Eighth Annual Report

OF THE

Federal Maritime Commission

Fiscal Year Ended June 30, 1969

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price 35 cents (paper cover)

FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

June 30, 1969

JOHN HARLLEE, *Chairman**
JAMES V. DAY, *Vice Chairman*
ASHTON C. BARRETT, *Member*
JAMES F. FANSEEN, *Member*
GEORGE H. HEARN, *Member*

THOMAS LISI, *Secretary*

*President Richard M. Nixon appointed Mrs. Helen Delich Bentley, of Maryland, to succeed Chairman Harllee who resigned effective September 1, 1969. Mrs. Bentley's appointment was confirmed by the United States Senate on October 3, 1969.

LETTER OF TRANSMITTAL

Federal Maritime Commission
Washington 25, D.C.

Office of the Chairman

November 3, 1969

TO THE SENATE AND 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 1969.

Helen Delich Bentley

Helen Delich Bentley
Chairman

FEDERAL MARITIME COMMISSIONERS (Fiscal Year 1969)

James F. Fanseen

James V. Day
Vice-Chairman

John Harllee
Chairman

Ashton C. Barrett

George H. Hearn

TABLE OF CONTENTS

HIGHLIGHTS OF THE YEAR

The Federal Maritime Commission continued during fiscal year 1969 to administer programs and discharge its responsibilities for the regulation of the waterborne foreign and domestic offshore commerce of the United States. These programs and responsibilities were executed pursuant to certain provisions of the Shipping Act, 1916; Merchant Marine Act, 1920; Intercoastal Shipping Act, 1933; Merchant Marine Act, 1936; and Public Law 89–777 of November 6, 1966. Highlights of Commission activities in the regulation of ocean transportation for the fiscal year ending June 30, 1969, are as follows:

Containerization

Containerization continues to be one of the most dramatic developments in ocean shipping of this century. The speed and inherent economies now possible through the use of this method of product distribution are rapidly interesting even those elements of the shipping industry who earlier expressed skepticism. Over the last few years containerization has become the most dominant factor influencing changes in trade patterns and services to Europe and the United Kingdom from U.S. North Atlantic ports. Its impact in the U.S. Pacific/Far East trades is growing with the introduction of an ever-increasing number of containerships in that trade. Shippers and some carriers are pressing for more container services and more favorable rules in the U.S. Atlantic and Gulf/Far East trades.

The Commission has kept abreast of the development of this innovation in order to discharge properly its regulatory obligations and at the same time promote this step forward in our foreign trade. The Commission recently released the results of its study of container

rules as published in 27 conference tariffs.[1] The tariffs studied cover trades in which the container is now, or has potential to become, a major consideration. The chart on page 3 depicts the ranking of those conferences in their container activities as of June 1, 1969, depicting graphically the status of the conference rules as they relate to the promotion of this new mode. Containerization represents an effective means of integrating the various transportation modes into a single intermodal system.

Such a system permits the free and uninterrupted flow of cargo among the various transportation modes and offers substantial economies to both carriers and shippers by greatly reducing the need to handle goods. Insofar as the ocean carriers are concerned, containerization offers other substantial economies through the use of high-speed containerships and inland transport facilities, permitting faster vessel turnaround and reductions in ports of call.

The Commission will continue to study the practices of carriers subject to this regulation with respect to this important development and will keep all avenues of information open in order that all possible advantages of intermodal container transportation may accrue to shippers in our foreign commerce.

International Longshoremen's Association (ILA) Pier Strike

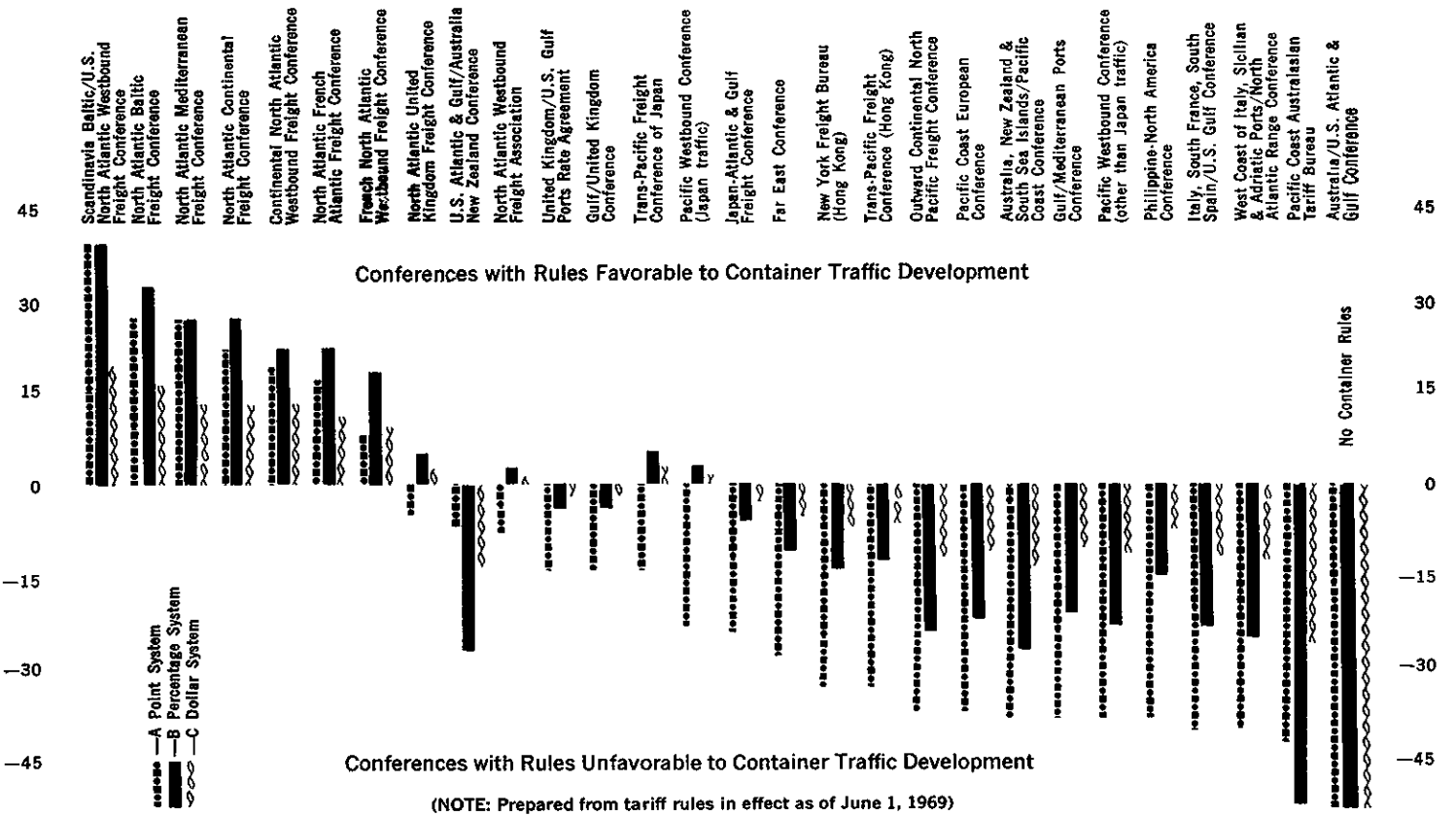
From December 20, 1968, to February 14, 1969, the International Longshoremen's Association was on strike at U.S. east and gulf coast docks.[2] Hundreds of ships were idle at their piers or at anchorage in harbors during this period.

After the strike was settled, steamship companies operating to Puerto Rico filed amendments to their tariffs, increasing rates in an effort to recoup purported past losses due to expenses incurred during the strike period. This action raised both legal and policy issues as to whether a common carrier should be allowed to recoup such

[1] Titled "Graphic Analysis of Rules Affecting Container Traffic in Twenty-Seven Conference Tariffs." The study may be obtained from the Federal Maritime Commission, 1405 I Street NW., Washington, D.C. 20573; price—$1 per copy.

[2] Other ports reached agreement at various subsequent dates with the last ports in the west gulf area returning to work on Apr. 13, 1969.

RANKING OF CONFERENCES PUBLISHING CONTAINER RULES



(NOTE: Prepared from tariff rules in effect as of June 1, 1969)

losses incurred during a strike no longer in effect by imposing surcharges or rate increases upon future users of its service.

The Commission suspended proposed rate increases and/or strike surcharges filed by Sea-Land Service, Inc., Seatrain Lines, Inc., and Transamerican Trailer Transport, Inc., for the full statutory period of 4 months, and ordered an investigation to determine both the lawfulness of such increases in principle and the reasonableness of the specific increases proposed by each common carrier involved. Cases involving the issues were pending further action by the Commission at yearend.

Commission Decisions

The Commission's decisions in formal cases are covered elsewhere in this report. However, the following are of particular significance:

Docket No. 6445—Investigation of Ocean Rate Structures in the Trade Between United States North Atlantic Ports and Ports in the United Kingdom and Eire—North Atlantic United Kingdom Freight Conference, Agreement 7100, and North Atlantic Westbound Freight Association, Agreement 5850.

On August 20, 1968, the Commission served its report in this case, finding that the North Atlantic United Kingdom Conference had established rates on general cargo and certain other rates on specified cargo items which were so unreasonably high as to be detrimental to the commerce of the United States, contrary to section 18(b)(5) of the Shipping Act, 1916. These rates were disapproved and the conference was ordered to file lower rates on these items along with a justification of the level of the new rates. Under the standards set forth by the Commission in its report in this case, an adverse party may show that a rate appears to be unreasonable by reference to a lower rate in a reciprocal or competitive trade, and upon a showing of detriment the burden shifts to the carrier to come forward and prove that its rate or rates are reasonable.

Following the service of the Commission's report in docket No. 65–45, the Conference filed in the U.S. Court of Appeals for the District of Columbia Circuit a petition to review the Commission's report and order in the proceeding. The Court of Appeals affirmed the Commission's order by decision dated June 27, 1969. The formula thus provided by the Commission has become a useful regulatory tool in the informal handling of similar situations in other trades.

Docket No. 68–8—Disposition of Container Marine Lines' Through Intermodal Container Freight Tariffs Nos. 1 and 2, FMC Nos. 10 and 11. On

April 23, 1968, the Commission concluded that the tariffs of Container Marine Lines (CML), providing for a through transportation service between the United States and the United Kingdom comprised of inland transportation in the United Kingdom in addition to port-to-port transportation, were acceptable for filing under section 18(b)(1), Shipping Act, 1916, if such tariffs clearly indicated the charges for each part of the movement and showed CML's assumption of common carrier liability for the through movement. It was further determined that the alleged conflict between the port-to-port portion of through rates and ocean rates in tariffs of conferences of which CML is a member was nonexistent, inasmuch as through intermodal service was not within the scope of the then approved conference agreements.

On June 18, 1969, the Commission approved amendments to the agreement and dual rate contracts of the North Atlantic Westbound Freight Association authorizing the conference to offer a through intermodal service. The case, remanded by the Court of Appeals for the District of Columbia Circuit on the Commission's own motion, has been reopened to permit a full exploration of the interplay between conferences and lines operating outside the conference framework in providing new techniques in the developing area of intermodal transportation.

Commission Rules

On June 7, 1969, the Commission published final rules amending General Orders 7 and 18, self-policing and minutes requirements, respectively, to exempt two-party rate-fixing agreements from the requirements of the rules. On the same date, final rules changing reporting requirements pertaining to Shippers' Requests and Complaints, General Order 14, from quarterly to annually were also published. These changes will significantly reduce the paperwork of both the carriers concerned and the Commission's staff without adverse effect on the regulatory functions of the agency.

On June 18, 1969, the Commission entered into a rulemaking proceeding to amend General Order 7 regarding self-policing systems in conference and ratemaking agreements. The proposed modification of the present General Order 7 rules is required to implement the 1967 decision of the U.S. Court of Appeals for the District of Columbia Circuit in the *States Marine Line* case. The proposed rules will insure the establishment of adequate procedures for self-policing of the agreements so as to provide specific guarantees against arbitrary action and reasonable assurance that an accused member will be treated fairly.

On August 16, 1968, the Commission published final rules governing the filing of agreements between common carriers of freight by water in the foreign commerce of the United States. These rules, promulgated as General Order 24, became effective September 15, 1968. Use of the uniform agreements provided in the rules, while permissive and not mandatory, will greatly expedite the processing of agreements and also result in considerable savings of time and expense to the Commission as well as to conferences and the carriers.

