commission also adopted (1) a new tariff rule to insure that the Governor of any state, commonwealth or territory, which includes a port served by a carrier subject to the tariff circular rules, will be furnished a copy of all tariff matter and applications for

special permission at the same time as such material is submitted to the Commission; (2) a "posting date system" which permits carriers to file tariffs or tariff changes on 45 days' notice; (3) a rule requiring carriers to give a brief description of tariff changes in letters of transmittal; and (4) amended its rules of practice and procedure to require that protests to rates and other matters be submitted to the Commission not later than 13 days prior to the proposed effective date thereof in lieu of the former 10-day provision.

Carrier Agreements

Agreements between carriers in the domestic offshore trade are subject to section 15 of the Shipping Act, 1916.

Nineteen carrier agreements and six modifications of existing approved agreements were filed during fiscal year 1964. Four agreements were pending at the end of fiscal year 1963. Each was examined to determine whether it would be unjust, discriminatory or unfair as between carriers, shippers, exporters, importers, or ports; that it would not operate to the detriment of the commerce of the United States; did not violate any of the provisions of the Shipping Act; whether it represented the true and complete understanding of the parties; and was not contrary to the public interest. Thirteen agreements were approved; four were withdrawn by the parties without formal action of the Commission; and eight agreements were determined not subject to section 15. Two agreements were made the subject of formal investigations and two are pending further review.

Special Studies

Studies were concluded in connection with (1) practices of carriers with respect to measurement and weighing of automobiles in the domestic offshore trades; (2) treatment of taxes of affiliated corporations by Federal regulatory agencies; and (3) the affect of the suspension of section 27 of the Merchant Marine Act, 1920, with respect to transportation of lumber and other commodities. Other studies in process are: (1) Benefits to the public, if any, to be derived from requiring certification of carriers; (2) reduction of formal proceedings on rate matters through the use of informal conferences; (3) solutions to problems involved in efficient regulatory control of the so-called "nonvessel operating common carriers by water;" (4) competitive influences of contract carriers in domestic offshore trades; and (5) current problems with respect to the three major domestic offshore trades, viz., Puerto Rican, Alaskan, and Hawaiian.

Noteworthy Developments in Industry

The Alaska Earthquake

The "Good Friday" earthquake of March 27, 1964, had a devastating effect upon water transportation between the continental United States

and the State of Alaska. The dock and warehouse facilities at Seward and Valdez were completely demolished, virtually eliminating water service to the Alaska Railbelt area; the outports of Yakutat, Fort Williams, Fort Bailey, Chignick, and Alitak were rendered unusable; and the dock and warehouse facilities at Cordova and Sheer Water were destroyed. The earthquake emergency required a complete revision of all existing sailing schedules. The Commission collaborated with carriers and State and local officials in an effort to expedite the restoration of water service to the disaster area.

Containerization

The trend toward containerization continued through fiscal year 1964. Sea-Land Service, Inc., instituted a trailership service into the Pacific Coast/Alaska trade. Matson Navigation Co. discontinued its Atlantic Coast/Hawaii service and further expanded its Pacific Coast/Hawaii containerization program. Matson expects its service to be almost completely containerized by the end of fiscal year 1965. Sea-train Lines, Inc., instituted through-railcar service between inland points in the United States and Puerto Rico.

Terminal Operators

The Commission is responsible for the regulation of the activities of marine terminal operators pursuant to the provisions of the Shipping Act, 1916. This entails the processing of terminal agreements under section 15 of the Shipping Act and policing and regulating terminal practices under sections 16 and 17 of the Shipping Act.

In carrying out this responsibility the Commission in fiscal year 1964:

1. Submitted to Congress proposed legislation which would declare a moratorium on penalties under section 15 against parties who had entered into agreements for the lease, license, or assignment of terminal facilities where such agreements were submitted within 90 days of the date of enactment of the legislation. The legislation, Public Law 88-275, was enacted on February 29, 1964.

2. Held oral argument on the amended proposed rules in Docket No. 875, a rulemaking proceeding to prescribe rules requiring terminal operators to file tariffs and prescribing uniform definitions of terminal services.

3. Instituted investigations to determine (1) whether Agreements No. T-4, City of Long Beach Board of Harbor Commissioners and Sea-Land of California, Inc. (Docket No. 1128) and No. T-5, City of Oakland Board of Port Commissioners and Sea-Land of California, Inc. (Docket No. 1129), come within the purview of section 15 of the Shipping Act, 1916, and (2) whether such agreements are approvable under the standards of section 15.

4. Instituted an investigation as to the truck and lighter loading and unloading practices at New York harbor by parties to The New York Terminal Conference Agreement No. 8005 (Docket No. 1153).

5. Held hearings in Factfinding Investigation No. 4 at New York, N.Y., Norfolk, Va., and Philadelphia, Pa., for the purpose of developing facts to determine whether free time, demurrage, and storage practices at terminals are unfair and whether terminals discriminate against truck traffic in favor of rail traffic.

6. Examined 3,567 terminal tariff filings to determine whether they were in conformity with the provisions of the Shipping Act, 1916, or with an approved conference agreement to which the terminal may have been a party. This represents an increase of 800 tariff filings over the number filed the previous fiscal year.

7. Reviewed the minutes of 44 terminal conference meetings to determine whether any action therein reflected was violative of the Shipping Act or the provisions of the conference agreement.

8. During fiscal year 1964, 1,634 terminal agreements were filed, representing an increase of 1,581 filings over the number filed in fiscal year 1963. Of the 1,634 filed 1,488 were filed pursuant to moratorium legislation, Public Law 88-274. Of the total filed, 72 were approved, 11 withdrawn before approval, and 555 were determined not subject to section 15.

Terminal agreements are examined to determine whether they may be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports; that they will not operate to the detriment of the commerce of the United States and the public interest; and that they do not violate any provisions of the shipping acts.

Freight Forwarding

The Commission licenses and regulates independent ocean freight forwarders, promulgates and enforces rules and regulations, and approves or disapproves agreements pursuant to the provisions of the Shipping Act, 1916.

Licensing

The law authorizes the Commission to issue licenses to those independent ocean freight forwarders found to be fit, willing, and able to function as such. As a consequence the Commission is required to conduct sufficient investigation as to each applicant to permit such a finding to be made.

At the beginning of fiscal year 1964, 151 licenses had been issued, and there were 896 applications pending. During the fiscal year, 45 new applications were received; 452 licenses were issued; 85 applications were denied or withdrawn; and 404 continued in process.

Of the remaining 404 pending applications, staff work has been completed on 106; 23 await court action on rulemaking proceedings; 167 are pending field investigations; and 108 are in various stages of staff processing. The latter pose legal and technical problems, some of which have been resolved by rulemaking proceedings and the establishment of Commission policy.

