

FEDERAL MARITIME COMMISSION

28th Annual Report for Fiscal Year 1989



The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and any other financial activity.

The second part of the document provides a detailed breakdown of the accounting process. It starts with the identification of the accounting cycle, which consists of eight steps: identifying the accounting cycle, analyzing and journalizing the transactions, posting to the ledger, preparing a trial balance, adjusting the accounts, preparing financial statements, and closing the books. Each step is explained in detail, with examples and practical advice.

The third part of the document focuses on the preparation of financial statements. It covers the balance sheet, the income statement, and the statement of owner's equity. It explains how these statements are derived from the accounting records and how they provide a comprehensive view of the company's financial health.

The fourth part of the document discusses the importance of internal controls. It outlines various control procedures, such as segregation of duties, authorization, and regular audits, to prevent errors and fraud. It also emphasizes the need for a strong internal control system to ensure the accuracy and reliability of the financial information.

The fifth part of the document covers the final steps of the accounting process, including the closing of the books and the preparation of the final financial statements. It explains how the temporary accounts are closed to the permanent accounts and how the final financial statements are prepared and presented.

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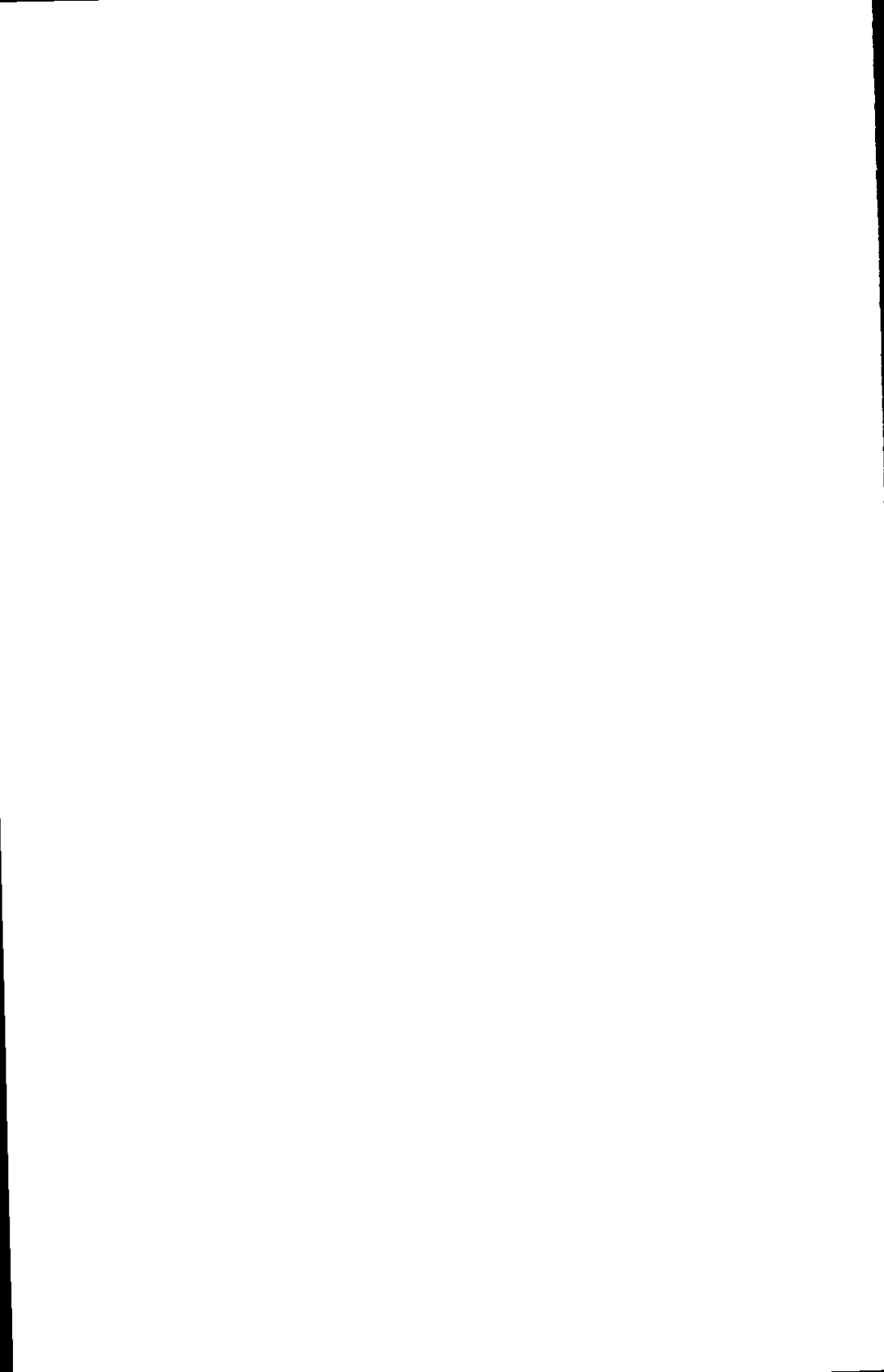
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FEDERAL MARITIME COMMISSION
WASHINGTON, D.C. 20573

To the United States Senate and House of Representatives:

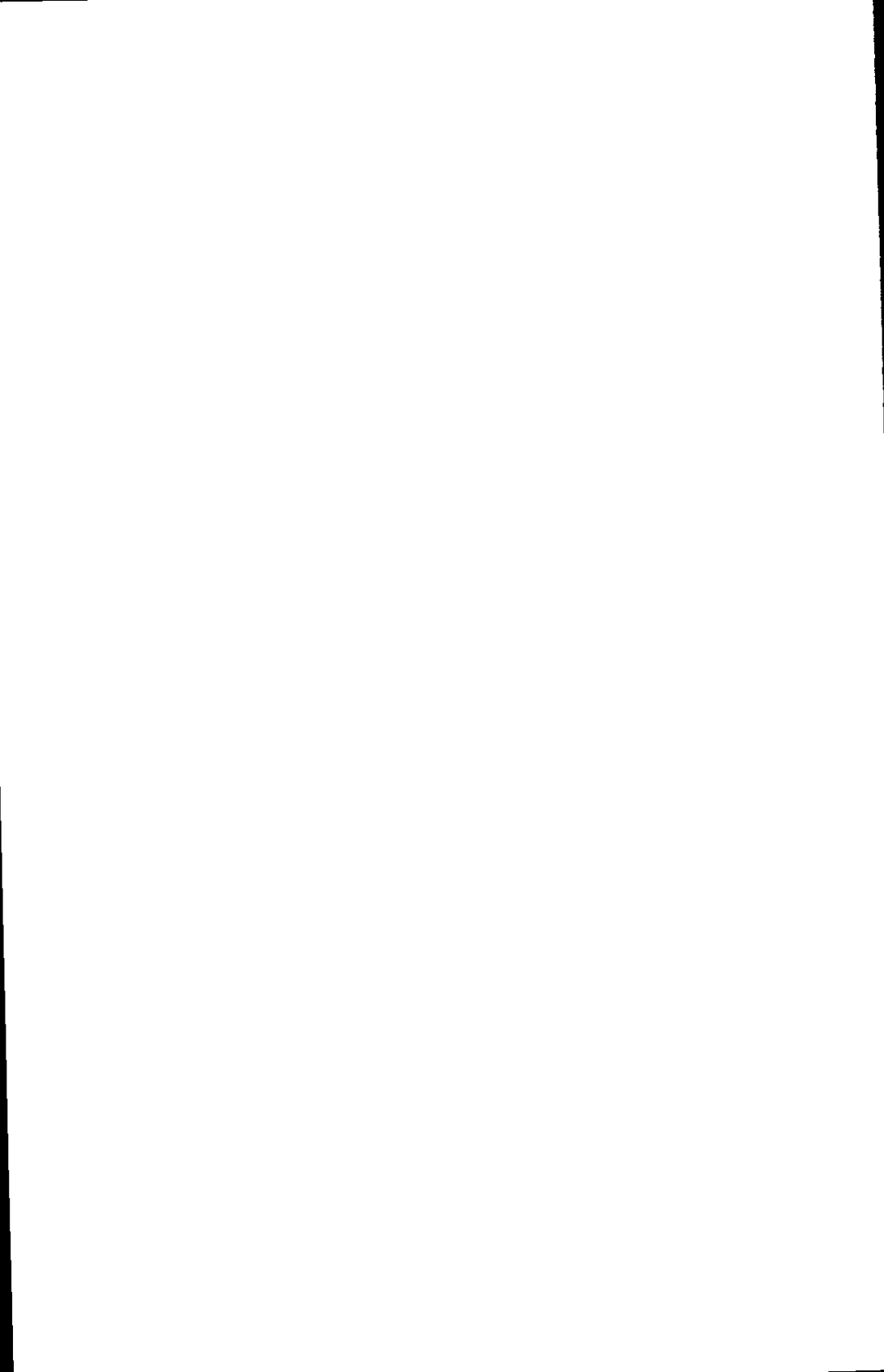
Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I am pleased to submit the twenty-eighth annual report of the activities of the Federal Maritime Commission for fiscal year 1989.

Additionally, section V.K of this report contains an *Update on Remote Access - March 1990*, to comply with the request of Congress to be kept informed on developments of reasonable restrictions on remote access to the Commission's *Automated Tariff Filing and Information System ("ATFI")*.

Sincerely,

A handwritten signature in black ink, appearing to read "James J. Carey".

James J. Carey
Acting Chairman



MEMBERS OF THE COMMISSION *



James J. Carey
Acting Chairman
Appointed 1981
Term Expires 1990
(R) *Illinois*

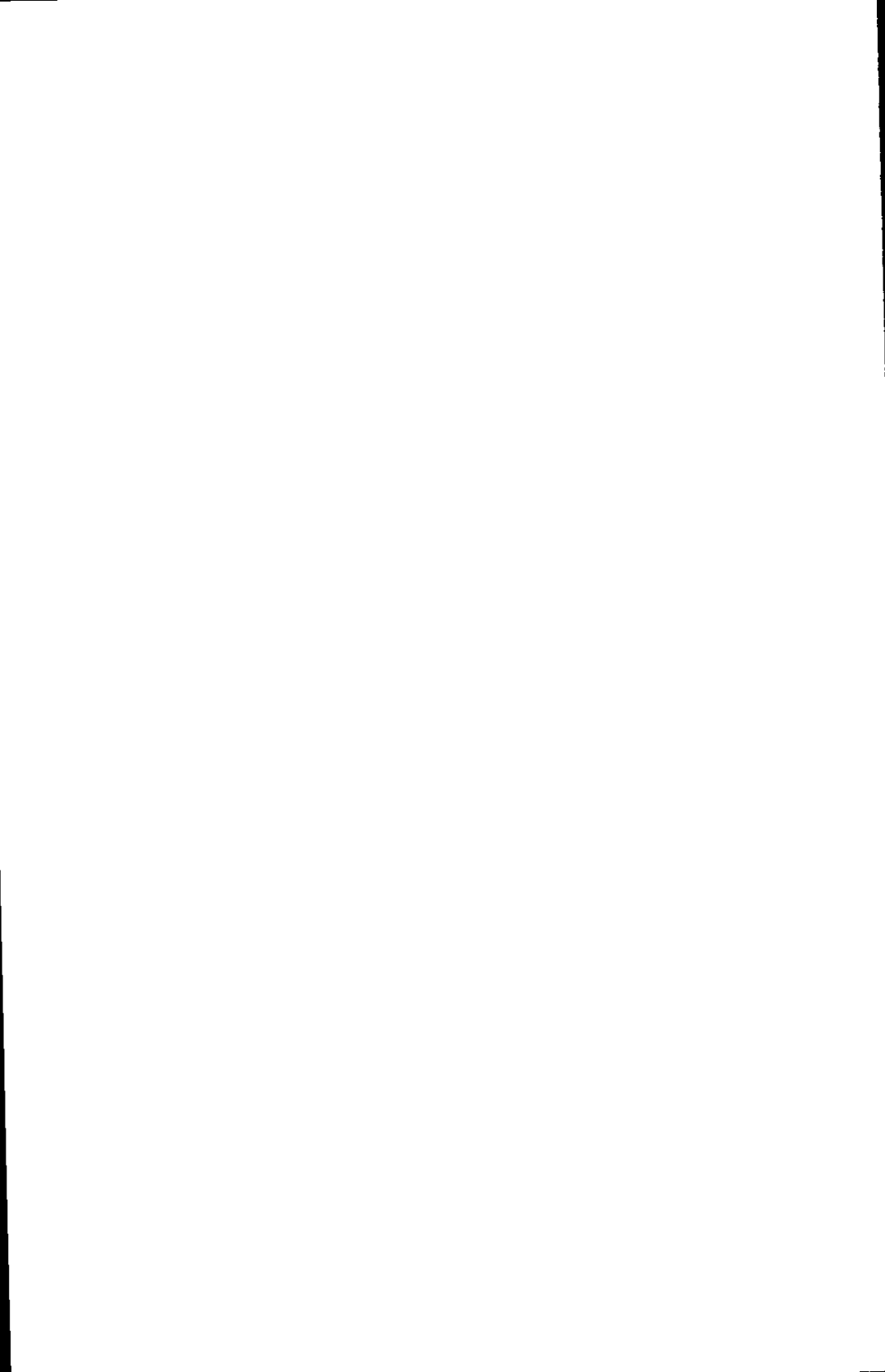


Edward J. Philbin
Commissioner
Appointed 1984
Term Expired 1989
(R) *California*



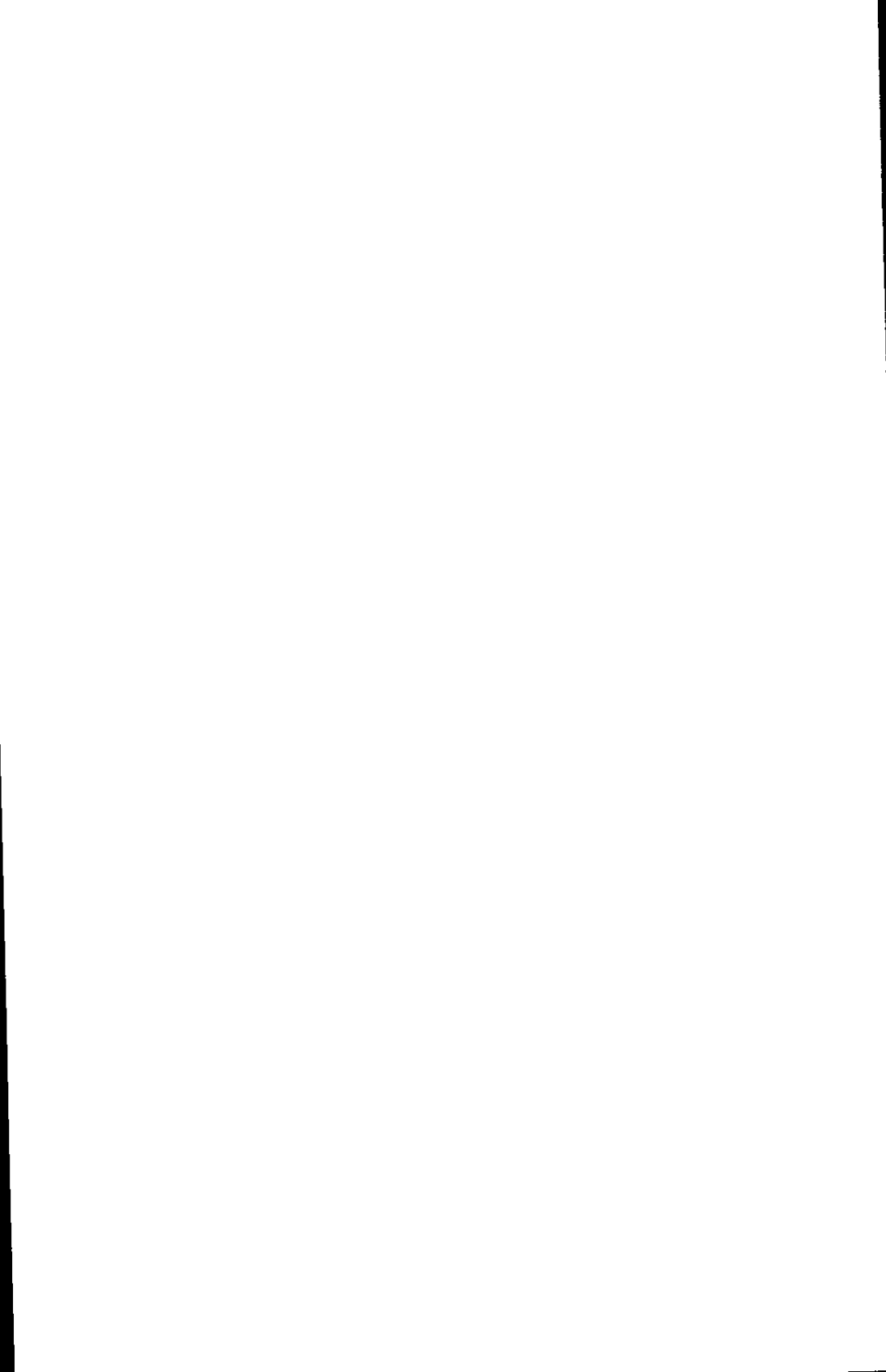
Francis J. Ivancie
Commissioner
Appointed 1985
Term Expires 1992
(D) *Oregon*

* 2 Vacancies as of September 30, 1989



SENIOR COMMISSION OFFICIALS

Secretary	<i>Joseph C. Polking</i>
Chief Administrative Law Judge . .	<i>Charles E. Morgan</i>
General Counsel	<i>Robert D. Bourgojn</i>
Director, Office of Equal Employment Opportunity .	<i>Mary A. Jackson</i>
Inspector General	<i>Tony P. Kominoth</i>
Managing Director	<i>Edward P. Walsh</i>
Deputy Managing Director	<i>Bruce A. Dombrowski</i>
Director, Bureau of Trade Monitoring	<i>Austin L. Schmitt</i>
Director, Bureau of Domestic Regulation	<i>Robert G. Drew</i>
Director, Bureau of Economic Analysis	<i>Robert A. Ellsworth</i>
Director, Bureau of Hearing Counsel	<i>Seymour Glanzer</i>
Director, Bureau of Investigations	<i>Wm. Jarrel Smith, Jr.</i>
Director, Bureau of Administration	<i>John Robert Ewers</i>



I

THE COMMISSION

A. HISTORY

The *Federal Maritime Commission* 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 *U.S. Merchant Marine*. Under the reorganization plan, the shipping laws of the United States were separated into two categories -- regulatory and promotional. The responsibilities associated with 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 *Federal Maritime Commission* 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 and in the domestic offshore trade of the United States. The passage of the *Shipping Act of 1984* brought about a major change in the regulatory regime facing shipping companies operating in the foreign commerce of the United States.

B. FUNCTIONS

The principal statutes or statutory provisions administered by the *Federal Maritime Commission* are the *Shipping Act of 1984*, the *Shipping Act, 1916*, the *Intercoastal Shipping Act, 1933*, the *Foreign Shipping Practices Act of 1988*, and section 19 of the *Merchant Marine Act, 1920*.

The Commission's regulatory responsibilities include:

- o Reviewing and monitoring agreements of common carriers and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.**
- o Receipt and review of tariff filings (but not the regulation of rate levels) by common carriers engaged in the U.S. foreign commerce.**
- o Protecting shippers and carriers engaged in the foreign commerce of the United States from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the United States.**
- o Protecting the rights of U.S.-flag shipping companies to transport cargoes in the U.S. foreign oceanborne and foreign-to-foreign trades.**
- o Regulating rates, charges, classifications, rules, regulations and tariffs of controlled carriers to ensure that such matters are just and reasonable.**
- o Regulating rates, charges, classifications, practices and tariffs of ocean common carriers in the domestic offshore trades of the U.S.**
- o Licensing international ocean freight forwarders.**

- o 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.**
- o Investigating discriminatory rates, charges, classifications, and practices of ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the United States.**

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 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 Act also requires carriers to make their rates, charges and practices publicly available in tariffs that must be on file with the Commission. Carriers may only assess the rates and charges that are lawfully on file with the Commission. The Commission does not, however, 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 carriers.

The Commission is authorized under the *Foreign Shipping Practices Act of 1988*, under section 19 of the *Merchant Marine Act, 1920* and under section 13(b)(5) of the *Shipping Act of 1984* to take action to ensure that the foreign commerce of the United States 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 the operation of U.S. carriers in the U.S. foreign oceanborne trades and that impair access of U.S.-flag vessels to ocean trade between foreign ports.

The *1916 and 1933 Acts* regulate the activities of common carriers and other persons engaged in the domestic offshore trades of the United States. In general, they provide for tariff filing and protect against unduly discriminatory practices in a manner similar to the *1984 Act*. In addition, the *1933 Act* provides for a more comprehensive scheme of regulation to ensure that the minimum and maximum rates and practices of common carriers in the domestic offshore trades are just and reasonable.

The Commission carries out its regulatory responsibilities by conducting informal and formal investigations. It also 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 Federal Maritime 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 Economic Analysis, Bureau of Trade Monitoring, Bureau of Domestic Regulation, Bureau of Hearing Counsel, Bureau of Administration, and Bureau of Investigations. The Managing Director assists the Chairman in providing executive and administrative direction to the Commission's Offices and Bureaus. These Offices and Bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 1989, the Commission was authorized a total of 224 full-time equivalent positions and had a total appropriation of \$13,585,000. The majority of the Commission's personnel are located in Washington, D.C., with field offices in New York, San Francisco, Los Angeles, New Orleans, Miami, Houston, and Hato Rey, Puerto Rico.



II

THE YEAR IN REVIEW

The Commission continued to have a high-degree of success in addressing its various statutory responsibilities in fiscal year 1989. Data collection and analysis for the *Report* required by section 18 of the *Shipping Act of 1984* was completed, and the Report was submitted as directed on September 20, 1989. The *Enforcement Program* continued as a high priority, with the focus remaining on major trade areas to detect commercial malpractices. The Commission's various investigatory efforts and enforcement actions resulted in record penalty collections and the disclosure of valuable information on malpractice activities. These, along with the Agency's continual push for industry compliance programs, helped to deter future malpractices and encourage fair competition in the foreign waterborne commerce of the United States.

Additionally, the Commission continued to combat unfavorable foreign government practices in certain trades, including the first case under the *Foreign Shipping Practices Act of 1988*. Agreement, tariff, and service contract filings were reviewed and analyzed to ensure statutory compliance. Regarding tariffs, significant progress was also made on various aspects of the project to automate tariff filings (*ATFI*), including the awarding of a contract for the first two phases of the system.

This Annual Report is essentially structured as an office-by-office synopsis of each operating unit's activities and accomplishments, with separate chapters that deal with areas of particular importance. This chapter is a brief summary of certain of the Commission's major accomplishments during the past year.

A. SECTION 18 REPORT

This year culminated with the Commission's completion and submission of its *Section 18 Report on the Impact of the Shipping Act of 1984*. Section 18 of the 1984 Act required the Commission to collect and analyze data on the impact of the Act on rates, service, independent carriers, and major regulatory proceedings, and to report on: (1) the advisability of a volume-and-mass tariff system, (2) the need for antitrust immunity for ports and marine terminals, and (3) the need for tariff filing and enforcement by the Commission.

Data collection was completed in 1989, and included the third in a series of surveys to the various segments of the ocean shipping industry. These surveys helped to identify industry views on the impact of the Act. The Commission continued to meet with representatives of the *Departments of Justice and Transportation*, and the *Federal Trade Commission*, regarding the collection of data, and also held a second meeting of its *Section 18 Study Advisory Committee*.

After completing its extensive research and analysis, the Commission issued its Report on September 20, 1989, as required by the 1984 Act. The four topics for data collection and analysis are covered in the first part of the Report. Separate parts address the special topics on tariffs and ports. The Report also contains separate parts on service contracts and independent action, and identifies provisions in the 1984 Act which might benefit from clarification or technical adjustment. A detailed *Executive Summary* of the Commission's 697-page Report is contained in Chapter VI.

The *Departments of Justice and Transportation* and the *Federal Trade Commission* were scheduled to release their reports on the impact of the 1984 Act by November 20, 1989. All four reports will then be considered by the *Advisory Commission on Conferences in Ocean Shipping* when it conducts its comprehensive study of the ocean shipping industry.

B. ENFORCEMENT

The Commission's enforcement program continued to emphasize trade malpractice programs that call for targeting agency resources on carriers, commodities and malpractices that have the greatest impact on the U.S. ocean commerce. Through the collaborative efforts of all involved staff components, relevant data and information is developed and analyzed, investigation and monitoring is accomplished, and then the appropriate enforcement action is initiated.

During fiscal year 1989, the Commission's intensified enforcement efforts in the *Trans-Pacific Trades Malpractices Program* resulted in several major settlements. Two major steamship lines serving the Pacific trades that were charged with unlawful rebating entered into settlement agreements with the Commission, one for \$2,550,000, and the other for \$1,225,000. Each carrier also agreed to make disclosures of its violations. Additionally, an investigative initiative involving a large number of NVOCCs alleged to be receiving rebates resulted in settlements with 13 additional respondents in the Trans-Pacific (twelve importers/exporters and one NVOCC). This effort was facilitated by the hearings held in connection with *Fact Finding Investigation No. 18*, a non-adjudicatory proceeding which has provided compulsory process support for ongoing investigations in the *Trans-Pacific Program*.

The Commission also continued to pursue its malpractice program in the *North Atlantic*, and was preparing to initiate at least one other such program in FY 1990. These major programs are combined with ad hoc enforcement actions which involve malpractices uncovered in other investigations.

These activities have enabled the Commission to continually increase its penalty collections over the past several years, and to collect a Commission record \$4.733 million in penalties in FY 1989. These penalty collections, along with the Commission's focus on industry self-policing programs and

appropriate monitoring of past offenders, serve as effective deterrents and a vehicle for uncovering repeat malpractices. They are essential in enabling the Commission to meet its overall enforcement objectives of ensuring statutory compliance and creating equitable trade conditions in the U.S. ocean commerce.

C. RESTRICTIVE TRADE PRACTICES

The Commission continued its active role in addressing restrictive practices that create conditions unfavorable to U.S. foreign shipping.

After considering additional comments, the Commission issued a Final Rule finding that certain laws and decrees of the Government of *Peru* created unfavorable conditions in the U.S./*Peru* oceanborne trade. The Commission assessed fees for each voyage made by specific *Peruvian*-flag carriers, but suspended application of the fees because of the economic and political conditions present in *Peru*.

Based on the comments received in response to a Notice of Inquiry, the Commission determined that a resolution of the Government of *Ecuador* was discriminatory and created conditions unfavorable to shipping in the U.S./*Ecuador* Trade. The Commission requested further comments, and upon review, issued a Notice of Proposed Rulemaking to adjust or meet conditions unfavorable to shipping in the trade created by the *Ecuadorian* cargo reservation laws. The proposed rule would impose a fee of \$100,000 per outbound voyage from the U.S. to *Ecuador* on Maritima Transligna, S.A., an *Ecuadorian*-flag carrier.

The Commission also continued to assess the impact of the laws, regulations and policies of the Governments of *Korea*, *Taiwan* and the *People's Republic of China*, which may unfairly burden or restrict the operations of certain ocean common carriers, including U.S. flag carriers. Of particular concern to

the Commission are indications that U.S. flag and possibly other carriers are prevented from conducting shipping and ancillary activities in these trades. The Commission issued orders and notices regarding these possible impediments to trade in the U.S./*Taiwan* and U.S./*Korea* trades.