Staff Investigation of Non-Vessel Operating Common Carriers (NVOCC's)

In its decision in docket No. 815 (6 FMB 245) the Commission's predecessor agency established a class of nonvessel operating common carriers. The Board found that any person (or business association) may be classified as a common carrier by water who holds himself out by the estblishment and maintenance of tariffs, by advertisement and solicitation, and otherwise, to provide transportation for hire by water in interstate or foreign commerce as defined in the Shipping Act, 1916; assumes responsibility or has liability imposed by law for the safe transportation of the shipments; and arranges in his own name with underlying water carriers for the performance of such transportation, whether or not owning or controlling the means by which such transportation is effected, is a common carrier by water as defined in the Shipping Act, 1916.

The carriers involved in that proceeding were mainly van lines engaged in the transportation of household goods in through door-to-door service. However, with the advent of fast containerships designed for the through intermodal carriage of general cargo, serious and perplexing problems have arisen. In his daily operations, the NVOCC is a carrier to the shipper and is a shipper to the underlying vessel operator. Because of this dual identity, carriers and conferences are following different practices in the treatment of NVOCC's.

Generally, NVOCC's consolidate small shipments into containers and make their profit by charging the shipper the rate for individual shipments and by paying the underlying carriers the lower rates and charges available for full containers.

However, the NVOCC is not defined in the Shipping Act, and vessel operators are reluctant to establish lower rates for NVOCC's as this may be considered to be unjust discrimination between shippers.

By Federal Register publications of February 12, 1969, and April 3, 1969, the Federal Maritime Commission instituted a review of the operations of Non-Vessel Operating Common Carriers (NVOCC's) in the foreign and domestic offshore commerce of the United States to be undertaken by its staff. The purpose of this review is to obtain background data on the operations and problems surrounding NVOCC activities and to ascertain whether there exists a need to establish guidelines and rules, and whether amendatory legislation affecting the regulation of the NVOCC should be recommended to the Congress.

Initial comments were solicited and received from NVOCC's, steamship lines, steamship conferences, and shippers. Informal hearings were held in Washington, New York, and San Francisco. Any interested party was permitted to testify or furnish written statements. To date these various segments have exhibited keen interest. Documents are now being reviewed by a special committee; a report of recommendations will be prepared early in fiscal 1970.

Conciliation Service

It is the Commission's policy to offer its good offices and expertise to parties to disputes involving matters within its jurisdiction, so as to effect resolution of such disputes with dispatch and without resort to costly and time-consuming formal proceedings. It also desires to facilitate and promote resolution of problems and disputes by encouraging affected parties to resolve differences through their own resources, and to create a forum in which grievances, interpretations, problems, and questions involving the waterborne commerce of the United States may be aired, discussed, and hopefully, resolved to the mutual satisfaction of all parties concerned. To this end, the Commission established a conciliation service effective August 3, 1968, to provide a further informal method for settling disputes between persons or companies involved in the shipping, receiving, handling, or movement of merchandise in commerce of the United States in foreign and domestic offshore trades.

The conciliation service is available to any merchant, carrier, conference of carriers, freight forwarder, terminal operator, government agency, or other person involved in the transportation of goods in such trades. The parties are free to determine the best procedure to be used. Participation is purely voluntary at all stages and the parties involved may withdraw at any time without prejudice. Only if unanimity is reached will the informal advisory opinion, although not binding, be sent to all interested parties and made available to the public. Use of the conciliation service does not prevent a party from pursuing any further course of action that it deems advisable. The Commission is confident that this service will prove to be of benefit to both the shipping industry and the shipping public.

Other Significant Activities

In other activities, the Commission in fiscal year 1969: (*a*) Instituted on its own motion 35 formal proceedings under statutory provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933; (*b*) issued 29 final decisions involving 30 formal proceedings; (*c*) approved under provisions of section 15 of the 1916 Act, 178 carrier agreements and 46 terminal agreements; (*d*) licensed 47 freight forwarders; (*e*) issued nine certificates to passenger ship owners and charterers attesting to financial responsibility for indemnification of passengers in event of nonperformance of contracted transportation; (*f*) issued nine certificates attesting to financial responsibility to meet liability incurred for death or injury to passengers or other persons ;(*g*) processed over 128,000 pages of tariff filings; (*h*) granted 304 and denied 34 special permission requests to effect new or increased freight rates in advance of the statutory notice time; (*i*) initiated actions to resolve over 450 informal complaints and concluded its action with respect to such complaints; (*j*) participated in 23 cases in litigation before the courts involving the decisions and orders of the Commission; (*k*) initiated one legislative proposal; and (*l*) continued an aggressive management improvement program with emphasis on improving its service to the public.

These and other activities of the fiscal year are set forth in detail in subsequent sections of this report.

Special Activities of the Commissioners

During fiscal year 1969, the Chairman and the Commissioners engaged in a number of special activities which included presenting the Commission's views on pending legislation to various congressional committees; addressing legal, trade, and shipping associations; and making television appearances and radio broadcasts. Visits were made to major port areas to obtain current and factual information on local shipping conditions from the industry and interested public officials. The Commissioners made 19 speeches during the year explaining the Commission's policies, programs, and objectives to prominent organizations throughout the United States. Examples of special activities follow:

Chairman John Harllee outlined for the House Merchant Marine and Fisheries Committee the responsibilities which would be imposed on the Federal Maritime Commission by section 5 of H.R. 6495, a bill to amend the Oil Pollution Act of 1924 for the purpose of controlling oil pollution from vessels and for other purposes. He also suggested in a speech before the Federal Bar Association on June 17, 1969, that the Federal Government take steps to institute an internship program for transportation attorneys.

Vice Chairman James V. Day discussed the prime examples of progress in the maritime field with the Maritime Committee of the Seattle Chamber of Commerce. and explained to the members of the Second International Container Service and Equipment Exposition the implications of containerization on the transportation regulatory policies of the United States.

Commissioner Ashton C. Barrett traveled to Europe to attend meetings with representatives of the West Coast of Italy, Sicilian, and Adriatic Ports/North Atlantic Range Conference (WINAC).

Commissioner James F. Fanseen explained the role of the Federal Maritime Commission regarding shipping and shippers' problems to the delegates to the Twentieth Annual Institute on Foreign Transportation and Port Operations at Tulane University, and discussed rate conferences and national interests before the American Merchant Marine Conference.

Commissioner George H. Hearn outlined the policies and programs of the agency as they relate to containerization to the delegates to the Ninth Annual Conference on Containerization, and explained to the Annual Meeting of the Freight Forwarders Institute this country's need for waterborne regulation today to prevent unlawful detriment to the commerce of the United States.

SCOPE OF AUTHORITY AND BASIC FUNCTIONS

The Federal Maritime Commission was established as an independent agency by Reorganization Plan No. 7, effective August 12, 1961. Its basic regulatory authorities are derived from the Shipping Act, 1916; Merchant Marine Act, 1920; Intercoastal Shipping Act, 1933; Merchant Marine Act, 1936; and Public Law 89–777 of November 6, 1966.

The Commission is composed of five Commissioners appointed by the President with the advice and consent of the Senate. The Commissioners are appointed for 5-year terms, with not more than three of the Commissioners being appointed from the same political party. The President designates one of the Commissioners to be the Chairman, who also serves as the chief executive and administrative officer of the agency.

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

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

The Commission's headquarters is located at 1405 I Street NW., Washington, D.C. 20573. There are three district offices located as follows:

Atlantic Coast District Office	26 Federal Plaza, room 4012, New York, N.Y. 10007.
Pacific Coast District Office	450 Golden Gate Ave., Box 36067, San Francisco, Calif. 94102.
Gulf Coast District Office	Post Office Box 30550, room 946, 600 South St., New Orleans, La. 70130.

INTERNATIONAL COMMERCE

Carrier Agreements

Section 15 of the Shipping Act, 1916, authorizes the Commission to grant exemptions from the provisions of the antitrust statutes to common carriers by water in the commerce of the United States and to other persons subject to the act, in instances in which such carriers or persons enter into arrangements, undertakings, or agreements regarding anticompetitive activities enumerated in that section. Such activities include fixing rates, controlling competition, pooling or apportioning earnings or traffic, allotting ports or regulating sailings, limiting or regulating the volume or character of traffic to be carried, and providing for exclusive, preferential, or cooperative working arrangements. The agreements are required to be filed and may not be implemented prior to approval by the Commission. Agreements may be disapproved if the Commission finds, after notice and hearing, the the agreement: (1) Is unjustly discriminatory, (2) operates to the detriment of the commerce of the United States, (3) is contrary to the public interest, or (4) is otherwise in violation of the Shipping Act, 1916.

Activity in Processing Section 15 Agreements

The Commission is current in the processing of foreign carrier agreements. The average processing time is 57 days from the date of filing. This is considered minimum as it includes a usual 20-day Federal Register notice period during which interested parties are given the opportunity to file comments or protests.

At the beginning of fiscal year 1969, there were 35 agreements pending Commission approval under section 15. These consisted of 18 new agreements and 17 modifications to existing approved agree-

ments. During the year, 209 agreements were filed (76 new agreements and 133 modifications). The Commission approved 156 agreements; 30 were withdrawn by the parties as a result of informal discussions concerning clarification or revision of the agreements; 15 were pending in formal proceedings; and 43 were in process of staff analysis.

At the close of fiscal year 1969, there were 769 active approved agreements on file consisting of: 131 conference and rate agreements, 12 joint conference agreements, 49 joint service agreements, 19 pooling agreements, 33 sailing agreements, 413 transshipment agreements, and 112 miscellaneous cooperative working arrangements.

Rules Governing the Filing of Section 15 Agreements

On August 16, 1968, the Commission published final rules governing the uniform filing of agreements between common carriers of freight by water in the foreign commerce of the United States. Utilization of the forms of agreements set forth in these rules, although permissive rather than mandatory, will insure expeditious processing of agreements and in many instances can result in approval under section 15 of agreements that otherwise would have required formal hearings. The use of the suggested agreement formats will result in considerable savings of time and expense to the Commission, the conferences, and the carriers.

Exemption of Nonexclusive Transshipment Agreements From Section 15 Approval

Final rules exempting nonexclusive transshipment agreements from section 15 approval requirements were published in the Federal Register (46 CFR 524) on May 14, 1968, and became effective immediately. These new rules were made possible by the exemption authority granted by the 89th Congress in the enactment of Public Law 89–778 on November 6, 1966. The Commission under appropriate safeguards, through the requirement of filing for information but not for approval, and by implementation of tariff filing requirements under section 18(b) of the act, is able to exercise its authority to exempt nonexclusive transshipment agreements from formal con-

sideration and processing under section 15. The best interests of both carriers and shippers are now being served by implementation of these rules permitting transshipment arrangements with little anticompetitive effect to be more readily negotiated and expeditiously put into operation.

During fiscal year 1969, 42 nonexclusive transshipment agreements were filed with the Commission pursuant to the new exemption rules. Most of these became effective within a week or two upon compliance with the tariff filing requirements.

Self-Policing of Section 15 Agreements

Section 15 of the Shipping Act, 1916, provides that the Commission shall disapprove an agreement if, after notice and hearing, it finds inadequate policing of the obligations of the agreement. It is necessary therefore, that provision for self-policing be included in certain section 15 agreements and that the Commission be informed of the manner in which such provision is being carried out.

The U.S. Court of Appeals for the District of Columbia Circuit in *States Marine Lines, Inc.* v. *Federal Maritime Commission,* 376 F. 2d 230, in its 1967 decision took issue with the manner in which the Commission administered the statutory requirement for self-policing and expressly required "* * * that this kind of self-regulatory process must provide specific, realistic guarantees against arbitrary and injurious action." The court further stated that "* * * given the special characteristics of the shipping industry and the conference system, the broad discretion granted a neutral body must be subject to some form of continuing internal review. That review must provide reasonable assurance that a member will be penalized only on the basis of evidence it has an adequate opportunity to rebut or explain—in other words, that the accused will in fact be treated fairly." [3]

There are approximately 70 conference and ratemaking agreements presently in effect which will require substantial modification in order to comply with the statutory objectives and decisions of the

[3] To conform to the self-policing systems presently contained in approved conference and rate-fixing agreements and to establish requirements for future agreements which comport with the decisions of the Commission and the court, the Commission entered into a proposed rule-making proceeding, docket No. 69–38, issued Aug. 7, 1969, which sets forth minimum requirements to be provided in every self-policing system.

