FEDERAL MARITIME COMMISSION

38th ANNUAL REPORT

for

Fiscal Year

1999

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FEDERAL MARITIME COMMISSION
WASHINGTON, D.C. 20573-0001

March 31, 2000

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the 38th Annual Report of the activities of the Federal Maritime Commission for fiscal year 1999.

Sincerely,

Harold J. Creel, Jr.
Chairman

MEMBERS OF COMMISSION*

Harold J. Creel, Jr.
Chairman
Appointed 1994
Term Expires 2004

Ming C. Hsu
Commissioner
Appointed 1990
Term Expired 1996

John A. Moran
Commissioner
Appointed 1998
Term Expires 2000

Delmond J.H. Won
Commissioner
Appointed 1994
Term Expired 1997

* *One vacancy as of February 4, 1996.*

SENIOR COMMISSION OFFICIALS

Counsel to the Chairman ..... Bruce A. Dombrowski

Secretary ..... *Bryant L. VanBrakle*

Chief Administrative Law Judge ..... *Norman D. Kline*

General Counsel ..... *Thomas Panebianco*

Director, Office of
Equal Employment Opportunity .. *Alice M. Blackmon*

Inspector General ..... *Tony P. Kominoth*

Managing Director ..... *Edward P. Walsh*

Director, Bureau of
Economics and
Agreement Analysis ..... *Florence A. Carr*

Director, Bureau of
Tariffs, Certification
and Licensing ..... *Austin L. Schmitt*

Director, Bureau of
Enforcement ..... *Vern W. Hill*

Director, Bureau of
Administration ..... *Sandra L. Kusumoto*

I

THE COMMISSION

A. HISTORY

The Federal Maritime Commission ("Commission" or "FMC") was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. Prior to that time, the Federal Maritime Board was responsible for both the regulation of ocean commerce and the promotion of the United States ("U.S.") Merchant Marine. Under the reorganization plan, the shipping laws of the U.S. were separated into two categories -- regulatory and promotional. The responsibilities associated with the promotion of an adequate and efficient U.S. Merchant Marine were assigned to the Maritime Administration, now located within the Department of Transportation. The newly-created FMC was charged with the administration of the regulatory provisions of the shipping laws.

The Commission is now responsible for the regulation of oceanborne transportation in the foreign commerce of the U.S. The passage of the Shipping Act of 1984 ("Shipping Act" or "1984 Act") brought about a major change in the regulatory regime facing shipping companies operating in the U.S. foreign commerce. The subsequent passage of the Ocean Shipping Reform Act of 1998 ("OSRA") as a series of deregulatory amendments and modifications to the 1984 Act further signaled a significant paradigm shift in shipping regulation.

B. FUNCTIONS

The principal statutes or statutory provisions administered by the Commission are the 1984 Act, the Foreign Shipping Practices Act of 1988 ("FSPA"), section 19 of the Merchant Marine Act, 1920

("1920 Act"), and Pub. L. No. 89-777. All of these statutes were amended and modified by OSRA, which took effect on May 1, 1999.

The Commission's regulatory responsibilities include:

- **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or unfair foreign laws, regulations, or business practices that harm U.S. shipping interests or ocean trade.**

- **Reviewing operational and pricing agreements among ocean common carriers and marine terminals, to ensure that they do not have excessively anticompetitive effects.**

- **Reviewing and maintaining a database of service contracts between ocean common carriers and shippers, and using this database to guard against anticompetitive practices and other unfair prohibited acts.**

- **Ensuring that common carriers' accurate rates and charges are accessible to the shipping public in private, electronically accessible systems.**

- **Regulating rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable and are not unfairly undercutting private competitors.**

- **Issuing 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.**

- **Licensing ocean transportation intermediaries ("OTIs") to protect the public from unqualified, insolvent, or dishonest companies.**

- **Ensuring that OTIs maintain bonds that protect the shipping public from financial loss.**

- **Investigating discriminatory rates, charges, classifications, and practices of common carriers, terminal operators, and OTIs operating in the foreign commerce of the U.S.**

The Commission is authorized by the FSPA, section 19 of the 1920 Act, and section 13(b)(6) of the 1984 Act, to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties to address actions by carriers or foreign governments that adversely affect shipping in the U.S. foreign oceanborne trades or that impair access of U.S.-flag vessels to ocean trade between foreign ports.

The 1984 Act is applicable to the operations of common carriers and other persons engaged in U.S. foreign commerce. It exempts agreements that have become effective under the 1984 Act from the U.S. antitrust laws, as contained in the Sherman and Clayton Acts. The Commission reviews and evaluates agreements to ensure that they do not exploit the grant of antitrust immunity, and to ensure that agreements do not otherwise violate the 1984 Act or result in an unreasonable increase in transportation cost or unreasonable reduction in service.

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat

shippers and other members of the shipping public. The 1984 Act prohibits carriers from unduly discriminating among shippers and other members of the shipping public. The 1984 Act also requires carriers to make their rates, charges and practices available in tariffs that must be open to public inspection. Carriers may only assess the published rates and charges. The Commission does not have the authority to approve or disapprove general rate increases or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned or -controlled carriers. Ocean common carriers also are required to file with the Commission all service contracts negotiated with shippers. The Commission has developed an Internet-based system for the electronic receipt of such contracts. Pursuant to the 1984 Act, all such contracts are provided confidential treatment by the Commission.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths, who embark passengers at U.S. ports, to establish financial coverage to indemnify passengers in cases of death, injury, or nonperformance of transportation. The Commission certifies such operators upon the submission of satisfactory evidence of financial responsibility. The Commission ensures that all OTIs operating in the foreign commerce of the U.S. are appropriately bonded to protect shippers from financial loss. Additionally, the Commission licenses all U.S. intermediaries.

The Commission carries out its regulatory responsibilities by conducting informal and formal investigations. It holds hearings, considers evidence and renders decisions, and issues appropriate orders and implementing regulations. The Commission also adjudicates disputes involving the regulated community, the general shipping public, and other affected individuals or interest groups.

C. ORGANIZATION

The Commission is composed of five Commissioners appointed for five-year terms by the President with the advice and

consent of the 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.

The Commission's organizational units consist of: Office of the Managing Director; Office of the Secretary; Office of the General Counsel; Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Inspector General; Bureau of Economics and Agreement Analysis; Bureau of Tariffs, Certification and Licensing; Bureau of Enforcement; and Bureau of Administration. The Managing Director assists the Chairman in providing executive and administrative direction to the Commission's bureaus. These offices and bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 1999, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of $14,133,000. That appropriation supported the actual employment of 139 full-time equivalent positions during the fiscal year. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in New York, New Orleans, Los Angeles, Miami and Seattle.

II

THE YEAR IN REVIEW

The Commission's fiscal year was dominated by the Ocean Shipping Reform Act of 1998 ("OSRA"). Signed by the President in October 1998, the new law became effective May 1, 1999. The Commission completed implementing regulations by March 1, 1999, and assisted the industry in complying with all new statutory and regulatory requirements.

Notwithstanding the extensive efforts required to properly implement OSRA, the Commission remained active in accomplishing the full breadth of its statutory mandates. In particular, a fact finding investigation was commenced to address carrier actions in the transpacific trade, where refusals of service or unreasonable rate increases were alleged during peak season capacity shortages. Investigation of widespread malpractice activity continued in the South and Central American trades, while other trades also were targeted so as to deter market-distorting or unreasonable behavior. And special attention continued to be placed on the restrictive practices of foreign governments. Adverse conditions in Brazil and the People's Republic of China ("PRC") remained under close scrutiny by the Commission, while actions by the Government of Japan to eliminate its restrictive port practices were monitored. Additionally, the Commission received and processed a significant number of filings as the industry transitioned to the new business environment created by OSRA.

This Annual Report essentially is structured on an office-by-office basis and contains a synopsis of each unit's activities and accomplishments. Special sections are devoted to areas of particular interest. This section of the report is a brief summary of the Commission's major activities and accomplishments during the year.

A. OCEAN SHIPPING REFORM LEGISLATION

Ocean shipping reform legislation became a reality this fiscal year when the President signed OSRA on October 14, 1998. This completed a nearly four-year process that examined all regulatory aspects of the U.S. ocean shipping industry.

The primary objectives of this new law are to provide the ocean shipping industry with more flexibility in conducting daily business, remove certain regulatory restrictions, and promote U.S. trade via more reliance on the marketplace. Its major changes include: eliminating tariff filing with the Commission, instead requiring carriers and conferences to publish tariff information in their own private automated systems; liberalizing service contracting; expanding the list of commodities exempt from tariff and service contract requirements; removing two of the four criteria necessary to obtain exemption from a statutory provision; strengthening the Commission's authority to address the restrictive practices of foreign governments and state-controlled carriers; and reforming and expanding bonding and licensing requirements.

OSRA became effective on May 1, 1999; however, much of the effort to implement it took place before then. The Commission was required to complete final regulations comporting with all new statutory requirements by March 1, 1999. While a daunting task, the Commission did accomplish this mandate. Eight separate rulemakings were initiated, each covering a specific program area. The Commission benefitted from the extensive comments and suggestions received from all sectors of the industry. And while those views necessitated a significant overhaul of certain Commission proposals, particularly regarding carrier automated tariff systems and service contract filing, all final rules were timely completed and provided the industry with clear direction and practical guidance for operating under the new regulatory environment of OSRA.

Subsequent to completing new regulations, the Commission was quite active assisting all sectors of the industry in their compliance efforts and explaining or clarifying any areas of uncertainty. The Commission also began the process of ensuring overall industry conformance with applicable statutory and regulatory requirements, and assessing OSRA's impact on U.S. ocean trade. Both of those efforts will continue in the upcoming fiscal year.

B. DEVELOPMENTS IN U.S. TRADE

The Commission actively monitors worldwide trade and economic conditions so as to enhance its oversight of our Nation's oceanborne commerce.

An overall imbalance of imports in excess of exports continued to affect liner shipping in all major U.S. trades for fiscal year 1999. Carriers worked to meet the demands for vessel space and equipment inbound, while coping with declining freight rates and low capacity utilization levels outbound. The new business environment created by OSRA's reforms caused many carriers to abandon the traditional conference system in favor of mutually coordinating under more loosely structured discussion agreements. Also, consolidation in the ocean liner industry accelerated as major carriers acquired additional assets for potentially greater economies of scale. Notably, the acquisition of Sea-Land's international assets by Maersk Lines sets an industry benchmark that other major carriers will compete against in the years to come.

In the transatlantic, sluggish economic conditions in North Europe and the euro's depreciation against the dollar created a severe trade imbalance. U.S. liner exports fell appreciably, and liner imports grew moderately. OSRA's reforms, along with the regulatory objections raised by the European Commission ("EC"), produced changes both in the *Trans-Atlantic Conference Agreement* ("TACA") and the trade. TACA revised its conference agreement to terminate

its members' authority to collectively set inland European freight rates, and to allow members to engage in individual and multi-carrier service contracts outside the conference framework. Membership in TACA dropped to eight carriers, and by fiscal year end, the conference's collective market share stood at 53 percent outbound and 49 percent inbound. TACA announced multiple tariff rate increases over the fiscal year, especially in the stronger inbound direction, and proposed significant rate increases for the upcoming year. Most of the TACA members' rates, however, remained set at levels negotiated under service contracts. In an attempt to unify the trade, eleven transatlantic carriers filed the *North Atlantic Agreement* ("NAA"), a more loosely structured conference agreement aimed at replacing TACA. NAA was withdrawn from review, however, when both the FMC and the EC expressed concerns over its potential impact.

U.S. liner exports to the Mediterranean grew moderately, while liner imports of home furnishings from Mediterranean countries were strong due to sustained growth in the U.S. housing market. Future trade with the region is expected to be affected by the weak euro and a softer demand in the U.S. for imported goods. Competition among carriers remained high as the *United States South Europe Conference* realized no gains in market share or membership in the fiscal year.

U.S. liner exports to Middle East nations continued to fall due to the region's sluggish economic growth, although renewed hope of a peace settlement could produce greater economic stability. U.S. liner imports from the region were strong, with particular gains in such goods as plastic products, apparel, and furniture. On agreement matters, carriers outside the Israeli trade disbanded their conference agreement, choosing to coordinate their activities under voluntary discussion agreements.

Economic growth stalled in many African nations due to conditions of political unrest, armed conflict, and poor infrastructure during the fiscal year. Among Africa's leading nations, U.S. liner exports of construction materials to Egypt grew as the country modernized its infrastructure. Also, U.S. liner imports from South Africa increased significantly as a result of the country's improved industrial productivity and output. Freight rates generally remained depressed.

Throughout Latin America and the Caribbean, the flow of liner cargo shifted in favor of U.S. import growth, and U.S. exports fell in response to regional economic instability. Mirroring trade flows, freight rates for imported goods increased, while the decline of exports correspondingly sent rates falling in the weak outbound direction. Agreement activity was heavy, as many of the major conferences in the trades were disbanded in preference of discussion agreements. The trades also experienced a considerable amount of carrier consolidation, most notably Hamburg-Sud's acquisition of Crowley American Transport, Inc. in conjunction with its ownership of Columbus Line.

Sustained growth in U.S. imports in the transpacific enabled the carrier members of the *Transpacific Stabilization Agreement* ("TSA") to effectuate a sizable increase in freight rates along with a peak season surcharge. TSA also announced further rate increases for the upcoming fiscal year. TSA realized greater market strength with the admission of China Ocean Shipping Co. ("COSCO"). The favorable inbound conditions also attracted new carriers, bringing additional vessel capacity and liner services to the trade. In the outbound direction, conditions remained weak throughout most of the fiscal year with freight rates and capacity utilization stalled at low levels. Agreement activity centered on the suspension or termination of major conferences, as carriers coordinated their activities under voluntary discussion agreements like TSA. The Commission also addressed a number of major issues in the transpacific, including a

fact finding investigation concerning carrier practices during peak season capacity shortages, issues surrounding TSA's voluntary service contract guidelines, and carrier activities under the Asian Shipowners' Forum.

C. RESTRICTIVE TRADE PRACTICES

One of the Commission's primary missions is to identify and eliminate protectionist practices of other countries that favor their domestic companies or discriminate against U.S. trade interests in ocean shipping. The Commission maintains a wide range of authority in this regard. It is authorized to issue rules in response to foreign practices that create conditions unfavorable to U.S. shipping in general. It may institute countervailing sanctions in response to foreign laws or policies that adversely affect U.S. carriers. And it can initiate appropriate action in instances where a U.S.-flag vessel faces unfair barriers in entering a foreign-to-foreign trade.

The Commission continued its active approach to its important restrictive practices authority in fiscal year 1999. Several situations were addressed, most notably those involving trade with the PRC, Brazil and Japan.

The Commission determined that Chinese laws and regulations unfairly disadvantaged non-Chinese carriers relative to a variety of maritime-related services. Information before the Commission indicated that U.S. and other non-Chinese operators faced restrictions in establishing wholly owned companies or branch offices, and in performing a number of integral vessel agency and freight forwarder services for themselves. Such carriers also are required to obtain government permission prior to conducting other operations. The Commission directed its staff to prepare formal proposals for action to address these circumstances. Any such proposals will be noticed for public comment prior to being effectuated.

As for Brazil, the Commission has been troubled by an unfair tax and duty exemption the Brazilian government was granting to its national-flag carriers, along with efforts by Brazil to deny U.S. carriers access to Brazilian government-controlled cargo. After considering all current information, the Commission contemplated initiating formal action to address this matter. However, early in calendar year 1999, the Brazilian government made a number of commitments that would resolve the Commission's concerns. Therefore, the Commission has held off initiating any formal responsive action. The Commission continues to monitor the situation to ensure that the Brazilian government follows through on its commitments and refrains from any unfair barriers to open trade.

And regarding Japan, the Commission issued a notice removing a final rule that had been established to address Japan's restrictive port practices; the rule had been in a state of suspension. The Commission observed that some of the findings in that final rule had been overtaken by evolving circumstances and were no longer supportable. The Commission determined to reevaluate current conditions facing U.S. shipping in Japan and ordered U.S. and Japanese carriers to file semiannual status reports on Japanese reform efforts. The Commission cautioned that this action in no way reflected satisfaction with the current status of the matter, and indicated a number of further steps the Government of Japan could take to ensure that its market-opening commitments can become effective. The Commission will continue to monitor this situation in Japan in the upcoming fiscal year.

D. TRADE OVERSIGHT

The Commission maintains systematic oversight of market conditions and prevalent practices in U.S. ocean shipping. These efforts help to uncover unreasonable or unfair industry behavior, and identify potentially unfavorable trade practices by foreign governments.

During the fiscal year, the Commission requested additional information from NAA when that proposed agreement in the U.S./North Europe trade was filed to replace TACA. The request sought further clarification of NAA's authority, along with other information to fully assess its potential economic impact. Based on the Commission's concerns, as well as those of the EC, NAA was withdrawn prior to the submission of any additional information. A Request for Additional Information also was issued concerning TSA's voluntary service contract guidelines, to discern their likely pricing effects. Upon review of TSA's response, the amendment was allowed to take effect. Additionally, the Commission found that certain carrier activities under the Asian Shipowners' Forum were subject to the Shipping Act of 1984 ("1984 Act"), requiring the subject carriers to file an agreement with the Commission along with minutes of future meetings.

Other specific monitoring and research projects undertaken in fiscal year 1999 included: a review of the authority of voluntary discussion agreements in the major U.S. trades; an analysis of freight rate trends in major liner trades; a review of shipping conditions in the South American trades, focusing on Brazil in particular; and an updated analysis of the freight rates charged by COSCO, a major controlled carrier.

E. ENFORCEMENT

The Commission is charged with overseeing U.S. ocean commerce so that a nondiscriminatory and efficient transportation system is maintained for the overall benefit of U.S. international trade. Our aim is to identify and address market-distorting activity, and to initiate any action necessary to ensure compliance with applicable U.S. shipping statutes.

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through area

representatives. These representatives serve the other major port cities and transportation centers within their respective areas, providing liaison between the Commission and the maritime industry, collecting and analyzing intelligence, and assessing industry conditions and practices. During fiscal year 1999, the Commission continued its investigation of malpractices by ocean carriers, cargo interests, and middlemen in the South American trades. Indications of malpractice activity also were pursued in the transpacific and Caribbean trades. As the year progressed, it became clear that the passage of new legislation and the effectuation of implementing regulations added to the uncertainty regarding applicable statutory requirements and appropriate transportation activities. The Commission made every effort to assist the industry in its compliance efforts, while dealing appropriately with practices that distort the marketplace.

