FEDERAL MARITIME COMMISSION

19th Annual Report

Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

TO THE SENATE AND THE HOUSE OF REPRESENTATIVES:

I am pleased to submit to you the annual report of the Federal Maritime Commission for Fiscal Year 1980 pursuant to section 103(e)(2) of Reorganization Plan No. 7 of 1961 and section 208 of the Merchant Marine Act, 1936.

The Commission achieved record productivity during Fiscal Year 1980, issuing 346 final decisions, eliminating its backlog of docketed proceedings, and expediting its review of agreements filed under section 15 of the Shipping Act, 1916. We also continued to make progress in our efforts to eliminate illegal rebating in the U.S. foreign commerce, and our administration of the Ocean Shipping Act of 1978 has served to virtually eliminate predatory rate-cutting by state-controlled ocean carriers operating in our foreign trades.

I am personally gratified that we have met the major goals I set for the agency when I became Chairman three and a half years ago by expediting the Commission's decision-making process, eliminating the agency's backlog of cases, and making our regulation more timely and responsive to the liner shipping industry and the public. We must now vigorously pursue other aspects of regulatory reform, including our efforts to curtail our regulation to those areas where it is clearly necessary and productive, and I look forward to great progress in this endeavor during Fiscal Year 1981.

Sincerely,

Richard J. Daschbach
Chairman

TABLE OF CONTENTS

I. LETTER OF TRANSMITTAL

II. THE COMMISSION 1

Membership
History and Functions
Administration

III. FISCAL YEAR 1980 IN REVIEW.....17

IV. FOREIGN COMMERCE 25

Agreements
Tariffs
Significant Commission Activities
Significant Trade Developments

V. DOMESTIC COMMERCE 52

Tariffs
Significant Commission Activities
Significant Trade Developments

VI. CERTIFICATION ACTIVITIES 57

Water Pollution
Passenger Vessels
Freight Forwarders

VII. FINAL DECISIONS OF THE COMMISSION 66

VIII. COURT PROCEEDINGS 75

IX. LEGISLATION 83

X. APPENDICES

THE MEMBERSHIP

MEMBERS	APPOINTED	CURRENT TERM EXPIRES
Richard J. Daschbach Chairman (D) New Hampshire	August 24, 1977	June 30, 1982
Leslie L. Kanuk Vice Chairman (D) New Jersey	April 21, 1978	June 30, 1981
Thomas F. Moakley Commissioner (D) Massachusetts	November 4, 1977	June 30, 1983
James V. Day Commissioner (R) Maine	February 12, 1962	June 30, 1984
Peter N. Teige Commissioner (R) California	April 7, 1980	June 30, 1985

MR. MOAKLEY

DR. KANUK

MR. DASCHBACH

MR. DAY

MR. TEIGE

II.
THE COMMISSION

History and Functions

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

Major responsibilities of the Commission include:

1) The regulation of ocean carrier ratemaking in the U.S. foreign and domestic offshore trades;
2) Investigation of discriminatory rates and practices among shippers, carriers, terminal operators, and freight forwarders;
3) Licensing of independent ocean freight forwarders;
4) Passenger vessel certification; and
5) Certification of vessels to ensure financial responsibility for pollution by oil and hazardous substances.

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

The functions and authority of the FMC are very often confused with those of the Interstate Commerce Commission and the Maritime Administration. The FMC,

unlike the ICC, has very limited authority to set rates or to disapprove tariffs already lawfully filed in the U.S. foreign commerce. The FMC also does not have authority to limit entry into the U.S. ocean commerce.

The Maritime Administration, under the U.S. Department of Commerce, is a promotional agency which develops, subsidizes, and promotes the U.S.-flag merchant marine. The FMC is strictly regulatory and has no responsibility for promoting the U.S.-flag merchant marine or shipbuilding industry. The FMC can, however, protect the U.S.-flag fleet to the extent that the maintenance of a competitive U.S. merchant marine serves the general public interest.

In spite of these restrictions, the Commission is responsible for ensuring stability and equity in the U.S. ocean commerce. Since over 95 percent of U.S. foreign trade is waterborne, the Commission's importance in protecting the shipping public and the consumer, as well as promoting efficiency and economy in our foreign commerce, cannot be overemphasized.

Administration

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

The FMC has a total authorization of 361 employees, with the majority of its personnel located in the Commission's Washington, D.C. headquarters. The Commission also has a district office for investigation and enforcement located at its Washington headquarters, with similar field offices in New York, Chicago, San Francisco, Los Angeles, New Orleans, Miami, and San Juan, Puerto Rico.

During Fiscal Year 1980, the Commission implemented a major reorganization of its programs and personnel. The Commission's new organizational structure is geared to meet its statutory goals and objectives with the greatest possible efficiency, effectiveness, and economy and is based upon optimal utilization of existing resources.

The reorganization reflected the culmination of a two-year study of the agency's functions, personnel, and workload by the FMC's Special Task Force on Commission Organization, chaired by Commissioner Thomas F. Moakley. The Task Force's final report noted that during the past three years the Commission has been charged with significant new statutory responsibilities to address dynamic changes in the U.S. ocean commerce, and stressed that the internal structure and corresponding work flow of the agency needed substantial modification in order to address these developments.

Chairman Richard J. Daschbach formally accepted the Task Force's recommendations on July 16, 1980, stating that they addressed the Commission's most urgent needs and proposed organizational changes that would significantly enhance the FMC's ability to carry out its statutory mandate. The reorganization itself commenced with a series of employee briefings on July 31, 1980.

Although implementation of the reorganization plan had nearly been completed by the end of the past fiscal year, the Commission believes that reorganization is a continuing process. The Special Task Force on Commission Organization was therefore designated a permanent committee which will oversee the reorganization and recommend further refinements and modifications to the agency's organizational structure as necessary changes become apparent in the future.

Highlights of the reorganization, which also implement most of the recommendations contained in the Comptroller General's January 18, 1980 report on FMC management functions, include:

> Creation of an Office of Regulatory Policy and Planning to serve as a permanent long-range planning unit designed to make the agency more responsive to changes in the regulatory environment.
>
> Establishment of a separate Office of Consumer Affairs to administer the FMC's increased consumer protection responsibilities.
>
> Consolidation of the former Bureaus of Enforcement and Hearing Counsel into a single Bureau of Investigation and Enforcement to improve coordination of the Commission's investigative, prosecutorial, and settlement activities.
>
> Division of the former Bureau of Ocean Commerce Regulation into separate Bureaus of Agreements and Tariffs, respectively, with more clearly delineated responsibilities.
>
> Creation of an Office of Management Evaluation and Review which will audit the cost/effectiveness of agency programs.
>
> Creation of a new Office of Energy and Environmental Impact to administer the FMC's increased responsibilities in the areas of energy conservation and environmental protection.
>
> Transfer of the Offices of Economic Analysis and Financial Analysis to the new Bureaus of Agreements and Tariffs, respectively, and establishment of the Office of Data Systems as a separate unit reporting directly to the Managing Director.
>
> Delegation of authority by both the Commission and the Managing Director to the lowest practical level.

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

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

  During Fiscal Year 1980, the Office of ALJ's conducted hearings in 17 cases and issued 115 initial decisions, 85 of which were subsequently adopted by the Commission. Most of the other 30 decisions rendered during FY 1980 were pending Commission consideration at the end of the reporting period.

o The Office of the Secretary functions similarly to that of a clerk of court. Its responsibilities include: (1) preparing the Commission agenda for weekly meetings; (2) receiving and processing formal complaints involving alleged violations of shipping laws; (3) issuing orders and notices of Commission action; (4) maintaining all official files and records of Commission proceedings; (5) administering the Freedom of Information and Government in the Sunshine Acts; (6) responding to information requests from the Commission staff, the ocean shipping industry, and the public; and (7) providing copies of decisions of the administrative law judges, Commission reports, publications, and miscellaneous documents to interested parties.

During Fiscal Year 1980, the Secretary's office was involved in the conclusion of 88 special docket proceedings, as well as 191 informal dockets, which involve claims against carriers for less than $5,000. It also assisted the Commission in the issuance of 53 other final decisions in formal proceedings, including a record 14 final rules.

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

1) Serving as the focal point for Commission long-range policy planning and analysis, defining and prioritizing both short- and long-range goals and objectives in coordination with other FMC bureaus and offices;

2) Monitoring and serving as interface between current Commission programs and activities and long-range policy objectives;

3) Developing long-range policy plans for the Commission on at least an annual basis for incremental periods of 2, 3, 4, and 5 years;

4) Developing special planning studies and analyses for the formulation of proposed Commission policies and objectives;

5) Analyzing and reviewing current Commission policies to determine their impact on regulated industries and the U.S. ocean commerce; and

6) Coordinating Commission activities regarding government programs that may affect Commission policy, particularly in the areas of regulatory reform, consumer activities, energy and environmental analysis, and government budget policy.

o The Office of Consumer Affairs is another new organizational unit created by the reorganization. It was developed to centralize and coordinate the Commission's consumer affairs activities, with particular responsibility for implementation of Executive Order 12160, which mandates increased agency awareness of the impact of its programs and policies on the nation's consumers.

The Office of Consumer Affairs will also coordinate and monitor the Commission's consumer complaint system; advise the Commission of the impact of its proposed rules, policies, programs, and legislation on consumers; represent the consumer perspective in the planning and development of agency policies; meet with shippers and carriers to

resolve complaints, problems, and matters of mutual concern; and monitor consumer-related legislation in the Congress, consumer initiatives by the Administration, and consumer activities in other government agencies.

The FMC's principal consumer constituency is comprised of U.S. shippers, the consumers of ocean transportation services, and the new office will handle all shipper grievances regarding ocean freight rates, practices, and related problems. The Commission receives more than one thousand of these complaints annually.

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

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

The Office of Management Evaluation and Review is currently involved in the development of actual performance standards to measure the effectiveness of selected agency programs and policies.

- The Office of Data Systems, formerly located in the Commission's Bureau of Industry Economics, was made a separate unit under the agency's reorganization. The office is responsible for the effective administration of a management information system augmented by the development of an upgraded automatic data processing system (ADP). As a separate unit, the Office of Data Systems is expected to utilize the Commission's ADP system to measure agency performance and requirements at all levels, reporting directly to the Managing Director to enable those senior-level managers responsible for allocation of agency resources to perform their duties with the best available statistical information.
- The Office of Energy and Environmental Impact, also formerly located in the Commission's Bureau of Industry Economics, has been re-established as an autonomous organizational unit to reflect the increasing importance of the Commission's environmental and energy impact programs.

Administration of the provisions of the National Environmental Policy Act (NEPA) and related statutes has become a major Commission responsibility. The growing importance of energy conservation in liner shipping activities and the increasing role of energy considerations in Commission proceedings all served to justify the creation of a separate office exclusively dedicated to energy and environmental concerns.

During Fiscal Year 1980, the former Office of Environmental Analysis prepared final rules implementing new standardized "Procedures for Environmental Policy Analysis" under NEPA, which will be applied to all proposed section 15 agreements processed by the Commission. The office also continued its review of Commission functions to determine which agency activities should be classified as "major regulatory actions" under the provisions of the Energy Policy and Conservation Act of 1975.

During Fiscal Year 1980, the office reviewed 288 section 15 agreements and docketed proceedings to determine the need for an environmental impact assessment. Thirty-eight Commission actions received an environmental impact analysis, 244 were determined not to require an assessment, and nine are currently being analyzed.

The reorganization divided the former Bureau of Ocean Commerce Regulation into two separate bureaus.

- The Bureau of Agreements' major responsibilities include the analysis and review of all agreements filed under section 15 of the Shipping Act, the evaluation of dual rate contract systems, and the development and standardization of procedures for streamlining the Commission's agreements' review process. Responsibility for the ongoing analysis of trade patterns, conference activities, self-policing contracts, pooling statements and operating reports represent a substantial portion of the Bureau's duties. The Bureau of Agreements also audits agreements approved by the Commission to determine whether the criteria under which an agreement was approved and current trade conditions

warrant continued approval; monitors significant trade activities; and forecasts future competitive trade conditions in conjunction with the Office of Regulatory Policy and Planning.

The addition of the Office of Economic Analysis, formerly located in the Bureau of Industry Economics, to the Bureau of Agreements reflects the high priority which the Commission attaches to the thorough economic evaluation of section 15 agreements. Recent court decisions virtually mandate increased coordination between the FMC's economists and transportation industry analysts, and the relocation of the Office of Economic Analysis within the Bureau of Agreements should enable economists and analysts to better coordinate their activities and pool their respective areas of expertise.

The Bureau of Agreements processed 365 agreements, an average of exactly one a day, during the past fiscal year.

o The Bureau of Tariffs is the other organizational unit created by the reorganization's division of the former Bureau of Ocean Commerce Regulation into two separate entities. The Bureau of Tariffs is responsible for the analysis of foreign and domestic tariffs filed with the Commission, monitoring of trade conditions in conjunction with the Bureau of Agreements, periodic tariff audits to ensure their conformity with applicable Commission rules and regulations, administration of special projects involving regulation of the U.S. foreign commerce, and the processing of informal docket claims.

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

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

During the past fiscal year, the Commission received 346,240 foreign tariff filings, 18,871 tariff pages filed in the domestic offshore trades, and 7,120 pages of terminal tariff filings.

o The Bureau of Investigation and Enforcement combines the former Bureaus of Hearing Counsel and Enforcement in an effort to achieve greater interface between the Commission's legal and investigative disciplines.

The Bureau systematically monitors the U.S. ocean commerce in an effort to curtail illegal rebating and other malpractices by carriers, shippers, consignees, and other persons subject to the Shipping Act. Enforcement is carried out through the investigative functions of the FMC's District offices, which are strategically located to cover maritime activities in areas surrounding major U.S. port cities. The Commission settled 47 malpractice cases totalling $3,515,000 in civil monetary penalties during Fiscal Year 1980.

The new Bureau combines the field office case development function of the former Bureau of Enforcement, the former enforcement claims and prosecution functions of the Office of General Counsel, and the major functions of the former Bureau of Hearing Counsel.

In so doing, the Commission achieves coordination of its investigative, prosecutorial, and settlement activities relating to enforcement cases. The relocation of the functions enumerated above within a single bureau lends greater consistency and continuity to the process by which the Commission audits the U.S. ocean commerce for malpractices, investigates possible violations, and ultimately prosecutes violations which have been documented.

Bureau attorneys also participate as staff or trial counsel in formal adjudicatory dockets, rulemakings, and other proceedings which are initiated by the Commission. They serve as hearing counsel, where intervention is permitted, in formal complaint proceedings instituted under section 22 of the Shipping Act. The Bureau of Investigation and Enforcement also furnishes legal advice on special Commission projects and often participates in matters of court litigation by or against the Commission.

o The Bureau of Certification and Licensing certifies vessels under various Federal anti-pollution laws to ensure liability for spills of oil and hazardous substances. The Commission has jurisdiction over 26,000 vessels in its administration of section 311 of the Federal Water Pollution Control Act (FWPCA), the Trans-Alaska Pipeline Authorization Act (TAPAA), and the Outer Continental Shelf Lands Act

of 1978 (OCSLA). The Bureau also has responsibility for the licensing and regulation of independent ocean freight forwarders and the certification of passenger vessels for liability incurred by casualties or non-performance of scheduled voyages.

