

**FEDERAL MARITIME
COMMISSION**

**39th
ANNUAL REPORT**

for

Fiscal Year

2000

[Seal]

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

March 31, 2001

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 39th Annual Report of the activities of the Federal Maritime Commission for fiscal year 2000.

Sincerely,

Harold J. Creel, Jr.
Chairman

MEMBERS OF COMMISSION

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

*Delmond J.H. Won
Commissioner
Appointed 1994
Term Expires 2002*

*John A. Moran
Commissioner
Appointed 1998
Term Expired 2000*

*Joseph E. Brennan
Commissioner
Appointed 1999
Term Expires 2003*

*Antony M. Merck
Commissioner
Appointed 2000
Term Expires 2001*

SENIOR COMMISSION OFFICIALS

Counsel to the Chairman *David R. Miles*

Secretary *Bryant L. VanBrakle*

Chief Administrative Law Judge *Norman D. Kline*

General Counsel *Thomas Panebianco*

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

Inspector General *Tony P. Kominoth*

Executive Director *Bruce A. Dombrowski*

Deputy Executive Director *Florence A. Carr*

Director, Bureau of Consumer
Complaints and Licensing *Sandra L. Kusumoto*

Director, Bureau of Enforcement *Vern W. Hill*

Director, Bureau of
Trade Monitoring *Austin L. Schmitt*

I

THE COMMISSION

A. HISTORY

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

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

B. FUNCTIONS

The principal statutes or statutory provisions administered by the Commission are the 1984 Act, the Foreign Shipping Practices Act of 1988 (“FSPA”), section 19 of the Merchant Marine Act, 1920 (“1920 Act”), and Pub. L. No. 89-777. All of these statutes were amended and modified by OSRA, which took effect on May 1, 1999.

The Commission's regulatory responsibilities include:

- # **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or unfair foreign laws, regulations, or business practices that harm U.S. shipping interests or ocean trade.**
- # **Reviewing operational and pricing agreements among ocean common carriers and marine terminals, to ensure that they do not have excessively anticompetitive effects.**
- # **Reviewing and maintaining a database of service contracts between ocean common carriers and shippers, and using this database to guard against anticompetitive practices and other unfair prohibited acts.**
- # **Ensuring that common carriers' accurate rates and charges are accessible to the shipping public in private, electronically accessible systems.**
- # **Regulating rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable and are not unfairly undercutting private competitors.**
- # **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**

- # **Licensing ocean transportation intermediaries (“OTIs”) to protect the public from unqualified, insolvent, or dishonest companies.**
- # **Ensuring that OTIs maintain bonds that protect the shipping public from financial loss.**
- # **Investigating discriminatory rates, charges, classifications, and practices of common carriers, terminal operators, and OTIs operating in the foreign commerce of the U.S.**

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

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

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public. The 1984 Act

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

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

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

C. ORGANIZATION

The Commission is composed of five Commissioners appointed for five-year terms by the President with the advice and consent of the Senate. Not more than three members of the

Commission may belong to the same political party. The President designates one of the Commissioners to serve as Chairman. The Chairman is the chief executive and administrative officer of the agency.

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

In fiscal year 2000, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$14,097,000. That appropriation supported the actual employment of 128 full-time equivalent positions during the fiscal year. The majority of the Commission's personnel are located in Washington, D.C., with area representatives in New York, New Orleans, Los Angeles, Miami and Seattle.

II

THE YEAR IN REVIEW

The Commission's fiscal year once again was strongly influenced by the recently enacted Ocean Shipping Reform Act of 1998 ("OSRA"), which became effective May 1, 1999. Despite its limited resources, the Commission assisted the ocean transportation industry as it adjusted to the new statute and the Commission's implementing regulations. In addition, the Commission completed a major reorganization of its various offices, so that it could more appropriately respond to the changes wrought by OSRA. The Commission also initiated a two-year review of the impact of OSRA on the ocean transportation industry. An interim status report was issued on June 22, 2000, and the Commission continues to gather and analyze data for the issuance of a final report during the summer of 2001.

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

A. DEVELOPMENTS IN U.S. TRADE

In fiscal year 2000, conditions in the major trades improved for ocean carriers operating liner services despite rising fuel prices. Rate recovery programs and cost reduction measures purportedly strengthened the financial position of many carriers. In addition, both carriers and shippers received benefits from the new service contract process under OSRA. Direct contract negotiations outside of the conference structure reportedly resulted in more customized contracts and closer partnerships between individual carriers and shippers.

New developments in shipping services also were noticeable. While some of the major liner operators had been developing value-added logistics services for a number of years, several other carriers announced that they were significantly increasing their investment in this type of service. For example, American President Lines (“APL”) announced that it planned to increase its value-added logistics operations, and anticipated that eventually this facet of its business would overshadow its traditional, core liner operations. In addition, while carriers had been individually developing Internet-based service functions for several years, a group of major carriers were finalizing plans to develop a single Internet portal designed to allow shippers and forwarders to transact a variety of business through a single web site.

In the transatlantic trade between the U.S. and North Europe, notable events included the trade imbalance favoring U.S. liner imports, as well as the high degree of carrier agreement activity. U.S. liner imports exceeded U.S. liner exports by 47 percent. Carriers endeavored to address problems such as uneven capacity utilization levels, depressed freight rates, and container repositioning to meet U.S. import demand. With import growth at 13 percent, members of the *Trans-Atlantic Conference Agreement* (“TACA”) sought to raise freight rates from the levels that had been established during the preceding period. Over the fiscal year, TACA introduced general rate increases (“GRIs”) in the westbound direction, and several modest GRIs in the eastbound direction. The conference’s ability to collectively raise rates, however, was limited by the fact that most of the trade’s cargo moved under individual service contracts. TACA also faced greater competition from independent carriers and lost its majority share of the trade. In the area of agreements, several long-standing vessel-sharing agreements (“VSAs”) in the trade were terminated. However, Maersk Sealand entered into a VSA with the New World Alliance, while P&O Nedlloyd and OOCL, under the Grand Alliance, entered into a VSA with Americana Ships. New carriers also entered as Compania Sud Americana de Vapores, Norasia, and Compagnie Maritime d’Affretement-Compagnie

Generale Maritime expanded into the transatlantic through separate slot charter agreements with established carriers.

Liner import growth from the Mediterranean increased 13 percent, as the U.S. demand for home furnishings from that region remained strong. U.S. liner exports saw some modest growth in response to improved economic conditions among Mediterranean nations. Intense competition among carriers in the trade kept rates low despite an attempt by the *United States South Europe Conference* to increase rates in the stronger westbound direction.

In the Middle East, benefits derived from escalating oil prices stimulated the economies of Saudi Arabia and other oil-producing nations of the Persian Gulf. While U.S. liner export growth slowed during the fiscal year, future projections on the demand for U.S. goods were favorable with the increase in money flowing to oil-rich nations. Liner imports from the Middle East were strong with high consumer demand in the U.S. for such goods as plastics, apparel and furniture.

In Africa, economic and trade conditions remained depressed despite the large influx of financial aid and assistance from international organizations. Trade between African nations and the rest of the world was hampered by significant trade barriers and lack of regional integration and trade-promoting institutions. Liner cargo volume between the U.S. and Africa was modest at approximately one percent of total U.S. trade. Despite these conditions, liner conferences operating in Africa introduced moderate rate increases, while some carriers expanded their services and upgraded vessels on existing services.

Overall, liner trading between the U.S. and Latin America and the Caribbean was weak. Some noticeable improvement in cargo growth, however, occurred in the U.S. trades with the East Coast of South America and the Caribbean. New liner services and vessel upgrades contributed to problems of overcapacity in the region.

Nonetheless, carriers endeavored to coordinate rate recovery programs by implementing GRIs through discussion agreements in the various trades. New surcharges also were imposed by carriers relating to costs incurred from regional government regulation, security, and theft problems. Carrier agreement activity included the formation of a new discussion agreement in the trade between the U.S. Gulf Coast and South America. Also, several existing discussion agreements filed amendments to allow their parties to enter into joint service contracts.

In the transpacific, a trade imbalance continued to favor U.S. liner imports in the eastbound direction from Asia, even though U.S. liner exports in the westbound direction were recovering from the recessionary declines of the preceding years. In response to strong import growth, carrier members of the *Transpacific Stabilization Agreement* (“TSA”) implemented a GRI and several surcharges in the eastbound trade. TSA members further announced plans for future GRIs and surcharges. However, a number of factors, including competition from new carriers, have kept recent rate increases by TSA members relatively low in contrast to preceding years. In the westbound trade, capacity utilization and freight rates for members of the *Westbound Transpacific Stabilization Agreement* reportedly rose during the fiscal year after significantly declining in past years. In particular, rate increases were implemented on U.S. refrigerated produce to Asian nations. As for service matters, carriers increased their all-water services through the Panama Canal for Asian cargo moving to and from the U.S. East Coast. Fears of possible congestion and delays at U.S. West Coast ports during the peak season may have prompted this increase in all-water service.

B. RESTRICTIVE TRADE PRACTICES

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

In fiscal year 2000, the Commission continued its active approach in this area. In particular, the Commission continued to address situations in the People's Republic of China ("PRC") and Japan.

The staff has prepared draft proposals for action to address unfair practices in the PRC. The Commission is monitoring the anticipated accession of the PRC to the World Trade Organization but continues to assess the situation, and is weighing whether formal proposals for action may yet be appropriate to address these circumstances. Should the Commission determine that formal proposals for remedial action are warranted, these proposals will be noticed for public comment prior to their effectiveness.

The Commission continues to monitor regulations and port practices in Japan through the semiannual reports filed pursuant to a 1999 order. There have been recent indications that Japanese efforts at deregulation may have had mixed results. The Commission will continue to watch closely the situation in Japan in the upcoming fiscal year.

Finally, an International Task Force, made up of key personnel in the Office of the General Counsel and the Bureaus of Enforcement,

Consumer Complaints and Licensing, and Trade Analysis, was formally convened in fiscal year 2000. The Task Force meets on a regular basis to identify, evaluate and anticipate foreign practices which might have an impact on U.S. shipping interests.