During 1989, the Commission adopted a Final Rule to implement the *Foreign Shipping Practices Act of 1988*, and amended its rules implementing section 19(1)(b) of the *1920 Act* and section 13(b)(5) of the *1984 Act*, to add new sanctions made available to the Commission in proceedings under those statutes, pursuant to the *1988 Act*. The Commission then initiated its first investigation under the *1988 Act*, regarding certain doing-business restrictions of *Taiwan* authorities. This investigation was pending at fiscal year end.

D. SURVEILLANCE

The Commission's surveillance program is a logical and effective adjunct to its enforcement activities. Regular monitoring of industry trends and concerted carrier activities enables the Commission to more readily identify practices contrary to the shipping statutes.

The Commission continued to refine its programs for the in-depth review of selected critical trades in 1989. These programs integrate a number of surveillance factors, such as operator market share data, shipper identification, review and analysis of agreements and periodic reports of agreement parties, etc.

Among the major projects completed this past year were: a comprehensive monitoring report on all major U.S. foreign trades; specialized monitoring reports on the U.S./*China* and U.S./*Hong Kong* trades; a report on estimated operating costs and revenues for certain *South American carriers*; an analysis of trade data in the *Ivory Coast/U.S.* inbound trade; and trade

reports on the *Far East, Mediterranean, and Caribbean* areas in support of the Commission's enforcement program.

E. TARIFF AUTOMATION

The Commission continued to make extensive progress in its program to automate the filing of tariffs. See Chapter V.

After receiving much technical comment on two draft RFPs, the Commission issued a final RFP in January 1989 to over 200 potential offerors on the bidders list. Eight proposals were received and evaluated for technical quality and cost effectiveness. The contract for Phase I, *System Concept*, and Phase II, *System Design*, was awarded to Planning Research Corporation ("PRC") of McLean, Virginia, teaming with Data Exchange International ("DXI"), of Pittsburgh, Pennsylvania, which had the best technical, as well as the best cost proposal. Work on the first phase began on September 5, 1989. The current schedule calls for system development and testing to begin in February 1990, the prototype operation to begin in April 1990, and full-scale operation in January 1991. To avoid competition with private-sector tariff services, the ATFI design contemplates restrictions on remote retrieval, such as the ability to retrieve only rudimentary information, "one-tariff-at-a-time."

The FMC will need industry volunteers for the prototype operation, especially filers of tariff data. When the system is ready for full-scale operation in early 1991, tariff filers will be "phased-in" for the changeover from their paper tariffs to their electronic tariffs becoming the tariffs officially in effect. For the first few years, it will probably be necessary to retain a paper system to ensure preservation of data and to accommodate less sophisticated users. This situation is expected to continue until final refinement of the system's software and the attainment of a higher level of computer utilization in the industry.

III

SURVEILLANCE AND ENFORCEMENT

A. SURVEILLANCE

An integral part of the Commission's administration of the Shipping Act, 1916, and the Shipping Act of 1984 is the systematic surveillance of carrier activity and trade conditions to ensure continuing compliance with statutory standards and the requirements of the Commission's rules. The Bureau of Trade Monitoring (*See Chapter VIII.G*) administers a variety of surveillance programs designed to afford the Commission the necessary degree of oversight in these areas.

The 1984 Act provides for the statutory effectiveness of filed agreements following a brief waiting period, unless a given agreement is rejected for technical reasons or for failure to conform with the mandatory conference agreement provisions in sections 5(b) and 5(c), or is contrary to the standards of section 6(g) of the Act. Once an agreement becomes effective, the Commission is responsible for maintaining surveillance over the parties' concerted activities in order to ensure compliance with the standards of the 1984 Act. To fulfill this statutory responsibility, the Bureau of Trade Monitoring has continued to direct its activities toward improving the breadth and effectiveness of its monitoring programs.

During fiscal year 1989, the Commission continued to refine its programs for the in-depth review of selected critical trades. These programs integrate a number of surveillance factors, including operator market share data, cargo tonnages of major-moving commodities, shipper identification, relevant tariff rates and rate histories, use of service contracts, agreement-document analysis, the review of minutes of

meetings of agreements and other agreement reports required by the Commission's rules, and investigation for existence of possible malpractices.

A major focus during fiscal year 1989 was the preparation of the *Section 18 Report on the Shipping Act of 1984*, which contains an overview of the international shipping industry in the areas of containerization, intermodalism, exit and entry patterns in selected trades, and export and import trends before and after the 1984 Act's passage. The Section 18 Report also contains: (1) changing trends in critical U.S. trades, namely, Europe, Asia, the Mediterranean, South America, and Australia; (2) the effect of the Transatlantic Enforcement Initiative; (3) the number, types, and characteristics of service contracts; (4) conference independent action activity; (5) the issue of conference independent action on service contracts; and (6) the activities of state-controlled carriers operating in U.S. trades. Finally, the Section 18 Report includes an analysis of carrier agreements filed before and after the Act's passage, including special reports on selected topics such as section 6(g) of the 1984 Act, loyalty contracts, and neutral-body self-policing.

During fiscal year 1989, the Bureau of Trade Monitoring produced another in its series of periodic Monitoring Reports, which provided timely analysis of emerging trends in agreement filings, conference market shares, and U.S.-flag participation in key subtrades. Additionally, a number of other surveillance projects were completed, including: (1) extensive monitoring reports on the U.S./China and U.S./Hong Kong trades; (2) a detailed analysis and recommendation regarding a complaint against a major transpacific conference's freight-all-kinds rates; (3) a preliminary analysis of the operational aspects of car carriers and the significance of such carriers executing and filing agreements with the Commission under the 1984 Act; (4) a report on estimated operating costs and revenues for certain South American carriers; (5) an analysis of trade data in the Ivory Coast/U.S. inbound trade regarding an allegation of government-imposed restrictions affecting the carriage of

certain cargoes; (6) an analysis of the potential harm resulting from certain Taiwan laws and regulations as they applied to the intermodal operations of U.S.-flag carriers in Taiwan; (7) a recommendation, as requested by a petition, that the Commission investigate the continued approvability of a rate agreement in the U.S./Guam trade under the 1916 Act; and (8) special trade reports on the Far East, Mediterranean, and Caribbean areas in support of Commission enforcement initiatives.

Other projects during fiscal year 1989 included: (1) the monitoring of activities of the parties to a discussion agreement in the Australian trades; (2) analysis of reports from a major transpacific conference on its costs of publishing independent actions on behalf of its members; (3) addressing problems experienced by certain shippers' associations in negotiating service contracts with conferences; and (4) preparing a number of carrier profiles to assist in determining the status of potential controlled carriers.

Major surveillance projects pending at the end of fiscal year 1989 were: (1) an economic impact analysis of the Commission's Transatlantic Enforcement Initiative; (2) a program to systematically audit major agreements in U.S. trades; (3) the development of trade profiles in key U.S. subtrades; (4) a report on carrier itineraries in the transpacific trades; (5) the development of profiles on major carriers in the U.S. trades; (6) the monitoring of a revenue pooling agreement in the U.S. Mediterranean trade; and (7) specific trade reports designed to assist the Commission's enforcement efforts.

B. ENFORCEMENT

Under the Shipping Act of 1984, the Commission placed greater regulatory emphasis on enforcement activity than existed under the predecessor statute. The enforcement functions are performed primarily by the Commission's Bureau of Hearing Counsel and Bureau of Investigations. (See Chapter VIII, J and K).

The Trans-Pacific Malpractice Program is an example of a long-term program initiated by the Commission. The purpose of this program is twofold: (1) to obtain compliance with the Shipping Act; and (2) to establish an equitable trade environment for carriers, shippers and middlemen participating in the Trans-Pacific Trades. The Trans-Pacific program involves both informal and formal investigations of violations of the Shipping Act. These investigations already have resulted in individual and comprehensive settlements with shippers, non-vessel operating common carriers, vessel operating common carriers and freight forwarders. Many of these entities provided disclosures of additional Shipping Act violations. In fiscal year 1989, primarily as a consequence of the Commission's investigation and enforcement efforts in the Trans Pacific Trades, the Commission collected the largest annual amount of civil penalties in its history - a total of nearly \$5 million. It is anticipated that the Trans-Pacific enforcement program will continue to have an important impact during the next fiscal year and beyond.

Another long-term program, the Trans-Atlantic Trade enforcement initiative, which began in 1987, continued through 1989. Enhanced neutral-body self-policing established through the program was implemented by participating carriers. Members of the Commission staff meet regularly with the participating neutral body and annually with the carrier members. The Commission is advised that this initiative is having a substantial beneficial impact on the shipping community.

To meet the needs of its expanded surveillance and enforcement role, the Commission has continued to augment its professional staff. The Commission also continues to provide training for professional employees at the White Collar Crime Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia. The Program focuses on investigation of fraud-related offenses and offers an opportunity for the exchange of ideas regarding investigative strategies and techniques utilized by other Federal agencies. Training also has been provided to enhance litigation and negotiating skills essential to the Commission's enforcement program.

A joint support program between the Commission and Bureau of Customs has resulted in interagency coordination of effort on matters of mutual concern. This program was continued during 1989.

The greater emphasis by the Commission on enforcement activity continues to increase the number of investigations of major violations conducted during the fiscal year which, in turn, results in greater civil penalties. (See Appendix E). It is anticipated that sustained enforcement activity will have an escalating deterrent effect on malpractices in the shipping industry.



IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

Vessel overcapacity continues to characterize the transatlantic trades. Rate levels, at least for most of 1989 and especially for cargoes moving outbound to Europe, are relatively soft and carrier revenue and profit results are reportedly lackluster. In addition, conference market share continues to decline. Concerning the latter trend, *A.P. Moller-Maersk Line ("Maersk")*, which entered the trade in April 1988 and has since emerged as a major participant, has stemmed the erosion to some extent in the eastbound direction where it operates as a conference member, but contributed to the decline in the westbound direction where it operates as an independent. Conference market share has also declined because of the March 1, 1989 withdrawal of *Orient Overseas Container Lines ("OOCL")* from the eastbound Conference. *OOCL*, after years of providing service as a conference carrier in both directions of trade, had begun operating as an independent carrier in the North Europe to U.S. East coast trades with its December 1987 resignation from the westbound Conference.

These trade conditions and carrier strategies, plus the continued growth of intermodalism in the U.S., are major reasons for a significant development in the transatlantic trades during fiscal year 1989, namely, the creation of the *USA-North Europe Rate Agreement ("USANE")* (FMC Agreement No. 202-011241) and the *North Europe-USA Rate Agreement ("NEUSA")* (No. 202-011242), which both became effective July 11, 1989. *USANE* covers the trade from the 48 contiguous U.S. states to North Europe, the United Kingdom and Ireland, and replaces

the 3 previous conferences in the outbound trade (the *U.S. Atlantic-North Europe Conference ("ANEC")*, the *Gulf European Freight Association*, and the *Pacific Coast European Conference*). *NEUSA* covers the trade from North Europe, the United Kingdom and Ireland to the 48 contiguous U.S. states, and replaces 3 inbound conferences (the *North Europe-U.S. Atlantic Conference ("NEAC")*, the *North Europe-U.S. Gulf Freight Association* and the *North Europe-U.S. Pacific Freight Conference*). This latest change is the second major conference consolidation in the trade since the passage of the Shipping Act of 1984. A previous restructuring, effective October 12, 1984, involved the consolidation of nine individual outbound and inbound rate-making groups to form *ANEC* and *NEAC*.

USANE and *NEUSA* are essentially the same in form, content, and membership as the conferences they replaced. One notable exception, however, is U.S.-flag carrier *Lykes Bros. Steamship Company ("Lykes")*, which had been a conference carrier for its U.S. Gulf service, but an independent for its U.S. East coast service. *Lykes* does not belong to either conference, at present. Both new agreements embody authority for a broad range of rates and tariff types. Each permits the concerted offering of service contracts and loyalty contracts, but prohibits these activities on the part of the individual members. It should also be noted that, while *Maersk* does not belong to *NEUSA*, it does participate in *Agreement No. 1237 (No. 203-011237)*, which authorizes *Maersk* and members of *NEUSA* to discuss, among other matters, rates and service. This agreement became effective May 29, 1989, and was amended July 16, 1989, to reflect the creation of *NEUSA*.

Because *USANE* and *NEUSA* are new, it is too soon to measure their impact. However, current market share data indicate that the parties do not dominate either leg of the U.S.-North Europe trade or any segment thereof, and that their competitive impact will be limited by significant direct and indirect competition. Furthermore, although shortly after their implementation, the two conferences imposed a September 1, 1989 bunker surcharge, and, as detailed below, a General Rate

Increase ("GRI"), existing overcapacity should dampen the prospect of future rate hikes.

Although the transatlantic conferences experienced market share reductions, two key cooperative working arrangements, the *Eurocorde Discussion Agreement (No. 202-010829)* and *Eurocorde I (No. 202-010833)* (commonly known collectively as the "Eurocorde" agreements), which authorize the parties to meet and discuss their tariffs and other matters, did not experience such an erosion. The membership of these agreements, already consisting of the members of *USANE* and *NEUSA* and ten non-conference carriers (including the previously mentioned *OOCL*), was increased with the addition of *Independent Container Line Limited*, another non-conference operator. Also, although *Lykes* has not joined either *USANE* or *NEUSA*, it has continued its participation in *Eurocorde*.

A mid-July 1989 meeting between representatives of the *Eurocorde* carriers resulted in a September 1, 1989 GRI. Depending on the subtrade, the rate increase for a 20-foot container ranged from \$100 to \$175, and for a 40-foot container, \$150 to \$250. Whether or not the rate increases will stick hinges greatly upon the willingness of the major non-conference carriers, which traditionally have undercut conference rates (e.g., *Evergreen Marine Corp., Ltd.* and *Mediterranean Shipping Co., S.A.*), to continue their support of the increases.

Besides the consolidation of the major transatlantic conferences, some carriers have established service rationalization arrangements as another means of dealing with the extremely competitive nature of the trade. The ability of carriers to share space, and thereby increase their service frequencies without a large capital investment or adding capacity, makes rationalization particularly attractive. The following are five examples of significant new service rationalization agreements during fiscal year 1989:

The *Wilhelmsen/ACL/GCL Space Charter Agreement* (No. 217-011221) permits *Wilhelmsen Lines A/S* ("*Wilhelmsen*") to charter vessel space to *Atlantic Container Line BV* ("*ACL*") and *Gulf Container Line (GCL), BV* ("*GCL*") in the trade between North American Atlantic ports and points and European ports and points. It also authorizes agreement on ports of call and the frequency of those calls, and allows agreement on general administrative and operational matters.

The *NOSAC/AutoSHIP Space Charter Agreement* (No. 232-011225) permits *AutoSHIP, Inc.* (individually or as a member of a joint service) to charter space on the U.S.-flag vessel *MV NOSAC RANGER*, which is operated by *Norwegian Specialized Auto Carriers* ("*NOSAC*") (a joint service of *Wilhelmsen Limited A/S*, *K/S NOSAC A/S & Co.*, and *K/S Benargus A/S & Co.*), and on any other U.S.-flag vessel which may be owned, chartered or operated by *NOSAC* in a common carrier service.

The *Canadian Transport/Star Shipping Container Space Charter Agreement* (No. 217-011238) provides for successive one-way space charters by *Star Shipping A/S* on *Canadian Transport Co. Ltd.*, vessels in the westbound trade from ports in Northern Europe to ports on the West coast of the United States.

The *American Transport Line, Ltd./Topgallant Lines, Inc. Space Charter Agreement* (No. 232-011244) permits the parties to charter space on each other's vessels, to interchange container equipment, and to rationalize sailings in the trade between ports in Northern Europe and ports on the U.S. Atlantic coast.

The *Euro-Gulf International, Inc./Tecomar S.A. Space Charter Agreement* (No. 217-011245) authorizes each party to charter space to the other, with each providing six vessels with individual capacities not exceeding 1,300 TEUs. The parties have committed themselves to a minimum of one-third of the space aboard each other's vessels in the trade between ports in North Europe and ports on the Atlantic and Gulf coasts of

Florida and the U.S. Gulf coast and the Gulf coast of Mexico, and between ports on the Atlantic and Gulf coasts of Florida and the U.S. Gulf coast and the Gulf coast of Mexico.

Three other significant agreements have gone into effect during the year. The three are:

The *BBS/Leif Hoegh Discussion Agreement (No. 203-011222)* authorizes *Barber Blue Sea* and *Leif Hoegh and Company, A/S* to discuss rates, charges, classifications, rules, and practices in the trades between U.S. ports and points and ports and points in all other foreign countries (excluding Japan). In addition, the parties may charter space to and from each other.

The *American Auto Carriers/Autoship Joint Service Agreement (No. 207-011226)* authorizes *American Auto Carriers, Inc.* and *Autoship Inc.* to establish a joint service in the trade between U.S. Atlantic ports and points and ports and points in Europe, the United Kingdom, Eire and the islands of the Atlantic.

The *Trans-Atlantic Carrier Association (No. 206-011243)* is an interconference agreement between *USANE* and *NEUSA* which permits the parties to take joint or individual implementing action with regard to any subject matter mutually covered by their respective rate agreements. In particular, the parties may act on tariff content, practices, and service contracts relating to common (*i.e.*, "two-way") shippers, housekeeping operations, space chartering arrangements, self-policing, and employment of cargo containers, rolling stock and ancillary equipment.

B. MEDITERRANEAN

The United States Atlantic/Mediterranean trade continues to be dominated by superconferences which encompass virtually all the principal carriers and handle 90 percent or more of the trade's liner cargo. The Mediterranean to U.S. Atlantic and Gulf subtrade is served by the *South Europe-U.S.A. Freight Conference ("SEUSA")* (No. 202-010676), which has a companion pooling agreement, *South Europe/USA Pooling Agreement* (No. 212-010286). The corresponding outbound subtrade is served by the *United States Atlantic and Gulf/Western Mediterranean Rate Agreement ("AGWM")* (No. 202-011102). The members of *AGWM* established a *pooling agreement* during the 3rd quarter of fiscal year 1989 (No. 212-011234), which authorizes them to pool revenue and to cross-charter space. The inbound and outbound U.S.-Pacific Mediterranean subtrades are served by the *Mediterranean/North Pacific Freight Conference* (No. 202-008090). During fiscal year 1989, as for several prior years, there were no significant individual nonconference carriers in any Mediterranean trade.

The strength of the conferences, however, is compromised by the ongoing problem of excess capacity in the trade. Since 1985, the U.S.-Mediterranean trade has averaged 40-50 percent in excess capacity. Certain peculiarities of the Mediterranean trade contribute to this situation. Overland competition from North European ports, for example, is intense, and shippers have the flexibility of shifting their cargo toward or away from Mediterranean ports. Consequently, cargo originating in the Mediterranean area and routed through North European ports contributes to the creation of excess vessel capacity in the Mediterranean trade. Moreover, the Mediterranean is a through route for carriers serving other destinations (e.g., the Indian subcontinent). Serving western Mediterranean ports adds little time or expense for a carrier which is providing service to Middle and Near East destinations. Thus, a number of through-service carriers, such as *Evergreen* (adding to its

around-the-world service) and *Barber Blue Sea* (adding to its Middle East service), operate in the Mediterranean subtrades.

Service contracts played a relatively minor role in this trade during fiscal year 1989 compared to other trades, since the oversupply of available cargo space has kept rates relatively low. Mediterranean shippers apparently do not view service contracts as a hedge against possible higher rates in the future. The combined effect of North European ports as alternatives, the existence of a small number of independent carriers, and excess capacity has resulted in a high degree of conference responsiveness to shippers, particularly in terms of maintaining requested rate levels.

Citing a decline in cargo volume, *SEUSA* imposed an 8-percent GRI on both containerized and breakbulk freight for movements from Italy to U.S. ports during 1989. Partially offsetting this increase was *SEUSA's* decision to abolish its 3-percent currency adjustment factor. Parallel to *SEUSA's* rate increase was the *Mediterranean/North Pacific Freight Conference's* 10-percent GRI. The *revenue pool agreement* among *SEUSA* members for movements from Italy to the U.S. was extended in principle until December 31, 1990.

Evergreen, *Costa Lines*, and *Italian Lines* entered into a 5-year slot charter agreement (No. 232-011184) in the Mediterranean-U.S. Atlantic coast trade during fiscal year 1989. It appears that the Italian carriers and the Italian Government both benefit from this space charter agreement by assuring utilization of vessels built at Italian taxpayers' expense. The three partners of this agreement hold approximately 40 percent of the *SEUSA* pool. With *Italian Lines* ending its relationship with *Compania Trasatlantica Espanola*, the latter has joined forces with *Nedlloyd Line*, *Sea-Land*, and *Trans Freight Lines* in a space charter arrangement (No. 232-011217), forming a competing group inside the conference. The implications of this regrouping are broad. Since large capacity vessels will be used and since some of the carriers may operate through North

European ports, the arrangement's impact on the trade may make agreement on pooling quotas more difficult.

C. AFRICA

Trade with Africa continues to improve, due primarily to the increased competitiveness of U.S. exports brought about by a decline in the value of the U.S. dollar over the past few years. U.S. exports, however, face stiff competition, especially from Western Europe, which still has strong ties with its former colonies and ships several times as much cargo to Africa as the United States does. Also, the economies of several African countries, especially Ghana and Nigeria, continue to recover from the effects of drought that ravaged the continent earlier in the decade. Increased agricultural production has resulted in more shipments of cocoa and coffee, two of West Africa's main export commodities.

Antilles and Africa Lloyd, a new service which specializes in moving breakbulk and project cargo between the U.S. Gulf and West Africa, started operations at the beginning of the fiscal year.

The *Safbank Line Ltd. and Lykes* entered into a reciprocal space charter and coordinated sailing agreement (No. 232-011247) in the trade between the United States and Southern Africa. The Agreement permits the parties to provide better service and to improve operating efficiency.

D. TRANSPACIFIC

Overall trade between the United States and the Far East remains strong, comprising approximately 30 percent of the value of U.S. exports worldwide. In the first eight months of 1989, U.S. exports to Japan, South Korea, Taiwan, Singapore, Hong Kong, and the PRC increased over 1988 levels by 18.8

percent, 21.7 percent, 18.9 percent, 29.1 percent, 15.3 percent and 25.9 percent, respectively.

A contributing factor to the growth in U.S. exports was the sharp decline in the value of the U.S. dollar from 1985 to 1988, which led to improved price competitiveness for U.S. goods. The South Korean won and the New Taiwan dollar continued to appreciate against the U.S. dollar by 15.2 percent and 10.3 percent, respectively, for the period from January 1988 to August 1989. The Japanese yen, however, while remaining relatively constant for most of 1988, depreciated by 10.98 percent against the U.S. dollar in the first eight months of 1989. This shift threatens to erode the earlier progress made at reducing the U.S. trade deficit with Japan.

In addition to exchange rate fluctuations, reasons for the export growth to the Far East include lower tariff and non-tariff barriers. U.S. exporters also benefited from an increase in the quality of U.S. products, and increased productivity by the U.S. work force in the manufacturing sector, as well as stable labor costs compared to other industrialized nations.

U.S. imports from the Far East also grew in 1989, accounting for approximately 40 percent of the value of total U.S. imports. In the first eight months of 1989, U.S. imports from China and Japan grew by 40.4 percent and 8.2 percent respectively over corresponding 1988 levels. Among other Asian trading partners, such as Singapore, Hong Kong and Taiwan, the level of U.S. imports for the first eight months of 1989 decreased by 14.2 percent, 4.2 percent and 2.4 percent, respectively.

One reason for increased U.S. imports is a continued loyalty to Asian products. Further, since many Asian nations have few natural resources, the appreciation of their currencies has made their purchase of raw materials and intermediate goods less expensive.

Average transpacific export rates, which in 1986 were 25 to 50 percent lower than freight rates for imports, currently stand at about 20 percent below import rates. The significance of this change is enhanced by the generally lower value of export cargo. The shift means that exports are acquiring a new importance to steamship lines that for the past decade have concentrated on the more profitable import trade. In anticipation of growing U.S. exports, liner carriers in the trade introduced 10 new ships during 1989, each with an average capacity of 2,200 TEUs.

Despite the introduction of new vessels, export growth has led to a decline in outbound unused vessel space. This in turn has led to a rise in the *Transpacific Westbound Rate Agreement's* ("TWRA") rates on most commodities. TWRA announced that it will impose an estimated 10-percent GRI on most dry and refrigerated cargo effective April 1, 1990.

Unlike the outbound trade, excess vessel capacity in the eastbound trade has led *Asia North America Eastbound Rate Agreement* ("ANERA") members to make increased use of independent action ("IA").

In April 1989, the Commission instituted Fact Finding Investigation No. 18, an outgrowth of the transpacific malpractice program instituted by the Commission in the fall of 1987, which is aimed at uncovering rate malpractices in the trade. Both shippers and carriers are included in the program, and violators are subject to civil penalties up to \$25,000 for each offense. Since the program began two years ago, importers, shippers, carriers, and cargo consolidators have paid penalties totaling more than \$4 million. The Commission's goal is to prevent practices that distort competition in the trade.

Two new significant agreements in the transpacific trade were filed during fiscal year 1989.

In early March 1989, 13 conference and non-conference carriers filed the *Transpacific Stabilization Agreement (No. 203-011223)*, with the objective of reducing vessel capacity in the Far East to U.S. trade by 10 percent (later increased to 11.5 percent) to combat overtonnaging and declining rates. The 1-year agreement provides that the parties must abide by an individual maximum allowed capacity calculated according to a mutually-agreed formula. The total of all parties' maximum allowed capacities for the year may not be reduced to less than 85 percent of the total of all parties' annual cargo capacity in the trade prior to the agreement. Any party exceeding its allowed capacity will be assessed a penalty.

The other significant new agreement in the transpacific was the *NYK - PM&O Discussion Agreement (No. 203-011248)* which became effective on September 17, 1989. The agreement establishes a cooperative working arrangement authorizing the parties, *Nippon Yusen Kaisha Line* and *Philippines, Micronesia & Orient Navigation Company*, to enter into discussions and reach agreement on matters of mutual concern in providing stable, efficient and economic transportation services in the agreement trade.

E. LATIN AMERICA AND THE CARIBBEAN

Major events during fiscal year 1989 included the expansion of *Zim Container Service*, the formation of *Venezuelan Container Service*, and the focusing of attention on the *Caribbean Basin Initiative*.

Zim-American Israel Shipping Co., Inc. expanded its *Zim Container Service Division* into Central America in May 1989. *Zim Container Service* entered into a connecting carrier contract with *Vencaribe Line*, a Venezuelan-flag operator, to carry cargo

between Kingston, Jamaica, and ports in Honduras, Guatemala, and Venezuela. *Zim Container Service's* ships will then carry cargo between Kingston and the Far East, the United States, and the Mediterranean. Most of the transshipped cargo will be destined for or originate in the Far East or the Mediterranean.

Venezuelan Container Service was formed in November 1988, when *H.L. Boulton*, the majority owner of *Venezuelan Container Line*, acquired *Marlago Line*. *Venezuelan Container Service* operates two vessels sailing out of Miami to Venezuela on a weekly basis, and every two weeks from Charleston to Venezuela.

Development in the Caribbean was considered by Congress this year. In particular, the future of the *Caribbean Basin Initiative ("CBI")* was deliberated. The *CBI* was created in 1983 to encourage economic development of beneficiary nations by allowing preferential treatment of many non-traditional products from these countries in the U.S. market. Twenty-two Central American and Caribbean countries are currently beneficiaries under the program. The success of this initiative is expected to increase the flow of liner cargoes between the U.S. and the Caribbean.

In February 1989, a complaint was filed against the *Caribbean Shipowners Association* by a group of Florida freight consolidators. The freight consolidators charged that freight-all-kinds rate increases on the U.S.-Barbados route and less-than-container load and less-than-trailer load rate reductions on U.S.-St. Maarten route violate the Shipping Act of 1984. The consolidators asked for reparations in the amount of \$250,000 a month from the date the charges were imposed. The case was eventually dismissed at the request of the complainants.

