

FEDERAL MARITIME COMMISSION



21st Annual Report



TWENTY-FIRST ANNUAL REPORT
OF THE
FEDERAL MARITIME COMMISSION
TO THE
CONGRESS OF THE UNITED STATES
FOR FISCAL YEAR ENDED
SEPTEMBER 30, 1982



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Federal Maritime Commission
Washington, D. C. 20323

Office of the Chairman

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

Pursuant to section 103(e)(2) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the twenty-first annual report of the activities of the Federal Maritime Commission for fiscal year 1982.

Sincerely,

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

Alan Green, Jr.
Chairman

MEMBERS OF THE COMMISSION



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



Thomas F. Moakley
Vice Chairman
Appointed 1977
Term Expires 1983
(D) Massachusetts



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



James J. Carey
Commissioner
Appointed 1981
Term Expires 1985
(R) Illinois

Note: Commissioner Richard J. Daschbach, whose term expired June 30, 1982, resigned from the Commission on October 25, 1982. The President has not yet nominated anyone to fill the existing vacancy on the Commission.

THE COMMISSIONHistory

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

Function

The Federal Maritime Commission is responsible for the administration of varying portions of a number of Federal statutes. Chief among these are the Shipping Act of 1916, the Intercoastal Shipping Act of 1933, the Merchant Marine Acts of 1920 and 1936, and the Federal Water Pollution Control Act Amendments of 1972. In recent

years, several other acts or amendments have been passed by the Congress and signed into law that modify or expand on these basic statutory responsibilities.

The Commission's principal regulatory responsibilities are as follows:

- Regulation of services, practices, and agreements of U.S.- and foreign-flag common carriers by water and other persons engaged in U.S. foreign commerce.

- Receipt and review of tariff filings, but not the regulation of rates, by U.S.- and foreign-flag common carriers by water engaged in the U.S. foreign commerce.

- Protection of U.S. commercial and policy interests, U.S. shippers, and carriers engaged in the foreign commerce of the United States from the rules and regulations of foreign governments and/or practices of foreign-flag carriers that have an adverse effect on the commerce of the United States.

- Regulation of rates, charges, classifications, tariffs, and practices of U.S. ocean common carriers in the domestic offshore trades of the U.S.

- Licensing of independent ocean freight forwarders.

- Issuance of passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.

- Issuance of certificates to vessel owners, operators or charterers showing financial responsibility for cleanup costs resulting from spills of oil or other hazardous substances discharged from vessels into the navigable waters of the United States.

- Investigations of discriminatory rates, charges, classifications, and practices of U.S.- and foreign-flag ocean common carriers (in both U.S. foreign and domestic offshore commerce), terminal operators, and freight forwarders.

- Rendering decisions, issuing orders, and adopting rules and regulations governing common carriers by water in U.S. foreign and domestic offshore commerce, terminal operators, freight forwarders, and other persons subject to shipping statutes of the United States.

The Commission's primary responsibility and most visible activity involves the administration of section 15 of the Shipping Act, 1916.

Section 15 grants groups of ocean common carriers (conferences) exemption from U.S. antitrust laws (as contained in the Sherman and Clayton Acts) once Commission approval of conference agreements has been obtained. The FMC reviews and evaluates all proposed agreements to ensure that they do not exploit the grant of antitrust immunity, and to prevent abuses associated with concerted rate-making and other potentially anticompetitive activities.

Beyond the Commission's section 15 responsibility to regulate the activities of competing ocean carriers in the commerce of the United States, the FMC is also concerned with the treatment of the shipping public by ocean carriers and conferences. The Shipping Act, 1916 prohibits carriers and conferences from discriminating or using otherwise preferential practices in dealing with shippers or other parties engaged in U.S. oceanborne commerce. The law also requires carriers and conferences to make their rates and practices (tariffs) publicly available, and that the applicable rates and charges indicated in the tariff are actually charged for services rendered. Currently, only those rates on file with the Commission can be charged. The Commission has limited authority to set these rates or to disapprove tariffs lawfully filed in the U.S. foreign commerce. The FMC does not possess the authority to limit entry into the oceanborne commerce of the United States.

Generally, the Commission is responsible for ensuring equity and

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

Organization

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

Five offices are directly responsible to the Chairman — Administrative Law Judges, the General Counsel, the Secretary, Regulatory Policy and Planning, and the Managing Director. Four operating bureaus report to the Managing Director and are responsible for the Commission's regulatory programs. Several administrative offices report to the Managing Director as well. Appendix A gives a graphic representation of the Commission's organization.

In fiscal year 1982, the Federal Maritime Commission was authorized a total of 306 permanent positions and had a total appropriation of \$11,498,000. The majority of the Commission's

personnel are located in Washington, D.C., with field offices in New York, Chicago, San Francisco, Los Angeles, New Orleans, Miami, and San Juan, Puerto Rico.

II
THE YEAR IN REVIEW

During fiscal year 1982, the Federal Maritime Commission was actively involved in critically assessing different aspects of its role as an independent regulatory agency and as a unit of a complex Federal governmental structure. Ever cognizant of the need to reduce the burden of government on the American taxpayer and the burden of regulation on the maritime industry of this country, the Commission undertook several activities to improve the efficiency and performance of the agency and to remove regulatory burdens while remaining consistent with the agency's statutory responsibilities.

One way of reducing regulatory burdens is to change the law to be more responsive to the commercial needs of the maritime industry. During the year, the Commission supported legislation to reform the maritime regulatory framework in place since 1916. In a letter to the Congress in February of 1982, the Commission suggested elimination of the time-consuming, speculative and wasteful review of commercial section 15 agreements prior to their implementation. This provision has been incorporated into the legislation and, along with clarification of the antitrust immunity and conference intermodal rate-setting authority questions, form the cornerstones of this regulatory relief measure.

The Commission has also made good use of the exemption authority granted to the agency in section 35 of the Shipping Act, 1916. During the year, the Commission took final action to exempt numerous categories of non-anticompetitive agreements from the filing and approval requirements of section 15 of the 1916 Act. Such actions include excluding routine rate actions from the reporting requirements of G.O. 18, and exempting certain agency agreements; exclusive and non-exclusive equipment interchange agreements; agreements which provide for the collection, compilation and exchange of credit experience information; and agreements involving routine administrative or housekeeping matters. In addition, the Commission initiated proceedings to modify the Uniform Merchants Contract to provide for a third rebuttable presumption, and adopted a proposed rule to exempt non-exclusive transshipment agreements from the section 15 filing requirements that will go into effect early in fiscal year 1983.

The Commission also instituted an inquiry into the regulation of the domestic offshore trades in March of 1982. This Notice of Inquiry (Docket No. 82-14) was issued in order to seek public comments on the effectiveness of regulation in the domestic offshore trades under the Intercoastal Shipping Act, 1933. Further, the Commission sought public comment on the regulatory and legislative changes necessary to improve the system. The response was indeed gratifying and, at the end of the fiscal year, the Commission was in the process of reviewing

the thorough and diverse views expressed by 23 interested parties.

In the past, the Commission has encountered considerable delay in the approval process for section 15 agreements. In order to improve this chronically poor performance, Chairman Green established the Agreements Processing Review Board in August of 1982. The Board is composed of high level Commission personnel whose purpose is to establish priorities and to provide review of each agreement at a very early stage in the process in order to clarify any legal or policy issues that may be present in the agreement itself. Even in the waning months of the fiscal year, the Board was successful in significantly reducing the inventory of agreements, and streamlining and improving the procedures for consideration of agreements by the Commission. Significant improvements are expected as fiscal year 1983 progresses.

The Commission also initiated a proposal to restructure the existing user fee schedule to more accurately reflect the true cost to the agency for services rendered to the public. A proposal to add new user fees where none existed previously was also initiated. These new fee schedules are expected to become effective early in fiscal year 1983.

In the early part of 1982, President Reagan, through the Cabinet Council on Commerce and Trade, created an interagency International Shipping Policy Group. Chaired by the Department of Transportation and

Co-Chaired by the Department of State, the membership of the group includes the Departments of Commerce and Justice, the United States Trade Representative and the Maritime Administration. The Federal Maritime Commission has provided technical assistance to the group as it formulates U.S. policy toward cargo sharing and the UNCTAD Code. Given the growing list of countries that are resorting to non-market cargo allocation schemes in liner shipping and the impending coming into force of the UNCTAD Code, it is imperative that the United States have a well-conceived policy in this area in order to protect fair and competitive access to the foreign commerce of the United States.

Despite a reduced appropriation and a declining personnel ceiling, the Commission realized significant gains in its productivity during fiscal year 1982. The Commission began 408 formal proceedings and completed 495, logging an increase of 15 percent and 20 percent, respectively, over the previous year. Since fiscal year 1976, formal proceedings initiated and completed have risen over 215 percent. The Office of Administrative Law Judges reported 191 case completions, a 31 percent increase over fiscal year 1981. The Bureau of Agreements reported a 13 percent increase in the number of agreements processed, while the Bureau of Tariffs recorded the highest volume of foreign tariff pages in FMC history (515,000), and a 28 percent increase over the previous fiscal year. New and supplemental applications for vessel

certification increased by 11 percent, while renewal applications jumped from 1,578 in 1981 to 10,600 in fiscal year 1982. The Commission settled 81 malpractice cases (up 26 percent) which resulted in \$2,295,353.00 in civil monetary penalties, an increase of 126 percent over the previous fiscal year. In addition, the Commission awarded \$4,399,503.00 to shippers for freight overcharges by carriers which were waived or refunded under section 18(b)(3) of the Shipping Act, 1916. This amount represents an increase of \$2,415,636.00 over reparations awarded during fiscal year 1981. Finally, the Commission returned to the General Fund of the Treasury almost 26 percent of its total fiscal year 1982 appropriation through fines and penalties collected, charges for Commission publications, and existing filing and service fees.

The substantial increases in efficiency and productivity represented by these various statistics are a tribute to the employees of the Federal Maritime Commission. Their willingness to respond positively to Federal budgetary constraints and to embrace new ways of carrying out rather constant responsibilities remains the greatest asset of the Commission. In fiscal year 1982, the people of the FMC certainly made a difference.

COMMISSION DECISIONS

Office of the Secretary

The Office of the Secretary is responsible for preparing a regular weekly agenda of matters subject to consideration by the Commission and recording subsequent action taken by the Commission on these items; receiving and processing formal complaints involving violations of the shipping statutes and other applicable laws; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving and responding to subpoenas directed to Commission personnel and/or records; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; authenticating instruments and documents of the Commission; issuing copies of initial decisions of the Administrative Law Judges, reports of the Commission, agency publications and miscellaneous documents submitted in proceedings before the Commission; and compiling and publishing bound volumes of Commission decisions. The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, the ongoing evaluation of the efficiency of the Commission's organizational structure, and implementation of legislative changes to the shipping statutes.

During fiscal year 1982, the Office of the Secretary published Volume 22 of the Commission's decisions, revised the listing of systems of records under the Privacy Act, and revised procedures for filing of section 15 agreements.

1. Informal Dockets

The Informal Docket Activity is a component of the Office of the Secretary and is responsible for the initial adjudication of claims filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the United States. These claims must be predicated upon violations of the Shipping Act, 1916, or the Interoceanic Shipping Act, 1933, for which reparation of less than \$5,000 is sought. The vast number of claims received to date under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers in violation of section 18(b)(3) of the Shipping Act, 1916.

The Informal Docket Activity received 168 new cases and issued orders or decisions disposing of 183 informal docket claims.