C. TRADE OVERSIGHT

During the fiscal year, the Commission completed an interim impact study of the newly enacted U.S. shipping legislation, entitled *The Ocean Shipping Reform Act: An Interim Status Report*. The interim report gave an overview of OSRA's legislative reforms and provided a preliminary review of how the industry and the Commission adjusted to the new legislation within the first year of its enactment. As part of the study, the Commission reviewed a sample of service contracts filed via its new Internet filing system to discern significant trends relating to OSRA's reforms. OSRA's initial impact also was evaluated in terms of carrier agreement activity and the voluntary service contract guidelines adopted by major carrier agreements. The Commission also conducted audits to determine the accessibility of freight tariffs electronically published by carriers. Upon completion of the interim report, the Commission began collecting data and information to conduct a more comprehensive analysis of OSRA's impact for a two-year study. As part of the two-year study, the Commission also will issue a formal Notice of Inquiry during the upcoming fiscal year to solicit industry input on relevant OSRA issues. The two-year OSRA Impact Study is scheduled for completion late in the summer of 2001.

Other specific monitoring and research projects undertaken for fiscal year 2000 included: data compilation and analyses for agency testimony and responses to inquiries before various Congressional committees; an examination of voluntary service contract guidelines filed by major agreements; an evaluation of regulations on the content and filing of minutes of agreement meetings; an assessment of agreement reporting requirements; review of a cargo-sharing arrangement in the U.S. to Australia and New Zealand trade, which

resulted in the Commission imposing specific quarterly reporting requirements to facilitate monitoring of the agreement; and responses to informal complaints and requests from shippers on rate and service matters.

D. CONSUMER COMPLAINTS

Fiscal year 2000 saw the failure of several non-vessel-operating common carriers (“NVOCCs”), some of whom had been long-time carriers with fairly sizeable operations. As a result, the Commission received numerous complaints from shippers and freight forwarders that had experienced problems with these NVOCCs. Some of the problems affected commercial shippers, while others concerned individual shippers of household goods and automobiles. Some of the failed NVOCCs had been licensed and bonded, while others were not.

In addition, a number of unlicensed NVOCCs were operating in violation of the bonding requirements. Individual shippers of household goods, often unsophisticated in matters of international transportation, represent a steady and significant market for these firms. As a general rule, such operators offer extremely low rates and, perhaps predictably, provide little or no service to those who use them. Frequently, such NVOCCs have failed to fulfill the transportation commitment, and the individual shipper learns that he has little recourse for recovery of his household goods, much less monies advanced for their transportation.

The Commission’s efforts have resolved a number of these matters for both shippers and forwarders. The informal assistance offered through our consumer complaints efforts, as well as formal actions taken against some operators with a history of egregious practices, have greatly increased public awareness of both the opportunities and dangers that exist today in international ocean shipping.

Also, the year saw a great increase in customer relations complaints against cruise operators. There was an increasing awareness of our presence among both consumer officials and the cruising public. A growing number of state and Federal consumer agencies referred their constituents to the Commission as the primary agency for the processing of cruise complaints. As a result, we received a record number of such complaints. Many of them, however, involved matters beyond the Commission's statutory jurisdiction. We nonetheless endeavored to resolve these matters on an informal basis, often with success.

Two types of recurring complaints seemed to generate a particular degree of frustration among consumers. The first involved air/sea cruise packages arranged by and purchased through a cruise line. Cruise lines would book air passage for the customer, but refuse to take responsibility for its execution. Thus, if the passenger missed the sailing due to a flight cancellation or delay, no refund or compensation would be made to the individual, even though the flight had been purchased through the cruise line. The second type concerned port cancellations and other cruise curtailments that occurred after the commencement of a cruise. Again, cruise line ticket contracts typically provide that no right exists to a refund or compensation in such circumstances. In practice, cruise operators frequently provide some cash or credit compensation. However, cruise lines view these offerings as a free gift, while customers often consider them inadequate.

Late in the year, Premier Cruise Lines permanently ceased operations -- its vessels were seized by creditors and the line filed bankruptcy to liquidate its assets. This event caused hundreds of would-be passengers to approach the Commission for assistance in obtaining refunds of their prepaid travel. Commission staff coordinated closely with the line's surety to encourage the establishment of a procedure for claims filing, even though the Commission has no direct role or authority in this process. Many Commission resources were devoted to disseminating information and

educating the public about the steps to file a claim against Premier's performance bond, including information on our homepage.

E. ENFORCEMENT

The Commission maintains a presence in Los Angeles, Miami, New Orleans, New York and Seattle through area representatives. These representatives serve as a liaison between the Commission and various maritime interests in respective areas and also investigate activity that may violate the Shipping Act of 1984 ("1984 Act").

Following-up on matters arising from a 1998 investigation into alleged ocean carrier malpractices during the peak season in the transpacific trades, the Commission determined that the *Asia North America Eastbound Rate Agreement* ("ANERA") and its members had violated certain provisions of the 1984 Act and the Commission's regulations by entering into service contracts containing so-called "opt-out" clauses. Under these clauses, various members of ANERA would sign on as participating carriers in conference service contracts, but "opt out" of the lower rates made available to the shipper under the contract. The Commission found that this device rendered the rates uncertain as to shipments tendered to carriers "opting out" of such contracts. In a separate but related action, the Commission entered into a compromise agreement with ANERA and its members, under which a sum of \$110,000 was paid for alleged violations of the Commission's regulations in failing to file the "opt-out" provisions of some 105 service contracts in ANERA's essential terms publication.

The Commission collected \$3,232,481 in civil penalties this past fiscal year. These collections represent a wide range of violations in all of our major trade lanes. Although the Commission continues to undertake enforcement activity, as required by its statutory mandate, its primary objective is to encourage voluntary compliance by the regulated ocean transportation industry.

III

MONITORING AND ENFORCEMENT

A. MONITORING

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

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

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

In fiscal year 2000, the Bureau of Trade Analysis prepared a variety of economic analyses and reports on the activities and practices of carriers operating in the U.S. international trades. Projects included: (1) preparation of sections on service contracts, carrier agreements, and tariff accessibility for the Commission's interim status report on OSRA; (2) economic analyses of newly filed major carrier agreements under the competition standards of section 6(g) of the 1984 Act; (3) compilation and analysis of trade and industry data for agency testimony before various Congressional committees, along with responses to Congressional inquiries; (4) an informational memorandum to the Commission examining the voluntary service contract guidelines filed by major agreements; (5) an analysis and outline of major issues concerning the regulations on the content and filing of minutes of agreement meetings; (6) a review of carrier alliance agreements, focusing on developing and implementing specific reporting requirements relating to their operations; (7) responses to various informal complaints and requests from shippers on matters relating to the imposition of rate increases and/or surcharges by certain major agreements; and (8) review of quarterly monitoring report data submitted in accordance with the Commission's regulations.

B. ENFORCEMENT

The 1984 Act establishes an integrated system for the regulation of the shipping and related industries in furtherance of the statutory declaration of policy to ensure a nondiscriminatory, efficient, and economic ocean transportation system for the benefit of international trade of the U.S. The enforcement program represents a major area of Commission activity. A principal goal of the program is to achieve compliance with the provisions of the 1984 Act. Compliance, in turn, provides the pathway to the statutory objectives of the 1984 Act. Enforcement is a traditional means to achieve compliance through deterrence.

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

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

During 2000, the Commission continued its investigations of malpractices, particularly unlawful rebating in the South American trades. Other trades were also the subject of malpractice investigations, including the transpacific and Caribbean trades. These investigations included improper rating practices, such as various forms of secret discounts and absorptions, and unlawful equipment

substitution, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Unlawful activities of certain ocean freight forwarders were also addressed. These included operating without a license, allowing use of a license by others, collection of compensation for services not performed or performed for a related entity, and entering into service contracts with ocean carriers.

Following up on matters arising from a 1998 investigation into alleged ocean carrier malpractices during peak season in the transpacific trades, the Commission determined that the *Asia North America Eastbound Rate Agreement* (“ANERA”) and its members had violated certain provisions of the 1984 Act and the Commission’s regulations by entering into service contracts containing so-called “opt-out” clauses. Under these clauses, various members of ANERA would sign on as participating carriers in conference service contracts, but “opt out” of the lower rates made available to the shipper under the contract. The Commission found that this device rendered the rates uncertain as to shipments tendered to carriers “opting out” of such contracts. In a separate but related action, the Commission entered into a compromise agreement with ANERA and its members under which a sum of \$110,000 was paid for alleged violations of the Commission’s regulations in failing to file the “opt-out” provisions of some 105 service contracts in ANERA’s essential terms publication.

During fiscal year 2000, the Commission collected \$3,232,481 in civil penalties. Settlements were reached with many different segments of the industry (*e.g.*, carriers, shippers, forwarders, and NVOCCs) operating in the U.S. foreign trades (*see* Appendix E).

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. TRANSATLANTIC

Over the course of fiscal year 2000, the trade between the U.S. and North Europe witnessed a widening of the imbalance between liner imports and exports. The strong value of the U.S. dollar against European currencies and the robust U.S. economy stimulated the demand for European imports among U.S. consumers. Relative to the preceding fiscal year, liner imports from North Europe grew by 13 percent in fiscal year 2000. Liner import growth was most prominent in such goods as auto parts, paperboard, glassware, furniture, veneers and wood products from European nations. The trend in U.S. export growth to North Europe, however, remained modest at 3 percent in comparison to the preceding fiscal year. European demand for such major U.S. liner exports as auto parts, chemicals and resins improved, while such goods as U.S. tobacco and cigarettes declined. The projected outlook for U.S. exports appears more favorable as productivity, economic growth, and unemployment in European nations shows improvement for the upcoming fiscal year.

The disparate trade growth created problems for carriers as the trade imbalance between the directional cargo flows grew more pronounced. In fiscal year 2000, U.S. liner imports in the westbound direction exceeded U.S. liner exports in the eastbound direction by nearly 470,000 TEUs, or 47 percent. Consequently, carriers endeavored to address such problems as uneven capacity utilization levels, depressed freight rates, and container repositioning to meet the westbound demand. While capacity utilization by operator varied, the latest trade reports for the second quarter of 2000 placed the overall

capacity utilization of vessels in the westbound direction at 77 percent, while slack demand in the eastbound direction produced an overall low utilization of 56 percent.