A/S Ivarans Rederi ("Ivaran Lines" or "Ivaran") is a party to two docketed proceedings currently before the Commission, Docket 86-09, *A/S Ivarans Rederi v. Companhia de Navegacao Lloyd Brasileiro, et al.*, and Docket 87-22, *United States*

Lines(S.A.) Inc. - Petition for Declaratory Order Re: The Brazil Agreements. Both dockets involve cargo revenue pooling arrangements in the U.S./South American trades in which *Ivaran Lines* participates.

Ivaran seeks in the first docket to have the Commission declare that the *Brazil/U.S. Atlantic Coast Agreement* should have been suspended because a major party to the agreement (*Moore-McCormack Lines*, the corporate predecessor to *United States Lines*) failed to make the required 40 sailings in 1982. On December 22, 1988, the Commission ruled against *Ivaran*, which has since appealed to the U.S. Court of Appeals, District of Columbia Circuit.

The second docket involves a dispute between *United States Lines* and *Ivaran* as to the correct legal interpretation of provisions of two northbound *Brazil/U.S. pooling agreements* and how cargo carried under the agreements' "Alternate Coast Port Service" provisions should be accounted for under the terms of the agreements concerned. This docket is currently before the Commission.

With regard to agreements in the trade, there was one significant development in fiscal year 1989, as well as two noteworthy trends.

The *U.S. Atlantic and Gulf Venezuela Freight Conference* (No. 202-006190) reorganized itself as two conferences, the *U.S. Atlantic/Venezuela Freight Association* (No. 202-006190), and the *U.S. Gulf/Venezuela Freight Association* (No. 202-011231). Most of the independent carriers in the trade, which -- with the combined conference -- had been parties to the *U.S. Atlantic and Gulf Venezuela Freight Conference Discussion Agreement* (No. 203-011172), joined one of the two regional conferences. The only members of the discussion agreement at present are the two conferences.

Two significant trends have become apparent in the Latin American trades during the past fiscal year. Five conferences

and four discussion agreements in the trade have added space chartering to their authority, while eight conferences prohibited their members from taking independent action to enter into loyalty contracts.

Two noteworthy agreements were filed in the Latin American trades in fiscal year 1989:

Euro-Gulf International, Inc. and *Tecomar, S.A.* filed a reciprocal space charter agreement (No. 217-011245) in the trade between U.S. Atlantic and Gulf ports and ports on the Gulf coast of Mexico. The agreement also includes the trade between U.S. Atlantic and Gulf ports and North Europe.

Companhia de Navegacao Lloyd Brasileiro and *Empresa Lineas Maritimas Argentinas S.A.* filed a space charter agreement (No. 217-011250) in the trade between U.S. Atlantic and Gulf ports and ports in Brazil, Paraguay, Uruguay and Argentina.

F. MIDDLE EAST

The Middle East trade, which over the past decade has experienced limited growth in liner service due to risk of war, poorly-developed infrastructures and lack of attractive cargo, continues to show signs of a reversal in market conditions. The Port of Basra, Iraq's largest port, was reopened in early 1989 after being closed for eight years because of the war with Iran, and work began on a billion-dollar port development project. Further, preparations are also underway in Iran to reopen the Ports of Abadan and Khorramshahr. Plans for full reconstruction of the two port cities were scheduled to be carried out once the Shatt al-Arab waterway is cleared of all debris left over from the Iran-Iraq conflict. The United Arab Emirates, a federation of seven small Arab principalities located on the Persian Gulf, reports that U.S. exports rose from approximately \$292 million to \$395 million during the first five

months of 1989. The boost in export sales represents a 35.4 percent increase over the same period last year.

In addition to the above, other significant activities took place:

Sea-Land Service, Inc., a U.S.-flag carrier, inaugurated direct container service in March/April 1989 between Europe, the Middle East, and Asia. The new service was made possible through a *space-sharing agreement* with *Norasia Shipping Service S.A.*, a privately-held Swiss company. The slot-charter arrangement enables *Sea-Land* to expand its presence in the Middle East through the introduction of a direct service to and from Asia with 13 vessels, 10 contributed by *Norasia* and 3 by *Sea-Land*. Reports indicated that *Sea-Land* viewed the venture as the final link in its effort to provide a global transportation service.

In April, *Thames Shipping, Ltd.*, a London-based carrier, established a new liner service between the ports of New York, Baltimore, Norfolk and Savannah, and Red Sea and Arabian Gulf ports. Common carrier services were, however, subsequently discontinued by the line later in the year.

In June, *Farrell Lines* resumed container service from the U.S. Atlantic to Baghdad and Mosul, Iraq. The U.S.-flag carrier intends to discharge full containers of Iraq-bound cargo at Port Izmir, Turkey, from where the containers will be transported via truck to their final destinations.

Further, in September, *Hoegh Lines* announced that it was expanding the capacity of its North Atlantic/Middle East and Far East service by redeploying four of the container vessels previously used in the US/Australian trade (scheduled for termination in January 1990) to replace six older general cargo ships in this trade area.

The fiscal year also saw the filing of a new interconference agreement in the trade. The parties to the

"8900" Lines Agreement (No. 202-008900) and the West Asia Rate Agreement (No. 202-010748) filed an Inter-Conference Discussion Agreement (No. 206-011239), effective July 8, 1989, to permit them to discuss and agree upon rates, terms and conditions of service, and to exchange information concerning the trade between the United States and the Middle East and Indian subcontinent.

G. WORLDWIDE

U.S. exports continue to enjoy substantial growth as a result of the relatively cheaper dollar, increased efforts at export marketing by domestic firms, and improved quality control in U.S. manufacturing processes. However, increased export traffic has not reduced the current trade deficit as much as hoped because: (1) there has been some rebound of the U.S. dollar's value, producing some braking effect on export growth; and (2) imports continue substantial growth due in part to aggressive marketing efforts by foreign suppliers and in part to the ingrained product preferences of U.S. consumers.

Elsewhere, the last half of 1989 has seen the diminution of political monopoly in Eastern Europe and, along with it, the intimations or even the first concrete steps toward market-oriented economies. Although ultimately these developments should lead to a substantial increase in world trade and the opening of vast new markets, the short-term effect is likely to be quite limited. The most likely effects anticipated in the short term are: (1) increased participation as cross-traders in U.S. trades by Eastern-bloc carriers; and (2) increased activity by the Eastern-bloc carriers on the world charter market as they seek new tonnage and replacements for obsolete vessels during a time of fiscal crisis for their home governments.

Events in mainland China have further impeded the development of that potential market. The trade already suffered from inadequate physical structures, routing and cost

controls, access to shoreside facilities, inadequate developmental capital, etc. Although carriers are proceeding, optimism is muted.

U.S. trades, particularly with partners in the developed world, have seen the continued maturation of fully integrated intermodal systems. Among other things, this implies: (1) control of an entire cargo movement by a single entity from origin to destination; (2) greatly increased potential for competition among multiple U.S. ports for cargo to/from the same inland point, or even between port areas in separate coastal ranges; (3) intermodal water-rail costs which approach, under the right conditions, those of all-water transport; and (4) an increase in agreements involving asset sharing.

While progress has been made in controlling excess vessel capacity in some areas, the problem persists due to the continuing entry of newly-constructed tonnage on the world scene. This problem is expected to continue through 1990.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every receipt and invoice should be properly filed and indexed for easy retrieval. This is particularly crucial for businesses that deal with a large volume of transactions, as it helps in identifying discrepancies and ensuring compliance with tax regulations.

Next, the document outlines the various methods used to collect and analyze financial data. It mentions the use of spreadsheets and specialized software to track expenses and revenues over time. The importance of regular audits is also highlighted, as they provide a comprehensive overview of the company's financial health and help in identifying areas for improvement.

The document also touches upon the role of management in overseeing the financial operations. It stresses that managers should have a clear understanding of the company's budget and should be able to make informed decisions based on the available financial data. This involves regular communication with the finance department and staying updated on the latest market trends and economic indicators.

In conclusion, the document provides a detailed overview of the financial management process, from data collection to analysis and decision-making. It serves as a valuable resource for anyone looking to improve their financial management skills and ensure the long-term success of their organization.

V.

AUTOMATED TARIFF FILING AND INFORMATION SYSTEM (ATFI)

A. INTRODUCTION AND BACKGROUND

A freight tariff contains a carrier's or conference's list of rates, charges, and rules applicable to its transportation of cargo. A service contract is a special agreement between shipper(s) and carrier(s) that applies in lieu of the freight tariff. Mutual commitments are made in a service contract, with the shipper guaranteeing the carrier a minimum quantity of cargo over a period of time, in consideration for a commitment by the carrier to a certain rate and service level.

Common carriers in the US oceanborne commerce and conferences of such carriers are required by law to file tariffs and service contracts with the Commission, and to make the tariffs and essential terms of service contracts available to the public in tariff format. In order to prevent discrimination, there are substantial penalties for not filing and for not adhering to the provisions of a tariff or service contract.

While the first regulatory ancestor of the FMC was established in 1916, it was not until 1961 that carriers in the US foreign commerce were required to file tariffs containing all the rates, charges, and rules applicable to their shipments. The number of tariffs and amendments filed with the FMC has steadily grown until, in fiscal year 1989, there were 798,993 tariff pages received and 5,215 service contract filings in the US foreign commerce. At the end of the fiscal year, there were 4,947 foreign tariffs on hand at the FMC.

The enormous amount of paper to be processed by a limited number of employees led the Commission in the early

1980s to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry, as well as enhancing the effectiveness of FMC regulation. A systematic exploration of this subject area by the Commission commenced with a series of studies, and has developed into a Commission proposal for an *Automated Tariff Filing and Information System ("ATFI")*.

B. EARLY STUDIES ON TARIFFS

The Commission conducted a study beginning in 1981 to examine the validity of the premises upon which the tariff filing requirements of the 1916 Act were based. The study contained three parts.

The first part concerned the internal use of tariff data in the effectuation of non-tariff programs, such as agreements, formal decisions, enforcement, etc. That analysis, published on October 1, 1981, was based upon an internal questionnaire. It concluded that tariffs are of critical importance to many Commission statutory functions, and that they could be more effectively used if the data were more accessible.

The second part of the study, published on December 9, 1981, evaluated the impact of the tariff filing system on external users -- shippers and freight forwarders -- and was based on interviews with 25 importers and exporters and 9 freight forwarders. It revealed that these groups believed that publicly available tariffs were a necessity and should be maintained at the FMC. Virtually all interviewees, however, agreed that the tariff system was too complex and could be simplified by implementing per-container rates, a class system of rates, computerized filing, and classification based upon the *US Foreign Trade Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States ("Schedule B")*.

The third part of the study, published in January 1983, focused upon ten liner operations and five conferences. This segment of the maritime industry opined that tariffs should be publicly available and maintained at the FMC. Unlike those interviewed for the earlier part of the study, however, the carriers and conferences stated that the marketplace determines the contents of tariffs. A majority believed that the complexity of tariffs might be a necessary evil. Several interviewees stated that any program to simplify the tariff system should include tariff automation.

The overall conclusion of the three-part study was that retention of the requirement to file tariffs had widespread support in the maritime industry, but the system was in need of modernization, particularly in the area of computerization.

While conducting this three-part study, the Commission also began an internal study of the impact of filing activity upon the Commission itself. The internal study revealed that during a six-month period, July-December 1981, a total of 212,458 permanent filings were received at the Commission. Thirty out of several hundred filers accounted for 47 percent of the total volume. The internal study also found that, based upon first quarter fiscal year 1982 actual expenses, the estimated annual cost of examining and maintaining the tariff filings of the 30 major filers was \$158,000.

With the results of these two studies in hand, the Commission explored the issue of tariff automation. Of particular interest to the Commission was the industry's views on the feasibility of, possible methods for, and implementation of an automated tariff system. In early 1983, the FMC interviewed seven carriers, five conferences, two freight forwarders, twelve shippers, and two transportation service firms.

The report of this survey was issued in March 1983, and revealed the overall belief of these parties that the tariff system should be automated and that implementation of an automated

system was overdue. Almost all interviewees said that there was a likelihood that they would use an automated system if it were more efficient and, in the long run, proved to be less costly than the existing system.

The various respondents were, themselves, at different stages of automation. A few carriers were highly automated, and a number of conferences and shippers had made substantial commitments to automation. Those respondents that were automated to some degree generally believed that automated tariffs would fit well into their systems.

C. FIRST STEP IN TARIFF AUTOMATION: ISSUES

Recognizing that there was a need and apparent industry support for tariff automation, the Commission's next step was to determine if any parties were interested in developing an appropriate system. On November 14, 1983, the Commission published in the *Commerce Business Daily* a *Notice of Inquiry*, entitled "*Sources Sought for 'Paperless' Federal Maritime Commission Electronic Filing, Storage and Retrieval Systems for Tariffs.*" Of the 31 replies received, 15 were considered to be responsive or partly responsive to the notice (i.e., indicated interest in being considered to develop the automated tariff system and/or described their qualifications). The comments also raised questions of both a legal and policy nature which needed to be resolved before proceeding with additional phases leading to the eventual adoption of an electronic tariff system. The major questions raised were:

1. Does the filing and storage of tariff information with a private contractor off FMC premises comply with the statutory requirement that tariffs be filed with the Commission?
2. Can the Commission mandate 100 percent industry compliance with electronic filing?

3. What is an appointed vendor's right of ownership to vendor-developed software, external to FMC's own data base requirements?

4. What copyrights are involved in tariff data?

5. What will be the "official agency record of tariff-filing," the data electronically stored or the hard copy that is either filed or produced from electronic filing? How long will storage be required? To what extent will hard copy continue to be required?

6. Will the contractor have monopoly control over the use of the tariff information filed in the system?

7. What will be the financial impact of a system on carriers and other firms that already have tariff automation?

8. What is the minimum term of any possible contract with an appointed outside vendor?

9. What is the economic and political viability of FMC as a free system user?

10. What will be the number of outside vendors which will be ultimately selected?

11. What will be FMC's programming demands on the contractor?

12. To what extent will there be a need to put present tariff data into the electronic system data base? How?

13. How will a system provide security for filed tariff data?

14. To what extent would a new system be compatible with other format standardizations?

D. THE SHIPPING ACT OF 1984

On March 20, 1984, the 1984 Act was enacted. Even though the continued need for various tariff requirements had been questioned by certain government agencies and the private sector during hearings, section 8 continued the requirements to file and abide by tariffs. Service contracts were authorized as an alternative to a tariff. While service contracts were required to be filed confidentially with the FMC, their essential terms had to be filed with the FMC in tariff format for availability to the general public.

E. THE TARIFF AUTOMATION TASK FORCE (1984 to PRESENT)

In August 1984, FMC Chairman Alan Green, Jr., appointed Vice Chairman James J. Carey as head of a special *Tariff Automation Task Force*. The Task Force gathered additional information, and in January 1985, sent questionnaires to 17 ocean carriers, 10 non-vessel-operating common carriers ("NVOCCs"), 19 conferences, 52 freight forwarders and 20 shippers. The questionnaires focused on the use of tariff data and suggestions to improve the process. Sixty-three entities responded. Some of the results of these responses are synthesized as follows:

- o **Tariffs were used by virtually all, usually on a daily basis, and mostly in paper form.**
- o **Most, with the exception of shippers, were satisfied with the current tariff form. Those not satisfied indicated a desire for an automated system.**
- o **Most of the respondents obtained data from commercial tariff services, but many used carrier/conference subscriptions. Carriers were the predominant users of FMC files, while a large**

number of freight forwarders, NVOCCs and shippers went directly to ocean carrier representatives for tariff information. They indicated that these sources met their needs; however, those suggesting improvements generally favored automation which could provide more timely and accurate data.

- o A majority of the respondents used publicly available standardized commodity coding systems, e.g., *Schedule A, Tariff Schedules of the United States Annotated*, *Standard International Trade Classification*, *Schedule B*, and *Standard Transportation Commodity Code*. Most respondents did not use standardized geographic coding systems, nor did they see a need for them.
- o Freight forwarder and shipper respondents showed the greatest degree of willingness to use more than one type of coding system.
- o Practically all ocean carrier and conference respondents believed that it would be advantageous to file data with the FMC in an automated fashion. The NVOCC respondents thought it might be too expensive.

At about the same time as the 1985 industry surveys, an in-house survey was conducted at the Commission to ascertain its needs for tariff automation and perceptions about this concept. The survey results included the following findings:

- o Most respondents in the FMC's operating bureaus felt that automated tariffs would increase the quality of their work, as well as their productivity.
- o Sixty-two percent of the respondents felt that hard copy was unnecessary if tariffs were accessible via machine-readable form. Reasons cited for paper

copies were the need for evidence in court, exhibits for enforcement reports, and a backup system in case of computer malfunction.

- o Forty percent said that a standard commodity classification code would increase both their efficiency and quality of work, while an additional twenty-one percent responded that it would increase only their efficiency but not their quality of work. Responses were similar regarding a standard geographic code.**

In August 1985, the *Task Force* issued a report entitled *Tariff Automation (A Functional Analysis)*. In addition to describing the results of the 1985 industry and in-house surveys, the report described the problems with manual tariff filing and review, and the FMC's need for automated filing and retrieval of tariff data. The objectives of an automated system were described as follows:

- o The automated system will operate in the private sector to the extent possible.**
- o The system will be financially self-sufficient through the assessment of user charges for access to the information.**
- o Access by the FMC will be without cost.**
- o The integrity of the system will be insured by the FMC through the development and ownership of software which will control entry into the system.**
- o A means will be constructed to minimize the monopolistic control of a single company operating the system, and effort should be made to preserve existing satellite companies now engaged in dissemination of tariff data.**

- o Contractual arrangements for electronic filing may not curtail the ability of the public to have access to tariff documents now routinely available in public document rooms or otherwise.**

The report recommended the conduct of a feasibility study which would evaluate the technical alternatives available and their costs, including a market analysis of the demand for tariff information and the likelihood that the FMC's costs could be recaptured. The *Task Force* report developed two primary options to be evaluated in the feasibility study, a synopsis of which follows:

1. Multiple private-sector data bases which would require FMC control or oversight regarding the acceptance of tariff filing within the data base; controls to prevent tampering with the data; and accessibility of the information in the data base to the FMC and to the public through the FMC's public reference facility (Tariff Control Center). This might require some sort of certification process. This option would probably involve the least cost to the FMC and minimum government involvement, but legislative changes would likely be required to implement it.

2. Single data base - one contractor designs and operates a single data base of tariffs for the FMC. After review and acceptance of the data, tariff information would then be made available to users for a fee, a portion of which would offset the cost of the contract to the FMC. Rather than grant the contractor a total monopoly over tariff information, however, the report indicated that it would seem more advisable for the contractor to supply only the raw data, perhaps on a subscription basis. The purchasers of the data would save on input costs to their system and obtain quicker access to the information in an electronically-usable form. Each purchaser could purchase electronic data, design its own software for providing the data in usable form, and sell the data to other users. Hard copy and/or microfiche pages could also be made available for sale by the contractor.

The report concluded that, since the FMC lacked the technical expertise, the feasibility study should be contracted out.

Because the Commission also needed to ensure that all future studies were unbiased, thorough, and accurate, it hired an industry consultant in August 1985 for technical assistance. The contract provided that the consultant must remain independent of the feasibility study contractor and could not become the contractor for the pilot/operating system.

F. FEASIBILITY STUDY OF TARIFF AUTOMATION and THE ATFI ADVISORY COMMITTEE

The Commission next turned to the General Services Administration ("GSA") for assistance with the feasibility study and entered into an interagency memorandum of understanding with GSA on August 1, 1985. Pursuant to this agreement, funds were transferred to a GSA fund and a Statement of Work for the development of a feasibility study was drafted, resulting in a contract for this task with a GSA-approved contractor.

Early in 1985, the FMC determined the need and importance of not only soliciting, but also considering in a public arena, the opinions of all interests affected by the possible automation of tariff filing. For that purpose and pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. I, 1-15, the FMC's *ATFI Industry Advisory Committee* was established.

The Commission's first steps in the formation of the Advisory Committee were to draft a charter and submit it to the GSA Advisory Committee Secretariat with an explanation of the need for the Committee and the FMC's plan to obtain

a balanced membership. Thereafter, candidates for membership on the Committee were solicited by *Federal Register* notice of April 12, 1987 (50 Fed. Reg. 14,453). Nominees were required to waive compensation for their services and acknowledge that they were ineligible to bid on any procurement solicitations resulting from the work of the Committee.

On November 11, 1985, the FMC published in the *Federal Register* (50 Fed. Reg. 47447) its Notice of the Formation of the *ATFI Advisory Committee* and announced the first meeting on December 6, 1985 (50 Fed. Reg. 50,013). FMC Commissioner Edward J. Philbin was designated Chairman of the Committee. The nineteen industry members represented three ocean carriers, three steamship conferences, two NVOCCs, three freight forwarders and the National Customs Brokers and Forwarders Association, three ports and the California Association of Port Authorities, two exporters and importers and the American Association of Exporters and Importers, two information service firms, and the Information Industry Association.

FMC Chairman Edward V. Hickey, Jr., opened the first Advisory Committee meeting on January 23, 1986, by asking for guidance on the following policy questions about any proposed automated system:

- o Is it desirable that it operate in the private sector?
- o Can it be structured so as to be financially self-sufficient through the assessment of user charges for access to the information?
- o Is it possible to achieve cost-free access to the system for the FMC?
- o Can the integrity of the system be ensured by the Commission through the development and ownership of software which will control entry into the system?

- o What means can be devised to minimize the possibility of monopolistic control by any single company that might operate the system, and to minimize interference with the operations of commercial companies currently engaged in the dissemination of tariff data?**
- o Can the system operation be structured to maintain public access to tariff information now routinely made available in public document rooms or otherwise?**
- o Can system operation be structured to complement public access under the Freedom of Information Act?**
- o Can a system be structured so that the burden imposed upon tariff filers to comply with the technical requirements of filing tariffs in an automated system will be minimized?**

Chairman Hickey explained that four items were necessary to assure the integrity of FMC's statutory mandates:

- o The FMC is to retain final authority to reject filings that do not comply with agency requirements, and is to determine the public availability of information pursuant to the Freedom of Information Act and other statutes.**
- o The system must permit the maintenance of historical records that can be retained, retrieved and reproduced for legal evidentiary purposes and to comply with requirements for retention of government records.**
- o The system must obviate unauthorized modification or tampering with data, yet allow the identification and authorized correction of errors.**

- o All fees for the use of the system (filing, retrieval or data reproduction) are to be reasonable and not prevent, deter or impair full public use.

The critical objectives of the *Advisory Committee* were established as follows:

- o To allow each segment of the shipping industry to formulate and specify its needs and goals in the process of automating shipping tariffs.
- o To educate each segment of the shipping industry about the needs and goals of the other segments in such a process.
- o To investigate the possible applications of existing and foreseeable Automated Data Processing technology to accommodate such needs and goals.
- o Then, if feasible, to formulate the necessary compromises of the needs and goals of each industry segment to design a system which is acceptable and beneficial to all industry segments.

The Commission directed the *Advisory Committee* to make an in-depth and critical evaluation of the draft sections of the *ATFI Feasibility Study*, and to evaluate and comment on any implementation plan which may be formulated after completion of the *ATFI Feasibility Study*.

The *ATFI Advisory Committee* met in three two-day sessions from January to November 1986, in which it actively provided input to and review of the reports of the *Feasibility Study Contractor*. The final report of the Contractor, entitled *Comprehensive Study of the Feasibility of an Automated Tariff System, FMC, October 28, 1986*, detailed the basic functionality for tariff automation, the necessary assumptions, the concept of a system, alternative concepts of operation, policy assumptions,

delivery alternatives, costs and funding. This report was approved in principle by the *Advisory Committee* with a few suggested changes. In summary, the tariff automation requirements identified by the *Feasibility Study* are:

1. Key Tariff Filing Requirements

- (a) Electronically create and transmit tariff filings to FMC.
- (b) Provide fault-tolerant filing (e.g., backup computer).
- (c) Provide compatibility with existing systems (to the extent possible).

2. Key FMC Tariff Processing Requirements

- (a) Accept electronically filed tariffs (e.g., new tariffs; essential terms; amendments).
- (b) Provide tickler capability (e.g., reminder to follow up on a letter of criticism).
- (c) Perform computer-assisted conformity check of tariff filings (e.g., syntactic, validity, associative edits).
- (d) Provide workload tracking functions (e.g., track status of new tariff filings).
- (e) Generate FMC communications (e.g., letter of rejection).
- (f) Route tariff filings.
- (g) Collect workload statistics (e.g., number of new tariffs filed in a week).

3. Key Tariff Retrieval Requirements

(a) It is expected that any value-added services built into this system will be for FMC's internal use, exclusively. Third-part vendors will provide value-added services to the public.

(b) Retrieve current tariff information with different keys (e.g., origin and destination).

(c) Retrieve historical tariff information with different keys (e.g., commodity code).

(d) Link tariff information to other data sources.

(e) Retrieve current tariff information in different formats (e.g., page).

(f) Retrieve historical tariff information in different formats (e.g., entire tariff).

(g) Provide computer-assisted identification of filed data (e.g., subscription service).

(h) Retrieve tariff information to support enforcement (e.g., re-rating).

(i) Retrieve tariffs to support special studies (e.g., rate indices).

4. Key Functionality Requirements

(a) Accuracy (e.g., amendments are properly applied to the data base).

(b) Timeliness (e.g., quick turnaround on posting new rates).

- (c) Security (e.g., user identification and passwords).
- (d) Special analyses for FMC (e.g., rate indices).

5. Key Policy Assumptions

(a) FMC will provide public access to the system via terminals in a public terminal room at the FMC. FMC will make copies of the data base available to third-party vendors, who could then resell the data (or value-added services) on a retail basis.

(b) FMC would not want the system to provide value-added services directly to the public; these services will be provided by third-party services. Any value-added services provided by the system would be available only to FMC users (e.g., for enforcement purposes).

(c) FMC would not want to restrict ownership rights to the data base as a creative financing method.

The functions and requirements of tariff automation identified in the study have not changed and have become the backbone of subsequent efforts to procure the *ATFI* system. The system concept developed and recommended to the Commission by the Contractor had a total estimated cost of \$7.3 million and an estimated implementation time frame of 14 months. The cost estimate was based on a present value calculation for the five-year period, and the implementation time frame consisted of design and implementation phases, including training, data conversion and testing. The cost estimates were considered conservative in the sense that they were the costs for complete development, i.e., "building from scratch." Some of the commercial tariff services may have existing systems which could be adapted to meet a portion of the functional requirements of *ATFI*.

The *Feasibility Study* concluded:

Tariff automation appears to offer significant benefits to the maritime industry and to the FMC; tariff automation appears to be politically feasible; and the potential costs of tariff automation appear to be within the reasonable range, when balanced against the benefits that would accrue and the practical limits in the budgetary process.

The *ATFI Advisory Committee*, in approving the *Feasibility Study* in principle, made two further recommendations which the Commission adopted:

- o First, the FMC should proceed with tariff automation as described in the study.
- o Second, the Commission should conduct a cost/benefit study of tariff automation to ensure that the perceived benefits are not outweighed by the costs of the impact of automation upon the industry.

G. BENEFIT COST ANALYSIS and PROCUREMENT AUTHORITY

In October 1987, a Benefit Cost Analysis was prepared by a commercial contractor and corroborated the economic feasibility of the project. This analysis was submitted to the Office of Management and Budget.

In December 1987, a delegation of procurement authority for the project was obtained from GSA.