Commission and the courts regarding self-policing of agreements. The proposed new rule would establish a high degree of uniformity in submissions of modifications to agreements containing self-policing provisions, thereby eliminating time-consuming procedures for evaluation by the Commission of self-policing provisions on an individual basis. Specific definitions of offenses, permissible penalties, impartial adjudication, and procedural guarantees to be provided an accused member of a conference or ratemaking agreement, minimum requirements for self-policing, etc., are clearly set forth in the proposed rule.

Shippers' Requests and Complaints

Section 15 of the Shipping Act, 1916, requires that conferences of carriers serving the foreign commerce of the United States establish procedures for promptly and fairly considering shippers' requests and complaints. Pursuant to this section, the Commission issued General Order 14 (46 CFR 527) requiring the reporting of such requests and complaints to the Commission as well as reporting the disposition thereof. Reports submitted to the Commission by conferences during fiscal year 1969 indicate that approximately 68 percent of all complaints and requests submitted to them were handled to conclusion in a manner favorable to the shipper. This favorable action on the part of conferences is attributable largely to the recognition by the conferences that it is in their self-interest to resolve disputes with shippers through normal business channels without reference to the Federal Government. Shippers are being encouraged constantly by the Commission to refer their complaints directly to the conferences. Shippers are free to seek Commission assistance if necessary.

Reports received by the Commission from steamship conferences during the past year show that they acted upon a total of 3,538 requests and complaints, granting 2,404 in whole or in part and denying 1,134.

Exclusive Patronage (Dual Rate) Contracts

Section 14(b) of the Shipping Act, 1916, enacted by Public Law 87–346, effective October 3, 1961, authorizes the Commission to

permit, with certain specified statutory safeguards, the institution by carriers or conferences of carriers, 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 carriers or conferences of carriers. The Commission may approve such dual-rate contract systems unless it finds that the contract, amendment, or modification thereof will be detrimental to the commerce of the United States, 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.

The following table shows the action taken by the Commission with respect to exclusive patronage contracts during the fiscal year:

FISCAL YEAR 1969 ACTION WITH RESPECT TO EXCLUSIVE PATRONAGE (DUAL RATE) CONTRACT SYSTEMS

(a) Approved dual-rate contract systems:

As of July 1, 1968	68
Approved during fiscal year 1969	1
Canceled during fiscal year 1969	0
Approved systems as of July 1, 1969	69

(b) Dual rate contracts filed for approval pursuant to section 14(b), Public Law 87–346, during fiscal year 1969:

	New systems	*Modifications to existing systems*
Pending July 1, 1968	3	29
Filed during fiscal year 1969	5	22
Approved during fiscal year 1969	1	48
Applications withdrawn before approval	3	3
Pending approval July 1, 1969	4	0

Of the five applications filed in fiscal year 1969 to institute new dual rate systems, four were received near the end of the fiscal year and are still pending approval. Two of these were filed by the Instituto de Fomento Nacional (INFONAC) of Managua, Nicaragua, and cover northbound and southbound movement of general cargo in the trade between specified ports on the U.S. Pacific coast and ports in Central America and Mexico.

The U.S. Atlantic and Gulf-Santo Domingo Conference has applied for permission to institute a new dual rate system for the carriage of coffee, cocoa, and/or tobacco in the trade from ports in the Dominican Republic to U.S. Atlantic and gulf ports. The Marine Express Line, an independent carrier, has applied for permission to institute a dual rate system in the trade from U.S. Atlantic and gulf ports to ports on the east coast of Central America including El Salvador and Caribbean ports.

In 1969, 22 modifications to existing dual rate systems were filed. Most of these modifications provided for amendment to approved dual rate contracts to permit upward adjustment in freight rates on less than the statutory 90-day-notice period in cases of currency devaluation by governmental action.

ADP Application to Carrier Agreements

The Commission prepares, by use of automatic data processing techniques, a semiannual publication entitled "Approved Conference, Rate, and Interconference Agreements of Steamship Lines in the Foreign Commerce of the United States." The compilation includes conference rate and interconference agreements, showing agreement numbers, current membership, trade areas, representatives with addresses, and other pertinent information pertaining to the agreements listed. Publication is made semiannually and provides up-to-date listings as of January 1 and July 1 of each year. The application of computer methodology has facilitated preparation of the document, making it possible to provide carriers, conferences, shippers, and the interested public with a current publication at a modest price.[1]

Freight Rates

Common carriers by water and conferences of such carriers are required by section 18(b) of the Shipping Act, 1916, to publish and file with the Commission tariffs setting forth the rules, regula-

[1] For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402—Subscription Price: $4.50 per year; $1.25 additional for foreign mailing.

tions, and rates applicable to the transportation of goods in the foreign commerce of the United States. General Order 13 (46 CFR 536) prescribes the form and manner in which ocean freight tariffs must be published and filed. These filing requirements, implementing the statutory standards, are designed to insure that adequate public notice is provided and that the tariffs are reasonably uniform and may be interpreted and applied without difficulty. Substantial modifications of the general order are now being considered to improve further the clarity of the tariffs and to standardize certain essential rules, resulting in more simplified documentation and a reduction in disputes on interpretation.

During fiscal year 1969, 249 new ocean freight tariffs were received; and a total of 2,582 tariffs are now on file and currently in effect. A total of 109,863 tariff pages, representing new tariffs, reissued tariffs, and changes in currently effective tariffs, were received. These pages represent approximately 220,000 new and initial rates and 275,000 rate changes. During the year, 420 rejections were issued for failure to conform to the statutory filing requirements.

In the processing of these filings, programs have been established to place particular emphasis on those commodities the rate level of which is known to have a significant economic effect upon the marketing capabilities of shippers. In addition, shippers are advised and assisted in processing requests for rate adjustments with carriers and conferences, thereby permitting mutually satisfactory adjustments on an informal basis. All rules and regulations governing the application of rates and charges are subjected to close and detailed examination. Due to the expanding use of containerization and unitization, the concept of intermodal services has become increasingly important in international commerce. For this reason, in examining tariff rules applicable thereto, the Commission seeks to insure that the rates and practices adopted by carriers and conferences do not hinder the development of either unitization or containerization and the economies inherent in both forms benefit both shippers and carriers. Since containerization offers our international trade a greatly improved and more effective system of transporting goods, particular significance is given to the examination of tariff rates and practices as they relate to this new technology. Container movement gives economic advantages to the ocean carriers. Substan-

tial savings are afforded by the fact that they are not required to handle cargoes directly into and out of their vessels, as opposed to the handling of a packaged unit of freight. High-speed containerships permit the carriers a much faster turnaround, and intermodal transportation allows reduction in the number of vessel calls.

Our examination and analysis programs are also designed to make certain, to the extent possible, that tariff rates and regulations do not result in unjustly discriminatory or unduly preferential treatment of shippers.

Special Permission Applications

Under section 18(b) of the Shipping Act, 1916, the Commission is authorized, in its discretion and for good cause, to waive the 30-day filing notice provisions set forth in the act. During fiscal year 1969, 147 special permission applications for waiver of the filing notice were received. Of this number 122 were approved, 19 were denied, and six were withdrawn by the applicants.

Freight Rate Surcharges

A common practice of conferences and carriers is to establish a surcharge as compensation for the extraordinary expenses resulting from port congestion. labor shortages or work stoppage that impede normal vessel operations. Since surcharges increase the cost of ocean services and might adversely affect the marketing capabilities of shippers, the Commission maintains continual surveillance over these additional costs.

Under this program, steps are immediately taken upon the filing of a surcharge to obtain information from the carriers and conferences concerning the conditions which were the basis for the surcharge. The Department of State has been helpful in furnishing background data concerning foreign ports. Exchanges of correspondence take place between the Commission and carriers and conferences relatives to surcharges. The Commission's last annual report discussed the favorable results of the cancellation and reduction of many port and area surcharges during fiscal year 1968.

Cancellation of surcharges at the following ports was achieved during fiscal year 1969 on the dates shown: Warri, Nigeria—15

percent canceled October 7, 1968; Conakry, Guinea—25 percent canceled February 28, 1969; Santos, Brazil—25 percent canceled August 19, 1968; and Brazil—$1 per ton canceled March 1, 1969.

As a result of the longshoremen's strike which began in December 1968 on the U.S. east and gulf coasts, most steamship conferences and independent carriers serving the U.S. foreign commerce from those coasts imposed strike surcharges on cargoes in order to recoup losses. The amount of the strike surcharges in most instances was set at 10 percent of the freight charges.

While the Commission did not question the right of carriers to receive adequate compensation for their services, it did take issue with inequitable apportionment of strike-related expenses to U.S. export trades. The Commission's staff contacted the conferences and carriers which filed strike surcharges in an effort to reach a solution which would afford some relief to our exporters and to determine whether strike surcharges were warranted. As a result, some conferences and carriers voluntarily postponed, reduced, or announced expiration dates of surcharges. In the trade between U.S. North Atlantic ports and certain European ports, conference carriers instituted a strike surcharge on outbound cargoes but not on inbound, thereby raising a question as to equitable apportionment of their strike-related expenses. Since the appeals of the Commission to the conferences and carriers did not achieve the desired results, on April 23, 1969, the Commission ordered the inbound and outbound conferences in the trade to show cause why they were not in violation of section 15 of the Shipping Act, 1916, and why the Commission should not order elimination of the inequity. On May 5, 1969, before replying to the order, the outbound conference canceled its 10-percent surcharge. Additionally, three leading nonconference lines serving the trade took similar action. Three other U.S. North Atlantic/European conferences terminated their strike surcharges 5 weeks early as a result of Commission intervention and negotiation. Again, nonconference lines followed the lead of the conferences and terminated strike surcharges. The termination of strike surcharges saved U.S. exporters very significant amounts in freight charges. This has not ended the matter however, because some of the conferences and carriers converted their strike surcharges into general rate increases. The Commission is investigating these rate increases to determine whether

there remain any inequities unlawfully prejudicial to the commerce of the United States.

General Freight Rate Increases

To fulfill the Commission's obligations under the statute and to insure that ocean rates are not fixed at levels which may impede the ability of shippers to compete effectively in foreign markets, the Commission maintains a program of surveillance over general freight rate increases published by conferences or nonconference carriers in the U.S. foreign trade. Whenever a conference or carrier publishes a general rate increase, inquiry is made promptly into the specific factors which were taken into consideration in reaching their decision. In the great majority of cases, a satisfactory result is achieved by an informal review, with the carriers concerned, of all facts bearing upon the matter, frequently resulting in reductions in the proposed rate increases.

The Commission's program has, for example, produced the following results: Marseilles/North Atlantic U.S.A. Freight Conference postponed a 10-percent general rate increase from January 15, 1969, to March 3, 1969; West Coast of Italy, Sicilian, and Adriatic Ports/North Atlantic Range Conference reduced a 15-percent general rate increase to 8 percent between November 1, 1968, and February 1, 1969; the India, Pakistan, Ceylon, and Burma Outward Freight Conference reduced a 10-percent general rate increase to 7½ percent; and the Far East Conference reduced their 10-percent general rate increase to 7 percent.

Computer Processing of Freight Rates

After a thorough review of its data processing system for tariffs, the Commission solicited an evaluation from other Government agencies, carriers and conferences of carriers, shippers, and other elements of the transportation industry to determine the applicability of its systems and programs to the needs of industry. It was determined that, due to absence of uniformity in commodity nomenclature and the concomitant lack of a unique numerical identifier for each commodity, our rate retrieval system lacked the degree of

specificity essential to the automated rating of transportation bills and charges. While our tariff automation processing was discontinued during the fiscal year, we are participating with other Government agencies and with shipper and carrier groups in the development of uniform commodity descriptions, standardization of format for shipping documentation, and elimination of nonessential documents, all necessary steps in the application of data processing systems to transportation paperwork. Faster ships, and the rapid turnaround of vessels resulting from containerization and unitization of cargoes, make cargo delays for lack of documentation more and more prevalent. Prompt and effective solution of these problems is essential to continued expansion of our trade through more efficient handling of shipping documents and reduction in overhead administrative costs.

Other Data Processing Activity

The staff is presently engaged in the development of a data processing system to list all ocean carriers, the tariffs in which they participate, the related agreement, if any, and the geographical scope covered by each tariff. It is believed that this listing, which we expect to be revised semiannually, will be of interest and benefit, not only within the Commission but to the ocean transportation industry generally, as a guide to the ocean services available and as an index to the carriers competing in a given trade either individually or as a member of a conference.