With the strong westbound demand, carriers serving the transatlantic endeavored to restore freight rates from the low rate levels of the preceding period. Several months prior to the effective date of OSRA, carriers reduced rates to levels unseen since the recessionary period in the early 1990s.

As conditions stabilized under OSRA, members of the *Trans-Atlantic Conference Agreement* (“TACA”) (No. 202-011375) introduced a series of GRIs primarily aimed at the strong westbound trade growth. Starting in fiscal year 2000, TACA implemented a westbound GRI of \$120 per 20-foot container and \$150 per 40-foot container. Shortly thereafter on January 1, 2000, TACA introduced a GRI of \$600 per 20-foot container and \$750 per 40-foot container in the westbound direction, and \$160 per 20-foot container and \$200 per 40-foot container in the eastbound direction. The westbound GRI included a \$250 per-container surcharge for repositioning empty containers. Industry estimates placed the rate increases at 50 percent westbound and 15 percent eastbound. TACA members, however, stressed that the effects of the GRI were minimal given that many shippers had renegotiated their contracts when OSRA became effective and were not up for renewal until April 2000. Before the close of the fiscal year, TACA introduced additional GRIs affecting the westbound direction in both April and September. The conference also implemented a series of GRIs in the eastbound direction from the U.S. Pacific Coast to North Europe. TACA further announced that its business year in the westbound direction was redefined to start on April 1, 2001, rather than coinciding with the calendar year as in the past.

While some level of rate increases reportedly held in the westbound direction, the full impact of TACA’s GRIs was mitigated by the fact that most of the trade’s cargo moved under individual

service contracts with independently negotiated rates outside the conference. Estimates placed the amount of cargo moved under individual service contracts at 80 percent for the TACA carriers. In addition, the conference's market power was further diminished, as it no longer commanded a majority share of the trade. The latest trade reports for the second quarter of 2000 put TACA's collective market share at 48 percent in the westbound direction, and 46 percent in the eastbound direction. This was down from the second quarter of 1999 when TACA still held a slight majority share of the trade at 52 percent westbound and eastbound. TACA's largest independent competitors in the transatlantic included China Ocean Shipping Company ("COSCO"), Evergreen, K Line, and Lykes Lines.

There was considerable agreement activity in the transatlantic trade, including a major reconfiguration of VSAs. With the purchase of Sea-Land's international services by Maersk, thereafter renamed Maersk Sealand, the long-standing VSAs between Sea-Land, Maersk, P&O Nedlloyd, and Orient Overseas Container Line ("OOCL") were terminated. In their place, Maersk Sealand entered into a space charter and sailing agreement with the New World Alliance (No. 232-011722), which includes APL Ltd., Mitsui O.S.K. Lines, and Hyundai Merchant Marine. Together the parties share vessel space on three service strings operating between the U.S. and North Europe with a total weekly capacity of 12,000 TEUs. P&O Nedlloyd and OOCL, under the Grand Alliance (No. 208-011602) in conjunction with NYK Line and Hapag-Lloyd, entered into a space charter and sailing agreement with Americana Ships (No. 232-011705). Americana Ships is a subsidiary of CP Ships that includes Lykes Lines and Transportacion Maritima Mexicana. The Grand Alliance/Americana parties offer a combined capacity of 15,000 TEUs a week with five weekly sailings between the U.S. and North Europe.

In addition, Compania Sud Americana de Vapores ("CSAV") and its subsidiary Norasia entered the transatlantic trade through a slot charter agreement with Senator Lines (No. 217-011700). Compagnie Maritime d'Affretement - Compagnie Generale Maritime ("CMA

CGM”) also entered the trade through a slot charter agreement with Maersk Sealand and the New World Alliance (No. 217-011726). Also, TACA amended its agreement to provide for a temporary slot chartering arrangement in an effort to manage overcapacity during the period of historically low demand between the months of December and February. The arrangement will permit TACA members to coordinate the temporary withdrawal of underutilized vessels from service for routine maintenance and/or repairs and to space charter among each other in order to maintain sufficient vessel capacity to meet cargo demand during the program period.

B. MEDITERRANEAN

The Mediterranean countries saw growth continue in fiscal year 2000, though at a relatively modest rate. Economic growth during fiscal year 2001 of 2 to 3 percent is forecast throughout the region. The growth of Italy’s gross domestic product (“GDP”), though increasing from 1 to 2 percent, remains one of the lowest in the European Union. The Spanish economy continues its strong growth, with real GDP growth remaining above 3 percent. Imports from the region to the U.S. have continued their strong growth due to the strength of the domestic U.S. economy.

The larger economies of the Mediterranean countries, Italy and Spain, saw exports from the U.S. grow 2 and 4 percent respectively, continuing a slowdown which began two years ago. The primary commodities moving into the region remained unchanged, with imports of the region’s top six commodities accounting for over half the TEU growth. Increased demand for U.S. lumber, woodpulp, and paperboard in the recovering economy of Italy accounted for much of the increase in cargo volume for the Mediterranean trade.

Imports from the Mediterranean grew by 13 percent. A strong U.S. housing market continued to pull in increasing imports of furniture, tiles, and other home furnishings. Italian furniture, up 32 percent in volume, topped the list in terms of new growth. While

demand in the U.S. housing sector slowed during the fiscal year, continued weakness in the euro may minimize any slide in trade from the Mediterranean.

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

C. MIDDLE EAST

After 5 years of slowing growth rates in the Israeli economy, GDP growth began to pick up during fiscal year 2000. Improving domestic demand and growing export revenues are credited for the turnaround. Foreign investment also has been strong. Saudi Arabia and the other Gulf countries have benefitted from a doubling of oil prices. This has provided a powerful stimulus to the economy. In addition, the Saudi government has asserted that it is committed to economic reforms which should further improve the economy.

Growth in U.S. exports to the Middle East countries slowed again during the fiscal year. However, growth is expected to pick up in 2001, due to recent improvements in the regional economies. The sharp increase in oil prices has increased the amount of money available to spend on U.S. goods. Additionally, increased foreign investment in Israel should change the type of U.S. exports to Israel from lower-valued cargo towards higher-valued products during fiscal year 2001.

During fiscal year 2000, imports from the Middle East were strong, with Israel being the biggest contributor to the growth. Israeli furniture cargo volume continued to be strong, although its growth rate declined further during the fiscal year. Shipments from the rest

of the region also were strong, led by plastic products, apparel and furniture.

D. AFRICA

Africa contains some of the poorest countries in the world. Many have experienced no change in per capita income since the 1960s. In addition, according to the African Development Bank, in fiscal year 2000 the region had the highest average population growth rate of 2.7 percent and one of the lowest average GDP rates of 3 percent.

During calendar year 2000, the World Bank (“the Bank”) and its affiliated agencies invested more than \$13 billion in various projects. These resources went into the further development of Africa’s transportation infrastructure, natural resources and public sector management. The Multilateral Investment Guarantee Agency, responsible for guaranteeing direct investment to member countries of the Bank, issued 67 contract guarantees amounting to \$3.8 billion for projects in 17 countries.

During the fiscal year, African trade with the U. S. and the rest of the world was restricted by high trade barriers and a lack of regional integration and trade-promoting institutions. The U.S. Congress passed the African Growth and Opportunity Act in 1999, placing a greater emphasis on trade with Africa. The U.S. approach to help Africa with its trade problems is focused on developing more open economies, promoting regional integration, encouraging participation in the World Trade Organization, facilitating access to new technology (including telecommunications, Internet access and electronic commerce) and removing trade barriers.

In fiscal year 1999, the volume of trade between the U.S. and Africa was estimated at 114,323 TEUs of U.S. exports and 81,087 TEUs of U.S. imports. Fiscal year 2000 year-end projections anticipate both U.S. imports and exports to increase by slightly more

than 8 percent over fiscal year 1999 trade volumes. Main U.S. exports consisted of machinery, transport equipment, aircraft and parts, civil engineering equipment, data processing machines and parts, and wheat. U.S. imports included crude oil, minerals (mainly platinum and diamonds), cocoa beans and petroleum oil. U.S. trade with Africa (in terms of liner cargo volume) was approximately 1 percent of the total U.S. trade during the fiscal year.

Freight rates, which had begun to stabilize and increase moderately during calendar year 1999, improved further during the fiscal year. The *U.S. Southern Africa Conference* ("USSAC") (No. 202-011259) implemented a GRI of \$150 per 20-foot container and \$250 per 40-foot container. It increased refrigerated cargo rates by \$300 per 20-foot container and \$500 per 40-foot container, and breakbulk by 10 percent. In the northbound subtrade, USSAC exempted the U.S. West Coast from the increases. Meanwhile, the *West African Discussion Agreement* (No. 205-011510) increased terminal handling charges and its freight-all-kinds rates to all West African ports.

Some African ports made little progress toward modernization and improvement of services. Many lacked basic equipment, such as cranes for loading and unloading. These conditions, in addition to uncollected empty containers, especially at the ports of Mombasa in Kenya and Dar es Salaam in Tanzania, led to congestion and delays. The ports of Cape Town in South Africa and Walvis Bay in Namibia made some improvements by upgrading equipment during the year.

Shipping services to Africa were expanded mainly by the upgrading and addition of vessels to existing services. Mitsui O.S.K. Lines launched a dedicated intra-West Africa service to enhance its operations; Lykes Lines expanded its North America/Africa multi-purpose service by adding ports of call in West Africa on inducement; and P&O Nedlloyd added vessels to its existing service to South

Africa allowing it to establish fixed-day weekly calls at Port Elizabeth and Durban.

No new agreements nor any major amendments to existing agreements were filed in the African trade area.