H. INQUIRY ON THE FUNCTIONALITY OF ATFI and PRESOLICITATION CONFERENCE

In December 1987, the Commission began to develop a draft request for proposals ("RFP") which would yield comment from the vendor community on the project. At the same time, the Commission sought public comment on the proposed functionality of the system in a Notice of Inquiry.

The purpose of this "outreach program" was to ensure that the regulated community and the potential user public were fully aware of the Commission's plans for tariff automation. Comments were requested from other than potential bidders on the basic functionality of the proposed *ATFI* system. This functionality, as set forth in the Notice of Inquiry, has remained constant throughout the project:

The electronic *ATFI* system, for which the FMC is seeking a prime contractor, will be run on the contractor's central computer with appropriate terminals at the FMC for tariff review, processing, and retrieval. The format of tariff data to be electronically filed is being developed in conjunction with the industry Transportation Data Coordinating Committee and will emphasize "tariff line items," vis-a-vis, tariff pages, as under the present system. "Tariff line items" are basically equivalent to commodity rate items in current paper tariffs and can be amended directly, without having to issue an entire revised page.

As recommended by the FMC's Advisory Committee, standardized commodity or geographic coding will not be mandated at the beginning, but the system must have the capability to provide for these functions at the appropriate time. The system will also include the essential terms of service contracts.

Full implementation of the system will be in phases to allow commercial firms time to adapt their operations.

Exemptions, at least temporary, will be granted to some types of tariff filers who are not economically able to use the electronic system.

The system will be as compatible as possible with existing computer equipment through the use of software for full connectivity. Filing of tariffs will be done primarily by using asynchronous terminals or microcomputers, dialing in with a modem to the FMC's data base. The filing software will provide on-line edit checks to ensure that the tariff information is correct and that basic statutory provisions are complied with before the tariff can be officially on file. Such edit checks, for example, will be able to electronically identify improper effective dates, such as a rate increase on less than 30-days' notice. Other problems for which rejection is warranted, such as unclear or conflicting tariff provisions, will still have to be handled by FMC staff and, if necessary, resolved at the Commission level. The system's computer capabilities, however, will facilitate this process also.

The ATFI system will have appropriate security mechanisms to protect the integrity of the data base.

Tariff filers will be able to file and amend their tariff materials by remote access directly to the ATFI system by carriers or conferences almost any time of day. The carrier or conference will be able to screen-scan its tariff so that the appropriate item can be amended. Commercial tariff services can also continue to be used by carriers and conferences for filing, e.g., by direct input into the data base, after creating tariffs on instruction from their clients, or transforming their paper tariffs into electronic form. The FMC will encourage commercial tariff services to assist small firms who may find it difficult to file electronically.

Once the tariff data are officially on file, the FMC will download the entire data base in "flat files", formatted onto computer tapes which will be sold to any person at the relatively inexpensive marginal cost of dissemination. This will satisfy the FMC's statutory duty of providing copies of tariffs at a reasonable charge. In order to keep up with a substantial number of rapidly changing freight rates in the shipping industry, however, interested persons must obtain these updated data base tapes frequently. FMC will offer a subscription service to provide this capability.

The FMC will not perform any value-added processing of the tariff data for sale to the shipping public in competition with commercial tariff services. It is expected that those services will subscribe to the data-base tapes to facilitate their value-added services. The FMC must, however, use the system to process tariff data internally for investigative and other regulatory purposes and will continue to utilize appropriate and available, value-added services of commercial tariff firms for this purpose.

In order to carry out its other statutory function of making tariffs and essential terms of service contracts available for public inspection, the FMC will continue to have a public reference room at its Headquarters in Washington, D.C. Here, interested persons can access a terminal on which information on a particular tariff will be brought up on the screen and scanned to find the necessary rates and rules. Paper copies of tariff data will still be available upon written request, especially for certification to courts and other tribunals for proceedings involving disputes over historical tariff rates. [*Inquiry on Tariff Automation*, December 22, 1987, 52 Fed. Reg. 48504.]

Explained in the Notice of Inquiry and contained in the draft RFP was remote access to the FMC data base by modem, almost any time of the day, for retrieval of tariff information by any interested person. This is described in the October 28, 1986 *Feasibility Study Final Report* as follows:

b. Retrieval and Analysis by the Public

. . . FMC would also allow remote access whereby a member of the general public could access the automated tariff system from remote locations. For example, the system would enable a shipper on the West Coast to retrieve data from the automated tariff system using a terminal or microcomputer equipped with a device (i.e., a modem) to enable data communications over public telephone lines.

However, members of the general public would only be able to perform relatively rudimentary retrievals, and essentially no analysis of the data. Specifically, members of the public would only be able to retrieve one tariff at a time, in its full format. To retrieve a tariff, the public user would have to specify the specific tariff of a particular carrier that is desired: the public user would not be able to search by keys (e.g., by route or community).

FMC has imposed these restrictions based on a careful analysis of applicable federal policies and precedents. FMC does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. . . . In the absence of tariff automation -- i.e., the status quo -- FMC will make available copies of tariffs to members of the public only if they can specify the particular tariff desired. A user fee is assessed for this service. FMC would not expand these services after tariff automation is implemented.

. . . However, FMC would help ensure that third-party services can provide such services. [Pages IV-8 and 9.]

While the Commission was waiting for public comment on the proposed features and functionality of the proposed *ATFI* system, a draft RFP was issued to the vendor community. Firms and individuals on the bidders list were requested to submit their questions on the proposed competitive acquisition and to attend a presolicitation conference for an opportunity for face-to-face questioning.

In April 1988, the Commission issued its *Report on Tariff Automation Inquiry* (53 Fed. Reg. 13,066) and detailed its rationale for the features and functions proposed for the system.

I. REMOTE RETRIEVAL

When the Commission was finalizing the RFP, it had become aware of concerns raised by both the House Subcommittee on Information, Justice and Agriculture, and OMB. The concerns revolved around the functionality of "remote retrieval." As stated earlier, this feature would allow the shipping public to dial, via telephone modem, for access to an individual tariff of a carrier or conference. It would give access to one tariff at a time, and would not provide for sophisticated searches. The questions about this feature were based on the perception that the Commission would compete with existing or intended value-added services offered by private sector firms. In June 1988, the Commission acknowledged its commitment to tariff automation, but placed the development of the system on "hold" to resolve the remote retrieval concerns (53 Fed. Reg. 22,048).

During the period June-December 1988, the Commission reassessed the functionality of the *ATFI* system, especially in the area of remote retrieval. This process involved a dialogue

with officials of Congress and the Executive Branch. Technical revisions were made to the RFP to reflect new funding exigencies and legal requirements. In October 1988, the Commission issued to some 200 potential offerors a second draft RFP for comment on the technical revisions. However, the Commission remained concerned about the questions on remote retrieval and stated in the letter transmitting the second draft RFP:

The remote retrieval issue has not been finally decided. Accordingly, this draft RFP is issued with the remote retrieval question still open. That issue will be decided in the final RFP.

After much analysis and reconsideration, the Commission decided in December 1988, to retain the functionality of the system with remote retrieval. In its *Second Report on Tariff Automation Inquiry*, the Commission stated:

The controlling question is: In designing the functionality of its ATFI system, has the Commission properly considered and balanced competing interests, such as (1) the system's utility to shippers, carriers and other members of the shipping public, and (2) the future role of private-sector information services? The Commission believes it has.

In October, 1986, a year before the Commission heard of any complaints about 'remote retrieval,' its private-sector contractor issued 'A Comprehensive Study of the Feasibility of an Automated Tariff System.' This report accurately describes the proposed functionality of the ATFI system in terms sufficiently precise for private-sector firms to fully understand for the purpose of submitting proposals. This public report was considered and discussed by the Commission's Industry Advisory Committee at the time and there were no objections to 'remote retrieval' . . .

More importantly, with the approval of the Commission and the Advisory Committee, the Feasibility Study Report suboptimized ATFI's public retrieval functions as an accommodation to private-sector information firms:

FMC does not want to compete with third-party services for the provision of sophisticated retrieval and analysis of tariff data for shippers, carriers, and others in the private market. [Page IV-8.]

Accordingly, the self-imposed restrictions would allow the general public to perform only relatively rudimentary retrievals of tariffs, and essentially no analysis of the data.

In consideration of the statutory duties of the Commission and the available technology required for it to properly perform these functions, the 1986 accommodation appeared reasonable. It still does.

The shipping public should also benefit from this modern technology by being allowed to obtain basic, raw tariff data on a limited basis. For more sophisticated services, the utilization of third-party vendors, both for filing and retrieval, is continued to be encouraged. An efficient tariff filing and retrieval network will promote fair competition and facilitate trade.

Accordingly and after further analysis, the Commission believes that it has sufficiently considered all policies and conflicting interests involved in the proposed system and has struck a proper balance in retaining the functionality of ATFI as originally devised in the Feasibility Study, and as further refined in the RFP . . . [December 23, 1988 (53 Fed. Reg. 52,785).]

See also Section K, *Update on Remote Access - March 1990*, below.

J. CONTRACT AWARD and BEGINNING OF ATFI

After receiving much technical comment on the two draft RFPs, and after resolving the "remote retrieval" issue, the Commission issued a final RFP in January 1989 to over 200 potential offerors on the bidders list. Eight proposals were received in March 1989 and evaluated for technical quality and cost effectiveness.

On August 8, 1989, the *ATFI* contract was awarded for Phase I, System Concept (including verification of requirements), and Phase II, System Design, to Planning Research Corporation ("PRC") of McLean, Virginia, teaming with Data Exchange International ("DXI"), of Pittsburgh, Pennsylvania, which had the best technical, as well as the best cost proposal. Work on the first phase began on September 5, 1989.

The contract for the five-year system life also contains options for each subsequent phase, i.e., development and testing, prototype operation, and each of four years of full-scale operation, which is scheduled to begin in December, 1990. If all options are exercised, the contract is worth about \$4.6 M.

K. UPDATE ON REMOTE ACCESS MARCH 1990

Since the 1986 *Feasibility Study* (See Sections F, H, and I, above), the FMC's *Automated Tariff Filing and Information System ("ATFI")* has been designed to accommodate remote filing and retrieval of tariff data through modems to and from the off-site host processor (mainframe computer). However, to avoid competition with private-sector tariff services, the design

contemplates restrictions on remote retrieval, such as the ability to retrieve only rudimentary information, "one-tariff-at-a-time."

Such a restriction has now been enacted into law [§ 2(b), Pub. L. 101-92]:

The Commission shall impose reasonable controls on the system to limit remote access usage by any one person.

Congress has explained this provision as follows:

Concern has been expressed over the use and accessibility of the ATFI system by all interested parties. In particular, the remote retrieval function will permit the public to dial into the system (by modem) and obtain a particular carrier's rates on a requested commodity in a given trade.

* * *

At the present time, no precise definition of "reasonable controls" in the limiting of access can be offered because the system has yet to be developed or implemented. However, the following non-exclusive possibilities are reasonable. First, members of the public could be limited to retrieving one tariff at a time in its full format, and the use would have to specify the specific tariff of the particular carrier that is desired. In the alternative, specific limitations on access time could be imposed, and automatic log-off would then occur. Either limitation, or a combination of both, could satisfy the requirement discussed herein . . . [H.R. Rep. No. 31, 101st Cong., 1st Sess.]

* * * * *

. . . While the ATFI system has not yet been fully developed, the Committee expects that controls will be built into the design. These controls can be in the form of a limitation on access at any one time and a limit on the total amount of time on the system with an automatic log-off feature . . . [Some form of user identification] will assist in preventing circumvention of the limitation features and prevent a monopolization of the system by a single entity. . . . [S Rep. No. 71, 101st Cong., 1st Sess.]

Both the House Merchant Marine and Senate Commerce Committees also requested to be kept informed on developments on reasonable restrictions as early as Phase III (Development).

In addition to the foregoing, similar language was contained in H.R. Rep. 173 to H.R. 2991, (Pub. L. 101-162), the FMC FY 1990 Appropriations Act:

. . . In implementing this system, the Committee expects the Commission to develop procedures that will ensure that ATFI will not * compete with private sector providers of information services. As the Commission's 1986 Feasibility Study recommended, remote access to the system should be only rudimentary with essentially no analysis of the data. In addition, the procedures governing the system should provide that the user be able to access the system on a limited number of items before automatic log-off.

[* S.Rep. No. 101-144 to H.R. 2991 added the word "unfairly," otherwise the language is identical.]

Phase I of the *ATFI* contract (*ATFI System Concept*) and Phase II (*System Design*) have now been completed. Phase III (*Development and Testing*) began in February, 1990 and Phase IV (*Prototype*) is scheduled to begin in April 1990. The *ATFI*

Contractor, working with the Commission staff, has developed reasonable controls and procedures governing remote access to accommodate the intent of Congress, as described above. These, however, will be subject to further changes as development of the system progresses and even after experience during prototype and full operation.

Preliminarily, it is intended that there be automatic log-off for any kind of modem access after five or ten minutes of inactivity. This is similar to many types of electronic, remote-access services.

For remote retrieval of tariff data, the design calls for specification by the user of a particular tariff desired to be accessed, after consulting a table of contents at log-on. To identify the sought-after Tariff Line Item ("TLI"), there will also be various help functions, such as commodity indexes, before bringing up the item on the screen.

Because tariffs will continue to have separate "Rules" sections governing the applicability of the rate, these sections of the same tariff may also be accessed. Moreover, where the tariff filer has a separate "Rules" or "Bill-of-Lading" tariff, instead of an all-inclusive "section" in the same tariff, these tariffs may also be accessed during the same session. In order to be able to accurately determine the applicability of a rate, these unique types of tariffs will be the only clarification to the "one-tariff-at-a-time" limitation.

When the system first becomes operable in early 1991, it is intended that the retriever will be automatically logged off after 30 minutes. This should allow sufficient exploration of all the applicable rules and, perhaps, another TLI, if there was a mistake in selecting the first TLI. After experience, this time limit can be adjusted upward or downward.

Software will be developed to assist in correcting as many problems as possible before tariffs are filed, either interactively or by the batch process. This should minimize errors and

rejections. In order that a carrier can determine that a filing session has been successful, however, it will be allowed access to (only) its own filing in the non-public review file and to consult a special message screen developed for this purpose. The fewer the errors, the easier it is for all concerned.

The system design will also provide for user identification and monitoring of utilization so that action can be taken to prevent access abuses by any individual or group.

If there are any further developments or changes to the controls and procedures governing remote access, the Commission will continue to keep Congress promptly apprised.



VI SECTION 18 STUDY

A. SECTION 18: THE MANDATE FOR A FIVE-YEAR STUDY OF THE IMPACT OF THE SHIPPING ACT OF 1984

Calendar year 1988 was the last full year of the data collection period outlined in section 18 of the *Shipping Act of 1984*. Section 18 of the *Shipping Act of 1984* (hereafter referred to as the "Act") directs the FMC for a period of five years following its enactment (March 18, 1984) to collect and analyze information concerning the impact of the Act upon the international ocean shipping industry. In section 18(a) Congress specified that the information collected should include data on, among other things, (1) increases or decreases in the level of tariffs; (2) changes in the frequency or type of common carrier services available to specific ports or geographic regions; (3) the number and strength of independent carriers in various trades; and (4) the length of time, frequency, and cost of major types of regulatory proceedings before the Commission.

Section 18(b) of the Act states that the FMC shall consult with the *Department of Justice* ("DOJ"), the *Department of Transportation* ("DOT"), and the *Federal Trade Commission* ("FTC") annually concerning data collection, and that these agencies "shall at all times have access to the data collected under this section to enable them to provide comments concerning data collection." Thus far, the FMC staff has met with the staffs of these agencies over a dozen times.

The Act further specifies, in section 18(c), that the following three topics should be addressed:

- o The advisability of adopting a system of tariffs based on volume and mass of shipment;**
- o The need for antitrust immunity for ports and marine terminals; and**
- o The continuing need for the statutory requirement that tariffs be filed and enforced by the Commission.**

Within six months after expiration of the five-year period of data collection, the Commission is to report the information, with an analysis of the impact of the Act, to Congress, to the *Advisory Commission on Conferences in Ocean Shipping* ("*Advisory Commission*") and to the *DOJ, DOT* and *FTC*. The three aforementioned agencies will also submit their own analyses on the impact of the Act 60 days after the FMC submission to the Congress and the *Advisory Commission*.

The *Advisory Commission* is charged with conducting a comprehensive study of, and making recommendations concerning, conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by having closed or open conferences. The *Advisory Commission* shall, within one year after its establishment, submit to the President and to Congress a final report containing a statement of findings and conclusions, including recommendations for such administrative, judicial, and legislative actions as it deems advisable.

B. EXECUTIVE SUMMARY FROM THE FMC SECTION 18 REPORT

1. Introduction

The Section 18 Report on the Shipping Act of 1984 ("Section 18 Report" or "Report") presents a detailed evaluation, including supporting data and analyses, of the impact of the *Shipping Act of 1984 ("1984 Act")* on the international shipping industry. It is the product of a five-year study by the Federal Maritime Commission ("FMC" or "Commission") mandated by Congress in section 18 of the *1984 Act*, and addresses a set of specific issues that Congress believed would be important in assessing the regulatory reforms embodied in the *1984 Act*. In particular, the Commission was required by section 18(a) of the Act to collect and analyze data on (1) increases or decreases in the level of tariffs; (2) changes in the frequency or type of common carrier services available to specific ports or geographic regions; (3) the number and strength of independent carriers in various trades; and (4) the length of time, frequency and cost of major types of FMC regulatory proceedings. These topics are addressed in Part One of the *Report*.

Congress also identified three specific topics in section 18(c)(3) of the *1984 Act* that the Commission should address in its Report: (1) the advisability of adopting a system of tariffs based on volume and mass of shipment; (2) the need for antitrust immunity for ports and marine terminals; and (3) the continuing need for the statutory requirement that tariffs be filed with and enforced by the FMC. These topics are discussed in Parts Two, Three, and Four of the *Report*.

The *Report* also addresses service contracts and independent action ("IA") in Parts Five and Six. Finally, Part Seven of the Report identifies certain provisions in the 1984 Act that may require clarification or technical amendment.

This *Executive Summary* presents an overview of the *1984 Act's* impact and summarizes the Commission's findings and conclusions.

2. Overview

Under the *1984 Act's* new agreement review process and standard, the Commission experienced (a) an increase in the average number of agreements and modifications filed each year; (b) a reduction in average processing time per agreement; and (c) a decline in the cost of proceedings before the Commission. These changes freed more Commission resources for expanded enforcement activity which brought about significant increases in penalty collections.

These procedural improvements also enabled the Commission to devote more time to address foreign government restraints on shipping. The Commission instituted more proceedings under section 19 of the *Merchant Marine Act, 1920*, since enactment of the *1984 Act* than at any other comparable period of time. These Commission actions have had a positive influence on trading conditions in the US foreign commerce.

The *1984 Act's* reforms did not bring about the negative consequences that some observers predicted. The creation of "superconferences" and the increase in rationalization agreements did not result in sharp rate increases, curtailment of shipping services, or loss of independent carrier competition. The *1984 Act* did not have a significant impact on rate levels, service frequency, or the strength of independent competition. The US trades remained open and competitive.

The popularity of the IA and the service contract provisions of the *1984 Act* led to a disagreement about whether *common carriage obligations* should be relaxed. In particular, major shippers have called for a greater role for *contract carriage*. These shippers would like Congress to establish a clear distinction between common carriage under tariff rates and carriage under service contracts. They would (a) require that the terms of service contracts be kept confidential; and (b) prohibit conferences from restricting the right of their members to enter into service contracts.¹

Carriers, on the other hand, assert that these steps would ultimately undermine the tariff system, the conference system, and the principle of common carriage in ocean shipping. Instead, they advocate continued filing and publication of the "essential terms" of service contracts and the availability of those terms to similarly situated shippers.²

3. Part One: The Impact of the 1984 Shipping Act on the International Shipping

As required by the *1984 Act*, the Commission collected and analyzed information on the Act's impact on rates, service, independent carriers, and regulatory proceedings. In addition, the Commission conducted a series of annual surveys to solicit the views of the maritime industry on the consequences of the *1984 Act*. These survey results were supplemented by policy papers presented by industry representatives serving on the *Section 18 Study Advisory Committee*.

The major conclusions to be drawn from this information are as follows:

(a) Data and Analysis on the Impact of the 1984 Act

(1) The Commission experienced an increase in the average number of carrier agreements and modifications filed

each year, and a reduction in the average processing time per agreement.

(2) Changes in the agreement review process and standard of review made easier the creation of superconferences and the use of conference intermodal authority.

(3) The 45-day agreement effectiveness provision in the 1984 Act decreased the average processing time for agreements to become effective to less than one-third of that required for approval prior to the *1984 Act*. The total cost of major proceedings declined as well.

(4) Following implementation of the *1984 Act*, there was a decline in the number of major proceedings before the Commission coupled with a modest increase in the average length of those proceedings. The Commission was able, therefore, to concentrate its resources on more complex proceedings and other issues, including enforcement cases and strategies.

(5) Independent action rates and service contracts expanded the commercial options available to the shipping public. In some trades, port-to-port tariff rates became the exception rather than the rule.

(6) The main factors that explain freight rate structures (value, tonnage, distance, direction, stowage, refrigeration) did not change appreciably as a result of the *1984 Act*. Where change was noted -- in the significance of the direction variable (i.e., outbound US versus inbound US) -- the most likely cause appeared to be trade flow imbalances, rather than provisions of the *1984 Act*.

(7) Quarterly rate data on the major-moving commodities in 18 US trades between 1976 and 1988 indicate that fluctuations in the supply of and demand for liner shipping services -- not IA and service contract provisions -- were the

basic cause of the rate changes that occurred after implementation of the *1984 Act*.

(8) A comparative study of rate stability in 18 US trades before and after implementation of the 1984 Act indicates that only six US/Pacific trades experienced a *decrease* in rate stability. However, that decrease began in 1982, suggesting that changes in the international economy were the primary cause.

(9) A comparison of shipping capacity growth rates before and after implementation of the *1984 Act* showed that, of the six US trades studied (North Europe, the North Pacific, the South Pacific, Italy, Australia and Brazil), three trades exhibited no dramatic changes in growth; two trades showed significant increases in capacity growth; and one trade, the Australia trade, showed a decrease in capacity growth. These results suggest that the prevailing economic conditions in specific trades, rather than particular provisions of the 1984 Act, were the important influences on the level of capacity provided to shippers.

(10) A comparison of the largest US trade, the Pacific trade, with the largest non-US trade, North Europe/Far East, involving nine basic service parameters, revealed broadly similar patterns of change during the 1984 to 1988 period. These results further support the view that factors other than the *1984 Act* were mainly responsible for changes in service levels.

(11) Data from the six trades studied indicate that no contraction in the average number of direct ship calls occurred between 1984 and 1988. In fact, the average number of calls made annually in the US port regions studied *increased* slightly.

(12) As inland transport costs declined relative to all-water transport costs, service concentration at the US range closest to the foreign destination increased.

(13) The relative strength of independent carriers, as reflected in the proportion of total shipping *capacity* provided, has changed little since the implementation of the *1984 Act*. In some individual trades, such as the North Europe trade, independents made significant market share inroads.

(14) Independent carriers made significant gains in terms of tonnage carried in the largest US trade, i.e., the Pacific trade.

(15) Comparisons of value-to-tonnage ratios between conference and independent carriers show that in most US trades, conference cargo mixes yield a higher ratio. But figures also show that independent carriers reduced the difference between their ratio and those of the conferences in most US trades. Independents appear to be increasing the proportion of high-valued cargo in their cargo mix.

(16) The Brazil trade, with its bilateral maritime agreement, revenue pooling agreements, and cargo reservation laws, is characterized by high conference market share with no independent action on rates.

(b) Industry Views on the 1984 Act

The views offered by various industry segments affected by the *1984 Act* varied widely. They varied both *across* industries and *within* each industry.³ A presentation of each industry group's views is contained in Chapter 7. To the extent that consensus exists on some key points, the following broad conclusions can be drawn:

(1) There is industry support for retaining an "open" conference system in the US trades. Alternative approaches, such as prohibiting conferences or allowing "closed" conferences, had little support.⁴

(2) A majority of the international ocean shipping industry supported the proposition that tariffs continue to be filed with, and enforced by, the FMC.

(3) The revised agreement review process in the *1984 Act* has proven beneficial.

(4) The more controversial *1984 Act* provisions are (a) the mandatory independent action provision, and (b) the provision permitting service contracts. Generally, shippers tended to endorse shorter notice periods for IA and the extension of IA to service contracts, while carriers tended to prefer the opposite.

4. Part Two: Volume and Mass Tariff System

(a) In response to Commission surveys, neither users nor providers of tariffs favored a system of tariffs based solely on volume and mass (i.e., weight or measure) or a freight-all-kinds system.

(b) An analysis of the economic implications of adopting a system of tariffs based on volume and mass suggests that such a system could cause distortions in the existing transportation system.

(c) Volume and mass tariffs might lead to a simpler system, and therefore require less regulatory oversight. Such a system could also:

(1) Reduce the movement of low-valued cargo in the US trades;

(2) Increase the impact of IA on conferences;

(3) Create distortions in the choice of ports if Canada, for example, does not impose a similar system; and

(4) Complicate intermodal ratemaking.

(d) Based on both data and theory, it is difficult to make a case for adopting a system of tariffs based on volume and mass of shipment.

(e) There was some support, especially among shippers, for a lump-sum per container system. This suggests support for a more simplified tariff structure.

(f) There is little data to support the contention that the current rate structure results from conferences' exercise of monopoly power.

5. Part Three: Antitrust Immunity for Ports and Marine Terminal Operators

(a) The regulation of marine terminals was a reaction to the pricing policies of railroad-owned marine terminals and their effects on competition among shipping lines. The current system of terminal control and coordination by state-sponsored public port authorities does not present similar threats to competition.

(b) The need for antitrust immunity to lessen excessive competition depends on one's theoretical point of view. The neoclassical economic interpretation concludes that there is no strong case for antitrust immunity. On the other hand, the Austrian economic view states that a case can be made for granting antitrust immunity.

(c) Public or quasi-public agencies are not motivated solely by economic considerations, and antitrust principles based on the traditional ideas of competition may not be fully applicable. Interport conferences that include members from two or more states generally are not successful in reducing interport competition.

(d) There is no clear public benefit in allowing private marine terminal operators to collectively fix rates and charges within a port. Granting antitrust protection for such purposes may not be necessary or economically justifiable.

(e) The need to provide antitrust immunity for port authorities and private terminal operators to allow "parity" with carrier conferences is questionable. Carriers' bargaining strength over terminal leases or services is generally due to port-related geographical and logistical factors and the availability of alternative ports-of-call, not to the carriers' 1984 Act antitrust immunity.

(f) Public port authorities may enjoy protection from US antitrust laws even without 1984 Act antitrust immunity. However, not all ports may enjoy the same level of immunity. This could result in a nonuniform application of antitrust immunity.

(g) Whether to retain the current 1984 Act antitrust immunity provisions dealing with marine terminals, or to limit them only to *public* port authorities, or to remove them altogether, requires a value judgment that balances all regulatory concerns. These include economic analysis, antitrust policy, state and federal regulatory responsibilities, and established industry practices.

6. Part Four: FMC Tariff Filing and Enforcement

(a) The historical record reflects a continuing reliance on tariff filing and enforcement.

(b) Based on annual survey responses, a majority of the shipping industry favor the continuation of the existing tariff filing and enforcement system.

(c) Surveys indicate that carriers believe they should continue to have the right to file excepted commodity rates,

but oppose IA on these rates. Shippers are divided on the filing issue but favor mandatory IA on excepted commodity rates.

(d) Surveys of the tariff filing and enforcement practices of foreign governments reveal a trend towards increased tariff regulation.