As previously mentioned, the Commission conducted a formal fact finding investigation to address alleged malpractices in the eastbound Pacific trade. Shippers and non-vessel-operating common carriers ("NVOCCs") complained of difficulties in obtaining space and demands for abrupt and significant rate increases during the peak holiday shipping season. An initial report of the investigation was issued, and certain activities were identified for further investigation or enforcement action by the Bureau of Enforcement.

The Commission collected $5,411,030 in civil penalties this past fiscal year. These collections covered a wide range of malpractices in several of our major trade lanes, and involved most segments of the industry. Continued Commission investigations and surveillance remain essential to deter egregious violations and to foster compliance with new statutory requirements. The Commission continually evaluates its enforcement program as it implements OSRA, to ensure that its goals and objectives comport with the new policy direction of this statute.

F. TARIFF AUTOMATION

Until April 30, 1999, the Commission's Automated Tariff Filing and Information System ("ATFI") enabled tariff matter and the essential terms of service contracts to be created on the filer's own computer and transmitted to the Commission for public review and retrieval. OSRA put an end to public tariff filing with the Commission -- as of May 1, 1999, carriers and conferences are required to publish such information in their own private automated systems. Service contracts are required to be filed confidentially with the Commission.

Enactment of OSRA eliminated the need for the Commission's ATFI system. The Commission terminated its contract with the vendor who had operated and maintained the system from its inception. However, arrangements were made to ensure the availability of historical ATFI data.

OSRA charged the Commission with developing rules relative to the accessibility and accuracy of tariff information. After modifying its initial approach based on extensive industry input, a final rule was established to govern carrier publication of tariff information. With similar suggestions and views from the industry, the Commission developed rules applicable to the electronic filing of service contracts. So as to facilitate transition to this new approach, carriers initially were provided with the option of using an Internet-based system, or a dial-up system predicated on the agency's previous ATFI system. This latter option expired at fiscal year end, so that all filings would be via Internet as of October 1, 1999.

The Commission received a tremendous number of service contracts and amendments to contracts in its new electronic systems. Specifically, approximately 22,000 contracts were filed from May through September, *i.e.,* since enactment of OSRA, whereas only 7,435 contracts had been submitted in the pre-OSRA period October through April. The Commission plans to assess its Internet filing

system to determine refinements and improvements that can facilitate filing and enhance the agency's ability to access and use the information it contains. Additionally, the Commission will be reviewing carriers' automated tariff systems to ensure they satisfy OSRA's requirements for accessibility and accuracy.

III

MONITORING AND ENFORCEMENT

A. MONITORING

The systematic monitoring of carrier activities and commercial conditions in the U.S. liner trades is an integral part of the Commission's responsibilities under the 1984 Act, as amended by OSRA. Such monitoring helps ensure that carriers operating in the U.S. trades comply with the statutory standards of the 1984 Act and the requirements of relevant Commission regulations. To that end, the Commission administers a variety of monitoring programs and other research activities designed to keep it informed of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

The importance the Commission attaches to its ongoing monitoring activities is a direct consequence of the removal, under the 1984 Act, of the Commission's previous broad discretion to disapprove agreements. The 1984 Act provides that, unless rejected under relevant statutory authority, agreements filed with the Commission shall become effective on the 45th day after filing or the 30th day after notice in the *Federal Register*, whichever is later. Agreements can be rejected for technical reasons or for failure to include statutory provisions in the agreement language. Also, the Commission may extend the original 45-day period when additional information from filing parties is deemed necessary and is requested. Finally, if the Commission determines that an agreement, by virtue of a reduction in competition, is likely to unreasonably increase transportation costs or decrease transportation service, it may seek

injunctive relief in the U.S. District Court for the District of Columbia.

As a consequence of the Commission's limited authority to block agreements from taking effect, the need for adequate and timely evaluation of post-implementation agreement activity has increased considerably. The Commission's monitoring program provides such an evaluation through its examination of carrier competition including market share, concentration, entry conditions, general rate and service conditions, as well as pricing trends, vessel utilization, service contracting activity, and shipper complaints.

In fiscal year 1999, the Bureau of Economics and Agreement Analysis prepared a variety of economic analyses and reports on the activities and practices of carriers operating in the U.S. international trade. Projects included: (1) profiles of the major trade lanes based on information contained in the agreement monitoring reports; (2) an updated monitoring report of controlled carrier activities along with individual controlled carrier profiles; (3) a review of the agreement authority of discussion agreements in major U.S. trades; (4) an analysis of two major agreements under the competition standards of section 6(g) of the 1984 Act; (5) an analysis of rates in major trades; (6) an updated analysis of rates charged by COSCO, a major controlled carrier; (7) a review of shipping conditions in the South American trades, especially the Brazil trade; and (8) analysis of quarterly monitoring reports submitted pursuant to the Commission's agreement reporting requirements.

B. ENFORCEMENT

The 1984 Act establishes an integrated system for the regulation of the shipping and related industries in furtherance of the statutory declaration of policy to ensure a nondiscriminatory, efficient, and economic ocean transportation system for the benefit of international trade of the U.S. The enforcement program represents a major area of Commission activity. A principal goal of the program

is to achieve compliance with the provisions of the 1984 Act. Compliance, in turn, provides the pathway to the statutory objectives of the 1984 Act. Enforcement is a traditional means to achieve compliance through deterrence.

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle, through an area representative based in each of those cities. These representatives also serve the other major port cities and transportation centers within their respective areas. Local presence in major port areas greatly enhances the Commission's ability to perform its various functions and improves communications with the regulated industry and its customers.

Cooperation between the Commission's area representatives and the U.S. Customs Service ("Customs"), with respect to the exchange of investigative information, continues to be beneficial. All area representatives are now co-located with Customs in their respective port districts and have established symbiotic working relationships which contribute to the productivity and efficiency of both agencies.

During 1999, the Commission continued its investigations of malpractices, particularly unlawful rebating in the South American trades. Other trades were also the subject of malpractice investigations, including the transpacific and Caribbean trades. These investigations included improper rating practices, such as various forms of secret discounts and absorptions, and unlawful equipment substitution, as well as carriage of cargo by and for untariffed and unbonded NVOCCs.

In September 1998, the Commission commenced Fact Finding Investigation No. 23, *Ocean Common Carrier Practices in the Transpacific Trades,* a nonadjudicatory investigation into individual and collective practices of ocean carriers in the transpacific trades by which shippers and NVOCCs of low-rated cargo were allegedly

refused service and/or charged higher rates during a period in which cargo exceeded available vessel space. Commissioner Won, as Investigative Officer, issued a Report and Recommendations to the Commission. That Report was subsequently the focus of a hearing before the House Judiciary Committee inquiring into the continued need for antitrust immunity for ocean shipping. In April 1999, the Commission extended Fact Finding Investigation No. 23 and designated the Director of the Bureau of Enforcement as the Investigative Officer to follow up on possible violations of the 1984 Act. The Investigative Officer was charged with providing the Commission with a report on his activities early in the upcoming fiscal year.

During fiscal year 1999, the Commission collected $5,411,030 in civil penalties. Settlements were reached with many different segments of the industry (*e.g.*, carriers, shippers, forwarders, and NVOCCs) operating in the U.S. foreign trades (*see* Appendix E).

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

While liner imports from North Europe continued to expand during the fiscal year, the pace slowed to 9 percent over the previous period's 16 percent growth. Strong U.S. consumer spending and a resilient dollar facilitated double-digit growth rates in liner imports from North Europe through the fourth quarter of 1998. U.S. consumer demand for higher-priced European beer and ale, wines, housing-related goods, and other luxury items led the expansion. Nearly all new growth came in products from euro-zone countries, which enjoyed a substantial increase in price competitiveness as a result of the decline in the currency's value relative to the U.S. dollar. Liner imports from Eastern Europe also continued to expand at record levels through the second quarter of 1999. U.S. demand for price-competitive East European goods is expected to keep imports from this region growing at a strong pace through calendar year 2000.

The fall in the euro should have supported import growth through the last three quarters of the fiscal year. However, a cooling U.S. economy and a shift in demand for a major European import (furniture) caused the inbound expansion of container trade from North Europe to slow further. More recently, the euro has made up some of the ground previously lost against the dollar which will tend to make imports from Europe less attractive to U.S. consumers. Therefore, while healthy growth in inbound traffic was still forecasted through the end of 1999, import trade volumes are likely to continue to slow in 2000.

During fiscal year 1999, U.S. liner exports to North Europe lost significant ground and contracted in each of the four fiscal year quarters. A large amount of the decline was due to the financial crisis in Russia that suppressed demand in much of Eastern Europe, as well as the weak euro and stagnating North European economies. Total shipments were down throughout the fiscal year as U.S. industrial inputs such as synthetic resins, chemicals, paperboard, and wastepaper fell due to weak European output growth. Sluggish construction activity contributed to a sharp decline in another major U.S. export to North Europe -- logs and lumber.

U.S. liner imports outpaced exports by more than 300,000 TEUs during fiscal year 1999. The unexpected decline in U.S. liner exports to North Europe caused a severe trade imbalance and operational difficulties for liner operators serving the trade. Throughout the fiscal year, carriers reported weak utilization levels, especially in the eastbound direction. In an attempt to offset the added costs of repositioning empty containers on the severely imbalanced North Atlantic trade, conference carriers implemented a $250 per container equipment-imbalance surcharge on westbound shipments. The surcharge mainly affected cargo moving under tariff rates, which represents less than 20 percent of the total cargo moving in the trade.

The *Trans-Atlantic Conference Agreement* ("TACA") underwent a number of major changes during fiscal year 1999 in response to regulatory changes under OSRA, heightened regulatory oversight by the EC, and increased competitive market pressures. Following the EC's September 1998 decision that fined TACA carriers $318 million for abusing their dominant position between 1994 and 1996, TACA filed a number of substantive changes to its Agreement. The changes were intended to conform the Agreement to both the EC's proposed antitrust settlement with TACA and regulatory changes under OSRA. Effective January 1, 1999, TACA members ended collective ratemaking over European inland rates which were part of a through service. While the EC did not fine

TACA for its past joint inland price-fixing, based on the September decision, it warned that it may impose fines on such activity in the future. While no court decision had been reached, TACA members ended the practice pursuant to the EC's proposed settlement.

TACA also amended its service contract provisions to comply with OSRA and EC requirements. Less than two months after OSRA took effect, TACA's Secretariat reported that its members had entered into over 1,000 individual and multi-carrier service contracts, and that less than 30 service contracts were within the conference framework. This illustrates the degree to which competition in the North Atlantic trade has increased and the loss of conference cohesion. TACA also reduced its notice period required for independent action ("IA") from 10 days to 1 day.

In addition to these agreement changes, TACA's membership continued to decline through the fiscal year under regulatory and competitive market pressures. POL-Atlantic, the latest carrier to leave TACA, resigned from the conference as of April 1999, due to financial difficulties. Over an 18-month period, TACA's membership declined from a high of 17 members to only 8 as of the end of fiscal year 1999. TACA's third quarter 1999 market share for eastbound cargo remained unchanged from last year at 53 percent, while its collective market share for westbound trade movements slipped to an estimated 49 percent during the third quarter of 1999.

On February 12, 1999, following the loss of over half of its members, the remaining TACA members and eleven other major North Atlantic carriers (collectively representing 84 percent of the trade), filed the *North Atlantic Agreement* ("NAA") – a conference agreement formed to replace TACA. NAA presented the Commission with a new form of carrier cooperation. It appeared to contemplate the collection, exchange and use of commercial and operational information within one agreement to facilitate and encourage the implementation of collective capacity management activities through underlying agreements, *i.e.*, NAA members' space

chartering agreements. The implementation of a "new style" conference agreement prompted the FMC to seek additional information from the Agreement members. European authorities also formally requested additional information and documents from NAA. NAA members subsequently withdrew their Agreement amid the FMC's concerns over the potential market power and authority being sought by the Agreement.

Against the backdrop of weak capacity utilization levels, increased competitive market pressures, and regulatory uncertainty regarding the competitive effect of confidential service contracting, TACA members proposed moderate rate increases beginning January 1, 1999. The proposed increases were $40 per 20-foot container and $50 per 40-foot container eastbound, and $80 per 20-foot container and $100 per 40-foot container westbound. However, much of these rate increases reportedly did not hold because of the regulatory environment and heightened competition in the trade. As westbound trade volumes gained momentum, TACA members raised westbound tariff rates two additional times during the fiscal year. A general rate increase of $120 per 20-foot container and $150 per 40-foot container took effect on June 15 and again on October 1, 1999, for cargo moving under TACA members' tariffs. Eastbound rates did not change.

Under its 2000 Business Plan, TACA members proposed to raise rates effective January 1, 2000, by $600 per 20-foot container and $750 per 40-foot container westbound, and by $160 per 20-foot container and $200 per 40-foot container eastbound from the Atlantic and Gulf. From the Pacific, rates have been announced to increase by $240 per 20-foot container and $300 per 40-foot container. The rate increases for westbound cargo will incorporate the $250 per container westbound-only equipment repositioning surcharge introduced September 1, 1999. The rate increases are estimated to represent a 50 percent rise in average westbound rates and a 15 percent increase in eastbound rates. According to industry sources, the proposed increases would bring rates back to a level that preceded recent rate

erosion in the North Atlantic trade. Rates reportedly have fallen to historically low levels over the last two years. As in the past, these rate increases are said to be a starting point for renegotiating service contracts. The competitive trade conditions will determine the extent to which these rate increases hold.

In addition to the FMC's close scrutiny of TACA and its members' activities, TACA continued to undergo examination by the EC. Following its publication of the revised TACA Agreement for public comment, the EC received opposing comments from the European Shippers' Council ("ESC"). In response to the ESC's objections, the EC decided to continue its investigation into the revised TACA arrangements regarding inland rates, as well as TACA's practices and procedures for collecting/exchanging individual members' commercial information, and how those procedures may affect competition between the parties to offer individual service contracts. Industry reports indicate that the EC now considers the inland rate matter settled, and is working with TACA representatives to resolve the remaining issue of information exchange under the Agreement.

TACA has appealed the EC's ruling of anticompetitive abuse and the imposition of $318 million in fines. Each side has submitted rebuttal arguments, but it is expected that the Court may take up to three years before it renders a decision in this case. TACA's other appeals against the EC on the legality of inland European rate setting and the removal of immunity from fines remain pending before the European Court.

B. MEDITERRANEAN

The Mediterranean countries saw growth continue in fiscal year 1999 after recovering from a brief slowdown two years earlier.

Economic growth during fiscal year 1999 of 2 to 3 percent is forecast throughout the region. The growth of Italy's Gross Domestic

Product ("GDP") will remain one of the lowest in the European Union ("EU"), while the Spanish economy continues its strong growth. Imports from the region to the U.S. have continued their strong growth due to the strength of the domestic U.S. economy.

The larger economies of the Mediterranean countries, Italy and Spain, saw exports from the U.S. grow 4 and 10 percent respectively, a slowdown from last year. The primary commodities moving into the region remained unchanged, *e.g.*, wastepaper and lumber, with imports of the region's top six commodities accounting for over half of the TEU growth. Foreign investment in the region should continue its strong growth due to the low cost of production in the area.

Imports from the Mediterranean grew by 15 percent. A booming U.S. housing market spurred a large increase in imports of furniture, tile, and other home furnishings. While demand in the U.S. housing sector is slowing, weakness in the euro will minimize any slide in trade from the Mediterranean.

The *United States South Europe Conference* (No. 202-011587) has been unable to increase its membership beyond the three carriers that originally formed the conference in 1997. The intensely competitive economic environment in the trade has kept rates low, though the conference has attempted to implement rate increases in the inbound trade during the fiscal year.

C. MIDDLE EAST

Israel's GDP growth has been slow due to the aftereffects of last year's economic crisis in Russia and Asia, two areas where Israel is heavily exposed. The election of Ehud Barak as the new Prime Minister has increased the chance of a peace settlement. The reduction in uncertainty may reduce interest rates and lead to a revival of the economy. Saudi Arabia and the other Gulf countries

have benefitted from an increase in oil prices. However, these economies remain mired in slow growth as necessary economic reforms have not been implemented.

Growth in exports to the Middle East countries dropped to 1 percent in fiscal year 1999. A continued deceleration in export growth to the region is expected due to the problems in the domestic economies of the region. Exports to Israel have been growing, but exports to Saudi Arabia and Kuwait have declined significantly. The decline in exports included a wide range of consumer goods.

Imports from the Middle East were strong, with Israel being the biggest contributor to the growth. Israeli furniture growth continued to be positive, though the growth rate is declining as the U.S. housing market may have passed its peak. Shipments from the rest of the region were also strong, led by plastic products, apparel and furniture.

The "8900" Lines Agreement (No. 202-008900) was canceled during the fiscal year. This conference agreement was originally implemented in 1965. The agreement was canceled because the members preferred to operate in a discussion agreement, the *Middle East Indian Subcontinent Agreement* (No. 203-011654).

D. AFRICA

Economic growth rates of African countries were generally low in fiscal year 1999. The World Bank reported that 13 countries had GDP rates of 5 percent or more. Another 29 had rates of less than 5 percent, while others failed to achieve any growth. The highest average GDP rate, 5.5 percent, was achieved by countries of the West Africa Monetary Union ("WAMU"), which is comprised of Senegal, Mali, Burkina Faso, Niger, Cote d'Ivoire, Togo, Guinea Bissau and Benin. As in previous years, the countries of the Southern Africa Development Community ("SADC"), including South Africa

and 13 other countries, maintained positive rates. Growth rates were severely restricted by political unrest and armed conflicts in some countries. In others, factors such as an undeveloped infrastructure and inadequate education and training presented problems to growth. Nonetheless, there were some encouraging developments, including the return of Nigeria to civilian rule, the political settlement in Sierra Leone, and the maintenance of political stability in South Africa.

The World Bank and its affiliate agencies invested $17 billion in Africa in calendar year 1999. Concessionary lending by the International Development Agency amounted to $2.2 billion. These resources went into the development of infrastructure, agriculture, human resources and public sector management. Under the World Bank's Special Program of Assistance to Africa, substantial resources were committed for the resurgence of Africa's economic performance.

African institutions, such as the SADC, WAMU, the Organization of African Unity, the Cross Border Initiative, the African Development Bank, and the Common Market for Eastern and Southern Africa, participated in initiatives to expand trade for promoting economic growth. The U.S. supported the efforts of the SADC and other institutions with a memorandum of understanding that endorsed and encouraged expansion of trade and investment. Many countries made reasonable progress in reducing both tariff and non-tariff barriers to trade.