- The Office of Budget and Financial Management is responsible for optimal utilization of the Commission's physical, fiscal, and manpower resources. The office formulates recommendations and interprets budgetary policies and programs, prepares budget justifications for the Congress and the Office of Management and Budget, and administers systems of internal control for agency funds. The Office of Budget and Financial Management is also responsible for the FMC's financial management policies, procedures, and planning, and administration of the FMC's cash management program.
- The Office of Administrative Services provides most physical resources for the Commission and its field offices. Some of the services performed include printing, duplicating, mail room services, building services, safety programs, and records storage and retrieval.
- The Office of Personnel Management plans and administers personnel management programs, including recruitment, placement, employee training and development, position classification, employee relations, and equal employment opportunity.

During 1980, the Office established an active Alcohol and Drug Abuse Counseling Program by trained employee-counselors. A policy to prevent sexual harassment of employees was formulated and an employee

questionnaire was designed to evaluate the extent of such abuse within the Commission. The Office also initiated its first program to train and certify employees to perform cardiopulmonary resuscitation (CPR).

Efforts continued through FY 80 to enhance opportunities for upward mobility of Commission personnel, particularly through the use of in-house recruitment. Broad-based college recruitment for hard-to-fill vacancies was initiated during this period. The Office also expanded its student employment program, striving to attract individuals studying those disciplines most frequently required for Commission occupations, including economics, law, and business administration. The Office of Personnel Management continued its efforts to recruit qualified handicapped employees. The Commission ranked among the highest of all Federal agencies in employment of the handicapped for the second straight year.

FY 80 represented the Commission's first year of developmental training in anticipation of appointment to the FMC's Senior Executive Service (SES). During this period, four middle management employees were competitively selected to attend residential training in preparation for senior executive assignments.

Position management projects undertaken during FY 80 included classification audits to determine the journeyman level for key Commission occupations; reclassification of secretarial employees to technician positions; managerial training in the Factor Evalaution System of position classification; and review of position descriptions to determine critical job elements for performance appraisal purposes.

The Office has continued its effort to implement changes to existing programs as well as to develop new programs mandated by the Civil Service Reform Act of 1978. Specifically, new Commission Orders have been developed for: Executive Development; Administrative Grievance Procedures; Labor-Management Relations; Performance Appraisal for Non-SES, Non-Merit Pay Employees; and Performance Appraisal for Senior Executives. Additional program development efforts resulted in establishment of a Federal Equal Opportunity Recruitment program, with targeted emphasis placed upon improving the representation of minorities and women in key Commission occupations.

III.
FISCAL YEAR 1980 IN REVIEW

The word 'regulation' currently provokes strident reaction within both the public and private sector that reflects a dramatic shift in traditional attitudes. There is growing conviction that government regulation of private enterprise has intruded too far into the commercial marketplace. Many people believe that it needs to be curtailed, and many regulatory agencies are spearheading efforts aimed at regulatory reform.

Like many popular ideas whose 'time has come', regulatory reform is a catch-all term that means different things to different people. However, there is a growing consensus that all types of government regulation must be re-examined, most regulation needs to be reformed, and some regulation must be removed.

When government regulation developed as a response to the abuses of the corporate monopolies of the late 1800's, it saved the public money. Today the excesses of government regulation often surpass the excesses of regulated industries. We can no longer afford regulation for its own sake. Regulatory activities must be efficient, effective, and limited to areas in which they are clearly necessary and productive.

It is within the context of these three criteria - efficiency, effectiveness, and necessity - that the Federal Maritime Commission evaluated its regulatory policies during Fiscal Year 1980 and initiated its own regulatory reforms.

The FMC's commitment to efficient regulation during the past year was demonstrated by its successful efforts to reduce procedural delay and eliminate the agency's backlog of docketed proceedings. Despite a continuing hiring freeze and declining personnel ceiling, the Commission achieved record productivity during Fiscal Year 1980, issuing 346 final decisions, an average of nearly one a day. The FMC's productivity during FY 80 surpassed last year's record of 252 final decisions which, in turn, had broken the record of 193 decisions issued during FY 78. During the past three fiscal years, the Commission has issued a total of 791 final decisions, more than the number of cases decided in the previous fifteen years combined.

During the past year, the Commission issued decisions concluding 53 formal proceedings, 88 special docket applications, 191 informal dockets involving shippers' small claims against ocean carriers, and fourteen final rules. The number of decisions issued in the latter two categories represented all-time FMC highs. In 1977, the FMC had twenty docketed proceedings that were over five years old. At the close of FY 80, it had none.

The Commission has also instituted strong measures to ensure that its backlog will never recur, including changes in its Rules of Practice and Procedure, the establishment of new internal deadlines for agency action, elimination of unnecessary time extensions in Commission proceedings, simplified procedures for the review of pending cases, and sweeping improvements in the agency's organizational structure.

Other areas of significant agency achievements during the past fiscal year included the following:

-- The Commission exempted six categories of section 15 agreements from its jurisdiction during FY 80 in an effort to reduce regulatory burden on the liner shipping industry and the public, as well as to tailor the FMC's regulation to those areas where it is clearly necessary and productive.

-- The Commission awarded $1,370,075 in reparations to shippers for freight overcharges waived or refunded under section 18(b)(3) of the Shipping Act, the second highest annual total in the FMC's history. Reparations were awarded to more shippers in 1980 than ever before.

-- The Commission settled 46 enforcement claims totalling $3,516,500 in civil monetary penalties, primarily for illegal rebating in the U.S. foreign commerce. The settlements included seven foreign-flag carriers, indicating an end to the disparity in enforcement of anti-rebating sanctions that had previously existed between U.S. and foreign-flag carriers. The Commission had never settled an anti-rebating claim against a foreign-flag carrier before 1978.

-- The Commission's successful administration of the Controlled Carrier Act virtually eliminated predatory rate-cutting by state-controlled

carriers in the U. S. foreign commerce during FY 80. In its most extensive proceeding under P. L. 95-483, the Commission suspended and subsequently rejected several hundred ocean freight rates of one state-controlled carrier and established clear guidelines for evaluating the reasonableness of the rates of state-controlled carriers in the future.

Further efficiency in the FMC's operations can be expected to accrue from the major reorganization of agency programs and personnel which was implemented during Fiscal Year 1980. The Commission's new organizational structure is geared to meet its statutory goals and objectives with the greatest possible efficiency, effectiveness, and economy, and it is based upon optimal utilization of existing resources.

The reorganization reflected the culmination of a two-year study of the agency's functions, personnel, and workload by the FMC's Special Task Force on Commission Organization, chaired by Commissioner Thomas F. Moakley. Several major elements of the reorganization reflect necessary changes in the FMC's priorities or respond to recommendations embodied in the Comptroller General's January 18, 1980 report on FMC management functions, including the following:

Creation of an Office of Regulatory Policy and Planning to serve as a permanent long-range planning unit designed to make the agency more responsive to changes in the regulatory environment;

Establishment of a separate Office of Consumer Affairs to administer the FMC's increased consumer protection responsibilities;

Development of an Office of Management Evaluation and Review which will audit the cost/effectiveness of agency programs; and

Creation of a new Office of Energy and Environmental Impact to administer the Commission's increased responsibilities in the areas of energy conservation and environmental protection.

During Fiscal Year 1980, the Commission also devoted great attention to upgrading its activities under section 15 of the Shipping Act. The Commission's analysis of section 15 agreements lies at the heart of its statutory responsibilities, and the FMC took several important steps during the past fiscal year to improve the timeliness and quality of its section 15 analyses and to ensure that its evaluation of section 15 agreements afforded maximum protection to the public while becoming increasingly responsive to the needs and problems of the U.S. foreign commerce.

Efficient commercial planning and operation in the U. S. ocean commerce depends on consistent and predictable regulation. In response to a growing conviction that its current criteria for evaluating section 15 agreements are too vague, the Commission decided during fiscal year

1980 to augment them with new standards for the approval of section 15 agreements which would be more clear, precise, and consistent with national economic objectives.

On September 18, 1980, the Commission began consideration of seven new ocean transportation objectives against which ocean carrier agreements could be measured. These potential new criteria for approving section 15 agreements were culled from S. 2585, Senators Daniel K. Inouye and John Warner's "Ocean Shipping Act of 1980," which was unanimously passed by the U. S. Senate during the last session of the 96th Congress. The Commission plans to incorporate them into a proposed rule designed to supplement the agency's existing section 15 standards and expects to issue the rule for public comment in early 1981.

During the past year the Commission also revitalized portions of Docket No. 76-63, Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916, adopting new internal procedures for the processing of section 15 agreements in order to increase the timeliness and efficiency with which proposed agreements are handled and standardize all phases of the agreement review process, from initial submission to final Commission action. The FMC also plans to finalize rules requiring more specific justification and supporting

data from proponents of a proposed agreement, and the Commission will likely tailor its new justification requirements to meet any new standards for section 15 approval that are adopted.

Other significant Commission activities during FY 80 included completion of two major vessel recertification programs involving over 24,000 vessels under the provisions of the Clean Water Act of 1977 and the Outer Continental Shelf Lands Act Amendments of 1978, respectively; establishment of new limits of financial coverage required of passenger vessel operators in the U. S. ocean commerce; development of a final rule scheduled for publication in early 1981 revising all aspects of the Commission's regulation of independent ocean freight forwarders; and issuance of several major studies analyzing current and prospective trade conditions on major trade routes in the U. S. foreign commerce.

The Commission's accomplishments during Fiscal Year 1980 represented fulfillment of many of the long-term objectives established for the FMC by the Chairman in testimony before the House and Senate Appropriations Committees, in which he pledged to expedite the Commission's decision-making process, eliminate the agency's backlog of cases, conduct a complete analysis and evaluation of the Commission's internal organization, and make the FMC's regulation more timely and responsive to the liner shipping industry, the U.S. ocean commerce, and the public.

During Fiscal Year 1981, the Commission plans to build upon these achievements in its continuing efforts to ensure that liner shipping regulation realizes its full potential for maintaining efficiency, stability, and harmony in the U.S. ocean commerce and in ensuring that the Federal Maritime Commission plays a significant role in achieving national economic objectives.

IV.

FOREIGN COMMERCE

Agreements

Under section 15 of the Shipping Act, 1916, the Commission is responsible for evaluation, approval, and continued surveillance of agreements between parties subject to the Act, including the application of specific criteria in evaluating an agreement's approvability. The Commission's consideration of section 15 agreements, which often invest ocean carriers with collective rate-making authority, is perhaps its most visible activity. In its deliberations, the Commission must weigh the anticompetitive effects of any agreement against its potential public benefits.

During Fiscal Year 1980, 365 agreements were processed under section 15. Of these agreements, 204 were between common carriers by water in the foreign commerce, 133 were marine terminal agreements, and 28 were maritime labor-management arrangements.

The surveillance of approved agreements involves a constant review of operations under that agreement and any subsequent modifications to determine whether it continues to meet the requirements of section 15 and applicable General Orders of the Commission. Agreements must conform to the latest Commission regulations and court decisions. Several ocean carrier conference agreements currently operating in the U.S. foreign commerce were originally filed with the Commission nearly sixty years ago and have been modified 100 times or more.

The Commission analyzes reports filed by parties to agreements to ensure that they are not engaged in activities beyond the scope approved by the Commission. The impact of these activities upon competitors and the shipping public is also measured on an ongoing basis for significant changes or trends. Data regarding the Commission's processing of agreement reports during Fiscal Year 1980, categorized by type of report, appear in Appendix D.

The Commission's analysis of section 15 agreements lies at the heart of its statutory responsibilities, and the FMC took several important steps during the past fiscal year to improve the timeliness and quality of its section 15 analyses and to ensure that its evaluation of section 15 agreements afforded maximum protection to the public while becoming increasingly responsive to the needs and problems of the U.S. foreign commerce.

Efficient commercial planning and operation in the U.S. ocean commerce depends on consistent and predictable regulation. The Commission currently requires that the proponents of section 15 agreements demonstrate that their proposed agreements will meet a serious transportation need, serve a valid regulatory purpose, or secure important public benefits. In response to a growing conviction that these criteria are too vague, the Commission decided during Fiscal Year 1980 to augment them with new standards for the approval of section 15 agreements which would be more clear, precise, and consistent with national economic objectives.

On September 18, 1980, the Commission began consideration of the following seven ocean transportation objectives against which ocean carrier agreements could be measured:

(1) development and maintenance of an efficient, innovative, and economically sound ocean transportation system to meet the current and future needs of the United States foreign commerce;

(2) protection of the rights of shippers, ports, and consumers by the prevention of discriminatory, prejudicial, unfair or deceptive practices;

(3) encouragement of the lowest possible stable freight rates which are commercially feasible and the highest quality service to shippers and consignees;

(4) encouragement of exports from the United States to achieve and maintain a favorable international balance of payments;

(5) comity with nations engaged in trade with the United States;

(6) assuring the maintenance of a dependable common carrier service responsive to the needs of exporters and importers in the waterborne foreign commerce of the United States; and

(7) encouragement and support of a regulatory environment which furthers the national objective of the efficient use of fuel for energy conservation through cooperation among carriers, rationalization and similar arrangements.

These potential new criteria for approving section 15 agreements were culled from S. 2585, Senators Daniel K. Inouye and John Warner's "Ocean Shipping Act of 1980," which was unanimously passed by the U.S. Senate during the last session of the 96th Congress. The Commission will incorporate them into a proposed rule designed to supplement the agency's existing section 15 standards and expects to issue the rule for public comment in January, 1981.

During the past year the Commission also revitalized portions of Docket No. 76-63, Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916, adopting new internal procedures for the processing of section 15 agreements in order to increase the timeliness and efficiency with which proposed agreements are handled and standardize all phases of the agreement review process, from initial submission to final Commission action.

The FMC also plans to finalize rules requiring more specific justification and supporting data from proponents of a proposed agreement, and the Commission will likely tailor its new justification requirements to meet any new standards for section 15 approval that are adopted.

As part of its continuing efforts to achieve meaningful regulatory reform, the Commission is also limiting its review of agreements to those areas where it is clearly necessary and productive. During the past fiscal year, the Commission continued its activities under Docket No. 79-18 - Exemption from Provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, exempting four types of agreements from the filing and approval requirements of section 15. At year's end, the Commission was considering the exemption of twelve additional categories of section 15 agreements from its regulatory jurisdiction. The FMC also testified in favor of the "Maritime Labor Agreements Act of 1980," which was signed into law on August 8, 1980, and exempted all maritime collective bargaining agreements from Commission review.