2. Final Decisions of the Commission

Additionally, the Office of the Secretary assisted in the formal proceeding program of the Commission. During fiscal year 1982, the Commission heard oral argument in two formal proceedings and issued 30

decisions involving formal proceedings. Twenty-nine formal proceedings were discontinued or dismissed without decision (including determinations not to review Administrative Law Judge orders terminating proceedings). Twenty-one Administrative Law Judge initial decisions in formal proceedings became administratively final upon passage of the time for the Commission to determine whether to review. Three proceedings were remanded to the Office of Administrative Law Judges.

The Commission also concluded 121 special docket applications and 276 informal dockets involving claims against carriers. These procedures resulted in refunds or waivers of freight charges to shippers in the amount of \$4,399,503.32.

In rulemaking proceedings the Commission issued 14 final rules.

3. Significant Formal Proceedings

Docket No. 81-51 - Time Limit for Filing of Overcharge Claims, 21 S.R.R. 1047 (August 5, 1982).

The Commission issued a final rule which amended its tariff filing requirements to prohibit carriers from imposing certain time limits on shipper's overcharge claims. The final rule proscribes tariff provisions which require overcharge claims to be filed less than two years after the cause of action has occurred. The two-year period is intended to coincide with the period prescribed in section 22 of the Shipping Act, 1916. The purpose of the rule is to allow the private sector greater opportunity to resolve these claims among themselves.

Docket No. 81-47 - Lease Agreement No. T-3753 Between Maryland Port Administration and Atlantic & Gulf Stevedores, Inc., 21 S.R.R. 306 (December 2, 1981).

The Commission declined to issue a declaratory order regarding the interpretation of a term in a lease agreement where no Shipping Act issues were presented; no special Commission expertise in resolving the dispute was necessary; the matter was already pending before a court of general jurisdiction; and the exercise of Commission jurisdiction would be a potential source of administrative delay.

Docket No. 81-43 - Independent Freight Forwarder License No. 1483, Tokyo Express Co., Inc. and Kozo and Kathleen Kimura d/b/a Cosmos Trading Company, 21 S.R.R. 1282 (September 17, 1982).

The Commission approved a settlement agreement which disposed of certain alleged violations of the Shipping Act, 1916 and which provided for a civil penalty that had been increased by the Administrative Law Judge. The Commission determined that while settlement agreements are generally presumed to be fair, correct and valid, Administrative Law Judges should not be compelled to accept settlement offers against their better judgement. The Commission therefore approved the Presiding Officer's \$5,000 increase of the civil penalty.

Docket No. 81-40 - Exemption of Exclusive Equipment Interchange Agreements from the Filing and Approval Requirements of Section 15 of the Shipping Act, 1916, 21 S.R.R. 831 (May 12, 1982).

This proceeding exempted from the filing and approval requirements of section 15 of the Shipping Act, 1916, exclusive equipment interchange agreements covering the exchange of empty containers, chassis, LASH/SEABEE barges and related equipment between two or more persons subject to the Act.

Docket No. 81-36 - Procedures for Environmental Assessment, 21 S.R.R. 405 (January 20, 1982).

This rulemaking amended existing environmental regulations by clarifying certain categorical exclusions and adding several new exclusions. These changes were made based upon the Commission's experience with the rules and will result in the avoidance of unnecessary environmental assessments for actions having no potential for significantly affecting the environment.

Docket Nos. 81-30 and 81-31 - The Boston Shipping Association, Inc. v. New York Shipping Association, Inc., 21 S.R.R. 955 (June 15, 1982).

These consolidated complaint proceedings were brought pursuant to section 22, Shipping Act, 1916 and the Maritime Labor Agreements Act of 1980. The Commission found that the complainant had failed to

demonstrate that Rule 10 of Certain Master Collective Bargaining Agreements was unlawful. The Rule requires container royalty assessments to be collected at the first port where the containers are handled by longshore labor.

Docket No. 81-26 - Agreement No. 10247-3, Australian Loading Expense Agreement, 21 S.R.R. 372 (December 23, 1981).

The Commission had instituted this proceeding to determine whether Agreement No. 10247-3 was one over which it had jurisdiction. Certain statements made by parties to this agreement indicated that they may have given their assent to the agreement solely to avoid governmental exclusion from the trade. The Commission concluded that the agreement was not the result of governmental dictate or fiat and was therefore subject to the filing and approval requirements of section 15 of the Shipping Act, 1916.

Docket No. 81-19 - Eli Lilly S.A. Puerto Rico Branch v. Mitsui O.S.K. Lines, Ltd., 21 S.R.R. 410 (January 12, 1982).

The Commission found that a complainant may, after initiating a complaint proceeding, obtain an assignment of a claim from an affiliate without being barred by the two-year statute of limitations in section 22 of the Shipping Act, 1916. It was determined that in obtaining a valid claim assignment, a complainant was adducing proof of injury and thus perfecting its claim in a manner not subject to the statute of limitations.

Docket No. 81-15 - United States-European Trade Carriers Cooperative Study, Agreement No. 10318, 21 S.R.R. 351 (December 17, 1981).

The Commission approved a Cooperative Study Agreement among carriers serving European trades, which had been amended to satisfy the objections of the Department of Justice, on the ground that the opponents to approval had not demonstrated that the agreement contravenes section 15.

Docket No. 81-11 - "50 Mile Container Rules" Implementation by Ocean Common Carriers Serving U.S. Atlantic and Gulf Ports - Possible Violations of the Shipping Act, 1916, 21 S.R.R. 544 (February 5, 1982).

The Commission issued an interim Report and Order which held that the implementation of the "50 mile container rules" is subject to the Commission's jurisdiction under the Maritime Labor Agreements Act of 1980 (P.L. 96-325) and referred the question of the rule's lawfulness under the shipping statutes to an Administrative Law Judge for an initial decision.

Docket No. 81-8 - Rohm & Haas Company v. Italian Line, 21 S.R.R. 212 (November 13, 1981).

The Commission allowed complainant to obtain and file an assignment for freight overcharges paid by its wholly-owned foreign subsidiary after the statute of limitations had expired.

Docket No. 81-1 - Universal Transcontinental Corp. and J.S. Stess Co., Division of Universal Transcontinental Corporation - Independent Ocean Freight Forwarder License No. 344-R, 21 S.R.R. 805 (April 16, 1982)

The Commission approved a settlement agreement which disposed of certain alleged violations of the Shipping Act, 1916 and which provided for a civil penalty. The Commission also found that Universal's shipper-connection did not preclude continued licensing given the amendment effected by P.L. 97-35 which removed such connections as a bar to licensing.

Docket No. 86-77 - Failure of Vessel Operating Common Carriers in the Foreign Commerce of the United States to Comply With the Certification Filing Requirements of Section 21(b) of the Shipping Act, 1916, 21 S.R.R. 706 (March 10, 1982).

The Commission took a variety of actions against common carriers by water who had failed to comply with the anti-rebating certification required by section 21(a) of the Shipping Act, 1916. Tariffs of several carriers not actively offering a common carrier service were cancelled. Carriers in technical violation of section 21 were informed of the defects in their previously submitted certifications and given an opportunity to rectify them.

Docket No. 80-70 - Status of Bulk Commodities With Respect to the Tariff Filing Requirements of Section 18(b)(1) of the Shipping Act, 1916, 21 S.R.R. 595 (March 8, 1982).

The Commission issued an interpretative rule which provides that bulk-type cargo, loaded in containers, trailers, rail cars, or similar types of intermodal equipment (with the exception of LASH or SEABEE barges) moving in the foreign commerce of the United States is subject to the tariff filing requirements of the Shipping Act, 1916. This interpretation was based on a finding that such cargo is loaded and carried subject to mark or count. For the purposes of this rule, "bulk cargo" was defined as those commodities which are in a loose, unpackaged form and have homogeneous characteristics.

Docket No. 80-54 - Time/Volume Rate Contracts - Tariff Filing Regulations Applicable to Carriers and Conferences in the Foreign Commerce of the United States, 21 S.R.R. 1020 (July 2, 1982).

This rulemaking prescribed uniform regulations for the use of time/volume rates (i.e., rates conditioned upon the shipment of a specific or minimum quantity of cargo over a set period of time). Such rates may be offered by common carriers by water or conferences if they meet stated conditions including, most importantly, that time/volume rates and related contracts be published in tariffs on file

with the Commission and be made available to all shippers or consignees under the same terms and conditions.

Docket No. 80-50 - Certified Corporation and Seaway Distribution Corporation, Possible Violations of section 16, Initial Paragraph, 21 S.R.R. 468 (January 21, 1982).

The Commission assessed civil penalties against Seaway Distribution Corporation for stipulated violations of section 16, initial paragraph of the Shipping Act, 1916. The Commission found that the violations occurred upon the payment of ocean freight at less than the applicable rates and charges.

Docket No. 80-45 - Agreement Nos. 10386, As Amended and 10387, As Amended - Cargo Revenue Pooling/Equal Access Agreements in the United States/Argentine Trades, 21 S.R.R. 513 (February 16, 1982).

The Commission approved, pursuant to section 15, cargo revenue pooling agreements in the northbound Argentine/United States trade. The Commission found that these agreements are the direct result of a government to government arrangement, and as such should be presumed to be in the public interest.

Docket No. 79-68 - Military Sealift Command, Department of the Navy v. Matson Navigation Company, 21 S.R.R. 459 (January 26, 1982).

The Commission found that claims for reparation, arising from a

general rate increase imposed by a domestic offshore carrier, accrue from the date the Commission issues a decision finding the rate increase unreasonable. The Commission also found that its decision was res judicata as to lawfulness of the rate increases, although the carrier had available to it certain equitable defenses which could defeat the reparation claim.

Docket No. 79-59 - Stute International, Inc. - Independent Ocean Freight Forwarder Application, 21 S.R.R. 927 (June 9, 1982).

Subsequent to the entry of an order denying Stute's application for a license as a freight forwarder because of a failure to meet the standard of independence, the statutory definition of an independent ocean freight forwarder was amended by Congress. On reopening, the Commission determined that, although Stute was connected through a holding company to both a shipper and consignee, this connection did not preclude licensing as a freight forwarder under the new statutory scheme.

Docket No. 79-45 - Louis Dreyfus Corp. et al. v. Plaquemines Port, Harbor and Terminal District, 21 S.R.R. 1072 (July 30, 1982).

The Commission found that a local jurisdiction, which provides essential services in cargo handling transactions, controls access to private terminal facilities and assesses selective cargo transfer fees for

the services it provides, is an "other person subject to the Act" even though it does not own or operate any public docks, wharves or warehouses serving common carriers. This confers Commission jurisdiction over the Port and subjects the Port's fees to scrutiny under the substantive provisions of the Shipping Act. The fees were found to violate sections 16 and 17 of the Act.

Docket No. 79-9 - Continental Grain Company v. Prudential Lines, Inc., 21 S.R.R. 1172 (August 20, 1982).

The Commission found Continental Grain Company to be subject to regulation under the Shipping Act, 1916 for its operation of the Norfolk & Western Elevator . However, Continental's refusal to permit the loading of grain on Prudential LASH barges pursuant to a restrictive clause contained in a contract for the sale of grain was found to be outside the scope of Commission jurisdiction.

4. Future Activities

During fiscal year 1983, the Commission, through the Office of the Secretary, anticipates revising the procedures for handling requests for "business confidential" information under the Freedom of Information Act; developing procedures to implement the Equal Access to Justice Act; compiling Volume 23 of the Commission's decisions; review and revision of regulations implementing the Freedom of Information, Privacy, and Government in the Sunshine Acts; revision of rules of

procedure caused by legislative changes; and development of an integrated, agency-wide reports on formal proceedings, and informal inquiries and complaints.

Adjudicatory Proceedings Before Administrative Law Judges

Administrative Law Judges conduct hearings and render decisions of adjudicatory proceedings held after receipt of a complaint or instituted by the Commission itself. The Commission has six Administrative Law Judges under the direction of a Chief Judge. Proceedings which come before the Administrative Law Judges include the approvability of section 15 agreements, adjudication of discriminatory practices between various parties subject to the Shipping Act, adjudication of shipper complaints under section 18(b)(3) of the Act, and domestic rate cases.