U.S. trade with Africa fluctuated, due mainly to changes in the trade with South Africa and Egypt, the largest sectors. Egypt increased imports by 7 percent because of current and future infrastructure development programs. It purchased materials to modernize areas such as transportation, energy products, electronic goods and medical supplies and equipment. At the same time its exports to the U.S., mainly glassware, furniture and cotton, declined. South Africa on the other hand, increased exports to the U.S. by 45 percent to over 7,700 TEUs. It achieved this level by stabilizing its

currency, the Rand, and implementing an economic policy which revived investment and output opportunities.

Shipping rates in all sectors of the trade increased moderately in calendar year 1999. Rates had fallen as numerous independent actions by members of the *America West Africa Freight Conference* were taken prior to the conference's abolishment in December 1997. The *U.S. Southern and East Africa Conference* ("USEAC") introduced a surcharge of $150 per 20-foot container and $225 per 40-foot container for the repositioning of empty containers. The USEAC also imposed a general rate increase of 10 percent.

With few exceptions, shipping services remained unchanged. Safbank Line upgraded its U.S. service by providing transshipment at Miami, Houston, and New Orleans. Gulf Africa Line expanded its service by including calls at Savannah, and OT Africa Lines was acquired by the Bailer Group.

Significant agreement activity was limited to amendments to ensure compliance with the provisions of OSRA.

E. LATIN AMERICA AND THE CARIBBEAN

The Caribbean grew steadily throughout fiscal year 1999, with the top five carriers posting modest gains in total TEUs carried. Most of this growth came from Haiti and the Bahamas, with good northbound trade growth in the apparel sector, especially menswear, and fruits and vegetables, particularly bananas. The biggest short-term problem was storm damage to the Dominican Republic's agriculture sector, particularly its cocoa crop.

In calendar year 1999, the trade flow between the West Coast of South America and the U.S. East and Gulf Coasts was reversed from 1998. In 1998, U.S. exports from the East and Gulf Coasts dominated the trade by an almost 3 to 2 margin. In 1999, the opposite was true, with imports leading exports by a 3 to 2 margin.

Southbound rates from the U.S. East and Gulf Coasts to the West Coast of South America fell for almost all commodities, while northbound rates grew modestly. In some cases, *e.g.,* FAK cargo southbound, there were rate increases as the volume of cargo increased; yet overall rates declined.

Despite their increased volumes, many of the northbound commodities face highly competitive world markets and are unable to bear large rate increases. Examples of commodities facing such competitive circumstances include bananas and flowers from Ecuador and Columbia, coffee from Peru, and fish and shellfish from Chile. The turnaround in the trade from an export to an import market, therefore, had a dramatic negative impact on many carriers.

Trade between the U.S. West Coast and the West Coast of South America faces different market pressures than the U.S. East and Gulf Coast trade. U.S. export volumes decreased dramatically from 49,299 TEUs in calendar year 1998 to 25,370 TEUs in calendar year 1999. Imports actually increased modestly, however, in marked contrast to the increase in imports in the U.S. East and Gulf Coast trade. Much of this increase came from a rise in lumber shipments from Chile and Peru, necessary to meet the increasing demand in the U.S. for construction materials.

The East Coast of South America trade with the U.S. remains the largest U.S. to Latin America trade, and Brazil remains our largest trading partner. This trade also showed a dramatic shift from being primarily an export trade from the U.S. in calendar year 1998 to a mostly import trade in calendar year 1999. This shift to imports came in January 1999, when Brazil devalued the Brazilian currency, the real, by almost 40 percent. This huge devaluation effectively eliminated the ability of Brazilians to purchase many U.S. products, yet lowered the cost of exports to the U.S. dramatically. Coffee, footwear, and lumber were three northbound commodities which showed strong increases in volumes northbound, while automobile parts, paper and paperboard, and general cargo, declined

precipitously. Overall, exports fell by 35 percent in the first quarter, 27 percent in the second quarter, and 14 percent in the third quarter over 1998 totals. Imports, however, climbed by 25 percent in the first quarter, 15 percent in the second quarter, and 25 percent in the third quarter.

The increased volume of cargo moving northbound created a problem for carriers repositioning containers southbound. To address these issues, the carriers initiated an equipment-repositioning charge in March of up to $700 per container payable by northbound shippers. After a significant outcry from shippers, by June 1999 this charge either largely had been incorporated into the base rates or disappeared altogether.

In an effort to address the changing competitive trade conditions in the Caribbean, and Central and South America, several new carrier alliances formed and four remaining conferences disbanded. The first conference to disband was the *West Coast of South America Agreement* (No. 202-002744). Citing the competition from Asian goods with U.S. consumer goods moving southbound into Chile and with South American finished goods moving northbound to the U.S., the conference disbanded, canceling its contracts as of November 30, 1998.

The *Inter-American Freight Conference* ("IAFC") (No. 202-009648), in October 1998, filed an amendment to allow new members to retain their individual service contracts when they joined the conference. This cleared the way for P&O Nedlloyd to join. In November 1998, Maersk and Sea-Land left the conference. In response to those activities, in December 1998, the IAFC filed a complete revision of its agreement, deleting the various trade sections, allowing for individual service contracting, reducing IA notice to 24 hours, removing the Amazon River basin region from its geographic scope, and changing its name to the *East Coast of South America Association.* By spring 1999, even this loose-knit structure had ceased to be effective, and the conference disbanded.

While the IAFC was struggling to survive, the *Venezuelan American Maritime Association* ("VAMA") (No. 202-006190) amended its agreement to: allow its members to charter space from each other or independent carriers on an *ad hoc* basis; permit its members to enter into service contracts either individually or in groups; permit IA with respect to service contracts; and reduce the IA notice period on tariff items from 10 days to 2 days. Despite these efforts, the VAMA disbanded in July 1999. Presently there are four conferences and seven discussion agreements serving the Latin American Trades.

Among the most significant vessel-sharing or slot-chartering agreements is the TMM/CP Ships joint service agreement. Transportacion Maritima Mexicana de C.V. ("TMM"), with its subsidiary liner companies (TMM and Tecomar), and CP Ships Holdings, Inc., with its subsidiary liner companies (Ivaran and Lykes), filed a joint venture agreement for the operation of common carrier services under the name Americana Ships.

The other major alliances involve mergers of major carriers in the trade. Maersk Lines was scheduled to complete its merger with Sea-Land. Hamburg-Sud (Columbus Line) acquired Alianca, Transroll Navegacao, and Crowley American Transport's South American services. Finally, CSAV acquired Libra Navegacao and Montemar/Pan-American Independent Line.

Maersk, Columbus, CSAV, Euroatlantic Container Line, and P&O Nedlloyd have joined in an agreement between the U.S. East Coast and the East Coast of South America, the *East Coast U.S./ East Coast South America Vessel Sharing Agreement* (No. 203-011642). This agreement permits the carriers to share space on each other's vessels as needed in order to effect the withdrawal of a small amount of capacity from the trade. As a result, the carriers are operating two weekly strings using 11 vessels instead of the three strings using 14 vessels that had been run separately by CSAV/Euroatlantic/TNX, Maersk/SeaLand, and Columbus/Alianca/P&O Nedlloyd.

The Columbus/Crowley acquisition brings together two of the largest carriers in the U.S. to South America trade. Crowley, already in strong working agreements with APL and the Americana Ships joint venture, brings Columbus (and Aliancia and Transroll) into cooperation with these carriers on the East Coast of South America and with Companhia Chilena de Navegacion Interoceanica and CSAV on the West Coast of South America. This gives Columbus a strong market share in both the U.S. to South America trade (both coasts) and the Europe to South America trades.

CSAV, along with its wholly-owned subsidiaries, Euroatlantic Container Line, Braztrans, and Montemar and Libra (two lines in which CSAV holds a controlling interest), filed a cooperative working agreement (the *CSAV Group Cooperative Working Agreement* (No. 203-011672)) to allow two or more of the parties to share vessels, market services, and share other administrative functions with the aim of reducing costs.

F. TRANSPACIFIC

On November 2, 1998, the *Transpacific Stabilization Agreement* ("TSA") (No. 203-011223), a discussion agreement among 13 conference and non-conference lines operating in the eastbound trades from the Far East and the Indian Subcontinent, announced a $900 to $1,000 general rate increase ("GRI") on service contract and tariff rates, to take effect on May 1, 1999. In addition, TSA announced that a peak season surcharge ("PSS") of $300 per FEU would be levied between June 1, 1999, and November 30, 1999. Owing to continued high demand by U.S. importers for vessel space and equipment, and despite the announced entry of six additional lines into the transpacific trades, TSA lines were able to fully implement the announced GRI and, with a limited number of minor exceptions, the PSS as well.

TSA's ability to implement its announced GRI and PSS was aided by the decision of COSCO to become a member of the

discussion agreement on February 28, 1999. COSCO's market share of approximately 7 percent gave TSA a total market share of approximately 90 percent, which was higher in some sub-trades. In addition, Mediterranean Shipping Co., the most prominent of the new entrants to the transpacific trade, initially joined TSA on March 18, 1999. It subsequently withdrew from the agreement.

By October 1999, current and expected demand for vessel space in the eastbound trades was strong enough that TSA lines announced a new annual GRI of $400 per FEU, beginning on May 1, 2000, and another $300 PSS scheduled to begin on July 1, 2000, to remain in effect until October 31, 2000.

In the U.S. to Asia export trades, the *Westbound Transpacific Stabilization Agreement* (No. 203-011325) proved unable to implement even relatively minor proposed rate increases. Indeed, despite evidence of the beginnings of an economic recovery in Korea and Thailand, including an increase in cargo volumes in the Europe to Asia trades, the westbound transpacific trades continued to be weak, with vessels reportedly operating at average capacity utilization levels of approximately 50 percent.

Between April 30 and August 1, 1999, three major transpacific conferences, the *Asia North America Eastbound Rate Agreement* ("ANERA") (No. 202-010776), the *Transpacific Westbound Rate Agreement* ("TWRA") (No. 202-010689), and the *Japan/United States Eastbound Freight Conference* (No. 202-011528), were either suspended or terminated. This action dramatically demonstrated that liberalization of service contracting under OSRA did indeed signal the end of traditional conferences in the transpacific trades, and the rise of discussion/stabilization agreements as the key carrier pricing and policy forum.

The transpacific trades also figured prominently in several major Commission oversight activities in fiscal year 1999, including: (1) Fact Finding Investigation No. 23, an investigation into carrier

price increases in the eastbound trades that was initiated on September 21, 1998; (2) a March 19, 1999, request for additional information related to TSA's proposed authority to establish voluntary service contract guidelines; and (3) the Commission's review of activities of the Stabilization of Trade Committee of the Asian Shipowners' Forum ("ASF").

The Commission's March 19, 1999, Request for Additional Information was issued to aid the Commission in its review of a proposed amendment to TSA that authorized member lines to establish and confidentially file with the Commission voluntary service contract guidelines as provided for under OSRA. The Commission's request focused on agreement provisions and confidential guidelines governing contract confidentiality, and concerned possible pricing effects owing to TSA's high market share and the current and expected economic conditions in the relevant trades. The authority to establish service contract guidelines took effect in early May, and shortly thereafter TSA made the guidelines public, including the text of TSA's model contract confidentiality clauses.

On October 5, 1999, in response to a Commission finding that certain activities of ASF's Stabilization of Trade Committee were subject to the 1984 Act, ASF members filed an agreement seeking antitrust immunity under the 1984 Act. The new agreement, the *Asian Shipowners' Forum/Stabilization of Trade Committee Agreement* (No. 203-011679), was scheduled to become effective on November 19, 1999.

G. WORLDWIDE

For fiscal year 1999, an overall imbalance of imports in excess of exports continued to plague U.S. liner trading worldwide. But by fiscal year end, signs of changes in the global economy foretold of a possible improvement. Worldwide, total U.S. liner imports outpaced liner exports by 36 percent. Record sales in the

U.S. housing market fed consumer demand for such imported goods as furniture, housewares, and ceramic tile. Also leading the way were computers from Asia and Europe. Total U.S. liner imports ended the fiscal year at a growth rate of 12 percent relative to the preceding period. Conversely, total U.S. liner exports fell by 3 percent as worldwide foreign demand suffered from the aftereffects of Asia's 1997 financial crisis, and the euro's decline in value against the dollar under the EU's newly integrated monetary system. Looking forward, the Federal Reserve's efforts to stall inflation by raising interest rates should temper consumer spending in the U.S. and improve the overall trade imbalance.

The effects of OSRA's reforms on the ocean liner industry were readily apparent as carriers restructured their activities under the new business environment that began on May 1, 1999. For the most part, OSRA's deregulation of service contracts rendered the conference system ineffectual in some major U.S. trades. Carriers seeking to coordinate their activities on rates and services in ways more compatible with OSRA abandoned conferences in favor of more loosely structured discussion agreements with voluntary rate authority. As OSRA took effect, many conferences throughout the U.S. trades were terminated or suspended, including such established agreements as ANERA, TWRA, The "8900" Lines Agreement, and the IAFC.

As the conference system diminished, major carriers moved to strengthen their positions in the liner trades by acquiring additional assets to achieve potentially greater economies of scale, and thus, cost efficiencies. Most notably, Maersk announced plans to acquire the international liner assets of Sea-Land. The integrated services will do business as A.P. Moller-Maersk SeaLand. While Maersk is already the world's largest liner carrier, the acquisition will distinguish A.P. Moller-Maersk SeaLand as the industry leader, with combined assets of 250 vessels totaling over 550,000 TEUs in capacity. Earlier in 1999, Maersk also purchased Safmarine, a South African carrier.

Other acquisitions during the fiscal year included the purchase of the South American services of Crowley American Transport, Inc., by Hamburg-Sud (Columbus Line), Evergreen's purchase of Lloyd Triestino, and CP Ships' purchases of Ivaran Lines and Australia-New Zealand Direct Line.

The move toward greater consolidation in the ocean liner industry is viewed as inevitable, with A.P. Moller-Maersk SeaLand setting the standard. The trend is projected to escalate over the next several years as carriers struggle to remain competitive.

V

AUTOMATED TARIFF FILING AND INFORMATION SYSTEM ("ATFI")

Prior to the enactment of OSRA, the 1984 Act required common carriers by water in the foreign commerce of the U.S. to file with the Commission and keep open to public inspection their "tariffs" applicable to ocean transportation. The 1984 Act also required that service contracts be filed confidentially with the Commission and that essential terms of such contracts be made available to the public in tariff format. *See* 46 U.S.C. app. §§ 817 and 1707. Additionally, terminal tariffs were required to be filed by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water in the U.S. foreign commerce. While tariff and service contract information is used for regulatory purposes, it primarily is intended to keep the shipping public informed so as to promote competition and facilitate the flow of U.S. exports and imports.

The Commission historically would receive up to a million paper pages of tariff matter per year. Processing this enormous amount of paper with a limited number of employees led the Commission to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry. A systematic exploration of this subject area commenced with a series of studies beginning in 1981.

A Feasibility Study concluded that a move from paper to electronic filing was viable. An industry Advisory Committee provided suggestions and advice to the Commission, and a Benefit/Cost Analysis confirmed the propriety of moving forward.

A contract was awarded late in 1989 for design and development of an automated filing system, and the final system was completed in 1992. The Commission considered industry views and the advice of Congress throughout the process, so as to include user-friendly features in the system and to avoid infringing on the information industry's ability to provide value-added services. The Commission also provided all required user guides, and continually apprised the industry of relevant information regarding the new system.

After a delay for reasons unrelated to the project, the system became operational in 1993; the industry was required to transition from paper to electronic filing pursuant to a specific phase-in schedule. ATFI was fully operational in 1994, and was used for all required tariff filing and remote retrieval through April 30, 1999. The Commission also entered into a Memorandum of Understanding with the U.S. Surface Transportation Board ("STB") for ATFI to accommodate the filing of domestic offshore tariffs required to be filed with the STB. The Commission provided administrative guidance and assistance to the STB, and remained responsible for all dealings with the contractor.

As explained more fully throughout this report, OSRA dramatically altered the regulatory requirements facing the U.S. ocean shipping industry. Tariff filing and the publication of service contract essential terms with the Commission was eliminated, and replaced with a system calling for the publication of such information in carriers' private automated systems. Accordingly, ATFI ceased serving as the system for tariff and essential terms filing as of May 1, 1999. The Commission terminated the ATFI contract effective May 31, 1999, allowing one month to archive data and close out the system. A separate contract was negotiated to ensure the public availability of historical ATFI data.

The ATFI system was recognized by the maritime and information industries as a significant achievement and real success.

It received, processed and made available an inordinate amount of information in an extremely efficient manner. The Commission thanks those in the industry for their cooperation throughout the life of ATFI. The Commission also wishes to commend its contractor, PRC Inc., for its technical competence, consistent responsiveness, and overall excellence in managing this important system.

VI

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. GENERAL

The Omnibus Trade and Competitiveness Act of 1988, enacted by Congress and effective with the President's signing on August 23, 1988, contains at Title X, Subtitle A, the Foreign Shipping Practices Act of 1988 ("FSPA").

The FSPA directs the Commission to address adverse conditions affecting U.S. carriers in U.S./foreign oceanborne trades, which conditions do not exist for foreign carriers in the U.S., either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

During fiscal year 1999, the Commission investigated potentially restrictive practices of the Government of the People's Republic of China ("PRC") which may warrant institution of formal proceedings under the FSPA or other statutes. These matters included limitations on non-Chinese companies' port access, intermodal services, freight forwarding operations, and agency services in China. That investigation, Docket No. 98-14, is ongoing. The Commission also reviewed Brazilian shipping restrictions, including unfair tax treatment of non-Brazilian vessels and limits on their ability to carry certain types of cargoes in the U.S.-Brazil trade; these issues subsequently were addressed in a new bilateral maritime agreement negotiated by U.S. and Brazilian officials in October 1999. The Commission also continued to collect reports on the progress of legal and operational reforms in Japan's port services market.

B. TOP TWENTY U.S. LINER CARGO TRADING PARTNERS

Section 10002(g)(1) of the Omnibus Trade and Competitiveness Act of 1988 requires the FMC to include in its annual report to Congress "a list of the twenty foreign countries that generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States."

The Journal of Commerce's Port Import Export Reporting Service ("PIERS") database was used to derive the Commission's list of top twenty partners. The PIERS data are aggregated so as to exclude all non-liner shipments. PIERS import data are collected in two ways: (1) tapes of import manifests filed electronically via the Automated Manifest System ("AMS") obtained from Customs, and (2) data transcribed manually at individual ports from import manifests not necessarily filed electronically with Customs. The raw data obtained from AMS are edited to conform to PIERS. Export data are manually transcribed at each port from bills of lading filed with Customs by ship lines. PIERS uses standardized spellings of company names, coding of ship lines, port names, and country code assignments. The Journal of Commerce also employs proprietary artificial intelligence software to increase the accuracy of its data.