Even in areas of maritime activity where continued surveillance is essential, the Commission has taken steps to reduce the regulatory burden imposed on the liner shipping industry and the public. The Commission amended its General Order 14 on June 4, 1980, to provide that conference reports of shipper requests and complaints be filed annually rather than four times a year. This reduction in the filing requirement from quarterly to annually is expected to reduce the workload burden on conferences and ratemaking agreements required to file such reports while affording continued protection to shippers with grievances.

Tariffs

Tariff filing methods have not kept pace with the liner shipping industry's rapid technological advances in recent years. During the past fiscal year, however, several initiatives have been launched to modernize and streamline the tariff filing process.

Electronic Transmission and Filing of Tariff Material

Special permission authority was granted to the Inter-American Freight Conference on behalf of Computerized Shipping Services (CSS) to install data processing equipment at the Commission which would facilitate the filing of tariff material through the utilization of electronic media. The equipment offers users the advantages of the speed of a telex (temporary) filing and the permanence of a hard copy filing and has the potential to reduce the staff's workload with respect to the "double examination" of temporary and subsequent hard copy filings. This technology also has the potential to improve the quality of tariff material filed, thus reducing the number of deficient filings due to typographical, formatting and time-related errors.

Several carriers have had equipment installed and are currently formatting tariff pages and data for inclusion in the new automated system. Test filings have been transmitted back and forth between Oregon, New York, New Jersey and the Commission's headquarters in Washington, D. C. The filing of actual tariff pages is scheduled to commence in late 1980, and the Commission is currently exploring methods for expanding its use of automated tariff filing systems.

Consideration is also being given to other proposals for simplifying and modernizing tariff filing procedures, including the possible institution of

class rates throughout the industry. This proposal and other alternatives will be carefully evaluated as part of a comprehensive review of current tariff filing rules, regulations, and practices scheduled to begin in January, 1981.

Microfilm Program

The Commission is currently in the process of converting its historical tariff files to a combination of microfilm jackets and microfiche. The decision to convert tariffs to film was based on a feasibility study which showed that microfilming will more adequately serve user needs, improve present file security, reduce delays in access, conserve valuable office space and enhance the productivity of Commission employees who previously had to devote a large amount of time to the manual upkeep of these records.

Temporary Tariff Filing Regulations

Other significant Commission activities involving tariff filings in the U.S. foreign commerce included the issuance of proposed rules amending the agency's current temporary tariff filing regulations. The Commission is considering the promulgation of rules which would clarify, amend or possibly cancel regulations contained in General Order 13 governing the filing of temporary tariff amendments. This rulemaking was initiated in response to petitions filed by several ocean carrier conferences and the Commission's own efforts to seek more efficient methods of transmitting tariff material. The proposed rule appeared in the Federal Register on September 3, 1980, and the comments elicited and a draft final rule will be considered in early 1981.

Interpretative Rule With Respect to Bulk Commodities Loaded in Containers

When the Shipping Act was enacted 64 years ago, most cargo was carried break-bulk. The major competition to liner services came from bulk and tramp operators. The tariff filing requirements contained in the statute were therefore limited to liner operators and excluded bulk type cargoes loaded without mark or count.

The age of containerization has added a new dimension to this exclusion owing to the containerization of bulk commodities which have thus far been exempt from tariff filing requirements. To clarify its position on this issue, the Commission has proposed an interpretive rule which provides that when bulk cargo which is otherwise exempt under section 18(b)(1) of the Shipping Act is loaded into a container, the cargo loses its exempt status and becomes subject to the tariff filing requirements of the Shipping Act.

The Commission has received extensive comments on its proposed interpretative rule and will soon issue a final decision on the appropriate treatment of "containerized bulk cargo."

Docket No. 79-95 - Cancellation of Tariffs

In late 1979, the Commission issued an Order to Show Cause why approximately 670 tariffs on file in the U.S. foreign commerce should not be cancelled for failure to comply with General Order 13, as revised effective January 1, 1979.

Many of these tariffs were no longer being utilized, and in other cases, carriers failed to respond to the new filing and format requirements embodied in the revision of G.O. 13. On April 23, 1980, the Commission cancelled approximately 500 tariffs for failure to comply with Commission regulations. Many of these tariffs were inactive.

Notice of Proposed Rulemaking Concerning Tariff Filing Regulations Applicable To Used Household Goods and Personal Effects

The Commission has also entered into a rulemaking proceeding which would (1) exempt from its tariff filing requirements the transportation of used household goods and personal effects by non-vessel operating common carriers by water; and (2) require that the rates on used household goods and personal effects established by vessel operating common carriers be stated on a weight basis.

The proposed rule appeared in the Federal Register on June 17, 1980. Comments on the proposed rule from seventeen parties were received during the next two months, expressing a broad spectrum of views on the issue. The staff is currently analyzing the comments and drafting a proposed final rule for the Commission's consideration.

Aggregate Time/Volume Rate Contracts

Finally, the Commission has issued proposed rules regarding tariff filing regulations applicable to aggregate time/volume rate contracts. Under the principle of "aggregate" or "time/volume" rates, a carrier will provide a contracting shipper with a lower rate than is otherwise applicable to shippers of the same commodity in exchange for a guarantee of a specific minimum volume of cargo, usually stated in revenue tons or a prescribed number of containers, shipped over a specified period of time.

The Commission's preliminary findings indicate that: (1) its tariff filing rules and regulations do not accommodate time/volume ratemaking schemes and are therefore statutorily restricted; (2) unjust discrimination, disadvantage and prejudice may be inherent in the time/volume rating system, rendering it unlawful; (3) time/volume rates are designed to regulate and control competition and require

specific Commission approval even if otherwise lawful; and (4) this type of ratemaking could allow carriers to tie shippers to their service in a manner not contemplated by dual rate contract systems.

The proposed rule was published in the Federal Register on August 27, 1980, with comments due later in the year and Commission resolution of the significant policy issues raised in this proceeding expected early in the next fiscal year.

Terminals

Marine terminals operated by private parties or state or local governments are currently subject to the Commission's jurisdiction if they provide services in connection with common carriers by water. Agreements entered into between terminal operators and other persons subject to the Shipping Act (e.g., for the lease of property, dock or berthing space, or for services to be performed for carriers) may require the approval of the Commission under section 15 of the Act.

The advent and subsequent rapid growth of containerization and intermodalism have generated numerous agreements between terminal operators and carriers. In an effort to reduce regulatory burden upon the industry, the Commission decided to review certain types of terminal agreements to determine whether they may be exempted from the FMC's regulation under section 35 of the Act.

Docket No. 80-32, Filing of Agreements Between Common Carriers of Freight by Water in the Foreign Commerce of the United States, evolved from this review. Initiated on May 27, 1980, it proposed to exempt leases or arrangements solely

involving terminal facilities located in foreign countries from the filing and approval requirements of section 15. The final rule implementing this proposal was adopted by the Commission and took effect on October 8, 1980.

Significant Commission Activities Affecting the U.S. Foreign Commerce

Monitoring of Controlled Carriers

When the Ocean Shipping Act of 1978 (P.L. 95-483) was enacted and signed into law on October 18, 1978, the Commission received a mandate to eliminate the predatory pricing practices of state-controlled carriers in the U.S. foreign commerce.

The staff's implementation of the new law began with the identification and classification of all state-controlled carriers operating in the foreign commerce of the United States. The Commission issued 78 orders under the authority of section 21 of the Shipping Act seeking information regarding the registry, ownership, and control of certain common carriers operating in our foreign commerce. On the basis of the responses received and other information independently developed by the Commission, 21 steamship lines had been classified as state-controlled carriers subject to the provisions of P.L. 95-483 by the end of Fiscal Year 1980. As new carriers enter the foreign commerce of the United States, the service of additional section 21 Orders will be carried out as needed.

The Commission also monitors changes of ownership, registry, and control of carriers, their entry and exit from conferences, and the opening of rates within conferences to which controlled carriers belong in order to stay apprised of those carriers which may become subject to the provisions of P.L. 95-483 and those which may become totally or partially exempt.

Section 18(c)(3) of the Act, which embodies the provisions of P.L. 95-483, authorizes the Commission to request from any controlled carrier a statement of justification which details the need and purpose of the carrier's tariff rates, charges, classifications, rules or regulations being applied in a particular trade. Utilizing this authority, the Commission has initiated several rate justification inquiries for the purpose of determining whether the rates, charges, and practices of certain controlled carriers are just and reasonable in accordance with the criteria set forth in section 18(c)(2) of the Act.

One of these rate justification requests resulted in the issuance of a March 2, 1979 Order of Suspension and To Show Cause served on the Far Eastern Shipping Company (FESCO) in Docket No. 79-10: Rates of Far Eastern Shipping Company, in which FESCO was ordered to show cause why over 300 of its commodity freight rates in the U.S./Australia-New Zealand, Philippines/United States, and U.S./Far East trades should not be disapproved by the Commission. The affected rates were suspended effective May 7, 1979, for a six-month period while the Commission analyzed FESCO's justification in order to determine whether they should be disapproved. Most of FESCO's three hundred and five original rates under suspension were subsequently disapproved. Two additional investigations into the rates utilized by FESCO in the Philippines/U.S. Pacific Coast trade (Docket Nos. 79-104 and 80-6) have resulted in the suspension and subsequent disapproval of several additional commodity rates.

Since the Commission commenced active enforcement of the controlled carrier law, requiring state-controlled carriers to compete on equal terms with their privately-owned competitors, predatory rate-cutting by these steamship lines in the U.S. foreign commerce has virtually been eliminated.

One of the most significant restrictions on the activities of controlled carriers contained in P.L. 95-483 is the provision that their rates and charges shall not, without special permission of the Commission, become effective within less than 30 days following the date of filing with the Commission. As a consequence of this requirement, fifty-three special permission applications from controlled carriers were received and processed by the Commission's staff during Fiscal Year 1980. Forty-two of those were granted, eight were denied, two were withdrawn, and one was pending at the end of the fiscal year.

As an adjunct to the administration of the Controlled Carrier Act, rules incorporating the strict tariff filing provisions of the controlled carrier law have been included in the Commission's General Order 13, Publishing and Filing Tariffs By Common Carriers In The Foreign Commerce of the United States 46 CFR 536. One of the most significant amendments to G.O. 13 provides that when a state-controlled carrier's rates have been suspended, the reasonableness of the rates it files to replace them will be judged in large part by comparing them to the rates of the U.S.-flag and reciprocal national-flag carriers operating in the trade.

Enforcement Activities

The Commission continued its active campaign to eliminate illegal rebating and other malpractices in the U.S. foreign commerce during Fiscal Year 1980. A description of the Commission's achievements in prosecuting claims of illegal rebating and standardizing its monitoring, investigative, settlement, and prosecutorial activities is contained in the chapter reviewing highlights of the past fiscal year.

Self-Policing

The Commission's revised rules establishing minimum standards for judging the adequacy of conference neutral body self-policing systems became effective January 1, 1979. General Order 7, Revised (46 CFR Part 528) requires that all rate-making agreements, except those between only two parties, must contain provisions describing the methods and standards used by independent policing authorities to investigate, adjudicate, and penalize breaches of the agreement. The validity of the Commission's neutral body self-policing rules was recently affirmed in a decision by the U.S. Court of Appeals for the D.C. Circuit.

On September 30, 1980, there were 90 conferences or ratemaking groups subject to the requirements of General Order 7, Revised. On that date, 52 agreements were in full compliance with the self-policing rules. The majority of the agreements which were not in full compliance involved conferences which had participated in the litigation over the validity of the Commission's rules. Now that the Court of Appeals has upheld the revision of G.O. 7, the Commission expects to effect full compliance in this area.

Pooling and Equal Access Agreements

Pooling agreements provide for equitable apportioning of cargo and/or revenues by a number of carriers in a given trade, enabling the participants to benefit from the increased efficiency and economy accruing from the pooling of vessels, equipment, and other resources. Various sailing requirements and other features relative to service efficiency are often included in pooling agreements. Equal access agreements are designed to ensure that national-flag carriers maintain access to cargo whose movement is controlled by the government

of the reciprocal trading partner through cargo preference laws, import quotas, or other restrictions. Several section 15 agreements contain both pooling and equal access provisions.

At the end of Fiscal Year 1980, there were eleven pooling agreements, three equal access agreements, and nine combined pooling/equal access agreements in effect. The preponderance of these agreements apply to the U.S./South American trades and are designed both to reduce the impact of various impediments to market entry imposed by several of America's trading partners and to maximize energy conservation, rationalization of sailings, and efficient vessel deployment accruing from various pooling arrangements. Eighteen such agreements affect the U.S. ocean commerce with Argentina, Brazil, Chile, Colombia and Peru. The remaining five pooling agreements involve several trade areas: the Israel/U.S. North Atlantic Pool (No. 9233); the U.S. Pacific/Japan Pool (No. 10116); the U.S. Atlantic/Japan Pool (No. 10274); the Italy/U.S. North Atlantic (WINAC) Pool (No. 10286); and the Calcutta and Bangladesh/U.S. Pool (No. 10333).

During Fiscal Year 1980, the Commission took several substantive actions regarding pooling and equal access agreements. The Colombia/U.S. Gulf equal access agreement (No. 10064) was granted a five-year extension through March 30, 1985. The Calcutta and Bangladesh/U.S. Pool was also approved for five years, through January 1, 1985. The Commission approved the addition of third-flag carriers to the Brazil/U.S. Gulf Pool (No. 10320), although a petition for reconsideration of the Commission's decision was pending at the end of the fiscal year.

Two of the pooling and equal access agreements in the southbound U.S. Gulf/Argentine trades were approved, while two other pooling agreements in the Argentine/U.S. Gulf and Argentine/U.S. Atlantic northbound trades, respectively, were approved pending an investigation and hearing in Docket No. 80-45. Finally, the two Japanese pools were approved for an additional three years with substantial modifications and institution of a Commission fact-finding investigation to determine whether bloc voting by Japanese-flag carriers existed and, if so, what if any impact it had on conference decisions in the North Pacific trades.

Space Charter Agreements

Space charter agreements involve the charter (or cross-charter) of space or slots between or among ocean carriers. Space chartering agreements are designed to ensure that a carrier is assured of vessel accommodation beyond that which would be otherwise available. There were eleven active space charter agreements in effect at the end of Fiscal Year 1980. Eight space charter arrangements involve the trade between the U.S. and the Far East. The remaining three agreements involve the trades between the U.S. and the Caribbean, the Mediterranean and Europe, respectively.

Several space charter agreements were the subject of Commission consideration during Fiscal Year 1980. The Commission approved with modifications a container space charter arrangement in the U.S./Europe trade which emanated from a formal Commission proceeding, Docket No. 77-7, Agreement Nos. 9929-3, et al., served December 28, 1979. The Commission also approved the extension of four space chartering agreements in the U.S./Japanese trade with substantial modifications,

but ordered an investigation of space charters in the Korean trade (Docket No. 80-52). The Korean agreements were given pendente lite approval during the investigation.