E. LATIN AMERICA AND THE CARIBBEAN

In South America, Ecuador's and Colombia's weak currencies forced a reduction in interest rates in order to avoid runs on their respective currencies. In addition, the value of Brazil's currency dropped sharply after it was floated during calendar year 1999. It became necessary to devalue Brazil's real, which led to economic stagnation. Brazil nevertheless managed to implement its economic objectives, and with the help of the Economic Commission for Latin America and the Caribbean, the economy improved.

U.S. imports from the East Coast of South America declined slightly during the first half of fiscal year 2000 before rebounding to the levels achieved in the third quarter of 1999. U.S. exports to the East Coast of South America continued to improve. The trade experienced strong demand for industrial and raw materials, forest products, fabrics, tires, tubes, tobacco, consumer goods, chemicals and photographic film. Carriers serving the trade noted that capacity utilization levels increased to 62 percent for U.S. imports and 61 percent for U.S. exports during the fiscal year.

On the other hand, U.S. exports to the West Coast of South America were less vibrant than U.S. exports to the East Coast of South America. Colombia, Peru and Chile experienced slow export growth mainly due to political unrest and a weak currency in Colombia. U.S. imports from the West Coast of South America remained flat, with no significant growth. The heavy rains and floods in Chile, Colombia, and Peru contributed to a decline in U.S. imports of fruits, vegetables and fish. In the U.S./West Coast South America

trade, carrier capacity utilization levels reportedly were 56 percent for U.S. exports and 65 percent for U.S. imports.

Overcapacity and instability in the region's largest economies inevitably led to rate reductions. Rates reportedly fell by up to 30 percent for some commodities and undoubtedly contributed to the demise of some shipping agreements. Toward the end of the fiscal year, as trade conditions improved, some carriers initiated rate recovery programs. The *East Coast of South America Discussion Agreement* ("ECSADA") (No. 205-011421) filed a GRI of \$500 per 20-foot container and \$1,000 per 40-foot container, effective April 1, 2000. Bunker surcharges also increased on April 15, 2000, by \$25 per 20-foot container and \$50 per 40-foot container. ECSADA planned two more GRIs effective October 1, 2000, and April 1, 2001. The *West Coast of South America Discussion Agreement* (No. 205-011426) implemented a similar rate recovery program. However, because of economic instability (*i.e.*, political unrest and weak currencies), the GRI did not hold up as well as carriers expected. Future GRIs are anticipated -- reportedly, they will be implemented on a country- and commodity-specific basis.

The Commission received shipper complaints concerning the imposition of an equipment imbalance surcharge in the northbound trade from the East Coast of South America to the U.S. East and Gulf Coasts. After postponing the surcharge for a brief period, the carriers rolled the surcharge into their base tariff rates. Subsequently, base tariff rates were lowered in response to competitive conditions in the trade. Informal inquiries by Commission staff indicated that the net effect was a slight increase in rates for some cargo movements.

During the fiscal year, Colombian customs authorities imposed regulations that subjected carriers to severe fines for inconsistencies and/or errors in cargo manifests or other shipping documents, including those associated with consolidated NVOCC shipments. In response, carriers adopted a Colombian surcharge of

\$100 per 20-foot container or \$5 per ton. Colombian customs authorities have promised to rescind the regulations, and the carriers canceled the surcharge.

U.S. trade with Central America and the Caribbean was not unlike that of the trade with South America. The same products are traded in both, and market conditions are similar. During fiscal year 2000, U.S. exports to the Caribbean increased by an estimated 4.8 percent over fiscal year 1999, and included such commodities as manufactured goods, grocery items, general cargo, automobiles, household goods, and medical supplies and equipment. U.S. imports from the Caribbean increased by 5.8 percent during fiscal year 2000. The main imports were bananas, coffee, cocoa beans and cocoa products, textiles, and synthetic resins.

Rate increases were initiated by *The Central American Discussion Agreement* ("CADA") (No. 205-011075) in the melon trade, increasing the tariff rate to \$2,800 per container from Central America to South Florida. Also, some members of CADA increased their tariff rates on coffee shipments by \$100 per 20-foot container, and 40 cents per bag on bulk shipments. Given current trade conditions, it is not yet known if these rates will hold.

In response to serious problems with theft, CADA continued to levy a surcharge on all goods originating from or bound for Guatemala to cover this risk. CADA reported that its carriers experienced greater theft in the Guatemalan trade than elsewhere. Many shippers opposed the surcharge and actively pursued ways of having it removed. However, toward the end of fiscal year 2000, CADA approved two additional theft risk surcharges for cargo moving in the U.S./Honduras and Nicaraguan trades.

During the fiscal year, several new shipping services were added to the Latin American and Caribbean trades, while many existing services were upgraded. This led to continued overcapacity in this region. However, as the fiscal year came to an end, more

carriers were participating in space-chartering and equipment-sharing agreements in an attempt to address market instability caused by container imbalances and overcapacity. Agreements filed and amended during fiscal year 2000 continue to reflect the general trend since OSRA, *i.e.*, less focus on conferences and more reliance on discussion and operational agreements. A few examples are highlighted below:

- # The *Gulf/South America Discussion Agreement* (No. 205-011707) permits its members to discuss and voluntarily agree on rates and related matters in the trade between the U.S. Gulf and Colombia, Ecuador, Peru, Chile, Argentina, Brazil, Venezuela and Trinidad.

- # The *IMC/Colombia Express Space Charter and Sailing Agreement* (No. 232-011715) between Industrial Maritime and Colombia Express, L.L.C. applies to the trade between the U.S. Gulf and Colombia, Trinidad, and Venezuela.

- # The *Colombia Discussion Agreement* (No. 205-011367) and the *Venezuelan Discussion Agreement* (No. 205-011383) amended their respective agreements to allow their members to enter into not only individual service contracts, but also joint service contracts. Prior to OSRA, only conferences were permitted to execute service contracts involving multiple ocean carriers.

F. TRANSPACIFIC

On October 15, 1999, the member lines of the *Transpacific Stabilization Agreement* (“TSA”) (No. 205-011223), a discussion forum and policy-setting group of 14 carriers operating in the

eastbound trades from the Far East and the Indian Subcontinent, announced a proposed GRI of \$400 on service contract and tariff rates, to take effect on May 1, 2000. In addition, TSA announced that a peak season surcharge (“PSS”) of \$300 per 40-foot container would be levied between July 1, 2000, and October 31, 2000. However, due to a number of factors, including new entries in the trade, contract confidentiality measures, and early discounting during service contract negotiations, TSA lines reportedly produced less than half of the revenue sought in the announced GRI. Some larger shippers reportedly avoided paying any GRI, while many shippers are said to have held the increase to between \$100 and \$200 per 40-foot container.

This slippage contrasted sharply with the reported success of TSA lines’ implementation of their \$900 to \$1,000 GRI during the previous (February through May 1999) contracting season. Competition from the new lines that entered the inbound trade appears to have kept rate increases relatively low for port-to-port carriage, while somewhat larger increases appear to have stuck for intermodal service. The existence of a number of active independent lines, such as Mediterranean Shipping Co. (“Med-Shipping”), Zim, Senator Lines, Cho Yang Shipping Co., China Shipping Container Line, Norasia, Trans-Pacific Line, Great Western Steamship, and Fesco Straits Pacific Line, has reduced TSA’s overall market share to about 80 percent, while providing enough additional vessel capacity to mitigate fears of a serious shortage of space during the Christmas season.

Another feature of the Asia import trade this year was the increase in Asia-to-U.S. East Coast all-water services through the Panama Canal. The all-water services provided included a number of new VSAs, and the expansion of existing services by major lines, supporting the growing cargo volumes going to U.S. East Coast destinations where several major importers have established new distribution centers. Fear of possible congestion problems and railroad delays at U.S. West Coast ports during the August through

October peak season may also have made the all-water option attractive to some shippers.

TSA members introduced a number of somewhat controversial surcharges -- presented as cost recovery measures -- in the eastbound trade this year, including a bunker adjustment surcharge, various terminal handling charges and other fees, and a carrier-provided chassis charge (to become effective January 1, 2001) of \$60 per chassis.

Looking ahead to next spring's contracting season (for the May 2001 through April 2002 contract year), TSA lines have announced a \$525 per 40-foot container GRI for Asia cargo going to West Coast ports, \$600 per 40-foot container for shipments moving through U.S. West Coast ports to inland points in California, Oregon and Washington, a \$600 per 40-foot container increase for cargo moving to U.S. East Coast ports via all-water or mini-landbridge service, and \$750 per 40-foot container GRI for intermodal movements to other inland points via either U.S. West Coast or U.S. East Coast ports. In addition, a \$300 PSS was also announced. However, despite the fact that Asia's export trade volumes continue to grow, the effect of confidential contracting on TSA's pricing solidarity, and expected increases in new tonnage in the trade in 2001 and beyond, suggest that final negotiated contract rates may, once again, fall short of the proposed rate increases.

During fiscal year 2000, freight rates in the U.S. export trade to the Far East continued to recover as a result of Asia's ongoing economic revival, following the financial and economic crises in the region that began in mid-1997. Liner exports to the Far East grew by 10 percent in the first quarter of 2000 over the same period in 1999. South Korea and China have been the main export growth markets in the region, but there have also been solid gains throughout Southeast Asia and in Taiwan.

Although the U.S. export trade is again expanding as a result of Asia's ongoing recovery from the financial and economic crises of the last two years, the transpacific trade remains seriously imbalanced.

For members of the *Westbound Transpacific Stabilization Agreement* (No. 205-011325), a discussion agreement of the largest carriers in the westbound Pacific trades, both capacity utilization and freight rates reportedly rose in fiscal year 2000, after having declined by roughly 50 percent between 1998 and 1999. In particular, there have been rate increases for relatively high-value agricultural commodities such as refrigerated produce. If westbound market conditions continue to improve, certain lower-value commodities, including scrap metal, wastepaper, and cotton, also could be subject to rate recovery measures.

G. WORLDWIDE

Although rising oil prices resulted in significantly higher bunker fuel costs this year, most lines reported improved financial positions. An ongoing and substantial rate recovery in the Asia/U.S. and Asia/Europe trades contributed importantly to many lines' financial improvement, as did continuing U.S. trade growth that kept pace with or exceeded the introduction of new tonnage into the major East/West trade lanes. In addition, many lines benefitted from continuing cost reduction measures and a gradual recovery from the serious cargo imbalances that followed the Asian banking and financial crisis that began in mid-1997.