Administrative Law Judges have the authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken whenever the ends of justice would be served thereby; regulate the course of the hearing; hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests or similar matters; make decisions or recommend decisions; and take any other action authorized by agency rule consistent with the Administrative Procedure Act.

At the beginning of fiscal year 1982, 99 proceedings were pending before Administrative Law Judges. During the year, 181 cases were added, which included 3 cases reopened and remanded for further proceedings. The judges held 25 prehearing conferences, conducted hearings in 13 cases, and issued 32 initial decisions in formal proceedings, and 126 initial decisions in special docket applications.

Cases otherwise disposed of involved 32 formal proceedings and 1 informal proceeding.

At the close of fiscal year 1982, there were 89 pending proceedings, 11 of which were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

LEGISLATION AND LITIGATION

Office of the General Counsel

The Office of the General Counsel advises the Commission on legal issues and provides it with legal counsel on matters under consideration. The office reviews the legality of proposed Commission rules, renders formal and informal written opinions on pending adjudicatory matters,

and prepares draft decisions and orders for ratification pursuant to Commission action.

1. Litigation

The Office of the General Counsel is also responsible for defending and enforcing Commission orders in court. This outside litigation work largely consists of representing the Commission in petitions for review of its orders in the Circuit Court of Appeals. While most of these appeals are brought in the U.S. Court of Appeals for the District of Columbia, others are mainly in the U.S. Circuit Courts in New York, New Orleans, and San Francisco. Other litigation handled by the General Counsel's

office consists of orders for enforcement, injunction suits and assisting the Department of Justice in civil penalty actions and other prosecutions in the U.S. District Courts. The Commission or its employees are also represented by the General Counsel's office in proceedings occasionally brought in the State Courts and before other government agencies.

At the close of the 1982 fiscal year, 15 of the 30 appeal cases that were carried over or filed during the year were decided or terminated, either through settlement or by withdrawal of the review petitions. Of the 5 cases in District Court, three were resolved by decision or settlement. Three Supreme Court cases and one ICC proceeding

comprised the balance of the litigation work handled by the General Counsel's office during this fiscal period.

Significant cases that have been decided or are still awaiting resolution are as follows:

Council of North Atlantic Shipping Associations and New York Shipping Association v. FMC & USA, D.C. Cir. No. 78-1776, challenged the FMC's order in Docket Nos. 73-17 and 74-40 which found the tariff regulations of certain carriers in the United States/Puerto Rico trade that require container stuffing and stripping within 50 miles of mainland ports by International Longshoremen's Association labor, to be unlawful. The Court upheld the Commission's jurisdiction over the regulations (Council of North Atl. Shipping Ass'ns. v. FMC, 672 F.2d 171 (D.C. Cir. 1982)), but remanded the proceeding to the Commission. The Supreme Court denied certiorari. The case is now before the Commission for a determination of the lawfulness of the regulations, but it has been stayed pending resolution of a related FMC proceeding.

NYSA et al. v. FMC and USA, D.C. Cir. No. 82-1347. The New York Shipping Association challenged the Commission's order in Docket No. 81-11 which held that "50 mile container rules" are subject to the Commission's jurisdiction under the Maritime Labor Agreements Act of 1980 (P.L. 96-325).

Totem Ocean Trailer Express, Inc. v. FMC and USA, 9th Cir. No. 80-7721, challenged an FMC declaratory order which held that the FMC lacks jurisdiction over any portion of joint motor/water rates for transportation of agricultural commodities exempt from economic regulation by the Interstate Commerce Commission between points in the contiguous United States and points in the States of Alaska or Hawaii. The Court upheld the Commission's determination with respect to its lack of jurisdiction over such joint motor/water rates, but remanded the case to the Commission to determine if such rates could or should be prohibited. See Totem Ocean Trailer Exp. v. FMC, F.2d 563 (9th Cir. 1981).

Puerto Rico Maritime Shipping Authority v. F.M.C., 678 F.2d 327 (D.C. Cir.), cert. den., ___ U.S. ___ (Oct 12, 1982), affirmed the Commission's decision in Docket No. 81-10 which held that a general rate increase filed by the Puerto Rico Maritime Shipping Authority in the United States/Puerto Rico domestic offshore trade was unreasonably high, and that similar increases filed by other carriers were just and reasonable. The decision is the first to interpret the 1978 amendments to the Intercoastal Shipping Act, 1933, and does so in a manner favorable to the Commission's administration of that statute.

Ship's Overseas Services, Inc. v. Federal Maritime Commission, 670 F.2d 304 (D.C. Cir. 1981). The Commission found that SOS had acted as

a common carrier on the basis of transportation services provided on a single shipment as an extraordinary accommodation to a single shipper. The Court of Appeals held that the Commission's finding was not sufficient in itself to establish common carrier status under the Shipping Act.

Federal Maritime Commission & USA v. Mitsui O.S.K. Lines Ltd. , et al. and International Paper Co. v. Mitsui O.S.K., Lines, Ltd. et al., 21 S.R.R. 492 (9th Cir. 1982).

In an unpublished opinion, the Court of Appeals affirmed a district court order denying enforcement of the Commission's subpoenas on the ground that the district court's denial was not clearly erroneous.

USA v. FMC, D.C. Cir. No. 79-1299. This proceeding constituted an appeal by the Antitrust Division of the Department of Justice which, inter alia, challenged the FMC's authority to approve section 15 agreements among ocean carriers which permit them to establish rates for through intermodal service in connection with inland carriers regulated by the Interstate Commerce Commission. The Court affirmed the FMC's authority to approve such intermodal agreements, but later vacated its affirmance and, after re-argument en banc, dismissed the appeal as moot.

Refrigerated Express Lines, Pty. Ltd. v. FMC, D.D.C. No. 81-1892.

Refrigerated Express Lines, a breakbulk carrier, sought review of certain Commission orders denying its petition for issuance of rules under section 19 of the Merchant Marine Act of 1920. The carrier alleged that its exclusion from the Australian meat trade, by a decision of the Australian Meat & Livestock Corporation to designate only container carriers under Australian law, had created a condition unfavorable to U.S. foreign trade within the meaning of the 1920 Act and the Commission's rules at 46 C.F.R. Part 506. The District Court affirmed the Commission's orders, noting the broad discretion vested in the agency by section 19. REL has appealed the District Court's order to the U.S. Court of Appeals for the D.C. Circuit.

2. Legislation

During fiscal year 1982, the Commission was very much involved with legislation being considered by the U.S. Congress. The Commission provided substantive and technical assistance to the Congressional Committees and members of Congress in their deliberations over maritime regulatory matters.

a. Shipping Act Reform

During the second session of the 97th Congress, both the House Merchant Marine and Fisheries Committee and the Senate

Commerce Committee continued to work towards enactment of comprehensive shipping reform legislation, S. 1593 and H.R. 4374, introduced during the first session. The Commission's staff worked closely with these Committees providing both substantive and technical comments on provisions of the legislation.

On February 12, 1982, in comments on S. 1593 to Senate Subcommittee on Merchant Marine Chairman Gorton, the Commission suggested far-reaching changes in the standards and procedures for its handling of section 15 agreements. In the interests of reducing administrative delay in agreement processing and wasteful governmental speculation as to the operational effects of an agreement, the Commission sought to greatly curtail the pre-implementation review process for section 15 agreements. In order to provide the entire maritime industry with clearly defined and predictable standards by which section 15 agreements are judged, the Commission also sought greater clarity in the "prohibited acts" section of the legislation. The Commission's comments were accepted and incorporated into both the House and Senate bills.

On April 22, 1982, the Senate Commerce Committee approved and reported S. 1593 to the full Senate. As reported by the Committee, the measure continued the antitrust immunity available to agreements among carriers and others. The bill required that all agreements be filed with the FMC and provided that an agreement will become effective 45

days after filing unless rejected or suspended by the Commission. An agreement need not be affirmatively "approved" by the Commission prior to its becoming effective. The "preapproval review" now currently conducted by the Commission for every filed agreement would be eliminated. Instead, regulatory oversight by the Commission of activities pursuant to a filed agreement would focus on whether such activity violates the specifically enumerated "prohibited acts" contained in the bill. S. 1593, among other things, would give the Commission specific jurisdiction over conference intermodal agreements, mandate open conferences, authorize the formation of shippers' councils, require provision for a right of independent action within a conference which also has in effect loyalty contracts with shippers, maintain tariff filing requirements for carriers and conferences, and authorize the use of time/volume rates and service contracts.

The companion bill in the House, H.R. 4374, was considered and amended by both the House Merchant Marine and Fisheries Committee and the House Judiciary Committee before being sent to the full House for a vote. On September 15, 1982, H.R. 4374 passed the House by a margin of 350 to 33. Like S. 1593, H.R. 4374 would continue the requirement for the filing of agreements, delete the public interest standard for approval and provide that all agreements will become effective 45 days after filing unless rejected or suspended by the Commission. The bill would provide a statutory grant of antitrust immunity that is more limited than that contained in

S. 1593, and place specific competitive restraints on joint ventures and pooling agreements. H.R. 4374 continued the requirements for tariff filing, allowed shippers and carriers to enter into service contracts and time/volume rates, and provided for a certification procedure for shippers' councils. H.R. 4374 would also establish a Presidential Commission to study the prospects for deregulation of ocean shipping.

b. Hearings

The Chairman of the Federal Maritime Commission testified on September 21, 1981, in support of S. 1593.

On October 6, 1982, Chairman Green testified before the House Subcommittee on Mercant Marine expressing Commission support for Congressman Biaggi's bill, H.R. 4374. On behalf of the Commission, he also presented the Subcommittee members with a letter detailing technical and substantive recommendations for the legislation. In May of 1982, the Commission's General Counsel appeared before the Monopolies and Commercial Law Subcommittee of the House Judiciary Committee to articulate the views of the FMC concerning the relationship between the proposed reform of the Shipping Act, 1916 and the antitrust laws. Throughout the year, Commission staff have provided members of Congress and their staffs with technical assistance.

The General Counsel also testified before the Senate Commerce Committee's Subcommittee on Merchant Marine on May 24, 1982, with

respect to S. 2414 which would extend Commission jurisdiction over carriers offering through transportation service for cargo originating in or destined for the United States whether or not the cargo moved through a United States port or through a port in Canada or Mexico. The Commission offered support for measures which equalize regulatory responsibilities of ocean carriers offering through intermodal services to shippers of the United States.

c. The Export Trading Company Act
and Other Legislation

The Congress continued consideration of legislation that would reform administrative procedures governing agency rulemaking and adjudicatory proceedings. The bill in the Senate, S. 1080, passed that body on March 24, 1982, while the companion measure in the House, H.R. 746, had not been considered by the full House.

On October 9, 1982, P.L. 97-290, the Export Trading Company Act, was signed into law by President Reagan. Its purpose is to encourage the formation of export trading companies (ETC'S) by permitting financial institutions to invest in such companies. An ETC is expected to provide assistance to smaller companies in the development of export markets. Among the services that an ETC may provide are freight forwarding and transportation. Before an ETC may offer freight forwarding services, the company must satisfy the licensing requirements and

regulations contained in section 44 of the Shipping Act, 1916 and the Commission's rules. The Commission believes the Export Trading Company Act may have a significant positive impact on the maritime commerce of the United States.

STRATEGIC PLANNING, ECONOMIC ANALYSIS
AND INTERNATIONAL AFFAIRS

Given the international nature of ocean liner shipping, and the rapidly evolving economic and political environment in which trade among the nations of the world takes place, the Commission has found it necessary to increase its capabilities in the area of strategic planning and economic analysis, and to enhance its responsiveness to new developments and trends in the U.S. oceanborne commerce and the international liner shipping industry.