Agreements

Ocean freight forwarders frequently enter into joint working agreements or cooperative working arrangements. For example, a forwarder who controls the routing of the shipments may arrange with a forwarder located at the port of exportation to prepare, complete, or process one or several of the necessary export documents. Such agreements are filed for Commission approval pursuant to section 15 of the Shipping Act, 1916.

At the beginning of the fiscal year, 634 agreements were pending approval, and an additional 903 were received. Of this total, 1,412 were approved, 40 rejected, and 85 are pending further review.

The number of agreements processed during the fiscal year constitutes an increase of more than 300 percent over those processed in the previous year. This increased productivity resulted from simplification of procedures and delegation of authority to staff level.

Rulemaking Proceedings

Experience gained in the licensing and regulation of independent ocean freight forwarders indicates a continuing need for revision and amendment of the basic rules which establish a code of business practices, duties, and obligations applicable to licensees. In the development of a practicable set of rules it has been necessary for the Commission to resolve many complex technical problems which have arisen as a result of their application.

During the fiscal year the Commission adopted one amendment to General Order 4, Rules Governing Practices of Licensed Independent Ocean Forwarders, Ocean Freight Brokers, and Ocean-going Common Carriers, and served notice of its intent to revise three additional rules. General Order 4, Amendment 5, was adopted by the Commission on April 7, 1964. The amendment enables licensed ocean freight forwarders, or brokers related thereto, to collect brokerage from common carriers for negotiating rates and booking bulk cargo. Such revision was designed to allow ocean freight forwarders, or their related companies, who have historically acted as brokers on bulk cargo, to continue to do so. The effective date of this rule has been suspended, since it is among those rules which are subject to a restraining order, dated May 28, 1963, of the U.S. Court of Appeals for the Second Circuit.

The Commission also proposed the revision of three other rules. Such proposals would amend General Order 4 to (1) specify the cir-

cumstances under which the required \$100 independent ocean freight forwarder license application fee would be refunded; (2) prescribe the minimum financial records to be maintained by licensees; and (3) permit nonvessel operating common carriers by water to be licensed as independent ocean freight forwarders with respect to certain classes of export shipments on which such parties perform dispatching functions.

Financial and Economic Analysis

On October 23, 1963, the Commission published proposed rules for financial reporting by carriers in the domestic offshore trades. Comments from interested parties were received and considered. On June 17, 1964, the final revised regulation, General Order 11, was published effective July 17, 1964. By the terms of this order, common carriers in the domestic offshore trades are required to report, at least annually, on their assets used, and the financial results of their operations in these trades. For the first time the Commission will be receiving current financial data with respect to the operations in the domestic offshore trades of carriers subject to its regulation. Analysis of these data should be of material assistance in expediting the handling of general rate cases and making determinations respecting changes in tariffs for individual commodities or groups thereof.

Joint meetings with the Interstate Commerce Commission and the Civil Aeronautics Board reflect continuing progress toward coordinating audit, accounting, and statistical programs. Matters being studied include (a) uniform audit procedures to be utilized by all three agencies; (b) free interchange of audit information (as between the three agencies) to avoid duplication of effort; (c) consideration of the problems which exist when more than one of the agencies has jurisdiction over the activities of a single carrier; (d) studies of cost procedures of the three agencies, designed to obtain uniform costing principles to the extent practicable; (e) consideration of the problem of uniform retention of records requirements for all carriers subject to regulation by the three agencies.

The Federal Maritime Commission gave increased attention to ocean freight rates and the general economics of ocean transportation. Efforts were concentrated on studies and analyses of the international trade in a wide range of selected commodity fields, including raw materials, semimanufacturers and manufactured products, to determine the economic effect of ocean freight rates in the volume and direction of trade in these commodities.

The Commission expects to expand its investigation and comparison of the freight rates which apply to foreign nation exports to this and other countries as compared to freight rates which apply to the exports of the United States into the same countries. These investigations are designed to assist in making determinations as to the existence of freight rate practices adversely affecting the movement of U.S. exports into overseas markets.

The Commission is collaborating closely with other departments and agencies of the Government concerned with the expansion of export trade, including the Department of Commerce, Department of Agriculture, Department of the Interior, Export-Import Bank, and the Trade Information Committee of the Office of the Special Representative for Trade Negotiations.

In the domestic field, the Commission continued its studies of rates of return and conducted special economic studies dealing with the Puerto Rican trade and of transportation problems in general.

Enforcement and Compliance

Informal Complaints

One of the responsibilities of the Federal Maritime Commission is the handling and appropriate disposition of informal complaints and protests against the rates, practices, and methods of operation of common carriers by water and conferences of such carriers. Most of these complaints and protests are lodged with the Commission by shippers or receivers of freight, and it is the duty of the Commission to give appropriate consideration to each in the light of the statutory provisions of the Shipping Act, 1916, and related acts. In some instances the circumstances require that the Commission institute non-adjudicatory factfinding proceedings to determine the factual situation with respect to the complaint or protest filed. In other instances sufficient information and documents are furnished to or obtained by the Commission's staff to warrant direct referral to the Department of Justice or to initiate formal agency proceedings to determine whether violations of the act have occurred. Still other instances require that the Commission institute formal agency rulemaking proceedings to deal with the matters involved.

The Commission is also under a duty to examine and review reports, information, and minutes of conference meetings which are submitted to the Commission pursuant to approved section 15 agreements. Such review is designed to insure compliance by the steamship lines involved with their approved agreements on file with the Commission and with the Shipping Act, 1916, and other applicable statutes, as well as the rules and regulations promulgated by the Commission.

In fiscal year 1964, the Commission initiated action to resolve 684 informal complaints, protests, and related matters and concluded its findings and action with respect to 536 cases. The majority of these actions are categorized as:

Complaints and Protests Against Ocean Freight Rates

Most of these matters are brought to the Commission's attention by complaining shippers or consignees, or their agents, who seek rate reductions without resort to formal proceedings. Many of these

complainants are unaware of the Commission's limited jurisdiction respecting rates in the foreign trade and are unfamiliar with procedures established by steamship conferences for hearing and considering shippers' complaints and requests. It is necessary to inform them of these procedures and the type of data they should furnish the steamship conferences or independent steamship lines to obtain needed rate adjustments. The Commission's staff seeks to bring about informal settlement which is satisfactory to both shipper and carrier.

One hundred and sixty-one complaints of this type were acted upon in fiscal year 1964. In seven cases, rate reductions or other benefits were effected following informal settlement of the matters involved. Other corrective action was taken by the carriers or parties involved in 49 cases. Complaints were withdrawn in four cases. In 101 cases, the Commission was unable to obtain relief for the complainant nor was any basis found for formal action by the Commission.

Freight Rate Disparities

In some instances importers, shippers, and others have noted that the freight rates that they pay are higher in the outbound trades than in the inbound trades and have asked the Commission's assistance to obtain a lowering of the carrier's export rates.

During the past year the Commission has undertaken numerous inbound-outbound freight rate disparity studies on an informal basis. Still other such studies have been undertaken in which formal demand for data and documents has been made pursuant to section 21 orders. The freight rate studies informally initiated by the Commission, including those involving the use of section 21 orders for data and documents, have been discussed heretofore.