Fiscal year 2000 saw the further development of confidential contracting in the "post-conference" OSRA environment. Shippers reported that contracting directly with their preferred carriers resulted in a more flexible and efficient negotiating process. Reports of expanded use of multi-trade contracts, and expanded inclusion of space guarantees and service performance elements, suggest that

service contracts are gradually becoming more customized under OSRA.

Fiscal year 2000 witnessed several ocean carriers independently announcing major commitments to expand their value-added logistics services and improve their Internet service options. Concertedly under the *Common Ocean Carrier Platform Agreement* (No. 203-011733), Maersk Sealand, P&O Nedlloyd, Med-Shipping, Hamburg Sud and CMA CGM jointly have financed the development and operation of a multi-carrier Internet web site, "INTTRA," on which shippers and intermediaries will be able to book, track and confirm their cargo movements. Other carriers are expected to join together to establish Internet-based transportation web sites in the near future.

Throughout fiscal year 2000, an array of new e-commerce companies have struggled to break into the liner cargo market. It remains unclear just how successful these efforts will be.

V

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. GENERAL

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

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

In fiscal year 2000, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. Also, information demand orders were issued to gather specific information regarding conditions in the People's Republic of China ("PRC").

In fiscal year 2000, the Commission's newly organized Task Force on Restrictive Foreign Practices, chaired by the General Counsel, began meeting. The Task Force is a network of representatives from a number of Commission bureaus and offices, and meets to exchange information regarding new or continuing areas of concern relating to restrictive foreign shipping practices possibly necessitating action under one of the Commission's statutory authorities in this area. The regular meetings of the Task Force will

also aid the Commission in developing efficient methods to address conditions as they arise.

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

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

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

The most recent complete calendar year for which data were available is 1999. The table on the next page gives the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 1999. The figures in the table represent each country's total U.S. liner imports and exports in thousands of TEUs.

Top Twenty U.S. Liner Cargo Trading Partners (1999)

| <u>Rank</u> | <u>Country</u> | <u>TEUs</u> <u>(000s)</u> |
|-------------|---|------------------------------|
| 1 | China (PRC) | 2,623 |
| 2 | Japan | 1,750 |
| 3 | Hong Kong ¹ | 1,423 |
| 4 | Taiwan | 974 |
| 5 | South Korea | 813 |
| 6 | Germany | 560 |
| 7 | United Kingdom (Incl. N. Ireland) | 492 |
| 8 | Italy | 491 |
| 9 | Brazil | 412 |
| 10 | Thailand | 409 |
| 11 | The Netherlands | 389 |
| 12 | Belgium & Luxembourg | 386 |
| 13 | Indonesia | 352 |
| 14 | France | 279 |
| 15 | Malaysia | 273 |
| 16 | Costa Rica | 245 |
| 17 | Philippines | 241 |
| 18 | Dominican Republic | 239 |
| 19 | Spain | 225 |
| 20 | India | 222 |

¹ On July 1, 1997, Hong Kong reverted to Chinese control as a special administrative region. However, PIERS continues to report data separately for Hong Kong because of its status as a major transshipment center.

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

The only change to the Top Twenty list in 1999, in comparison with the list of 1998, is the addition of Spain, which replaced Venezuela, now in 24th place.

In terms of ranking order, China (PRC) continued its lead, with an increase in volume of almost 18 percent over 1998's volume, which represented an 18 percent increase over 1997's. Hong Kong likewise registered a significant increase of 14 percent in trade volume over the previous year, as did South Korea (also 14 percent). Only minor changes occurred among the rankings of the other top countries.

VI

**SIGNIFICANT
OPERATING
ACTIVITIES**

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. General

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

The 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 2000:

The Commission issued decisions concluding six formal proceedings. Fifteen initial decisions of an administrative law judge became administratively

final without Commission review. The Commission also concluded 39 special docket applications, and 5 informal dockets which involved claims sought against carriers for up to \$10,000. During the same period, the Commission issued final rules in 4 rulemaking proceedings.

Special Docket Officers issued decisions in 39 proceedings during fiscal year 2000.

Seven rulemaking proceedings and three formal petitions were pending before the Commission at the end of the year. Final decisions in these matters are anticipated in fiscal year 2001.

2. Library

The Commission's Library was transferred from the Office of General Counsel to the Office of the Secretary by an agency reorganization in fiscal year 2000. The Library serves the Commission's research and information needs. Its holdings consist of specialized material primarily covering the various segments of the shipping industry, as well as historical and current regulatory materials covering all phases of shipping in the U.S. foreign trades. It also contains material on several related fields such as engineering, economics, political science and an extensive collection of legal publications. The library includes such sources of information as law encyclopedias, engineering textbooks, legal treatises, Comptroller General Decisions, and editions of the various National Reporter systems. The Library's holdings consist of approximately 4,000 volumes and numerous microfiches, CD-ROMs and on-line services.

B. OFFICE OF ADMINISTRATIVE LAW JUDGES

1. General

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

ALJs have the authority to administer oaths and affirmations; issue 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 2000, 16 formal proceedings were pending before the ALJs. During the year, 17 cases were added. The ALJs formally settled four formal proceedings, one informal proceeding, and one special docket proceeding, dismissed or discontinued three formal proceedings, and issued six initial decisions in formal proceedings.

2. Commission Action

The Commission adopted two formal initial decisions, one initial decision in part, four orders of approval of settlement, two dismissals of complaints of the ALJs, and settled one formal proceeding. One order of dismissal of the ALJs was reversed.

Three initial decisions of the ALJs were pending consideration by the Commission at the end of the fiscal year.

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

***William J. Brewer v. Saeid B. Maralan* [Docket No. 99-19].**

In this case complainant shipper alleged that respondent NVOCC misled complainant and mishandled a shipment of personal goods and household effects that complainant wanted shipped from Detroit, Michigan, to Egypt. It was found that respondent had quoted a lower rate to the shipper which respondent later did not charge, failed to release the shipment in Egypt, and failed to answer complainant's inquiries about the status of the shipment. Such conduct was found to have violated section 10(d)(1) of the 1984 Act, and respondent was ordered to pay complainant the value of the goods, namely \$75,000, or alternatively, to return the goods to the shipper and refund freight money.

***James J. Flanagan Shipping Corporation v. Lake Charles Harbor and Terminal District and Lake Charles Stevedores, Inc.* [Docket No. 94-32].**

In this proceeding a stevedoring company doing business in Lake Charles, Louisiana, had alleged that the respondent port and its contractor had violated section 10(d)(1) of the 1984 Act by assessing a supplemental rail-switching charge and sought money damages. After the Commission found the charge to be unlawful, the case was remanded to the ALJ, who found that the alleged damages suffered by complainant could not be traced to the unlawful charge. The complaint, therefore, was dismissed with no award of damages.

Safmarine Container Lines N.V. and Safmarine and CMBT Lines N.V. (SCL) v. Garden State Spices, Inc.
[Docket No. 00-08].

In this proceeding two common carriers by water alleged that respondent shipper had violated section 10(a)(1) of the 1984 Act by inducing the carriers to release the cargo to the shipper, who thereafter gave the carriers bad checks and later, after apparently settling with the carriers, again tendered bad checks. The carriers were awarded \$10,625 in money damages, plus interest and reasonable attorney's fees.

4. Pending Proceedings

At the close of fiscal year 2000, there were eighteen pending proceedings before the ALJs, of which four were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. OFFICE OF THE GENERAL COUNSEL

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

1. Rulemakings and Decisions

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

(a) Rulemakings

Interpretations and Statements of Final Policy Regarding Ocean Transportation Intermediaries [Docket No. 00-06], (May 8, 2000).

The Commission issued an Interpretive Rule to clarify 46 C.F.R. § 515.23(b), which sets forth the claim settlement procedure for claimants seeking to pursue a claim against an OTI. This proceeding was implemented as a result of a settlement reached in *American Surety Association v. Federal Maritime Commission*, D.C. Cir. No. 99-1418. The rule explains that a claimant should provide all documentation and information supporting its claim to the financial responsibility provider, and that the financial responsibility provider

and claimant may mutually settle a claim either before or after claimant has obtained a final judgment from an appropriate court. However, the rule also states that if the financial responsibility provider believes that the court judgment was obtained fraudulently, it may challenge that judgment if permitted in the jurisdiction where it was obtained.

In the Matter of a Single Individual Contemporaneously Acting as a Qualifying Individual for both an Ocean Freight Forwarder and a Non-Vessel-Operating Common Carrier [Docket No. 99-23], (March 15, 2000).

The National Customs Brokers and Forwarders Association of America (“NCBFAA”) filed a petition with the Commission seeking issuance of a declaratory order confirming, pursuant to 46 C.F.R. § 515.22(c)(1999), that a single individual can act contemporaneously as the qualifying individual for both an ocean freight forwarder and an NVOCC. The Commission denied the request to address the issue through a declaratory order and instead issued a notice of proposed rulemaking. The proposed rule sought to effect NCBFAA’s change, albeit using a slight modification of the proposed language, believing that it was more encompassing. After notice and comment, the Commission adopted the rule as proposed, thus reducing the regulatory burden and increasing flexibility for licensed OTIs. Two other minor changes were adopted at the same time. First, the definition of branch office at 46 C.F.R. § 515.2 was amended to better reflect the treatment of branch offices elsewhere in the Commission’s rules. Also, the Commission republished a drug certification process required by 21 U.S.C. § 862, which was inadvertently omitted during the rulemaking process to implement OSRA.

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

The Commission issued a Notice of Inquiry to seek comments from interested parties regarding possible changes to the Commission's rules governing the content of ocean common carrier and marine terminal operator ("MTO") agreements which are filed with the Commission in accordance with the 1984 Act. The proceeding was initiated in response to comments received in the rulemaking proceeding in Docket No. 98-26, which amended the Commission's agreement regulations to implement changes made by OSRA. Those comments requested that the Commission's rules on content standards for agreement filing be updated or refined. Interested parties were given 60 days to comment in response to the Notice of Inquiry, which was published in the *Federal Register* on August 3, 1999. Comments were received from carriers, shippers, and other interested parties and were under review at the end of fiscal year 2000.