Non-Exclusive Transshipment Agreements

Agreements which provide for the transshipment of cargo between carriers on a non-exclusive basis, and for which the parties do not seek the antitrust immunity provided by the Commission's approval under section 15 of the Shipping Act, 1916, may simply be filed with the Commission for informational purposes pursuant to the requirements of the Commission's General Order No. 23 (46 CFR 524), which represents an exemption from the Commission's full agreements review process. These agreements must adhere to a prescribed format and their acceptance by the Commission does not convey any antitrust immunity. G.O. 23 has been in effect since 1968 and more than 1,500 agreements and 800 subsequent amendments have been filed according to its provisions.

During the last three years, the number of agreements filed under G.O. 23 has escalated significantly, from an average of 75 agreements per year to 220 agreements in Fiscal Year 1979 and 330 agreements in Fiscal Year 1980. In addition, the frequency of the filing of amendments to these agreements has risen from an historical level of 25 amendments per year to 160 overall amendments to non-exclusive transshipment agreements during Fiscal Year 1980.

In attempting to cope with these increases, the administrative processing of these agreements was centralized in January 1979 and was subsequently automated in January 1980. A comprehensive study of transshipment activity was initiated

in mid-1980 for the purpose of evaluating the regulatory effectiveness of General Order No. 23 and recommending appropriate modifications and possible further exemption from Commission filing requirements.

Collective Bargaining Agreements

Two major developments during Fiscal Year 1980 radically altered the Commission's jurisdiction over maritime collective bargaining agreements. The FMC's original involvement with maritime labor agreements stemmed from the Supreme Court's March 1, 1978, decision in Federal Maritime Commission v. Pacific Maritime Association (435 U.S. 40), in which the court determined that collective bargaining agreements as a class are not categorically exempt from the filing requirements of section 15, stating in part that "the Commission is the public arbiter of competition in the shipping industry."

However, the Commission subsequently decided that negotiations between maritime labor and management was a commercial process in which government should not interfere. The Commission concluded its rulemaking proceeding in Docket No. 78-11, Exemption of Collective Bargaining Agreements, with the April 1 1980 publication of a final rule (General Order 44) providing for the exemption of collective bargaining agreements between labor unions and maritime multi-employer collective bargaining units from the filing and approval requirements of section 15.

The Congress and the Administration agreed that government should exercise minimal regulation over the collective bargaining process and, on August 8, 1980, the President signed the Maritime Labor Agreements Act of 1980 into law (P.L. 96-325). This legislation, which was developed with the Commission's support,

amends the Shipping Act, 1916, in three basic respects. It amends section 15 to exclude maritime labor agreements (except for certain assessment agreements) from the definition of those agreements which are subject to the Commission's section 15 approval requirements. It further amends section 15 to provide that assessment agreements for the funding of collectively-bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or the type of vessel or equipment utilized, shall be deemed approved upon filing with the Commission. This amendment also sets forth the procedures and time limits to be observed by the Commission in the event of the filing of a complaint against any such assessment agreement. Finally, P.L. 96-325 adds a new section 45 to the Shipping Act to provide that the provisions of the Shipping Act and the Intercoastal Shipping Act of 1933 shall not apply to maritime labor agreements except with regard to the assessment agreements described above.

Exemption of Husbanding Agreements

On June 4, 1980, the Commission gave notice of its rulemaking proposal to exempt certain husbanding agreements between common carriers by water and other persons subject to the Act from the filing and approval requirements of section 15 of the Act. The Commission proposed in Docket No. 80-36 to exempt husbanding agreements which provide for routine vessel operating activities from its jurisdiction, and adopted a final rule exempting such activities from the Commission's filing and approval requirements on August 21, 1980.

Intermodalism

Intermodal transportation involves the movement of goods over a route involving two or more modes of transportation. Intermodal tariffs, reflecting rates and charges for intermodal transportation services, are filed with both the Federal Maritime Commission and the Interstate Commerce Commission. Some jurisdictional conflicts have arisen from inconsistencies and conflicts between the laws administered by the two agencies simply because the Shipping Act, 1916 and the Interstate Commerce Act of 1887 never contemplated the need for uniform regulation of intermodalism.

The FMC and ICC are consequently working closely in areas of potentially overlapping jurisdiction. For example, the ICC initiated Ex Parte 364 Sub 1 for the purpose of promulgating regulations under section 22(h) of the Motor Carrier Act of 1980. This section provides that a freight forwarder may enter into contracts with a rail carrier or water carrier providing transportation subject to the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933. The Commission is participating in the ICC's rulemaking in order to ensure that the existing statutory requirements of all common carriers concerned remain clear.

By the end of Fiscal Year 1980, 41 conference and ratemaking agreements had intermodal authority. Twenty-eight of these agreements have implemented their authority by filing intermodal tariffs.

Bunker Surcharges

Bunker fuel has become a major operating expense for all steamship lines. The volatile nature of world fuel oil prices and general escalation of energy

costs has prompted ocean carriers to increase their rates and recoup these expenses through increasing reliance on bunker surcharges.

In its continuing effort to monitor bunker surcharges, the Commission made inquiries during the fiscal year to the major North Atlantic and South Atlantic freight conferences questioning the level of their respective surcharges, since it had been learned that the same carriers transporting cargo from North Atlantic ports under one agreement and South Atlantic ports under another published different levels of bunker surcharges for what appeared to be identical services.

The responding conferences explained that the discrepancy in bunker surcharge levels was attributable to the notice requirement that is imposed upon conferences which maintain a dual rate contract system. The majority of the North Atlantic conferences are obligated to file surcharges on 90 days' notice whereas the South Atlantic conferences require only 30 days' notice, since they do not have a dual rate system. The North and South Atlantic Conferences subsequently achieved parity in their bunker surcharges and the probe was discontinued.

The Commission intends to continue intensive monitoring of world fuel oil prices with the dual objective of responding to the concerns of shippers paying increased rates and the needs of carriers burdened by increasing oil prices.

Currency Adjustment Factors

The Commission instituted a rulemaking proceeding establishing tariff requirements for common carriers publishing currency adjustment factors (Docket 80-19) in the foreign commerce during the past fiscal year. Various

procedures proposed by the maritime community for enabling carriers to respond to currency fluctuations on short notice without subjecting shippers to unwarranted currency surcharges are still being evaluated.

Agreement Audits

During the past fiscal year, the Commission's staff instituted a pilot agreement audit program conducting on-site audits of the Southbound Pacific Coast/Australasian Tariff Bureau (Agreement No. 50), the Atlantic and Gulf-Australia and New Zealand Conference (Agreement No. 6200), and the United States Australian-New Zealand Discussion Agreement (No. 10214). The purpose of the audits was to:

(1) determine whether the activity of the parties is, and has been, within the parameters of the agreements as approved;

(2) determine whether the authorities conferred by section 15 approvals have been fully utilized as contemplated by the Commission at the time of approvals;

(3) determine whether the authorities conferred have been exercised in any manner not anticipated by the Commission at the time of approvals.

(4) determine whether lesser anticompetitive restraints will serve to satisfy participants' legitimate commercial objectives;

(5) determine whether continued approval of the agreements in their present form is consistent with relevant Commission decisions, general orders, and current policies;

(6) acquire additional knowledge of the operations and interaction of the conferences' member lines; and

(7) identify potential regulatory problems.

A preliminary audit report has been reviewed by the Commission and transmitted to the various agreement parties for comment. Upon receipt of these comments, a final report will be addressed to the Commission which

summarizes all comments, discusses any regulatory problems perceived by the Commission's staff, and determines whether the subject agreements are operating in a manner consistent with the Commission's policy and statutory objectives.

Other staff audit work involved an analysis of approved section 15 agreements which may be dormant or inactive, such as conference agreements with operating authority only in the U.S./Cuba trades or simple transshipment agreements not currently being utilized. A program to identify and cancel dormant agreements has been inaugurated, and eight such agreements were recently processed for cancellation by the Commission.

Significant Trade Developments

During Fiscal Year 1980, developments in the U.S. foreign commerce presented the Federal Maritime Commission with a clear dichotomy in the achievement of its regulatory goals and objectives. On the one hand, the Commission is attempting to reduce the regulatory burden it imposes upon the liner shipping industry. On the other hand, the increased volatility and rate instability of major trade routes in the U.S. foreign commerce, particularly in the North Atlantic and North Pacific, required increased regulatory surveillance.

The Commission currently has no option but to exercise its statutory obligation to the fullest in order to protect the rights of all participants in the U.S. ocean commerce, and the prospect of continued trade instability indicates that the Commission's conflict in fulfilling its two major objectives will likely continue during Fiscal Year 1981.

ANALYSIS BY TRADE AREAS

U.S. North Atlantic/Europe Trade

During Fiscal Year 1980, the North Atlantic liner trade experienced extensive changes in traditional service patterns which threatened the stability of the trade. The trade had been dominated by seven containership operators: Atlantic Container Lines, Dart Containerline, Farrell Lines, Hapag-Lloyd, Sea-Land, Seatrain, and U.S. Lines. All had been members of the Continental North Atlantic Westbound Freight Conference. Seatrain withdrew from the conference February 1, 1980, allegedly to regain its market share lost to non-conference carriers. Toward the end of Fiscal Year 1980, Seatrain had completely withdrawn from the North Atlantic trade, with Trans Freight Lines absorbing a major portion of its market share and capacity. Farrell also withdrew from the Continental North Atlantic Westbound Freight Conference and the trade late in the year.

Following Seatrain's withdrawal, the conference permitted its member lines to set their own rates independently in order to prevent further withdrawals. This resulted in months of active rate-cutting, alleged to involve as many as 400 commodities a day. The recession and continuing decline of the value of the U.S. dollar contributed to the decrease in westbound tonnage and corresponding increase in eastbound tonnage. This highly volatile situation has caused rate structures to be depressed by an estimated 25 percent.

The substantial capacity increases made by the leading carriers in this trade since Fiscal Year 1979, coupled with the decrease in U.S. imports from Europe, led to an increasing trade imbalance and growing disparity in rates.

As westbound rates continued to decline and a 6.5 percent eastbound rate increase was imposed in mid-year, the Commission became increasingly concerned that carriers in the North Atlantic trades were "cross-subsidizing" their operations by raising outbound rates to compensate for inbound rate-cutting. The Commission believed that the resultant rate disparities represented a serious potential threat to U.S. exporters.

The Commission therefore served section 21 orders requesting detailed information from all carriers operating in the North Atlantic trades justifying their rate actions. Receipt of this information will enable the Commission to determine whether rates in the eastbound trades may be unjustly or unreasonably prejudicial or discriminatory to U.S. exporters, as compared with their foreign competitors, in violation of section 17 of the Shipping Act (46 U.S.C.816) or whether the rates assessed in the eastbound or westbound trades may be so unreasonably high or low as to be detrimental to the commerce of the United States in violation of section 18(b)(5) of the Shipping Act (46 U.S.C. 817(b)(5)). The Commission expects this information to provide a more clear picture of the scope and magnitude of alleged rate disparities in the trade.

U.S.-East Asia Trade

The U.S.-East Asia trade consists primarily of the liner trade between the United States and Japan, Korea, Taiwan, and Hong Kong, which accounted for approximately 77 percent of the total liner imports and exports to East Asia in 1979. U.S. exports to East Asia increased from 9.91 million short tons in 1978 to 11.50 million short tons in 1979, while imports during that same period declined from 9.65 to 8.97 million short tons.

The U.S.-East Asian trade is characterized by a large number of competitors, most of which offer containerized services. Thirty-eight carriers serve the trade, providing a total annual container capacity of 1,481,474 TEU's (an increase of 20 percent over the 1979 level) and an annual breakbulk capacity of approximately 138,798,000 cubic feet.

Although the amount of container capacity increased, there was a decline in the volume of cargo moving on the eastbound leg. This was partially due to the reduced purchasing power of the U.S. dollar and partially due to U.S. restrictions on imports from the Far East. The combination of increasing capacity and declining cargo levels has resulted in a heavily overtonnaged inbound trade, and most North Pacific carriers have lower utilization rates in the eastbound trade than in the westbound trade.

The additional capacity supplied by independent carriers has reduced the cargo share of conference members. The loss in the conference share has also been attributed to rate-cutting by independent lines and an effort on the part of several developing nations to increase their portion of the Far East trade. As a result, Sea-Land resigned from twelve eastbound conferences in the Trans-Pacific trade in early 1980. Increased container capacity, shrinking cargo levels, and Sea-Land's resignation from the eastbound conferences has led to fierce rate competition between the independents and the conferences. However, despite the present overtonnaging and resulting instability, many carriers still plan to further expand their capacity in the months ahead.

U.S./South American Trade

The U.S./South American trade, which is essentially breakbulk in nature and the most rationalized trade in the U.S. foreign commerce, continues to be

dominated in that region by trade with Argentina, Brazil, Chile, Colombia, Ecuador, Peru and Venezuela.

U.S. liner trade with South America is influenced by the protectionist shipping policies of several large South American countries toward their national shipping lines. Many South American nations utilize various maritime promotional policies, including government ownership, assistance, and cargo sharing, in order to ensure the development of their respective merchant fleets. Most of these nations have passed laws reserving a portion of their ocean commerce for carriage in their national-flag vessels.

In response to these policies, U.S.-flag carriers and reciprocal South American shipping lines have frequently entered into bilateral pooling and equal access cargo sharing agreements.

Although the U.S./South American trade was the first of all major trades to participate in an international container service, it is currently one of the least containerized. Fully containerized cargo movements in the trade account for only three percent of total available capacity. This minimal level of containerization can be attributed to several factors: (1) a general lack of containerizable commodities in the northbound trade; (2) the continued resistance of organized South American dock labor; (3) inadequacy of port and inland transport infrastructures; and (4) protectionist shipping policies that make it unprofitable for shipping lines to expend large sums of money that would be required to convert to fully containerized operations. The investment of many South American national-flag lines in multi-purpose vessels rather than fully cellular vessels has enhanced their opposition to increased containerization of the South American trade.

In its South American Trade Study, the Commission's staff concluded that rate increases in the heavily rationalized South American trades were lower than in many other comparable trades, a finding that tends to dispute the historical assumption that the restraint on competition exercised by pooling agreements automatically leads to higher ocean freight rates.

V.

DOMESTIC COMMERCE

Tariffs

Cancellation of Inactive Tariffs

On September 14, 1979, the Commission notified common carriers operating in the domestic offshore trades of its intent to cancel 70 filed tariffs which had been classified as inactive due to the carriers' failure to reissue the tariffs to bring them into conformity with the requirements of the Commission's revised General Order 38. The Commission subsequently cancelled 54 of these tariffs, which had been filed by carriers who either advised the Commission of their inactivity in the domestic trades and requested cancellation or who failed to respond to the Commission's October 15, 1979 order to show why the apparently inactive tariffs should not be eliminated.