Of the rate disparity shipper complaints filed, 15 were concluded without affording relief to the complainant, and no basis was found for formal action by the Commission. In four other cases, corrective action was taken by the carriers involved. One case was docketed for formal hearing but the disparity in the inbound-outbound trades was eliminated by the conferences concerned before the proceeding actually got underway.

Loss and Damage Claims

Exporters, shippers, and others sometimes complain that carriers do not settle their claims properly, or do not settle in full, or have disallowed their claims. Such complainants ask the Commission to help them in these matters. Ordinarily, the Commission does not have jurisdiction over loss and damage claims, and with respect to the few instances of this type brought to its attention, the parties are informed that these are matters for the courts rather than the Commission. It is the duty of the Commission, however, to take action in cases in which it appears that the carriers are unjustly discriminating against shippers in the matter of settling claims.

Twenty-four claims matters were brought to the Commission's attention during the year. Corrective action was taken by the carriers

in six instances. No relief was obtained for the complainant in 15 cases, and no basis was found in these cases for recommending formal action by the Commission. One complainant was withdrawn by the parties. The remainder of these cases is pending further inquiry.

Steamship Passenger Complaints

Passengers on ocean liners, particularly cruise ships, are sometimes disappointed with respect to accommodations, schedules, or fares charged and seek the assistance of the Commission to obtain satisfaction of grievances. During fiscal 1964, action was initiated to resolve 11 such cases. In three cases, informal settlement was accomplished; one case was referred to the Department of Justice. After investigation, the Commission closed four other cases in which no relief for the complainant was obtained. Three cases were pending at year's end.

Cases Involving Tariff Filings

Pursuant to the requirements of Public Law 87-346, the Commission has been active in the enforcement of the tariff-filing provisions of section 18(b) of the Shipping Act, 1916. In this category the Commission reviewed 127 cases of which 44 remained open and under inquiry and investigation on July 1, 1964. Of the 83 cases processed to conclusion, no violation of section 18(b) was found in 39 cases; 32 cases were referred to the Department of Justice; and corrective action was taken by carriers in 9 cases; in the other 3 instances the complaints were withdrawn upon the finding that no violations had occurred.

Unfiled Carrier Agreements

There were 77 cases involving possible violation of the agreement-filing provisions of section 15 of the Shipping Act, 1916. In one instance, a determination of violation resulted in referral to the Department of Justice. In 31 instances, no basis was found for recommending formal action or referral to the Department of Justice. Three cases were settled informally. At year's end, 42 cases were pending further inquiry and investigation. Many of the cases in this category were items arising out of the House Antitrust Subcommittee hearings in 1959, 1960, and 1961, and possible violations referred to therein were barred from prosecution by the statute of limitations.

Complaints Alleging Discrimination

Forty-three complaint cases involved alleged unjust discrimination or undue prejudice in violation of sections 16 and/or 17 of the Shipping Act, 1916. Two of these cases were withdrawn by the complainants; in 11 instances the carriers took corrective action; in 18 cases inquiry and investigation failed to indicate a basis for relief to the complainant or for formal action by the Commission; 3 cases were docketed in formal proceedings; and 9 items were pending at the end of the fiscal year.

Rebates of Ocean Freight

In all, 31 cases of alleged rebating of ocean freight charges were reviewed on an informal basis during fiscal year 1964. Twenty cases were closed after inquiry and investigation failed to indicate a basis for relief to the complainant or formal action by the Commission. There were 11 other cases pending as of July 1, 1964.

Other Complaints and Inquiries

Included in this group were 179 alleged overcharges, undercharges, disputes as to description of cargo or classification, and matters unrelated to shipper complaints. The Commission informally investigated 57 cases in which no relief for the complainant was obtained, and no basis for formal Commission action was found. It effected informal settlement in 50 cases; referred 2 cases to the Department of Justice; and docketed 2 for formal investigation. Complaints were withdrawn in four cases. The remaining were under review at the end of the fiscal year.

Review of Conference Minutes of Meetings

During the year, a total of 5,933 pages of minutes of meetings of steamship conferences operating pursuant to approved section 15 agreements were reviewed as a part of the Commission's continuing surveillance of conference activities. Examination of the records of the activities of the conferences has resulted in informal inquiry into 22 matters which are included in the cases reported in the various categories discussed above.

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

As a result of hearings before the subject committee during the period 1959 through 1961, the Commission instituted action to resolve 247 possible violations of the shipping statutes. Action on these items was virtually completed in fiscal year 1964.

Twenty-six cases have been referred to the Department of Justice for prosecution as violations of the shipping statutes; 10 others are in process of formal proceedings before the Commission. One hundred and eighty-two matters have been closed by administrative action of the Commission on the basis that they were (1) satisfied by rule-making proceedings or by agreement of the party or parties to comply with the statutory requirements; (2) not subject to prosecution by the Department of Justice for the recovery of penalties since action was barred by provisions of Federal statutes and no regulatory purpose would be served by further administrative action of the Commission; and (3) determined, after investigation of initial and subsequently developed facts, not to be violations of the statutes or to be insignificant problems which have been resolved.

The remaining 29 matters, upon which substantially all staff work has been completed, are in process of appropriate disposition and scheduled for early completion.

Factfinding Proceedings

Through factfinding proceedings, nonadjudicatory in nature, the Commission obtains data upon which it determines the need for further action which may include (1) formal investigation; (2) rule-making proceedings; or (3) direct referral to the Department of Justice.

Three factfinding proceedings were instituted: (1) A general inquiry into the impact of conference rate practices upon the commerce of the United States; (2) an inquiry into whether certain conference rates on plywood were so high as to be detrimental to our commerce or prejudicial to American exporters; and (3) project rates and practices related thereto. These proceedings mark the continuing interest of the Commission in ocean freight rate problems and particularly its attempt to eliminate barriers which prevent or retard the movement of the American goods overseas.

The general investigation of conference rate structure was prompted by the fact that since passage of the Shipping Act in 1916, no overall investigation of conference rates and practices had been undertaken by Congress or this Commission's predecessors. The purpose of the investigation was to provide the Commission with a comprehensive record regarding conference ratemaking activities and practices and to place it in the position to either promulgate rules or to make appropriate legislative recommendations to Congress.

The investigation of the plywood rates was prompted by complaints from the plywood industry which indicated that high outbound freight rates on that commodity were preventing or retarding American exports.

Factfinding proceedings with respect to terminal practices at North Atlantic ports have been completed and reports are now being prepared. Hearings in a similar proceeding with respect to South Atlantic and Gulf ports will commence shortly.

Field Investigations

There were 783 active investigative cases pending as of July 1, 1963. Of these cases 697 involved ocean freight forwarder license applicants, and the remainder consisted of alleged malpractices in contraventions of shipping laws. During the year, 941 new cases were opened, and 831 investigations were completed. The majority of these cases pertained to ocean freight forwarder matters.