The most recent complete calendar year for which data were available is 1998. The table on the next page gives the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 1998. The figures in the table represent each country's total U.S. liner imports and exports in thousands of TEUs.

Top Twenty U.S. Liner Cargo Trading Partners (1998)

Rank	Country	TEUs (000s)
1	China (PRC)	2,230
2	Japan	1,749
3	Hong Kong[1]	1,239
4	Taiwan	982
5	South Korea	692
6	Germany	510
7	United Kingdom (Incl. N. Ireland)	495
8	Italy	460
9	Belgium & Luxembourg	410
10	Brazil	405
11	Thailand	363
12	The Netherlands	351
13	Indonesia	333
14	France	269
15	Malaysia	251
16	Dominican Republic	227
17	India	221
18	Costa Rica	218
19	Philippines	216
20	Venezuela	216

[1] *On July 1, 1997, Hong Kong reverted to Chinese control as a special administrative region. However, PIERS continues to collect data separately for Hong Kong due to its status as a major transshipment center.*

Source: All data are aggregated from the PIERS (Port Import Export Reporting Service)/Journal of Commerce database. PIERS obtains its information from ship manifests and bills of lading for all vessels calling at U.S. ports.

The only changes to the Top Twenty list in 1998, compared to 1997, are the addition of India and Costa Rica. These two countries replaced Honduras and Singapore. India regained its traditional place among the top U.S. trading partners as a result of a revival of its manufacturing sector. Costa Rica's volume of trade with the U.S. increased substantially as a result of improved market conditions for its agricultural exports and increased import demand of investment projects and renewed consumer confidence.

In terms of ranking order, China (PRC) continued its lead, with an increase in volume of more than 18 percent over 1997's volume. Only minor changes occurred among the rankings of the other top countries.

VII

SIGNIFICANT OPERATING ACTIVITIES

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. General

The Office of the Secretary serves as the focal point for all matters submitted to and emanating from the members of the Commission. Accordingly, the Office is responsible for preparing and submitting regular and notation agenda of matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these items; receiving and processing formal and informal complaints involving violations of the shipping statutes and other applicable laws; receiving and processing special docket applications and applications to correct clerical or administrative errors in service contracts; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving all communications, petitions, notices, pleadings, briefs, or other legal instruments in regulatory and quasi-judicial proceedings and subpenas served on the Commission or members and employees thereof; 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; issuing publications and authenticating instruments and documents of the Commission; compiling and publishing bound volumes of Commission decisions; and maintaining and promulgating official copies of the Commission's regulations. The Office also is responsible for approving or denying special docket requests.

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 1999:

- **The Commission issued decisions concluding six formal proceedings. Another two formal**

proceedings were discontinued or dismissed without decision, while 19 initial decisions of an administrative law judge became administratively final without Commission review. The Commission also concluded 90 special docket applications, and 6 informal dockets which involved claims sought against carriers for up to $10,000. During the same period, the Commission issued final rules in 17 rulemaking proceedings.

- **Special Docket Officers issued decisions in 90 proceedings during fiscal year 1999.**

Seven rulemaking proceedings and two formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 2000.

2. Office of Informal Inquiries and Complaints and Informal Dockets

This Office coordinates the informal complaint-handling system throughout the Commission. A total of 1,998 complaints and information requests were processed in fiscal year 1999. Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint-handling activities amounted to $206,140. Since 1990, this Office has helped complainants recover over $1,600,000.

The Office facilitated communications among maritime industry representatives and Commission officials, and supplied materials and information requested by the general public. During fiscal year 1999, this Office responded to 1,085 such telephone requests and inquiries.

In addition, the Office is responsible for the initial adjudication of reparation claims up to $10,000. These claims must be predicated upon violations of the 1984 Act. Many of the claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers, while a significant number pertain to the mishandling of personal effects shipments. During fiscal year 1999, six claims were filed, while three pending cases were carried over from the previous year. There were three pending cases at the close of the fiscal year.

During fiscal year 1999:

- **The Office cooperated closely with the staff of the Bureau of Enforcement with respect to the activities of several nonperforming NVOCCs. These efforts helped many customers of the concerned firms recover their apparent losses, and contributed to formal enforcement efforts in several noteworthy cases.**

- **The Office continued to broaden its outreach activities, establishing and developing contacts and relationships throughout the public and private sectors. As a result, a wider range of individuals and businesses utilized the available services.**

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

Administrative Law Judges ("ALJs") manage the development of an evidentiary record through rulings and conferences with counsel for the litigating parties, rule upon dispositive motions, and preside at hearings held after the receipt of a complaint or institution of a proceeding on the Commission's own motion.

ALJs have the authority to administer oaths and affirmations; issue subpenas; 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 1999, sixteen formal proceedings were pending before the ALJs. During the year, 19 cases were added. The ALJs formally settled ten proceedings, dismissed or discontinued three proceedings, and issued seven initial decisions in formal proceedings (a dismissal and an initial decision were issued in one proceeding).

2. Commission Action

The Commission adopted five formal initial decisions, one initial decision in part, nine orders of approval of settlement, and two dismissals of complaints of the ALJs. Two initial decisions and

two orders approving settlements of the ALJs were pending consideration by the Commission at the end of the fiscal year.

3. Decisions of Administrative Law Judges (in proceedings not yet decided by the Commission)

Rose International, Inc. v. Overseas Moving Network International, Ltd., et al. [Docket No. 96-05].

In this proceeding an NVOCC alleged that various respondent entities engaged in moving household goods had obtained access to a service contract as a purported shippers' association, although the entities did not operate with the required NVOCC bonds and tariffs or were otherwise not a bona fide shippers' association. By this means respondents allegedly obtained transportation from vessel-operating carriers at less than the lawfully applicable rates. Complainant, therefore, alleged that respondents had violated section 10(a)(1) of the 1984 Act, which forbids such practice, and that one respondent had received freight forwarder compensation on shipments in which it had a beneficial interest, in violation of section 19(d)(4) of the 1984 Act. The presiding ALJ concluded that respondents had obtained access to the service contract properly and without fraud or deceit and had not obtained transportation at less than applicable rates, that the one respondent had not obtained payment of forwarder compensation from a carrier unlawfully, and that the complaint should be dismissed.

Saeid B. Maralan (aka Sam Bustani), et al. -- Possible Violations of Sections 8(a)(1), 10(b)(1), 19(a), and 23(a) of the Shipping Act of 1984 [Docket No. 98-19].

This proceeding was an investigation into the activities of respondents Sam Bustani and several of his corporate companies. The presiding ALJ found that respondents had committed multiple

violations of various laws cited in the title of the proceeding. Specifically, respondents had knowingly provided services as an NVOCC without having the required tariff and surety bond and that, even after filing a tariff, respondents failed to adhere to their filed rates. Furthermore, in several instances respondents acted as a freight forwarder without having the license and surety bond required by law. Respondents were assessed $100,000 as civil penalties, with additional penalties suspended provided respondents obeyed the law. Respondents were also ordered to cease and desist from violating the laws cited.

4. Pending Proceedings

At the close of fiscal year 1999, there were sixteen pending proceedings before the ALJs, of which six were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. OFFICE OF THE GENERAL COUNSEL

The General Counsel provides legal counsel to the Commission. This includes reviewing for legal sufficiency staff recommendations for Commission action, drafting proposed rules to implement Commission policies, and preparing final decisions, orders, and regulations for Commission ratification. In addition, the Office of the General Counsel provides written or oral legal opinions to the Commission, its staff, and the general public in appropriate cases. As described in more detail below, the General Counsel also represents the Commission before the courts and Congress and administers the Commission's international affairs program.

1. Rulemakings and Decisions

The following are rulemakings and adjudications representative of matters prepared by the General Counsel's Office:

(a) Rulemakings

***The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984* [Docket No. 99-13], (August 3, 1999).**

The Commission issued a Notice of Inquiry to seek comments from interested parties regarding possible changes to the Commission's rules governing the content of ocean common carrier and marine terminal operator ("MTO") agreements which are filed with the Commission in accordance with the 1984 Act. The proceeding was initiated in response to comments received in the rulemaking proceeding in Docket No. 98-26, which amended the Commission's agreement regulations to implement changes made by

OSRA. Those comments requested that the Commission's rules on content standards for agreement filing be updated or refined. Interested parties were given 60 days to comment in response to the Notice of Inquiry, which was published in the *Federal Register* on August 3, 1999.

Ocean Common Carriers Subject to the Shipping Act of 1984 [Docket No. 99-10], (June 18, 1999).

As a result of comments received in a rulemaking proceeding to implement OSRA, the Commission initiated this proceeding to amend various regulations to clarify the definition of "ocean common carrier" contained therein. The proposed definition reflects the Commission's current interpretations of the term. Accordingly, only ocean common carriers that operate vessels in at least one U.S. trade would be subject to these rules. Interested parties were given 60 days to comment on the proposed rule.

Amendments to Regulations Governing Employee Ethical Conduct Standards, the Federal Maritime Commission -- General, Public Information, Environmental Policy Analysis, Monetary Penalty Inflation Adjustments, Nondiscrimination on the Basis of Handicap, Passenger Vessel Financial Responsibility, and Certification of Policies and Efforts to Combat Rebating [Docket No. 99-09], 28 S.R.R. 721 (April 28, 1999).

The Commission issued a final rule in Docket No. 99-09 on April 28, 1999. The purpose of this rulemaking was to implement certain ministerial changes required by OSRA, and to reorganize and clarify the rules generally. Among other changes, the rule updates the Commission's quorum requirements, eliminates the regulations governing the filing of anti-rebating certifications, and updates several outdated references and cross-references.

Service Contracts [Docket No. 98-30], 28 S.R.R. 688 (March 1, 1999) and 28 S.R.R. 729 (April 28, 1999).

This rulemaking proceeding was initiated to implement changes made by OSRA to section 8(c) of the 1984 Act. The Commission issued a Notice of Proposed Rulemaking on December 17, 1998, an Interim Final Rule on March 1, 1999, and confirmed the rule as final on April 27, 1999. The Rules became effective on May 1, 1999.

There were significant changes made to the proposed rule in the final rule, the most notable of which was the provision for a new Internet-based filing system, which allows carrier-filers to file their commercially-negotiated contracts without re-formatting. Comment from the industry prompted the Commission to add this Internet-based filing option to the proposed rule's more rigidly formatted dial-up filing system, which was developed based on ATFI. After the favorable reception of the Internet-based filing option, the Commission phased-out the dial-up system as of October 1, 1999.

The final rule also addressed comments regarding matters including the Commission's responsibilities for confidentiality of service contract filings; the inclusion of a shipper status certification in service contract filings; the implementation of a new statutory requirement for carriers to provide labor organizations certain service contract information upon request; the method and location of publication of certain essential terms of service contracts; and the treatment of non-conference agreements entering into service contracts.

***Carrier Automated Tariff Systems* [Docket No. 98-29], 28 S.R.R. 670 (February 26, 1999) and 28 S.R.R. 686 (April 26, 1999).**

In response to changes made to the 1984 Act by OSRA, the Commission proposed new regulations dealing with the automated tariff systems of common carriers and conferences. Under OSRA, carriers no longer have to file tariffs with the Commission, but are required to publish their rates in private, automated tariff systems. The Commission was charged by OSRA with prescribing the requirements for accessibility and accuracy of these tariff systems and can prohibit their use if they fail to comply with these requirements.

The Commission received 22 comments on the Proposed Rule from all segments of the ocean transportation industry. These comments proved to be particularly helpful in assisting the Commission in determining the parameters of the final rule. Accordingly, on February 26, 1999, the Commission adopted a final rule establishing requirements for carrier automated tariff systems that would go into effect on May 1, 1999, the effective date of OSRA. In addition, the Commission adopted a new definition for the term "motor vehicle." However, because that term had not been defined in the proposed rule, the Commission allowed it to go into effect as an interim final rule and gave interested parties an opportunity to comment on it. The Commission subsequently received one comment and, on April 26, 1999, adopted a final rule that included a modified definition of "motor vehicle."

***Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries* [Docket No. 98-28], 28 S.R.R. 629 (February 26, 1999) and 28 S.R.R. 667 (April 29, 1999).**

This proceeding added new regulations, at 46 CFR Part 515, to implement changes made by OSRA to the 1984 Act relating to ocean freight forwarders and NVOCCs.

OSRA amended section 19 of the 1984 Act to require that all OTIs in the U.S. be licensed. OTIs are ocean freight forwarders and NVOCCs as defined by the 1984 Act. As part of the rulemaking, the Commission determined who should be considered "in the United States" for the licensing requirements of the 1984 Act. Further, in response to comments received, the Commission established a procedure whereby foreign-based NVOCCs could establish a presence in the U.S. and obtain a license.

The Commission established a range of financial responsibility requirements commensurate with the scope of activities engaged in by the different OTIs and set forth procedures for making claims against an OTI's financial responsibility. (A Petition for Reconsideration of the limited issue of the claim procedure and a related issue in the surety bond form has been filed and is presently before the Commission.) In addition, the Commission formulated definitions of "NVOCC services" and "transportation-related activities" to ensure that the financial responsibility instrument is used to pay for claims arising out of an OTI's transportation-related activities.

Finally, the Commission set forth the duties and responsibilities of OTIs. Some are applicable to all OTIs. Others, however, apply only to ocean freight forwarders or NVOCCs, due to the inherently different nature of their business and relationship with their customers.

Commenters to the Notice of Proposed Rulemaking, American Surety Association and Kemper National Insurance Companies, filed a Petition for Reconsideration challenging certain aspects of the final rule. The Petition was denied in part relating to the procedures for collecting on a Court judgment obtained against an OTI, the "consents to be sued" language in Bond Form FMC-48, and the definitions of "freight forwarding services," "NVOCC services," and "transportation-related activities," and granted in part to correct an administrative oversight to include the word "final" before the term "judgments" in § 515.23(b)(2).

Marine Terminal Operator Schedules, 46 CFR Part 525 [Docket No. 98-27], 28 S.R.R. 664 (February 19, 1999).

This rulemaking was initiated in order to implement the changes made by OSRA to MTOs' requirements to publish information on their operations. The rule sets forth the regulations for the publication of terminal schedules by MTOs. MTOs may make their terminal schedules available to the public by electronic publication. Any terminal schedule made available to the public shall be enforceable in court as an implied contract. Furthermore, the rule requires all MTOs, whether or not they publish their terminal schedules, to file an FMC-1 form with the Commission as a means of notification.

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 [Docket No. 98-26], 28 S.R.R. 655 (March 1, 1999) and (April 28, 1999).

In this proceeding, the Commission amended its regulations governing agreements among ocean common carriers and MTOs to reflect changes made by OSRA. In accordance with that Act, the Commission established new rules barring shipping lines from collectively agreeing to prohibitions or restrictions on service contract

negotiations or requirements for disclosure of contract terms or negotiations, but permitting lines to establish voluntary contract guidelines. Also, to implement OSRA, the rule amended the scope of marine terminal agreements subject to the Act, established rules for agreements on freight forwarder compensation, reduced the mandatory notice period for carriers' IA on tariff rates, and made other conforming changes. In addition, while not required by OSRA, the Commission also deleted much of its format requirements for filed agreements.

Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers [Docket No. 98-25], 28 S.R.R. 626 (February 10, 1999).

In order to implement statutory changes mandated by OSRA, the Commission issued a proposed rule on December 4, 1998, addressing its regulations governing restrictive foreign shipping practices and controlled carriers. After receiving and reviewing comments to the proposed rule, the Commission issued a final rule on February 10, 1999. Major changes to the regulations, as mandated by OSRA, include the addition of service contract suspension as a remedy to address restrictive foreign trade practices, and the addition of "pricing practices" as a potential condition unfavorable to shipping. Furthermore, the Commission consolidated formerly scattered regulations governing controlled carriers into a single section at 46 CFR Part 565.

(b) Decisions

Petition of National Customs Brokers & Forwarders Association of America for Issuance of Rulemaking or, in the Alternative, for a Declaratory Order [Petition No. P5-98], 28 S.R.R. 1042 (July 16, 1999).

The National Customs Brokers & Forwarders Association of America ("NCBFAA") petitioned the Commission to institute a rulemaking proceeding or, in the alternative, for a declaratory order to address the scope of the term "shipper" as defined in section 3(23) of the 1984 Act, as amended. The Petition also requested that the Commission amend its Rules at 46 CFR § 510.23(a) (now § 515.42(a)) to eliminate the requirement that an ocean freight forwarder's principal be identified as the "shipper" on bills of lading. (The Rule also permits the ocean freight forwarder's name to be listed after the name of the shipper.) Comments on the Petition were received from the Council of European and Japanese National Shipowners' Associations, a group representing ocean common carrier conference and discussion agreements, and the National Industrial Transportation League. The Commission concluded that the NCBFAA Petition provided no new factual basis or persuasive legal argument for reversing the conclusions reached in the numerous proceedings in which the issue previously had been considered, and denied the Petition. In its Order, the Commission summarized the occasions on which it previously addressed the question of who may be considered a shipper for purposes of various sections of the 1984 Act, including participation in service contracts, and concluded that this issue is best left for determination in commercial settings on a case-by-case basis.

***ANERA and its Members - Opting Out of Service Contracts* [Docket No. 99-05], 28 SRR 747 (April 14, 1999).**

The Commission issued an Order to Show Cause to the Asia North America Eastbound Rate Agreement ("ANERA") and its members to show cause why the practice of "opting out" of service contract rates does not violate sections 8(c) and 10(d)(1) of the 1984 Act and § 514.17(c)(2) of the Commission's service contract regulations. The practice, initiated by ANERA for the 1998 service contract year, permitted individual carrier members to be a signatory of a service contract but to charge for shipments at the tariff rates in effect at time of shipment rather than the rates specified in the contract. The practice came to the Commission's attention during Fact Finding Investigation No. 23, *Ocean Common Carrier Practices In the Trans-Pacific Trades*, in which the Commission's designated Fact Finding Officer investigated shipper allegations that carriers had allocated vessel space during the 1998 peak holiday shipping season on the basis of carrier profit and had refused to provide space for cargo unless shippers made significant rate concessions, in violation of the 1984 Act. The Commission received affidavits, documents and arguments in response to the Show Cause Order from ANERA and the Commission's Bureau of Enforcement. The case is presently under consideration.

Kin Bridge Express, Inc. and Kin Bridge Express (U.S.A.), Inc. -- Possible Violations Sections 8, 10(a)(1), 10(b)(1) and 23 of the Shipping Act of 1984 [Docket 98-08] , 28 S.R.R. 604 (April 8, 1999).