Significant Commission Activities In the Domestic Offshore Trades

Bunker Surcharges

Two hundred and seventy bunker surcharges have been filed in the U.S. domestic ocean commerce since June 6, 1979, when the Commission established Domestic Circular Letter No. 1-79.

On July 16, 1980, the Commission decided to allow Circular Letter No. 1-79 to expire as scheduled on September 30, 1980, since the emergency conditions that existed in early 1979 no longer existed and the special filing requirements that were established at that time were therefore no longer necessary. Carriers were advised that previous regulations governing the filing of fuel-related increases in their tariffs were again in effect. The notice period for increases

of three percent or more reverted to 60 days and the financial justification required under 46 CFR 502 and 46 CFR 512 again became mandatory.

The Commission intends to publish rules early in Fiscal Year 1981 governing special permission applications for filing of surcharges on less than statutory notice in order to meet emergency conditions that might again arise in the future. The proposed rules will provide guidelines for determining whether or not an emergency warranting a surcharge exists. However, during the period between the expiration of Circular Letter No. 1-79 and the establishment of the new rules, carriers may request special permission under 46 CFR 531.18 to waive such portions of existing requirements which they believe to be inappropriate. Special permission requests will be evaluated on an ad hoc basis.

Any carriers filing bunker surcharges pursuant to Circular Letter No. 1-79 which were accepted prior to September 30, 1980, will be permitted to file a single discrete general rate increase to incorporate the surcharge into their rate structure without further justification, provided that the price of fuel has not decreased during the period of the surcharge and further provided that such a general rate increase is strictly limited to those rates and charges to which the bunker surcharge had previously applied. Such general rate increases must be filed on 30 days' notice.

Significant Trade Developments In the U.S. Domestic Waterborne Commerce

ANALYSIS BY TRADE

U.S. Mainland/Puerto Rico-Virgin Islands Trade

Strong competition continued in the Puerto Rico trade during Fiscal Year 1980. The Puerto Rico Maritime Shipping Authority (PRMSA) filed a 15 percent

rate increase in the U.S. Atlantic and U.S. Gulf to Puerto Rico trades effective December 1, 1979, and filed a seven percent rate increase in its Puerto Rico/Virgin Islands' service, also scheduled to become effective on December 1.

Following PRMSA's lead, Trailer Marine Transport (TMT) filed a 15 percent general rate increase in the U.S. Atlantic & Gulf/Puerto Rico trade scheduled to become effective December 15, 1979 and Gulf Caribbean Marine Lines, Inc., (GCML) also filed a 15 percent general rate increase slated to take effect on January 1, 1980. The Commission determined to neither investigate nor suspend the proposed increases and they became effective as scheduled.

However, Sea-Land Service, Inc., (Sea-Land) filed a 25 percent general rate increase to become effective January 1, 1980. Upon consideration of the supporting data and protests received, the Commission determined that Sea-Land's increases should be placed under investigation and that portion of the tariff matter which represented an increase of more than 15 percent should be suspended pending completion of the investigation proceeding, which was initiated on December 26, 1979 as Docket No. 79-102.

Sea-Land's proposed 25 percent general rate increase applicable to the Virgin Islands' trade was allowed to go into effect as scheduled. The Commission subsequently decided to investigate the 25 percent rate increase in the Virgin Islands trades as well, but since these rates had already gone into effect, they could not be suspended.

By adoption of an Offer of Settlement served March 3, 1980, the Commission ultimately permitted Sea-Land to raise its rates in its Puerto Rican tariffs to

a point not to exceed 21 percent of its December 31, 1979, base rates without requiring further justification for those rates. Sea-Land was also granted special permission to reduce its base rates in the Virgin Islands' trade tariff to a level not to exceed 21 percent over the base rates which were in effect on December 31, 1979.

Pursuant to the terms of the settlement offer, Sea-Land incorporated its fifteen percent general rate increase into its Puerto Rican tariffs by amending each individual rate item to reflect the fifteen percent increase. On May 29, 1980, Sea-Land filed further amendments to its Puerto Rican tariffs in order to increase its rates an additional 5.2 percent in line with the settlement offer allowing Sea-Land a total increase of 21 percent.

Late in the first quarter of FY 1980, carriers in the Puerto Rico trade substantially increased demurrage charges applicable to refrigerated trailers. PRMSA, Sea-Land and TMT also proposed increased demurrage charges applicable to dry cargo and tank trailers of approximately 100 percent, effective April 1, 1980. The Commission determined to neither investigate nor suspend any of these increases, since they appeared not to be a revenue hike but a legitimate means for carriers to recover their trailers as soon as possible after delivery of cargo to consignees.

On March 20, 1980, Trailer Marine Transport Corporation filed formal notice that it was taking over the operations of Interisland Intermodal Lines, Inc. (IIL Both carriers are owned by Crowley Maritime Corporation. TMT explained that the take-over, which became effective May 1, 1980, was made because TMT's name was more widely recognized and the consolidation would standardize and simplify accounting and record-keeping.

West Coast/Hawaii Trade

Matson Navigation Company published a 60 percent wharfage charge effective October 5, 1979, at U.S. West Coast ports. There were nine protests filed in response, but the wharfage increase was found to produce only a 2.6 percent overall increase in revenue and was allowed to become effective.

Matson subsequently filed another 40 percent wharfage increase at U.S. West Coast ports, which was also protested. The cumulative effect of the two wharfage increases allowed Matson to publish 100 percent of the charges assessed by the West Coast public port tariffs. The second wharfage increase created an overall rate increase of 1.62 percent and was also permitted to take effect, producing a total increase in rates of 4.22 percent.

West Coast/American Samoa Trade

Farrell Lines Incorporated (Farrell), Pacific Islands Transport Line, Ltd. (PITL), and Polynesia Line, Ltd. (PLL), carriers in the U.S. Pacific/American Samoa trade, were allowed to institute a ten percent general rate increase in their respective tariffs effective March 17, 1980.

VI.

CERTIFICATION ACTIVITIES

The FMC's Bureau of Certification and Licensing administers laws designed to ensure financial responsibility for environmental pollution problems and passenger vessel operations in the U.S. ocean commerce, and it regulates the activities of various participants in ocean cargo movements in order to protect the public from unscrupulous trade practices or irresponsible financial activities

Primary responsibilities include certification that:

1) The operators of foreign and domestic vessels using U.S. waters are financially able to meet specified levels of liability for any water pollution they may create;

2) the operators of foreign and domestic passenger vessels boarding passengers at U.S. ports are financially able to meet liabilities resulting from death or injury or from non-performance of scheduled voyages; and

3) persons engaging in the business of ocean freight forwarding in the export commerce of the United States are properly qualified and bonded to do so.

Financial Responsibility for Water Pollution

The Commission administers the vessel financial responsibility provisions of three water pollution statutes: the Federal Water Pollution Control Act, the Trans-Alaska Pipeline Authorization Act, and the Outer Continental Shelf Lands Act Amendments of 1978. Under these laws, domestic and foreign vessel operators are required to demonstrate that they are financially able to meet specified limits of potential liability for removal costs and certain related damages resulting from spills of oil and hazardous substances. Vessel operators

who are unable to comply with the Commission's criteria for pollution liability are prohibited from operating in U.S. waters.

The Commission's major objective under this program is to ensure that the financial loss resulting from spills is shifted from taxpayers and other damaged parties to vessel operators and their underwriters. A secondary objective is to encourage prompt cleanup after a spill in order to reduce ecological damage.

In order to meet the Commission's financial responsibility requirements, vessel operators must submit to the FMC and keep on file satisfactory evidence of insurance, surety bonds, guarantees, or self-insurance which will guarantee reimbursement to the U.S. government and other damaged parties in case of an accident involving pollution. The Commission issues Certificates of Financial Responsibility (Pollution) for vessels which meet its financial responsibility requirements and, under a related program, cooperates with the U.S. Coast Guard, U.S. Customs Service, and the Panama Canal Commission to enforce the requirement that certificates be carried on board the subject vessels. Failure of a vessel to carry a certificate results in automatic detainment. During Fiscal Year 1980, twenty-six vessels were detained beyond their intended sailing time for non-compliance with the Commission's certification requirements. The Commission's certification responsibilities are extensive and, on September 30, 1980, there were 24,754 vessels of all types and flags carring valid certificates.

Two major vessel certification programs were completed during Fiscal Year 1980. The Commission completed recertification of over 24,000 vessels under the Clean Water Act of 1977, which amended the Federal Water Pollution Control Act. Because the 1977 amendments increased and broadened the liability of vessel

operators who discharge pollutants into U.S. waters, new evidence of financial responsibility providing coverage for that new liability had to be filed with and processed by the Commission. A smaller scale, first-time certification program required for vessels transporting oil produced on the Outer Continental Shelf was also completed. This program resulted from enactment of the Outer Continental Shelf Lands Act Amendments of 1978, delegated to the Commission by the President on February 26, 1979.

Cleanup cost reimbursements to the U.S. alone have amounted to $31 million during the past decade. Additional millions of dollars have been spent by vessel operators and their underwriters in cleaning up spills without government involvement, thus substantially relieving the public of the burden of bearing cleanup costs for accidental spills or paying for resultant environmental damage.

Passenger Vessel Financial Responsibility

The Commission's jurisdiction over passenger vessel operations primarily involves the administration of sections 2 and 3 of Public Law 89-777. This statute applies to owners, charterers, and operators of U.S. and foreign-flag vessels which have berth or stateroom accommodations for 50 or more passengers and which board passengers at U.S. ports.

Vessel operators subject to the provisions of P.L. 89-777 are required to maintain on file with the Commission evidence of their financial ability to meet statutorily prescribed amounts of liability in the event of death or injury to passengers and crew and to reimburse passengers in the event of non-performance of a scheduled voyage or cruise.

Vessels covered by acceptable evidence of financial responsibility are issued Certificates of Financial Responsibility (Casualty and Performance) which must be presented for examination to the United States Customs Service. Over one hundred vessels have been certified by the FMC for passenger service in the U.S. ocean commerce under P.L. 89-777. During Fiscal Year 1980 alone, the Commission received 55 applications for passenger vessel certification. There were eleven new applications for performance certificates, eleven new applications for casualty certificates, and 33 applications for amendments to existing certificates.

On April 7, 1980, the Commission increased the maximum amount of financial coverage required of passenger vessel operators from $5 million to $10 million for indemnification of passengers in the event of non-performance of a scheduled cruise. This increase reflects the inflationary impact on passenger fares and insurance rates which has occurred since 1967, when the $5 million limit was established by the Commission. Since that time, most passenger vessel fares have doubled, and the Commission deemed it appropriate to double the limits of financial liability needed to protect cruise passengers. The new rules will take effect on February 20, 1981.

As an ancillary responsibility, the Commission's Office of Consumer Affairs informally assists cruise passengers with complaints involving the failure of passenger vessels operating to and from U.S. ports to meet contractual commitments, but the FMC has no statutory authority to adjudicate claims arising from these complaints.

Independent Ocean Freight Forwarders

Section 44 of the Shipping Act, 1916, vests the Commission with authority for the licensing and regulation of independent ocean freight forwarders. The ocean freight forwarding industry is comprised of individuals and corporations who serve export shippers by arranging for transportation of cargo by ocean common carriers for a fee. Because forwarders are also paid a commission by carriers for their services, they are required by law to be free of shipper connections in order to prevent unlawful indirect rebates to shippers.

A Congressional finding in 1961 that shippers were forming their own "dummy" forwarding firms in order to receive indirect rebates led to the enactment of section 44. The Congress also found that the licensing and regulation of forwarder would serve to eliminate unqualified and financially irresponsible forwarders whose practices were not conducive to a favorable export climate. The financial responsibility of a forwarder is assured by a $30,000 surety bond which is required to be maintained on file with the Commission.

The reform of General Order 4, which governs the activities of ocean freight forwarders, was the greatest challenge facing the Commission in the freight forwarding area during the past fiscal year. The Commission's current General Order 4 was originally issued in December, 1961. Commission and industry experience indicated a need for clarification and updating of many aspects of the FMC's regulations in this area in response to significant commercial and technological changes in the forwarding industry and the export ocean commerce it serves. In order to meet this need, the Commission worked throughout Fiscal Year 1980 to develop comprehensive revisions of its freight forwarding regulations.

In January, 1980, the FMC issued proposed rules (Docket No. 80-13, Licensing of Independent Ocean Freight Forwarders) for public comment which were designed to provide necessary modernization and clarification of existing regulations governing the forwarding industry. By the end of the fiscal year, the Commission had heard oral argument on the major issues raised by the proposed revisions and had nearly completed preparation of a final rule aimed at the following five objectives:

1) Reduced government regulation of the commercial transactions between freight forwarders, shippers, and carriers;

2) Continued protection of the consumers of ocean transportation services from unscrupulous forwarding activities;

3) Increased consistency in the treatment of freight forwarder license applications, denials, suspensions, revocations, and penalties;

4) Modernized freight forwarding regulations more responsive to the needs of the liner shipping industry as a whole and more conducive to a favorable export climate;

5) Clarified relationships between forwarders and their shipper and carrier clients, respectively.

These goals will be reflected in a final rule scheduled for publication by the end of calendar year 1980 which revises all aspects of the Commission's regulation of forwarders, including regulations addressing licensing requirements, qualifying officers, treatment of branch offices, bonding requirements, license suspensions, denials, and revocations, anti-rebate certifications, payover requirements, and deductions of compensation.

The Commission's licensing activities continued uninterrupted throughout the drafting of new freight forwarder rules. During Fiscal Year 1980, the Commission received 265 applications for independent ocean freight forwarder licenses, in addition to 98 applications pending from Fiscal Year 1979. One hundred and nine of these applications were approved, 11 were denied, and 45 were withdrawn. Another 98 applications were returned to applicants because of deficiencies which prevented processing, and 52 previously-issued licenses were revoked. Revocations usually occur because the licensees fail to maintain valid surety bonds required by the Shipping Act.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that independent ocean freight forwarders comply with the provisions of the Shipping Act and applicable FMC regulations after they have been licensed. During the past fiscal year, these investigations produced the following results: (1) 75 warning letters were sent to licensees in connection with minor infractions, directing them to take remedial action to avoid recurring violations; (2) ten formal proceedings were instituted to determine whether a revocation or suspension action was warranted; and (3) fourteen other instances of violative activity were referred to the Office of General Counsel for the assessment of appropriate civil penalties.

Other activities during the year included the approval of 118 branch offices through which freight forwarding could be conducted and the approval of 58 transfers of licenses. At the end of the fiscal year, there were 1,397 licensed forwarders operating under Commission jurisdiction.