Investigative activity resulted in 11 convictions for criminal violations of the shipping statutes with resultant fines of \$7,600. These convictions were based upon pleas of guilty or *nolo contendere*. Addi-

tionally 11 shipping entities, through compromise with the Department of Justice, paid \$43,902.27 for violations of shipping statutes which are of a civil nature. At the close of the fiscal year, there were pending in the Federal courts or with the Department of Justice for appropriate action 10 cases involving a possible 34 defendants for criminal violations and 25 cases involving a possible 45 defendants for violations of the shipping statutes which are of a civil nature.

Formal Proceedings

The Commission on its own motion instituted during the year 51 formal proceedings involving various regulatory matters. This represents the most ambitious regulatory effort the Commission has ever undertaken. More important the institution of these proceedings did not interfere with the Commission's decisionmaking processes. The 109 cases completed this year represent not only a high watermark for the Commission but by far exceeds the number of decisions on regulatory matters by any of the Commission's predecessors in a 50-year period. The status of the Commission docket in formal proceedings is indicated below:

	Beginning fiscal 1964	New dockets	Concluded fiscal 1964	Pending beginning fiscal 1965
Investigations:				
Section 15.....	19	14	14	19
Sections 14, 16, 17.....	7	5	5	7
Section 18(b)(5).....	4	6	2	8
Dual rate contracts.....	63	-----	60	3
Freight forwarder licensing.....	4	2	5	1
Rate proceedings.....	10	15	16	9
Rulemaking.....	10	10	7	13
Totals.....	117	52	109	60

Proceedings Before Hearing Examiners and Federal Maritime Commission

At the beginning of the fiscal year, 136 proceedings were pending before the hearing examiners, and there were added during the fiscal year 179 cases; 5 cases were remanded for further proceeding, making a total of 320 proceedings. The examiners conducted 93 hearings and issued 131 recommended or initial decisions. The Commission heard 24 oral arguments involving 109 proceedings and issued 42 final decisions involving 120 formal proceedings. At the end of the fiscal year there were 33 proceedings pending final decision by the Commission.

Final Decisions of the Commission

Docket No. 732—*H. Kempner v. Lykes Bros. Steamship Co., Inc., et al.*; Docket No. 733—*H. Kempner v. Lykes Bros. Steamship Co., Inc., et al.*; Docket No. 734—*Galveston Cotton Company v. Lykes Bros. Steamship Co., Inc., et al.*; Docket No. 735—*Texas Cotton Industries v. Lykes Bros. Steamship Co., Inc., et al.* The Commission issued two final decisions in this proceeding, dismissing complaints against certain respondents after stipulation between the parties.

Docket No. 805—*Parsons & Whittemore, Inc. v. Rederiaktiebolaget Nordstjernan (Johnson Line)*; Docket No. 809—*Parsons & Whittemore, Inc. v. Compagnie Generale Transatlantique (French Line)*; Docket No. 810—*Parsons & Whittemore, Inc. v. The Blue Star Line Ltd. (Blue Star Line)*; Docket No. 811—*Parsons & Whittemore, Inc. v. Furness Withy & Co. Ltd. (Furness Line)*; Docket No. 812—*Parsons & Whittemore, Inc. v. Westfal-Larsen & Co. A/S (Interocean Line)*; Docket No. 813—*Parsons & Whittemore, Inc. v. Fred Olsen & Co. (Fred Olsen Line)*. It was determined that the Shipper's Rate Agreement of the Pacific Coast European Conference was never approved under section 15 of the Shipping Act, 1916, and therefore was unlawful at the time of the shipments involved here; that complainant evaded its obligations under the Shipper's Rate Agreement by using a subsidiary to ship cargo on nonconference vessels; and that the authority to award reparations under section 22 of the Act is discretionary and accordingly reparations are denied since such award would be inequitable under the circumstances here.

Docket No. 827 (Sub. No. 1)—*Philip R. Consolo v. Flota Mercante Grancolombiana, S.A.* On rehearing on remand, it was determined that complainant was injured to the extent of \$106,001, by respondent's refusal to allocate refrigerated space to complainant for the carriage of bananas.

Docket No. 873—*Investigation of Passenger Steamship Conferences Regarding Travel Agents.* It was determined that the agreements of the Atlantic Passenger Steamship Conference and the Trans-Atlantic Passenger Steamship Conference violated section 15 of the act in certain respects and appropriate modifications thereto were ordered.

Docket No. 936—*Hellenic Lines, Ltd.—Violation of Section 16 (First) and 17.* It was determined that respondent violated sections 16 (first) and 17 of the act in charging different rates to similarly situated shippers for identical service; that respondent's agent was acting within the scope of his authority in charging the rates; that intent is not a prerequisite to a finding of violation of sections 16 (first) and 17 of the act; and that the act is primarily regulatory and administrative statute, evinces a strong policy of protecting the public, and respondent may not evade its responsibilities to the public by pleading ignorance of its agent's activities.

Docket No. 947—*International Trading Corporation of Virginia, Inc. and International Trading Corporation of New England, Inc. v. Fall River Line Pier, Inc.* On further proceedings, it was determined that complainants were injured to the extent of \$11,773.99 by respondent's violations of sections 16 and 17 of the Act.

Docket No. 969—*Alaska Steamship Company—General Increase in Rates in the Peninsula and Bering Sea Areas of Alaska*; Docket No. 1067—*Northern Commercial Co. River Lines—General Increase in Rates in the Yukon River Area of Alaska.* It was determined that the rates and charges of respondents were unjust and unreasonable to the extent that they provide Alaska Steamship Co. a rate of return in excess of 10 percent in its seasonal service.

Docket No. 1000—*California Stevedore & Ballast Co. et al. v. Stockton Elevators, Inc.* It was determined that respondent violated section 17 of the act by engaging in the unreasonable practices of passing on to the ship its established rental charge for the use of loading equipment in the form of a lump-sum markup which included its profit on stevedoring; failing to publish the charge specifically to apply against the ship, cargo, or all stevedores alike; failing to assess the charge against its subcontractor; and assessing such charge exclusively against complainants who are competing stevedores.

Docket Nos. 1001, 1002, 1003, 1005, 1006, 1007, 1009 through 1023, 1025 through 1031, 1033, 1034, 1035, 1037, 1039 through 1059, 1092, 1101, 1106, 1109, 1110, 1111.—*The Dual Rate Cases*. The Commission approved all proposed dual rate contracts in accordance with the modifications specified in its orders in this proceeding.

Docket No. 1061—*Bulkley Dunton Overseas S.A. v. Blue Star Shipping Corporation*. The Commission adopted the initial decision of the examiner dismissing the complaint on ground that respondent's handling charge did not constitute a violation of section 17 of the act.