The Commission, on its own motion, determined to review an ALJ's decision that Kin Bridge Express, Inc., a Taiwan NVOCC, should be subject to a suspension of its tariff so long as it refused to comply with discovery orders. Finding that a failure to cooperate with discovery undermines the Commission's investigative processes

and responsibilities, the Commission held that suspending Kin Bridge Express, Inc.'s tariff until it complies with discovery was an appropriate sanction. In compliance with section 13(b)(7) of the 1984 Act, the Commission transmitted the Report and Order to the President for review. As there was no objection to the tariff suspension from the President, the Office of the Secretary issued a Notice of Tariff Suspension on April 19, 1999, and the suspension of Kin Bridge Express, Inc.'s tariff became effective.

Compania Sud Americana de Vapores S.A. v. Inter-American Freight Conference, et al. [Docket No. 96-14], 28 S.R.R. 12 (March 19, 1998).

This proceeding was initiated by a complaint filed by Compania Sud Americana de Vapores S.A. ("CSAV") against Respondents Inter-American Freight Conference ("IAFC") and Section C of the IAFC. CSAV alleged that the Respondents violated sections 10(a)(2) and 10(a)(3) of the 1984 Act, 46 U.S.C. app. § 1709(a)(2) and (3), by charging CSAV for expenses allegedly not authorized by the IAFC Agreement. CSAV claimed to have been damaged by the IAFC's action in drawing on a CSAV-supplied letter of credit to pay for a portion of the winding-up expenses of a juridical entity known as the Sociedade Brasileira de Administracao de Conferencias de Frete ("Sobracon"). In response to the complaint, Respondents submitted a Motion to Dismiss and/or for Summary Judgment. CSAV then filed a Cross-Motion for Partial Summary Judgment. The presiding ALJ issued a decision in which he granted the Respondents' Motion for Summary Judgment and dismissed the complaint.

The Complainant had argued that the Respondents violated section 10(a)(2) by failing to file with the Commission an agreement to dissolve Sobracon, a Brazilian corporation employed to administer the Respondents' conference activities in Brazil. The ALJ found that, as a matter of law, the Respondents had provided sufficient language

in their filed FMC Agreement to satisfy the agency's filing requirements. Disagreeing with this conclusion, the Commission issued an order in which it determined that the Respondents had not filed the agreement to dissolve the corporation, and that this failure to file produced a violation of section 10(a)(2) of the 1984 Act. After the Commission issued its Order, the Respondents filed a Petition for Reconsideration, and several outside parties filed an *amicus curiae* brief in support of the Petition for Reconsideration. That Petition is currently being reviewed by the Commission.

River Parishes Company, Inc. v. Ormet Primary Aluminum Corporation [Docket No. 96-06], 28 S.R.R. 751 (February 3, 1999).

This proceeding was initiated by a complaint filed by River Parishes Co., Inc. ("RIVCO") against Ormet Primary Aluminum Corp. ("Ormet"). RIVCO alleged that Ormet violated sections 10(b)(11), (b)(12), (d)(1) and (d)(3) of the 1984 Act by granting an exclusive contract to Bisso Towboat Company for tugboat services at the Burnside Terminal on the Mississippi River.

On April 30, 1998, the presiding ALJ issued an Initial Decision in which he found that the Commission had jurisdiction over Ormet, but also found that RIVCO failed to meet its burden of proof on the merits. Both parties filed exceptions to the Initial Decision.

On February 3, 1999, the Commission issued its Report and Order adopting the ALJ's ultimate conclusions that the Commission had jurisdiction over Ormet and that RIVCO failed to meet its burden of proof on the merits.

***Total Fitness Equipment, Inc. d/b/a Professional Gym v. Worldlink Logistics, Inc.*, Informal Docket No. 1831(F); *Application of Total Fitness Equipment, Inc. d/b/a Professional Gym for the Benefit of Itself* [Special Docket Application No. 3110], 28 S.R.R. 534 (December 10, 1998).**

This proceeding arose from a complaint by Total Fitness Equipment, Inc., a shipper, against Worldlink Logistics, an NVOCC. Total Fitness alleged that Worldlink had violated several provisions of the 1984 Act by refusing to file a commodity rate for chrome track bar cargo, by quoting an unfiled rate to carry the cargo from Taiwan to the U.S., by charging a higher Cargo NOS rate to ship the cargo, and by refusing to release the cargo until the higher charges were paid. In his Initial Decision, the ALJ found that Worldlink had violated sections 10(b)(6) and 10(d)(1) of the 1984 Act, and ordered that Worldlink pay Total Fitness $11,009.38 in reparations. Worldlink filed Exceptions to the Initial Decision, and Total Fitness filed a Reply. On December 10, 1998, the Commission issued a Report and Order in which it upheld the Initial Decision, finding that Worldlink had violated section 10(b)(6) by discriminating against Total Fitness's chrome track bar cargo, and section 10(d)(1) by double billing Total Fitness and by refusing to release its cargo until the second billing was paid. Worldlink filed a Petition for Review of the Commission's decision in the U.S. Court of Appeals for the District of Columbia Circuit on December 29, 1998.

2. Litigation

The General Counsel represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the Commission upon petitions for review of its orders filed with the U.S. Courts of Appeals, the General Counsel also participates in actions for

injunctions, enforcement of Commission orders, actions to collect civil penalties, and other cases where the Commission's interest may be affected by litigation.

The following are representative of matters litigated by the Office:

***Worldlink Logistics, Inc. v. Federal Maritime Commission and United States of America*, D.C. Cir. No. 98-1622.**

This case was initiated in the U.S. Court of Appeals for the District of Columbia Circuit by Worldlink Logistics, Inc., as a Petition for Review of the Commission's decision in *Total Fitness Equipment, Inc. d/b/a Professional Gym v. Worldlink Logistics, Inc.*, Informal Docket No. 1831(F); *Application of Total Fitness Equipment, Inc. d/b/a Professional Gym for the Benefit of Itself*, Special Docket No. 3110. Worldlink filed a brief on March 29, 1999, arguing that the Commission's decision should be vacated. The Commission and the U.S. jointly filed a brief on April 28, 1999, arguing that the court should uphold the Commission's decision. Intervener Total Fitness filed a Notice of Concurrence on May 5, 1999, indicating that it agrees with the positions taken in the Commission's brief. On October 28, 1999, the court issued a judgment upholding the Commission's decision and denying Worldlink's Petition for Review.

***American President Lines, Ltd. v. Federal Maritime Commission*, D.C. Cir. No. 98-1271, *consolidated with Sea-Land Service v. Federal Maritime Commission*, D.C. Cir. No. 98-1272; *Government of the Territory of Guam v. Federal Maritime Commission*, D.C. Cir. No. 98-1354.**

These cases arose from the Commission's decision in Docket No. 89-26, *Government of the Territory of Guam v. Sea-Land Service, Inc. and American President Lines, Ltd.* The Government of Guam ("GovGuam") alleged that Sea-Land and American President Lines ("APL") had violated several provisions of the Shipping Act, 1916 ("1916 Act"), by charging unreasonably high rates in the trade between Guam and the mainland U.S., as well as in the trade between Guam and Hawaii. The ALJ issued an Initial Decision on June 3, 1996, in which he found that the rates of Sea-Land and APL were not unreasonable; he, therefore, dismissed the case. GovGuam filed exceptions to the Initial Decision, and on June 1, 1998, the Commission issued an order finding several violations of the 1916 Act, and remanding the proceeding to the ALJ for a determination on damages as well as a determination on a jurisdictional issue regarding whether certain containers moved by Sea-Land after it withdrew its FMC-filed tariffs were subject to the Commission's jurisdiction.

Sea-Land and APL filed petitions for review of the Commission's decision in the U.S. Court of Appeals for the District of Columbia Circuit on June 11, 1998. Their appeals were consolidated by the court. GovGuam filed a petition for review of the Commission's decision in the same court on July 28, 1998. Its petition was not consolidated with the carriers' cases.

On July 13, 1998, the Commission filed a motion to dismiss for lack of subject matter jurisdiction in cases 98-1271 and 98-1272, arguing that the Commission's June 1, 1998, order was not final under the Hobbs Act and thus not yet susceptible to court review. On

September 14, 1998, the Commission filed a similar motion in case 98-1354.

On November 24, 1998, the Court granted the Commission's motions to dismiss. The remanded proceeding before the ALJ, which had been held in abeyance pending conclusion of the appeals, resumed on December 7, 1998.

Maryland Port Administration v. Federal Maritime Commission, 4th Cir. No. 97-2418.

This proceeding sought review of the Commission's decision in Docket No. 94-01, *Ceres Marine Terminals, Inc. ("Ceres") v. Maryland Port Administration ("MPA")*. Ceres, an MTO alleging violations of sections 10(b)(11), (b)(12), (d)(1) and (d)(3) of the 1984 Act and sections 16 and 17 of the 1916 Act, claimed that MPA engaged in unjust preference and prejudice and unreasonable discrimination by failing to grant it equivalent lease terms and terminal facilities that it provided to an ocean common carrier in its lease with the Port. MPA argued that ocean common carriers and MTOs are not similarly situated and thus, any disparate treatment was not unjust or unreasonable.

On October 10, 1997, the Commission found that the ALJ had failed to consider or address the evidence or to reflect the applicable standards for his decision. Therefore, the Commission vacated the Initial Decision and decided the case *de novo*. The Commission found that respondent MPA had violated sections 10(b)(11) and (12) of the 1984 Act by relying on a vessel call guarantee to justify granting more favorable lease terms to an ocean common carrier and refusing those same, or substantially similar, terms to an MTO solely because of its status, where the vessel call guarantee did not provide to the port any more security or assurances than the MTO could have provided, and further violated section 10(d)(1) by imposing on the MTO rates and charges that were excessive in relation to the benefit received, particularly where the degree of disparity in the rates so

greatly disfavored the party committed to moving substantially more cargo. The Commission also found that Respondent violated sections 10(b)(11) and (12) by refusing to grant the MTO rates for its barge service that were comparable to those offered to another barge operator unless the MTO dropped its existing state court lawsuit and paid amounts allegedly due, and further violated section 10(d)(1) by imposing on the MTO rates for its barge service that were excessive in comparison to the rates provided to the operator of another barge service for the same service and that was not reasonably related to any legitimate goal of the port.

Respondent appealed the Commission's decision to the U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia, and Ceres intervened in the proceeding. Briefing was completed on February 19, 1998, and argument was heard on April 8, 1998. On October 13, 1998, the Court issued an unpublished decision in which it affirmed in part, reversed in part and remanded the case to the Commission. The Court affirmed the Commission's decision that Ceres' barge traffic counts towards the container guarantee in its lease with MPA. However, the Court further found that the Commission failed to fully consider MPA's claim that Ceres was estopped from challenging the terms of its lease with MPA. The Commission's decision rejected MPA's claim but did not elucidate that rejection to the Court's satisfaction; therefore, the Court remanded the issue to the Commission for its consideration. The Court also noted that should the Commission determine that MPA's estoppel challenge is without merit, the Commission is encouraged to revisit its determination with respect to the measure of damages due Ceres.

On October 23, 1998, MPA filed with the Commission a "Petition to Establish a 'Chinese Wall,' or in the alternative, to permit discovery regarding communications between Ceres and the Federal Maritime Commission staff," to which Ceres replied on November 10, 1998. On April 16, 1999, the Commission issued a Report and Order denying MPA's petition, finding that the participation of agency staff in a remanded proceeding presented no

conflicts with the Administrative Procedure Act or due process considerations. On May 26, 1999, the Commission issued an Order establishing a procedural schedule for disposition of the remanded issue. Opening briefs were filed on June 25, 1999, and reply briefs on July 20, 1999. In its reply, MPA contends that in view of recent Supreme Court decisions, it is immune from Ceres' damages claim under the 11th Amendment of the U.S. Constitution. On August 16, 1999, MPA filed a response in which it did not object to Ceres' motion, but also filed a motion for leave to amend its answer and a request for a briefing schedule on the sovereign immunity issues. On September 10, 1999, the parties filed a Joint Motion to Approve Stipulation, in which they sought to preserve the sovereign immunity issues for resolution in a future Federal court proceeding. The Commission granted the Motion on September 17, 1999.

3. Legislative Activities

The General Counsel represents the Commission's interests in all matters before Congress. This includes commenting on proposed legislation, proposing legislation, preparing testimony for Commission officials, responding to Congressional requests for assistance, and preparing agency responses to requests from the Office of Management and Budget ("OMB") on proposed bills and testimony.

During fiscal year 1999, 153 bills, proposals and Congressional inquiries were referred to General Counsel for comments. The Office also worked closely with Congressional staffs on proposed legislation that affected the Commission. In particular, the Office monitored the progress of and commented on various aspects of S. 414, OSRA, that would significantly affect the Commission's statutory mandates. The President signed OSRA on October 14, 1998, Pub. Law No. 105-258, and the law took effect on May 1, 1999.

4. Significant Ongoing Activity

Port Restrictions and Requirements in the United States/Japan Trade [Docket No. 96-20], 27 S.R.R. 913 (February 26, 1997).

The Commission had issued a final rule to impose fees of $100,000 per voyage on Japanese liner operators on February 26, 1997, in response to unfavorable restrictive practices in place in Japanese ports. The imposition of these sanctions was first proposed on November 6, 1996, pursuant to section 19 of the 1920 Act after an extensive FMC investigation into Japanese port practices. The final rule was originally scheduled to take effect April 14, 1997; after a postponement to allow diplomatic efforts at resolution, the final rule took effect on September 4, 1997.

In its decision, the Commission found a series of restrictive conditions involving the dominance of the harbor services industry in Japan by the Japan Harbor Transportation Association ("JHTA"), an association of Japanese waterfront employers. The Commission found that shipping lines in the U.S.-Japan trades are not allowed to make operational changes, major or minor, without the permission of JHTA. That organization exercised its control through its administration of the "prior consultation" system, a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions. No written criteria, explanations, or avenues for appeal were given for JHTA's decisions, and JHTA used its control over access to the prior consultation system to suppress competition and allocate work among its member companies. The Commission also found that JHTA used its authority to disrupt the business operations of its detractors, extract payment of unwarranted fees, and impose operational restrictions, such as Sunday work limits. As a result of these conditions, U.S. carriers and U.S.-Japan trade were burdened with unreasonably high costs and inefficiencies.

The Commission found that the Government of Japan bore ultimate responsibility for JHTA's actions, as JHTA operates with the permission of, and under the regulatory authority and ministerial guidance of, the Ministry of Transport ("MOT"). Also, JHTA member companies are subject to MOT oversight and regulation, and their rates and business plans are subject to MOT approval. In ruling that the imposition of fees was warranted, the Commission found that repeated diplomatic efforts over the last several years by the U.S. and other major trading nations have failed to bring about necessary reforms.

The sanctions were originally scheduled to go into effect April 14, 1997; however, bilateral discussions covering many of the Commission's concerns were held between the U.S. Government and the Government of Japan, concluding with the signing of a "Memorandum of Consultation" by the two governments on April 11. In the Memorandum of Consultation, the Government of Japan committed to a framework for reforming the prior consultation system by July 31, 1997. Based on this and other commitments, the Commission postponed the effective date for the imposition of fees on April 13 until September 4, 1997. When that date arrived, however, no reform plans for the prior consultation system had been agreed upon or implemented. Therefore, the Commission took no action to further stay the sanctions, and the fees began to accrue.

On October 15, 1997, under the payment provisions set forth in the final rule, the payment of $4 million in fees assessed for the month of September was due by the Japanese carriers. However, on October 16, the Commission was informed that the Japanese carriers did not intend to pay the amounts owed. In response, the Commission announced its intention to put into effect the provisions of the final rule addressing non-payment of fees. Under these provisions, liner vessels operated by the Japanese carriers could be barred from, or detained in, U.S. ports, and be denied customs clearance, until their debts to the U.S. Government were satisfied.

The likelihood of ship detentions added a new level of urgency to ongoing U.S.-Japan maritime negotiations (led by the Maritime Administration of the Department of Transportation, together with the Department of State). These negotiations ultimately proved successful. On October 24, 1997, before any ships were actually detained, U.S. and Japanese negotiators concluded documents which would constitute a historic, detailed and far-reaching commitment to reform Japanese port practices. In light of these developments, the Commission entered into an agreement with Japanese shipping lines on fees assessed for the month of September, accepting $1.5 million in compromise.

In November, once the documents agreed to by the negotiators were formally ratified by all necessary government and industry leaders, the Commission suspended the effectiveness of its final rule assessing sanctions. The Commission and Japanese carriers also executed a compromise agreement whereby the Commission, in recognition of the substantial sums already paid by the carriers in this case and the signing of the port reform accords, agreed not to collect those fees assessed on Japanese shipping lines during October and November 1997. The Commission has kept the agency proceeding open, however, to monitor compliance with the commitments made by the negotiators, and to ensure that agreed-upon reforms are actually implemented.

On May 28, 1999, the Commission issued a notice removing the final rule, and requiring U.S. and Japanese carriers to file semiannual status reports regarding Japanese reform efforts. The Commission observed that some of the findings in the final rule -- for example, findings regarding official refusals to grant licenses -- had been overtaken by evolving circumstances and were not supported by the current record; thus, it was appropriate to withdraw the suspended rule while the Commission reevaluates the current conditions facing U.S. shipping in Japan. The Commission cautioned that removal of the final rule in no way reflects the satisfaction of the Commission with the current status of this matter, and pointed out a number of

further steps that the Government of Japan appropriately could take to ensure that its market opening commitments can become effective. The Commission directed that the carriers provide reports addressing the status of reform efforts regarding prior consultation; entry of non-Japanese carriers into Japan's harbor services market; and Government of Japan proposals for broader harbor services deregulation.

5. Foreign Shipping Restrictions and International Affairs

The General Counsel is responsible for the administration of the Commission's international affairs program. The General Counsel monitors potentially restrictive foreign shipping laws and practices, and makes recommendations to the Commission for investigating and addressing such practices.

The Commission has the authority to address restrictive foreign shipping practices under section 19 of the 1920 Act and the FSPA. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions affecting U.S. carriers in foreign trade, which conditions do not exist for foreign carriers in the U.S.

In fiscal year 1999, in addition to the proceeding with regard to Japan, the Commission investigated and addressed a number of potentially unfavorable or discriminatory shipping practices by foreign governments in Brazil and the PRC.

On August 12, 1998, the Commission initiated Docket No. 98-14, *Shipping Restrictions, Requirements and Practices of the People's Republic of China*, with the issuance of Information Demand Orders to vessel-operating carriers of the U.S. and the PRC

for information on Chinese policies and practices regarding port access, the licensing of multi-modal transport operations, and the establishment of representative and branch offices there.