The formal proceedings summarized below are representative of docketed activity involving freight forwarders during FY 80:

- In Docket No. 79-61, Rene Lopez and David Romano d/b/a United Dispatch Services - Independent Ocean Freight Forwarder License No. 1381, the Commission found that the licensee permitted its name and license number to be used by a person not employed by the licensee for the performance of ocean freight forwarding services, and that the licensee falsely certified to ocean carriers that it had performed forwarding services necessary to receive compensation and accepted such compensation from ocean carriers. The Commission decided that such conduct warranted a six-month suspension of the forwarder's license.
- In Docket No. 79-94, All-Freight Packers & Forwarders, Inc. - Independent Ocean Freight Forwarder License Application, the Commission found that the applicant had violated section 44(a) of the Shipping Act, 1916, by engaging in unlicensed forwarding activities on six separate occasions and imposed a civil penalty of $5,000 for those violations. However, the Commission found that, in view of mitigating circumstances, which included the applicant's previous business record, the lack of any apparent attempt to deceive or mislead the Commission, and violations which did not unjustly enrich the applicant, All-Freight Packers was fit, willing and able to carry on the business of forwarding.

- In Docket No. 80-2, Avion Forwarding, Inc. - Independent Ocean Freight Forwarder License Application, the Commission found that the applicant had carried on the business of ocean freight forwarding without a license in 137 instances in violation of section 44(a) of the Shipping Act, 1916, and imposed a civil penalty of $25,000. The Commission also determined that the continued and flagrant nature of the Shipping Act violations demonstrated that the applicant was unfit to be licensed.

VII.

FINAL DECISIONS OF THE COMMISSION

During Fiscal Year 1980, the Commission issued 346 final decisions, an average of nearly one a day. The FMC's productivity during FY 80 surpassed last year's record of 252 final decisions which, in turn, had broken the record of 193 decisions issued during FY 78. During the past three fiscal years, the Commission has issued a total of 791 final decisions, more than the number of cases decided in the previous fifteen years combined.

The Commission issued decisions concluding 53 formal proceedings, 88 special docket applications, 191 informal dockets involving shippers' small claims against ocean carriers, and fourteen final rules. The number of decisions issued in the latter two categories represented all-time highs.

Oral arguments were heard in two formal proceedings. Twenty-three formal proceedings were discontinued or dismissed without decision, nine ALJ initial decisions in formal proceedings became administratively final without Commission review, and one proceeding was remanded to the Administrative Law Judges.

The Commission issued over three hundred decisions affecting the U.S. foreign commerce during FY 80. Some of the most significant or representative cases included the following:

Docket No. 79-10 - Rates of Far Eastern Shipping Company, 19 S.R.R. 1536 (April 1, 1980). In this first proceeding under the Ocean Shipping Act of 1978 (P.L. 95-483), the Commission disapproved several hundred ocean freight rates of the Far Eastern Shipping Company (FESCO), a Soviet state-controlled carrier, as unjust and unreasonable and established guiding principles applicable to future cases under this new legislation. These principles were

subsequently applied in Docket No. 79-104 - Specific Commodity Rates of Far Eastern Shipping Company in the Philippines/U.S. Pacific Coast Trade, 20 S.R.R. 249 (August 5, 1980), where additional rates of this state-controlled carrier were disapproved as unreasonably low. These decisions contributed to the virtual elimination of predatory rate-cutting by state-controlled carriers in the U.S. foreign commerce during Fiscal Year 1980.

Docket Nos. 79-21 through 79-41 - Proceedings for Failure to Include Provisions for Adequate Self-Policing as Required by General Order 7, 19 S.R.R. 957 (October 17, 1979). Important modifications in the Commission's self-policing requirements for section 15 ratemaking agreements took effect on January 1, 1979. These show cause proceedings were instituted against carriers which failed to include the new provisions for self-policing in their agreements. The Commission subsequently disapproved several of these agreements because they were inadequately policed. Many of the affected carriers and conferences appealed the Commission's new self-policing rules, but the U.S. Circuit Court of Appeals upheld the FMC's efforts to eliminate malpractices in the U.S. foreign commerce by placing a greater burden on participating carriers to effectively police themselves.

Docket No. 79-46 - Expedited Surcharges for Recovery of Carriers' Increased Fuel Costs in the Foreign Commerce of the United States, 19 S.R.R. 929 (October 16, 1979). The Commission held in this case that certain bunker surcharges instituted by carriers employing dual rate contracts were lawful under section 14(b) of the Shipping Act, 1916. It found that these surcharges

were the result of extraordinary conditions in the world marketplace which were beyond the carriers' control and were not reasonably forseeable. In addition, the inability to assess these charges in a timely manner would have unduly impeded and delayed the carriers' services.

Docket No. 79-75 - Interpool, Ltd., Itel Corporation (Container Division), Trans Ocean Leasing Corporation v. Pacific Westbound Conference, Far East Conference, and Member Lines, 19 S.R.R. 1719 (May 15, 1980). The Commission's action in this proceeding was designed to ensure full compliance with the agency's Rules of Practice and Procedure. The FMC dismissed a complaint following the Complainant's failure to respond to discovery requests and comply with two separate orders of the administrative law judge. The Commission held that strict adherence to agency procedure is necessary to maintain the Commission's integrity and ensure the prompt and orderly conduct of agency business.

Docket No. 78-11 - Exemption of Collective Bargaining Agreements, 19 S.R.R. 1579 (April 10, 1980). On April 10, 1980, the Commission adopted regulations (46 C.F.R Part 525) to provide for the exemption of collective bargaining agreements between labor unions and maritime multi-employer collective bargaining units from the filing and approval requirements of section 15. The Maritime Labor Agreements Act of 1980 was subsequently signed into law on August 8, 1980, incorporating into the FMC's governing statutes the agency's desire to exempt maritime labor agreements from section 15 approval requirements and to minimize government regulation of the collective bargaining process.

Docket No. 79-95 - Cancellation of Tariffs for Noncompliance with Commission Regulations, 19 S.R.R. 1662 (April 23, 1980). During the past fiscal year, the Commission ordered over 350 carriers operating in the U.S. foreign commerce to show cause why 600 of their tariffs filed and published at the FMC should not be cancelled for noncompliance with tariff filing regulations which took effect on January 1, 1979. A majority of the tariffs were inactive and only six of the Respondents contested the proposed cancellation. Through its action in this proceeding, the Commission was able to significantly update and simplify its foreign commerce tariff records.

Docket No. 79-51 - Procedures for Environmental Policy Analysis, 19 S.R.R. 1713 (May 14, 1980). During Fiscal Year 1980 the Commission issued final rules (46 C.F.R 547) for implementing the National Environmental Policy Act (42 U.S.C. 4321 et seq.). These new procedures comply with regulations recently adopted by the Council on Environmental Quality. They apply to all Commission actions and reflect the FMC's efforts to ensure that activities in the U.S. ocean commerce have no adverse impact on the environment.

Docket No. 77-60 - New York Freight Bureau Intermodal Extension (Agreement No. 5700-26), 19 S.R.R. 1073 (November 29, 1979). In this proceeding, the FMC disapproved an amendment to a conference agreement which would have permitted the conference to continue setting intermodal transportation rates to the Far East via U.S. Atlantic and Gulf ports. The proposed amendment was deemed to be inadequately justified because the conference had possessed intermodal rate authority for several years without implementing an intermodal service, faced

no competition for intermodal traffic via U.S. Atlantic and Gulf ports, and proposed intermodal routings which were relatively inefficient and extended to an unrealistically broad geographic area.

Docket No. 76-11 - Japan/Korea Atlantic and Gulf Freight Conference et al. - Intermodal Dual Rate Contract (Agreement Nos. 150 DR-7 and 3103 DR-7), 19 S.R.R. 1229 (December 3, 1979). This proceeding represented one of the Commission's most important cases involving intermodal authority during the past fiscal year. The Commission disapproved amendments to the dual rate contract of a steamship conference seeking to include intermodal transportation within the scope of the contract when the conference lacked underlying section 15 authority to offer an intermodal service. Similar intermodal amendments were approved for another conference on the condition that shippers be offered the clear choice of signing a contract which obligated either their port-to-port shipments or their through intermodal shipments (or both) to conference carriers. Objections of the Department of Justice and other parties to the assertion of Shipping Act jurisdiction over intermodal dual rate contracts were denied.

Docket No. 77-13 - First International Development Corporation v. Shipping Overseas Services, Inc., 19 S.R.R. 101 (March 23, 1979). In a proceeding based upon the need to file a tariff for common carriage in the U.S. foreign commerce, the Commission held that the failure of a nonvessel operating common carrier engaged in foreign commerce to file a tariff in compliance with section 18(b)(1) of the Shipping Act, 1916, rendered the freight charges collected by that carrier

unlawful. The shipper was awarded reparations based upon its undisputed assertion that the fair value of the transportation performed did not exceed the nonvessel operating carrier's costs.

Docket No. 79-86 - Japan/Korea - Atlantic and Gulf Freight Conference Rules Pertaining to Chassis Availability and Demurrage Charges that Result When Chassis are not Made Available, 19 S.R.R. 1370 (February 7, 1980). The availability of chassis for container cargo continued to be a major issue in the liner shipping industry during the past fiscal year. The Commission found here that certain tariff rules of the Japan/Korea - Atlantic and Gulf Freight Conference pertaining to chassis availability and the assessment of demurrage during periods of chassis unavailability were violative of sections 17 and 18(b)(1) of the Shipping Act, 1916. In particular, the Commission found the assessment of demurrage on containers at greater than compensatory amounts during periods of general, port-wide unavailability of chassis to be an unjust and unreasonable practice.

Docket No. 77-56 - West Gulf Maritime Association v. The City of Galveston (Board of Trustees of the Galveston Wharves), 19 S.R.R. 779 (September 14, 1979). The respective liabilities of shippers, carriers, and ports for cargo movements in the U.S. ocean commerce continues to be a major source of contention. The Commission found unreasonable under section 17 of the Shipping Act, 1916, terminal tariff provisions which: (1) would relieve a port from liability for its own negligence; (2) would permit application of a port user's payments of port charges to the account of another user; and (3) required that the port be reimbursed

litigation expenses if the port succeeds in litigation, but which did not require the port to pay such expenses if it unsuccessfully initiated litigation. The Commission upheld a terminal tariff requirement that steamship agencies and stevedoring companies obtain general liability and property damage insurance.

Docket No. 79-49 - Intervention In Commission Proceedings, 19 S.R.R. 950 (October 17, 1979). This proceeding amended Rule 72 of the Commission's Rules of Practice and Procedure (46 C.F.R. 502.72) to clarify the standards for intervention in Commission proceedings. The new rule is intended to protect the rights of affected parties while at the same time preventing unnecessary procedural delay through the participation of remote interests. It is patterned after the Federal Rules of Procedure and establishes a distinction between intervention as a matter of right and permissive intervention.

Docket No. 79-61 - Rene Lopez and David Romano d/b/a United Dispatch Services - Independent Ocean Freight Forwarder License No. 1381, 19 S.R.R. 1446 (February 25, 1980). In one of the Commission's major freight forwarder license proceedings during the past year, the Commission suspended the license of an independent ocean freight forwarder for a period of six months upon finding that the forwarder permitted its name and license number to be used by a person not employed by it for the performance of ocean freight forwarding services.

Commission decisions involving the U.S. domestic offshore commerce were largel governed by the recent implementation of the domestic rates law (P.L. 95-475), which provides for expedited domestic rate proceedings and reparations to shippers

of those portions of rate increases found to be unreasonable; the promulgation of new rules under the Commission's General Order 11 specifying required data submissions and justification for rate changes in the U.S. domestic commerce; and continuing controversy over the appropriate methods for computing and analyzing bunker surcharges. Significant and representative decisions included the following:

Docket No. 78-46 - Amendments to Financial Reports by Common Carriers by Water in the Domestic Offshore Trades, 19 S.R.R. 1261 (January 14, 1980). This proceeding achieved a comprehensive revision of the Commission's General Order 11 (46 C.F.R. Part 512) in response to the enactment of P.L. 95-475, which required the Commission to establish guidelines for determining a "just and reasonable return" for carriers operating in domestic offshore trades. Because of the magnitude of the project, a special task force was appointed to develop guidelines tailored to the specialized types of operations and diverse financial structures that must be evaluated in determining the reasonableness of ocean carrier rates under the Intercoastal Shipping Act, 1933, As Amended.

Financial Exhibits and Schedules for Non-Vessel Operating Common Carriers in the Domestic Offshore Trades. The Commission also promulgated final rules for non-vessel operating common carriers in the domestic offshore trades (46 C.F.R. Part 514). In furtherance of its regulatory reform policies, the Commission eliminated annual reporting requirements for NVOCC's and decided that it was necessary to establish reporting requirements and guidelines for determining the

reasonableness of NVOCC rates only when a formal investigation is ordered under the Intercoastal Shipping Act, 1933.

Docket Nos. 79-55, 79-84, 79-92 and 80-4 - Matson Navigation Company - Bunker Surcharges in the Hawaii Trade, 19 S.R.R. 1065 (November 23, 1979). In response to dramatic increases in the cost of fuel oil, the Commission established procedures for emergency rate increases in the domestic offshore trades which permitted carriers to pass through unexpected operating expenses to shippers. In these proceedings, the Commission took steps to ensure that emergency rate increases were strictly limited to unforeseen increases in fuel costs and to develop methodologies for evaluating the need for and reasonableness of bunker surcharges.

Docket No. 79-102 - Sea-Land Service, Inc. - Proposed Twenty-Five Percent Increase in the Puerto Rico/Virgin Islands Trades, 19 S.R.R. 1499 (March 17, 1980). In this proceeding, the Commission established guidelines for the compromise settlement of disputed rate increases in the U.S. domestic offshore trades pursuant to the requirements of the Intercoastal Shipping Act. Procedures were developed to protect shippers' and carriers' rights while concurrently reducing the regulatory burden on both the parties involved and the national economy.

VIII.
COURT PROCEEDINGS

Many of the Commission's most important and intensely contested decisions are appealed to the courts, and the FMC often institutes court action itself to enforce compliance with the Shipping Act, 1916, or to resolve jurisdictional disputes.

The agency therefore continued to carry a heavy litigation schedule throughout Fiscal Year 1980. During the past fiscal year, sixteen new cases were added to the thirty-nine cases on appeal pending before various U.S. Circuit Courts of Appeal on October 31, 1979. The number of Commission cases pending in district courts also increased, growing from six in FY 79 to nine in FY 80. Finally, the FMC's litigation activities during the past fiscal year included a petition to the U.S. Supreme Court for certiorari, two proceedings before the Interstate Commerce Commission, and one action in a California state court.

At the close of Fiscal Year 1980, twenty-three cases remained pending in U.S. Circuit Courts of Appeals, as well as four cases in district courts, and one case each before the Supreme Court, the Interstate Commerce Commission, and a California state court. The following proceedings represent the most significant cases that were decided in various courts during FY 80 or were still pending resolution at the end of the fiscal year under statutes administered by the FMC.