Docket No. 1070—*Selden & Co., Inc. v. The Board of Trustees of the Galveston Wharves*. The complaint was dismissed on the ground that it is not unlawful per se for a terminal to increase demurrage charges on cargo already consigned to or received by the terminal.

Docket No. 1072—*Investigation of Certain Practices of Stockton Elevators*. It was determined that the record did not show nor would it support a finding that respondent participated in any act which was unjust, unfair, or unreasonable in violation of sections 16 and 17 of the act.

Docket No. 1077—*Investigation of Increased Rates in the Atlantic/Gulf Puerto Rico Trade—Outward Freight Tariff No. 1 FMC-F No. 1, J. J. Marty, Agent*. The Commission adopted the initial decision of the examiner finding respondent's increased rates on various commodities moving from U.S. Gulf ports to Puerto Rico just and reasonable.

Docket No. 1090—*General Investigation into Common Carrier Freight Rates and Practices in the Florida/Puerto Rico Trade*. It was determined that the tariffs and transportation practices of respondent TMT Trailer Ferry were not unlawful. No finding made as to rates of South Atlantic and Caribbean Line and said respondent was ordered to clarify certain aspects of its tariffs, file periodic financial reports to the Commission, and submit its books of entry to certain audits. No findings were made as to respondent's Sea-Land Service and Motorships of Puerto Rico.

Docket No. 1091—*Orleans Materials and Equipment Company v. Matson Navigation Company*. The Commission adopted the initial decision of the examiner dismissing the complaint on the ground that charges assessed and collected from complainant were applicable and not unreasonable.

Docket No. 1095—*Agreement No. 150-21, Trans-Pacific Freight Conference of Japan and Agreement No. 3103-17, Japan-Atlantic and Gulf Freight Conference*. It was determined that section 15 of the act does not require, in the absence of a provision in the basic agreement to the contrary, that modification strengthening the self-policing system of a conference be adopted only upon unanimous vote of the parties to such agreements. Accordingly, the agreements which were the subject of this proceeding were approved.

Docket No. 1097—*In the Matter of Agreement No. 8905 Port of Seattle-Alaska Steamship Co.* It was determined that respondent Port of Seattle was a person subject to the act with respect to agreement 8905; that said agreement is subject to the filing and approval requirements of section 15 of the act; that the temporary and interim agreements between respondents which incorporate substantially all the provisions of Agreement 8905 are subject to the requirements of section 15 and were effectuated by respondents in violation thereof; and that Agreement 8905, not having been shown violative of section 15, be approved.

Docket No. 1100 (Sub. No. 1)—*In the Matter of Agreement No. 9218 Between the Member Lines of the North Atlantic Continental Freight Conference and the Continental North Atlantic Westbound Freight Conference*. It was determined that Agreement 9218 be approved.

Docket No. 1102—*Pacific Coast European Conference Port Equalization Rule*. It was determined that an evidentiary hearing is not required where no factual issue is involved; that Rule 29 of respondent's Freight Tariff 13 was without sanction in respondent's conference agreement and therefore unlawful; that absent provision therefor in the conference agreement, respondents are not authorized to institute a plan of port equalization since such a plan is not conventional or routine ratemaking but a new arrangement for the regulation and

control of competition and thus must be expressly under section 15 of the act; and that the provisions of section 15 authorizing a conference to file and effectuate, without prior Commission approval, tariff rates, fares and charges and classifications, rules, and regulations explanatory thereof, limits respondents strictly to the exercise of the ratemaking power conferred by their conference agreement and prohibits them from effectuating a tariff rule embodying their unapproved port equalization plan.

Docket No. 1105—*Agreement 7700-6—Persian Gulf Outward Freight Conference*. The Commission adopted the initial decision of the examiner approving Modification 6 to Agreement 7700.

Docket No. 1115—*Application for Freight Forwarding License—Dixie Forwarding Co., Inc.*; Docket No. 1116—*Application for Freight Forwarding License Mr. L. H. Graves d/b/a Patrick & Graves*. It was determined that the applications of respondents for licenses as independent ocean freight forwarders be denied because of operations in violation of section 44 of the act; submission to the Commission of false financial statements; false certifications to carriers in order to collect brokerage unlawfully; and lax financial practices. On reconsideration, it was determined that the applications be granted on condition that applicants submit independently certified audits of their financial status every 6 months for 2 years.

Docket No. 1123—*Matson Navigation Company Pallets and Containers—Pacific Coast/Hawaii Trade*. The Commission adopted the initial decision of the examiner finding respondent's rates for transportation of pallets and containers from Pacific Coast ports to Hawaii just and reasonable.

Docket No. 1130—*Martin Birnbach v. La Flor de Mayo Express Company*. The Commission adopted the initial decision of the examiner dismissing the complaint on ground that respondent had not violated sections 17 or 18 of the act.

Docket No. 1144—*Sea-Land Service, Inc.—Discontinuance of Jacksonville/Puerto Rico Service*. It was determined that the discontinuance by embargo of respondent's Sea-Land's service from Jacksonville to Puerto Rico was not lawful since no emergency exists justifying such action.

Docket No. 1165—*Application for Freight Forwarding License—Carlos H. Cabezas*. The Commission adopted the initial decision of the examiner denying the application of respondent for a license as an independent ocean freight forwarder on grounds that applicant lacked financial capability compatible with the duties and responsibilities of a freight forwarder and was unwilling to conform to the requirements, rules, and regulations of the Commission.

The Commission granted application made under Rule 6(b) of the Commission's Rules of Practice and Procedure authorizing voluntary payment of reparation or waiver of collection of undercharges in the following proceedings: Special Docket Nos. 266, 267, 282 (Order of Remand), 282, 366, 367, 371, and 374.

The Commission denied applications under Rule 6(b) in the following proceedings: Special Docket Nos. 268, 290, 312, 313, 364, 369, and 372.

Decisions of Hearing Examiners

(In proceedings not yet decided by Commission)

Docket No. 732—*H. Kempner v. Lykes Bros. Steamship Co., Inc., et al.*; Docket No. 733—*H. Kempner v. Lykes Bros. Steamship Co., Inc., et al.*; Docket No. 734—*Galveston Cotton Company v. Lykes Bros. Steamship Co., Inc., et al.*; Docket No. 735—*Texas Cotton Industries v. Lykes Bros. Steamship Co., Inc., et al.* It was determined in these proceedings, which were remanded for the assessment of reparation, that the complaints against certain respondents be dismissed with prejudice as a result of settlement of claim for reparation on shipments of cotton from U.S. Gulf ports to ports in the Mediterranean and Far East areas.