International Relations

The Federal Maritime Commission has, throughout the year, kept in close touch with the Department of State and the shipping representatives of foreign nations to reduce or, if possible, eliminate points of disagreement which arise through the Commission's administration of its various regulations.

During the period under review, Chairman John Harllee made two trips to Europe to attend meetings of the Organization for Economic Cooperation and Development (OECD) and to meet with

government shipping representatives and representatives of foreign shipping lines and conferences to discuss the regulatory activities of the Commission. Commissioner Ashton C. Barrett traveled to the Mediterranean and European areas to meet with the West Coast of Italy, Sicilian, and Adriatic Ports/North Atlantic Range Conference (WINAC) representatives in Genoa, Italy, to discuss regulatory problems with the carriers and conferences, and attended an OECD meeting in Paris, France. Commissioner James F. Fanseen made an orientation trip to Europe in the fall of 1968, to discuss regulatory problems and containerization with various government shipping officials and representatives of industry.

The staff of the Federal Maritime Commission held a series of meetings with European and Japanese shipping attachés to discuss present and potential regulatory problems. The Chairman and staff members of the Commission attended a meeting of shipping officials of the United States and Brazilian Governments. This meeting was to discuss, explain, and explore the international shipping policies of the two governments. During the period under review, meetings were also held with the Ambassador of Korea; the Ambassador of Ceylon; and, the Representative of the Export Development Commission of the Organization of American States (OAS).

The Commission furnished information to American Embassies abroad on a variety of freight rate and other matters, and secured from them information on conditions at various ports around the world to assist in the reduction or elimination of surcharges.

The substantive problems with the European and Japanese Governments and shipping lines created in the early days of the Federal Maritime Commission, by its implementing amendments to the 1916 Shipping Act, have abated considerably. However, problems still exist as the Federal Maritime Commission issues regulations to modernize and refine its regulatory activities. These problems now are largely jurisdictional, in that European and Japanese Governments continue to maintain the position that any regulatory activity which affects an agreement of conference in their area is an infringement on their jurisdiction.

In the current fiscal year, the Government of France joined the majority of European governments in enacting laws which could be used to prohibit its shipping lines or conferences from furnishing

information to the Federal Maritime Commission (French Law No. 651, April 1968). The law became effective in August 1968.

Foreign Discrimination

The prospect of foreign shipping discriminations continued during fiscal year 1969. The staff of the Commission has maintained continual surveillance of foreign shipping activities and various laws and regulations in order to keep the Commission advised fully.

There is a growing tendency toward shipping legislation in various Latin American countries directing cargoes to national shipping lines. This is brought about by enlarging the kinds of commerce within the governmental sphere and issuing regulations requiring that a given percentage of such government-generated cargoes move on national shipping lines. This pattern of regulation is developing in Argentina, Brazil, Chile, and Ecuador. Colombia and Peru appear to be moving toward extending their regulations to include the control of purely commercial cargoes.

The Federal Maritime Commission is continuing its active consideration and surveillance of the problem.

Public Information

The Commission makes available to the public, information and records consistent with the requirements of Public Law 89–487, effective July 4, 1967, amending section 3 of the Administrative Procedure Act. Further, the Commission expends every effort to provide expedited service to the public with respect to the obtaining of information and records, to assure full access to rates, agreements, rules, and decisions. A close relationship is maintained with interested representatives of news media.

DOMESTIC OFFSHORE COMMERCE

The Federal Maritime Commission regulates rates and practices of domestic offshore common carriers in the trade areas comprising Alaska, Hawaii, Puerto Rico, Guam, American Samoa, and the United States Virgin Islands, pursuant to the statutory provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.

These two statutes provide a comprehensive scheme of regulation over common carrier freight rates and practices. Domestic offshore water carriers are required by the Commission's rules to file freight rates with the Commission at least 30 days in advance of the effective date of the rate. The Commission is empowered to suspend for a period of 4 months the effective date of any such rate, or tariff of rates, pending a hearing and decision on the lawfulness of the rate or tariff in question. If the Commission should determine, after hearings, that any rate, fare, charge, classification, tariff regulation, or practice is unjust or unreasonable, it may determine, prescribe and order enforced a just and reasonable alternative.

Freight Rates

The Intercoastal Shipping Act, 1933, requires domestic offshore water carriers to file with the Commission and keep open for public inspection tariffs of rates, fares, and charges for, or in connection with transportation between ports served. The Commission accepts or rejects these tariffs in accordance with the requirements of the statutes and the Commission's rules.

In fiscal year 1969, 13,348 new pages to existing freight and passenger tariffs were examined. Of these, 528 pages were rejected and letters sent to persons filing as to the corrective action to be taken.

Action was taken by the Commission concerning 43 protested or questionable tariff provisions. Seven formal proceedings were instituted upon the Commission's own motion and eight were instituted upon receipt of protests.

During and after the International Longshoremen's strike (December 1968–April 1969), the Commission received several complaints about the shortage of vessel space to Puerto Rico. On a number of occasions it was successful in helping to resolve shipper space problems.

The Commission's policy of meeting with domestic offshore water carriers, shippers, and representatives of the governments of the domestic offshore areas to discuss, negotiate, conciliate, or otherwise resolve potential disputes on an informal basis resulted in eliminating approximately 28 formal proceedings during fiscal year 1969. This resulted in a substantial saving in both time and money to the Commission, benefiting the carriers, the shippers, and the public.

Special Permission Applications

Section 2 of the Intercoastal Shipping Act, 1933, provides that no change may be made in tariff rates, fares, charges, classifications, rules, or regulations, except by publication, filing, and posting of new tariff schedules. Such changes cannot become effective earlier than 30 days after the date of filing with the Commission. Upon application of the carrier, the Commission may, in its discretion and for good cause, allow the changes to become effective on less than 30 days' notice. During fiscal year 1969, the Commission approved 182 special permission applications and denied 15, and two were withdrawn by the applicants.

Carrier Agreements

Agreements between carriers in the domestic offshore trades are subject to section 15 of the Shipping Act, 1916, which requires that such agreements be filed for approval before effectuation. Each agreement or modification is examined to determine whether it represents the true and complete understanding of the parties; would be unjust, discriminatory, or unfair as between carriers, shippers,

exporters, importers, or ports; operates to the detriment of the commerce of the United States; otherwise violates the Shipping Act; or is contrary to the public interest.

During fiscal year 1969, two original agreements and 16 modifications to approved agreements were filed with the Commission. Four original agreements were pending at the end of fiscal year 1968. Thus, 22 carrier agreements or modifications to agreements were processed during fiscal year 1969. Two original agreements were withdrawn and 20 were approved, by the parties. At the close of fiscal year 1969, there were no agreements or modifications to agreements between carriers in the domestic offshore trades pending action by the Commission.

TERMINAL OPERATORS

The activities of marine terminal operators are regulated by the Commission pursuant to the provisions of the Shipping Act, 1916. This entails the processing of terminal agreements, review of terminal tariffs, and policing and regulating terminal practices. In carrying out this responsibility, the actions described below were taken by the Commission during fiscal year 1969:

1. An informational terminal tariff circular, designed to assist terminal operators in the construction, publication, and filing of marine terminal tariffs, was issued at the beginning of fiscal year 1969. Enthusiastic interest was expressed. Over 700 copies of the circular had been issued by the end of the year.

2. The Commission implemented vehicle detention rules applicable at marine terminals of members of the New York Terminal Conference in the Port of New York. The rules entitle motor vehicle operators loading or unloading waterborne freight at these facilities to receive detention charges for undue delays at piers resulting through no disability, fault, or negligence on the part of the motor vehicle operator. The rules became effective April 7, 1969, pursuant to the order of the U.S. Court of Appeals for the District of Columbia Circuit. The court directed the Commission to establish and administer an escrow fund wherein all claimed detention charges are to be deposited by the terminal operators pending the outcome of litigation involving the legality of the detention rules.

3. In connection with the vehicle detention rules, the Commission instituted an investigation, docket No. 69–28, *Truck Detention at the Port of New York,* to review certain provisions of the rule in order to determine whether such provisions are just and reasonable within the meaning of section 17 of the Shipping Act, 1916, and whether they should be modified or amended.

4. The Commission's staff began a study concerning valuation of leased terminal property at Pacific coast ports. The study will determine whether criteria should be set for minimum and maximum compensation for leasing terminal property.

5. The Commission instituted an investigation, docket No. 69–4, *In the Matter of Agreement T–2214 Between the City of Long Beach, California, and Transocean Gateway Corporation,* to determine whether a terminal lease agreement between the city of Long Beach and Transocean Gateway Corp. should be approved, disapproved, or modified pursuant to section 15 of the Shipping Act, 1916. The issues in the proceeding are confined to whether the rental rate agreed upon is compensatory and, if not compensatory, whether it results in prejudice to other ports or terminals.

6. The Commission instituted an investigation, docket No. 69–5, *In the Matter of Agreement T–2227 Between the San Francisco Port Authority and States Steamship Company,* to determine whether the agreement should be approved, disapproved, or modified pursuant to section 15 of the Shipping Act, 1916. The issues involved in this proceeding are similar to those in agreement T–2214; i.e., whether the rental rate to be charged by the San Francisco Port Authority is compensatory, and if not, whether it results in prejudice to other ports or terminals.

7. On April 7, 1969, the Commission approved two agreements, T–2271 between the city of New York and the Port of New York Authority, and T–2272 between the city of New York, the Port of New York Authority and passenger vessel operators serving the Port of New York, providing for construction of a new, consolidated, steamship passenger terminal in New York to be used by all major passenger vessels serving that city. Two protests to the agreements—by Marine Space Enclosures, Inc., and American Dock Co.—were received. The Commission approved the agreements over these objections on the grounds that sufficient transportation need and public interest were demonstrated to warrant approval of the agreements without a hearing, and that the particular interests represented by protestants were indirect and remote. Subsequently, protestants appealed the Commission's approval of the agreements to the U.S. Court of Appeals for the District of Columbia Circuit.[5]

[5] On July 30, 1969, the court issued its decision remanding the matter to the Commission for futher proceedings.

8. Two interconference agreements relating to terminal operations were filed with the Commission for section 15 approval during the fiscal year. This is the first time that terminal agreements of this nature have been presented to the Commission.

(*a*) Agreement No. T–2206, between the members of the California Association of Port Authorities and the Northwest Marine Terminal Association, was approved by the Commission on January 15, 1969.

(*b*) Agreement No. T–2229, between the South Atlantic Terminal Conference and the Norfolk Marine Terminal Association, was filed on May 5, 1969.[6]

The agreements are similar in nature and provide for a cooperative arrangement whereby the members may confer, discuss, and make recommendations on rates, charges, practices, and matters of mutual concern. The agreements do not grant ratemaking authority to the groups, and actions taken pursuant to the agreements are not binding upon the members. The Commission limited its approval of both agreements to 3 years, and intends to police closely the functioning of the agreements to determine whether continued approval should be granted.

9. Several informal complaints were received concerning terminal tariff practices at Norfolk and Baltimore which provided for progressive increases in demurrage rates during the recent longshoremen's strike. The Commission contacted the operators and expressed its position that penalty demurrage during a strike period was unreasonable, since cargo could not be removed from the terminal. As a result of Commission intervention, the terminal operators voluntarily amended their tariffs to remove penalty demurrage during strike periods, thus precluding the need for a formal proceeding in this matter.

10. The staff processed 140 terminal agreements filed pursuant to section 15 of the Shipping Act, 1916. Fifty-four agreements were determined not to be subject to the act; 46 were processed for Commission approval; and 11 were voluntarily withdrawn by the parties. Twenty-nine were pending final Commission action at the end of the year.

11. Ninety-four quarterly reports, covering shippers' requests and complaints submitted by ratemaking terminal conferences in ac-

[6] Approved by the Commission on July 11, 1969.

cordance with the Commission's General Order 14, were reviewed.

12. The staff examined 5,599 terminal tariff filings to determine whether they were in conformity with the provisions of the Commission's General Order 15, the Shipping Act, 1916, or an approved conference agreement to which the terminal may have been a party.

13. The minutes of 152 terminal conference meetings were reviewed to determine whether any action reflected therein was violative of the Shipping Act.

FREIGHT FORWARDING

Licensing

Section 44 of the Shipping Act, 1916, provides for the licensing and regulation of independent ocean freight forwarders by the Commission. All applicants for licenses are investigated and information developed to determine if the applicant is fit, willing, and able to function as an independent ocean freight forwarder. The following depicts the licensing activity of the Commission during the year.