In September of 1980, the Commission created the office of Regulatory Policy and Planning. The office is responsible for the conduct of strategic planning, economic policy analysis, and research in the area of international affairs for the Commission. The office endeavors to ensure that the Commission is aware of the expected impact of its current decisions and that it anticipates future developments affecting ocean shipping and the environment of international trade. Office activities include analysis and forecasting of economic trends, legislative actions, and operational and structural

changes in the ocean liner industry. The office conducts a full range of international affairs activities, policy briefings, and ongoing economic research and analysis for the Commission in support of the Commission's regulatory role.

During fiscal year 1982, the office provided economic analysis and expert testimony for numerous section 15 agreements, rulemakings, and domestic offshore general rate increase requests that came before the Commission as formal, docketed proceedings. The office conducted special planning studies and briefings in several diverse areas that included long range planning to formulate strategies for the Commission's future under various scenarios for regulatory reform; the Commission's tariff filing system; the UNCTAD Code of Conduct for Liner Conferences; a published study of the U.S./Australasian liner trades; and the impact of cargo reservation laws and decrees of foreign governments on the U.S. maritime trades. The office, at the Chairman's direction, provided technical assistance in the ongoing deliberations of the interagency International Shipping Policy Group. This group has been charged with formulating U.S. policy toward cargo sharing and the UNCTAD Code and developing a strategy by which the policy is to be implemented. The responsibilities of the office also include analysis of current Commission policies to determine their impact on regulated industries and U.S. ocean commerce, and the coordination of Commission activities with those of other government programs.

Given the expected entry into force of the UNCTAD Code of Conduct for Liner Conferences in the near future and the increasingly widespread adoption of non-market cargo allocation schemes by the governments of other nations, the Commission anticipates a much greater involvement in international activities. Thus, the Commission will likely depend more heavily on the Office of Regulatory Policy and Planning to conduct the related policy research and provide the Commission with timely and accurate information.

III

SIGNIFICANT FMC ACTIVITIES AND THE YEAR'S HIGHLIGHTS

The Commission's statutory responsibilities are chiefly carried out through various bureaus within the agency. Under the direct control of the Office of the Managing Director, these bureaus are largely organized by statutory function. Section 15 agreement processing and analysis, tariff filing and enforcement, hearings and investigations, and vessel certification and licensing comprise the four main functional bureaus within the agency. Each bureau is comprised of several offices, and the entire Commission receives management and administrative support from other Commission offices. Appendix A indicates the Commission's organization during fiscal year 1982.

REGULATORY PROGRAMS

BUREAU OF AGREEMENTS

The Bureau of Agreements is responsible for analysis and review of all agreements filed under section 15 of the Shipping Act, 1916, and the evaluation of dual rate contract systems. In order to effectively assess

the transportation need to be served and the public benefit to be accomplished through such section 15 agreements, the bureau monitors the changing patterns of international shipping and trade, and analyzes conference activities, various operating reports and statements submitted by ocean carriers, and self-policing contracts. Agreement audits are performed in order to determine whether the benefits and objectives upon which Commission approval of the agreement was predicated are truly being achieved. When combined with knowledge of current trade conditions and trade forecasts these audits indicate if continued approval of an agreement is warranted. Given the rapidly changing international shipping environment, surveillance of Commission-approved section 15 agreements constitutes an increasingly important function of the Commission.

1. Processing

At the beginning of fiscal year 1982, there were 181 applications for section 15 approval on file with the Commission. During the year, 389 additional applications were received, resulting in a total of 570 applications available for processing. The Commission approved 224 section 15 new or modified agreements during the year. The overwhelming majority of Commission approvals were conditional, requiring that the parties to an agreement refile a modified agreement to meet specific conditions imposed by the Commission. In such cases, should the parties fail to meet the conditions, the approvals

would be null and void. Conditions are imposed by the Commission in order to protect the public interest or provide information required to maintain adequate surveillance over the activities of the parties contemplated in a section 15 agreement.

In addition to the agreements approved, 8 were disapproved during the year and 33 were withdrawn. Action was also completed during the year on 166 miscellaneous filings, including various petitions and agreements which were ultimately determined not to be subject to section 15 of the Shipping Act, 1916. Section 15 applications on hand at the close of the fiscal year numbered 139, representing a significant reduction from the number of agreements pending at the start of fiscal year 1982.

During the fiscal year, three significant actions were taken to be more responsive to the public by streamlining the agreements processing procedures and expediting the processing of agreements filed for approval with the Commission. First, an Agreements Processing Review Board was established to provide early legal and policy input in the agreements review process. This Board is composed of the Deputy Managing Director, the Deputy General Counsel, the Director of the Bureau of Agreements, and the Director of the Office of Regulatory Policy and Planning. The Board reviews each agreement at an early stage of processing and clarifies any legal or policy issues which may be

present. As a result of this review, the preparation of a staff recommendation, reflecting the views and previous policy decisions of the Commission, is commenced at an earlier stage than was previously possible and the entire review process expedited.

Secondly, the Commission issued a revised General Order 24 that prescribes improved procedures for the processing of agreements filed for approval pursuant to section 15 of the Shipping Act, 1916. This revised regulation provides notice to the public of the procedures for filing of agreement approval requests; filing of comments and protests to such agreements and responsive pleadings thereto; and the disposition of approval requests by the Commission.

Thirdly, the Commission issued public notice of the internal procedures governing the processing of agreements. These procedures establish internal responsibility and requirements for the processing of agreements submitted to the Commission for approval. These procedures impose strict deadlines on the staff for the completion of the analysis and processing functions.

2. Surveillance

The Shipping Act, 1916, confers upon the Commission the specific responsibility to cancel, disapprove or modify any agreement upon the finding, after notice and hearing, that the agreement does not conform to prescribed standards. Therefore, the Commission has in place

programs to ensure that adequate commercial information and trade intelligence is available to the Commission. These programs provide the Commission with sufficient information to take corrective action in any situation that is contrary to the public interest or otherwise unlawful.

Conferences and other rate agreement carrier groups are required to submit to the Commission minutes of their meetings covering all matters discussed, annual reports covering shippers' requests and complaints, and semiannual reports covering self-policing activities. In addition, the Commission generally imposes reporting requirements upon certain other types of section 15 agreements, such as discussion, chartering, sailing, pooling and joint service agreements. In the interest of uniform regulation, at the end of the fiscal year, efforts had been initiated to standardize reporting of this nature.

3. Program To Eliminate Inactive Agreements

An important activity of the Commission's staff is the maintenance of surveillance over the operations of carriers who are party to approved section 15 agreements. Such surveillance will often disclose that certain agreements are dormant and may no longer be necessary.

During fiscal year 1982, the Bureau of Agreements embarked on a program to review the 374 section 15 agreement files approved and on file with the Commission as of September 30, 1981. The review program was structured to determine which of the 374 agreements were active.

Active status was determined by evidence of recent tariff filings, advertised sailings, recent correspondence and/or the filing of reports or minutes of meetings held pursuant to an agreement. During the fiscal year, 74 agreements were determined to be inactive and were terminated. At the end of fiscal year 1982, 1207 section 15 agreements were on file and considered active. It is anticipated that early in fiscal year 1983, an additional 26 agreements will have been terminated pursuant to this program.

4. Types of Agreements

a. Marine Terminal and Shoreside Agreements

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

Act, 1916. In addition, the Commission maintains surveillance over the activities of parties to terminal agreements.

During fiscal year 1982, the Bureau of Agreements processed to completion 173 agreements and agreement modifications providing for the use and provision of port and terminal services and facilities.

An unusually high number of agreements was filed during the fiscal year between ports and terminal operators which provided for the financing of new and improved terminal facilities (mostly bulk) with tax-exempt revenue bonds. This method of financing capital improvements in lieu of general obligation bonds or other tax based revenue sources reflects a growing trend among U.S. port administrators. Because of the volatility of the bond market and the common requirement that definitive Commission action precede finalization of the financial transaction, the Commission adopted special procedures for expediting action on these agreements.

Another type of agreement showing increased activity during the fiscal year is the revenue sharing/preferential use agreement used by ports to secure long-term, regular service commitments from ocean carriers. Such agreements are most commonly used in conjunction with container carriers. Their growing use attests to the high degree of competitiveness among ports which have made or are making substantial investments in container and intermodal facilities. The greatest activity in this respect has occurred on the U.S. West Coast.

A major intercoastal discussion agreement among terminal operators on the Atlantic and Gulf Coasts (T-3856) was preliminarily acted upon during the fiscal year and was under investigation at the close of the year relative to that portion of the agreement authorizing the discussion of rates and charges. The agreement was approved by the Commission early in the year on the condition that the rate discussion authority be removed because it had not met applicable public interest standards. Upon petition, the parties were granted a formal hearing.

The Commission is also charged with handling a certain limited number of labor-management agreements pursuant to the Maritime Labor Agreements Act of 1980 (P.L. 96-325, 94 Stat. 1021). The Act provides that such agreements, to the extent they provide for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized, shall be deemed approved upon filing with the Commission. During fiscal year 1982, only 2 labor-management agreements of this type were filed.

b. Pooling and Equal Access Agreements

Pooling agreements apportion cargo and/or revenues among carriers. In some cases, increased efficiency and economy can result from the pooling of vessels, equipment and other resources. Also, these

agreements often set forth sailing requirements and other features relating to overall service efficiency. Equal access agreements formalize national-flag carrier 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 1982, there were nine pooling agreements, three equal access agreements, and seven combined pooling/equal access agreements approved and in effect. The preponderance of these agreements apply to the U.S./South American trades. Fifteen such agreements affect the U.S. ocean commerce with Argentina, Brazil, Chile, Colombia and Peru. The four remaining agreements, which are strictly commercial pooling arrangements, involve several trade areas: the Israel/U.S. North Atlantic Pool (No. 9233); the U.S. Pacific/Japan Pool (No. 10116); the U.S. Atlantic/Japan Pool (No. 10274); and the Italy/U.S. North Atlantic (WINAC) Pool (No. 10286).

During fiscal year 1982, the Commission took several substantive actions in the area of pooling agreements. It conditionally approved a four-year extension of the Italy/U.S. North Atlantic (WINAC) Pool (No. 10286), and approved a Discussion and Equal Access Agreement (No. 10425) in the U.S./Chile trade.

The Commission also approved the Argentina/U.S. Gulf (No. 10382) and the Argentina/U.S. Atlantic (No. 10386) pooling agreements in its Report and Order in Docket No. 80-45. These agreements are now scheduled to expire December 31, 1983. The Calcutta/Bangladesh Pool (No. 10333), which was before the Commission in Docket No. 81-37 to determine its continued approvability, was terminated by the parties, and pursuant to their request, the proceeding was discontinued.

c. Space Charter Agreements

Space charter agreements provide for chartering (or cross-chartering) of vessel space or container slots between or among ocean carriers. The purpose of these agreements is to ensure carrier access to vessel accommodations beyond that which would otherwise be available. There were fifteen active space charter agreements in effect at the end of fiscal year 1982. Nine space charter arrangements involve the trade between the U.S. and the Far East. The remaining six agreements involve the trades between the U.S. and the Caribbean, the Mediterranean, Europe and the Ivory Coast.