The Commission met in January and June 1999 to review information collected in this docket. In a press release dated June 24, the Commission stated that the responses to the FMC inquiries indicated that Chinese laws and regulations discriminate against and disadvantage U.S. carriers and other non-Chinese shipping lines with regard to a variety of maritime-related services. For example, U.S. carriers are barred from opening wholly-owned companies or branch offices in the PRC in locations where carriers' vessels do not make monthly calls; thus, U.S. carriers must rely on Chinese agents (affiliates of the state-owned Chinese shipping lines) to solicit business, book space, accept goods, and perform other functions in many port cities and inland locales. U.S. carriers also are subject to high minimum capital requirements, and are barred by Chinese law from performing a number of integral vessel agency services for themselves, such as arranging for entry, departure, customs clearance, consignment, transshipment and multimodal transport. The Commission also expressed concerns about: Chinese restrictions on U.S. carriers' freight forwarding operations; existing requirements that ocean carriers obtain governmental permission before beginning or changing international vessel services; and proposed rules that could require the disclosure of confidential service contract rates or terms, and further restrict non-Chinese carriers' ability to offer multi-modal transport services in China. To address these restrictions, the Commission directed its staff to prepare a formal proposal for action under section 19 of the 1920 Act. The Commission may take actions including limitations on sailings, suspension of tariffs, suspension of regulated agreements, fees not to exceed $1,100,000 per voyage, or any other measure necessary and appropriate to address the unfavorable conditions. Such proposed measures would, upon Commission approval, be noticed to the public for comment by interested parties prior to becoming effective.

The Office of the General Counsel continues to closely monitor certain maritime policies of the Government of Brazil. The Commission has had serious concerns about a Brazilian law providing unfair tax and duty exemptions for vessels enrolled in its second ships register, the Registro Especial Brasileiro ("REB"). The Commission also was troubled by Brazilian moves in late 1998 to deny U.S. ocean carriers access to Brazilian government-reserved cargoes, and to levy discriminatory duties on such cargoes when carried by U.S. shipping lines. At that time, the Commission observed that such matters may warrant formal FMC action, including imposition of sanctions pursuant to section 19 of the 1920 Act. However, in early 1999, the Commission received reports that Brazilian authorities, in U.S.-Brazil maritime consultations held February 24 and 25, made a number of commitments that would address the Commission's concerns. For example, Brazilian officials reportedly agreed to prepare a legislative proposal to eliminate the REB tax preference provisions, and to implement a bilateral agreement to resolve long-term concerns about access to government-impelled cargoes. The Office is closely monitoring developments to ensure that the Brazilian commitments are fully implemented.

The Office of the General Counsel also participated in interagency groups and international maritime discussions, and coordinated and participated in briefings of foreign visitors.

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the 1984 Act. Common carriers that are owned and controlled by foreign governments are required to adhere to certain tariff-filing requirements under the 1984 Act. The Office investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The Office, in conjunction with other Commission components, also monitors the activities of controlled carriers. OSRA expands the definition of "controlled carrier" as currently defined under the 1984 Act. In fiscal year 1999, the Office

reviewed documents and information relating to the controlled carrier status of a number of carriers.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

The Office of Equal Employment Opportunity ("EEO") applies knowledge of Federal EEO and personnel management concepts, procedures and regulations to develop and manage a comprehensive program of equal employment opportunity. The Office works independently under the direction of the Chairman to provide advice to the Commission's management in improving and carrying out its policies and program of non-discrimination and affirmative program planning.

The Office is responsible for affirmative program planning, special emphasis programing, and complaints processing and adjudication, with the assistance of collaterally-assigned EEO counselors and a Special Emphasis Program Coordinator.

The Office works closely with the Commission's Office of Personnel, managers and supervisors to:

- **Improve recruitment and representation of women, minorities and persons with handicapping conditions in the workforce.**
- **Provide adequate career counseling.**
- **Facilitate early resolution of employment-related problems.**
- **Develop program plans and progress reports.**

The Director, Office of EEO, arranges for counseling of employees who raise allegations of discrimination; provides for the

investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 1999 include the following:

1. Provided briefings to senior staff.

2. Provided workshops on EEO.

3. Provided counseling assistance to managers, supervisors and employees.

4. Reviewed and assessed management and personnel human resource activity and actions.

5. Developed information and materials for training senior executives, area representatives, and staff and EEO Counselors.

6. Planned and developed special emphasis programs for FMC employee participation.

7. Continued to improve FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.

8. Continued non-discrimination policy and programs in response to Pub. L. No. 103-123.

During fiscal year 2000, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

E. OFFICE OF INSPECTOR GENERAL

The Office of Inspector General ("OIG") at the Commission was established pursuant to the Inspector General Act of 1978, which was amended in 1988 to provide for additional statutory inspectors general at designated Federal entities, including the Commission.

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to, the Commission's programs and operations.**

- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.**

- **Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of, promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**

- **Recommend policies for, and conduct, supervise, or coordinate relationships between the**

Commission and other Federal agencies, state and local governmental agencies, and nongovernmental agencies with respect to all matters relating to: the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; and the identification and prosecution of participants in any fraud or abuse.

- **Keep the Chairman and the Congress fully and currently informed by means of semiannual and other reports concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Commission, recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing such corrective action.**

During fiscal year 1999, four audits and one operational review were completed in final. The audits included reviews of audit corrective actions, the Commission's Freedom of Information Act program, the agency's Representation Fund, and the EEO program. At the request of the Chairman, the OIG also conducted a review of the feasibility of contracting out certain agency functions. In addition, the Office monitored the Commission's progress in addressing Year 2000 ("Y2K") issues.

During the year, a number of Hotline complaints were received, and various investigations, both informal and formal, were opened and pursued. Two formal investigations remain pending review by the Department of Justice. One other formal investigation was completed, and another matter was referred to the Public

Integrity Section at the Department of Justice and, after review, returned to the agency for appropriate administrative action.

In fiscal year 2000, the Office will continue its high-priority program of conducting program evaluations in order to improve agency operations. OSRA brought about significant regulatory changes, and the Office will examine the agency's progress in implementing that statute. In addition, other audits and reviews also will be handled as the Office carries out the OIG's statutory mandate to combat waste, fraud and abuse in agency programs. These audits and reviews are tied to both the agency and the OIG strategic plans. The Office will initiate investigations, both formal and informal, as warranted.

The IG, as an active member of the Executive Council on Integrity and Efficiency, will continue working with that organization on joint projects which affect the IG community.

F. OFFICE OF THE MANAGING DIRECTOR

The Managing Director, as senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the:

- **Bureau of Economics and Agreement Analysis.**
- **Bureau of Tariffs, Certification and Licensing.**
- **Bureau of Enforcement.**
- **Bureau of Administration.**

and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman.

Also, the Managing Director provides administrative guidance to the:

- **Office of the Secretary.**
- **Office of the General Counsel.**
- **Office of Administrative Law Judges.**

and administrative assistance to the:

- **Office of the Inspector General.**

Further, the **Office of Information Resources Management** reports directly to the Office of the Managing Director.

This management structure has been established to ensure the timely and proper achievement of Commission goals and objectives.

In addition, the Managing Director is the Audit Follow-up and Management (Internal) Controls Official for the Commission, and the

Office manages those programs. The Managing Director is the agency's Senior Procurement Executive, its Designated Chief Information Officer, and the Commission's Chief Operating Officer.

During fiscal year 1999, the Deputy Managing Director was the Contracting Officer for the Commission's ATFI system. As the ATFI Contracting Officer, the Deputy Managing Director had direct responsibility for administration of this contract. The ATFI contract was terminated in the third quarter of fiscal year 1999 due to implementation of OSRA, which eliminated the requirement for carriers to file tariffs electronically with the Commission.

A significant achievement of the Office during fiscal year 1999 was oversight of the orderly termination of the ATFI system and transition to new systems designed to accept service contract filings as well as to maintain historical tariff records. Passage of OSRA necessitated these major changes in the automated programs provided to the public by the Commission. Additionally, the Office continued to coordinate implementation and further development of the five-year Strategic Plan and agency Annual Performance Plans as required by the Government Performance and Results Act of 1993 ("GPRA").

The Office's key objectives for fiscal year 2000 are the continued development or redesign of programs to support recent modifications in the Commission's statutory mandates, including implementation of an agency-wide reorganization; review of the agency's user fee schedule for Commission activities; completion of the passenger vessel operator rulemaking process; continued implementation of the Commission's five-year plan under the GPRA, including modifying the agency's Strategic Plan and Annual Performance Plan in light of the passage of OSRA in order to align objectives to the new regulatory regime; and continuing oversight of staff efforts to address restrictive practices of foreign governments.

Office of Information Resources Management

The Office of Information Resources Management ("OIRM") administers the Commission's information resources management ("IRM") program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws which prescribe responsibility for operating the IRM program. These IRM functions include: conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to OMB. The Office is also responsible for managing the computer security and the records and forms programs. The Director of the Office serves as Senior IRM Manager, Forms Control Officer, Computer Security Officer, and Records Management Officer.

During fiscal year 1999, the Office:

- **Modified and enhanced the FMC'S home page, Intranet, and optical imaging system.**

- **Upgraded the Commission's telecommunications capability to T-1 connections, upgraded the e-mail system and installed a firewall on the Local Area Network.**

- **Conducted Information Technology ("IT") Group meetings to share current IT information with Commission employees.**

- **Coordinated technical, logistical, procedural and security issues related to the Commission's worldwide service contract filing system and other database systems created, owned and maintained by the Commission.**

- **Monitored the activities of the ATFI Contractor until termination of the system in line with OSRA.**

- **Furnished agency-wide advice and coordination on records management, OMB clearances, collections of information, and IRM, including providing assistance and guidance to Commission staff in obtaining OMB clearance of seven rulemakings prompted by the enactment of OSRA.**

- **Compiled a supplemental budget request for emergency funds for Y2K IT compliance.**

- **Developed specifications and issued a contract for design, development and implementation of automated systems for ATFI historical data and the dial-up service contracts data.**

Major initiatives for fiscal year 2000 include: (1) replacing and updating old hardware and software with Y2K compliant technology and software; (2) enhancing the FMC home page; (3) upgrading hardware and software for agency-wide file servers; (4) maintaining liaison with the Government Printing Office to ensure that FMC's Government Information Locator Service entries remain current; (5) developing plans and strategies for agency compliance with the Paperwork Elimination Act; (6) finalizing and submitting an electronic records management schedule to the National Archives and Records Administration; (7) providing technical support and assistance for program offices to access carrier automated tariff systems; and (8) providing technical support and assistance for the electronic filing of service contracts.

G. BUREAU OF ECONOMICS AND AGREEMENT ANALYSIS

1. General

The primary function of the Bureau is to plan, develop, and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the 1984 Act as amended by OSRA. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting waterborne liner transportation.**

- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**

- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**

- **Providing expert economic testimony and support in formal proceedings, particularly those regarding unfair foreign shipping practices.**

- **Processing and analyzing common carrier and marine terminal agreements.**

2. Monitoring

The goal of the Bureau's monitoring activities is to ensure that carriers operating in U.S. ocean trades comply fully with applicable statutory standards and Commission regulations. To that end, the Bureau administers a variety of monitoring programs and other research efforts designed to apprise the Commission of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

For a description of the Bureau's monitoring activities for fiscal year 1999, *see* Section III. A, *Monitoring*.

3. General Economic Analysis

In addition to research and economic analysis pertaining to its monitoring programs, the Bureau provides economic expertise for a variety of Commission initiatives including rulemaking proceedings. Bureau economists prepare testimony in fact finding investigations and cases of unfair shipping practices under section 19 of the 1920 Act and the FSPA. They also contribute to speeches and provide briefings for senior agency officials.

Key projects the Bureau completed in fiscal year 1999 included: (1) profiles of the major trade lanes based on information contained in the monitoring reports; (2) an updated monitoring report of controlled carrier activities along with individual controlled carrier profiles; (3) an update of the Bureau's carrier agreement database including a compendium entitled *Carrier Agreements in the U.S. Oceanborne Trades*; (4) a review of the agreement authority of discussion agreements in major U.S. trades; (5) an examination of the adequacy of FMC minutes filing regulations; (6) an analysis of two major agreements under the 6(g) standard; (7) an analysis of rates in major trade lanes; (8) a regulatory flexibility and major rule analyses for the rulemakings implementing OSRA; (9) classification of

agreements to determine each agreement's monitoring report requirements for 1999; (10) development of specific reporting requirements for the Inland Shipping Service Association; (11) responses to informal complaints of shippers regarding agreements in various trades; (12) an updated analysis of rates charged by COSCO, a major controlled carrier; (13) a review of shipping conditions in the South American trades, especially the Brazil trade; (14) participation in an audit of the "accessibility" standard of electronically published common carrier tariffs; (15) semiannual Trans-Atlantic Conference Agreement/FMC meetings to discuss trade conditions and conference activities; (16) meetings with Transpacific Stabilization Agreement/Westbound Transpacific Stabilization Agreement representatives to discuss trade conditions in the Pacific; (17) preparing statistics on the U.S. liner trade for use in Congressional testimony; (18) preparation of a section 15 demand order concerning the Asian Shipowners' Forum; (19) a review of data submissions under the Commission's agreement reporting requirements; and (20) a presentation on liner shipping policy at a U.S. Department of Agriculture Economic Research Workshop.

4. Agreement Analysis

Under sections 4 and 5 of the 1984 Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo or revenue, allot ports or regulate sailings, limit or regulate the volume or character of cargo or passengers to be carried, control or prevent competition, or engage in exclusive or preferential arrangements are required to be filed with the Commission. Except for certain exempted categories, agreements among MTOs and among one or more MTO and one or more ocean common carrier are also required to be filed with the Commission.

Generally, an agreement becomes effective 45 days after filing, unless rejected by the Commission, made the subject of a formal Commission request for additional information, or enjoined

by a U.S. district court under section 6(h) of the 1984 Act on a showing by the Commission that it will unreasonably increase transportation costs or unreasonably decrease service. An agreement already in effect can also be enjoined on a similar showing by the Commission. Under the Commission's regulations, certain routine or nonsubstantive agreements are exempt from the 45-day waiting period and are effective upon filing with the Commission. Further, the 1984 Act empowers the Commission to investigate and order the disapproval, cancellation, or modification of any effective agreement it finds to be in violation of the Act. In an investigation, the Commission may seek to enjoin, in U.S. district court, conduct that violates the Act.

There are several categories of agreements on file at the Commission. They range from conferences that fix rates and set common conditions for service to loosely structured talking agreements under which any decision reached is nonbinding on the parties. What follows is a brief description of the various agreement categories.

(a) Conference Agreements

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. These agreements typically are limited to a geographical area or trade route.

During fiscal year 1999, the Bureau received 97 conference filings, which include modifications to existing conference agreements as well as new agreements. The Bureau analyzed and processed 100 filings last fiscal year. At the end of the fiscal year, there were 25 conference agreements on file. Two conference agreements in the inbound transpacific trades were in the state of suspension at the end of the fiscal year.

(b) Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in a given trade providing for the pooling and apportionment of cargo or revenues, or both, in the interest of increased efficiencies through stabilizing competitive conditions. These agreements often set forth sailing and other requirements aimed at improving overall service efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo that is controlled by the governments of reciprocal trading partners under cargo preference laws, import quotas, or other restrictions.

There were eight pooling and equal access agreements on file at the end of the fiscal year.

(c) Space Charter and Sailing Agreements

Space charter agreements authorize the chartering of vessel space or container slots between or among participating vessel operators. Sailing agreements provide for the rationalization of the parties' sailing schedules. Through effective management of their vessels and the space on those vessels, participants in these agreements are able to provide a high level of service at reduced operating costs. These agreements also generally contain authority to exchange equipment. A number of conferences and discussion agreements also have included space charter and sailing authority within the scope of their agreements.

During fiscal year 1999, the Bureau received 56 new agreements and modifications in this category and processed 65 filings. At the end of the fiscal year, there were 103 space chartering and sailing agreements on file.

(d) Joint Service Agreements

Parties to joint service agreements operate a joint venture under a single name in a specified trading area. The joint venture issues its own bills of lading and sets its own rates as an individual entity.

Ten new joint service agreements and/or modifications were filed during fiscal year 1999. The Bureau processed 11 filings during the year. Seventeen joint service agreements were on file at the conclusion of the fiscal year.

(e) Cooperative Working & Other Agreements

Cooperative working agreements run the gamut from discussion agreements, which permit the participants to discuss competitively sensitive trade matters, to specialized inter-carrier operational undertakings that do not fit precisely within the other agreement categories. This grouping also includes voluntary rate discussion agreements, as well as agency, transshipment, and equipment interchange agreements.

Carriers filed 107 agreements, including amendments, under these categories in fiscal year 1999. The Bureau processed 112 filings. There were 122 of these agreements on file at the end of the fiscal year.

(f) Marine Terminal Agreements

Marine terminals, operated by both public and private entities, provide facilities, services, and labor for the interchange of cargo and passengers between land and ocean carriers, and for the receipt and delivery of cargo from shippers and consignees. The Bureau is responsible for reviewing and processing agreements related to the marine terminal industry.

During fiscal year 1999, the Bureau analyzed 66 terminal agreements relating to port and marine terminal services and facilities. Certain terminal agreements become effective upon filing under Commission rules that exempt specified classes of marine terminal agreements from the waiting period requirements of the 1984 Act. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. At the end of the fiscal year, 460 terminal agreements were on file with the Commission.

The number of marine terminal agreement filings have decreased drastically since fiscal year 1992. That year, to lessen the regulatory burden on the industry, the Commission exempted terminal lease agreements from filing. Prior to that time the Commission was receiving approximately 340 terminal agreements a year. Last fiscal year the Commission received only 62 terminal agreements.

5. Overview of Agreement Filings

In fiscal year 1999, the Bureau received 363 agreements, including modifications to existing agreements, which was a slight increase (1.7 percent) over the previous fiscal year. The Bureau processed 385 agreement filings last year, a productivity gain of almost 12 percent. Appendix C contains a breakdown of receipts and processing categories for the fiscal year.

At the end of fiscal year 1999, the Bureau had a total of 275 carrier agreements and 460 terminal agreements on file. Appendix C also provides a breakdown by various agreement types.

6. Future Plans and Proposed Activities

The Bureau's overall monitoring program will focus on systematic oversight of carrier and trade activity with an emphasis on:

analyzing information contained in carrier agreement quarterly monitoring reports submitted under the Commission's agreement reporting requirements; reviewing agreement minutes submissions; monitoring current developments and trade trends; and reviewing publicly available sources of trade information. The above data will be employed in a planned study on the impact of OSRA. The Bureau also will assess the impact of key issues facing the industry in order to monitor developments in major trades.