At the close of fiscal year 1968, there were 1,018 licensed freight forwarders, with 31 applications pending completion of review. During fiscal year 1969, 61 new applications were received; 47 licenses were issued; 18 applications were denied or withdrawn; and 27 were pending at the end of the fiscal year. Forty-one licenses issued previously were revoked or withdrawn during fiscal 1969. As of the end of the year, there were 1,024 ocean freight forwarders licensed by the Commission.

Formal Proceedings

The Commission instituted a proceeding, docket No. 69–22, *Independent Ocean Freight Forwarder License Application—Violet A. Wilson d/b/a Transmares,* to determine whether Violet A. Wilson, doing business as Transmares was qualified under the standards of section 44(b), Shipping Act, 1916, to be licensed as an independent ocean freight forwarder.[7]

In docket No. 68–48, *Independent Ocean Freight Forwarder License No. 790,* the Commission instituted an investigation and hear-

[7] By order of July 24, 1969, the Commission adopted the initial decision of the hearing examiner wherein respondent was found qualified for licensing provided an apparently unqualified individual played no part in respondent's ocean freight forwarding business.

ing to determine whether North American Van Lines continues to qualify for a license and whether its license should remain in effect or be revoked. The issues in this proceeding stem from the acquisition of North American Van Lines by Pepsi Co., Inc., an exporter in the foreign commerce of the United States. At respondent's request, the proceeding was postponed indefinitely on February 26, 1969. Respondent's license was suspended pending final decision.

Other Significant Activity

Because of the large number of amendments to part 510 of chapter IV, title 46 of the Code of Federal Regulations, the Commission's rules regarding licensing of independent ocean freight forwarders were republished in their entirety (33 F.R. 12654). No substantive changes were made.

During the past year, the Commission became aware of a trend toward mergers in the independent ocean freight forwarder industry. Because proposed merger agreements among freight forwarders must be submitted to the Commission for consideration pursuant to section 15, Shipping Act, 1916, there would appear to be sufficient statutory safeguards to prevent port area monopolies or other situations which might prove detrimental to the commerce of the United States. However, surveillance of the situation will be continued with a view toward determining the long-range impact of the trend on the freight forwarder industry and U.S. foreign commerce.

FINANCIAL ANALYSIS

During fiscal year 1969, the Commission received financial statements from 40 carriers, submitted in accordance with the provisions of General Order 5. These reports reflect the financial condition of the reporting carrier as a corporate entity. In addition, 39 reports were submitted under the requirements of General Order 11, which identifies categories of data to be submitted by carriers in reporting results of their operations for each regulated common carrier trade. Information derived as the result of audit and analysis of these data at headquarters and on the site of the carrier's operations is of material assistance in expediting action on rate cases.

The Commission's staff conducts a continuing program of audits of these financial statements. During the year, 11 of the reports were verified by audits of the carrier's records conducted generally by field auditors of the Commission located in New York, San Francisco, and Seattle. To obtain uniformity and thoroughness, a specific audit program has been prescribed.

On December 1, 1967, the Commission published in the Federal Register notice of a proposed rulemaking requiring selected carriers (those with gross revenues of more than $1 million earned in the service of the domestic offshore trades) to submit more detailed financial reports revealing costs of carriage of various categories of commodities. These data will enable the Commission to expedite the discharge of its duties under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. Hearings have been held in Washington, and will be resumed on the Pacific coast and concluded in Washington in the fall. We estimate that the new accounting report, when published, will be applicable to between 15 and 20 of the carriers reporting currently under General Order 11. Those carriers which meet the financial criterion contemplated by the proposed rule will no longer be required to report under General Order 11.

PASSENGER INDEMNITY

The Commission is charged with the administration of sections 2 and 3 of Public Law 89–777, the ship passenger safety statute enacted November 6, 1966.

Section 2 of the statute, which became effective August 7, 1967, requires owners and charterers of vessels having berth or stateroom accommodations for 50 or more passengers, and embarking passengers at U.S. ports, to establish financial responsibility to meet any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports. Section 3, effective May 5, 1967, requires persons arranging, offering, advertising, or providing passage on such vessels to establish financial responsibility for indemnification of passengers for nonperformance of transportation.

The rules implementing sections 2 and 3 of Public Law 89–777 are contained in Commission General Order 20, which requires inter alia that assets or securities acceptable to the Commission of applicants, insurers, guarantors, escrow agents, or others as evidence of financial responsibility must be physically located in the United States. This requirement results from a finding by the Commission that, in enacting the statute, Congress intended that assets must be readily available in the United States to pay any judgment obtained from U.S. courts.

During fiscal year 1969, the Commission approved nine applications for the issuance of performance certificates and nine applications for the issuance of casualty certificates. Also approved were 24 amendments requested by qualified holders of the Commission's performance and casualty certificates, reflecting additions to existing fleets, changes of ownership, charter arrangements, and evidence of financial responsibility.

Federal Maritime Commission
Washington, D. C. 20573

CERTIFICATE OF FINANCIAL RESPONSIBILITY FOR INDEMNIFICATION OF PASSENGERS FOR NONPERFORMANCE OF TRANSPORTATION

No._____

KNOW ALL MEN BY THESE PRESENTS THAT

has evidenced financial responsibility for indemnification of passengers for nonperformance of transportation, and as the holder of this Certificate is duly authorized to arrange, offer, advertise, or provide passage on vessels having berth or stateroom accommodations for fifty or more passengers and which are to embark passengers at United States ports.

This Certificate, to cover the , is issued pursuant to the authority contained in Section 3 of Public Law 89-777, and is subject to the provisions of said Law, Part 540, Chapter IV of Title 46 of the Code of Federal Regulations as it is or may be amended, the pertinent provisions of other applicable regulations promulgated under the foregoing section of said Law, and any terms and conditions set forth below.

By Order of the Federal Maritime Commission

Effective: _____
Secretary

Federal Maritime Commission
Washington, D. C. 20573

CERTIFICATE OF FINANCIAL RESPONSIBILITY TO MEET LIABILITY INCURRED FOR DEATH OR INJURY TO PASSENGERS OR OTHER PERSONS

No._____

KNOW ALL MEN BY THESE PRESENTS THAT

has evidenced financial responsibility to meet any liability incurred for death or injury to passengers or other persons on voyages to or from United States ports.

This Certificate, to cover the , is issued pursuant to the authority contained in Section 2 of Public Law 89-777, and is subject to the provisions of said Law, Part 540, Chapter IV of Title 46 of the Code of Federal Regulations as it is or may be amended, the pertinent provisions of other applicable regulations promulgated under the foregoing section of said Law, and any terms and conditions set forth below

By Order of the Federal Maritime Commission

Effective. _____
Secretary

At the close of the fiscal year, one application for performance and casualty certification and seven amendments to existing performance and casualty certificate applications were pending completion of processing.

During the year, six performance certificates and four casualty certificates were revoked as charter arrangements were completed or certificants ceased to operate subject to sections 2 and 3 of Public Law 89–777.

Nineteen informal complaints involving passenger vessel operations were received. The Commission lacks broad statutory authority over passenger vessel operations, especially in the foreign trades. However, in an effort to assist the passenger and to correct any conditions detrimental to passengers or the industry, vessel owners and operators are contacted concerning all such complaints received by the Commission.

ECONOMIC ANALYSIS

Economic analysis by the Commission involves the gathering, collation, and evaluation of data regarding ocean transportation services in both the domestic offshore and foreign trades of the United States. Studies cover the broad gamut of economic implication, including possible rate inequities and discriminatory and other unfair practices. Also included is analysis of the level of carriers' general rate structures to determine whether individual rates bear a fair relationship to each other, considering such factors as cost of transportation, nonregulated competition, rate levels at which cargo stops moving, and the public need for low rates on particular commodities.

Exhibits and oral testimony of the Commission's staff of economists played an important role in the decision in docket No. 65–45 in which certain rates of the North Atlantic United Kingdom Conference were found to be so unreasonably high as to be detrimental to the commerce of the United States.

Puerto Rico/Virgin Islands Trade Study

A study of the Puerto Rico and Virgin Islands trades was initiated by the Commission during fiscal year 1968. Now in final phases of review by the staff, the study will be ready for publication before the end of calendar year 1969. The major objective of the study is to evaluate the effect of ocean transportation on economic conditions in these trades.

This study will provide the Federal Maritime Commission with background information needed to supplement data obtained in formal proceedings and will be used in the development of more efficient administrative and regulatory techniques. The study also

evaluates the operations of ocean terminals, pickup and delivery services, adequacy and efficiency of shipping services, developmental rates, and special regulatory problems which may retard the flow of commerce between the U.S. mainland and ports in Puerto Rico and the Virgin Islands.

Special Projects

Special studies conducted by the Commission during fiscal year 1969 included preparation of statistical data and exhibit material for general revenue investigations in the Puerto Rico and the Virgin Islands trades; an analysis of the domestic offshore carriers' tariff credit rules; a study to determine the necessity for investigation of rates on household goods; an analysis of demurrage and detention rules applicable at New York, N.Y.; a study of the feasibility of regulating contract carriers in the domestic offshore trades; and a study of the necessity for certification of carriers in the domestic offshore trades.

Other areas of economic activity during the year involved studies of the flow of major moving commodities, containerization studies, a review of conglomerate mergers in the shipping industry, and a study of the effects of strike-related surcharges, some of which resulted in eliminations, deferment, or adjustments.

ENFORCEMENT AND COMPLIANCE

Informal Complaints (Foreign)

The Commission is responsible for administering the regulatory statutes which affect relationships among common carriers by water engaged in transportation in the foreign commerce of the United States as well as relationships between those carriers and the shipping public.

To this end, the Commission has: (1) Implemented rules requiring carriers to establish procedures for prompt disposition of shippers' complaints and for filing reports of actions taken; (2) published in conjunction with the Department of Commerce, a booklet titled "Ocean Freight Guidelines for Shippers" to assist exporters and importers in presenting their complaints and requests for rate reductions to carriers and conferences; and (3) stressed mediation procedures in resolving cases presented to the Commission.

Through cooperative negotiation with the parties concerned, these policy and procedural devices are proving to be effective in resolving shippers' complaints. During fiscal year 1969, the Commission processed, under its program for handling informal complaints and protests, a total of 221 matters relating to the activities of carriers or conferences of such carriers in the foreign commerce of the United States. Areas covered included level of ocean rates, unsettled claims, alleged discriminatory practices, disputed classification of cargo under carriers' tariffs, untariffed common carriage and other complaints. In 73 instances, resolution favorable to the shipper was achieved after intervention or inquiry by the staff. Nine cases were referred to the Department of Justice for prosecution of violations of the Shipping Act, 1916. Other matters resolved by the parties and matters in which no violation of law was involved totaled 139. There were 95 cases pending resolution at the end of the fiscal year.

Informal Complaints (Other)

Domestic Offshore Carriers.—During fiscal year 1969, the Commission received 142 informal complaints involving freight rates, tariffs, agreements, and other practices of domestic offshore carriers. In addition, there were 17 pending informal complaints at the end of fiscal 1968. Of the total of 159 new and pending informal complaints, 125 cases were resolved by determination of no violation or by adjustment satisfactory to the complainant. Eleven complaints were withdrawn and one case involving violations of the shipping statutes was referred to the Department of Justice for appropriate action. At the end of fiscal year 1969, 22 complaints were pending additional investigation.

Freight Forwarders.—There were six informal complaints relating to freight forwarders on hand at the close of fiscal year 1968; 34 additional complaints were received this year, making a total workload of 40 cases. Seven complaints were resolved by settlement or withdrawal; no violation was found in nine instances and 18 cases were closed by other corrective actions. At the end of fiscal 1969, there were six complaints pending final resolution.

Terminal Operators.—At the beginning of the year 52 informal complaints against operators of terminal facilities were pending staff action. An additional 128 cases were received during fiscal year 1969. Sixty-six cases were handled to completion, with 114 complaints pending final actions at the close of fiscal 1969. Of the pending complaints, 63 are the subject of docket No. 65–46—*Truck Loading and Unloading Rates at New York Harbor;* 13 are the subject of docket No. 68–9—*Free Time and Demurrage Charges on Export Cargo;* two are in other formal proceedings; with the remainder awaiting further action by the staff.