(e) The Commission would find it difficult to meet its legislatively mandated responsibilities in the absence of tariff requirements.

(f) Of the policy options considered, only the existing system ensures a nondiscriminatory ocean transportation system.

(g) The existing tariff filing and enforcement mechanism, in an open conference environment, can promote market efficiency, ensure fair treatment of shippers by carriers, and preserve just competition between carriers.

7. Part Five: Service Contracts

(a) Service contracts have had a significant impact upon the maritime community. During the period of study, carriers and conferences filed 17,103 service contracts and substantial amounts of cargo moved under those contracts.

(b) Sixty-nine percent of service contract filings were by independents (or *individual* conference carriers), and 31 percent were by conferences.

(c) Evergreen Line filed more service contracts (2,333) than any other carrier or conference. The Asia North America Eastbound Rate Agreement ("ANERA") had the second highest total (1,317), and the North Europe-U.S. Atlantic Conference was third (1,253).

(d) There was a wide variation in rates between service contracts and tariffs for similar commodities carried by conferences.

(e) Industry opinions are mixed on both the effects of service contracts and the extent to which the service contract provisions of the *1984 Act* should be amended.

(1) Since 1986, carriers have increasingly indicated that service contracts have had a positive impact on their firms.

(2) Shippers, especially those who have successfully negotiated them, view service contracts favorably.

(3) Majority support existed in the maritime community for continuing to require that the essential terms of service contracts be made publicly available. However, a significant number of shippers prefer confidential contracts.

(4) Carriers oppose, while shippers support, requiring independent action on service contracts.

8. Part Six: Independent Action ("IA")

(a) IA allows conference members to offer lower rates and more responsive service to shippers. IA enhances the competitiveness and flexibility of conferences because the members are able to compete both among themselves and with independents. If intraconference competition becomes too intense, the ability of the conference to stabilize rates can be threatened. Although mandatory independent action may have expedited changes in tariff rates, market conditions determined their ultimate levels.

(b) The large number of IAs taken by two conferences in the Pacific trades, the Transpacific Westbound Rate Agreement ("TWRA") and ANERA, may reflect the level of competition from independents in those trades. The recent

decrease in the use of IAs by TWRA carriers may be explained by growing US exports that have served to reduce excess shipping capacity. Slowing imports may be the reason for the growing use of IA by ANERA carriers.

(c) Mandatory independent action in conference agreements was not subject to as much debate as was the length of the maximum IA notice period. The current ten-day maximum period was opposed by carriers and supported by shippers. While the ten-day notice period may have facilitated carrier rate reductions, it did not cause them. The cause was more likely overtonnaging.

(d) Service contract rates were affected by IA on tariff rates because tariff rates were often the basis for negotiating service contract rates.

(e) It is difficult to formulate specific conclusions concerning IA on service contracts (i.e., a member's right to enter into individual service contracts), because of the minimal amount of such activity under the *1984 Act*. The impact of service contract IA on the conference's ability to establish uniform rates in an overtonnaged market could last longer than for IA on tariffs, because a service contract effectively diverts at least a portion of a shipper's cargo from other carriers for the duration of the contract (rather than for a single voyage).

9. Part Seven: Technical Adjustments, Clarifications, and Anomalies

The Commission has identified certain provisions of the *1984 Act* which are unclear or might create unintended effects. These provisions are discussed in the *Section 18 Report's* final chapter.

10. Endnotes

- 1 *"Position of the Shipper Study Group and Advisory Committee on Amendments to the Shipping Act of 1984," March 24, 1989, pp. 19-20. [Submitted to the FMC by 22 US shippers.]*
- 2 *"Ocean Common Carrier Position Papers on the Shipping Act of 1984," March 20, 1989. [Submitted to the FMC by the 27 carrier members of FMC Agreement 203-010851.]*
- 3 *Cross-tabulation analysis revealed, for example, differences among shipper views by size (small, medium, large), among carriers by affiliation (independent, conference member), and among private marine terminal operators by commercial status (independent company, carrier-affiliated company).*
- 4 *The Shipper Study Group and Advisory Committee advocated the elimination of antitrust immunity. See Shipper Study Group paper, *ibid.*, pp. 7-10.*

C. SURVEYS

Since 1986, the Federal Maritime Commission has sent surveys to various industry groups seeking information and opinions on certain aspects of the *Shipping Act of 1984*. In 1986, surveys were sent to carriers, shippers, ports and non-port marine terminal operators. In 1987, freight forwarders were added to the list of survey recipients. The 1988 survey was sent to all the above plus NVOCCs and shippers' associations. The survey results of all three years were used in the Commission's Section 18 Report.

D. SECTION 18 STUDY ADVISORY COMMITTEE

The Federal Maritime Commission established an Industry Advisory Committee to make continuing recommendations on the conduct of the section 18 study. The committee is comprised of 32 members. The members are representatives from conferences, ocean common carriers, non-vessel-operating common carriers, ocean freight forwarders, customs brokers, shippers, shippers' associations, ports, private marine terminal operators, and other transportation service firms.

The first meeting of the Advisory Committee took place on March 10, 1988 at the FMC headquarters building in Washington, D.C. The second meeting was held at the same place in April 1989. The committee addressed the Commission's data-gathering efforts to date, and had the opportunity to submit position papers outlining their views on the impact as well as changes they wished to see made to the *1984 Act*.

A synopsis of their views contained in these position papers follows.

1. The Ocean Common Carrier Group recommended essentially no changes to the status quo: i.e., maintain FMC tariff filing and enforcement, publicly available service contracts, antitrust immunity for conferences and other concerted activities, open conference system, and mandatory independent action (except that the notice period should be lengthened from 10 to 60 days).

2. The Shipper Advisory Committee and Study Group suggested that "Congress should amend *The Act* to end conference antitrust immunity" and also called for the elimination of port antitrust immunity. The shippers supported the current tariff filing and enforcement regime should

antitrust immunity be retained, preferred confidential service contracts, reduced notice period for IAs (currently 10 days), and wanted mandatory IA extended to service contracts.

3. The American Association of Port Authorities' main concern is antitrust immunity for ports and marine terminals. The group advocated retention of current legislation vis-a-vis port antitrust immunity.

4. The parties to the Marine Terminal Operator Advisory Commission Study Agreement were in favor of exempting terminal/common carrier service agreements from regulation and filing under the *Shipping Act of 1984*. They did not believe that stevedoring operations should be regulated.

5. The National Customs Brokers and Forwarders Association of America (NCBFAA) supported the status quo regarding tariff filing and enforcement, mandatory IA, public availability of essential terms, and antitrust immunity for conferences although "we would be required to re-evaluate our current support for this system if it continues to cause major difficulties."

6. In addition to the views of freight forwarders submitted by the NCBFAA, the **Pacific Coast Council of Customs Brokers and Freight Forwarders Associations, Inc. (PCC)** submitted their perspectives on the *1984 Act*. The PCC believes that antitrust immunity for concerted carrier activities should be discontinued and so should tariff filing and enforcement as well as service contract filing. Service contract and loyalty contracts should be freely negotiated between the parties, without government intervention. The PCC also believes that both NVOCCs and VOCCs should be subject to licensing and bonding requirements, to protect the shipping public from financial injury.

7. The Shippers' Association Study Group was in favor of maintaining the tariff filing and enforcement role of the FMC, but thought that the FMC should take a tougher stance on service contract abuses, particularly when carriers/conferences do not negotiate in good faith with shippers' associations. They also believe that, just as conferences are granted exemption from antitrust laws, shippers' associations should enjoy a similar exemption.

8. The Non-Vessel-Operating Common Carriers (NVOCCs) supported current tariff filing and enforcement provisions and mandatory IA. However, they believe that they should be permitted to offer service contracts to their shipper customers, and receive antitrust immunity if carriers were granted exemption from antitrust laws. Most importantly, NVOCCs should be licensed and bonded by the FMC.

9. The Consultative Shipping Group urged the FMC to focus on the effects which IA and service contracts have had on rates and rate stability. In addition, they thought that the Commission should study "whether the detailed approach to the regulation of liner conferences adopted by the US is a necessary feature of antitrust immunity."

VII

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. THE STATUTE

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 ("1988 Act").

The *1988 Act* directs the Commission to address adverse conditions affecting United States carriers in U.S.-foreign oceanborne trades, which conditions do not exist for carriers of those countries in the United States, 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.

B. ACTIONS TAKEN UNDER THIS STATUTE

On July 21, 1989, the Commission initiated an investigation under the *Foreign Shipping Practices Act of 1988* of certain doing-business restrictions of Taiwan authorities which appeared to adversely affect the intermodal operations of U.S. carriers serving the United States/Taiwan trade. On November 16, 1989, the Commission issued a Report and Order which discontinued this proceeding based on commitments which appeared to resolve certain shipping issues, anticipated progress on other issues, and the absence of any request for specific sanctions against foreign carriers. The Commission also determined that continued monitoring of the trade was appropriate in order to evaluate whether the anticipated further progress was achieved. The Commission

therefore stated that it would require the carriers serving the trade who were parties to this proceeding to report subsequently on the status of shipping conditions in the trade.

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

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

The data which the staff used to derive the Commission's list of top twenty trading partners were furnished by the Bureau of the Census ("Census"). The Census data distinguish between liner, tramp, tanker, and dry cargo service. Census defines liner service as that "type of service offered by a regular line operator of vessels on berth. The itineraries and sailing schedules of vessels in liner service are predetermined and fixed." The data supplied to the Commission by Census are intended to exclude all non-liner shipments in accordance with this definition.

The export data are compiled primarily from Shipper's Export Declarations; while the import data are compiled from the import entry and warehouse withdrawal forms. Both types of documents are required to be filed with U.S. Customs officials. These data are subsequently forwarded to Census. Both export and import statistics exclude: shipments between the U.S. possessions, shipments of mail or parcel post, exports and imports of vessels themselves, and other transactions such as military household goods shipments, bunker fuels and other supplies, intransit shipments through the United States, etc.

The most recent year for which Census data were available to the Commission is calendar year 1988. The table below indicates the twenty foreign countries which generated the largest volume of oceanborne liner cargo in bilateral trade with the United States in 1988. The figures below represent each country's total United States liner imports and exports in thousands of long tons.

Top Twenty U.S. Liner Cargo Trading Partners (1988)

<u>Rank</u>	<u>Country</u>	<u>Tons (000's)</u>
1	Japan	13,683
2	Taiwan	7,793
3	Republic of Korea	5,418
4	Federal Republic of Germany	4,189
5	Italy	2,995
6	China (PRC)	2,969
7	United Kingdom (Incl. N. Ireland)	2,798
8	The Netherlands (Holland)	2,443
9	Hong Kong	2,159
10	France	2,100
11	Belgium and Luxembourg	2,010
12	Brazil	1,850
13	Australia	1,795
14	Spain	1,547
15	Thailand	1,213
16	Indonesia	1,208
17	India	987
18	Singapore	967
19	Philippines	940
20	Sweden	891

Source: U.S. Department of Commerce, Bureau of the Census. Figures listed above are based on monthly data provided by Census and are subject to revision.

The top ten countries were the same in both 1987 and 1988. The only differences in the top ten countries between the two years are the rankings of China (PRC) and the United Kingdom. In 1988, China (PRC) ranked sixth as opposed to seventh in 1987. The United Kingdom ranked seventh in 1988 as opposed to sixth in 1987. The top 11 through 20 countries changed moderately between the two years. Eight of the countries listed in 1987 appeared again in 1988. Two countries listed in 1987, Venezuela and Saudi Arabia, were replaced by Singapore and Sweden in 1988.

VIII

**SIGNIFICANT
OPERATING
ACTIVITIES**

BY

ORGANIZATIONAL UNIT



A. OFFICE OF THE SECRETARY

1. General

The Office of the Secretary is responsible for preparing the regular and notation agenda of matters subject to consideration by the Commission and recording subsequent action taken by the Commission on these items; receiving and processing formal complaints involving violations of the shipping statutes and other applicable laws; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving and responding to subpoenas directed to the Commission and its personnel for testimony and/or records; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; authenticating publications and documents related to formal proceedings before the Commission; and compiling and publishing bound volumes of Commission decisions.

The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 1989:

- o **The Office began to plan for a more comprehensive automated management system in anticipation of a local area network being installed. The local area network would link offices throughout the Commission.**
- o **Substantial progress was made in developing automated methods for the coding, archiving and editing of materials to be included in published volumes of Commission decisions. The process**

culminated in the publication of Volume 23 of the Commission's decisions.

- o **The Commission published its *Section 18 Report on the Shipping Act of 1984*. The office coordinated data gathering regarding cost, length, and frequency of proceedings for inclusion in that report. The office also coordinated the public distribution of the final report.**
- o **The Commission heard oral argument in 1 formal proceeding and issued decisions concluding 12 formal proceedings. Eleven formal proceedings were discontinued or dismissed without decision (including determinations not to review Administrative Law Judge orders terminating proceedings). One case was also remanded back to the Administrative Law Judge. The Commission also concluded 86 special docket applications, 15 informal dockets which involve claims sought against carriers for less than \$10,000, and 13 applications to correct service contracts. During the same period, the Commission issued final rules in seven rulemaking proceedings.**
- o **Five rulemaking proceedings and five formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 1990.**

2. Office of Informal Inquiries and Complaints and Informal Dockets

This Office coordinates the informal complaint handling system throughout the Agency. A total of 1,383 complaints and information requests were processed in fiscal year 1989, including those handled through the District Offices.

Recoveries to the general public of overcharges, refunds and other savings attributable to the complaint handling activities amounted to \$136,743. Since 1981, this Office has helped complainants recover over \$2,300,000.

The Office coordinated meetings between maritime industry representatives and Commission officials, and supplied copies of procedures, dockets and other information requested by the general public. During fiscal year 1989, this Office responded to 674 such telephone requests and inquiries. The Office maintained liaison with members of the President's Consumer Affairs Council, in which it participated throughout the fiscal year.

In addition, the office is responsible for the initial adjudication of reparation claims for less than \$10,000 that are filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the United States. These claims must be predicated upon violations of the Shipping Act, 1916, the Shipping Act of 1984, or the Intercoastal Shipping Act, 1933. The vast number of claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers. During fiscal year 1989, 13 claims were filed. During the same period 14 informal docket claims were concluded. There were no pending cases at the close of the fiscal year.



B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

Administrative Law Judges preside at hearings held after the receipt of a complaint or institution of a proceeding on the Commission's own motion.

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

At the beginning of fiscal year 1989, 32 proceedings were pending before Administrative Law Judges. During the year, 135 cases were added, which included five proceedings remanded to Administrative Law Judges for further proceedings. The judges held 17 prehearing conferences, held two formal oral hearings, formally settled one proceeding, dismissed or discontinued seven proceedings, and issued nine initial decisions in formal proceedings, and 92 initial decisions in special docket applications.

2. Commission Action

The Commission adopted four special docket decisions, 76 special docket decisions became administratively final, and four formal decisions became administratively final.

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

United States Lines (S.A.) Inc. - Petition for Declaratory Order Re: The Brazil Agreements [Docket No. 87-22].

This proceeding began when United States Lines (S.A.) Inc. (USLSA) petitioned the Commission for a declaratory order seeking to terminate a controversy among carrier members of two revenue pooling agreements serving the U.S. Atlantic and U.S. Gulf trades from Brazil. Although USLSA believed that revenue earned from USLSA's new intermodal service to Gulf ports should be accounted for in the Gulf agreement, another line, Ivaran Lines, believed such revenues belonged in the corresponding Atlantic pool. The Commission referred the matter to the Office of Administrative Law Judges for development of a suitable evidentiary record and for initial decision. After the record was developed, an initial decision was issued resolving the controversy in favor of USLSA, authorizing release of withheld pool payments, and suggesting that the agreements needed amendatory language in relation to modern inland intermodal services.

Port of Ponce v. Puerto Rico Ports Authority [Docket No. 88-5].

This case was a complaint proceeding where the Port of Ponce initiated the action against the Puerto Rican Ports Authority (PRPA), alleging that PRPA had violated sections 16, First and 17 of the 1916 Shipping Act and the successor provisions of the 1984 Act. As the case progressed, the issues which developed were:

1. Was PRPA an "other person" and "marine terminal operator" within the meaning of the Shipping Acts so that the Commission had jurisdiction? The Initial Decision (ID) found that it did have jurisdiction since PRPA had the requisite

degree of "control" respecting the use of the facilities at Ponce. Further, the ID rejected PRPA's contention that, in collecting fees from ships calling at Ponce, it was doing so solely for navigational purposes, and that the tariff filing was only "informational" in character. In doing so, it noted that the tariff imposed charges for services that were nowhere defined within its terms and that the tariff was ambiguous.

2. Did the complainant have standing? The ID decided that the complainant had standing, and that a later joining in the action by the Municipal Assembly and Mayor of Ponce did not prejudice the respondent's case.

3. Did the respondent violate section 17 of the 1916 Act and 10(d)(1) of the 1984 Act? The ID held that it did because, even though PRPA did not operate or own the piers at Ponce, the tariff filed by PRPA imposed fees for undefined reasons from some vessels while exempting others discriminatorily. Further, the services for which the fees were collected were never rendered to vessels at Ponce, which vessels could be denied the use of the port if the fees were not paid.

4. Were section 16, First, of the 1916 Act and sections 10(b)(11)-(12) of the 1984 Act violated? The ID held they were not, noting that the evidence of record failed to establish there was *undue* or *unreasonable* preference or advantage given.

5. Should reparations be granted Ponce? The ID denied reparations because the fees were paid by the vessels, not by Ponce, and because Ponce did not establish that specific expenditures it made for port services would not have been necessary had the services enumerated in PRPA's tariff been provided.

***California Shipping Line, Inc. v. Yangming Marine Transport Corp.* [Docket No. 88-15].**

This was a very important case of first impression involving service contracts and the ability to "me-too" them by shippers. Section 8(c) of the 1984 Shipping Act is the operative section. The questions presented *under the facts of this case* were:

1. Was the complainant entitled to "me-too" three service contracts given to others by the respondent? The Initial Decision (ID) held that the complainant was a "similarly situated shipper" and was entitled to "me-too" the service contracts because the respondent denied the "me-too" request out of hand and did not establish that the complainant was different from the other shippers in terms of transportation factors.

2. Did the respondent properly deny the "me-too" requests because of co-loading? The ID held that under the facts here, where the respondent did not even raise the issue until after the complaint was filed, it could not have properly denied the "me-too" request because of any "intent" to co-load, especially where the evidence was devoid of any showing that the complainant would have had to co-load to satisfy the service contracts. The ID held that the question of whether or not co-loading was illegal in service contracts as a matter of law, was not in issue.

3. Where a service contract is terminated by a carrier *after* a "me-too" request is made, can the "me-too" request be denied? The ID held that, since the one service contract was terminated *after* the complainant had made its "me-too" request, the request could not be denied as to the one service contract where the law provides that the contract may be "me-toosed" anytime within 30 days of the filing of the contract with the

Commission. It held further, that time limits in the Commission's regulations do not change what the law requires.

4. Did the denial of the "me-too" requests violate sections 10(b)(5) and 10(b)(12) of the Act? The ID held that those sections were violated because the "me-too" requests were denied out of hand and were blatantly and unjustly discriminatory.

5. Were reparations allowable? The ID held that they were and that the evidence established the amount of such damages. However, double damages were not awarded.

6. Were penalties appropriate? The ID held that, in view of the violations of the Shipping Act and because the respondent had misled the Commission with factually inaccurate information, a penalty of \$5,000 was appropriate for each of the three violations.

Pueblo International, Inc. v. Tropical Shipping and Construction Co., Inc. [Docket No. 89-09].

This was a complaint proceeding wherein it was alleged that the respondent violated the Shipping Acts by failing to file its schedule of rates, by collecting improper rates, and by unjustly discriminating against the complainant. The issue became one of the jurisdiction of the F.M.C. vis-a-vis the jurisdiction of the I.C.C.

Before hearing, the parties filed a confidential settlement agreement which represented a binding agreement only as to themselves. The agreement is a commercial accommodation and is both a reasonable and acceptable resolution of the issues and its acceptance is warranted under the Commission policy encouraging settlement rather than litigation.

Judges also issued initial decisions in Docket Nos. 87-10, 87-15, 87-29, 88-9, 88-23, Special Docket Nos. 1608, 1644, 1649, 1651, 1653, 1655, 1656, 1657, 1659, 1660, 1663, 1664, 1665, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1692 (Remanded), 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1705, 1707, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1736, 1737, 1738, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1754, 1755, 1763, and 1764, described under "Decisions of the Commission."

4. Pending Proceedings

At the close of fiscal year 1989, there were 58 pending proceedings, of which three were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

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, or the general public in appropriate cases. The General Counsel also represents the Commission before the Courts and Congress and administers the Commission's international affairs program.

1. Decisions and Rulemakings

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

Matson Navigation Company, Inc. -- Application for Section 35 Exemption, [Petition No. P5-88], 24 S.R.R. 1518 (January 27, 1989).

The Commission granted a petition filed by Matson Navigation Company, Inc. ("Matson"), allowing Matson a limited exemption from the 30-day notice requirements of the 1933 Act, so that Matson could put into effect on one day's notice reductions in existing individual rates and rates on new tariff items. The Commission found that this exemption was necessary in order to allow Matson to compete with carriers not regulated by the FMC, and should benefit shippers.

***Tariff Filing Notice Periods - Exemption*, [Docket No. 89-3], 24 S.R.R. 1604 (March 17, 1989).**

The Commission amended its tariff filing regulations to permit all FMC-regulated carriers providing port-to-port service in the Hawaiian domestic offshore trade to put into effect on one day's notice reductions in existing individual commodity rates and rates on new tariff items. This action followed the Commission's approval of the aforementioned similar statutory exemption for Matson in Petition No. P5-88. The Commission found that a trade-wide exemption should benefit shippers, stimulate competition and avoid discrimination among carriers.

***Actions to Address Adverse Conditions Affecting U.S.-Flag Carriers That Do Not Exist for Foreign Carriers in the United States*, [Docket No. 88-24], 24 S.R.R. 1631 (March 16, 1989).**

The Commission adopted a Final Rule adding a new part to its regulations to implement the 1988 Act. The new rule sets forth general procedures for investigatory proceedings to address adverse foreign conditions affecting U.S.-flag carriers that do not exist for foreign carriers in the United States. The Commission also amended its rules implementing section 19(1)(b) of the 1920 Act and section 13(b)(5) of the 1984 Act, to add new sanctions made available to the Commission in proceedings under those statutes, pursuant to the 1988 Act.

***Service Contracts*, [Docket No. 88-16], 24 S.R.R. 1513 (January 12, 1989).**

The Commission adopted a Final Rule to allow parties to service contracts filed with the Commission to correct clerical or administrative errors in the essential terms of such contracts. Parties seeking relief must file requests within 45 days of the contract's initial filing with the Commission. Requests for

correction must include a supporting affidavit, a concurrence by the other party, and other relevant documents.

***Interpretations and Statements of Policy*, [Docket No. 88-17], 24 S.R.R. 1368 (October 24, 1988).**

The Commission adopted a Final Rule advising that common carriers or conferences may not require a shippers' association to obtain or apply for a Department of Justice Business Review Letter prior to or as part of a service contract negotiation process. The rule was designed to help eliminate unnecessary impediments to the operation of shippers' associations and the negotiation of service contracts.

***Service Contracts - "Most-Favored-Shipper" Provision*, [Docket No. 88-7], 24 S.R.R. 1351 (November 1, 1988).**

The Commission adopted a Final Rule prohibiting the use of "most-favored-shipper" clauses that permit changes to a service contract rate to be based on unpublished offers of other carriers. However, the Commission declined to prohibit clauses that allow a contract rate to meet the published rates of carriers or conferences. The Commission also declined to adopt a rule that would address the use of *de minimis* liquidated damages and, instead, indicated that it would treat such matters on a case-by-case basis.

***Hemisphere Navigation Co., Inc. v. Sea-Land Service, Inc.* [Docket No. 87-29], 25 S.R.R. 56 (April 28, 1989).**

Hemisphere Navigation Co., Inc., a non-vessel-operating common carrier, had filed a complaint alleging that Sea-Land Service, Inc., had misrated 35 shipments to Puerto Rico by applying motor/water rates set forth in a joint through intermodal tariff filed at the Interstate Commerce Commission ("ICC"), rather than the lower rates set forth in Sea-Land's

all-water port-to-port FMC tariff. Following an Initial Decision by an administrative law judge finding for Hemisphere, the parties negotiated a settlement whereby Sea-Land agreed to pay reparations representing a substantial percentage of the sum originally sought by Hemisphere.

The Commission approved the settlement, finding it to be a reasonable compromise of the differences between the parties. In addition, the Commission advised that it may examine transportation services provided under intermodal tariffs filed with the ICC in order to adjudicate allegations by a shipper that the services it received in fact were port-to-port services subject to exclusive FMC jurisdiction and should have been assessed FMC-tariffed rates. The Commission concluded that, in discharging its responsibilities to protect shippers from unreasonable carrier practices and to safeguard the integrity of the Shipping Act's tariff filing requirements, the FMC does not improperly transgress upon the jurisdiction of the ICC.

Atlantis Line, Ltd. v. American President Lines, Ltd., [Docket No. 87-19], 24 S.R.R. 1391 (October 31, 1988), petition denied, 24 S.R.R. 1641 (March 17, 1989).

The Commission reversed the Initial Decision and found that a disputed American President Lines' tariff provision, "Note N", was clear and unambiguous, and therefore denied Atlantis reparations. The Commission concluded that the discount provided by Note N applied only to those containers shipped after the 100-TEU minimum requirement had been met. Atlantis' subsequent Petition for Reconsideration was rejected for failure to present any arguments or facts which had not been earlier considered by the Commission.

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade, [Docket No. 87-6], 24 S.R.R. 1619 (March 21, 1989).

The Commission issued a Final Rule finding that unfavorable conditions exist in the U.S./Peru oceanborne trade as a result of certain laws and decrees of the Government of Peru. Further, in order to meet or adjust the unfavorable conditions found, the Commission assessed fees for each voyage made by specified Peruvian-flag carriers. However, because of the economic and political conditions present in Peru, the Commission suspended application of the rule's sanctions.

Investigation of Rebates and Other Malpractices -- Yangming Marine Line, [Docket No 87-2], 24 S.R.R. 1252, Administratively Final (F.M.C., October 27, 1988).

The Commission initiated this proceeding to determine whether Yangming Marine Line ("YML") had violated the 1916 Act or the 1984 Act by allowing shippers of cotton to Taiwan to obtain transportation at less than the rates shown in its tariffs or service contracts, through the payment of secret rebates or through other unfair or discriminatory practices. An administrative law judge issued an Initial Decision approving a settlement negotiated with YML by the Commission's Bureau of Hearing Counsel, whereby YML agreed to pay \$168,667, to cease and desist from making payments or assessing charges on cotton shipments except in accordance with the provisions of its tariffs or service contracts, and to provide the Commission with certain documents and other information. The Commission permitted the Initial Decision to become administratively final.

American Trucking Associations, Inc. - Petition to Issue Order to Show Cause, [Petition No. P8-88], 25 S.R.R. 246 (June 21, 1989).

The Commission denied a petition filed by the American Trucking Associations, Inc. ("ATA"), alleging that certain practices by carriers at Pacific Coast ports stemming from a collective bargaining agreement were identical to the unlawful "50 Mile Container Rules" formerly enforced at Atlantic and Gulf ports. ATA urged the Commission to issue an order to the carriers to show cause why their practices under the labor agreement should not also be found unlawful. The Commission, however, found that unlike the "50 Mile Rules," the Pacific Coast practices did not facially restrict the carriers from releasing their containers to freight consolidators, nor did they place any restraints on the freedom of small shippers to employ such consolidators. The Commission thus denied the petition, without prejudice to the right of ATA or other persons to file a complaint.