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

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

The Commission received eight comments on the proposed rule from various segments of the ocean transportation industry. After full consideration of these comments, the Commission adopted the proposed rule as a final rule. This rule was served on May 2, 2000, and published in the *Federal Register* on May 8, 2000.

(b) Decisions

***South Carolina Maritime Services, Inc. v. South Carolina State Ports Authority* [Docket 99-21], 28 S.R.R. 1385 (March 23, 2000).**

The Commission, on its own motion, determined to review an ALJ's decision to dismiss a private complaint. The ALJ had ruled that a port authority operating as an arm of the State of South Carolina is immune from FMC jurisdiction under the Eleventh Amendment to the Constitution and the doctrine of state sovereign immunity. The Commission overruled the ALJ's decision, and held that the Eleventh Amendment and state sovereign immunity do not extend to administrative proceedings like those conducted by the Commission, but instead only apply to judicial proceedings before courts. For this reason, the Commission found that the South Carolina State Ports Authority is subject to FMC jurisdiction. The Commission remanded the case to the ALJ for further proceedings.

***ANERA And Its Members - Opting Out of Service Contracts* [Docket No. 99-05], 28 S.R.R. 747 (December 29, 1999).**

The Commission instituted this proceeding by issuing an Order to Show Cause to the *Asia North America Eastbound Rate Agreement* ("ANERA") and its members why the practice of "opting out" of service contract rates does not violate sections 8(c) and 10(d)(1) of the 1984 Act, 46 U.S.C. app. §§ 1707(c) and 1709(d)(1), and section 514.17(c)(2) of the Commission's service contract regulations. The practice, initiated by ANERA for the 1998 service contract year, permitted individual carrier members to be a signatory of a service contract but to charge for shipments at the tariff rates in effect at time of shipment rather than the rates specified in the contract. The practice came to the Commission's attention during Fact Finding Investigation No. 23, *Ocean Common Carrier Practices In the Trans-Pacific Trades*, in which the Commission's designated

Fact Finding Officer investigated shipper allegations that carriers had allocated vessel space during the 1998 peak holiday shipping season on the basis of carrier profit and had refused to provide space for cargo unless shippers made significant rate concessions, in violation of the 1984 Act. The Commission found that the opt-out practice violated section 8(c) and the Commission's regulations because it resulted in service contracts which were ambiguous with respect to an essential term of the contract, the line-haul rate.

Pacific Champion Express Co., Ltd. - Possible Violations of Section 10(b)(1) of the Shipping Act of 1984 [Docket No. 99-02], (April 21, 2000).

This proceeding was initiated by the Commission as an investigation into the activities of an NVOCC, Pacific Champion Express Co., Ltd. ("Pacific Champion"). The ALJ found that respondent knowingly and willfully violated section 10(b)(1) of the 1984 Act, 46 U.S. C. app. § 1709(b)(1), on 35 shipments, and that a civil penalty should be assessed and a cease and desist order issued; however, he further found that due to mitigating factors, a penalty of only \$200,000 should be assessed, with the amount above \$75,000 being suspended if and until respondent violated the 1984 Act in the future. The Commission upheld the ALJ's decision except that it vacated the portions of the Initial Decision conditionally suspending \$125,000 of the \$200,000 penalty based upon Pacific Champion's future conduct and obligating Pacific Champion to pay \$25,000 and Pacific Champion's surety bond company to pay \$50,000, and rather imposed a \$75,000 penalty on Pacific Champion.

Saeid B. Maralan (aka Sam Bustani), World Line Shipping, Inc., et al. - Possible Violations of Sections 8(a)(1), 10(b)(1), 19(a) and 23(a) of the Shipping Act of 1984 [Docket 98-19], 28 S.R.R. 1244 (December 16, 1999).

In this Commission-initiated investigation, the ALJ had held that respondents violated several sections of the 1984 Act, imposed a fine of \$100,000, and issued cease and desist orders. The ALJ also had placed respondents on “probation,” suspended fines above \$100,000, and suspended any action on his Initial Decision pending a Commission staff examination into a purportedly fraudulent document submitted by respondents. The Commission’s Bureau of Enforcement filed Exceptions to these latter findings, and respondents filed Exceptions to the findings of violations. The Commission determined to uphold the findings of violations, as well as the civil penalty of \$100,000 and the cease and desist orders. The Commission vacated those portions of the ALJ’s decision placing respondents on probation, suspending fines above \$100,000, and suspending action on the decision pending an examination into the purportedly fraudulent document.

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

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

the respondents' Motion for Summary Judgment and dismissed the complaint.

The complainant had argued that the respondents violated section 10(a)(2) by failing to file with the Commission an agreement to dissolve Sobracon, a Brazilian corporation employed to administer the respondents' conference activities in Brazil. The ALJ found that, as a matter of law, the respondents had provided sufficient language in their filed FMC Agreement to satisfy the agency's filing requirements. Disagreeing with this conclusion, the Commission issued an order in which it determined that the respondents had not filed the agreement to dissolve the corporation, and that this failure to file produced a violation of section 10(a)(2) of the 1984 Act. After the Commission issued its Order, the respondents filed a Petition for Reconsideration, and several outside parties filed an *amicus curiae* brief in support of the Petition for Reconsideration. That Petition was being reviewed by the Commission at fiscal year's end.

2. Litigation

The General Counsel represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the Commission upon petitions for review of its orders filed with the U.S. Courts of Appeals, the General Counsel also participates in actions for injunctions, enforcement of Commission orders, actions to collect civil penalties, and other cases where the Commission's interest may be affected by litigation.

The following are representative of matters litigated by the Office:

***American Surety Association v. Federal Maritime Commission, et al.* D.C. Cir. No. 99-1418.**

This proceeding sought review of the Commission's decision in Docket No. 98-28, *Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries - Petitions of the American Surety Association and Kemper National Insurance Companies for Reconsideration of the Final Rule*, 28 S.R.R. 1028 (1999). The Petition for Reconsideration was denied in part relating to the procedures for collecting on a court judgment obtained against an OTI, the "consents to be sued" language in Bond Form FMC-48, and the definitions of "freight forwarding services," "NVOCC services," and "transportation-related activities," and granted in part to correct an administrative oversight to include the word "final" before the term "judgments" in 46 CFR § 515.23(b)(2).

In its petition for review filed in the D.C. Circuit, the American Surety Association alleged that the Commission erred in promulgating § 515.23(b) by not requiring a claimant to promptly notify a financial responsibility provider of any litigation filed against its principal OTI so that the financial responsibility provider could timely intervene in any such action and assert defenses, and by not allowing financial responsibility providers the ability to review the validity of a claim underlying a default judgment; and the Commission erred by imposing upon surety companies, in Bond Form FMC-48, the requirement that they "consent to be sued," without any factual or statutory justification for such a requirement. The Commission settled the case with petitioner, and the case was dismissed with prejudice on May 23, 2000. As a result of settlement, the Commission issued a rule, *Interpretations and Statements of Policy Regarding Ocean Transportation Intermediaries* [Docket No. 00-06], (May 8, 2000).

***South Carolina State Ports Authority v. Federal Maritime Commission et al.*, 4th Cir. No. 00-1481.**

This case was initiated in the U.S. Court of Appeals for the Fourth Circuit by the South Carolina State Ports Authority, as a Petition for Review of the Commission's decision in *South Carolina*

Maritime Services, Inc. v. South Carolina State Ports Authority, Docket No. 99-21. That decision held that the Eleventh Amendment and state sovereign immunity do not extend to administrative proceedings like those conducted by the Commission, but instead only apply to judicial proceedings before courts. The practical result of the FMC's determination was that the South Carolina State Ports Authority was found not to be immune from private complaint proceedings before the Commission. The Ports Authority appealed this decision. The case was docketed on April 24, 2000. South Carolina State Ports Authority's brief was filed on July 20, 2000. Twenty-one states filed an *amicus curiae* brief on July 31, 2000, in support of the Ports Authority. The National Association of Waterfront Employers filed an *amicus curiae* brief in support of the FMC's decision on September 11, 2000. The FMC filed its brief on September 20, 2000, and the U.S. filed a separate brief, supporting the FMC's decision, on the same day. Oral argument was scheduled for January 22, 2001.

Federal Maritime Commission v. World Line Shipping, Inc. and Saeid B. Maralan (a/k/a Sam Bustani), C.D. Ca. No. 00-CV-423.

The Commission filed a Complaint for Injunctive Relief against World Line Shipping, Inc. and Saeid B. Maralan in the U.S. District Court for the Central District of California, seeking to enjoin the defendants from violating the Shipping Act during the pendency of FMC Docket No. 00-05, *World Line Shipping, Inc. and Saeid B. Maralan (a/k/a Sam Bustani) - Order to Show Cause*. Docket No. 00-05 will determine whether World Line Shipping, Inc. and Saeid B. Maralan have violated and continue to violate sections 8(a), 19(a), and 19(b) of the Shipping Act by acting as an NVOCC without a public tariff, license, or bond. The Complaint for Injunctive Relief sought to enjoin such conduct through the issuance of a temporary restraining order or preliminary injunction until the Commission issues a final

decision in Docket No. 00-05. The Court granted the preliminary injunction on June 12, 2000.

Worldlink Logistics, Inc. v. Federal Maritime Commission, et al., D.C. Cir. No. 98-1622.

This case was initiated in the U.S. Court of Appeals for the District of Columbia Circuit by Worldlink Logistics, Inc., as a Petition for Review of the Commission's decision in *Total Fitness Equipment, Inc. d/b/a Professional Gym v. Worldlink Logistics, Inc.*, Informal Docket No. 1831(F); *Application of Total Fitness Equipment, Inc. d/b/a Professional Gym for the Benefit of Itself*, Special Docket Application No. 3110. Worldlink filed a brief on March 29, 1999, arguing that the Commission's decision should be vacated. The Commission and the U.S. jointly filed a brief on April 28, 1999, arguing that the Court should uphold the Commission's decision. Intervenor Total Fitness filed a Notice of Concurrence on May 5, 1999, indicating that it agrees with the positions taken in the Commission's brief. On October 28, 1999, the Court issued a judgment upholding the Commission's decision and denying Worldlink's Petition for Review. Worldlink filed a Petition for Rehearing and Request for Rehearing *en banc*. The Court denied the petition on January 14, 2000, and the case then became final.