The Bureau also will continue to furnish support and prepare economic testimony in formal Commission proceedings arising in the areas of its expertise; provide analyses and recommendations on petitions, information demand orders, and Commission-initiated rulemakings; perform pre-effectiveness analyses of newly filed agreements to determine whether they are likely to raise issues and specific questions under sections 5, 6(g) and 10 of the 1984 Act, or raise general policy questions; prepare recommendations to the Commission on the more complex agreements and those agreements that raise policy issues; and process other agreement matters internally under authority delegated by the Commission. Further, the Bureau will take action necessary to implement and administer any changes brought about by a reorganization of the agency and Bureau pursuant to OSRA.

H. BUREAU OF TARIFFS, CERTIFICATION AND LICENSING

1. General

The Bureau of Tariffs, Certification and Licensing is responsible for administering the Commission's service contract filing system; ensuring that NVOCCs and freight forwarders submit appropriate evidence of financial responsibility; the licensing of ocean freight forwarders and NVOCCs in the U.S. as OTIs; the certification of owners and operators of passenger vessels for financial responsibility; and monitoring the accessibility and accuracy of all tariffs published by common carriers, conferences of such carriers, and MTOs. In meeting these responsibilities, the Bureau:

- **Ensures that shippers, as a result of tariff publications, are not subjected to unjust, unfair or unreasonably discriminatory practices in the movement of cargo in the U.S. foreign commerce.**

- **Approves or disapproves special permission applications involving requests to deviate from tariff publishing rules.**

- **Administers the OTI financial responsibility program by setting policies and guidelines and reviewing financial instruments that evidence financial responsibility.**

- **Reviews and processes service contracts, service contract amendments and essential terms publications filed by ocean common carriers and conferences of such carriers.**

- **Prepares recommendations on requests to correct clerical or administrative errors in the essential terms of service contracts.**

- **Licenses ocean freight forwarders and NVOCCs in the U.S. as OTIs under the provisions of the 1984 Act, as amended under OSRA.**

- **Certifies owners and operators of passenger vessels in U.S. trades with respect to the financial responsibility of such owners and operators to satisfy any liability incurred for nonperformance of voyages or death or injury to passengers or other persons.**

As part of its program responsibilities, the Bureau:

- **Initiates recommendations for formal action and proceedings by the Commission in collaboration with other offices of the Commission as warranted.**

- **Cooperates with other Commission components with regard to enforcement of statutory and regulatory requirements.**

- **Processes Commission form FMC-1, which is electronically submitted from the Commission's home page and identifies the location of the carrier's or marine terminal's tariffs or schedules.**

- **Maintains several automated databases, including the Regulated Persons Index, which contains the names, addresses, phone numbers, trade names, and other pertinent information on the persons the Commission regulates.**

Information concerning regulatory matters that the Bureau administers is available to the industry and the public at large through the Commission's home page on the Internet. Included in this information are the regulations that apply the tariff publication requirements under 46 CFR Part 520; passenger vessel financial responsibility requirements under 46 CFR part 540; and financial responsibility requirements for OTIs under 46 CFR Part 515. Additionally, electronic, downloadable versions of forms that are used in support of the Bureau's regulatory programs are available on the home page, *e.g.*, the carrier's tariff location form, FMC-1; the *Application for a License as an Ocean Transportation Intermediary,* form FMC-18; and the *Application for Certificate of Financial Responsibility,* form FMC-131.

In fiscal year 1999, the Bureau contributed to the Commission's efforts toward complying with the requirements of the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, whose purpose is to maximize the collection of delinquent debt owed to the Federal Government.

2. Foreign Commerce

(a) Foreign Tariffs

Before May 1, 1999, section 8 of the 1984 Act, 46 U.S.C. app. § 1707, required the filing of tariffs in the Commission's ATFI system. These tariffs set forth the rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. As of May 1, 1999, OSRA mandates the publication of common carrier and conference tariffs in private automated systems. The Bureau reviews and monitors the accessibility and accuracy of the private systems, as prescribed under OSRA, and reviews published tariff material for compliance with the Act's requirements. The Bureau continues to act upon applications for special permission to deviate from tariff filing rules and regulations; the Bureau will continue to recommend

Commission action on tariff publishing activities and regulations, and maintain records of NVOCC financial responsibility.

The Bureau is also involved in the processing of the Commission's form FMC-1, which is electronically submitted from the Commission's home page and identifies the location of the carrier's or marine terminal's tariffs or schedules.

During fiscal year 1999, the Bureau received and processed 238 foreign commerce special permission applications to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff publishing regulations.

(b) Service Contracts

Service contracts offer an alternative to transportation under tariff terms. Their flexibility enables contract parties to tailor transportation services to accommodate specific commercial and operational needs.

The 1984 Act permitted vessel-operating common carriers ("VOCCs") and conferences to enter into service contracts with shippers or shippers' associations. Service contracts entered into under section 8(c) of the 1984 Act, 46 U.S.C. app. § 1707(c), were filed confidentially with the Commission, and a concise statement of the contract's essential terms was also filed with the Commission and made available to the general public in tariff format. Similarly situated shippers could obtain a contract containing the same terms.

Effective May 1, 1999, OSRA significantly altered the treatment of service contracts. The definition of service contract was changed to include a certain volume or a portion of a shipper's cargo (the 1984 Act previously specified only volume). Contracts may be negotiated and signed by multiple shippers on the one hand, and individual ocean common carriers or agreements between or among ocean common carriers on the other. Formerly, only "a shipper"

could enter into a contract, and "a conference" was the only group of carriers so permitted. Essential terms which must be made public in carrier published tariffs have been limited to: (1) commodity or commodities involved; (2) minimum volume or portion; (3) duration; and (4) origin and destination port ranges. The contract rate now is confidential, as are the carrier's commitment to the shipper and inland geographic areas served under the contract. There is no equivalent right, as previously existed, for a shipper to obtain a contract containing the same terms as a similarly situated shipper. In addition, global contracts covering foreign-to-foreign cargo shipments may be filed with the Commission, although non-U.S. matters will not be subject to the Commission's jurisdiction. However, to the extent to which the U.S. trade matters are affected by, contingent on or reliant on foreign-to-foreign movements, the Commission has the statutory duty and jurisdiction to obtain relevant records. And the statement of essential terms published for such contracts must indicate that the contract includes matter outside the Commission's jurisdiction.

OSRA also prohibits the forum for the resolution of contract disputes from being affiliated with, or controlled by, a controlled carrier or by the government which owns or controls the carrier. In addition, parties to collective bargaining agreements may petition the Commission for disclosure of other service contract information under certain specified conditions.

The Commission determined that all contracts would be required to be filed electronically. In conjunction with other bureaus, the Bureau was responsible for developing an acceptable system for such filing. Two systems initially were developed, one which was Internet-based and another which used a dial-up approach. This latter system was predicated on the Commission's former ATFI system, and was provided as an option to facilitate contract filing during the transition to OSRA requirements. The dial-up system expired at the end of the fiscal year, and all service contracts now are required to be filed in the Internet-based system. The Internet-based system is designed for flexibility. It does not require contract terms to be filed

in any prescribed order, and it allows carriers to submit service contracts in WordStar, WordPerfect, Microsoft Word and ASCII formats.

During the first seven months of the fiscal year, through April 30, 1999, the Commission's ATFI system received 17 essential terms publications, 7,435 new service contracts, and 29,118 amendments. Under OSRA, from May 1, 1999, through the end of fiscal year 1999, the Bureau received 22,018 new service contracts and 32,256 amendments.

(c) Controlled Carriers

A controlled carrier is an ocean common carrier whose operating assets are directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier are operated. Section 9 of the 1984 Act, 46 U.S.C. app. § 1708, provides that no controlled carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules or regulations in those tariffs. In addition, such rates, charges, and classifications of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission. The 1984 Act, before being amended by OSRA, excepted the following from controlled carrier requirements: (1) rates of controlled carriers of a state whose vessels are entitled by a treaty of the U.S. to receive most-favored-nation treatment; (2) a controlled carrier of a state which subscribed to the Organization for Economic Cooperation and Development code; (3) rates of controlled carriers when members of an agreement; and (4) rates in the trade between the U.S. and the controlled carrier's country. OSRA retained this first exception, removed the last three, and added an exception for "a trade served exclusively by controlled carriers."

The 1984 Act previously defined a "controlled carrier" as one whose assets are owned or controlled by the government under whose registry the carrier's vessels operate. Accordingly, a carrier owned or controlled by a government could remove itself from controlled carrier status by registering its vessels with a government other than the one which owned or operated it. OSRA closed that loophole by providing simply that a carrier is "controlled" if its assets are owned or controlled by a government. Additionally, in assessing whether the rates and charges of controlled carriers are just and reasonable, the Commission now is directed to take into account whether they are below a level that is fully compensatory. The Commission may suspend a controlled carrier's rates on 30 days' notice, and is given 120 days to determine whether such rates are unjust and unreasonable.

By Order on March 27, 1998, the Commission granted one controlled carrier, COSCO, a limited exemption from the 30-day notice period applicable to controlled carriers to reduce rates to meet or exceed the filed rates of competing ocean common carriers. (Petition No. P1-98, *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984.*) In fiscal year 1999, COSCO exercised the authority granted by the Commission's Order in 23 instances.

(d) Common Carrier Anti-Rebate Certification Program

Prior to OSRA, every common carrier by water in the foreign commerce of the U.S., as well as all licensed ocean freight forwarders were required by section 15(b) of the 1984 Act (46 U.S.C. app. § 1714) and 46 CFR Part 582 to file a sworn *Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States*. This certification was filed with the Commission on or before December 31 of each even-numbered calendar year and was signed by the Chief Executive Officer of the

common carrier or ocean freight forwarder. OSRA eliminated this requirement. Given OSRA's effective date of May 1, 1999, the Commission waived the filing of these certifications in calendar year 1998.

3. Ocean Transportation Intermediaries

Ocean freight forwarders and NVOCCs in the U.S. have been combined by OSRA into a new entity known as OTIs. As of May 1, 1999, OTIs "in the United States" must be licensed by the Commission and must establish that they are qualified by experience and character to act as an OTI. This is a new requirement for current NVOCCs in the U.S. Also, no person may act as an OTI unless it furnishes a bond, proof of insurance, or other surety in an amount determined by the Commission to ensure financial responsibility. The Commission's statutory authority for the licensing of OTIs is contained in section 19 of the 1984 Act, 46 U.S.C. app. § 1718, as amended by OSRA. The Bureau's program with regard to OTIs enables the Commission to maintain effective surveillance over the technical qualifications and financial responsibility of OTIs operating in the U.S. foreign commerce. The Commission this fiscal year increased financial responsibility coverage requirements for OTIs as follows: freight forwarders, $50,000; licensed NVOCCs, $75,000; unlicensed (foreign) NVOCCs, $150,000; and unincorporated branch offices, $10,000.

During fiscal year 1999, the Commission received 441 new and amended freight forwarder license applications. The Commission approved 365 applications; 70 applications were deficient and returned; and 17 requests for a license were withdrawn. The Commission also issued 301 new licenses and revoked 81 licenses. At the end of the fiscal year, 2,206 licensed forwarders were operating under the Commission's jurisdiction. Of these freight forwarders, 1,905 were reissued a license as an OTI and were required to file riders, amendments, or new bonds to comply with the OTI provisions of OSRA. Additionally, 2,500 NVOCCs were

grandfathered as OTI-NVOCC licensees, including 97 grandfathered NVOCCs that added freight forwarder authority to their OTI licenses. At the end of the fiscal year, approximately 2,449 NVOCC surety bonds were on file. The Bureau estimates that over 2,000 inquiries on surety bond matters were received during the fiscal year. OTI applicants use revised form FMC-18, *Application for a License as an Ocean Transportation Intermediary*, which is available on the Commission's home page.

4. Domestic Commerce

(a) Domestic Tariffs

The regulatory responsibility for U.S. domestic offshore commerce was transferred to the STB effective October 1, 1996, pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995). The FMC and STB entered into a Memorandum of Understanding that provided for tariffs under the jurisdiction of the STB to continue to be filed in the Commission's ATFI system. The Bureau maintained administrative control in support of the STB's receipt and review of all domestic trade tariffs filed in the ATFI system through April 1999. The Bureau provided the STB with advice on the operation and use of the ATFI system, ATFI administrative changes, reports, and news bulletins that affected domestic offshore tariff filings. Although the ATFI system was no longer used for filing purposes after May 1, 1999, the STB will have access to the historical data maintained in the ATFI system.

(b) Marine Terminal Activities

Until May 1, 1999, MTOs were required to file tariffs stating their rates, charges, rules and practices pursuant to 46 CFR Part 514 of the Commission's regulations and the statutory responsibilities set forth in section 10 of the 1984 Act, 46 U.S.C. app. § 1709. During fiscal year 1999, the Bureau received, processed, and reviewed two

new terminal tariffs, along with numerous amendments that were filed in the ATFI system through April 30 of the fiscal year. Under OSRA, effective May 1, 1999, MTOs have the option of publishing public schedules of their rates, regulations and practices, including limitations of liability for cargo loss or damage. Any such schedule shall be enforceable in an appropriate court as an implied contract, without proof of actual knowledge of its provisions. As required by OSRA, the Commission has prescribed by regulation, 46 CFR Part 525, the form and manner in which MTO schedules shall be electronically published.

5. Passenger Vessel Certification

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. §§ 817d and 817e), which are implemented by the Commission's regulations in 46 CFR 540 -- *Security for the Protection of the Public.* Pub. L. No. 89-777 requires certain persons to present the Commission with evidence of financial responsibility to indemnify passengers and other persons for death, injury or nonperformance of transportation for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories.

Upon the submission of satisfactory evidence of financial responsibility in accordance with Subpart A of 46 CFR 540, the Commission issues a *Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation.* Upon the submission of similar evidence in accordance with Subpart B of 46 CFR 540, the Commission issues a *Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages.* The program now encompasses about 150 vessels and 40 operators, which have evidence of financial responsibility coverage in excess of $310 million for nonperformance and over $1 billion for casualty. The certificates issued pursuant to this program are necessary for the Customs clearance of thousands of passenger vessel sailings annually.

During fiscal year 1999, the Commission received 101 applications for passenger vessel certificates. During the fiscal year, 38 casualty certificates and 78 performance certificates were approved and issued to passenger vessel applicants.

The Bureau was involved in a Further Notice of Proposed Rulemaking aimed at protecting a higher proportion of passenger deposits and prepaid fares, Docket No. 94-06, *Financial Responsibility Requirements for Nonperformance of Transportation.* At the end of the fiscal year, a cost benefit analysis was being reviewed for this proceeding.

6. Automated Database Systems

The Bureau currently maintains and uses the following automated database systems: (1) Regulated Persons Index, (2) Service Contract System, (3) Microfiche System, (4) OTI System, and (5) the tariff and service contract portions of the FMC Imaging System. The Regulated Persons Index assigns a discrete number to each person the Commission regulates and contains, among other things, the address, telephone number, trade name of the person and bonding information. The Service Contract System contains certain key service contract data, some of which is only available to the Commission's staff since it is made confidential by law. The Microfiche System provides a means of locating canceled tariffs and amendments which have been microfiched. The OTI System contains certain information concerning licensees, including surety bond information. The FMC Imaging System, among other things, provides for document storage and retrieval of tariffs and service contracts. These databases provide support for many of the Commission's programs. Certain information contained in the databases is also available to the public.

7. Rulemaking and Docketed Proceedings

The Bureau recommends initiation of, or supports, formal rulemakings and Commission docketed proceedings addressing alleged violations of the 1984 Act and Pub. L. No. 89-777.

In fiscal year 1999, the Bureau was involved extensively with other agency components in developing proposed and final rules to implement OSRA. Specifically, the Bureau participated in the rulemakings dealing with 46 CFR Parts:

515 Ocean Transportation Intermediaries (Docket No. 98-28)
520 Carrier Automated Tariff Systems (Docket No. 98-29)
530 Service Contracts (Docket No. 98-30)
525 Marine Terminal Operator Schedules (Docket No. 98-27)

The Bureau also answered numerous industry questions concerning the implementation of and compliance with the Commission's new rules.

Financial Responsibility Requirements for Nonperformance of Transportation [Docket No. 94-06].

In Docket No. 94-06, the Bureau is involved in a Further Notice of Proposed Rulemaking to protect a higher proportion of passengers' deposits and prepaid fares. The Bureau has analyzed the comments filed to the proposed rule, and a cost benefit analysis is being reviewed.

Fact Finding Investigation No. 23 - *Ocean Common Carrier Practices in the Transpacific Trades.*

The Bureau conducted tariff and service contract research for this investigation.

Petition No. P1-98, *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984.*

The Bureau is responsible for verifying all rates and charges filed pursuant to the authority granted by the Petition.

8. Enforcement Activities

The Bureau supports the Commission's compliance and enforcement efforts by furnishing information to the Bureau of Enforcement and the Bureau of Economics and Agreement Analysis with regard to tariffs, service contracts, passenger vessel certification and OTI licensing. The Bureau also provides analyses, statistics and data from its record systems to support these activities. Additionally, the Bureau refers apparent violations of the statutes administered by it to the Bureau of Enforcement, and prepares expert testimony in support of the prosecution of apparent statutory violations.

I. BUREAU OF ENFORCEMENT

The Bureau of Enforcement is the primary investigatory and prosecutorial arm of the Commission. Attorneys of the Bureau serve as trial attorneys in formal proceedings instituted under section 11 of the 1984 Act, and in investigations instituted under the FSPA. Bureau attorneys serve as legal advisors to the Managing Director and other bureaus, and also may be designated investigative officers in nonadjudicatory fact finding proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and to advise the Managing Director and the other bureaus. The Bureau also participates in the development of Commission rules and regulations. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court or other agency litigation to which the Commission is a party.

Through investigative personnel, the Bureau monitors and conducts investigations into the activities of ocean common carriers, OTIs, shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission. Monitoring activities include: (1) service contract reviews to determine compliance with applicable statutes and regulations; (2) reviews of OTI operations, including compliance with licensing, tariff, and bonding requirements; (3) audits of passenger vessel operators to ensure the financial protection of cruise passengers; and (4) various studies and analyses to support Commission programs. Investigations are conducted into alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal rebating; misdescriptions or misdeclarations of cargo; illegal or unfiled agreements; abuses of antitrust immunity; unlicensed freight forwarding; untariffed cargo carriage; unbonded OTI and passenger vessel operations; and various types of consumer abuses, such as failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers.