During fiscal year 1982, final approval was granted to the American-Flag Charter Agreement (No. 10420) among five U.S.-flag carriers. The agreement provides for space-available cross-chartering among the parties that, together, operate 64 container, combination breakbulk/container, PO/RO, breakbulk and LASH vessels in the

U.S./Far East trades. This agreement was an outgrowth of the U.S.-Flag Far East Discussion Agreement (No. 10050), and should increase the efficiency of available services while maintaining a sufficiently competitive climate in a trade exhibiting seriously destabilizing conditions. Final approval was also granted to the U.S./East Asia Space Charter Agreement (No. 10422) involving three foreign-flag carriers. The agreement encompasses the operations of a total of eighteen container vessels in these trades. A space charter agreement in the trade from the Ivory Coast to the U.S. Gulf (No. 10433) was also approved.

d. Agreements Covering Intermodal Movements

The development of intermodalism continued to play a significant role in marine transport during fiscal year 1982. The Commission's criteria for approval of conference intermodal rate-making authority as first articulated in American West African Conference (Agreement No. 7680-39), 20 S.R.R. 1196 (1981) and Japan/Korea Atlantic & Gulf Conference (Agreement No. 3103-67), 20 S.P.R. 1173 (1981) were refined in fiscal year 1981 in three separate orders disapproving Agreements Nos. 6200-20, 9988-8 and 9522-44. These Commission orders indicated the types of factual demonstrations needed to justify approval of conference intermodal through-rate setting authority. The Commission has clearly indicated its full support for commercially viable intermodal services. At the same time, the Commission made it abundantly clear

that no rate group would be granted such authority unless there was a clear manifestation that the public interest would be best served by allowing concerted activity as opposed to leaving the development of intermodal services to the individual carriers. During fiscal year 1982, the Commission, using the guidelines laid down in the 6200-20 Order, approved intermodal authority in two separate agreements: the Philippines North America Conference; and the Trans-Pacific Freight Conference (Hong Kong) Independent Lines Rate Agreement.

At the close of fiscal year 1982 there were 43 Conference/Rate Agreements having Commission approved authority to offer through intermodal services -- thirty-one conference agreements and 12 rate agreements. Out of the total of forty-three, 11 had inland authority both in the United States and foreign countries, five had inland authority limited to the United States and 27 had inland authority limited to overseas. The portion of our trade and commerce moving under through intermodal services has reached substantial proportions and indications are that it will continue to increase in the future as the technology progresses.

e. Conference and Ratemaking Agreements

Conference and ratemaking agreements provide for the collective discussion, agreement and establishment of ocean freight rates and practices by groups of ocean carriers. Such agreements are limited to a

geographic area or trade route. The basic distinction between "conference" and "rate" agreements is that "conference" agreements are usually a major or dominant influence on the rates within their trade, whereas "rate" agreements are typically of a lesser influence. Conference agreements are generally characterized by comparatively large numbers of member carriers, complex interrelationships, stringent collective ratemaking procedures, and limited or nonexistent opportunity for independent action by individual members. Rate agreements, on the other hand, are typically comprised of a small number of members (frequently only 2), have simple organizational structures, utilize comparatively democratic ratemaking procedures and provide very liberal opportunities for individual activities (i.e., independent action).

During the year, the Commission concluded the processing of 116 conference and rate agreements or amendments to such agreements: 82 agreements/amendments were ultimately approved; 3 were cancelled; and 19 were withdrawn by the proponents prior to final action by the Commission. At the end of the fiscal year, 101 conference and rate agreements were in effect.

f. Joint Service Agreements

Joint service and consortia agreements generally establish a new and separate line or service to be operated by the parties as a joint venture. The new and separate entity generally fixes its own rates,

publishes its own tariffs, markets its own services, issues its own bills of lading and acts generally as a single carrier.

At the end of fiscal year 1982, there were 26 joint service and consortia agreements approved and in effect. These agreements cover virtually all of the U.S. foreign trades and cover services varying from specialized automobile carrier operations to containerized and RO/RO services. During fiscal year 1982, the Commission took several significant actions in this area, including an extension of the authority of the Johnson Scanstar Joint Service (No. 9973) to cover cargo moving between Mexico and U.S. Pacific Coast ports, and granted pendente lite approval to an extension of the Pacific America Container Express Service Agreement (No. 9925) pending the outcome of Docket No. 82-24.

5. Comments by Trade Area

a. Trans-Atlantic

Depressed world economic conditions, and vigorous and aggressive non-conference competition has served to create a highly competitive situation in the North Atlantic trade route between the U.S. and Northern Europe. Another factor contributing to this intense competitive situation is the diversion of U.S. cargoes through Canadian ports via Canadian transport systems. Without substantial recovery in

world economic conditions, little improvement in these depressed business conditions for fiscal year 1983 should be expected.

b. Mediterranean

The carriers serving the Mediterranean/United States' trade offer diverse services that include breakbulk, container, semi-container, LASH and RO/RO. There are eight conferences serving the Mediterranean area and numerous non-conference competitors. Further, considerable cargoes move via Mediterranean ports to and from areas such as the Persian Gulf, the Middle East, West Africa and India/Pakistan. Also, there is a keen rivalry between carriers and conferences serving the Mediterranean area and those serving the North European/North Atlantic trade.

c. Trans-Pacific

Keen competition, rate instability, efforts to initiate cargo-sharing and bilateral arrangements, and strong growth of intermodalism continued to characterize the trans-Pacific trade in fiscal year 1982. The conferences in these trades attempted to cope with effective competition from independent carriers through the increased use of independent action, dual rate authority and rate initiative (i.e., when a minority of a conference's membership decides to meet the independent competition's rates while still remaining within the conference).

d. Central and South America & Caribbean

Conditions in the Central and South American and Caribbean trades did not change markedly in fiscal year 1982. The trade continues to be heavily imbalanced with significantly more liner cargo being exported from the U.S. While the involved trade remains the least containerized of all U.S. trades, steps are being taken by some of the affected nations to upgrade port facilities in order to accommodate a greater volume of containerized traffic. As this situation evolves, shippers in these trades should expect a significant change in the types of service offered.

e. Africa

Historically, a breakbulk trade, the growing demand for containerized services in the trade to Africa has caused a discernable shift to take place in the types and level of services offered. Financial commitments of ports and carriers to promote containerized services are facilitating this change. With plans being laid in fiscal year 1982 for carriers to increase the container capacity of their fleets, and with concomitant development of the African transportation infrastructure, containerized cargo could become the dominant movement in this trade.

6. Self-Policing

Section 15 of the Shipping Act, 1916, specifically imposes upon the Commission the responsibility to disapprove or modify any agreement upon a finding of inadequate self-policing.

General Order 7, Revised (46 CFR 528) requires that all ratemaking agreements, except those between only two parties, contain provisions describing the methods and standards used by independent policing authorities to investigate and adjudicate breaches of the agreement by any of the membership, and to assess the penalties for such breaches. Those ratemaking groups subject to the requirements of the General Order are required to file with the Commission semiannual reports which cover that group's self-policing and adjudicatory activities during the preceding six-month period. The validity of the Commission's neutral body self-policing rules was affirmed in a decision by the U.S. Court of Appeals for the D.C. Circuit and upheld by the U.S. Supreme Court.

During fiscal year 1982, the Commission took specific action to achieve full compliance from certain parties subject to the requirements of General Order 7, Revised, who had not yet conformed their agreements to these requirements. The Commission served five ratemaking groups with orders to show cause why their agreements should not be cancelled or modified for their failure to comply with the Commission's self-policing rules. The Commission also rescinded pending conditions of approval relating to self-policing for three ratemaking groups that were otherwise in full compliance with General Order 7. All other pending agreements relating to self-policing were processed during the fiscal year.

Pursuant to the Commission's direction, a review of all self-policing regulations has been conducted and a final report recommending specific changes in the in the regulations prepared. These changes would relieve the affected industry of unnecessary burdens and at the same time provide for improved and more effective self-policing.

7. Rulemaking

Section 35 of the Shipping Act, 1916 provides the Commission with authority to exempt for the future any class of agreements between persons subject to the 1916 Shipping Act, or any specified activity of such persons, from any requirement of the 1916 Shipping Act or the Intercoastal Shipping Act, 1933, upon a finding that an exemption will not substantially impair effective regulation, be unjustly discriminatory or be detrimental to commerce. For some time the Commission has been reviewing its regulations in an effort to remove or modify any regulation that imposes an undue burden on affected parties. To this end, the Commission has continued its efforts to limit the exercise of its authority over agreements to only those areas where intervention is clearly necessary and productive.

During fiscal year 1982, the Commission eliminated unnecessary requirements by taking final action in the following rulemaking proceedings:

Exclusion of routine rate actions from the reporting requirements of General Order 18, Docket No. 81-4;

Exemption from the section 15 filing and approval requirements of agreements involving routine administrative or housekeeping matters, Docket No. 81-6;

Exemption from the section 15 filing and approval requirements of certain agency agreements, Docket No. 81-16;

Exemption from the section 15 filing and approval requirements of agreements which provide for the collection, compilation and exchange of credit experience information, Docket No. 81-18;

Exemption from the section 15 filing and approval requirements of exclusive and non-exclusive equipment interchange agreements, Docket No. 81-40.

In addition to the above rulemaking proceedings to provide exemptions under section 35 of the Act, the following "proposed" rulemaking proceedings have been instituted but not yet finalized at the close of the fiscal year:

Modification of the Uniform Merchant's Contract to provide for a third rebuttable presumption, Docket No. 81-54; final rule being drafted;

A proposed rule to exempt nonexclusive transshipment agreements from the filing requirements of section 15 was adopted by the Commission on September 29, 1982.

8. Other Significant Developments

a. NVOCC Co-Loading Agreements

Non-vessel operating common carrier (NVOCC) co-loading agreements authorize an NVOCC to accept another NVOCC's shipments for forwarding in the same containers as the shipments of the receiving NVOCC. Three such agreements were filed during the fiscal year, all of which encountered strenuous opposition from the carrier conferences in the trades in which the agreements would be implemented. Two of these agreements (Nos. 10435 and 10437) were conditionally disapproved as insufficiently justified and the third agreement (No. 10456) will be considered by the Commission in fiscal year 1983.

b. U.S./Amazon Discussion Agreements

During fiscal year 1982, the Commission approved short-term extensions of the U.S. Atlantic/Brazil Amazon Basin and the

U.S. Gulf/Brazil Amazon Basin Discussion Agreements (Nos. 10392 and 10410, respectively). These agreements grant authority to the two principal national-flag carriers in these trades to discuss the establishment of cargo distribution and traffic rationalization agreements in these trades. Such agreements are required under Brazilian law before foreign national-flag carriers are allowed to obtain blanket waivers for the carriage of cargo otherwise reserved to Brazilian-flag carriers. Although these agreements had received several prior extensions and the carriers' discussions under this authority had not yet achieved concrete results, the Commission determined that further short-term extensions were warranted.

c. United States Atlantic & Gulf/Jamaica & Hispaniola
Steamship Conference

Agreement No. 10424, the United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Conference, approved April 7, 1982, covers the trade between U.S. Atlantic and Gulf Coast ports and ports in Jamaica, the Dominican Republic and Haiti. The approval of Agreement No. 10424 resulted in the consolidation of three former conferences into a single all-encompassing conference agreement and should promote administrative economy and efficiency for both carriers and shippers in the trades.

Appendix C summarizes the Commission's agreement activity for fiscal year 1982.

BUREAU OF TARIFFS

The Bureau of Tariffs is responsible for the analysis of foreign and domestic tariffs filed with the Commission. The bureau also performs periodic tariff audits to ensure conformity with applicable Commission rules and regulations. In conjunction with the Bureau of Agreements, the bureau also monitors trade conditions in the foreign and domestic commerce of the United States. Through its Office of Financial Analysis the bureau is responsible for the analysis of proposed domestic offshore rate increases pursuant to the Commission's rate-setting authority in the domestic offshore trades. Administration of the controlled carrier statutes has also become an increasingly important role of the Bureau of Tariffs.