U.S. Court of Appeals

Trans Pacific Freight Conference of Japan/Korea, et al. v. FMC, D.C. Cir. No. 78-2172 and Sea-Land Service, Inc. v. FMC, D.C. Cir. No. 79-1062. In these consolidated cases, several conferences and carriers challenged the Commission's

revised self-policing rules, promulgated under the Commission's General Order 7 on September 21, 1978. The rules require conferences and rate-making bodies to police their members' obligations under their agreements through a neutral body, which must be empowered to perform certain investigative functions. The FMC's rules were affirmed by a panel of the U.S. Court of Appeals for the D.C. Circuit on September 11, 1980. Petitioners have suggested rehearing by the entire court sitting en banc.

U.S. & FMC v. Atlantic Container Line, et al., D.C. Cir. Nos. 79-1931 and 79-2162; U.S. and FMC v. Philip E. Bates, et al., D.C. Cir. Nos. 79-1930 and 79-2171. The defendants pled nolo contendere to a series of indictments on June 8, 1979, charging seven steamship lines operating in the U.S. foreign commerce and thirteen individuals with violations of section 1 of the Sherman Act (15 U.S.C. §1) by implementing agreements not covered by the Commission's approval under section 15 of the Shipping Act, 1916, to "fix, raise, stabilize and maintain" price levels for the shipment of ocean freight in the U.S. foreign commerce. The Commission sought access to the grand jury proceedings for use "preliminarily to or in connection with a judicial proceeding" in accordance with Federal Criminal Rule 6(e). On August 14, 1979. the Commission instituted an adjudicatory proceeding in FMC Docket No. 79-83 to determine, inter alia, whether the practices alleged in the indictments violated section 15 of the Shipping Act. By orders dated July 17 and August 31, 1979, the District Court denied the Commission access to the grand jury materials and was affirmed on appeal by the D.C. Circuit (see also In Re Ocean Shipping Antitrust Litigation S.D.N.Y. MDL 395, included in the description of district court cases).

Reefer Express Lines v. FMC & USA, D.C. Cir. No. 78-2229 and A/S Ivarans Rederi v. FMC & USA, D.C. Cir. No. 78-2270. Review was sought of the Commission's approval in Docket Nos. 78-51 and 78-52 of revenue pooling agreements in the northbound Argentina/U.S. Atlantic and Gulf trades. Reefer Express Lines was voluntarily dismissed, and a settlement agreement was submitted to the Commission for approval in A/S Ivarans Rederi. The Commission unanimously approved the settlement shortly after the close of the fiscal year.

Dart Containerline Co. v. FMC & USA, D.C. Cir. No. 79-1932. This proceeding is a challenge to the Commission's decision in Docket No. 77-50, holding that Dart's practice of absorbing rates for inland transportation of tobacco between Wilmington, North Carolina, which it does not serve by water, and the Norfolk/Hampton Roads area, which it does, violates sections 16 and 17 of the Shipping Act, 1916. The case was argued on September 17, 1980, and is now pending decision.

Puerto Rico Maritime Shipping Authority v. USA & ICC, D.C. Cir. No. 79-2228. This case challenges an ICC order accepting for filing and asserting exclusive jurisdiction over joint motor/water rates in the U.S./Puerto Rico trade. The FMC has intervened in support of petitioner's challenge to exclusive ICC jurisdiction over such rates. The matter has been briefed, and oral argument was scheduled for November 5, 1980.

USA v. FMC, D.C. Cir. No. 79-1299. This proceeding constitutes an appeal by the Antitrust Division of the Department of Justice which, inter alia, challenges the FMC's authority to approve section 15 agreements among ocean carriers which

permit them to establish rates for through intermodal service in connection with inland carriers regulated by the Interstate Commerce Commission. The case has been briefed and argued and is now awaiting decision.

Seatrain Pacific Services, S.A. v. FMC, D.C. Cir. No. 80-1248 and USA v.FMC, D.C. Cir. No. 80-1251 (consolidated cases). Seatrain and the Antitrust Division of the Department of Justice appealed the Commission's decision in Docket No. 76-11 approving amendments to two conference agreements which provide for a dual rate contract system in connection with through intermodal service under rates offered by ocean carrier members of the conferences and inland carriers regulated by the Interstate Commerce Commission. The case is being held in abeyance pending the Court's decision in USA v. FMC, D.C. Cir. No. 79-1299, above.

USA V. FMC, D.C. Cir. No. 79-1325. The Antitrust Division of the Department of Justice has also appealed a Commission decision approving a pooling agreement in the trade between Italy and the U.S. on grounds that the anticompetitive effects of the cargo and revenue pool were not sufficiently justified. The case is awaiting decision.

Council of North Atlantic Shipping Associations and New York Shipping Ass'n v. FMC & USA, D.C. Cir. No. 78-1776. A challenge has been brought to the FMC's order in Docket Nos. 73-17 and 74-40 declaring unlawful the tariff regulations of certain carriers in the United States/Puerto Rico trade which require stuffing and stripping of containers originating from or destined to points within 50 miles

of mainland ports by International Longshoremen's Association labor. The Commission's order found the tariff provisions unlawful under section 14 Fourth, 16 First, and 18(a) of the Shipping Act, 1916, and section 4 of the Intercoastal Shipping Act of 1933. The case is now pending ruling on a motion, opposed by the Commission, for summary reversal and remand in light of the decision of the Supreme Court in NLRB v. International Longshoremen's Association, U.S. , (June 20, 1980), which remanded to the National Labor Relations Board the issue of whether the collective bargaining agreement provisions which the tariff regulations purport to implement are valid under the National Labor Relations Act.

Ryoichi Takazato and Kanematsu-Gosho, Inc. v. FMC, et al., 9th Cir. No. 78-2193. Disagreeing with U.S. District Judge Orrick's ruling upholding the enforcement of the Commission's administrative subpoenas, this case was appealed by petitioner Ryoichi Takazato on May 22, 1978. Thereafter, U.S. v. Paper Fibres International, et al., 9th Cir. No. 77-3566, was consolidated on appeal with Ryoichi Takazato, and the consolidated cases have been briefed, argued and are pending decision.

National Association of Recycling Industries, Inc. v. FMC, D.C. Cir. No. 79-1267. Petitioners in this case challenged a Commission decision upholding the lawfulness of conference rates on wastepaper and virgin woodpulp under the Shipping Act's section 18(b)(5). The petitioners also claimed that the Commission failed to meet its obligations under the National Environmental Policy Act of 1969. The Department of Justice appeared in opposition to the Commission's position in this appeal. The case has been argued and is awaiting decision.

Nepera Chemical, Inc. v. FMC, D.C. Cir. No. 79-2186. Petitioner Nepera appealed a Commission order disallowing the collection of certain freight charges that were not timely corrected by a carrier in its tariff in conformity with section 18(b)(3) of the Shipping Act. In a companion District Court action, Nepera Chemical, Inc. v. Sea-Land Service, Inc., D.C. Cir. No. 79-3022, Nepera has sued for actual and punitive damages against the carrier, alleging its negligence to file a corrected tariff. The Commission has intervened in the District Court action, and both cases are pending hearing by the respective courts.

New York Shipping Ass'n v. FMC & USA, D.C. Cir. No. 78-1479; Zim-American Israeli Shipping Co., Inc. v. FMC & USA, No. 78-1871. These consolidated proceedings were brought to review the Commission's orders respecting adjustments in assessments to fund benefits for maritime laborers and disposing of Docket No. 69-57. On July 30, 1980, the Court upheld the Commission's order requiring New York Shipping Association to make further assessment adjustments in addition to those already ordered and upheld by the Court of Appeals for the District of Columbia Circuit (see 571 F.2d 1231), and reversed the Commission's denial of Zim's claim for assessment adjustments.

U.S. District Courts

U.S. v. Ala-Mar Shipping Co., S.D. Fla. Civ. No. 80-1155-Civ JCP. The Department of Justice instituted a civil penalty action on behalf of the Commission against defendant Ala-Mar and several of its corporate officers for unlicensed and other illegal ocean freight forwarding activities in violation

of section 44 of the Shipping Act. Defendants agreed to the payment of $30,000 in civil penalties and the entry of a permanent injunction against future illegal forwarding activities to settle the case.

In Re Ocean Shipping Antitrust Litigation, S.D.N.Y. Civ.No.M-21-26-CES, MDL 395. This case is a consolidation of 35 private treble-damage antitrust cases brought against the carriers who pled nolo contendere in U.S. & FMC v. Atlantic Container Line, et al., cited above. The Commission sought to enter this case as a party under the Federal Court intervention rules (28 U.S.C. Rule 24), and to request the Court to refer litigation of the Shipping Act defenses to the Commission for adjudication under the doctrine of primary jurisidiction. The Court denied the Commission's motions on October 15, 1980.

Retla S.S. Co. v. Pan Ocean Bulk Carriers, et al., C.D. Cal. C.A. No. 79-1437-HP. This proceeding was a private action filed for treble damages and injunctive relief under sections 1 and 2 of the Sherman Act. The complaint raised questions regarding the noncompensatory rate levels employed by one water carrier against another in U.S. foreign commerce, and therefore, pursuant to a request from the Court, the Commission submitted a brief, amicus curiae. The Court adopted the position taken by the Commission in its brief and referred to the agency all questions relating to the allegedly unlawful rates under the standards of section 18(b), Shipping Act, 1916 for the purpose of an investigation to be completed by June, 1980. The dispute has been settled, and both the Commission and Court proceedings have been terminated.

U.S. v. Open Bulk Carriers Ltd., et al., S.D. Ga., Civil No. CV-477-193. Another civil penalty action was filed by the Justice Department on behalf of the Commission against five defendants for combining cargo surreptitiously in order to obtain a lower freight rate than the applicable tariff rate on file with the Commission in violation of sections 15, 16, 18 and 44 of the Shipping Act, 1916 and Commission General Order 4. The case against the carrier defendant and two of the shipper defendants has been settled. The Commission has pending a motion for summary judgment against the remaining defendants, a shipper and a licensed freight forwarder.

IX.

LEGISLATION

The second session of the 96th Congress was marked by considerable legislative activity in both the House and Senate on bills which would have totally restructured U.S. maritime policies. However, neither H.R. 6899, the so-called "Omnibus Bill" sponsored by Congressmen Murphy, McCloskey, and Snyder, nor S. 2585, Senators Inouye and Warner's "Ocean Shipping Act of 1980," were enacted. When Congress finally adjourned in December, 1980, only two bills directly affecting the Commission's regulatory responsibilities had been passed and signed into law, and neither encompassed the sweeping changes contained in the maritime reform bills which dominated press and industry speculation throughout the past fiscal year.

Maritime Labor Legislation

H.R. 6613 was introduced during the second session of the 96th Congress by Congressman Murphy of New York and signed into law by President Carter as P.L. 96-325 on August 8, 1980.

The Maritime Labor Agreements Act of 1980 amends the Shipping Act, 1916, to exempt all collectively bargained maritime labor agreements from the Commission's regulatory jurisdiction, with the exception of agreements that fund fringe benefit obligations on other than a uniform man-hour basis. Assessment agreements calculated on other than a uniform man-hour basis are still filed pursuant to section 15 of the Shipping Act, 1916, but now are deemed approved upon filing. An expedited form of complaint proceeding for any challenge to such an agreement is also provided by the new law.

P.L. 96-325 is designed to respond to the concerns of the maritime industry over the FMC's role in the collective bargaining process by ending the Commission's review of maritime labor agreements while, at the same time, preserving the Commission's authority to ensure nondiscriminatory treatment of shippers and carriers with regard to certain assessment agreements.

Commissioner Thomas Moakley testified on behalf of the Commission before the House Subcommittee on Merchant Marine on March 11, 1980, and testified again on June 4, 1980 before the Senate Subcommittee on Merchant Marine and Tourism. His testimony reflected the Commission's strong conviction that collective bargaining is a commercial process which should not be subject to government regulation and should be exempted from the Commission's section 15 review procedures. However, the FMC concurrently cautioned against complete removal of existing protection afforded to shippers and carriers by Commission oversight. Commission staff members worked actively with both House and Senate Committees in preparing a revision of H.R. 6613. The bill received strong support in both the House and Senate and was signed into law by President Carter on August 8, 1980.

Regulatory Reform

The 96th Congress enacted only one regulatory reform bill specifically affecting the FMC's activities. S. 299, the Regulatory Flexibility Act, was signed into law during the past fiscal year in an effort to provide relief to small businesses from excessive government regulation. P.L. 96-354 requires both executive branch and independent agencies to analyze the impact of their rules on the interests of small businesses.

After January 1, 1981, agencies will be required to publish twice yearly a calendar of proposed rules which may have a significant impact on small businesses. Agencies will also have to show that, in adopting a final rule, they chose the least burdensome alternative available for achieving their regulatory goal. The new law also requires each final rule to be accompanied by a "regulatory flexibility analysis" which describes each regulatory procedure considered and why various alternatives were rejected. These analyses will be required for all rules formally proposed after January 1, 1981.

The "Omnibus Bill' and the "Ocean Shipping Act of 1980"

On July 12, 1979, Chairman Murphy, Mr. Snyder of Kentucky and Mr. McCloskey of California introduced H.R. 4769, the "Omnibus Maritime Regulatory Reform, Revitalization, and Reorganization Act of 1979." The sponsors of the "Omnibus Bill" maintained that it would strengthen the maritime industry by reducing government regulation and allowing different segments of the industry to organize in ways that would provide for more efficient and profitable operations. The original bill would have (1) provided antitrust immunity for authorized conference activities and for shippers' councils, and would have allowed conferences to limit membership; (2) allowed construction subsidies for ships to be sold to U.S. citizens but operated under foreign flags; (3) permitted ships built or operated with subsidies to participate in trade between foreign countries in addition to trade between the United States and other nations; (4) granted operating subsidies for foreign-built ships if owned by U.S. citizens and operated under the U.S. flag (at present, operating subsidies may be given

only to American-built ships); (5) revised tax laws that currently encourage American companies to register under foreign flags; and (6) established a goal of 40 percent carriage of U.S. trade on U.S.-flag ships.

H.R. 4769 was revised early in 1980 and the product of this revision, H.R. 6899, was introduced by Mr. Murphy of New York, incorporating many of the features of the original bill.

The Commission supported those provisions of H.R. 6899 which clarified the antitrust immunity granted to the liner shipping industry, eliminating duplicative maritime and antitrust regulation, and permitted the formation of shippers' councils. However, the FMC strongly opposed the bill's efforts to meld the regulatory functions of the FMC and the promotional activities of the Maritime Administration in a single executive branch agency, viewing the proposed consolidation as an effort to merge two totally diverse responsibilities and a threat to the Commission's independent, quasi-judicial status.

Chairman Richard J. Daschbach testified before the House Merchant Marine Subcommittee on March 3, 1980, addressing the organizational reform embodied in the revised Omnibus Bill. He urged the Committee to adhere instead to President Carter's designation of the Maritime Administration of the Department of Commerce as the Administration's chief spokesperson on maritime affairs, and reaffirmation of the primacy of the FMC as the final authority in regulatory matters. The Chairman emphasized in his testimony that the President's recommendations thus designated the lead agencies in both the promotional (MARAD) and regulatory spheres (FMC) of U.S. maritime policy, preserving a clear and necessary distinction between the two.