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through an area representative based in each of those cities. These representatives serve other major port cities and transportation centers within their respective areas. In addition to monitoring and investigative functions, area representatives represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze intelligence of regulatory significance, and assess industry conditions. Liaison activities involve cooperation and coordination with other government agencies, providing regulatory information and relaying Commission policy to the shipping industry and the public, and handling informal complaints.

The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty demands arising out of those violations. If settlement is not reached, Bureau attorneys act as prosecutors in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other bureaus, in special enforcement initiatives.

During fiscal year 1999, the Bureau continued its investigation and prosecution of malpractices, particularly fraudulent cargo descriptions and measurements in the transpacific trades and secret rebates in the South American trades. Other trades were also the subject of malpractice investigations, including the North Atlantic, Central American and Caribbean trades. These malpractices included unlawful and discriminatory practices such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations have resulted in compromise settlements of civil penalties. However, investigations of several NVOCCs and ocean

common carriers have required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

In September 1998, the Commission commenced Fact Finding Investigation No. 23, a nonadjudicatory investigation into individual and collective practices of ocean carriers in the transpacific trades by which shippers and NVOCCs of low-rated cargo allegedly were refused service and/or charged higher rates during a period in which cargo exceeded available vessel space. The Bureau provided legal, investigative and administrative support for this investigation, including participation in oral hearings held in various port cities and assisting the Investigative Officer in preparation of his Report and Recommendations to the Commission. In April 1999, the Commission extended Fact Finding Investigation No. 23 and designated the Director of the Bureau as the Investigative Officer to follow up on possible violations of the 1984 Act.

In the U.S./North Europe trades, the Bureau continued to work closely with the Bureau of Economics and Agreement Analysis in prosecuting cases of possible unfiled agreements in Docket No.97-07, *Possible Unfiled Agreement Between Hyundai Merchant Marine Company, Ltd. and Mediterranean Shipping Co., S.A.*, and Docket No. 97-08, *Possible Unfiled Agreements Among A.P. Moller-Maersk Line, P&O Nedlloyd Limited and Sea-Land Service, Inc.*

The cooperation between the Commission's area representatives and Customs with respect to the exchange of investigative information continues to be beneficial to both parties. Cooperation with Customs has expanded into several joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation also has included local police and the U.S. Immigration and Naturalization Service, when necessary.

In fiscal year 1999, the Bureau revised and expanded its audit program to accommodate the requirements of OSRA. This program

is conducted from headquarters, primarily by mail, and reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. This program identified several OTIs operating in violation of the 1984 Act and Commission regulations. The audit program also included review of entities holding themselves out as VOCCs with no indication of vessel operations and resulted in Commission orders for the cancellation of the tariffs of these entities. (Docket No. 98-31, *Publication of Inactive or Inaccurate Ocean Common Carrier Tariffs.*)

When the fiscal year began, 25 enforcement cases were pending final resolution by the Bureau. During the fiscal year, 45 new enforcement actions were commenced. Thirty were compromised and settled, administratively closed, or referred for formal proceedings. Forty enforcement cases were pending resolution at fiscal year's end.

The Bureau entered the fiscal year as party to 14 formal proceedings, and participated in 17 new formal proceedings during the year. Fifteen of these proceedings were completed, with the remaining 16 pending at the end of the fiscal year.

At the beginning of fiscal year 1999, there were 85 requests for legal advice pending in the Bureau. Eighty-two such requests were received during the fiscal year, and 104 legal advice projects were completed. Accordingly, 63 legal advice matters were pending in the Bureau on September 30, 1999.

In fiscal years 2000 and 2001, the Bureau will continue to pursue fraudulent and anticompetitive practices and will continue to monitor U.S. trades and the implementation of the changes and regulations resulting from OSRA, to the extent that resources permit.

J. BUREAU OF ADMINISTRATION

Office of the Director

The Bureau of Administration ("BOA") provides administrative support to the program operations of the Commission. The Bureau interprets governmental policies and programs and administers these in a manner consistent with Federal guidelines, including those involving property management, procurement, financial management, and personnel. The Bureau initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations with respect to its program activities. The Director, BOA, is responsible for the direct administration and coordination of the:

- **Office of Administrative Services.**
- **Office of Budget and Financial Management.**
- **Office of Personnel.**

Many of the functions and achievements of BOA are reflected in the narratives for these Offices below.

The Director serves as the FMC's Competition Advocate, challenging barriers to competition and reviewing procurement practices as specified in the Federal Acquisition Regulation. The Director is the Commission's representative, as Principal Management Official, to the Small Agency Council ("SAC"). As the Chief Financial Officer, the Director provides program oversight for the agency's budget and financial management responsibilities, and ensures agency compliance with the Financial Integrity Act, the Antideficiency Act, and the Debt Collection Improvement Act of 1996.

The Commission's Training Officer is located in the Office of the Director. The Training Officer provides employee development assistance and career counseling throughout the agency and provides technical assistance to the Executive Resources Board. The Training Officer also serves as a member of the SAC Training Committee. FMC employees took advantage of several cost-free training programs through SAC and the Department of Justice Legal Education Institute. Computer software training and training required by statute also were offered to FMC employees.

The Office of the Director also has the responsibility for directing and administering the Commission's Information Security Program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12958.

1. Office of Administrative Services

(a) General Office Responsibilities

The Office of Administrative Services ("OAS") directs and administers a variety of management services functions that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office is the Commission's Contracting Officer.

The Office's support programs include telecommunications, procurement of administrative goods and services, property management, space management, printing and copying management, mail and records services, forms and graphic designs, facilities and equipment maintenance, and transportation. The Office's major functions are to secure and furnish all supplies, equipment and services required in support of the Commission's mission, and to formulate regulations, policies, procedures, and methods governing

the use and provision of these support services in compliance with the applicable Federal guidelines.

(b) Achievements

During fiscal year 1999, the Office:

- **Assumed the role of Contract Administrator for the FMC's ATFI program and (a) arranged for the relocation of the computer system at PRC to FMC's Headquarters location, (b) negotiated maintenance service agreements on both the host and back-up computer systems, and (c) initiated the process to close out the contract with PRC.**

- **Provided procurement guidance and assistance for the award of contracts to establish dial-up and Internet-based service contract filing systems.**

- **Arranged for the printing and distribution of the FMC's *37th Annual Report.***

- **Completed full implementation of the FMC's automated property inventory management system.**

- **Awarded a new contract for credit card services through the Department of Interior's contract with NationsBank.**

- **Completed the full implementation of the FMC's automated procurement management system.**

- **Established a defined Interagency Agreement with the Office of Thrift Supervision ("OTS") for**

accounting services and administrative support to the FMC.

- **Arranged for the leasing of office space, acquisition of furnishings, and relocation of the FMC's Seattle Area Representative, and arranged for the relocation of the New Orleans Area Representative.**

- **Coordinated with General Services Administration ("GSA") and U.S. Sprint on the transition requirements for the new FTS2001 telecommunications contract.**

(c) Future Plans

In fiscal year 2000, the Office's objectives include the following: (1) continue to evaluate and expand the SACONS automated procurement management system throughout the Commission to provide access by every activity; (2) continue efforts to expand the Commission's electronic commerce program for paperless office interaction; (3) continue to evaluate and refine the operations of the automated property inventory management system; (4) continue to address any needed Y2K compliance concerns to ensure agency equipment and facilities are compliant; and (5) continue to provide advisory and assistance support to FMC activities regarding innovative support service approaches.

2. Office of Budget and Financial Management

(a) General Office Responsibilities

The Office of Budget and Financial Management administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments;

ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to Congress and OMB; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, as well as the Commission's Imprest Funds; ensures accountability for official passports; and assists in the development of proper levels of user fees.

(b) Achievements

During fiscal year 1999, the Office:

- **Collected and deposited $7,665,693 from user fees and fine and penalty collections.**

- **Coordinated and prepared budget justifications and estimates for the fiscal year 2000 Congressional budget and fiscal year 2001 budget to OMB, participated in the OMB budget hearing, and testified before the House Subcommittee on Coast Guard and Maritime Transportation.**

- **Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Cost for 1998 (Office of Personnel Management - "OPM"); the Civil Monetary Penalty Report for 1998 (Department of the Treasury - "Treasury"); the Current Asset Management Annual Certification (FY 1998 Cash Flow) (Treasury); the Report on International Travel for FY 1998 (OMB); electronic funds transfer ("EFT") payment report for 1st quarter of FY 1999 to the EFT Compliance Team (Treasury); Agency Taxpayer Identification Number Report**

(Treasury); and reports on first class airline accommodations for FY 1998 (GSA).

- **Prepared monthly status reports on workyears, funding, travel and receivables.**

- **Completed the update of user fees which became effective November 1998.**

- **Worked with OAS and NationsBank to complete implementation of the new travel charge card for FMC travelers.**

(c) Future Plans

Financial management goals in fiscal year 2000 include redesign and refinement of the FMC accounts receivable systems. The Office also will: (1) continue to implement electronic commerce to automate the processing of purchase orders, obligations and payments, in conjunction with OAS and OIRM; (2) review procedures and controls for cash management; and (3) continue to pursue initiatives leading to economy and efficiency in budget and financial operations, including implementation of the Debt Collection Improvement Act.

3. Office of Personnel

(a) General Office Responsibilities

The Office of Personnel plans and administers a complete personnel management program including: recruitment and placement, position classification and pay administration, occupational safety and health, employee assistance, employee relations, workforce discipline, performance management and

incentive awards, employee benefits, career transition, retirement and personnel security.

(b) Achievements

During fiscal year 1999, the Office:

- **Conducted a review of all administrative-related Commission orders and developed a timetable for revision or revocation of applicable orders in conjunction with the agency strategic and performance plans and Vice President Gore's "plain language" initiative; revoked four Commission orders which were superseded by changes in regulations and/or when policies were incorporated into other orders and issuances of the Commission, and updated 13 other such orders.**

- **Reissued guidelines for emergency dismissal/closure procedures and issued employee notifications of legislative and regulatory changes to benefits programs.**

- **Conducted the Federal Employees Health Benefits Program and Thrift Savings Plan Open Seasons, including sponsoring an annual Employee Health Benefits Fair. Sponsored Blue Cross/Blue Shield Service Days during which a representative met each month with employees on-site to assist them. Conducted Federal Employees Retirement System Transfer Open Season and the Federal Employees' Group Life Insurance Open Enrollment period.**

- **Coordinated and publicized family-friendly initiatives and responded to Congressional**

inquiries regarding agency participation in specific programs.

- Prepared request to OPM necessary to secure Voluntary Early Retirement Authority.

- Coordinated with OTS to ensure all automated personnel data programs and documentation requirements are Y2K compliant; obtained specialized computer-related training for staff.

- Monitored and modified Employee Assistance Program contracts for the agency and managed a very successful Annual Leave Transfer Program. Coordinated the agency's Combined Federal Campaign effort, which raised close to $19,000.

- Advised supervisors concerning their responsibilities in areas of employee conduct and performance. Charted performance appraisal milestones and issued reminders and instructions to supervisors and performance review board members concerning the performance appraisal process.

- Conducted comprehensive classification, recruitment and placement programs, including staffing of mission-critical vacancies and conducting cyclical position management program review.

- Conducted a comprehensive personnel security program, coordinated with OPM appraisal officers in connection with an audit of the agency program, and completed corrective tasks.

- **Prepared a number of reports, including the annual Employee Assistance Program report; annual statistical and race/national origin reports in connection with the Luevano Decree; reports and plan certifications for all affirmative action programs; annual reports covering internal and external staffing activities under agency and interagency career transition assistance plans; executive and political appointees semiannual verification and pay and performance reports; annual Occupational Safety and Health Report; report of activity under the Welfare-to-Work program; reports to OPM on family-friendly initiatives; and OPM's Equal Pay Self-Audit Guide report.**

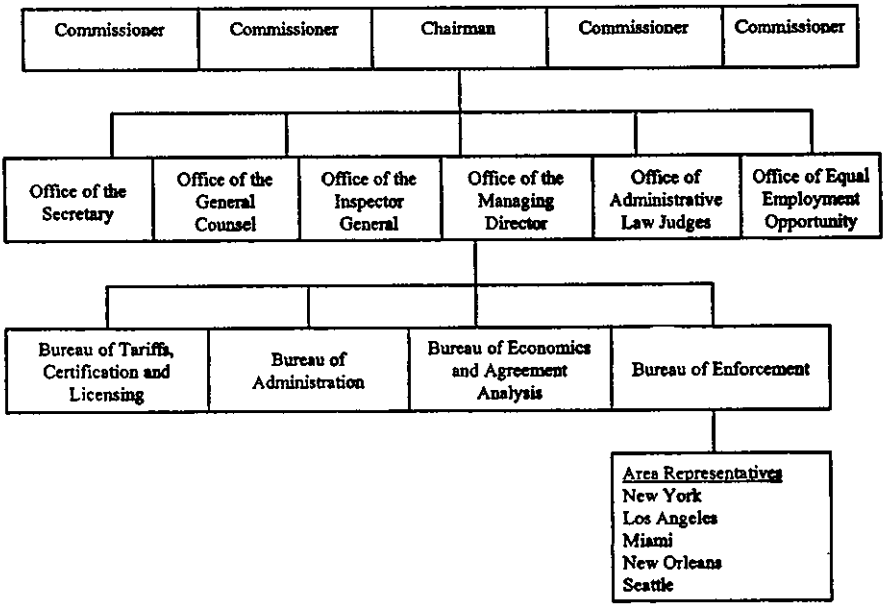
(c) Future Plans

In fiscal year 2000, the Office plans to continue to: (1) advise agency management and staff on all personnel matters and ensure the maintenance of a sound and progressive personnel program; (2) implement pertinent portions of the agency's strategic and related performance plans; (3) continue the process to explore and implement simplification, flexibility, and accountability of human resources management programs; and (4) continue revision of pertinent Commission orders in accordance with Presidential initiatives and regulatory changes in human resource programs.

APPENDIXES

APPENDIX A

FEDERAL MARITIME COMMISSION ORGANIZATION CHART Fiscal Year 1999



APPENDIX B

COMMISSION PROCEEDINGS
Fiscal Year 1999

Formal Proceedings

Decisions	6
Discontinuances & Dismissals	2
Initial Decisions Not Reviewed	19
Rulemakings - Final Rules	17
Total	44

Special Dockets	90
Informal Dockets	6

APPENDIX C

AGREEMENT FILINGS AND STATUS
Fiscal Year 1999

Agreements Filed in FY 1999
(including modifications)

Carrier	301
Terminal	62
Total	363

Agreements Processing Categories in FY 1999

Forty-Five Day Review	110
Shortened Review	35
Exempt-Effective Upon Filing	230
Rejection of Filing	0
Formal Extension of Review Period	3
Not Subject	1
Withdrawals	6
Total	385

Carrier Reports Submitted for Commission Review

Minutes of Meetings and Ad Hoc Reports	600
Monitoring Reports	307
Total	907

Agreements on File as of September 30, 1999

Conference	25
Pooling & Equal Access	8
Joint Service	17
Space Chartering/Sailing	103
Cooperative Working, Agency, & Equipment Interchange	122
Terminal	460
Total	735

APPENDIX D

TARIFF AND SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS
Fiscal Year 1999

Electronic Tariffs* in Effect on April 30, 1999 . *4,778*

Electronic Tariff Filings through April 30, 1999

*Tariffs (new)**	*649*
Rules	*57,548*
Commodity Descriptions	*126,004*
Tariff Line Items	*1,140,476*
Inland Tables	*11,370*
Tariff Records	*1,840*
Organization Records	*1,326*

Essential Terms Documents

New Service Contracts	*29,453*
Service Contract Amendments	*61,374*

Special Permission Applications

Granted	*226*
Denied	*5*
Withdrawn	*7*

**Includes essential terms publications, and foreign and marine terminal tariffs.*

APPENDIX E

CIVIL PENALTIES COLLECTED
Fiscal Year 1999

Air Tiger Express (U.S.A.) Inc.	**$95,000.00**
Alexim Trading Corporation	20,000.00
American Commercial Transport, Inc.	**65,000.00**
Amerilines -USA, Inc. and LAFCO	100,000.00
Asia North America Eastbound Rate Agreement	**55,000.00**
Best Freight International	50,000.00
Best Lines Limited.	**30,000.00**
China Interocean Trans. and Sino-Am Marine Co.	70,000.00
China Nat. Foreign Trade dba SINOTRANS	**350,000.00**
Compania Sud Americana de Vapores (CSAV)	1,850,000.00
Crowley American Transport	**35,000.00**
Direct Container Line, Inc.	802,476.75
Eagle Transfer Inc. dba NPI Line	**150,000.00**
Fortune Network Ltd.	40,000.00
Freight Line of the Americas, Inc. (FLOTA)	**50,000.00**
Giorgio Gori, SRL	37,500.00
Hecny Transp. and Hecny South America, Ltd.	**230,000.00**
Hoegh-Ugland Auto Liners (HUAL)	130,490.63
Hudson Shipping (H.K.) Ltd.	**30,000.00**
International Ocean Consolidators Corp.	50,000.00
Madrigal-Wan Hai Lines Corp.	**175,000.00**
Mercator Shipping, Ltd.	200,000.00
Metro Frght. Serv., Inc. and Georges T. Samaha	**15,000.00**
NEC Logistics, Ltd.	60,000.00
Orient Express Container Company, Ltd.	**90,000.00**
Owens Refrig. Freight Ltd and Cooltainer Services	70,000.00
Pacific-Trans, Inc.	**45,000.00**
Prestige Forwarding Co.	105,000.00
Refrigerated Container Carriers	**50,000.00**
Scanwell Container Line, Ltd.	95,000.00
Sea Dragon Navigation Ltd.	**175,562.79**
Traffic Care International	90,000.00
Total Civil Penalties Collected	**$5,411,030.17**

APPENDIX F

INVESTIGATIONS
Fiscal Year 1999

Investigations/Special Inquiries Opened:		*84*
Audits/Compliance Checks Opened:		*42*
Compliance Checks:	*32*	
VOCC Audits:	*10*	
Total Openings:		***126***
Investigations/Special Inquiries Completed:		*103*
Audits/Compliance Checks Completed:		*33*
Compliance Checks:	*24*	
VOCC Audits:	*9*	
Total Completions:		***136***

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1999

APPROPRIATIONS:

Public Law 105-277: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-02; Provided, that not to exceed $2,000 shall be available for official reception and representation expenses. $14,150,000

Public Law 106-51, Omnibus Consolidated Rescissions and Appropriations Act of 1999	- 17,000
Revised Appropriation	**$14,133,000**

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1999.	**$14,132,783**

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1999:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	$2,254,663
Fines and penalties	$5,411,030
Total general fund receipts	**$7,665,693**

U.S. GOVERNMENT PRINTING OFFICE 2000-461-744-20089