Other Compliance Action

The Commission continued its compliance program in the domestic offshore trades during fiscal year 1969. The program is divided into two parts. Part I relates to general activities of water carriers subject to the shipping statutes and is intended to: (1) Acquaint the shipping public as well as the carriers with the provisions of the shipping statutes and rules and regulations of the Commission, and (2)

provide for surveys designed to detect and investigate instances of failure to comply with the statutes and rules and regulations of the Commission. Part II of the program is a container inspection program instituted to prevent or inhibit unlawful practices in weighing, measuring, and describing cargo transported in containers.

At the close of fiscal year 1968, there were three compliance surveys pending additional investigation by the Commission. Twelve additional surveys were initiated during fiscal 1969. Of the total of 15 new and pending compliance surveys, eight were closed and seven were pending completion of additional investigation at the close of fiscal year 1969.

During the fiscal year, Commission investigative personnel identified 47 containers containing either mismeasured or misdescribed cargo moving in the domestic offshore trades. Letters were sent to 21 shippers relating to minor or first-time violations of the shipping statutes. The remaining violative cases, involving more serious infractions, are being reviewed by the Commission's staff for possible referral to the Department of Justice for appropriate action.

Field Investigations

Commission investigators inspected 178 containers in the domestic offshore trades during fiscal 1969 to determine whether shippers and/or carriers were in violation of the governing statutes or rules and regulations of the Commission. As a result of the Commission's inspection program, two major carriers have reported a total of $825,000 in additional revenue from shippers which would not have been collected otherwise. Shippers, by properly declaring their cargo, pay the required tariff rates and secure no rate advantage over competitors.

During 1969, the investigative staff of the Commission, in cooperation with and at the request of a foreign steamship conference, conducted a survey to determine the need for, the problems, and the feasibility of inspection programs on heavily containerized foreign trade routes. Results of the survey were not evaluated fully at yearend. However, it is apparent that an inspection program is desirable and that the most feasible methods of carrier self-policing have still to be developed.

During the fiscal year, 341 new investigative cases were opened and 365 were completed. These encompassed suspected violations of sections 14, 15, 16, 17, 18, and 44 of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, as well as investigations of applicants for independent ocean freight forwarder licenses, compliance checks of licensed freight forwarders, and financial responsibility inquiries under Public Law 89–777.

Of the investigative cases referred to the Department of Justice for prosecutive action, eight cases were finalized by pleas of guilty, award of judgment or by compromise settlement in the total amount of $77,000.

Formal Proceedings

The Commission on its own motion instituted 35 proceedings and remanded for additional evidence three proceedings previously submitted to it. Furthermore, 10 formal complaints were filed and eight complaints were filed pursuant to the Commission's *Procedure for Adjudication of Small Claims.* One hundred and sixteen cases were concluded either through Commission decision, satisfaction of complaint, or discontinuance of proceeding. This figure represents a substantial increase over that in fiscal 1968 owing to the settlement, dismissal, or withdrawal of a large number of complaints processed under the Commission's small claims procedure.

The number of formal proceedings instituted by the Commission has remained at a relatively stable level in keeping with the Commission's continuing efforts to regulate the steamship industry wherever possible through rules of general application rather than by means of ad hoc proceedings.

Among the formal proceedings initiated by the Commission are several of more than usual import, such as an investigation into the general revenue needs of seven vessel-operating common carriers serving the Puerto Rico trade and four unprecedented investigations of revenues of nonvessel operating carriers serving in the same trade.

During the course of the year the Commission served several noteworthy decisions. In this category of proceedings were the disapproval of seven export rates in the North Atlantic United Kingdom trade where the rates were found to be higher than corresponding

import rates and to be exerting adverse effects on exports; the finding that certain west coast conferences could continue to promote the flow of commerce through west coast ports by means of the so-called overland/OCP rate system; the issuance of rules instituting the payment by terminal operators at the Port of New York for truck detention; and the disapproval of conference arrangements in the Latin American/West Coast trades tying shippers to conference service in trade areas beyond those in which the shippers normally participated. In the latter case, however, the Commission has reopened the proceeding for consideration of further evidence concerning the need for such arrangements in these trades.

The status of the Commission docket in formal proceedings is indicated below:

	Pending beginning fiscal 1969	*New dockets and remanded cases*	*Concluded fiscal 1969*	*Pending beginning fiscal 1970*
Investigations:				
Sec. 15	10	10	13	7
Secs. 14, 16, 17	5	3	3	5
Sec. 18(b)(5)	1	1	1	1
Complaints	20	10	18	12
Small claims	53	8	56	5
Dual rate contracts	1	0	1	0
Freight forwarder licensing	2	2	2	2
Rate proceeding	7	14	9	12
Rulemaking	10	8	13	5
Total	109	56	116	49

PROCEEDINGS BEFORE HEARING EXAMINERS AND FEDERAL MARITIME COMMISSION

Hearing examiners preside at hearings held after receipt of a formal complaint or institution of a proceeding on the Commission's own motion. Examiners have the authority inter alia to administer oaths and affirmations; issue subpenas authorized by law; rule upon motions and offers of proof and receive relevant evidence; take or cause depositions to be taken whenever the ends of justice would be served thereby; regulate the course of hearings and hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests; issue decisions; and take any other action authorized by agency rule and the Administrative Procedure Act.

At the beginning of the fiscal year, 98 proceedings were pending before hearing examiners. During the fiscal year 50 cases were added, which included four cases remanded to the examiners by the Commission for further proceedings. The examiners conducted hearings in 15 cases, held prehearing conferences in 25 cases, and issued 25 initial decision during the fiscal year. Eighty-seven cases were otherwise disposed of by the examiners. Thirty-one of the latter group were formal proceedings while 56 were handled in accordance with the Commission's small claims procedure. Under this procedure, claims against common carriers subject to the Shipping Act, 1916, as amended, and the Intercoastal Shipping Act, 1933, as amended, in the amount of $1,000 or less for the recovery of damages (not including claims for loss of or damage to property) or for the recovery of overcharges are, with the written consent of parties, determined by the Commission's hearing examiners without the necessity for formal proceedings under other rules of the Commission.

Decisions of Hearing Examiners (in Proceedings Not Yet Decided by Commission)

Docket No. 66–46—Henry Gillen's Sons Lighterage, Inc., et al. v. *American Stevedores, Inc., et al.*—Docket No. 66–47—*Henry Gillen's Sons Lighterage, Inc., et al.* v. *Columbia Stevedoring Co., et al.* The Commission is without jurisdiction to direct payment of reparation pursuant to section 22 of the Shipping Act, 1916, by a stevedoring contractor who does not furnish wharfage, dock, warehouse, or other such terminal facilities, and is neither a carrier nor a forwarder, and therefore is not a "common carrier by water, or other person subject to this act." Where the Commission in prior decision and order directed respondents to discontinue charges for shipside lighter service in the future, without an express finding of past unlawfulness of such charges, complainant in reparation proceeding cannot rely upon such prior decision and order to establish that past charges were unlawful, since determination of future unlawfulness does not necessarily mean that past acts were found to be unlawful at the time thereof. In a reparation proceeding, parties who were not parties to a prior adjudicatory proceeding are not bound under theory of collateral estoppel by the Commission's findings in the prior proceeding. In reparation proceeding to recover charges for shipside loading and unloading of lighters, where complainant lightermen relied upon Commission decision and order in an investigation proceeding for proof of unlawfulness of the charges; held as to charges prior to effective date of that decision that unlawfulness thereof was not established, either by findings in the investigation proceeding or upon record in the reparation proceeding, and that in any event lightermen could not recover without proof of actual injury where Commission had expressly found charges to be authorized by approved section 15 agreement and therefore not unlawful per se. As to charges assessed by parties to investigative proceeding subsequent to effective date of order therein forbidding such charges for the future, complainants found entitled to reparation without proof of injury.

Docket No. 67–56—Pittston Stevedoring Corporation v. *New Haven Terminal, Inc.* A terminal operator may impose a usage charge on persons coming onto its facility for a gainful purpose; however, such charge is subject to the just and reasonable requirements set forth in section 17 of the Shipping Act, 1916. Usage charge of $1 per 1,000 board feet of lumber imposed on stevedores doing business at a terminal in competition with terminal operator's stevedoring operation, found not reasonably related to the services furnished, and its imposition by respondent constitutes an unjust and unreasonable practice which violates section 17 of the act. Cease and desist order entered.

Docket No. 68–9—Free Time and Demurrage Charges on Export Cargo. Free time and demurrage rules and regulations on export cargo prescribed for future application at the ports of New York and Philadelphia. It is concluded and found that the ocean carriers and marine terminal operators at

the ports of New York and Philadelphia, insofar as they permit unlimited free time with no demurrage charges on export cargo on the piers, docks, or wharves at these two ports, have not established, observed, and enforced just and reasonable regulations and practices relating to the receiving, handling, or storing of property, contrary to the requirements of section 17 of the Shipping Act, 1916. That the granting of unlimited free time with no demurrage charges on export cargo at the port of New York and Philadelphia is an unjust and unreasonable practice, and in the circumstances section 17 of the act requires that this Commission determine, prescribe, and order enforced just and reasonable regulations and practices with respect to free time and demurrage at these two ports. That for the future, just and reasonable free time and demurrage rules, regulations, and practices for export cargo at the ports of New York and Philadelphia hereby are determined, prescribed, and ordered enforced. Specific rules found just and reasonable and prescribed.

Docket No. 68–10—Inter-American Freight Conference—Cargo Pooling Agreements Numbered 9682, 9683, and 9684. Agreements 9683 and 9684, setting up pooling arrangements for the carriage of coffee and cocoa, respectively, from Brazil to Atlantic ports of the United States, have not been shown to be of need in the trade and do not represent the full understanding of the parties thereto. The agreements would be unjustly discriminatory and unfair as between carriers, would operate to the detriment of the commerce of the United States, and would be contrary to the public interest. The agreements are disapproved.

Docket No. 68–13—Assembly Time—Port of San Diego. A tariff rule providing an additional 10 days assembly time at San Diego for Government-owned or sponsored cargo, or for charitable purposes, found not to offend the proscriptions of section 16 First or 17 of the Shipping Act, 1916, or to be otherwise unreasonable.

Docket No. 68–14—C. H. Leavell & Company v. *Hellenic Lines, Limited.* Where complainant shipped cargo on two of respondent's vessels scheduled for Red Sea port via Suez Canal, which was closed after commencement of voyages following outbreak of Arab-Israeli War of 1967 requiring both voyages to be diverted via Cape of Good Hope, the first after backtracking from Alexandria, a 65-percent surcharge imposed on the voyage which was extended 164 percent in time and 193 percent in mileage, and a 25-percent surcharge imposed on the voyage which was extended 71 percent in time and 94 percent in mileage, found authorized by filed tariff rule and bill of lading clauses providing for additional compensation in unspecified amount in the event of such contingency, and not in violation of section 18(b) of the Shipping Act, 1916. Incorporation by reference of definitely ascertainable matter in bill of lading terms comprising transportation agreement follows established maritime custom which is not invalidated by section 18(b) of Shipping Act, 1916. Complaint dismissed.

Docket No. 68–29—U.S. Pacific Coast/Australia, New Zealand, South Sea Islands Trade—Unapproved Agreements. Respondent's failure to file

for approval their agreement of June 4, 1965, authorizing the payment of brokerage in the Pacific Coast/Australia, New Zealand, and South Sea Islands trade, and their tariff rules pursuant to such agreement, violated section 15 of the Shipping Act, 1916. The payment of brokerage under the rules was the unlawful carrying out of an unapproved agreement. Respondent's agreement of December 9, 1965, prohibiting the payment of brokerage, and the tariff rules pursuant thereto, not having been filed for approval, were in violation of section 15. Respondent's agreement of February 1, 1966, to cancel all tariff references to brokerage, and the tariff rules pursuant thereto, not having been filed for approval, were in violation of section 15. Respondents did not operate under an unfiled agreement or understanding not to pay brokerage between February and May 1966. The payment of brokerage by respondents between May 1966 and February 28, 1968, was not pursuant to an unfiled agreement or understanding. Respondents did not agree, by direct action or implication, not to pay brokerage to New Zealand and the lesser islands between June 1965 and August 15, 1968. The Commission is not estopped from making findings with respect to respondent's tariff rules which were to have become effective February 15, 1966, prohibiting the payment of brokerage.