1. Foreign Commerce

a. Anti-Rebating Certification Program

The Shipping Act Amendment of 1979 (P.L. 96-25), enacted and signed into law on June 19, 1979, requires that the Chief Executive Officer of every vessel operating common carrier by water in the U.S. foreign commerce file with the Commission a periodic, written anti-rebate certification. General Order 43 requires an annual submittal of the above certification by May 15th and requires that such carriers also file a provision in each of their tariffs advising that they have a

policy against the payment of an unlawful rebate. During the year, 321 anti-rebate certifications were submitted to the Commission. On October 24, 1980, in Docket No. 80-77, 180 carriers who failed to file their certification for 1980 were required to show cause why they should not be found in violation of the above certification filing requirements. The Commission's Order in this proceeding was served March 10, 1982. As a result of this order, 37 carriers cancelled their own tariffs, and the Commission staff cancelled the tariffs of 6 other carriers. The certifications of the balance of the carriers were modified to meet the Commission's requirements.

b. Rulemakings

The Commission's final rules on Per-Container Rates (Docket No. 81-50) were published on June 14, 1982, to become effective August 13, 1982. The effective date subsequently was postponed to October 12, 1982, to provide time for filing and disposition of petitions for reconsideration.

The Commission published its proposed rulemaking covering procedures and requirements for publishing Currency Adjustment Factors (Docket No. 82-36), on July 20, 1982. Comments from interested parties are being reviewed.

c. Controlled Carriers

The Commission continues to monitor the activities of controlled

carriers as required by the Ocean Shipping Act of 1978. One of the most significant restrictions placed on the activities of carriers owned or controlled by the governments of foreign nations contained in that legislation provides that lower freight rates cannot become effective for a period of 30 days after filing with the Commission, unless the Commission grants them special permission to advance the effective date. As a consequence of this requirement, 26 special permission requests were received from designated controlled carriers and processed by the staff during fiscal year 1982. National Galleon Shipping Corporation of the Philippines was identified as a controlled carrier by the Commission on September 1, 1982.

d. Tariff Activity (Foreign)

In fiscal year 1982, the number of tariff filings increased by 84,300 or 22 percent, over fiscal year 1981. The number of tariffs on file with the Commission at the end of the fiscal year decreased by approximately 300. The Commission began a program to cancel the tariffs of carriers that have been dormant for over a twelve-month period. This program resulted in the cancellation of 232 tariffs.

In addition, the Commission continued its program to place cancelled tariffs on microfiche for record-keeping purposes in lieu of being transferred to government storage facilities. By the end of fiscal year 1982, one million cancelled tariff pages have been placed on microfiche. Appendix D summarizes Commission tariff activity for fiscal year 1982.

e. Transfer of Functions of Office of Special Projects

During the fiscal year, the Office of Special Projects, operating under the Bureau of Tariffs, was abolished and its personnel transferred to the Office of Foreign Tariffs. The office assumed significant functions involving the anti-rebate program and controlled carrier activities.

f. Tariffs for Bulk Commodities

The Commission issued a final interpretative rule in Docket 80-70 making the transportation of bulk commodities loaded and carried in containers, trailers, rail cars, or similar intermodal equipment (with the exception of LASH or SEABEE barges) moving in the foreign commerce of the United States subject to the tariff-filing requirements of the Shipping Act, 1916. However, the effective date of the interpretation was stayed until further order pending the outcome of a new proceeding (Docket 82-13) that would exempt certain bulk commodities loaded and carried in container, trailers, rail cars or similar intermodal equipment, from the tariff-filing requirements of the Shipping Act, 1916.

g. Terminal Handling Charges

The North Atlantic Ports Association (NAPA) filed a petition requesting that the Commission issue a show cause order relative to the imposition of terminal handling charges instituted by two conferences

operating in the North Atlantic trades. The petition was denied by the Commission on the ground that no prima facie violation of the shipping statutes had been shown.

h. Time/Volume Rates and Contracts

The Commission concluded its work on Docket No. 80-54: Time/Volume Rate Contracts - Tariff Filing Regulations Applicable to Carriers and Conferences in the Foreign Commerce of the United States. This rulemaking proceeding, initiated by the Commission in 1980, culminated in the Commission's adoption of a final rule, effective August 9, 1982, which prescribes uniform time/volume rules pertaining to publication, recordkeeping, reporting and accountability requirements.

2. DOMESTIC COMMERCE

The Intercoastal Shipping Act, 1933, and sections 17 and 18(a) of the Shipping Act, 1916, require the filing of rates, charges and rules describing the practices of common carriers in the U.S. domestic offshore trades, as well as of marine terminal operators. Unlike Commission involvement in foreign commerce, the Commission is charged with regulating the level of rates in the domestic offshore commerce from the mainland to Alaska and the offshore communities of Hawaii, Guam, Puerto Rico, American Samoa, and the U.S. Virgin, Midway, Johnston, Wake and Northern Mariana Islands.

In order to carry out the duties of ensuring just and reasonable rates and practices in these domestic trades, the Commission reviews and analyzes tariff filings of domestic ocean common carriers and terminal operators; rejects improperly or incorrectly filed tariffs or recommends alternate appropriate actions; acts upon applications for special permission to waive tariff-filing rules and regulations; and prepares recommendations to the Commission regarding tariff-filing, rate activities, and general rate increases.

The Office of Domestic Tariffs has on file 234 domestic offshore tariffs filed by 282 carriers, and 570 terminal tariffs filed by 454 terminal operators. There were approximately 18,000 domestic carrier tariff revisions and 7,300 terminal tariff revisions filed during the year.

a. Significant Commission Activities by Trade Area

U.S. Mainland/Puerto Rico/Virgin Islands

By Order issued September 25, 1981, in Docket 81-10 - Sea-Land Service, Inc., Trailer Marine Transport Corporation, Gulf Caribbean Marine Lines, Inc. and Puerto Rico Maritime Shipping Authority, Proposed General Rate Increases in the Puerto Rico and Virgin Islands Trades, the Commission found that rate increases of 16 and 18 percent, which had become effective for the Puerto Rico Maritime Shipping Authority (PRMSA) were unjust and unreasonable to the extent they

exceeded an average increase of 14.5 percent. In accordance with law, the Commission ordered PRMSA to reduce its rates because the full rate increase had been in effect during the course of the investigation. PRMSA was also required to refund amounts equal to that portion of the rate increase found to be not just and reasonable. Applicable law required that these refunds include interest.

On October 23, 1981, PRMSA filed appropriate tariff amendments reducing the increase by 2.5 percent in its trade to or from North Atlantic ports, and 2.2 percent in its trade to or from Gulf and South Atlantic ports. PRMSA's rate reductions became effective October 24, 1981. Identical increases of Sea-Land Service, Inc. (Sea-Land) and Trailer Marine Transport Corporation (TMT) had been found reasonable for these carriers in the same docket, but were subsequently reduced by these carriers to the same level placed in effect by PRMSA, presumably because of competitive pressures in the trade. PRMSA, after a stay of the Commission's Order was vacated, unsuccessfully fought the refund Order in the United States Court of Appeals for the District of Columbia Circuit. PRMSA, on June 11, 1982, also filed a Petition for Emergency Relief with the Commission requesting that the part of the Order requiring refund of freight charges to shippers be rescinded. Further, PRMSA petitioned the Supreme Court for review of the case. At the end of fiscal year 1982, these matters were still awaiting resolution.

In another rate action, PRMSA and TMT Both proposed to increase the rates of approximately 300 commodity items by 2.9 percent effective November 20, 1981. Commission review determined that such an increase would affect approximately 90 percent of their individual carrier revenues. On November 12, 1981, the proposed increases of TMT were permitted to become effective. However, like increases of PRMSA were suspended and placed under investigation. Subsequently, PRMSA requested authority to cancel the suspended matter and did cancel the proposed 2.9 percent increase. TMT followed PRMSA's lead and also cancelled its proposed 2.9 percent increases prior to the effective date.

In late December, 1981, additional general rate increases were filed by PRMSA, Sea-Land and TMT. The increases were the subject of Commission consideration during February of 1982. Review of staff findings, and consideration of carrier support data and various protests resulted in Commission approval of the 13 percent increases. PRMSA's increase applied to its trade between the U.S. mainland and ports in Puerto Rico and the U.S. Virgin Islands, as well as between ports in Puerto Rico and ports in the U.S. Virgin Islands. Sea-Land's increase applied to its operations between the U.S. mainland and ports in Puerto Rico and the Virgin Islands. The TMT increase applied to its service between San Juan, Puerto Rico and ports in the U.S. Virgin Islands.

In August of 1982, Sea-Land proposed that the FMC grant a rate increase of five percent in its service between U.S. Atlantic and Gulf ports and ports in Puerto Rico and the Virgin Islands, and three percent in its service between San Juan, Puerto Rico and ports in Canada via Elizabeth, New Jersey. These increases are commensurate with Sea-Land's chief competitors, PRMSA and TMT, which now file general rate increases with the Interstate Commerce Commission.

U.S. Mainland West Coast/Hawaii

Matson Navigation Company, Inc., proposed a 7.5 percent general rate increase between U.S. Pacific Coast ports and ports in Hawaii. There were no protests filed against the increase and after Commission review and analysis, it was determined the rate increase would not result in an unjust or unreasonable rate of return on rate base and the increase was permitted to become effective as scheduled on January 1, 1982.

BUREAU OF HEARINGS AND FIELD OPERATIONS

The Bureau of Hearings and Field Operations, which consists of an Office of Hearing Counsel, an Office of Investigations, and six District Offices, 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, 1916.

The Office of Hearing Counsel participates as trial counsel in formal adjudicatory dockets, rulemaking, and other proceedings which are initiated by the Commission. Office attorneys serve as hearing counsel, where intervention is permitted, in formal complaint proceedings instituted under section 22 of the Shipping Act and handle prosecutorial and settlement activities relating to enforcement cases. In addition to the formal proceedings in which the bureau participates as party, the bureau monitors all other formal proceedings in order to ascertain that all issues impacting the shipping industry and/or the general public, as distinguished from purely private disputes between litigating parties, are adequately developed. There are between 40 and 60 such proceedings under review at all times. The office also, on request, furnishes legal advice to the staff, the shipping public, and on special Commission projects. Under certain circumstances, the bureau is authorized to participate in matters of court litigation by or against the Commission. The bureau reviews all enforcement reports from the Office of Investigations and sends claim letters or warning letters as appropriate, depending on the nature of the alleged violations. If compromise or settlement is not possible, the bureau will prosecute the claim in a formal Commission proceeding.

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

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

During fiscal year 1982, the Commission adjudicated or settled 81 malpractice cases totaling \$2,295,353 in civil monetary penalties. Nearly 65% of the civil penalties assessed or settled were imposed against foreign firms. Appendix E provides a complete listing of the civil penalties assessed or settled.

At the beginning of the fiscal year, there were 711 field investigations of all types in progress. There were 611 new investigations initiated during the year, making a total of 1,322 cases on hand and scheduled for investigation. Violations included carrier and shipper malpractices (rebates of freight charges, and misclassification, misdescription or misdeclaration of shipments), unlawful common carrier rates in U.S. foreign and domestic offshore trades, unlawful agreements, unlicensed ocean freight forwarder activity, and other matters. Completed investigations totaled 788, leaving 534 cases pending at the end of the fiscal year. Appendix F summarizes the Commission's investigative activities.

As of the close of fiscal year 1981, the Office of Hearing Counsel had 57 formal proceedings pending. During the year, 23 new proceedings were received and 32 were completed, resulting in 46 formal proceedings on hand as of September 30, 1982. The bureau provided legal advice to the staff on more than 225 recommendations and special projects during the fiscal year.