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 petition 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:

***New York Shipping Association, Inc. v. FMC*, 854 F.2d 1338 (D.C. Cir. 1988), cert. denied, ___ U.S. ___, 109 S. Ct. 866 (1989).**

The Commission had ruled that the publication and enforcement by ocean common carriers of the "50 Mile Container Rules," whereby cargo originating from or destined to points within 50 miles of Atlantic and Gulf Coast ports were required to be loaded or unloaded at the ocean piers by longshoremen, were unreasonable and unjustly discriminatory and therefore violated the 1916 Act, the 1984 Act and the 1933 Act.

The Commission further had ruled that, under the maritime statutes, the Rules could not be defended on the ground that they were the result of collective bargaining agreements between the carriers and the International Longshoremen's Association ("ILA") intended to preserve work for longshoremen. The Commission concluded that the proper accommodation for national labor policy under the shipping laws was in the construction of the remedy for shipping violations. The Commission accordingly limited the remedy to an order directing the carriers to cease and desist further publication and enforcement of the Rules. However, this order was stayed during the subsequent court review of the Commission's decision.

The U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's action. The carriers and the ILA then filed a petition for certiorari with the United States Supreme Court. The Commission and the U.S. Solicitor General filed a joint brief in opposition to certiorari. In January 1989, the Supreme Court denied certiorari. The stay of the Commission's cease and desist order subsequently was lifted and the Commission issued an order directing the carriers to comply with the terms of the cease and desist order within seven calendar days. [Docket No. 81-11].

A/S Ivarans Rederi v. Companhia de Navegacao Lloyd Brasileiro, [Docket No. 86-9], 24 S.R.R. 1468 (December 22, 1988).

The Commission denied a complaint of a member of a cargo revenue pooling agreement in the Northbound Brazil/U.S. Atlantic Coast trade that an interpretation of the agreement by its other members violated the 1984 Act by carrying out actions unauthorized by the agreement. The Commission found, contrary to complainant's contentions, that the proper interpretation of the agreement was that the failure of a major carrier party to the agreement to make the required number of sailings under the agreement did not result in the agreement's suspension, but only in the reduction of that carrier's pool share. The matter is now under review by the Court of Appeals for the District of Columbia Circuit in Nos. 88-1597 and 89-1105, *A/S Ivarans Rederi v. USA & FMC*.

Agreement Provisions on Loyalty Contracts, [Docket Nos. 87-26 and 88-1], 24 S.R.R. 1395 (October 31, 1988).

The Commission determined that conference agreement provisions which prohibit a conference member from entering into a loyalty contract or from taking independent action for the purpose of entering into a loyalty contract had not been shown to be unlawful under the 1984 Act. The case is now pending decision by the United States Court of Appeals for the District of Columbia Circuit in Nos. 88-1850 and 88-1894, *Chemical Manufacturers Association v. USA & FMC*.

National Customs Brokers & Forwarders v. United States, 883 F.2d 93 (D.C. Cir. 1989).

The U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's determination not to institute a rulemaking proceeding to amend its present rules and promulgate new rules relating to the regulation of freight

forwarding activities. The court found that the regulations attacked were reasonable exercises of the Commission's rulemaking authority and that the decision with respect to the requested rules was not improper. The Court held that a determination not to institute rulemaking could only be overturned in "the rarest and most compelling of circumstances" involving legal error or change in factual predicate for the agency's action, neither of which was present here.

***American Association of Cruise Passengers, Inc. v. Carnival Cruise Lines, Inc.*, D.C. Cir. No. 88-7229.**

The Commission filed an *amicus curiae* brief in a private treble damage antitrust action brought by a discount travel club against a number of ocean passenger lines. The Commission appeared in support of defendants' contention that the plaintiff's allegations of a group boycott constitute charges of Shipping Act violations within the Commission's exclusive jurisdiction, and against the plaintiff's argument that carriers providing round-trip ocean "cruises" are not passenger common carriers within the scope of the Shipping Act. The case is now before the United States Court of Appeals for the District of Columbia Circuit.

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, and responding to Congressional requests for assistance.

In February 1989, comments were provided to the Committee on Merchant Marine and Fisheries on H.R. 439, a bill to amend the 1984 Act to provide for equitable treatment of U.S. ocean freight forwarders by ocean carrier conferences. The bill would provide conference members a right of independent action on the level of ocean freight forwarder

compensation and would prohibit conferences from limiting ocean freight forwarder compensation to less than 1.25 percent of all rates and charges assessed against the cargo.

In April 1989, comments were submitted to the Senate Committee on Governmental Affairs on S. 444, a bill to amend the Federal Advisory Committee Act. The Commission enclosed a copy of a letter submitted to the Office of Management and Budget concerning federal advisory committee operations. In this letter, the Commission advised the Office of Management and Budget that the only existing industry advisory committee sponsored by the FMC is the Section 18 Study Advisory Committee.

Vice-Chairman Carey testified before the House Subcommittee on Merchant Marine at hearings on the domestic offshore trades in February 1989. The domestic offshore trades include water transportation routes between the mainland United States and Hawaii, Alaska, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa. Unlike the international liner trades, rate levels established by the carriers are subject, within limits, to review by either the FMC or the ICC, depending on the service offered by a carrier. The hearing was designed to examine problems associated with regulation of the Puerto Rico trade by both the FMC and ICC. According to Subcommittee Chairman Walter B. Jones (D-NC), dual regulation has become a source of confusion for companies operating in the Puerto Rico trade. Currently, the FMC regulates port-to-port shipments to and from Puerto Rico, and the ICC has jurisdiction over joint through intermodal movements.

On June 15, 1989, Acting Chairman Carey testified before the House Subcommittee on Merchant Marine at hearings on H.R. 2498, the Intermodal Shipping Act of 1989. H.R. 2498 was introduced by Chairman Jones on May 25, 1989. This legislation is the result of an oversight hearing in San Juan, Puerto Rico on February 16, 1989 on the regulation of the domestic offshore trades.

Testimony was also prepared and coordinated for four other Congressional hearings during fiscal year 1989.

4. International Affairs

The General Counsel has the responsibility for monitoring and reporting on international maritime developments, including practices of foreign governments which affect ocean shipping. The General Counsel's Office represents the Commission on U.S. Government interagency groups dealing with international maritime issues, and participates as a technical advisor on regulatory matters in bilateral and multilateral maritime discussions.

Several reports and recommendations were prepared and submitted to the Commission on matters arising under section 19(1)(b) of the 1920 Act ("Section 19"). The subject of these Section 19 matters included Peruvian (*See* Docket No. 87-6) and Ecuadorian cargo reservation laws (*See* Docket No. 89-7) and restrictions on intermodal activities of carriers operating in the U.S./Taiwan trade (*See* Docket No. 87-25). In addition, the Commission instituted an investigation under the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. § 1710a ("FSPA"), into alleged "doing business" restrictions and practices of Taiwan authorities which appeared to adversely affect U.S. carriers (*See* Docket 89-16).

Further, the Commission continues to assess the impact of the laws, regulations and policies of the Governments of Korea, Taiwan and the People's Republic of China, which may unfairly burden or restrict the operations of certain ocean common carriers, including U.S. flag carriers operating in the U.S. trades with these countries, and the U.S. importers and exporters which depend on their services. The Commission is assessing the impact of these nations' laws, regulations and policies to determine whether action under Section 19 or the FSPA is warranted. Of particular concern to the Commission are indications that U.S. flag and possibly other carriers are

prevented from conducting shipping and ancillary activities in these trades. The Commission has issued orders and notices regarding these possible impediments to trade in the U.S./Taiwan and U.S./Korea trades.

The Office of the General Counsel participated in interagency groups and international maritime discussions, particularly as technical advisors to the Interagency Maritime Policy Group, whose other members include representatives of the U.S. Departments of Transportation, State, Commerce, and Justice, and the Office of the U.S. Trade Representative. In addition, the Office served as liaison on international shipping matters between the Commission and other U.S. Government agencies, as well as private parties. The Office also coordinated and participated in briefings of foreign visitors to the Commission.

Finally, under the Commission's controlled carrier program relating to the status of controlled carriers, several common carriers were classified as such during the fiscal year.

5. Significant Ongoing Activities

(a) Korea Shipping Conditions

The Commission initiated an inquiry into the existence and effects of laws, regulations and policies of the Republic of Korea ("ROK") on the ability of U.S.-flag and other non-ROK-flag ocean carriers to undertake ancillary maritime activities in the ROK by service of a Section 15 Order on all non-ROK-flag carriers serving the trade on April 14, 1987. The Section 15 Order requested information on laws, rules, policies or administrative interpretations which prevent carriers from owning or operating their own facilities, or conducting specific shore-side shipping operations. The Commission was particularly concerned that non-ROK-flag carriers are requested to operate through a Korean-owned general agent and are apparently unable to perform their own sales, marketing,

contracting, warehousing, trucking and equipment maintenance and repair functions in the ROK.

The responses to the Section 15 Order show a complex pattern of legislation, regulations and administrative agency oversight consisting of some 10 laws and 6 sets of implementing decrees which affect the transaction of maritime-related business activities in the ROK. The restrictions established in these laws and decrees appear to unfairly burden non-ROK carriers and may result in conditions unfavorable to shipping in the trade by preserving certain business opportunities in the ROK for Korean nationals, effectively handicapping non-ROK international shipping lines in their competition with ROK-flag carriers. The Departments of State and Transportation (MarAd) have engaged in consultations with representatives of the ROK Government regarding those issues on several occasions.

Legislation was recently enacted and regulations implemented to permit the U.S. - flag carrier operation of branch offices in the ROK. The Commission is currently reviewing the effect of these developments on the U.S. carriers' efforts to conduct such activities.

- (b) *Inquiry Into Laws, Regulations and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade* [Docket No. 89-07]; [Notice of Inquiry - 54 Fed. Reg. 10,721 (March 15, 1989)], [Notice of Further Comments - 54 Fed. Reg. 21,473 (May 1, 1989)], [Notice of Proposed Rulemaking - 54 Fed. Reg. 34,194 (August 18, 1989)].

The Commission received information from Overseas Enterprises Inc. ("OEI"), a U.S.-owned company, and the Department of State, regarding allegations that OEI has been unable to reestablish a liquid bulk service in the U.S./Ecuador trade because of the Government of Ecuador's ("GOE") requirement that OEI employ U.S.-flag vessels in such a

service. In response to these submissions, the Commission issued a Notice of Inquiry requesting interested parties to comment on the allegations and on any other laws, regulations or policies of the GOE which may adversely affect shipping in the U.S./Ecuador trade, in order to determine whether action pursuant to section 19 is warranted. The principle Ecuadorian law in question is a Resolution which reserves solid and liquid bulk import cargo from the United States to Ecuador for Ecuadorian-flag vessels or foreign vessels chartered by Ecuadorian shipping companies, or U.S.-flag vessels.

Based on the comments received in response to its Notice of Inquiry, the Commission determined that the Ecuadorian Resolution on its face appears to create conditions unfavorable to shipping in the trade and, to the extent that the Resolution applies only to the U.S./Ecuador trade, it is discriminatory. However, due to questions raised in the comments regarding the status of OEI, the Commission requested further comments to provide interested parties an opportunity to submit additional information on the status and operations of OEI, as well as on conditions in the U.S./Ecuador trade.

Upon review of all comments submitted, the Commission issued a Notice of Proposed Rulemaking to adjust or meet conditions unfavorable to shipping in the trade created by GOE cargo reservation laws. The Commission also noted that the Department of State reports that the GOE was not contemplating any initiatives to allow OEI to operate in the trade. The proposed rule would impose a fee of \$100,000 per outbound voyage of Maritima Transligrá, S.A., an Ecuadorian-flag carrier, from the U.S. to Ecuador.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

The Office of Equal Employment Opportunity 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 programming, and complaints processing and adjudication, with the assistance of collaterally-assigned EEO counselors and Special Emphasis Program Coordinators.

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

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

The Director of Equal Employment Opportunity 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 and prepares proposed dispositions of such

formal complaints; and monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 1989 include the following: (1) developed and implemented an EEO briefing for all new employees; (2) planned, developed and coordinated extensive internal and external special emphasis programs for employee participation; (3) broadened the nationwide EEO information, training and counseling support network for FMC to include the New Orleans District Office; (4) provided in-depth technical support and training for the Bureau of Investigations; (5) initiated and implemented FMC's first Intergovernmental Personnel Assignment with an historically Black college; (6) utilized external sources for EEO counselor training at no cost to FMC; (7) in concert with the Office of Personnel, developed and implemented targeted recruitment strategies in selected areas; (8) worked with the Selective Placement Coordinator to ensure that the Commission maintained its high standing among agencies in employment of staff with targeted disabilities; (9) increased minority and female representation in the professional and administrative series; (10) improved minority and female participation in Agency decisionmaking.

During fiscal years 1990 and 1991, the Office will continue its existing programs and initiate activities designed to increase management and employee understanding of EEO principles and to foster greater participation in EEO-related activities.

E. OFFICE OF INSPECTOR GENERAL

The Office of Inspector General at the Federal Maritime Commission was created by the passage of *Public Law 100-504*, which amended the *Inspector General Act of 1978* to provide for the establishment of additional statutory inspector generals at designated Federal entities, including the Federal Maritime Commission. This new legislation was signed into law on October 18, 1988.

On the statutory effective date of April 17, 1989, the Office of Inspector General was in operation as a separate, independent entity reporting only to the head of the agency. The Inspector General does not report to, nor is subject to supervision by, any other officer or employee of the Commission. The Inspector General has complete control over all audits and investigations, including determining whether to initiate or close a particular audit or investigation.

It is the duty and responsibility of the Office of Inspector General to:

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

- o Recommend policies for, and to 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 or the identification and prosecution of participants in any such fraud or abuse.**

- o 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.**

Significant accomplishments in fiscal year 1989 include the following:

- 1. Established the Office of Inspector General. This entailed recruiting personnel, determining the location and physical layout of the Office, acquiring furniture and equipment, and formulating policies and procedures.**

- 2. Reviewed the organizational structure of the Commission, determined those activities subject to audit, and identified an agency-wide audit universe.**

3. Revised the Commission's internal order relating to the Inspector General activity, and issued a circular to all agency personnel outlining the audit function to be carried out by the Office.

4. The Inspector General is an active member of the Coordinating Conference of the President's Council on Integrity and Efficiency ("PCIE") and participated at meetings and on committees established by that body.

5. Initiated a comprehensive program of audits and, as needed, investigations, to prevent and detect fraud and abuse in Commission programs and operations. Three investigations and one limited inquiry were completed during the fiscal year.

The Office will continue to implement the new legislation and expand the role of the Office in the next fiscal year. We anticipate the issuance of a number of significant audits during the year, as well as surveys, and follow-up reviews. Investigations will be conducted as necessary. The Commission's Inspector General will continue his participation in the PCIE-Coordinating Conference which provides a forum for the exchange of views for the inspector general community.



F. OFFICE OF THE MANAGING DIRECTOR

The Office of the Managing Director is responsible for the direct administration and coordination of Commission staff activities and programs to ensure the timely and proper achievement of Commission goals and objectives.

The Office provides direct administrative and technical supervision to the:

- o **Bureau of Trade Monitoring.**
- o **Bureau of Domestic Regulation.**
- o **Bureau of Economic Analysis.**
- o **Bureau of Hearing Counsel.**
- o **Bureau of Investigations.**
- o **Bureau of Administration.**

Additionally, the Office of the Managing Director furnishes administrative direction to the:

- o **Office of the Secretary.**
- o **Office of the General Counsel.**
- o **Office of Administrative Law Judges.**
- o **Office of Equal Employment Opportunity.**
- o **Office of the Inspector General.**

A significant achievement of the Office during FY 89 was the continued coordination of an enhanced enforcement program involving all operating Bureaus. Several aspects of the major initiative in the Trans-Pacific Trade were addressed and concluded, with further action contemplated for FY 90. The necessary planning and initial groundwork also was completed for future enforcement programs.

The Office is currently:

- 1. Guiding the development of the agency's Automated Tariff Filing and Information (ATFI) System;**
- 2. Directing, under Commissioner Ivancie's oversight, the development and implementation of the agency's new Strategic Plan;**
- 3. Monitoring the installation of a Commission-wide Local Area Network which will ultimately be utilized for the ATFI system; and**
- 4. Directing a scaled-down collection of data relative to the report required by section 18 of the 1984 Act. The Office will also oversee any staff assistance provided to the Advisory Commission on Conferences in Ocean Shipping.**

The Office of the Managing Director's key objectives for fiscal years 1990 and 1991 are the continued coordination of staff efforts regarding the development of ATFI, the expansion of the enhanced enforcement program, and the correction of the material weaknesses identified in the 1989 *Federal Managers' Financial Integrity Act* report.

G. BUREAU OF TRADE MONITORING

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 Shipping Act of 1984 and the Shipping Act, 1916. The Bureau's major program activities include:

- o Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial and economic activity in each major U.S. trade, in order to keep the Commission and its staff apprised of current trade conditions, emerging trends and regulatory needs impacting on waterborne liner transportation;**
- o Systematic surveillance programs overseeing carrier activity in areas relevant to the Commission's administration of statutory standards;**
- o Processing and analysis of agreements involving common carriers; and**
- o Support of formal Commission proceedings in the Bureau's areas of expertise.**

2. Surveillance (See Chapter III)

3. Types of Agreements

(a) Conference and Ratemaking Agreements

Conference and ratemaking agreements provide for the collective discussion, agreement and establishment of ocean freight rates and practices by groups of ocean carriers. Such agreements are limited to a geographic area or trade route. The Commission's rules currently do not distinguish between conference and rate agreements for purposes of determining applicability of the so-called "*mandatory provisions*."

During fiscal year 1989, the Commission concluded the processing of 170 conference and rate agreements, including amendments to existing agreements, pursuant to the Shipping Act of 1984. There were 74 conference/rate agreements in effect at the end of the fiscal year.

(b) Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in given trades which provide for the pooling and apportionment of cargo and/or revenues in the interest of the increased efficiencies which such arrangements can provide as a result of their stabilization of competitive conditions. These agreements also often set forth sailing requirements and other features relating to overall service efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo which is controlled by the governments of reciprocal trading partners as a result of cargo preference laws, import quotas or other restrictions.

At the conclusion of fiscal year 1989, there were 23 agreements in effect with pooling and/or equal access authority. Eleven agreements of this type have a significant impact on U.S. ocean liner commerce with Argentina, Brazil, Chile, Peru and Colombia.

(c) Space Charter and Sailing Agreements

Space charter agreements authorize the chartering (or cross-chartering) of vessel space or container slots between or among vessel operators. The essential objective of arrangements of this type is to facilitate the rationalization of overall fleet operations and to reduce overtonnaging in given trades. These agreements also generally contain authority to rationalize sailings and to exchange equipment.

During fiscal year 1989, 30 space charter and sailing agreements and amendments were filed under the 1984 Act, and 114 were in effect at the conclusion of the fiscal year.

(d) Joint Service/Consortia Agreements

Joint service and consortia agreements generally establish a new and separate line or service to be operated by otherwise independent operators as a joint venture in a given trade. The resulting service operates as a single carrier, fixing its own rates, publishing its own tariffs and issuing its own bills of lading, but its authority is strictly confined to that which is specifically set forth in the agreement authorizing its operation.

Eleven joint service/consortia agreements and amendments were filed during fiscal year 1989 and 34 such agreements were in effect at the conclusion of the fiscal year.

(e) Cooperative Working Arrangements

Cooperative working arrangements run the gamut from discussion agreements, which authorize the participants to discuss competitively-sensitive trade matters, to specialized inter-carrier operational undertakings which do not precisely fit the other categories reported above. Thirty-nine cooperative working agreements, and amendments to effective agreements, were filed during fiscal year 1989, and 99 such agreements were in effect at the conclusion of the fiscal year.

4. Future Plans and Proposed Activities

With the completion of the 5-year study mandated by Section 18 of the Shipping Act of 1984, the Bureau intends to further develop its monitoring programs. Additional reports generated through this effort will include an in-depth audit of agreement activities that will contain a review of agreement minutes, development of detailed trade profiles and topic papers, and specific monitoring of selected agreements.

The Bureau's overall monitoring program will continue to focus on the systematic oversight of carrier and trade activity in areas relevant to the administration of the standards of the Shipping Act of 1984. To this end, the Bureau plans to continue its series of periodic monitoring reports to provide a framework and methodology for the in-depth monitoring of key subtrades and analyzing rate and service activity under the standards of sections 5, 6(g) and 10 of the Act. The Bureau's monitoring reports provide periodic trend analyses of agreement activities and other topics; its trade studies provide an overview of trade conditions between the United States and selected countries. The Bureau's controlled carrier reports support the Commission's activities under section 9 of the Act. Also, specific monitoring of selected carrier agreements will continue. In aggregate, the Bureau's monitoring reports and studies provide an up-to-date and detailed interpretation of evolving carrier and agreement activity, and changing trade conditions, under the Act's standards. Although they are informative in their own right, they are not an end in themselves. Rather, the report/study program develops a factual basis that can isolate and identify activity that may contravene the Act's standards for appropriate follow-up by the Bureau or the Commission itself, as warranted by the circumstances of each case.

The Bureau anticipates continuing pre-effectiveness analysis of newly-filed agreements to determine if an agreement is likely to raise any section 5, 6(g) or 10 issues, or policy questions; the preparation of recommendations to the Commission on more

complex agreements or issues; and the disposition of routine agreements under authority delegated by the Commission.

In support of the Bureau's monitoring efforts, continued maintenance of databases for the *Work-in-Process System (WIPS)* and the *Required Reports Profile System (RRPS)*; programming changes in current programs for the systems; and developing programs for additional functions are also planned.

It is anticipated that the Bureau will continue to be involved in projects related to various investigative initiatives. The Bureau also expects to continue to be actively involved in rulemakings refining and/or clarifying the application of the Commission's regulations.

Development of a plan for the production of an agreement listing/reference book, containing agreement-related information, is also proposed.

Finally, the Bureau's support of formal Commission proceedings is expected to continue. The Bureau's degree of involvement will, of course, turn on the number and subject matter of the proceedings initiated during the next fiscal year.



H. BUREAU OF DOMESTIC REGULATION

1. General

The Bureau of Domestic Regulation plans, develops, administers and analyzes programs and activities in connection with pricing by common carriers by water, conferences of such carriers and terminal operators in the foreign and domestic offshore commerce of the United States; reviews and maintains both new and amended tariff filings, rejecting those which fail to conform to the Commission's regulations; approves or disapproves special permission applications involving requests to deviate from certain tariff filing rules; processes service contracts and essential terms publications filed by ocean common carriers and conferences of such carriers; initiates recommendations, in collaboration with other offices of the Commission as warranted, for formal action and proceedings by the Commission; and plans, develops, and administers programs for processing, evaluating, and monitoring agreement activity of marine terminal operators.

The Bureau is also responsible for the licensing of ocean freight forwarders under the provisions of the Shipping Act of 1984; and under Public Law 89-777, the certification of owners and operators of passenger vessels in the United States trade with respect to the financial responsibility of such owners and operators to satisfy liability incurred by non-performance of voyages or for death or injury to passengers or other persons. Thus, the Bureau of Domestic Regulation is responsible for all tariffs filed by ocean common carriers and terminal operators; marine terminal agreements; service contracts; the licensing of ocean freight forwarders; and the certification of passenger vessels for financial responsibility.

The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations, with respect

to its program activities. The Bureau also cooperates with other Commission components with regard to enforcement of the Commission's regulatory requirements.

2. Foreign Commerce, Tariff, and Service Contract Activity

(a) Service Contracts

The Shipping Act of 1984 permits ocean common carriers and conferences of such carriers to enter into service contracts with shippers and/or shippers' associations. A service contract is defined in the Act as:

. . . a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level - such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

Each contract entered into under section 8(c) of the Shipping Act of 1984 must be filed confidentially with the Commission and, at the same time, a concise statement of its essential terms must be filed with the Commission and made available to the general public in tariff format. The essential terms must be offered to all similarly situated shippers.

The essential terms of a service contract include:

- o The origin and destination port ranges or geographic area;**
- o The commodity involved;**

- o **The minimum volume;**
- o **The line-haul rate;**
- o **The duration;**
- o **Service commitments; and**
- o **Liquidated damages for nonperformance, if any.**

The variables which can be prescribed in service contracts are almost infinite, thereby giving carriers and shippers significant freedom to tailor transportation arrangements suitable to their commercial needs.

During the fiscal year, the Commission revised its regulations governing the modification of service contract essential terms. The purpose of the revised rule is to permit the modification of service contracts to correct administrative or clerical error. Under the rule, requests to modify service contract essential terms are made to the Commission and, if approved, the modified essential terms are made available to all other shippers and shippers' associations for a specified period of time. During fiscal year 1989, the Commission received 20 requests for modification of service contracts due to clerical or administrative error. Of these, the Commission granted 13 requests and denied two; five requests were pending at the close of fiscal year 1989.

Another service contract issue was addressed in Docket No. 88-7, *"Most-Favored-Shipper" Provisions*. The new rule limited contingency clause provisions for adjustments to contract rates to permit the contract rate to be changed to meet a rate offer of another carrier or conference only if such a rate is published in a tariff or set forth in a service contract on file with the Commission. The new rule effectively eliminated so-called *"Crazy Eddy"* clauses in service contracts.

On April 12, 1989, the Commission issued *Circular Letter 1-89* to ocean common carriers and conferences. The Letter addressed the Shipping Act of 1984 requirements with regard to service contracts and the need for mutual commitments and the contract's liquidated damages provisions, if any. Specifically the Commission advised carriers and conferences that: (1) service contracts must contain mutually binding commitments by the contracting parties sufficient to meet the definition of "service contract" contained in the 1984 Act; (2) this commitment may not be vitiated by any other provision in the contract, such as a provision providing for a reduction in the shipper's cargo minimum as the shipper's exclusive remedy in the event of a carrier breach; and (3) that liquidated damage provisions should not be *de minimis* so as to give a shipper an unfair benefit even though it did not meet its commitment under the contract.

During fiscal year 1989, the Bureau received 5,215 service contracts. These contracts were filed by 75 individual ocean common carriers and 25 conferences. The contracts involved approximately 7,600 shippers and the entire scope of the U.S. foreign commerce, both inbound and outbound.

(b) 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 Shipping Act of 1984 (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, classifications, rules or regulations 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. Exceptions to these proscriptions include rates of controlled

carriers of a state whose vessels are entitled by a treaty of the United States to receive most-favored-nation treatment.

The Bureau of Domestic Regulation monitors the tariff filings of controlled carriers to assure that the required notice for rate increases and decreases is given. During fiscal year 1989, controlled carriers filed approximately 11,000 tariff pages. The Bureau also acted on 12 special permission applications filed by controlled carriers.

(c) Common Carrier Anti-Rebate Certification (ARC) Program

Every common carrier by water in the foreign commerce of the United States and ocean freight forwarder is required by section 15(b) of the Shipping Act of 1984 (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 is to be filed with the Secretary of the Commission annually and is to be signed by the Chief Executive Officer of the common carrier or ocean freight forwarder. Section 15(b) and 46 CFR 582.1(b) provide that failure to file the required certification may result in a civil penalty of \$5,000 for each day the violation continues. The information obtained under the anti-rebating program is used to maintain continuous surveillance over common carrier activities and to provide a deterrent against rebating practices.

An automated program was implemented to insure the receipt of certifications from all those required to file. During the year, approximately 3,000 certifications were filed in a timely manner. In conjunction with the Bureau of Hearing Counsel, the Bureau undertook an enforcement program with respect to non-filers of certifications. Enforcement actions are planned during fiscal year 1990.