Docket No. 872—*Agreement No. 8200—Joint Agreement Between the Member Lines of the Far East Conference and the Member Lines of the Pacific West-bound Conference*. It was determined that joint agreement No. 8200 between

conferences concerning the trade from U.S. Atlantic, Gulf, and Pacific ports to the Far East was not detrimental to the commerce of the United States, or otherwise in contravention of section 15, but that agreements relating to ratemaking initiative, overland rates, and rate differentials were without sanction in the approved joint agreement and therefore violative of section 15 of the Shipping Act, 1916; that the agreement requiring both conferences to concur in matters voted on while sanctioned by their joint agreement was nevertheless violative of Public Law 87-346; that the manner by which respondents determine whether commodities are placed on the ratemaking initiative or not violates section 16 of the Shipping Act, 1916; that the approved joint agreement should be amended to incorporate the complete agreements found to be outside its scope and that, as amended, Agreement No. 8200 should be reapproved by the Commission.

Docket No. 890—*In the Matter of Unapproved Section 15 Agreements—Spanish/Portuguese Trade*; Docket No. 891—*In the Matter of Rates, Charges and Practices of Carriers Engaged in the Trade Between United States and Spain/Portugal*. It was determined that certain respondents had violated sections 15, 16, and 17 of the act during the period from 1952 to 1959. Certain other respondents were found not to have been in violation of the act.

Docket No. 904—*Puget Sound Tug & Barge Co. v. Foss Launch & Tug Co., et al.*; Docket No. 914—*Puget Sound Tug & Barge Co. v. Wagner Tug Boat Company, et al.* It was determined that complainant common carrier was not entitled to reparation because of alleged diversion of cargo from it by respondent common carriers while latter were operating pursuant to an unfiled and unapproved agreement in violation of section 15 of the Shipping Act, 1916, and complaints were dismissed.

Docket No. 960—*Hawaiian Rates—Second General Increase (1961)*. It was determined that the rates and charges of Matson Navigation Co. for the transportation of property between the Pacific coast and Hawaii were unjust and unreasonable to the extent they provide a rate of return in excess of 13 percent.

Docket No. 1066—*Alcoa Steamship Co., Inc.—General Increases in Rates in the Atlantic Gulf Puerto Rico Trade*. It was determined that the proposed general increase in rates of respondent Alcoa in the Atlantic and Gulf to Puerto Rico trade was just and reasonable, and found not to result in an unlawful rate of return, and the proceeding was discontinued.

Docket No. 1078—*Japan-Atlantic and Gulf Freight Conference Exclusive Patronage (Dual Rate) Contract*; Docket No. 1080—*Trans-Pacific Freight Conference of Japan Exclusive Patronage (Dual Rate) Contract*. It was determined that the use of dual rate system by applicants would not be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. If modified in accordance with the recommendations of the examiner, the proposed dual rate contracts would be approved pursuant to section 14(b) of the Shipping Act, 1916, as amended.

Docket No. 1079—*The Persian Gulf Outward Freight Conference Exclusive Patronage (Dual Rate) Contract*. It was determined that the use of the proposed exclusive patronage (dual rate) contract was approvable if modified in accordance with the recommendations of the examiner.

Docket No. 1084—*Investigation of Wharfage Charges on Bulk Grain at Pacific Coast Ports*. It was determined that the assessment of wharfage charges on grain moving through marine terminal elevators on the Pacific coast pursuant to the Department of Agriculture's Uniform Grain Storage Agreement did not constitute an unjust or unreasonable practice under section 17 of the Shipping Act, 1916, and the proceeding was discontinued.

Docket No. 1088—*Jordan International Company v. Flota Mercante Grancolombiana, et al.* It was determined that complainant knowingly and willfully obtained from Grancolombiana transportation of logs from Colombia to New Orleans by means of an unjust or unfair device or means at less than rates or charges which would otherwise have been applicable in the first 4 months of 1961, in violation of section 16 of the Shipping Act, 1916; that respondent Grancolombiana allowed complainant to obtain transportation of logs from Colombia

to New Orleans in violation of section 16 Second of the Shipping Act, 1916; that rates on logs from Colombia to New Orleans were not shown to be unduly prejudicial, unjustly discriminatory, or detrimental to the commerce of the United States; that the complaint be dismissed but that an investigation into the weighing and shipping practices of such movements should be initiated.

Docket No. 1089—*Volkswagenwerke Aktiengesellschaft v. Marine Terminals Corporation, et al.* It was determined that the cooperative working arrangement of respondents who are common carriers and other persons subject to the act and also members of the Pacific Maritime Association which arrangement established a method of assessing and collecting contributions to pay the members' obligation under an agreement between the Maritime Association with the International Longshoremen's and Warehousemen's Union was not within the purview of section 15 of the Shipping Act, 1916.

Docket No. 1096—*The Northern Pan-America Line, A/S (Nopal Line) v. Moore-McCormack Lines, Inc., et al.* It was determined that Pooling Agreement No. 9040 establishing money pools in the Brazil/U.S. Coffee Trade was not shown to be in violation of the Shipping Act, 1916, nor to operate to the detriment of the commerce of the United States, nor to be contrary to the public interest and that the complaint should be dismissed.

Docket No. 1100—*In the Matter of Agreement No. 4490-7 Between the Member Lines of the North Atlantic Continental Freight Conference and Agreement No. 8210-2 Between the Member Lines of the Continental North Atlantic Westbound Freight Conference.* It was determined that Agreements 4490-7 and 8210-2 would be in violation of section 15 of the act. Subsequently, this proceeding was discontinued before the Commission decision.

Docket No. 1104—*Pacific Seafarers, Inc. v. Atlantic & Gulf American-Flag Berth Operators, et al.* Complainant, which had captured a major share of wholly foreign interport trade in cement financed by Agency for International Development, was not entitled to reparation under sections 15, 16 First, or 18(b) of the Shipping Act, 1916, where damages resulted only from drastic reduction in rates by competitive bidding following opening of cement rates fixed by unfiled rate agreement among respondents; agreements concerning rates and other matters described in section 15 of the Shipping Act, 1916, are not within the jurisdiction of the Commission where they relate solely to foreign interport trade in goods of foreign origin and destination, even though Agency for International Development financed the procurement and shipment of the goods and only American flag carriers were involved; tariffs of rates for transportation between foreign ports are not required to be filed by section 18(b)(1) of the Shipping Act; unfiled agreements outside the territorial jurisdiction under the Shipping Act, 1916, are not brought within jurisdiction by use of same organizations set up to administer other agreements filed with and approved by the Commission, where the approved agreements dealt with different subject matter and were not modified by the unfiled agreements.

Docket No. 1105 (Sub. No. 1)—*Agreement No. 8900—Rate Agreement United States/Persian Gulf Trade.* Agreement No. 8900 was approved pursuant to section 15 of the act.

Docket No. 1134—*Investigation of Practices in the Great Lakes/Japan Trade—Iono Kaiun Kaisha, Ltd. and Mitsui Steamship Co., Inc.* It was determined that respondents, as parties to FMC Agreement 8670, who determined not to serve Duluth on inbound traffic, delivering cargo of Duluth shipper at Milwaukee even though the same vessels called at Duluth later to pick up outbound cargo, did not violate sections 15 or 16 First of the act; that Agreement 8670 was found to be the complete agreement between the parties on this subject, and the proceeding was discontinued.