H.R. 6899 was reported out unanimously by the full Merchant Marine Committee on April 2, 1980. However, the Committee on Ways and Means subsequently deleted Title IV, which had been designed to provide tax relief for the U.S. maritime industry. The House Committee on the Judiciary also held a day of hearings and thereafter reported an amended version of the bill significantly altering its regulatory provisions.

The Senate's approach to shipping reform was contained in S. 2585, "The Ocean Shipping Act of 1980," which was introduced by Senator Cannon of Nevada on April 4, 1980. S. 2585 incorporated many of the features of S. 1460, S. 1462, and S. 1463 -- bills addressing maritime regulatory reform which were introduced during the first session of the 96th Congress.

The Senate bill streamlined and updated all aspects of the FMC's regulation of international liner shipping, fashioning a regulatory system designed to assure the maintainance of a dependable common carrier service responsive to the needs of vessel operators, exporters, and importers in the waterborne commerce of the United States.

Some of the bill's major provisions included the following:

A declaration of policy which clearly delineates nine specific objectives of ocean transporation regulation in the foreign commerce of the United States;

Clarification and reaffirmation of the complete exemption of concerted activities in ocean shipping from the operation of U.S. antitrust laws;

Establishment of clear procedures for FMC approval of agreements and the imposition of statutory time limits on Commission action;

Establishment of certain categories of presumptively approvable agreements;

Authorization of shippers' councils within the United States;

Allowance for greater flexibility in the type of patronage contracts offered by ocean carriers and conferences;

Expansion of the Commission's authority to exempt broad categories of agreements from its jurisdiction;

Authorization of the approval and implementation of intermodal agreements;

A determination that intergovernmental maritime agreements between the United States and its trading partners are to be negotiated whenever conditions in foreign commerce warrant their use;

Requirement that all carriers submit to independent, neutral body self-policing in order to ensure compliance with the requirements of the Act; and

Clarification and reaffirmation of the independence of the FMC from OMB clearance of legislative recommendations, testimony or comments.

The House and Senate bills reflected substantially different approaches to maritime regulatory reform. The FMC expressed its preference for the Senate approach, which it believed included a more detailed and responsive revision of the Shipping Act and incorporated much of the Commission's own legislative proposal, the "Revised Shipping Act," which was submitted to both the House and Senate on July 19, 1979.

Under the leadership of Senator Daniel Inouye of Hawaii, S. 2585 was unanimously passed by the Senate on April 24, 1980, but was not subsequently enacted by the House. It is expected to provide a strong foundation for maritime reform efforts in the 97th Congress.

Superfund/H.R. 85 and S. 1480

The so-called "superfund" bill, H.R. 85, was passed by the House of Representatives on September 19, 1980. Named for the $375 million trust fund it creates to clean up spills of oil and hazardous substances in navigable waters, the bill provides for certification of the financial responsibility of vessel owners and operators to ensure that they are financially able to meet specified liabilities for damage due to an oil or chemical spill.

The Senate bill, S. 1480, which provides for a much larger "superfund" --$4.1 billion--also contains financial responsibility requirements.

The Commission currently administers a program for the certification of financial responsibility for vessels under the Federal Water Pollution Control Act, and it therefore forwarded detailed comments on both H.R. 85 and S. 1480 to appropriate Congressional committees expressing the agency's interpretation of the two bills' impact on its certification program. Final enactment of superfund legislation was expected early in Fiscal Year 1981.

Senate Commerce Committee Oversight -- Administrative Law Judges

Commissioner Moakley testified before the Senate Commerce, Science, and Transportation Committee at a September 24, 1980 hearing on the role of Administrative Law Judges. Accompanied by Chief Administrative Law Judge John Cograve, Commissioner Moakley outlined the duties and responsibilities of the ALJ's at the FMC and testified that the current selection and assignment system for ALJ's provides adequate safeguards to ensure their independence from agency influence and is an appropriate method for providing needed expertise in the early stages of administrative decision-making.

Draft Domestic Statute to Replace The Intercoastal Shipping Act, 1933

On April 29, 1980, the Commission launched an effort to revise the statute under which it regulates the U.S. domestic offshore commerce. In order to obtain the greatest possible input from participants in this commerce, the Commission sent a letter to shippers, carriers, ports, government entities, and other groups with an interest in the domestic waterborne trade soliciting their views on various aspects of the Commission's domestic commerce regulation which could be reformed.

The letter specifically invited comments on the following issues:

1) Formation of shippers' councils;

2) Desirability of adding to, reducing, or eliminating FMC control over domestic rates;

3) Use of the dominant carrier methodology for ratemaking purposes;

4) Treatment of surcharges;

5) Modification of existing refund provisions for rates found to be unlawful;

6) Regulation of intermodal transportation;

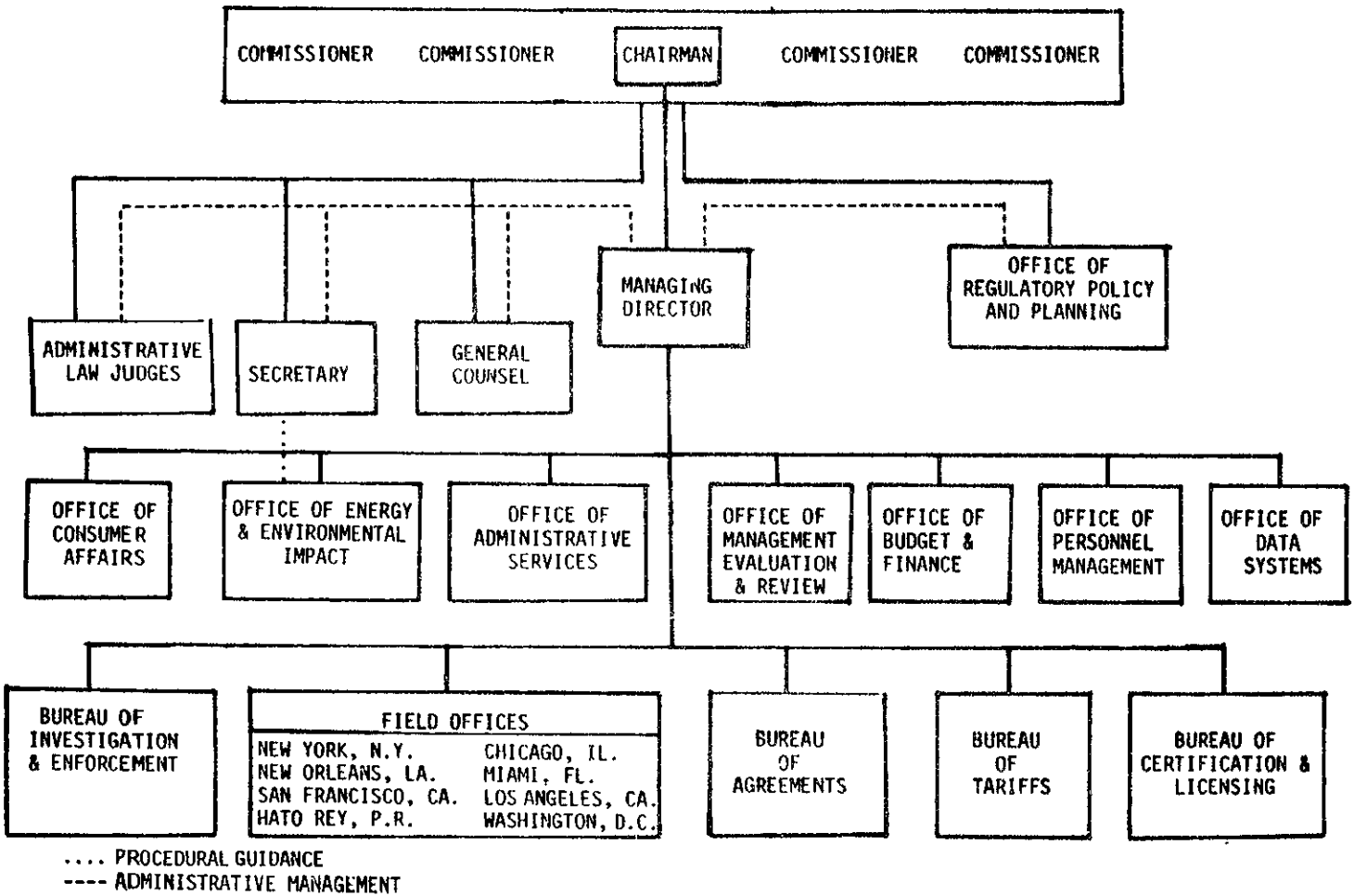
7) Deadlines for Commission action;

8) Bonding and licensing requirements for NVOCC's; and

9) Termination of FMC regulation over activities in the domestic commerce.

The Commission is currently reviewing the rather limited input received from affected parties before deciding whether to prepare and submit a draft revised statute to the 97th Congress for its consideration.

FEDERAL MARITIME COMMISSION



APPENDIX A

APPENDIX B

CIVIL PENALTY SETTLEMENTS FOR
VIOLATIONS OF THE SHIPPING ACT, 1916
FISCAL YEAR 1980

Western Navigation Corp.	10,000	10-10-79
American President Lines	750,000	10-11-79
Atlantica, S.p.A. (Rebate)	1,345,000	10-25-79
Concordia	10,000	10-30-79
General Foods	5,000	11-05-79
The Gailstyn Company	15,000	11-23-79
E.L. Mobley	5,000	11-27-79
Arlen Realty & Development	50,000	11-29-79
Weinstein International	10,000	12-03-79
Mego International	55,000	12-17-79
Rohm & Haas	20,000	12-17-79
Chilewich Corp.	100,000	12-18-79
Kirsch	10,000	12-19-79
Mark Thomas International	5,000	12-31-79
U.S. Shoe	5,000	12-31-79
Trimodal, Inc.	5,000	12-31-79
Price Paper Products	20,000	01-02-80
Evergreen	30,000	01-28-80
May Department Stores	10,000	01-28-80
Pappas Industries	5,000	01-29-80
Consolidated Foods	25,000	02-01-80
Spiegel, Inc Midwestern International Corp.	40,000	02-19-80

APPENDIX B
(Cont.)

General Mills	5,000	02-21-80
Italian Line	480,000	02-22-80
Pinto Trading Corp.	10,000	03-11-80
Waterman S.S. Corp.	30,000	03-17-80
Universal Convertors & Importers	5,000	03-27-80
American Export Group International Services	100,000	03-28-80
Columbus Line	5,000	04-15-80
Karlander Kangaroo Line	5,000	04-21-80
Pacific Australia Direct Line	5,000	04-21-80
Central Gulf Lines	8,000	04-24-80
Trader Navigation Co., Ltd. (Atlantraffik Express Serv.)	35,000	04-25-80
Independent Forwarding Service	1,500	05-05-80
Gelmart Industries, Inc.	15,000	05-07-80
SCOA International	10,000	05-14-80
Phoenix Container Liners (1976) Ltd.	35,000	05-16-80
Wilcox	5,000	05-29-80
Spanish Lines	35,000	06-02-80
International Industries Disc., Inc.	5,000	06-03-80
SCM Corp.	75,000	06-04-80
International Cargo	15,000	06-10-80
Aladdin Industries, Inc.	7,000	06-26-80
Ala-Mar (Unlic. F.F.)	30,000	07-22-80
Black & Decker	10,000	07-28-80
Ybarra-Beatrice	35,000	07-31-80

APPENDIX C

BUREAU OF ENFORCEMENT
FIELD INVESTIGATIONS
FISCAL YEAR 1980

INVESTIGATIONS	TOTAL	MALPRACTICES	TARIFF VIOLATIONS	FORWARDER AND OTHER MATTERS
Pending September 30, 1979	733	322	125	286
Opened FY 1980	1057	404	101	552
Completed FY 1980	1002	317	121	564
Pending September 30, 1980	788	409	105	274

APPENDIX D

Statistical Abstract of Filings

SECTION 15 AGREEMENTS FILED (including modifications):

Foreign Commerce	184
Terminals	125
Labor-Management	8

SECTION 14b DUAL RATE CONTRACTS (including modifications): 1

REPORTS REVIEW:

Shippers' Requests and Complaints	289
Minutes of Meetings	2865
Self-policing of Conference and Rate Agreements	193
Pooling Statements	48
Operating Reports	42

APPROVED AGREEMENTS ON FILE AS OF SEPTEMBER 30, 1980:

Conference	72
Rate	37
Joint Conference	10
Pooling	23
Joint Service	28
Sailing	33
Transshipment	123
Cooperative Working, Agency, and Container Interchange.	120
Dual Rate Contract Systems	60
Non-exclusive Transshipment	625
Domestic Offshore	12
Terminals	560
Labor-Management Approvals and Exemptions	210

APPENDIX D
(Cont.)

FOREIGN TARIFF FILINGS
FISCAL YEAR 1980

Total Number of Tariff Filings Received		346,240
Total Number of Tariff Filings Rejected		7,871
Total Number of Tariffs on Hand 10/1/79		3,043
Total Number of Tariffs on Hand 10/1/80		3,507
Special Permission Applications Received During Fiscal Year 1980		163
Granted	121	
Denied	27	
Withdrawn	15	

DOMESTIC TARIFF FILINGS
FISCAL YEAR 1980

Tariffs on File as of September 30, 1980		
Domestic Offshore		236
Terminals		569
Tariff Pages Filed During Fiscal Year:		
Domestic Offshore		18,871
Terminals		7,120
Special Permission Applications:		224
Granted	192	
Denied	22	
Withdrawn	6	
Pending	4	
Investigation and Suspension Memoranda:		22
Completed	22	
Pending	0	

APPENDIX E

STATEMENT OF APPROPRIATION AND OBLIGATION FOR THE
FISCAL YEAR ENDED SEPTEMBER 30, 1980

PROPRIATION:	
Public Law 96-68, 96th Congress, approved September 24, 1979: 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; Provided, that not to exceed $1,500 shall be available for official reception and representation expenses.....	$11,175,000
Public Law 96-304, 96th Congress, approved July 8, 1980; Supplemental Appropriation Act, 1980 to cover increased pay cost.	125,000
Appropriation availability.....	11,300,000
LIGATIONS AND UNOBLIGATED BALANCE:	
Net obligations for salaries and expenses for the fiscal year ended September 30, 1980.....	11,092,745
Unobligated balance withdrawn by Treasury	$ 207,255

ATEMENT OF RECEIPTS: DEPOSITED WITH THE GENERAL FUND OF THE TREASURY FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1980:

Publications and reproductions.....	23,297
Water Pollution application and certificate fees.....	268,356
Fines and penalties.....	3,848,140
Miscellaneous.....	16,144
Total general fund receipts.....	$ 4,155,937