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

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

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

service for the same service and that was not reasonably related to any legitimate goal of the port.

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

On October 23, 1998, MPA filed with the Commission a "Petition to Establish a 'Chinese Wall,' or in the alternative, to permit discovery regarding communications between Ceres and the Federal Maritime Commission staff," to which Ceres replied on November 10, 1998. On April 16, 1999, the Commission issued a Report and Order denying MPA's petition, finding that the participation of agency staff in a remanded proceeding presented no conflicts with the Administrative Procedure Act or due process considerations. On May 26, 1999, the Commission issued an Order establishing a procedural schedule for disposition of the remanded issue. Opening briefs were filed on June 25, 1999, and reply briefs on July 20, 1999. In its reply, MPA contended that in view of recent Supreme Court decisions, it is immune from Ceres' damages claim under the Eleventh Amendment to the Constitution. On August 16, 1999, MPA filed a response in which it did not object to Ceres' motion, but also filed a motion for

leave to amend its answer and a request for a briefing schedule on the sovereign immunity issues. On September 10, 1999, the parties filed a Joint Motion to Approve Stipulation, in which they sought to preserve the sovereign immunity issues for resolution in a future Federal court proceeding. The Commission granted the Motion on September 17, 1999.

3. Legislative Activities

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

During fiscal year 2000, 117 bills, proposals and Congressional inquiries were referred to General Counsel for comments. The Office prepared and coordinated testimony for three Congressional hearings. The Office also worked closely with Congressional staffs on proposed legislation that affected the Commission.

4. Foreign Shipping Restrictions and International Affairs

The General Counsel is responsible for the administration of the Commission's international affairs program. The General Counsel monitors potentially restrictive foreign shipping laws and practices, and makes recommendations to the Commission for investigating and addressing such practices. The Commission has the authority to address restrictive foreign shipping practices under section 19 of the 1920 Act and the FSPA. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions affecting U.S. carriers

in foreign trade, which conditions do not exist for foreign carriers in the U.S.

In fiscal year 2000, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments, and issued information demand orders to gather specific information regarding conditions in the PRC. Additionally, the Commission received periodic reports which detailed the progress being made in reforming restrictive practices concerning Japan's port facilities. The Commission also continued to monitor developments in Brazil to ensure that commitments that country made to remove certain problematic conditions are fully implemented.

In fiscal year 2000, the Commission's newly organized Task Force on Restrictive Foreign Practices, chaired by the General Counsel, began meeting. The Task Force is a network of representatives from a number of Commission bureaus and offices, and meets to exchange information regarding new or continuing areas of concern relating to restrictive foreign shipping practices possibly necessitating action under one of the Commission's statutory authorities in this area. The regular meetings of the Task Force will also aid the Commission in developing efficient methods to address conditions as they arise.

On August 12, 1998, the Commission initiated Docket No. 98-14, *Shipping Restrictions, Requirements and Practices of the People's Republic of China*, with the issuance of Information Demand Orders to vessel-operating carriers of the U.S. and the PRC for information on Chinese policies and practices regarding port access, the licensing of multimodal transport operations, and the establishment of representative and branch offices there.

The Commission met in January and June 1999 to review information collected in this docket. In a press release dated June 24, 1999, the Commission stated that the responses to the FMC inquiries indicated that Chinese laws and regulations discriminate against and

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

Later in 1999, there were a number of further developments. A new Chinese controlled carrier, China Shipping Container Lines ("CSCL") announced plans to enter the U.S. trades, and bilateral maritime talks resumed between the U.S. and China. Also, the U.S.-flag Sea-Land Service, Inc., announced that it was to be acquired by the parent of Maersk Line. In light of these developments, the Commission in November determined to further review these matters and supplement the record before taking up the issue of whether to

initiate a section 19 rulemaking proceeding targeting Chinese carriers. Accordingly, the Commission issued an information demand order to CSCL inquiring about the scope of its operations in China and the U.S.; CSCL's response was received February 29, 2000. Also, after the closing of Maersk's acquisition of Sea-Land's services, the Commission issued an order demanding information about the extent of that company's services in China, and the effect of Chinese restrictions on its operations in U.S. commerce. Maersk Sea-Land's responses were received March 24, 2000. The Commission had the matter under review at fiscal year's end.

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

Another responsibility of the Office is the identification and verification of controlled carriers under section 9 of the 1984 Act. Common carriers that are owned and controlled by foreign governments are required to adhere to certain tariff-filing requirements under the 1984 Act. The Office investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The Office, in conjunction with other Commission components, also monitors the activities of controlled carriers. OSRA expands the definition of "controlled carrier" as currently defined under the 1984 Act. In fiscal year 2000, the Office reviewed documents and information relating to the controlled carrier status of a number of carriers, and classified CSCL and China National Foreign Trade Transportation (Group) Corp. as controlled carriers.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

The Director, Office of EEO, arranges for counseling of employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness.

Significant accomplishments in fiscal year 2000 include the following:

- 1. Provided briefings to senior staff.**
- 2. Provided workshops on equal employment opportunity.**
- 3. Provided counseling assistance to managers, supervisors and employees.**
- 4. Reviewed and assessed management and personnel human resource activity and actions.**
- 5. Developed information and materials for training senior executives, area representatives, and staff and EEO Counselors.**
- 6. Planned and developed special emphasis programs for FMC employee participation.**
- 7. Continued to improve FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.**
- 8. Continued non-discrimination policy and programs in response to Pub. L. No. 103-123.**

During fiscal year 2001, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles.

E. OFFICE OF INSPECTOR GENERAL

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

It is the duty and responsibility of the OIG to:

- # Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to, the Commission's programs and operations.**
- # Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.**
- # Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of, promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**
- # Recommend policies for, and conduct, supervise, or coordinate relationships between the**

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

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

During fiscal year 2000, the Office issued the following five audits in final:

- | | |
|---------------|---|
| A99-04 | <i>Review of Commission's Travel Expenditures FY-1999</i> |
| A99-05 | <i>Evaluation of Prior Years Obligation Balances</i> |
| A00-01 | <i>Review of Records Management Program</i> |
| A00-02 | <i>Evaluation of the FMC's FY-2001 Annual Performance Plan</i> |
| A00-03 | <i>Review of the Imprest Fund</i> |

Other significant actions taken by the Office included assisting the Commission in the issuance of a *Policy on Personal Use of Government Office Equipment*. The OIG also conducted a peer

review of the Appalachian Regional Commission's Office of Inspector General. This required review was conducted in accordance with the President's Council on Integrity and Efficiency's *Guide for Conducting Peer Reviews of the Audit Operations of the Office of Inspectors General* to determine compliance with applicable Government Auditing Standards. A similar peer review of the FMC's OIG was completed, and based on this review, it was determined that the Office is in full compliance with General Accounting Office standards.

During the year, various Hotline complaints were received, and investigations, both informal and formal, were opened and pursued. Two formal investigations referred to the Department of Justice have been closed based on action taken by that agency.

In fiscal year 2001, the Office will continue its high-priority program of conducting program evaluations in order to improve agency operations. In addition, other audits and reviews also will be handled as the Office carries out the OIG's statutory mandate to combat waste, fraud and abuse in agency programs. These audits and reviews are tied to both the agency and the OIG strategic plans. The Office will initiate investigations, both formal and informal, as warranted.

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

F. OFFICE OF THE EXECUTIVE DIRECTOR

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

- # **Bureau of Consumer Complaints and Licensing,**
- # **Bureau of Enforcement, and**
- # **Bureau of Trade Analysis,**

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

Also, the Executive Director provides administrative guidance to the:

- # **Office of the Secretary,**
- # **Office of the General Counsel, and**
- # **Office of Administrative Law Judges,**

and administrative assistance to the:

- # **Office of the Inspector General.**

On February 27, 2000, the Chairman effected a reorganization of the Commission. One result was the elimination of the Bureau of Administration. The responsibilities of that former bureau now reside within the Office of the Executive Director. The following offices now report directly to the Office of the Executive Director:

Office of Budget and Financial Management,
Office of Human Resources,
Office of Information Resources Management, and
Office of Management Services.

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

In addition, the Executive Director is the Audit Follow-up and Management (Internal) Controls Official for the Commission, and the Office manages those programs. The Executive Director is the agency's Senior Procurement Executive, its Designated Chief Information Officer, and the Commission's Chief Operating Officer.

The Deputy Executive Director serves as the Commission's Competition Advocate, its Chief Financial Officer, and is its representative, as Principal Management Official, to the Small Agency Council. The Office also is responsible for directing and administering the Commission's Information Security Program.

A significant achievement of the Office during fiscal year 2000 was implementation of the Commission's reorganization of February 27, 2000, which was designed to focus the agency's resources and programs to more effectively and efficiently implement OSRA. The Office also guided the first phase of the OSRA impact study; an Interim Report was issued in fiscal year 2000. Further, the Office oversaw all activities regarding development of a refined Alternative Dispute Resolution Program, as well as the expenditure of funds from Congress' Y2K Contingency Fund to ensure overall agency Y2K compliance. The Office also directed staff efforts as participants in the agency's Permanent Task Force on Restrictive Foreign Practices. Additionally, the Office coordinated the updating and revision of the agency's five-year Strategic Plan, and preparation of the agency's Annual Performance Plan and Program Performance Report as required by the Government Performance and Results Act of 1993 ("GPRA").