Docket No. 69–2—A. P. St. Philip, Inc. v. *The Atlantic Land and Improvement Company and Seaboard Coast Line Railroad Company.* Atlantic Land & Improvement Co., owner of a terminal facility, found to have divested itself of all functions in connection with the operation of the terminal under a lease to Seaboard Coast Line Railroad Co., and not be a person subject to the Shipping Act, 1916. Seaboard Coast Line Railroad, operating a terminal facility in connection with common carriers by water, found subject to the act. The giving or granting of an exclusive right to furnish tugboat services to vessels docking and undocking at a terminal when not justified by a transportation need, the public interest, or furtherance of a valid regulatory purpose, violates section 16 First of the act. Seaboard Coast Line Railroad, although not having prevented tugboat companies other than Tampa Bay Towing Co. from serving vessels docking and undocking at its terminal has evidenced its intent to do so contingent upon the final outcome of an action in a State court against Atlantic Land & Improvement Co. A cease and desist order cannot be issued in the absence of proof of violation of the act by a person subject to the act. Complaint dismissed without prejudice to reinstitution of a proceeding under section 22 of the act should Seaboard Coast Line Railroad carry out its declared intent to grant Tampa Towing Co. the exclusive right to furnish tugboat services to vessels docking and undocking at the phosphate elevator terminal.

Docket No. 69–4—Agreement No. T–2214 Between the City of Long Beach, California, and Transocean Gateway Corporation. Rental for marine properties for use as a public container terminal, subject to an adjustment in the minimum rental for the second year, found compensatory on proposed 10-year basis, and not shown to be unjustly discriminatory or unfair to other

ports or terminals. Lease agreements approved subject to said adjustment in second-year minimum rental.

Docket No. 69–22—Independent Ocean Freight Forwarder License Application—Violet A. Wilson d/b/a Transmares. Applicant, Violet A. Wilson, doing business as Transmares, will be an independent ocean freight forwarder as defined in the Shipping Act, 1916; is fit, willing, and able properly to carry on the business of forwarding and to conform to the provisions of this act and the requirements, rules, and regulations of the Commission issued thereunder; the proposed forwarding business will be consistent with the national maritime policies declared in the Merchant Marine Act, 1936; and will be issued a license as provided in section 44(b) of the Shipping Act, 1916.

The examiners also issued initial decisions in dockets Nos. 65–5, 65–31, 66–11, 66–61, 67–44(1), 68–3, 68–16, 68–19, 68–24, 68–26, 68–27, SD–403, and SD–404, described under "Final Decisions of the Commission."

Pending Proceedings

At the close of fiscal year 1969 there were 36 pending proceedings, of which 23 were investigations initiated on the Commission's own motion; and the remaining cases were instituted by the filing of formal complaints and/or applications by conferences, trade associations, shippers, individual steamship companies, and others.

Final Decisions of the Commission

In proceedings other than rulemaking the Commission heard 11 oral arguments and issued 29 decisions involving 30 proceedings. Of these proceedings, seven were discontinued without report, one was referred to the examiner for evidentiary hearing, and one was remanded for further hearing.

Docket No. 1092—Agreement No. 8660—Latin America/Pacific Coast Steamship Conference and Proposed Contract Rate System. The contract rate system of respondent conference was disapproved and the conference was directed to offer such contracts separately in each trade area which it serves. On reconsideration, the matter was remanded for taking of further evidence.

Docket No. 1153—Truck and Lighter Loading and Unloading Practices at New York Harbor. In furtherance of its previous order in this proceeding, the Commission prescribed truck detention rules to be employed by the New York Terminal Conference, upon a finding that the Conference had failed to do so itself.

Docket No. 65–5—Proposed Rule Governing Time Limits on the Filing of Overcharge Claims. The rules of carriers and conferences providing for a 6-month limitation on filing of overcharge claims by shippers were found not to be violative of the shipping statutes nor did they preclude the filing of claims with the Commission within the 2-year statutory period. Accordingly, the Commission found no necessity for publishing a proposed 2-year rule.

Docket No. 65–31—Investigation of Overland and OCP Rates and Absorptions-Docket No. 66–61—Board of Commissioners of the Port of New Orleans v. *Pacific Coast Australasian Tariff Bureau.* The practices of various conferences in setting competitive rates for the Pacific coast gateway ("overland" and "overland common point" rates) were found to be authorized by their conference agreements and not violative of the shipping statutes. The Commission directed, however, that the agreements be updated to make clear the intent of such practices.

Docket No. 65–45—Ocean Rate Structures in the Trade Between the United States and the United Kingdom and Eire. Seven specific rates of the North Atlantic United Kingdom Freight Conference were found to be so unreasonably high as to be detrimental to the commerce of the United States since the rates did not conform to ratemaking factors, caused economic harm to U.S. commerce, and had not been justified by the conference in relation to lower inbound rates on similar commodities in the same trade.

Docket No. 66–11—Arthur Schwartz and Justamere Farms v. *Grace Line.* The Commission adopted the decision of the examiner in finding that the refusal of Grace Line to offer refrigerated space to complainants was not in violation of the shipping statutes or previous orders of the Commission since complainants had failed to meet their obligations under their freighting contracts. Accordingly, the complaint was dismissed.

Docket No. 66–37—Kimbrell-Lawrence Transportation, Inc.: General Increase in Rates in Kodiak Island, Alaska Peninsula and Aleutian Islands Area of Alaska. Respondent's rates were found not unlawful, but respondent was directed to adopt a means for reasonable determination of amounts to be assigned to vessel betterments and expenses.

Docket No. 66–65—Ballmill Lumber and Sales Corporation v. *Port of New York Authority, et al.* On motion for ruling, the Commission found that Port of New York Authority had not complied with its previous order and directed the Authority to extend to Ballmill: (1) A lease coextensive with Weyerhaeuser co., (2) the right to sublet to a subsidiary, and (3) permission to make improvements on the leased premises.

Docket No. 67–8—Agreement No. 9597 Between Flota Mercante Gran Centroamericana, S.A., Continental Lines, S.A., and Jan C. Uiterwyk Co. Respondents were found to have carried out agreements without Commission approval and to have charged rates other than those on file with the Commission in violation of sections 15 and 18(b), respectively.

Docket No. 67–44 (Sub. 1)—Agreement No. DC–30 Between South Atlantic and Caribbean Lines and TMT Trailer Ferry, Inc. Agreement No. DC–30 providing for fixing of rates on refrigerated cargo from Florida to Puerto Rico was found not violative of the shipping statutes and was approved pursuant to section 15.

Docket No. 67–54—Chr. Salvesen and Co. v. *West Michigan Dock and Market Corporation.* West Michigan was found to have violated section 16 by unreasonably refusing to serve Salvesen's vessel in order of time of arrival, thus granting undue preference to another vessel. West Michigan, however, was found not to have violated section 16 in the assignment of available shore labor to stevedore the vessel. The matter was then returned to the presiding examiner to determine the amount of reparations due Salvesen.

Docket No. 68–3—Lake Charles Harbor and Terminal District v. *Port of Beaumont Navigation District.* Beaumont's wharfage and unloading tariff, which assessed a lower rate on bagged rice originating in Arkansas than from other origins, was found not to be in violation of the shipping statutes since the user of the higher rate was shown to benefit thereby; there was no showing that the lower rate was less than compensatory; and there was no showing of related injury to Lake Charles. Accordingly, the complaint was dismissed.

Docket No. 68–16—Anthony G. O'Neill—Freight Forwarder License. Applicant O'Neill was found to be unqualified for licensing by reason of his lack of knowledge or experience with exporting procedures and his inability to communicate fully in the English language.

Docket No. 68–19—G. R. Minon—Freight Forwarder License. Applicant Minon was found to be unfit for licensing by reason of his cooperation in the fraudulent diversion of drug shipments and his continued use of an illegal license.

Docket No. 68–24—Agreement No. 8200 Between the Far East Conference and the Pacific Westbound Conference and Modifications 8200–1 and 8200–2. The Commission adopted the initial decision of the examiner, granting continuing approval of Agreement No. 8200 and approving modifications thereto, both for a period of 1 year. The parties to the proceeding had suggested this course of action since the practices which were the subject of the modifications were being tested in other proceedings before the Commission and the courts.

Docket No. 68–26—Agreements Nos. T–2108 and T–2108–A. The Commission adopted the initial decision of the examiner approving, pursuant to section 15, agreements between the city of Los Angeles and Japan Line, Kawasaki Kisen Kaisha, Mitsui O.S.K. Lines, and Yamashita-Shinnihon

Steamship Co., providing for preferential use of terminal facilities. Certain provisions relating to routing of cargo and retroactive compensation were ordered deleted and the minimum compensation ordered increased.

Docket No. 68–27—Agreements Nos. T–2138 and T–2138–1. The Commission adopted the initial decision of the examiner approving, pursuant to section 15, agreements between the Port of Oakland and Japan Line, Kawasaki Kisen Kaisha, Mitsui O.S.K. Lines, and Yamashita-Shinnihon Steamship Co., providing preferential use of terminal facilities. Certain provisions relating to routing of cargo and retroactive compensation were ordered deleted.

Docket No. 69–9—South Atlantic and Caribbean Line. The Commission rejected an embargo notice of South Atlantic and Caribbean Line under which the carrier would refuse to accept any container of less than trailer loads, consolidated full container loads, or a container which came from or was destined to any point within a 50-mile radius of the center of Miami. The carrier contended that this was necessary because of the terms of its contract with the International Longshoremen's Association but the Commission found that there was no physical disability to carry—a fundamental prerequisite for declaring an embargo.

The Commission adopted initial decisions of examiners in special dockets 403 and 404 granting applications by carriers to refund overcharges to shippers.

RULEMAKING

The following rulemaking proceeding, instituted during fiscal year 1969, is in progress:

Docket No. 69–6—Collection, Compromise, and Termination of Enforcement Claims. Proposed rules published February 25, 1969.

The following rules were published during the fiscal year as a result of rulemaking proceedings:

General Order 7—Self-Policing Systems, Amendment 3 (Docket No. 69–14) (Exemption of Two-Party Rate-Fixing Agreements).

General Order 13—Filing of Tariffs by Common Carriers by Water in the Foreign Commerce of the United States and by Conferences of Such Carriers, Amendment 2 (Docket No. 69–33) (Exemption of Certain Activities of Alaska Ferry System). This rule also amended Tariff Circular 3.

General Order 14—Shippers' Requests and Complaints, Amendment 4 (Docket No. 69–15) (Exemption of Two-Party Rate-Fixing Agreements From Reporting Requirements).

General Order 16—Rules of Practice and Procedure, Amendment 3 (Docket No. 68–2) (Federal Maritime Commission Conciliation Service); Amendment 4 (Docket No. 68–15) (Depositions, Written Interrogatories and Discovery); and Amendment 5 (Docket No. 68–34) (Special Docket Applications).

General Order 18—Conference Agreement Provisions Related to Concerted Activities, Amendment 4 (Docket No. 69–16) (Exemption of Two-Party Rate-Fixing Agreements).

General Order 20—Security for the Protection of the Public, Amendment 3 (Docket No. 69–1) (Waiver of Amount of Working Capital Requirement for Self-Insurers).

General Order 24—(Docket No. 67–55) Filing of Agreements Between Common Carriers of Freight by Water in the Foreign Commerce of the United States.

ACTION IN THE COURTS

Thirteen petitions to review Federal Maritime Commission orders were pending in the various U.S. Courts of Appeal at the beginning of the fiscal year. During the year, nine more petitions were filed, 11 of these were disposed of and the remaining 11 were pending briefing, argument or decision as of June 30, 1969.

The following are some of the more important cases in which the Federal Maritime Commission was involved during the fiscal year:

In *American Export-Isbrandtsen Lines, et al.* v. *FMC & USA,* D.C. Cir. No. 22402 (decided June 27, 1969), the District of Columbia Circuit affirmed the Commission's authority to disapprove rates of a steamship conference which were found to be so unreasonably high as to be detrimental to the commerce of the United States. The conference was also ordered to submit new rates with justification. The decision represents the first court test of section 18(b)(5), a 1961 amendment to the Shipping Act, 1916.

In *Matson Navigation Co.* v. *FMC & USA,* 405 F. 2d 796 (9th Cir. 1968), the Ninth Circuit, although remanding the case for further consideration, upheld the Commission's authority pursuant to section 15, Shipping Act, 1916, to approve merger agreements between steamship companies. The Commission had approved a merger between two west coast lines over the protest of a competing line. The Commission's authority was upheld notwithstanding that opposition and that of the Department of Justice.