Docket No. 1145—*Reduction in Freight Rates on Automobiles North Atlantic Coast Ports to Puerto Rico.* It was determined that the reduced rates of respondents on automobiles were unjustly and unreasonably low under sections 4 and 5 of the Intercoastal Shipping Act, 1933. A minimum just and reasonable rate was prescribed and the effective date of findings to be coordinated with those in a companion proceeding.

Docket No. 1150—*Hasman & Baxt, Inc., Valencia Baxt Express, Inc.—Misclassification and Misdescription of Goods in Containerized Trailer Vans in the United States/Puerto Rico Trade.* It was determined that Hasman & Baxt had misclassified cargo and violated section 16 of the Shipping Act, 1916; that Hasman & Baxt and Valencia Baxt had falsified a statement of cargo weight and violated section 16 of the act; that the record was insufficient with respect to certain shipments of synthetic rayon yarn, to support a finding that either respondent had violated section 16 of the act.

Docket No. 1155—*Imposition of Surcharge on Cargo to Manila, Republic of the Philippines.* It was determined that surcharges imposed by respondents on cargo from the United States to Manila were not to be in violation of sections 15, 16, 17 or 18(b) (5) of the Shipping Act, 1916, as amended.

Docket No. 1166—*In the Matter of Agreement Nos. 6200-7, 6200-8 and 6200-B, U.S. Atlantic & Gulf/Australia-New Zealand Conference.* Agreements modifying outbound conference agreement (1) to add U.S. Great Lakes and St. Lawrence River ports to trade from Atlantic and Gulf ports to Australia and New Zealand, with separate section to fix rates from lakes, (2) to change voting requirement in ordinary conference action from unanimity to two-thirds, and (3) to provide for rate agreements as to rates from Canadian ports to conference destinations and use of conference rates by members in such Canadian trade in the absence of any such rate agreement, if modified in accordance with the decision, were approved pursuant to section 15 of the Shipping Act, 1916, as amended; agreement between conference and lines operating out of Canada, providing for the establishment of agreed rates from Canadian ports to conference destinations and application of conference dual rate contract to such carriers and ports, was approved pursuant to section 15 of the Shipping Act, 1916, as amended; and permission was granted to extend use of conference's approved dual rate contract to entire trade covered by conference agreement as expanded by approved amendment, pursuant to section 14b of the Shipping Act, 1916, as amended.

Docket No. 1168—*Application for Freight Forwarding License—Louis Applebaum, 8-10 Bridge St., N.Y., N.Y.* It was determined that the application be denied because applicant as a partner in a firm primarily engaged in the business of selling and shipping goods to foreign countries did not qualify as an independent ocean freight forwarder as defined in Public Law 87-254.

Special Docket No. 365—*Universal Terminal & Stevedoring Corporation v. The Austrian Trade Delegate.* It was determined that the request by complainant for authority to accept \$3,000 as full payment of accrued pier demurrage charges in the amount of \$8,807.13, be granted.

Special Docket No. 368—*Lykes Bros. Steamship Co., Inc.—Application to Refund in Part Charges Collected on Shipments via SS SUE LYKES from New Orleans, Louisiana, to Liverpool/Manchester, England.* It was determined that the application of Lykes Bros. Steamship Co., Inc., to refund in part certain freight charges collected on shipments via SS *Sue Lykes* from New Orleans to England be denied.

Special Docket No. 370—*Lykes Bros. Steamship Co., Inc.—Application to Refund in Part Freight Charges Collected on Shipment via SS WILLIAM LYKES from San Juan, Puerto Rico (With Transshipment at Houston, Texas) to Yokohama, Japan.* It was determined that the application of Lykes Bros. Steamship Co., Inc., to refund in part freight charges collected on shipment via SS *William Lykes* from San Juan, Puerto Rico, to Yokohama, Japan, be denied.

Special Docket No. 373—*Bangur Brother's Ltd., et al. v. American Export Lines, Inc.* It was determined that the application of American Export Lines to refund a portion of freight money be denied.

Examiners also issued decisions in Docket Nos. 1000, 1001, 1001(1), 1002, 1003, 1005, 1006, 1006(1), 1007, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1018(1), 1018(2), 1019, 1020, 1021, 1022, 1023, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1033, 1034, 1035, 1037, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1061, 1072, 1077, 1090, 1091, 1092, 1097, 1100(1), 1101,

1105, 1106, 1109, 1110, 1111, 1115, 1116, 1123, 1130, 1165, SD 266, SD 268, SD 282, SD 290, SD 312, SD 313, SD 364, SD 366, SD 367, SD 369, SD 371, SD 372, SD 374, described above under "Final Decisions of the Commission."

Pending Proceedings

At the close of the fiscal year there were 148 pending proceedings, of which 31 were initiated on the Commission's own motion, and the remainder were instituted by formal complaints and applications filed by conferences, trade associations, shippers, individual steamship operators, and others.

Rulemaking Proceedings

At the end of the fiscal year, the following rulemaking proceedings were in process.

Docket No. 875—*Filing of Tariffs by Terminal Operators*. Oral argument has been heard on revised proposed rules.

Docket No. 934—*Predated Bills of Lading*.

Docket No. 964—*Filing of Tariffs by Common Carriers by Water in the Foreign Commerce of the United States and by Conferences of Such Carriers*. Further revised proposed rules incorporating electronic data processing aspects of tariff filing were published April 24, 1964.

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

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

Docket No. 1148—*Publication, Posting, and Filing of Rates and Charges in rules* were published in the Federal Register, October 9, 1963.

Docket No. 1147—*Cancellation of Inactive Tariffs and Elimination from Tariffs of Ports to Which Service Has Been Discontinued*. Proposed rules were published in the Federal Register, October 9, 1963.

Docket No. 1148—*Publication, Posting, and Filing of Rates and Charges in Domestic Offshore Trade*. Proposed rules were published in the Federal Register, October 9, 1963.

Docket No. 1149—*Protests to Tariffs, Description of Tariff Changes, and Notification to State, Commonwealth, or Territorial Governments of Proposed Tariffs or Tariff Amendments*. Proposed rules published in the Federal Register, October 9, 1963.

Docket No. 1156—*Shippers Requests and Complaints*. Proposed rules published in the Federal Register, November 1, 1963.

Docket No. 1183—*Practices of Licensed Ocean Freight Forwarders, Ocean Freight Brokers, and Occangoing Common Carriers: Non-vessel Operating Common Carriers by Water*. Proposed rules published in the Federal Register, May 16, 1964.

Docket No. 1184—*Practices of Independent Ocean Freight Forwarders, Ocean Freight Brokers, and Occangoing Common Carriers: Maintenance of Financial Records*. Proposed rules published in the Federal Register, May 22, 1964.

Docket No. 1186—*Licensing of Independent Ocean Freight Forwarders: Refund of Application Fee*. Proposed rules published in the Federal Register, June 9, 1964.