(d) Inactive Tariffs

During fiscal year 1989, the Bureau of Domestic Regulation continued a comprehensive review of foreign commerce tariffs currently on file with the Commission. The purpose of this review was to identify tariffs of firms which appeared to be inactive or no longer operating as carriers in the waterborne foreign commerce of the United States. Inactive tariffs reflect inaccurate information and serve no useful purpose while adding to administrative cost. A carrier was deemed to be inactive if it had not amended its tariff during the preceding twelve month period, had not filed the required anti-rebating certification, and could not be contacted by mail or telephone. As a result of this review, an order to show cause why identified carrier tariffs should not be cancelled was prepared. The order was served during fiscal year 1989, and resulted in the cancellation of 246 inactive tariffs.

(e) Tariff Processing

During fiscal year 1989, the Bureau of Domestic Regulation received and reviewed 739 new foreign tariffs, of which 141 were rejected. In addition, 725,093 tariff pages amending existing tariffs and 182 foreign special permission applications were processed. The program of microfiching cancelled tariffs and cancelled pages to active tariffs is continuing. During fiscal year 1989, approximately 707,000 cancelled tariff pages were recorded on microfiche.

3. Domestic Tariff Activity

(a) Authority

Common carriers operating in the U.S. domestic offshore commerce are required pursuant to section 18(a) of the Shipping Act, 1916, 46 U.S.C. app. 817, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, to file tariffs of rates, charges and rules with the Commission. The Bureau of

Domestic Regulation must ensure that these tariffs comply with applicable statutory requirements. The Commission's regulations also require the filing of annual reports of financial and operating data by vessel operating common carriers in the domestic trades.

(b) Inactive Tariffs

During fiscal year 1989, the Bureau of Domestic Regulation continued a program, similar to that with respect to foreign tariffs, to identify tariffs of firms which appeared to be inactive or no longer operating as carriers in the domestic offshore waterborne commerce of the United States. As a result of this program, an order to show cause why identified carrier tariffs should not be cancelled was served early in fiscal year 1989, and resulted in the cancellation of 49 inactive domestic tariffs during the fiscal year.

(c) Tariff Processing

During fiscal year 1989, 46 new domestic offshore tariffs were received and reviewed, of which 15 were rejected. In addition, 23 domestic special permission applications were processed. The Bureau also processed approximately 4,000 tariff pages amending existing tariffs.

4. Marine Terminal Activities

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

(a) Agreements

During fiscal year 1989, the Bureau received 283 agreements and agreement modifications relating to port and terminal services and facilities. Of these, 272 agreements became effective upon filing under Commission rules which exempt entitled marine terminal agreements from the waiting period requirements of the Shipping Act of 1984 and/or the approval requirements of the Shipping Act, 1916; agreements not entitled to the Commission's exemption provisions were processed under the applicable statutory filing requirements. Seven agreements were considered not subject to the Commission's jurisdiction. Seven hundred and fifty terminal agreements were in effect at the end of the fiscal year.

The Commission is also charged with processing certain labor-management agreements pursuant to the *Maritime Labor Agreements Act of 1980* (P.L. 96-325, 94 Stat. 1021). This Act provides that such agreements, to the extent they provide for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized, shall be deemed effective upon filing with the Commission. During fiscal year 1989, three labor-management agreements of this type were filed.

During fiscal year 1989, the Commission continued its moratorium on the assessment of penalties against certain unfiled terminal service agreements. Resumption of potential enforcement activities is pending the Commission's disposition of the staff's recommendations in Fact-Finding Investigation No. 17. That fact-finding addressed whether certain terminal service agreements are subject to the Commission's jurisdiction.

The Bureau continued its monitoring and surveillance program regarding all existing terminal agreements on file with the Commission.

(b) Terminal Tariffs

The Bureau carried out its responsibilities with respect to terminal tariffs by reviewing 5,071 terminal tariff pages filed during fiscal year 1989. At the end of the fiscal year, there were 460 terminal tariffs on file with the Commission. The Bureau completed its review of all terminal tariffs in the Commission's files during fiscal year 1989.

5. Freight Forwarders

The ocean freight forwarding industry is comprised of persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders serve export shippers by arranging for the ocean transportation of cargo by common carriers, and by handling the paperwork, legal requirements, safety requirements and other incidentals related to exports. Ocean freight forwarders receive a fee from the exporter for handling an export shipment as well as compensation from the ocean carrier whose vessel is selected to carry the cargo.

Congressional findings in 1961, focusing on malpractices within the ocean freight forwarding industry, led to the enactment of section 44 of the Shipping Act, 1916 (46 U.S.C. 841b) which vested the Commission with authority for the licensing and regulation of independent ocean freight forwarders. At that time, malpractices in the export trades were rampant. Given the importance of maintaining a favorable climate for U.S. businesses, especially small businesses which lacked the expertise to do their own exporting, Congress found that licensing and limited oversight of ocean freight forwarders was necessary to eliminate secret, illegally preferential rebates, and to ensure that unscrupulous, incompetent and financially irresponsible persons were prevented from operating as ocean freight forwarders. Although the number of licensed ocean freight forwarders has increased since 1961, forwarder-initiated malpractices are now more the exception than the rule.

The continued maintenance of fiduciary responsibility, technical qualifications and the financial responsibility of an ocean freight forwarder are currently assured by means of a license issued by the Commission and a surety bond which is required to be maintained on file with the Commission. Once issued, a license need not be renewed. However, Commission approval for a change in the business form of a licensee or a license transfer to another person is required. The amount of the bond depends upon the number of offices through which an ocean freight forwarder provides services. The basic bond amount is \$30,000. It is increased by \$10,000 for each unincorporated branch office of a forwarder. Each separately incorporated office of a forwarder is required to obtain its own license.

With the enactment of the Shipping Act of 1984, the Commission's regulatory responsibilities over the forwarding industry are now found in section 19 of that Act. Under this statute, the basic licensing requirements remain essentially in place. However, the prohibition against export shippers receiving a license has been eliminated, i.e., freight forwarders no longer have to be "independent." Licensed forwarders are barred from collecting compensation from carriers on shipments in which they have a beneficial interest. Also under the statute, agreements by and among forwarders engaged in foreign commerce of the United States are no longer required to be filed with the Commission for approval. Hence, such agreements are afforded no anti-trust immunity.

The Shipping Act, 1916, as amended, does not require persons operating as forwarders in the domestic off-shore trades of the United States to obtain a license to do so, nor are such entities required to file a surety bond.

The Commission received 249 applications for ocean freight forwarder licenses and for approval of the transfer of licenses or other organizational changes during fiscal year 1989, while 57 applications were pending at the end of fiscal year 1988. Of these, 86 new license applications were approved, six

were withdrawn, one was denied and 62 were returned to applicants because of deficiencies which prevented processing. Fifty-eight applications for transfers or other organizational changes were approved, and eight were withdrawn or returned because of deficiencies. Eighty-five applications were pending at the close of fiscal year 1989.

During fiscal year 1989, 88 ocean freight forwarder licenses were revoked, resulting primarily from the licensees' failure to maintain the required surety bond on file, 83 new licenses were issued and 16 licenses were reissued. At the end of the fiscal year, 1600 licensed forwarders were operating under the Commission's jurisdiction, approximately 1% more than the total number of licensees at the close of fiscal year 1988.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statutes and the Commission's regulations. During the year, 66 investigative reports were received by the Bureau. Two reports were pending review at the beginning of the fiscal year. Forty of these reports resulted in the issuance of warning letters or referral to the Bureau of Hearing Counsel for the assessment of appropriate civil penalties. Seventeen cases were determined to require no formal corrective action. Eleven reports were pending review at the close of fiscal year 1989.

Other activities during the year included:

- o The processing of 738 surety bond actions including new bonds, riders to bonds and cancellations of bonds;
- o The review and processing of nine informal complaints concerning, in the majority of cases, the non-payment of freight charges by forwarders to carriers;

- o **The issuance of 83 new licenses and the re-issuance of 16 revoked licenses after new surety bonds were obtained;**
- o **The receipt of information about 19 claims, totaling in excess of \$171,000, that were filed against forwarder bonds.**

During fiscal year 1989, *The National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA)* sought judicial review of the Commission's denial of its 1987 petition for rulemaking to amend six areas of the Commission's ocean freight forwarder rules (46 CFR Part 510). The Court affirmed the Commission's decision denying the NCBFAA's petition.

6. Passenger Vessel Certification

The Commission is responsible for administering sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817d and 817e), which have been implemented by the Commission's regulations found in 46 CFR 540 - "*Security for the Protection of the Public.*" Owners, charterers, and operators of American and foreign vessels having berth or stateroom accommodations for fifty or more passengers and embarking passengers at United States ports must establish financial responsibility: (1) to meet any liability incurred for death or injury to passengers or other persons on voyages to or from United States ports; and (2) to indemnify passengers for nonperformance of transportation to which they would be entitled under ticket contracts. Upon the submission of evidence of financial responsibility in accordance with Subpart B of 46 CFR 540, the Commission will issue a *Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages [Certificate (Casualty)]*. Upon submission of similar evidence in accordance with Subpart A of 46 CFR 540, the Commission will issue a *Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation [Certificate (Performance)]*.

With respect to the Certificate (Casualty), financial responsibility must be established in accordance with a schedule provided in section 2 of Public Law 89-777. An applicant operating more than one vessel must evidence financial responsibility for its fleet under the casualty provisions at a level based on the passenger capacity of its largest vessel. The extent of financial responsibility, required under section 3 of Public Law 89-777 for the issuance of a Certificate (Performance), is determined by the Commission, taking into account factors such as the number of vessel accommodations, fare structure, collection policy, sailing schedule, itinerary and past experience. The maximum amount with respect to performance is \$10 million (except as a self-insurer which could require a greater amount). The Commission's staff is presently reviewing this Commission imposed limit to determine if it should be increased.

The certificates must be presented to United States Customs officials at the port or place of departure of the vessel from the United States. Under the law, the U.S. Customs Service will refuse clearance of a vessel if it does not have proper certificates on board, or until such time as the Commission confirms compliance with the law.

During fiscal year 1989, the Commission processed 59 applications for passenger vessel certificates involving 84 separate vessel certifications. Twenty-one were new performance certificates; 17 were new casualty certificates; 42 were amendments to existing certificates; and, 4 vessel certification requests were withdrawn. Holders of passenger vessel certificates have on file with the Commission evidence of financial responsibility in excess of \$250 million for performance certification and over \$1 billion for casualty certification.

7. Automated Database Systems

The Bureau of Domestic Regulation maintains several automated database systems. These are: (1) *The Service Contract System*; (2) *The Regulated Persons Index*; (3) *The Tariff Profile System*; (4) *The Microfiche System*; and, (5) *The Ocean Freight Forwarder System*. *The Service Contract System* provides certain key service contract data, such as geographics, shipper names, commodities and rates. *The Regulated Persons Index* assigns a discrete number to each person the Commission regulates and provides their address and business name. *The Tariff Profile System* lists key data contained in tariffs on file with the Commission. *The Microfiche System* provides a means of locating cancelled tariffs which have been microfiched. *The Ocean Freight Forwarder System* provides pertinent data necessary for the tracking of licensees, including surety bond information.

During fiscal year 1989, the Bureau began to design and program another automated system for its terminal agreement filing activity. The system prototype is planned for fiscal year 1990.

A local area network (LAN) prototype was implemented in the Bureau late in fiscal year 1989. The fully implemented LAN will act as a gateway to the Commission's planned Automated Tariff Filing and Information System, and provide Bureau staff with access to local databases within the Bureau and the Commission.

8. Shippers' Associations

The Shipping Act of 1984 recognized shippers' associations for the first time as entities in international ocean transportation. They are defined in the Act as groups of shippers which, on a non-profit basis, consolidate their cargoes to secure volume rates or enter into service contracts. The Act expressly requires that the carriers and conferences negotiate with shippers' associations. It also provides that associations can enter into service contracts on behalf of their members. Shippers'

associations have not been granted antitrust immunity under the 1984 Act. In fiscal year 1989, 18 service contracts were filed involving 20 shippers' associations. Since the Shipping Act of 1984 became effective, a total of 38 shippers' associations have entered into a total of 174 service contracts with certain carriers and conferences.

9. Financial Analysis

The Bureau of Domestic Regulation provides accounting and financial expertise to help ensure the reasonableness of rates for the transportation of cargo and other services provided by common carriers in the domestic offshore waterborne commerce of the United States. The Bureau also provides technical assistance to other activities within the Commission.

The Bureau continued to monitor the activities of carriers in the domestic offshore commerce of the United States. The effort involved the receipt and review of financial and operating data submitted in compliance with 46 CFR Part 552.

During the year, the Bureau reviewed a general rate increase filed in the Hawaii Trade. The Bureau was also involved in an inquiry concerning an increase in certain rates in the Guam Trade.

Financial expertise is also provided with respect to the passenger vessel certification program. During fiscal year 1989, a full on-site audit was conducted for unearned passenger vessel revenue collected by one passenger vessel operator. The financial statement of a company wishing to participate in the program as an insurer was also reviewed.

Accounting assistance was provided to the Bureau of Hearing Counsel in connection with its enforcement program and litigation activities.

10. Support Activities

The Bureau of Domestic Regulation acts as one of the primary information and data sources for other Commission activities and programs.

Investigative activities require substantial tariff research and supporting documentation which is provided by Bureau staff. Automated data bases, such as the regulated persons index and service contract system, are utilized for initial data identification purposes and actual hard copy of relevant material is retrieved and provided to the Bureau of Investigations and/or the appropriate field office.

The Commission's field offices are also provided with general data lists of regulated persons situated in specific field office jurisdictions. This data assists not only with investigative efforts, but serves localized public needs for information concerning Commission regulated industries.

During the past fiscal year, the Bureau completed and submitted several chapters and sections of chapters on Bureau related subjects which were incorporated into the Commission's *Section 18 Report on the Shipping Act of 1984* (September, 1989). The Bureau also supported other bureaus and offices in their Section 18 Report activities by providing the raw tariff rate data which was tracked to study pricing behavior in the liner shipping industry and service contract database information to support the analysis of service contract trends over the five year study period.

11. Rulemaking and Docketed Proceedings

The Bureau initiates or supports formal rulemakings and Commission docketed proceedings. During fiscal year 1989, the Bureau was involved with: Docket No. 88-7, *Service Contracts - "Most-Favored-Shipper" Provisions*, to amend service contract regulations to prohibit clauses referencing unpublished or unfiled

rates of other carriers and conferences; Docket No. 89-04, *Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers and Their Agents*, to require the publication of terms and conditions governing the use of carrier provided equipment; Docket No. 88-16, *Service Contracts*, to permit the correction of administrative or clerical errors in service contracts under specific circumstances; Docket No. 89-03, *Tariff Filing Notice Period - Exemption*, to permit carriers providing port-to-port service in the Hawaiian domestic offshore trade to publish on one day's notice reductions in existing individual commodity rates, and rates on new tariff items; Docket No. 88-17, *Interpretations and Statements of Policy*, stating that common carriers or conferences may not require a shippers' association to obtain or apply for a Department of Justice Review Letter prior to or as part of a service contract negotiation process; Docket No. 88-19, *Effective Date of Tariff Changes*, that requires common carriers to specify in their tariffs that the effective date for rates, rules and charges applicable to a given shipment is the date the cargo is received by the carrier or its agent; and Docket No. 89-20, *Definition of a Shipper and Availability of Mixed Commodity Rates*, to define the term "shipper" more clearly and provide that mixed commodity rates will be available only to shippers as redefined. The Bureau also participated in Fact Finding Investigation No. 17, *Rates, Charges and Services Provided at Marine Terminal Facilities*, to determine the Commission's jurisdiction over certain marine terminal industry practices.

I. BUREAU OF ECONOMIC ANALYSIS

1. General

The Bureau of Economic Analysis provides economic, statistical, and financial analysis for the Commission. The Bureau augments the Commission's policy planning capabilities and enhances the agency's responsiveness to new developments and trends in US ocean commerce and the liner shipping industry.

Major activities of the Bureau include:

- o **Preparing the five-year study required by section 18 of the Shipping Act of 1984 as to the impact of the Act on the international ocean shipping industry;**
- o **Coordinating the input of various industry study groups which were organized to assist the staff in gathering information and trade data for the Section 18 Study;**
- o **Organizing and coordinating the activities of the *Section 18 Study Advisory Committee* which was formed to receive, in a public forum, industry advice on the conduct of the five-year study;**
- o **Preparing financial and economic data and reports for use in overseeing the activities of carriers in the domestic offshore trades;**
- o **Preparing special reports on economic and financial developments in liner shipping; and**
- o **Providing information in response to Commission needs for economic, political, and policy information.**

2. Section 18 Study

The Bureau's major project during FY 1989 was to complete the collection and analysis of data required by section 18(a) and finalize the reports required by section 18 (c) of the Shipping Act of 1984. The Commission's *Section 18 Report on the Shipping Act of 1984* ("*Section 18 Report*" or "*Report*") was submitted on September 20, 1989 as required by section 18 of that Act to the Congress, and three other government agencies - the *Department of Transportation*, the *Department of Justice*, and the *Federal Trade Commission*. The *Advisory Commission on Conferences in Ocean Shipping* ("*Advisory Commission*") is also to receive a copy of the *Report*, however, the *Advisory Commission* had not been formed by the end of the fiscal year. An Executive Summary of the FMC's *Section 18 Report* presents an overview of the *Report's* findings and conclusions. It has been included in Chapter VII, the "*Section 18 Study*."

3. Future Plans and Proposed Activities

The Bureau will concentrate its efforts in fiscal year 1990 on developing a strategic plan for the FMC. The plan will become a framework for the Commission to use in the development of its programs and general process of allocating resources to the various program areas.

The Bureau will analyze the responses to the Commission's *Section 18 Report on the Shipping Act of 1984 from the Department of Transportation, the Department of Justice, and the Federal Trade Commission*. The Commission's data collection effort may be continued on a scaled-down level to ensure that the *Advisory Commission* has current information on sections 18(a) of the 1984 Act -- level of rates, service, and competition.

J. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory (docketed) proceedings, non-adjudicatory investigations, rulemaking proceedings when designated by Commission order, and other proceedings initiated by the Commission. Bureau attorneys serve as trial attorneys, where intervention is permitted and appropriate, in formal complaint proceedings instituted under section 22 of the 1916 Act, and section 11 of the 1984 Act. Bureau attorneys also are designated Investigative Officers in non-adjudicatory formal proceedings. In addition to the formal proceedings in which the Bureau participates as a party, the Bureau monitors all other formal proceedings in order to ascertain that major issues affecting the shipping industry and/or the general public, as distinguished from issues deriving from private disputes between the litigating parties, are adequately developed. The Bureau also participates in an advisory capacity in the development of Commission rules and regulations. On occasion, the Bureau may participate in court litigation by or against the Commission.

On request, the Bureau furnishes legal advice to the staff. Bureau attorneys provide legal advice to the Bureau of Investigations during field investigations and review enforcement reports completed by that Bureau. When appropriate, the Bureau of Hearing Counsel prepares and serves notices of violations of the shipping statutes and/or regulations, and may compromise and settle civil penalty allegations arising out of those violations. If settlement is not reached, the Bureau acts as prosecutor in formal Commission proceedings that may result in the assessment of civil penalties. The Bureau also participates, in conjunction with other Bureaus, in special enforcement initiatives such as the *Trans-Atlantic Enforcement Initiative* and the *Trans-Pacific Malpractice Program*.

At the beginning of fiscal year 1989, 27 enforcement reports were pending final resolution by the Bureau. During the fiscal year, 46 new enforcement reports were received from the Bureau of Investigations. Forty-six such cases were compromised and settled, administratively closed, or referred for formal proceedings. Twenty-seven enforcement reports were pending resolution on September 30, 1989.

At the start of fiscal year 1989, the Bureau was party to nine formal proceedings. During the fiscal year, the Bureau participated in seven new formal proceedings. Four proceedings in which the Bureau participated were completed. Accordingly, the Bureau was involved in twelve formal proceedings at the end of the fiscal year.

At the beginning of fiscal year 1989, there were 48 requests for legal advice pending in the Bureau. Seventy-one requests for legal advice were received during the fiscal year, and 70 legal advice projects were completed. Accordingly, 49 legal advice matters were pending in the Bureau on September 30, 1989.

The Commission's increased emphasis on enforcement is resulting in expansion in all areas of Bureau activity. As a result of this effort, the Bureau collected almost \$5,000,000 in civil penalties in fiscal year 1989. (Appendix E shows that over \$5,500,000 was compromised or assessed in fiscal year 1989). This included some of the largest settlements with single respondents entered into by the Commission under the 1984 Act, and represented the largest amount of civil penalties ever collected by the Commission in a single year. Settlements were reached with all segments of the industry (e.g. carriers, shippers, forwarders, marine terminal operators), in the full range of the U.S. foreign trades.

In April, 1989, the Commission instituted *Fact-Finding Investigation No. 18*, a non-adjudicatory proceeding to investigate rebating and other rate malpractices in the Trans-Pacific trades. As a direct consequence of the fact-finding, settlements in excess of \$1,000,000 have resulted with Pacific cargo interests and an

NVOCC. Generally, as a consequence of the increased emphasis on enforcement and, in particular, due to continued *Fact Finding No. 18* activity, it is anticipated that this trend in civil penalty collection will continue.

In fiscal years 1990 and 1991, the Bureau will continue to pursue violations of the shipping statutes aggressively, and will continue to offer legal advice and support to the Commission staff.



K. BUREAU OF INVESTIGATIONS

The Bureau of Investigations monitors the activities of, and conducts investigations of alleged violations by ocean common carriers, non-vessel-operating common carriers, freight forwarders, shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission.

The Bureau maintains a staff of 47 personnel located in the Headquarters Office in Washington, D.C., and District Offices in the major port cities of Houston, Los Angeles, Miami, New Orleans, New York, San Francisco, and Hato Rey, Puerto Rico. In addition to investigative and surveillance functions, each District Office represents the Commission within its jurisdiction, provides liaison between the Commission and the maritime industry and the shipping public, collects and analyzes intelligence of regulatory significance, and assesses industry-wide conditions for the Commission.

The Bureau investigates significant competitive practices pursuant to major Commission-approved malpractice programs. In addition, the Bureau investigates a full range of violations on a local level. These activities may also be carried out in conjunction with fact-finding, formal, or court proceedings.

The following practices are subject to ongoing investigations conducted by the Bureau:

- o Illegal rebating by carriers and receipt of illegal rebates by shippers, non-vessel-operating common carriers, and shippers' associations;**
- o Misdemeanors and misdeclarations of cargo or other malpractices of carriers, shippers, consignees, and other persons;**

- o **Activities of ocean common carriers who are parties to agreements whenever it appears that such agreements and modifications have been implemented prior to filing with the Commission or are being carried out in violation of the Shipping Acts;**
- o **Failure by common carriers to file appropriate tariffs covering their rates and charges or to charge rates that are in effect and on file with the Commission; and,**
- o **Operating as an ocean freight forwarder without a license issued by the Commission or contrary to statute or regulation.**

The Bureau's surveillance activities include:

- o **Review of service contracts to determine compliance with statute and regulation.**
- o **Review of non-vessel-operating common carrier operations.**
- o **Post-licensing and routine compliance checks of licensed freight forwarders to determine whether their operations conform with regulatory requirements.**
- o **Audits of passenger vessel operators to ensure the financial protection of cruise passengers.**

Bureau 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 within a District.

The Bureau assists the Bureau of Hearing Counsel in formal proceedings before the Commission, conducts studies and surveys for use in program development and program

revision, reports trade information, and recommends remedial action.

During fiscal year 1989, the Bureau continued to investigate malpractices in the major trade routes with special emphasis on the Trans-Pacific and Trans-Atlantic trades. The Bureau's intensified efforts in the Trans-Pacific trades resulted in the development of a significant number of investigations into the practices of vessel-operating common carriers, non-vessel-operating common carriers, freight forwarders, and cargo interests. The investigative strategies employed in the *Trans-Pacific Malpractice Program* will be applied to programs focusing on other trades routes in fiscal years 1990 and 1991. The Bureau continues to monitor and investigate conditions in the North Atlantic trades as part of the *Trans-Atlantic Enforcement Initiative* which began in fiscal year 1987.

The Bureau conducted 132 investigations and special inquiries in fiscal year 1989 of which the majority were transferred to the Bureau of Hearing Counsel for enforcement action. (See Chapter III.) A total of 191 surveillance matters were conducted in fiscal year 1989, including audits of selected service contracts, freight forwarder compliance checks, and audits of non-vessel-operating common carriers.

Coordination between the Commission's District Offices and U.S. Customs Service's Field Offices continued in fiscal year 1989, as a part of the Memorandum of Understanding between the agencies for the exchange of enforcement information. Part of the focus of fiscal year 1989 activities was the development an agreement whereby Commission investigators may access information filed by the shipping community in Custom's *Automated Commercial System* electronic database. The exchange of investigative information will increase in fiscal years 1990 and 1991, as both agencies move toward automation and the electronic filing of information regarding their regulatory activities.

During fiscal year 1989, the Bureau continued to provide its investigators with formal training in fraud detection through participation in the *White Collar Crime Training Program* at the Federal Law Enforcement Training Center ("FLETC") in Glynco, Georgia. In addition, all District Office personnel were provided with training in the use of automated systems in support of Bureau operations. Training activities in fiscal 1990 will focus on the enhancement of data processing skills for all Bureau personnel, continued participation in FLETC's advanced training programs, and mid-level supervisory and management training for senior investigative personnel.

In fiscal year 1989, the Bureau initiated hiring actions in the Houston, Los Angeles, New Orleans, and Puerto Rico District Offices. A Special Assistant to the Bureau Director was also hired in August 1989 to provide additional expertise and guidance in the planning, coordination, and evaluation of the Bureau's target malpractice program. This augmentation of Bureau personnel resulted in a marked increase in the number of field investigations conducted by the Bureau.

At the beginning of fiscal year 1989, there were 187 field investigations in progress. During the year, 323 new field investigations were initiated, providing 510 cases on hand and scheduled for inquiry. Completed investigations totaled 257, leaving 253 cases pending at the end of the fiscal year. Appendix F summarizes the Bureau of Investigations' activities.

L. ADMINISTRATION PROGRAM

Office of the Director Bureau of Administration

The Bureau of Administration is responsible for the direct administration and coordination of the:

- 1. Office of Administrative Services**
- 2. Office of Budget and Financial Management**
- 3. Office of Personnel**
- 4. Office of Special Studies**

Many of the functions and achievements of the Bureau of Administration are reflected in the narratives for these Offices (infra).

The Office of the Director is responsible for coordinating the procurement of the Commission's ATFI system. In fiscal year 1989, the following major accomplishments related to the ATFI procurement process were achieved:

- o The Commission issued a decision in an ATFI Notice of Inquiry proceeding in which it decided to retain the original functionality of the system, including remote retrieval of tariffs by the public;**
- o Issued a second draft, and then a final, Request for Proposals ("RFP") to over 200 bidders;**
- o Received and evaluated offers from private sector firms (or teams of firms) in response to the RFP;**
- o Awarded a contract for the initial two phases of the system; and,**

- o **Had its new contractor commence work on the first phase of the system, i.e., "Finalizing the ATFI system concept" (including validation of requirements).**

In fiscal year 1990, the ATFI contract permits the Commission's exercise of contract options for Phases III and IV, i.e., development and operation as a Prototype system, if certain findings are made. Full operation of the system is expected to begin in fiscal year 1991.

The Office of the Director coordinated and edited the Commission's *27th Annual Report to Congress*.