In *Pacific Far East Line, Inc.* v. *FMC & USA,* 410 F. 2d 257 (D.C. Cir. 1969), the District of Columbia Circuit upheld a Commission decision finding that a steamship company was unlawfully rebating when it entered into a reciprocal agreement to purchase its fuel oil from a dairy company which, in turn, agreed to ship on the carrier's vessels. The dairy company, which had never been in the business of supplying oil, was assigning its fuel oil contracts to oil suppliers and receiving a substantial royalty.

In *Alaska Steamship Co.* v. *FMC & USA,* 399 F. 2d 623 (9th Cir. 1968) and *Sea-Land Service Inc.* v. *FMC & USA,* 404 F. 2d 824 (D.C. Cir. 1968), both the District of Columbia and the Ninth Circuit held that joint rate tariffs for port-to-port service between Seattle, Wash., and Alaskan ports, which included pickup and delivery within the terminal areas, were subject to the jurisdiction of the Interstate Commerce Commission rather than the Federal

Maritime Commission. Both cases involved an interpretation of Public Law 87–595, which amended the Interstate Commerce Act.

Now pending before the District of Columbia Circuit in *American Export-Isbrandtsen Lines et al.* v. *FMC & USA*, No. 22820, is a petition to review the validity of a Commission order requiring a conference of terminal operators in New York to assume responsibility for truck delays due to the inability of the terminals to provide adequate labor to handle the truck. The Commission had found that the terminals' attempt to disclaim liability for labor shortages was an unreasonable practice in violation of section 17, Shipping Act, 1916.

LEGISLATIVE DEVELOPMENT

Changes in Penalties for Violations of the Shipping Statutes

The Commission transmitted to the Congress during the fiscal year ended June 30, 1969, a legislative proposal which would change from criminal to civil the penalties for violation of certain provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, and authorize the Commission to fix and assess civil penalties. The Commission presently is authorized, upon proper complaint, to award reparations for injury suffered as a result of violations of the Shipping Acts. However, it has only limited power to impose sanctions for the violations. The proposal would enable the Commission to relate the penalty directly to the act's regulatory objectives and in its discretion to assess a penalty less than the maximum permitted, when in its judgment the assessment of a lesser amount seems appropriate. The proposal was introduced in the Senate as S. 3846. No further action was taken in either House before the expiration of the 90th Congress. It is anticipated that a similar measure will be recommended in the 91st Congress.

Other Legislative Activity

There are several additional areas under consideration in which the Commission believes that legislation clarifying its jurisdiction is desirable.

1. Pickup and delivery services performed within a port area by a motor carrier for a common carrier by water subject to the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, traditionally have been considered as incidental to the predominant line-haul performed by the water carrier subject to the Commission's jurisdiction. The Interstate Commerce Act (sec. 216(c)), recently has been interpreted as divesting the Federal Maritime Commission of jurisdiction over the transporta-

tion where the motor carrier and the water carrier enter into joint rates in the Alaska and Hawaii domestic offshore trades.[8] If the arrangement is merely a combination of local rates and not a joint rate, the Federal Maritime Commission retains jurisdiction. Thus, these decisions permit a water carrier to choose to be regulated by whichever agency it desires and to change such election at will. Such forum shopping is not conducive to effective regulation. Appropriate amendment of the Interstate Commerce Act would restore jurisdiction to the Federal Maritime Commission in those instances where the pickup and delivery is merely incidental to the ocean transportation and would result in effective regulation.

2. Proposed legislation to specifically authorize the Commission to seek, in connection with a Commission proceeding, injunctive relief by application to a district court of the United States having jurisdiction over the partes to enjoin the acts or practices under investigation pending a final determination in the matter by the Commission. The Commission believes that it can better discharge its statutory responsibilities and better protect the interests of litigants if it is granted specific authority to ask courts to maintain, upon appropriate showing, the *status quo* pending final Commission determination in such proceedings.

On October 24, 1968, Public Law 90–634 was approved. Section 306(a) provides for the President, upon complaint of an interested party, to make an investigation to determine whether any exporting country which is a member of the International Coffee Organization, or group of exporting countries which includes any member of such organization, is taking action which discriminates, or threatens to discriminate, against U.S. flag vessels in the shipping of coffee to the United States. If the President finds such action exists, he shall notify the Federal Maritime Commission which shall promptly make appropriate rules and regulations under section 19 of the Merchant Marine Act, 1920.

During fiscal year 1969, the Commission also made studies of numerous bills introduced in the Congress and transmitted pertinent comments to the appropriate committees.

---

[8] *Alaska Steamship Company* v. *Federal Maritime Commission* 399 F. 2d 623. *Sea-Land Service, Inc.* v. *Federal Maritime Commission* 404 F. 2d 824.

ADMINISTRATION

Commissioners

There were no changes in Commission membership during fiscal year 1969. John Harllee, rear admiral, U.S. Navy (retired) continued, by designation of the President, to serve as Chairman. The other members were Ashton C. Barrett of Mississippi; James V. Day of Maine; James F. Fanseen of Maryland; and George H. Hearn of New York.

Following the Commission's policy of rotating the vice chairmanship, James V. Day was, on June 30, 1968, elected Vice Chairman, succeeding George H. Hearn.

Personnel

There were 238 employees on duty as of June 30, 1969. The Commission continued to emphasize effective provision of equal employment during the course of the fiscal year. Also, new avenues were created for the advancement of employees in lower level, dead end positions.

Staff Organization

Mr. James E. Mazure, director of the Commission's Bureau of Compliance, was designated as Acting Managing Director following the resignation of Edward Schmeltzer on January 10, 1969.

The Office of Hearing Counsel was, effective August 26, 1968, redesignated as the Bureau of Hearing Counsel.

Closing of Anchorage, Alaska, and Seattle, Washington, Offices

The Commission's offices in Anchorage, Alaska, and Seattle, Wash., were closed during the second half of fiscal year 1969; the former because of a court determination that the Commission does not have jurisdiction over joint port-to-port water movement and port terminal area pickup and delivery services by motor carriers, and the latter as a concomitant measure in the interests of economy.

Relocation of Washington, D.C. Office

In late October 1968, the Commission moved to larger, modern quarters at 1405 I Street NW., Washington, D.C. 20573.

Relocation of Atlantic Coast District Office

In May 1969, the Commission's New York office moved to the newly constructed Federal Office Building located at 26 Federal Plaza, New York, N.Y. 10007.

Management Improvement Programs

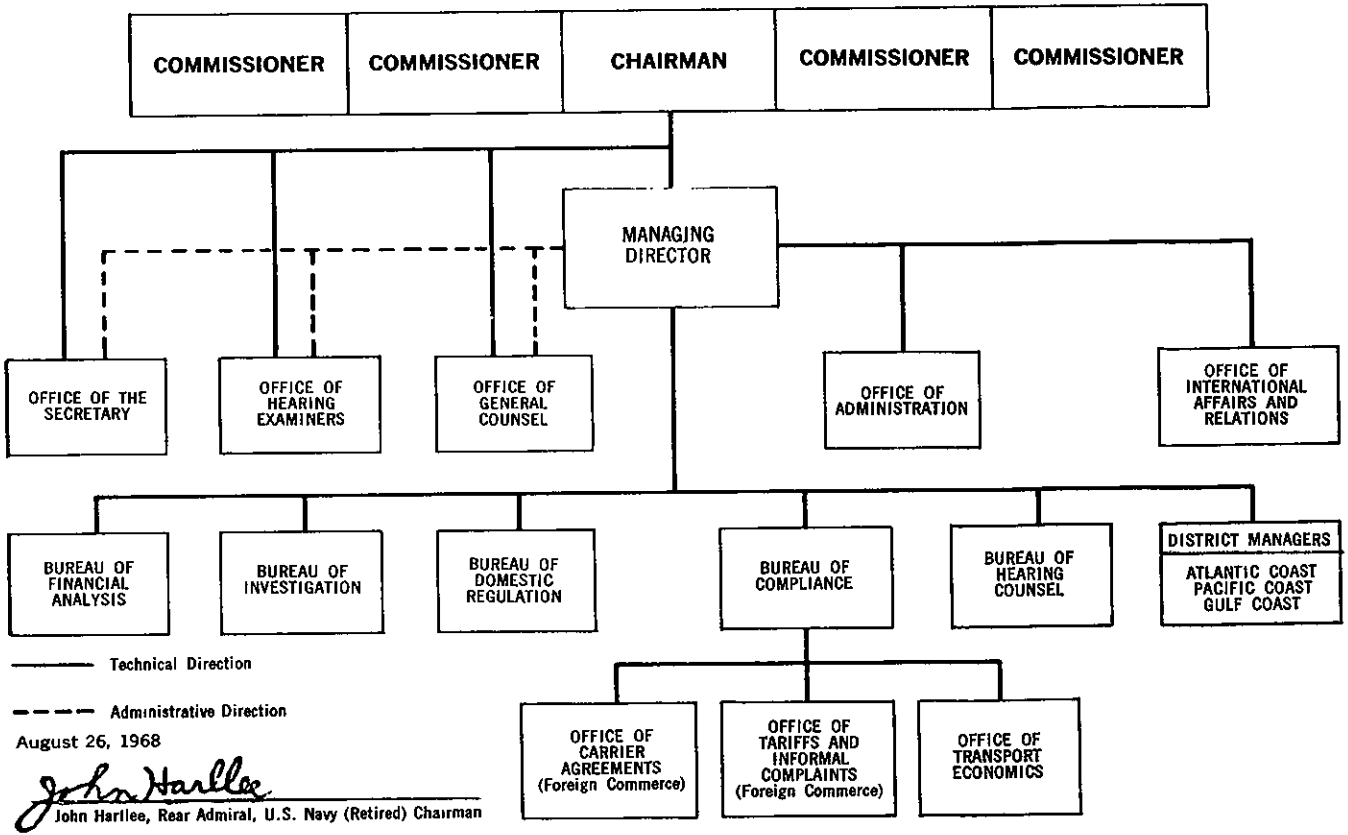
During fiscal year 1969, the Commission continued to emphasize cost reduction and efficiency of operations in order to effect maximum utilization of staff resources. There were many instances of reduction in the volume of paperwork required to carry out the Commission's programs. And, most importantly, significant advances were made in our program to improve service to the public. Examples of management activities during fiscal year 1969 include:

1. *Expansion of Public Information Services.*—The physical size of the Commission's public information facility was increased by at least one-third, enabling the provision of services which, due to space limitations, were not previously available. The new facility promotes use by the public and enables the Commission to provide, for the first time, a true one-stop public information service.

2. *Establishment of the Federal Maritime Commission Conciliation Service.*—The newly established rule (discussed in more detail in "Highlights of the Year") permits the Commission's managing director to assign to each dispute between shippers and carriers and among others involved in the waterborne commerce of the United States a conciliator who will air the dispute, either orally or on a written record, and render a nonbinding decision to the parties, thereby avoiding the necessity for protracted, costly, formal hearings.

3. *Seminar on "Language of Business."*—The Commission's Bureau of Financial Analysis conducted an employee seminar on the language and concepts utilized in preparing financial statements. Twelve sessions were held, with emphasis on situations and problems peculiar to the ocean shipping industry. Seminars such as this are intended to provide insight into, and understanding of, the problems of the shipping industry in order to increase the quality of the Commission's services to the shipping community.

FEDERAL MARITIME COMMISSION



August 26, 1968

John Harllee

John Harllee, Rear Admiral, U.S. Navy (Retired) Chairman

Statement of Appropriation and Obligation for the Fiscal Year Ended June 30, 1969

APPROPRIATION:		
Public Law 90–470, 90th Congress, approved Aug. 9, 1968: For necessary expenses of the Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902		$3,653,000
Public Law 91–47, 91s Congress, approved July 22, 1969; Second Supplemental Appropriations Act 1969, to cover increased pay cost		90,000
Appropriation availability		3,743,000
OBLIGATIONS AND UNOBLIGATED BALANCE:		
Net obligations for salaries and expenses for the fiscal year ended June 30, 1969		3,724,086
Unobligated balance withdrawn by the Treasury		18,914
STATEMENT OF RECEIPTS DEPOSITED WITH THE GENERAL FUND OF THE TREASURY FOR THE FISCAL YEAR ENDED JUNE 30, 1969:		
Publications and reproductions		8,610
Freight forwarder license fees		8,700
Fines and penalties		87,675
Recoveries for lost Government property		1,182
Miscellaneous refunds		1,234
Total general fund receipts		107,401