There were published in the fiscal year (a) General Order No. 5 (Amendment 5)—Reports by Common Carriers in the Domestic Offshore Trades; (b)

General Order No. 6—Rules Governing the Right of Independent Action in Agreements; General Order No. 7—Self-policing Systems; General Order No. 8 (parts I, II, III)—Republishing of Regulations Under Chapter IV of Title 46, CFR; General Order No. 9 and Amendment 1 thereto—Admission, Withdrawal and Expulsion Provisions of Steamship Conference Agreements; General Order No. 10—Green Hide Weighing Practices; and General Order No. 11—Reports of Rate Base and Income Account by Vessel Operating Common Carriers in the Domestic Offshore Trades.

Action in the Courts

During the fiscal year 1964, the Commission experienced a sharp increase in the volume of litigation handled by the Commission's Office of the General Counsel, due primarily to court challenges to "section 21" orders. There were 42 cases before the courts, relating to decisions and orders of the Commission during the fiscal year, and 30 of these cases were pending at the end of the fiscal year.

Several of the more important court decisions were:

The Government of Guam v. Federal Maritime Commission and United States of America, 329 F. 2d 251 (D.C. Circuit, January 23, 1964), in which the court affirmed in part an order of the Commission approving two rate increases in the trade between the United States and Guam, but remanded the case to the Commission for further findings and conclusions on the issues of overhead expenses and working capital.

Pacific Westbound Conference v. Federal Maritime Commission and United States of America, 332 F. 2d 49 (9th Circuit, April 30, 1964), in which the court dismissed as "insubstantial and frivolous" a petition to review an order of the Commission issued pursuant to section 21 of the Shipping Act, 1916, requiring the conference to submit to the Commission copies of documents relating to rates. The petitioner had appealed on the grounds that the order did not state the purpose for which it was issued, was not authorized by the statute, and was unreasonable and oppressive. The court rejected all these contentions and dismissed the appeal.

Dixie Forwarding Company, Inc. v. Federal Maritime Commission (U.S. District Court, Southern Dist. of Tex., May 6, 1964) in which the court dismissed a complaint which sought a writ of mandamus against the Commission, pursuant to section 10 of the Administrative Procedure Act, to compel the Commission to issue plaintiff a license to engage in freight forwarding. The court's opinion stated that "the Courts of Appeal have exclusive jurisdiction to enjoin, set aside, suspend, or determine the validity of final orders of the Federal Maritime Commission." The court further stated that "the authority of a United States District Court to compel official action by mandamus is limited to nondiscretionary duties of a ministerial nature" and concluded that the court was without jurisdiction to entertain the suit.

American Export and Isbrandtsen Lines, et al. v. Federal Maritime Commission and United States of America (9th Circuit, June 26, 1964) in which the court affirmed an order of the Commission which held that a "port equalization" rule adopted by the Pacific Coast European Conference requires section 15 approval before the practices therein set forth may be initiated. The court found itself "unable to agree with petitioners that Rule 29 is within the scope of their approved Conference Agreement."

The Commission also referred to the Department of Justice for consideration 67 cases involving violations of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, and rendered the Department all necessary assistance in connection therewith.

Legislative Developments

The Commission was concerned with two pieces of legislation during the fiscal year. The first was Public Law 88-103 which excluded lumber from the tariff filing requirements of section 18(b) of the Shipping Act, 1916. The second was Public Law 88-275 which exempted certain terminal leases from the penalty provisions of the Shipping Act. The latter was necessitated by the large number of terminal leases which had not been filed with the Commission for approval, due to a general unawareness of the Commission's interpretation of the Shipping Act, 1916, that such leases were encompassed within the terms of section 15 of the act. This interpretation was affirmed by the U.S. Court of Appeals for the Fifth Circuit.

The Commission made no other legislative recommendations during the fiscal year.

Administration

Commissioners

John Harlee, Rear Admiral, U.S. Navy (retired), of the District of Columbia, was designated by the President, on August 26, 1963, to be the Chairman, Federal Maritime Commission.

Ashton C. Barrett, of Mississippi, whose initial term of appointment as Commissioner expired June 30, 1963, was reappointed by the President and confirmed by the Senate on September 5, 1963, for the term expiring June 30, 1967.

Other members of the Commission in fiscal year 1963 were: Thomas E. Stakem of Virginia; John S. Patterson of Maryland; and James V. Day of Maine.

The Commission on January 15, 1964, elected Thomas E. Stakem as Vice Chairman, succeeding Ashton C. Barrett. Mr. Stakem's term of appointment as Commissioner expired June 30, 1964.

Staff Organization

Timothy J. May was appointed Managing Director on September 24, 1963, succeeding Elmer E. Metz who retired. Responsibilities of the Managing Director were broadened to include the direction and administration of the organization and activities of the Office of International Affairs; also managerial direction and coordination of the Office of the Secretary and the Office of the General Counsel.

Personnel

There were 231 employees on duty as of June 30, 1964, a decrease of 20 employees from employment on June 30, 1963.

Management Improvements

A vigorous management improvement program launched by the Commission in fiscal year 1964, consolidated the efforts of top management, supervisors and employees in increasing operational effectiveness and reducing costs. Key steps were (1) the establishment of an agency program of priorities and objectives; (2) installation of a management information and reporting system to insure that scheduled work is accomplished or operating problems identified; (3) a 1-month concentrated search for savings by the man-on-the-job, which brought forth 209 employee ideas for savings and efficiency—over 30 percent of which were adopted; and (4) the use of a task force of top officials of the agency to study and resolve complex workload and management problems which cut across organizational lines.

Notable achievements included (1) procedural simplification in the processing of carrier tariff changes, section 15 agreements, and freight forwarder licenses; (2) increased delegations of authority to staff level, thereby expediting action and increasing the effectiveness of employee utilization; (3) strengthening of the role of the district managers; (4) conversion of the payroll and accounting system to automatic data processing through utilization of the ADP capability of the General Services Administration; and (5) reduction of internal reports and paperwork processes in all areas of activity.

Appendix

Statement of Appropriation and Obligation for the Fiscal Year Ended June 30, 1964

APPROPRIATION:

Public Law 88-245, 88th Congress, approved December 30, 1963:

For necessary expenses of the Federal Maritime Commission, including services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates for individuals not to exceed \$75 per diem; hire of passenger motor vehicles; and uniforms, or allowances therefor, as authorized by the Act of September 1, 1954, as amended (5 U.S.C. 2131)----- \$2,575,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended June 30, 1964----- 2,574,531

Unobligated balance withdrawn by the Treasury----- 469

STATEMENT OF RECEIPTS DEPOSITED WITH THE GENERAL FUND OF THE TREASURY FOR THE FISCAL YEAR ENDED JUNE 30, 1964:

Duplication of records and other documents----- 104

Freight forwarder license fees----- 24,600

Fines and penalties----- 88,902

Bonus for reporting service----- 15,035

Total general fund receipts----- 128,641