BUREAU OF CERTIFICATION AND LICENSING

1. Financial Responsibility for Water Pollution

The Commission administers the vessel financial responsibility provisions of three water pollution statutes: the Federal Water Pollution

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

The scope of the Commission's vessel financial responsibility function involves the entire portion of the world's vessel operating industry which either totally or partially conducts its business in United States waters. The Commission is not responsible for the setting of environmental standards, field enforcement or cleanup activities. These matters are accomplished by the Environmental Protection Agency, U.S. Customs Service and the U.S. Coast Guard.

This program provides an incentive for prompt cleanup of a spill without government intervention. Ecological damage is reduced because a vessel operator must maintain pollution liability insurance in order to operate in U.S. waters. In the event of an accident, an operator has much to gain by expediting the cleanup process before wind, tide, and current magnify the area of damage, and thus, the cost to the vessel operator, owner or insurer.

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

During fiscal year 1982, the Commission received 16,542 requests for certificates. An additional 502 requests for certificates were carried over from fiscal year 1981. Over 16,523 requests for certificates were processed, and 3,374 certificates were revoked due to sale of the vessels, scrapping, sinking, etc. At the end of the year, there were 25,212 vessels of all types and flags carrying valid certificates.

2. Passenger Vessel Financial Responsibility

The Commission also administers sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817 d and e). The law requires owners, charterers and

operators of U.S. and foreign-flag passenger vessels (ships with 50 or more berth or stateroom accommodations) that board passengers at U.S. ports to establish their financial responsibility to 1) refund deposits and fares in the event of nonperformance of cruises or voyages, and 2) meet statutorily prescribed liabilities in the event of death or injury to passengers or other persons.

Certificates are issued once the parties have submitted sufficient evidence of insurance, surety bond, escrow account, guarantee or self-insurance. A Certificate (Performance) is issued upon receipt of evidence of financial responsibility to refund deposits and fares. The amount of evidence of financial responsibility required depends on the amount of anticipated unearned passenger revenue to a maximum showing of \$10,000,000. The amount of evidence of financial responsibility required for a Certificate (Casualty) depends upon the vessel's number of berth or stateroom accommodations, calculated in accordance with a schedule contained in Public Law 89-777.

Over 100 passenger vessels were carrying valid casualty and performance certificates at the end of fiscal year 1982. In excess of one million passengers boarded these vessels in U.S. ports during the year, with no known incidents of failure to refund fares or otherwise compensate passengers for non-performance of transportation. Furthermore, the Commission is unaware of any losses or injuries suffered by passengers without means for recovery.

During the year, 71 applications for certificates were processed: 35 new certificates were issued, 34 existing certificates were amended, and applications for two certificates were withdrawn. Nineteen certificates were revoked, reflecting withdrawals of vessels from U.S. trades, completion of scheduled cruises, etc.

3. FREIGHT FORWARDERS

Section 44 of the Shipping Act, 1916, vests the Commission with authority for the licensing and regulation of independent ocean freight forwarders. The ocean freight forwarding industry is comprised of persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders serve export shippers by arranging for the ocean transportation of cargo by common carriers, and by handling the paperwork, legal requirements, safety requirements and other incidentals related to such exports. Payment for handling an export is received from the exporter and from the ocean carrier whose vessel was selected by the forwarder to carry the cargo.

In 1961, Congress found that licensing and limited oversight of forwarders was necessary to eliminate secret, illegally preferential rebates and to ensure that unscrupulous, incompetent and financially irresponsible persons were prevented from operating with impunity. Section 44 was enacted at that time to promote and restore a favorable

export climate for U.S. businesses, especially small businesses, which lack the expertise to do their own exporting.

The continued maintenance of fiduciary responsibility, technical qualifications and financial responsibility of a forwarder are currently assured by means of a license issued by the Commission, and a surety bond required to be maintained on file with the Commission. Once issued, a license need not be renewed. The amount of the bond depends upon the number of offices through which a forwarder provides ocean freight forwarding services.

Fiscal year 1982 was the first year of experience under the Commission's completely revised rules (General Order 4, 46 CFR 510) which govern the licensing of independent ocean freight forwarders. This was the first extensive revision of the rules since initial issuance in 1961. Commission and industry experience had indicated that updated rules were required to reflect changes in international transportation over the last twenty years, and to balance the differing interests of freight forwarders, export shippers, and oceangoing common carriers. The Commission instituted new programs to process changes in a forwarder's business structure, adjust bond coverage and combat rebating.

During the fiscal year, the Commission further revised its rules to comply with statutory amendments contained in the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35). The Commission also

adopted policies which continued to allow forwarders to provide forwarding services free of charge to charitable and relief agencies, and to allow forwarders who are carrier's agents to continue to collect forwarder commissions from such carriers in addition to agency fees.

During fiscal year 1982, the Commission received 227 applications for independent ocean freight forwarder licenses, in addition to the 55 applications pending from the previous fiscal year. 148 of these applications were approved, two were denied, eight were withdrawn, and 86 incomplete applications were returned. 89 previously issued licenses were revoked, primarily because the forwarders failed to maintain the surety bonds required by section 44.

In addition to applications for new licenses, in fiscal year 1982, the Commission received 159 applications requesting approval of transfers of licenses and other organizational changes. 38 applications for transfers, etc. were carried over from the previous fiscal year. 173 of these requests were approved during the fiscal year.

Every few years of an on-site compliance investigation is conducted as part of the Commission's effort to ensure that each licensed forwarder complies with the provisions of the Shipping Act, 1916, and the Commission's regulations. During the year, 150 investigative reports were reviewed with the following results: (1) 24 warning letters were sent to licensees in connection with minor infractions, explaining how to

avoid recurring violations; (2) one formal proceeding was instituted; and (3) 58 cases involving violations of the Shipping Act, 1916, and/or the Commission's regulations were referred by the Bureau of Certification and Licensing to the Bureau of Hearings and Field Operations for the assessment of appropriate civil penalties. The remainder of the cases were determined to require no formal corrective action.

Other activities during the year included (1) the processing of 1,378 surety bond actions including new bonds, riders to bonds, and the cancellation of bonds; (2) the review of 58 uniform fee schedules submitted by forwarders under section 510.32(h) of General Order 4; (3) the review and processing of 31 informal complaints regarding, for the most part, monies owed by forwarders to others; and (4) the receipt and review of 1,551 anti-rebate certifications required by section 510.35(c) of General order 4. At the end of the year, there were 1,564 licensed ocean freight forwarders, representing an increase of 58 licensees over fiscal year 1981.

ADMINISTRATIVE ACTIVITIES

The Managing Director is also responsible for implementing the administrative programs of the Commission as established by the Chairman. Several offices of the Commission are involved in the administrative support of the Commission's regulatory programs.

The Office of Personnel plans and administers personnel management programs, including recruitment, placement, employee training and development, position classification, employee relations, and equal employment opportunity. During fiscal year 1982, the office completed implementation of the Commission's first full year of performance appraisal programs mandated by the Civil Service Reform Act of 1978. In addition, the office prepared new or updated administrative procedures (Commission Orders) in a variety of areas. During the year, the office continued in its effort to educate supervisors as to their responsibilities in the areas of employee performance, conduct, awards, and discipline. The office is also responsible for distribution of information regarding health benefits, Hatch Act restrictions on political activities, the blood donor program, in-house training programs, and all personnel reduction programs.

In the course of its regulatory mission, the Commission receives a wide range of inquiries and complaints from various segments of the maritime industry and the public at large. In order to respond to these informal inquiries, the Commission created the Office of Informal Inquiries and Complaints (formerly the Office of Consumer Affairs). This office seeks the resolution of complaints by acting as an informal liaison between the public and various aspects of the maritime industry. During fiscal year 1982, a total of 574 complaints and requests for

information were processed by the office. Through the activities of this office, complainants were able to make savings and secure refunds in the amount of \$127,000. In addition, the office also prepared information regarding state and local consumer agencies to which complaints are referred when the FMC lacks appropriate jurisdiction.

The Office of Energy and Environmental Impact ensures Commission compliance with the National Environmental Policy Act of 1969 and the Energy Policy and Conservation Act of 1975. These Acts require the Commission to complete analyses of the energy and environmental aspects of all section 15 agreements and docketed proceedings before it. Where Commission action is likely to have a significant impact upon energy conservation or the environment, the office is called upon to complete an analysis of the situation, and when necessary, prepare energy and environmental impact statements. During fiscal year 1982, the Commission issued a final rule amending its Rules for Environmental Policy Analysis (G.O. 45; 46 CFR 547) to expand the types of Commission actions categorically excluded from environmental analysis. The rule became effective on March 1, 1982. During the year, the office reviewed 298 section 15 agreements and docketed proceedings. Of these, 256 were categorically excluded from any environmental analysis, while an analysis of the remaining 42 resulted in "findings of no significant impact." It was not necessary to prepare any formal energy or environmental impact statements during the year.

The Office of Data Systems is responsible for the effective and efficient management of data and other information resources in support of the Commission's regulatory and administrative programs. Record management systems are administered by the office for vessel certification, freight forwarder, and Commission mailing functions. In addition, systems were maintained to provide management information to senior-level managers responsible for resource allocation and performance evaluation, as well as to process Bureau of Census vessel/commodity movement data. In an effort to control Commission costs and to reduce inherent logistical problems, the decision was made during fiscal year 1982 to institute an in-house computer system and discontinue external computer leasing. The office's major project of the year involved conversion of the vessel certification, freight forwarder, and Commission mailing systems to the new in-house computer. During the year, the office also produced approximately 1,100 special reports on selected trade areas for use by staff economists and analysts in supporting Commission action regarding certain agreements and docketed proceedings, and in preparing special Commission studies.

The Office of Administrative Services provides physical resources and non-personnel services for the Commission and its field offices. The office is responsible for managing Commission space, property and supplies, as well as performing services involving printing, duplication,

communication, safety, contracts, acquisitions, and records storage and retrieval. An automated system of personal property inventory was implemented during fiscal year 1982.

The Office of Management Evaluation and Review is responsible for assessing Commission efficiency in its use and management of capital and human resources, as well as determining the level of Commission compliance with applicable laws, regulations, and internal policies. As the Commission's Inspector General, the Director of this office is also charged with uncovering any waste, fraud, or mismanagement that may exist in the Commission. During fiscal year 1982, the office issued a formal internal Auditing Manual, and commenced a major audit of the Commission's financial control system. The office also conducted a program study regarding the most active tariff filers in the U.S. foreign commerce. Ongoing activities include ensuring Commission compliance with the requirements of the Paperwork Reduction Act of 1980, monitoring public reporting and recordkeeping requirements, and working with other elements of the agency to develop a long-range information resources management plan for the Commission.