The Director is Agency Contact for *FEMA* and Commission representative, as Principal Management Official, to the *Small Agency Council*. Additionally, the Director is the Executive Secretary and Committee Management Officer of the Commission's *Section 18 Study Industry Advisory Committee*, which met in April 1989.

1. Office of Administrative Services

(a) General Office Responsibilities

The Office of Administrative Services 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 of Administrative Services reports directly to the Director, Bureau of Administration.

The office's support programs include communications, procurement of administrative goods and services, property management, space management, printing management, mail and records services, reproduction and graphic services, facilities and equipment maintenance, and transportation. The office's major functions are to secure and furnish all necessary 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 *Federal Acquisition Regulation (FAR)*, the *Federal Property Management Regulations (FPMR)*, the *Federal Information Resources Management Regulation (FIRMR)*, and other appropriate Federal guidelines.

(b) Office Program Objectives

The program objectives of the Office of Administrative Services are to:

- o Execute Commission contracts and administer these and any other procurement matters which obligate the Government to expenditure of funds;**
- o Control and administer the Commission's acquisition, utilization, inventory, maintenance, and disposition of property;**

- o Develop and coordinate a comprehensive telecommunications program for Washington headquarters and at all Commission field offices, which includes installation and maintenance of all telecommunications equipment and features;**
- o Administer programs for improvement of the workplace environment and other space utilization operations for headquarters and field locations, which include planning, negotiating, drafting and interpreting architectural drawings and specifications, and assigning space to and providing furnishings for offices;**
- o Manage the receipt, storage, issuance and inventory of all supplies, forms and accessories required in support of Commission operations;**
- o Coordinate and control all printing, duplicating, copying and graphic services, whether provided in-house or by outside sources;**
- o Regulate receipt, distribution and dispatching of mail;**
- o Coordinate the use of the building's physical facilities at headquarters with respect to maintenance, security and parking;**
- o Arrange for transportation services for all Commission locations;**
- o Conduct safety inspections and coordinate the Commission's emergency evacuation program;**
- o Manage the retention, transfer, and disposal of Commission records; and,**

- o **Direct the Commission's participation, development and goal setting under the Small Business Act.**

(c) Accomplishments

During fiscal year 1989, the Office of Administrative Services:

- o **Initiated the lease renewal process for Headquarters space and provided justification package to GSA;**
- o **Provided temporary space for the Houston field operation and initiated a dialogue with GSA for establishing a permanent location;**
- o **Initiated the relocation process to expand and move the Los Angeles field operation to a larger facility and better location;**
- o **Established an automated property inventory of agency furniture and equipment, and revised the program for regular excessing and disposal of unserviceable items;**
- o **Restructured the mail and supply operations, including staffing changes, and duty and responsibility adjustments;**
- o **Printed and distributed two (2) draft RFPs and the final RFP for award of the FMC's Automated Tariff Filing and Information system (ATFI) contract;**
- o **Procured and distributed required furnishings and equipment needed for implementation of the ATFI program throughout the FMC Headquarters and field locations;**

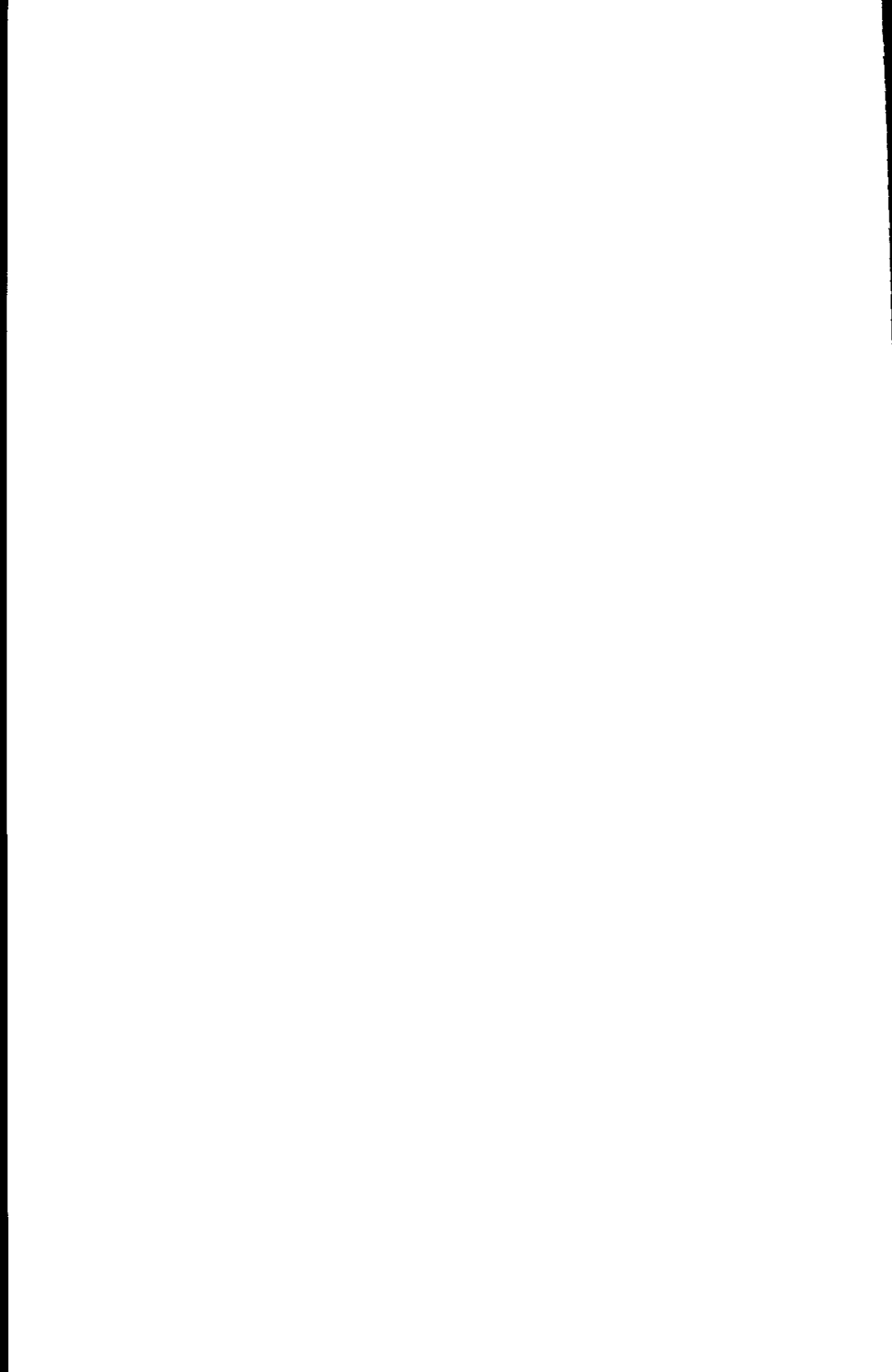
- o Arranged for expert consultants for program initiatives in both the Bureau of Economic Analysis and Bureau of Investigations;**
- o Established the new Office of the Inspector General at the Headquarter's location, rearranged space allocation, and made alterations as necessary for the new operation; also, arranged for an expert consultant to assist the Inspector General in the development of program initiatives.**
- o Revised and upgraded position descriptions for professional and technical OAS staff for upward mobility and career development;**
- o Conducted an FTS (telecommunications) study on Headquarters and field usage and provided recommendations for future needs;**
- o Established a program for procuring temporary clerical assistance;**
- o Printed and distributed the Section 18 Report and Compendium on the Shipping Act of 1984;**
- o Conducted a copy management study for Headquarters and field locations, made upgrades to the Headquarters current copying program, and recommended purchasing (vs leasing) of field office copiers;**
- o Disposed of and replaced an obsolete word processing system throughout the FMC Headquarters facility;**
- o Conducted an internal activity review of the procurement program and made noted adjustments to improve its effectiveness, recommending staffing changes as appropriate;**

- o **Drafted the Congressional response on the FMC's property disposition practices; and,**
- o **Revised the Commission Order on Long Distance Telephone Usage.**

(d) Office Prognosis

In fiscal year 1990, the Office plans to conclude the initiatives begun in fiscal year 1989 along with finalizing objectives surrounding the following:

- o **Establishing a credit card program for small purchases;**
- o **Planning procurement initiatives to upgrade telecommunication instruments and systems throughout Headquarters and field locations;**
- o **Re-establishing and automating vendor/bidder list reference files as procurement informational resources;**
- o **Resolving ongoing facility concerns over handicap accessibility;**
- o **Continuing office initiative of revising OAS related Commission Orders, Managing Directives, and Standard Operating Procedures specifically in the areas of procurement, property, and telecommunications; and,**
- o **Resolving and finalizing space initiatives in Headquarters, Los Angeles, and Houston.**



2. Office of Budget and Financial Management

(a) General

The Office of Budget and Financial Management administers the Commission's financial management program and is responsible for optimal utilization of the Commission's physical, fiscal, and staffing resources. The Office is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the *Congress* and the *Office of Management and Budget*. The Office also administers internal controls systems for agency funds, travel and cash management programs, and the Commission's imprest fund. The Director of the Office is the Commission's Chief Financial Officer.

(b) Objectives

The objectives of the Office are to:

- o Submit annual budget justifications and estimates to *OMB* and the *Congress*;**
- o Execute the budget to ensure appropriated funds are properly expended;**
- o Prepare regular financial reports to aid management decisions;**
- o Administer the control system over workyears of employment;**
- o Collect all fees and forfeitures due the Commission;**
- o Process payments to vendors as efficiently and in accordance with the *Prompt Payment Act*;**

- o **Ensure resources are used properly to avoid fraud, waste, error, and abuse;**
- o **Process travel orders and vouchers within established time limits and in accordance with governing regulations;**
- o **Review internal controls and accounting procedures to ensure that they conform to existing regulations, and develop procedures to correct deficiencies; and**
- o **Administer the Commission's *Imprest Fund* program and manage the Commission's *Cash Management Program*.**

(c) Achievements

During fiscal year 1989, the Office of Budget and Financial Management:

- o **Collected and deposited \$4,888,328 from user fees, fines, collections, freight forwarder licensing and vessel certification fees;**
- o **Provided the *Cash Management Division* of the *Department of Treasury* with data on the agency's participation in the electronic funds transfer of employee paychecks and allotments, as well as the agency's participation in the *Diner's Club Credit Card System*;**
- o **Prepared Merit Pay and award calculations;**
- o **Coordinated and prepared budget justifications and estimates for the fiscal year 1990 *Congressional* budget and the fiscal year 1991 budget to *OMB*;**
- o **Participated in *OMB* and *Congressional* budget hearings;**

- o **Managed the Commission's *Travel and Cash Management* programs;**
- o **Provided management with monthly status reports on workyears, funding, travel and receivables;**
- o **Reviewed and updated financial management and accounting control procedures to ensure compliance with *OMB, GAO* and *Treasury* guidelines;**
- o **Assisted the *Office of Thrift Supervision*, formerly the *Federal Home Loan Bank Board*, in producing the *Prompt Payment Report* to *OMB* for 1989;**
- o **Prepared an *Impact Statement* in response to *OMB's* proposed reductions in FY 1989 appropriations and an analysis of increased pay costs associated with the FY 1989 and 1990 pay increases;**
- o **Participated in the planning strategy for tariff automation;**
- o **Completed office procedures and an internal control manual; and,**
- o **Studied the use of a commercial credit card for small purchases.**



3. Office of Personnel

The Office of Personnel plans and administers personnel management programs, including recruitment and placement, training, position classification and pay administration, occupational safety and health, employee counseling services, employee relations, performance appraisal, incentive awards, and retirement. Significant achievements during fiscal year 1989 are outlined below.

(a) Program Development

A new Commission Order 115, *Performance Management System Including Senior Executive Service (SES) Performance Appraisal System* was finalized and published. The new order, which incorporates all of the changes mandated by FPM 430-22, was circulated to all managers and supervisors for comment prior to issuance and their comments were incorporated to the extent possible. The order was approved by OPM as meeting all the requirements of law and regulation. A major goal of the new order is to simplify, as much as possible, a complex procedure and to make it as consistent as possible with the PMRS system.

A new Commission Order 114, *Annual Leave Transfer Program*, was prepared and issued. Under the provisions of this program, a percentage of accrued annual leave of a Commission employee can be donated to another employee who needs such leave because of a medical emergency. Since the beginning of the program, the Commission's four qualified leave recipients and recipients at other agencies have received over 1200 hours of annual leave. In every instance, applications to become leave recipients have been acted upon within 24 hours. The experimental *Leave Bank Program* was studied for possible use at the Commission but ultimately rejected because the present program is working so well.

The Commission's *Drug Free Workplace Plan* was amended to incorporate the comments and suggestions of the *Interagency Coordinating Group* and resubmitted to the Group for review and approval. The Office also made arrangements for the Commission to be included in the *Interior Department's Request for Proposal* for collection and testing services.

Commission Order 65, *Administrative Grievance System*, was amended to exclude from its coverage requests for reconsideration of non-SES performance appraisals executed under the new *PMS* plan.

Commission Order 95, *Executive Resources Board*, was amended to eliminate the prohibition on members succeeding themselves and include the EEO Director as an advisor to the Board.

(b) Recruitment and Placement

Having concluded the largest concentrated recruitment effort since 1978, the Office worked closely with management officials to maintain staffing at authorized levels. Close coordination with the Managing Director's Office, Budget Office, and selecting officials, as well as careful monitoring of turnover and quick advertising and filling of vacancies, was essential to this effort to maximize workyears available to the Commission. During the year, the Commission maintained its high standing among all agencies in percentage of employees with targeted disabilities and offered special salary rates to clerical employees in Washington, D.C., New York, Florida, and California.

An expanded investigative program meant that recruitment efforts were concentrated in the major port cities around the country where the Commission maintains district offices. A major effort was made during the staffing of the new Houston office to attract well qualified minorities and women as candidates. A total of 37 new employees were hired during the year. All schedule C and other personnel matters associated with a change in administration were handled expeditiously.

(c) Employee Relations

The Office prepared a proposal to provide all employees with personalized benefits statements detailing their specific benefits under the health and life insurance, social security, retirement, Thrift Savings Plan, worker's compensation, and leave programs. This proposal was approved and is currently being implemented.

Employee counseling services contracts in Washington, New York, Miami, San Francisco, and Los Angeles were closely monitored during the year and supervisors and employees were advised of the services provided by the contractors. This confidential, voluntary program makes professional counseling and assistance available to covered employees at no charge. Efforts were made to provide counseling services to employees in New Orleans and Houston on an as-needed basis. The several wellness programs presented included seminars on *Time Management*, *AIDS*, *Balancing Work and Family*, *Stress Management*, etc. A bi-monthly counseling services newsletter was distributed to all employees.

Arrangements were made for interested employees nearing retirement to participate in a week-long retirement planning program held by the *Federal Aviation Administration* at no cost to the Commission. The Office also conducted a *Health Benefits Open Season*, sponsored the *Annual Employee Health Fair*, and made the *Check Book Health Benefits Guide* available to employees at no charge.

The Office worked closely with the *Red Cross* to improve agency participation in the blood donor program by establishing a system of coordinators within each bureau and office. These coordinators were trained in the latest techniques to encourage blood donations. Two on-site blood drives were held.

The Office continued to advise supervisors concerning their responsibilities in the areas of employee conduct and performance, including the granting of within-grade increases

and awards, correcting discipline and other problems. In seeking to resolve performance or conduct-related problems, the Office worked closely with Commission legal advisors to ensure that employees affected by adverse actions were accorded their due rights. All employee relations cases were successfully resolved during the year.

(d) Training

The Office worked closely with the Executive Resources Board to address the issues of how to train and develop the Commission's cadre of senior executives, *SES* candidates, and *PMRS* managers and supervisors. This work produced two ERB-sanctioned and Chairman-approved training programs, one for executives and one for the *PMRS* group. Both programs consist of ERB-approved core management training which all covered employees must complete and ERB-approved elective managerial training designed to meet specific individual needs. The *PMRS* on-site training is open to GS 13 thru 15 employees on a first-come, first-served, space available basis. Also a policy was developed and issued to all employees limiting the amount the Commission would pay for credit courses at local colleges.

On-site training programs offered to agency employees included a *Salute to Secretaries Reception and Time Management Workshop*; *Supervising Employee Performance, Conduct, and Leave*; and, a course in *Proofreading*. Approximately 150 instances of off-site training were offered to employees. New procedures were put in to place to speed approval of training requests and follow-up, once the training is completed, to obtain and review course evaluations and assure prompt payment.

(e) Performance Appraisal

With the publication of a new appraisal system for *PMS* employees, *PMRS* managers and supervisors were offered on-site training in performance evaluation and the workings of the new system. In addition, during the rating year, *SES*, *PMRS*, and non-*PMRS* performance appraisal milestones were charted

and issued by the Office to all employees and supervisors; reminder memos and instructions covering mid-year progress reviews, performance appraisal, and new performance plans were prepared and issued on schedule. A plan for the payment of *PMRS* performance awards for the FY 88 appraisal cycle was submitted to the Chairman for approval. All performance awards were timely. On-site audits of all mid-year progress reviews were conducted and an audit conducted to determine that all employees had a position description and performance standards.

(f) Incentive Awards

A campaign to revitalize and promote the suggestion program resulted in a significant increase in the number of suggestions received and approved for implementation during the year.

The Commission's *Incentive Awards Program* was administered in a timely fashion. This included: prompt action on internal awards; successful efforts to revitalize the *Employee-of-the-Month Award* and the *Suggestion Program*; and the nomination of several employees for external awards (e.g., an *SES* rank award, the *Arthur S. Flemming Award*, the *FEIAA Executive of the Year Award*, and the *Disabled Employee of the Year Award*).

(g) Position Classification and Pay Administration

The major recommendations contained in a comprehensive study of the Commission's grade structure were implemented during the year and efforts made to expedite the processing of promotion requests were successful. In addition, the staff closely monitored special pay rates in various locations around the country and issued decisions in three pending highest previous rate cases.

During fiscal years 1990 and 1991, The Office will continue to advise the Commission on all personnel matters and ensure the maintenance of a progressive personnel program within the Commission.

4. Office of Special Studies

(a) General Office Responsibilities

The Office of Special Studies provides leadership and guidance for the agency's information resources management efforts. These efforts support the Commission in every phase of its statutory mission to include: policy and rule making, tariff automation, complaint investigation, litigation and administration. The office is also responsible for the conduct of management analysis and control activities, and energy and environmental impact studies.

(b) Major Accomplishments

During fiscal year 1989, the Office:

- o Developed and began implementation of a plan for the conversion of traditional wordprocessing to microcomputer compatible equipment. A Replacement Plan and schedule was also approved and is presently being implemented. The Office developed and provided micro-computer training classes on-site for headquarters personnel. Specialized micro-computer training classes were developed and provided to each of the Commission's field offices.**
- o Initiated a *Forms Automation Study Group* to evaluate the potential for automation (access, completion, and storage) of current paper-based forms.**
- o Administered the implementation of a SBA 8(a) contract which will provide micro-computers and software for a Local Area Network (LAN) that will serve as the gateway for the planned Automated Tariff Filing and Information System (ATFI). The micro-computers acquired through this contract have**

been installed; training was designed and conducted; and, testing of the LAN prototype was initiated. The target date for activation of the Commission-wide LAN is set for April 1990.

- o Provided technical support and guidance to the ATFI Group in various pre-contract award phases and during the contractor evaluation phase. In August 1989, the ATFI contract was awarded to the Planning Research Corporation (PRC), teaming with Data Exchange International (DXI).
- o Control and authority were centralized over all ADP service contracts. This enables the Commission to establish accountability for systematic review of ADP service contract budgets, performance, and payments.

(c) On-going Activities

- o The *Forms Automation Study* will continue through fiscal year 1990 and should be fully implemented by fiscal year 1991.
- o Implementation of the Commission-wide LAN which will serve as the gateway to ATFI will continue into fiscal year 1990.
- o Technical support and guidance for the development and implementation of ATFI will continue and the office will continue to monitor tasks and schedules to ensure the smooth and timely interface of ATFI to the LAN Gateway.
- o The office will recommended a contract to provide Commission personnel with hands-on PC training in word processing.

- o **The office is developing a proposal to restructure current *"Productivity Measurements"* being reported to the *Department of Labor*.**
- o **Analysis to identify opportunities for automating labor-intensive operations is on-going.**

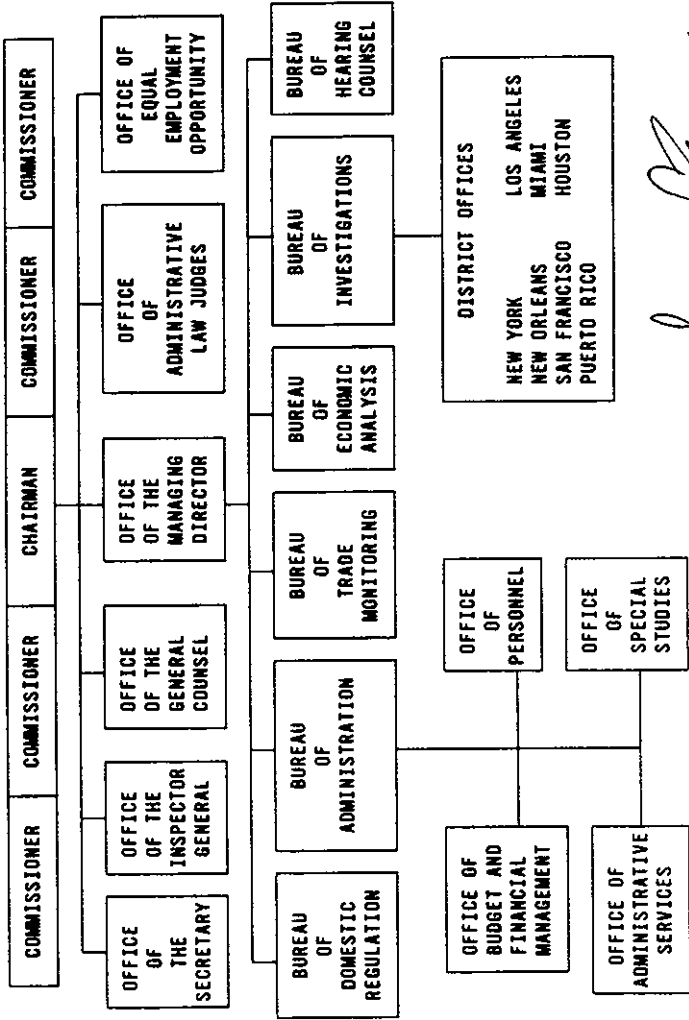
(d) Description of Future Plans or Proposed Activities

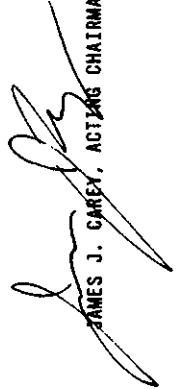
During fiscal year 1991, the Office will continue to develop information resource management strategies which will further the effective, efficient, and economical use of information management principles, systems, and guidelines.

APPENDICES

FEDERAL MARITIME COMMISSION

APPENDIX A




 JAMES J. CAREY, ACTING CHAIRMAN

APPENDIX B

COMMISSION PROCEEDINGS Fiscal Year 1989

Formal Proceedings

Decisions	12
Discontinuances & Dismissals	11
Initial Decisions Not Reviewed	6
Report on Remand from U.S. Court of Appeals	1
Remanded	1
Rulemakings - Final Rules	7
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Total	38

Applications to Correct Service Contracts ... 13

Special Dockets 86

Informal Dockets 15

Oral Arguments 1

APPENDIX C

CARRIER AGREEMENT FILINGS AND STATUS Fiscal Year 1989

Carrier Agreements Filed in FY 1989 (including modifications)

Foreign and Domestic Commerce	277
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	277

Agreements Processing Categories in FY 1989

Forty-Five Day Review	154
Shortened Review	62
Exempt-Effective Upon Filing	79
Rejection of Filing	0
Formal Extension of Review Period	2
Approved Under Shipping Act, 1916	3
	<hr/>
	300

Carrier Reports Submitted for Commission Review

Shippers' Requests and Complaints	120
Minutes of Meetings	1149
Pooling Statements	6
Operating Reports	3
Index of Documents	254
Consultations	120
	<hr/>
	1652

Carrier Agreements on File as of September 30, 1989

Conference	74
Interconference	20
Pooling & Equal Access	23
Joint Service	34
Sailing & Charter	114
Cooperative Working, Agency, & Equipment Interchange	99
	<hr/>
	364

APPENDIX D

TARIFF AND TERMINAL AGREEMENT FILING AND STATUS - FISCAL YEAR 1989

Tariff Filings (Pages)

Foreign Filings	798,993
Domestic Filings	8,684
Terminal Filings	<u>5,071</u>
TOTAL	812,748

Tariff Publications

Foreign:	On Hand 10/1/88	4,399
	On Hand 10/1/89	4,947
Domestic:	On Hand 10/1/88	317
	On Hand 10/1/89	262
Terminals:	On Hand 10/1/88	399
	On Hand 10/1/89	460

Special Permission Applications

Total Received - Foreign	182
Granted	140
Denied	29
Withdrawn	13
Total Received - Domestic	23
Granted	16
Denied	2
Withdrawn	5

Domestic Investigation and Suspension Memoranda

Completed	2
Pending	0

Service Contracts Filed 5,215

Terminal Agreements Received

(including amendments)	283
On Hand 10/1/88	623
On Hand 10/1/89	750

APPENDIX E

CIVIL PENALTIES COMPROMISED OR ASSESSED Fiscal Year 1989

Allstate Trading Co.	\$120,000
Aloha Pacific Cruises Limited Partnership & S.S. Monterey Limited Partnership	7,500
American Transport Lines, Inc.	10,000
Amertrans International Co.	5,000
Benel International Co.	2,000
Big Roc Tools Inc.	11,000
Coaster Company of America, Inc.	57,500
Crossocean Shipping Co. (Jugolinija)	185,000
D.B. Berelson & Co.	52,500
E.K. Fasteners, Inc.	88,000
Elegant Products Inc.	10,000
<i>Flairtime</i>	15,000
Food Products International, Inc.	17,500
Greenball Corp.	100,000
Hanstai International Inc.	70,000
Intex Corporation	40,000
Korea Shipping Corp.	38,000
Lloyd Bermuda Line, Inc.	75,000
Matson Terminals, Inc.	71,223
Mediterranean Shipping Company	50,000
Mitsui Air International, Inc.	22,500
National Shipping Co. of Saudi Arabia	45,000
Orient Overseas Container Line, Inc.	2,550,000
Pac Bridge Shipping Ltd.	200,000
Pacific Motif Inc.	50,000
Philip Karahalís	97,500
Raymond & Whitcomb, NY Inc.	7,500
Showa Line, Ltd.	1,225,000
Society Expeditions Cruise, Inc.	29,850
Tatung Company of America	250,000
U.S. South Atlantic & Gulf/Central American Freight Association	10,000
Warner Forwarders, Inc.	12,500
 	<hr/>
Total Civil Penalties Compromised or Assessed	\$5,525,073

APPENDIX F

FIELD INVESTIGATIONS Fiscal Year 1989

	Surveillance Actions	Other	TOTAL
<i>Pending 10/1/88</i>	41	146	187
<i>Opened FY 1989</i>	191	132	323
<i>Closed FY 1989</i>	139	118	257
<i>Pending 9/30/89</i>	93	160	253

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1989

APPROPRIATIONS:

Public Law 100-459, approved October 1, 1988: 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. III), 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. 5901-5902; Provided, that not to exceed \$1,500 shall be available for official reception and representation expenses.

\$13,585,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 1989.

\$13,585,000

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1989:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	\$155,045
Fines and penalties	\$4,733,283
Total general fund receipts	\$4,888,328