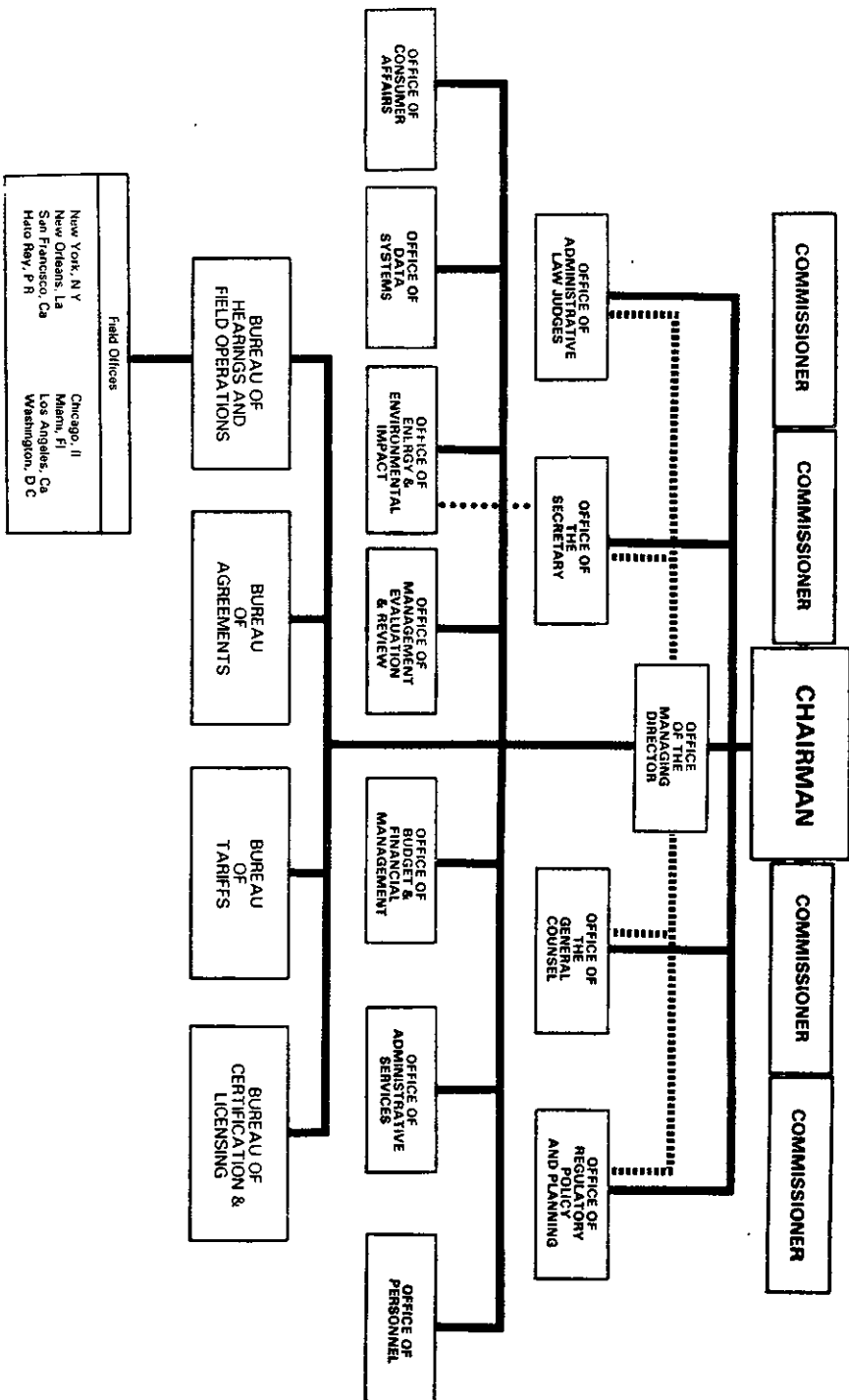
The Office of Budget and Financial Management administers the Commission's financial management program, and is responsible for optimal utilization of the Commission's physical, fiscal, and manpower resources. The office is charged with interpreting government budgetary

and financial policies and programs, and assisting in the preparation of an annual budget for submission to the Congress and the Office of Management and Budget. The office also administers internal control systems for agency funds. Appendix G summarizes appropriations, obligations, and receipts for fiscal year 1982.

APPENDICES

ORGANIZATIONAL CHART

FEDERAL MARITIME COMMISSION



APPENDIX B

FORMAL PROCEEDINGS - FISCAL YEAR 82
(BY DOCKET NUMBER)

1) Oral Arguments

79-9 82-7

2) Commission Decisions

71-29	79-59	80-77	81-19	81-44
72-35	79-68	80-80	81-26	81-47
73-17	79-72	81-1	81-30	81-72
74-40	80-45	81-10	81-31	82-4
79-9	80-50	81-11	81-39	82-7
79-45	80-63	81-15	81-43	81-47

APPENDIX B

(Continued)

4) No Review by Commission of ALJ Decision

78-1	80-62	80-79	81-27	81-59
80-20	80-65	80-83	81-41	81-65
80-57	80-66	81-14	81-42	81-67
80-60	80-76	81-17	81-55	82-11
80-61				

5) Dockets Remanded to ALJ's

71-29	80-76	81-8
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6) Commission Rulemakings

80-13	81-4	81-36	81-50	82-16
80-54	81-16	81-40	81-51	82-21
80-70	81-18	81-46	82-76	82-31

2

APPENDIX C

AGREEMENT FILINGS AND STATUS--FY 1982

Sections 14b and 15 Agreements Filed in FY 1982

(including modifications)

Foreign and Domestic Commerce.....	221*
Terminals.....	166
Labor-Management.....	2

*Includes 74 staff-initiated agreement cancellations.

Conference Reports Submitted for Commission Review

Shippers' Requests and Complaints.....	101
Minutes of Meetings.....	2,595
Self-Policing of Conference and Rate Agreements.....	161
Pooling Statements.....	41
Operating Reports.....	52

Approved Agreements on File as of September 30, 1982

Conference.....	62
Rate.....	39
Joint Conference.....	11
Pooling.....	18
Joint Service.....	24
Sailing.....	30

APPENDIX C

(Continued)

Transshipment.....	46
Cooperative Working, Agency & Container Interchange....	101
Dual Rate Contract Systems.....	47
Terminals.....	603
Labor-Management Approvals and Exemptions.....	<u>226</u>
TOTAL:	1207

APPENDIX D

TARIFF FILINGS AND STATUS - FISCAL YEAR 1982

FOREIGN COMMERCE

Total Number of Tariff Filings Received	466,686
Total Number of Tariff Filings Rejected	5,795
Total Number of Tariffs on Hand 10/1/81	3,891
Total Number of Tariffs on Hand 10/1/82	3,603
Special Permission Applications	190
Granted	147
Withdrawn	19
Denied	24

APPENDIX D

(Continued)

DOMESTIC COMMERCE

Total Number of Tariff Filings Received	
Domestic Offshore	18,103
Terminals	7,267
Total Number of Tariff Filings Rejected	
Domestic Offshore	647
Total Number of Tariffs on Hand 10/1/81	
Domestic Offshore	234
Terminals	580
Total Number of Tariffs on Hand 10/1/82	
Domestic Offshore	234
Terminals	570

APPENDIX D

(Continued)

SPECIAL PERMISSION APPLICATIONS

Domestic Offshore	102
Granted	83
Withdrawn	7
Denied	11
Pending	1

INVESTIGATION AND SUSPENSION MEMORANDUM

Domestic Offshore	7
Completed	6
Pending	1

APPENDIX E

CIVIL PENALTIES ASSESSED OR SETTLED - FY 1982

Kuehne& Nagle (F)	350,000.00
Daniel F. Young	100,000.00
Trans-Overseas	1,250.00
Rohner, Gehrig	2,000.00
Ideal Cargo Services	7,500.00
Alltrans	10,000.00
Intercontinental Transport (F)	1,500.00
Hapag Lloyd (F)	4,000.00
Comp. Gen. Mar (F)	4,000.00
Moller-Maersk (F)	600,000.00
Harrington Agents for A. Bottachi(F) Naviera Nicaraguense(F) Navion(F) Atlanttrafik(F)	10,000.00
Misty Valley, Inc.	3,500.00
Major Van Lines	5,000.00
Transportation Services Int'l, Inc.	2,500.00
Atlantic Cargo Services AB (F)	7,000.00
Imex Int., Inc.	10,000.00
Alfa Aerofreight Services Inc.	4,000.00

APPENDIX E
(Continued)

Almar Int'l Corp. of Miami, FL	10,000.00
Central Gulf	30,000.00
International China Co., Inc.	17,500.00
Erskine FF, Inc.	8,500.00
Certified Corp.; Seaway Dist.	10,000.00
Paulssen & Guice Ltd. and Paulssen & Guice Midwest, Inc.	15,000.00
Chumet Shipping	20,000.00
Cardinal Forwarding	2,000.00
Dolphin Freight Forwarders	6,000.00
ICT Consultants	5,000.00
Kanematsu-Gosho	90,000.00
TSI Transport Services	2,000.00
Wall Shipping	2,000.00
Sam Young Express	2,000.00
Goodyear	30,000.00
Scindia Steam Nav. Co., Inc. (F)	45,000.00
Cosmos Shipping	117,103.00
Uiterwyk Shipping (F)	35,000.00
Imex Tours	3,000.00
Jose Gilberto Velasquez	1,500.00

APPENDIX E
(Continued)

Damar Cargo Services	5,000.00
Susanne Fontana	1,000.00
Sovereign Int.	3,000.00
Dean Forwarding Co.	2,000.00
Gulf Caribbean Marine Lines, Inc.	7,500.00
Gemini Int.; Marquis Surface	5,000.00
Airpac Int'l	15,000.00
Alrod Int'l	5,000.00
Universal Trans. Corp. and J.S. Stass Co.	67,000.00
Int'l Shipping Co.	2,500.00
Holdings Overseas	1,500.00
Holsum Foods (Div. Honeymead)	5,000.00
John Doe, An Attorney	1,000.00
FESCO (F)	375,000.00
VIP Export Import	2,000.00
Hapag-Lloyd (F)	5,000.00
WPM, International	2,000.00
Bond, International	6,000.00
BIL Int. Corp.	1,000.00
Rocargo	2,000.00
The Wallace Companies	25,000.00
Impex Services	5,000.00

APPENDIX E
(Continued)

Enterprise Shipping	12,000.00
Wallenius Lines (F)	5,000.00
Metal Purchasing Co.	2,000.00
O'Neill & Whitaker	1,500.00
A. R. Pradillo	2,500.00
Ecuadorian Line (F)	20,000.00
World Jet Shipping	2,000.00
Gibbons Int.	3,000.00
American Global & American Hawaii Cruises	2,500.00
Rohde & Liesenfeld	20,000.00
Ramon Arguelles	35,000.00
Horizon Air Freight	5,000.00
John Scalice	2,000.00
Trans World Int'l	7,500.00
Galapagos Lines	2,000.00
Maurice C. Perry (U.S. Miami, Int.)	2,500.00
DMC Shipping	1,000.00
Miguel del Prado, Inc.	8,000.00
Bremen International (Refrigerated Cargo Consolidators)	2,000.00

APPENDIX E
(Continued)

Cargo Express Customs Brokers	2,000.00
Dorick Navigation, S.A. (F)	2,500.00
Lykes Bros SS Co.	19,000.00
Tokyo Express Co & Kimura d/b/a Cosmos Trading Co.	20,000.00
TOTAL	<u>2,295,353.00</u>

Note: (F) indicates a foreign-owned company.

APPENDIX F

FIELD INVESTIGATIONS - FISCAL YEAR 1982

<u>Investigations</u>	<u>Total</u>	<u>Malpractices</u>	<u>Tariff</u> <u>Violations</u>	<u>Forwarder and</u> <u>Other Matters</u>
Pending				
09/30/81	711	306	110	295
Opened				
FY 1982	611	98	95	418
Completed				
FY 1982	788	222	111	455
Pending				
09/30/82	534	182	94	258

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1982

APPROPRIATION:

Continuing Resolutions P.L. 97-85, 97-92 and 97-161: For necessary expenses of the Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms or allowances therefore, as authorized by 5 U.S.C. 5901-5902; Provided, that not to exceed \$1,500 shall be available for official reception and representation expenses	\$11,225,000
Public Law 97-257 97th Congress, approved September 10, 1982: Supplemental Appropriations Bill to cover increased pay cost.	<u>273,000</u>
Appropriation availability	\$11,498,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1982	<u>11,401,000</u>
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Unobligated balance returned to Treasury	\$97,000
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STATEMENT OF RECEIPTS: DEPOSITED WITH THE GENERAL FUND OF THE
TREASURY FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1982*:

Publications and reproductions	35,663
Water pollution application and certificate fees	542,866
Fines and penalties	<u>2,406,746</u>
Total general fund receipts	\$2,985,275

*Receipts are \$20,551 higher than amounts reported by the U.S.
Treasury which are in error.