The Office's key objectives for fiscal year 2001 are directing the preparation of a comprehensive study on the impact of OSRA on the maritime community; guiding Commission efforts regarding continued development or redesign of programs to support recent modifications in the Commission's statutory mandates; coordinating the semiannual review of the user fee schedule for Commission services; overseeing the Commission's implementation of GPRA, including preparation of the fiscal year 2002 Annual Performance Plan and the fiscal year 2000 Program Performance Report; and managing Commission efforts to comply with section 508 of the Rehabilitation Act Amendments of 1998 and the Government Paperwork Elimination Act of 1998 ("GPEA").

1. Office of Budget and Financial Management

(a) General Office Responsibilities

The Office of Budget and Financial Management ("OBFM") administers the Commission's financial management program and is responsible for optimal utilization of the Commission's fiscal and staffing resources. OBFM is charged with interpreting Government budgetary and financial policies and programs, and developing annual budget justifications for submission to the Congress and OMB. The Office also administers internal control systems for agency funds, travel, cash management, and the Commission's Imprest Fund.

(b) Achievements

During fiscal year 2000, OBFM:

- # **Collected and deposited \$3,727,997 from user fees, fine and penalty collections, and ocean freight forwarder and OTI application and passenger vessel certification fees.**

- # **Coordinated and prepared budget justifications and estimates for the fiscal year 2001 Congressional budget and fiscal year 2002 budget to OMB, and participated in the fiscal year 2001 OMB budget hearing.**
- # **Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Cost for 1999 (Office of Personnel Management - "OPM"); the Report on International Travel for FY 1999 (OMB); and reports on first-class airline accommodations for fiscal year 1999 (General Services Administration - "GSA").**
- # **Prepared monthly status reports on workyears, funding, travel and receivables.**
- # **Managed the Commission's travel and cash management programs.**
- # **Continued to work with the Office of Management Services and the Bank of America to complete implementation of the new travel charge card for FMC travelers.**

(c) Future Plans

Financial management goals in fiscal year 2001 include refinement of the agency's accounts receivable system and development of a fully integrated financial management system. OBFM also will: (1) continue to implement electronic commerce to automate the processing of purchase orders, obligations and payments, in conjunction with the Office of Management Services and the Office of Information Resources Management; (2) review procedures and controls for cash management; and (3) continue to

pursue initiatives leading to economy and efficiency in budget and financial operations, including continued implementation of the Debt Collection Improvement Act.

2. Office of Human Resources

(a) General Office Responsibilities

The Office of Human Resources (“OHR”) plans and administers a complete personnel management program including: recruitment and placement, position classification and pay administration, occupational safety and health, employee assistance, employee relations, workforce discipline, performance management and incentive awards, employee benefits, career transition, training, retirement, and personnel and information security.

(b) Achievements

During fiscal year 2000, OHR:

- # **Met with senior executives and management officials, supervisors and individual employees to determine and conduct personnel-related work necessary to effect a major agency reorganization. Ensured legal and procedural accuracy of staffing and classification activity and prepared a variety of documents, reports and personnel actions to document the organizational movement of employees.**

- # **Assumed responsibility for the Commission’s training program.**

- # **Conducted an agency-wide voluntary early retirement program to minimize potential reductions-in-force.**
- # **Conducted both a comprehensive recruitment and placement program to staff critical vacancies, and a comprehensive employee relations program. Coordinated and publicized family-friendly initiatives.**
- # **Managed a successful Voluntary Annual Leave Transfer Program, Combined Federal Campaign, and Employee Assistance Program; sponsored the Federal Employees Health Benefits Fair and conducted the Health Benefits and Thrift Savings Plan Open Seasons; sponsored Blue Cross/Blue Shield Days and issued employee notifications of legislative and regulatory changes to benefits programs.**
- # **Conducted a comprehensive position classification program, including conducting cyclical position management program review and preparation and revision of position descriptions in connection with agency reorganization.**
- # **Conducted a comprehensive performance management program, including providing guidance to managers and supervisors with respect to aligning employee performance plans with agency strategic and performance plans.**
- # **Conducted a comprehensive personnel security program, including implementing recommended revisions to the program, initiating required**

investigations and preparing final reports to OPM of actions taken.

Continued automation of human resources programs and records including developing and testing mechanisms for posting of information on FMC's Intranet and working with OPM information technology ("IT") officials to ensure executive information system data integrity upon migration to new system.

Continued the planned revision of human resources-related Commission Orders, updating ten such Orders.

(c) Future Plans

In fiscal year 2001, OHR plans to continue to: (1) advise agency management and staff on all personnel matters and ensure the maintenance of a sound and progressive personnel program; (2) implement pertinent portions of the agency's strategic and related performance plans; (3) enhance employee development through the agency training program; and (4) continue the process to explore and implement simplification, flexibility, and accountability of human resources management programs.

3. Office of Information Resources Management

(a) General Office Responsibilities

The Office of Information Resources Management ("OIRM") provides administrative support with respect to information resources management ("IRM") to the program and administrative operations of the Commission. As such, OIRM is responsible for ensuring that the Commission's IRM program is administered in a manner consistent

with applicable rules, regulations and guidelines. OIRM plans, coordinates and directs management of automated information systems.

The Director, OIRM, serves as the Commission's Senior IRM Manager, FMC Computer Security Officer, Forms Control Officer, and Records Management Officer. These IRM functions include: conducting IRM management studies and surveys; managing data telecommunications; developing and managing databases and applications; coordinating records management activities; administering IRM contracts; and developing Paperwork Reduction Act clearances for submission to OMB. The Office is also responsible for managing the computer security and forms programs.

(b) Achievements

During fiscal year 2000, OIRM:

- # **Coordinated and monitored all technical, logistical, procedural and security issues related to database systems created, owned and maintained by the Commission.**
- # **Administered the agency's IT technical support and technical assistance contracts.**
- # **Maintained and enhanced the FMC homepage.**
- # **Maintained liaison with the Government Printing Office ("GPO") regarding the agency's Government Information Locator Systems records maintained on the GPO Access System.**
- # **Provided guidance, coordination and liaison support to the Commission to obtain OMB**

approval and clearance of forms and new rulemakings.

- # Developed specifications for and supervised contractor development of agency data systems.**
- # Cooperated in the development of refinements to the Commission's Internet-based service contract filing system, a mission-critical system required by OSRA.**
- # Coordinated the procurement/contracting for Y2K-compatible hardware, software and systems upgrades, including the PIERS Focus system and the Commission's optical imaging system, and upgraded server software to ensure Y2K compatibility and to enhance computer security.**

(c) Future Plans

In fiscal year 2001, OIRM will continue to emphasize ongoing support for Commission and externally mandated programs. Major initiatives include plans to: (1) develop and submit to the National Archives and Records Administration schedules for electronic program and administrative records and other records not currently scheduled or covered by the General Records Schedule; (2) ensure Commission compliance with major Government-wide initiatives such as Section 508 of the Rehabilitation Act Amendments of 1998 and GPEA; (3) develop in-house and Internet automated access systems using the most current technology; (4) administer and work with the agency contractor to refine the new Internet-based service contract filing system; (5) assist Commission staff on issues related to assessing the accuracy and accessibility of private tariff filing systems; (6) provide continued technical and administrative support for end-user equipment and software; (7) provide continued agency-wide advice and coordination on records management, OMB clearances and

information management issues; and (8) continue maintenance and update of the Commission's homepage to provide information to the public.

4. Office of Management Services

(a) General Office Responsibilities

The Office of Management Services (“OMS”) 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 serves as the Commission's Contracting Officer.

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

(b) Achievements

During fiscal year 2000, OMS:

- # **Provided procurement guidance and contract administration services for several database systems.**
- # **Provided procurement guidance and assistance for the award of contracts to acquire an electronic imaging system, an automated accounts receivable**

- system, a redesigned FMC Form 1 filing system, and a network security assessment.
- # **Coordinated with OIRM on procuring new computer workstations and servers using funds provided by OMB for the agency's Y2K compliance activities.**
 - # **Renewed the Interagency Agreement with the Office of Thrift Supervision for accounting services and administrative support to the FMC.**
 - # **Established the Commission's Transit Benefit Program required by Executive Order 13150, *Federal Workforce Transportation*. Developed an inter-agency agreement with the Department of Transportation's TASC/TRANServe for ongoing administration of the program.**
 - # **Completed logistical and other arrangements related to the Commission's reorganization in February 2000.**
 - # **Developed an Occupancy Agreement with GSA for the rental costs of the Commission's headquarters building.**
 - # **Arranged for the printing and distribution of the FMC's *38th Annual Report*.**

(c) Future Plans

In fiscal year 2001, the Office's objectives include the following: (1) implement an upgrade of the automated procurement management system to its latest version; (2) continue efforts to expand the Commission's electronic commerce program for paperless office interaction; (3) continue to evaluate and refine the operations of the automated property inventory management system; (4) coordinate with GSA to develop a new lease agreement for headquarters office space; and (5) continue to work with FMC activities regarding innovative support service approaches.

G. BUREAU OF CONSUMER COMPLAINTS AND LICENSING

1. General

The Bureau of Consumer Complaints and Licensing was established effective February 28, 2000, through the Commission's general reorganization implemented to more closely align the Commission's organization with its responsibilities under OSRA. The primary operating programs for which the Bureau has responsibility are the Commission's OTI licensing program, passenger vessel certification program, ADR program, and consumer assistance program. In administering these programs, the Bureau:

- # Licenses and regulates OTIs, including ocean freight forwarders and NVOCCs.**
- # Issues certificates to owners and operators of passenger vessels that have evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages or for death or injury to passengers and other persons.**
- # Manages programs assuring financial responsibility of OTIs and passenger vessel operators, by developing policies and guidelines, and analyzing financial instruments and financial statements.**
- # Responds to consumer inquiries and complaints, acting as an intermediary to resolve difficulties encountered by consumers with respect to cruises and shipments of cargo.**

- # **Develops and maintains an ADR program, arranging for and providing mediation and other dispute resolution services where appropriate.**

- # **Develops and maintains information systems that support the Bureau's programs and those of other Commission entities.**

In carrying out these functions, the Bureau provides information and referrals in response to a wide array of informal inquiries, provides guidance with respect to licensing and bonding, and where appropriate, advises about various means available to resolve complaints, both informally and formally. The Bureau also focuses on facilitating conflict resolution through informal and non-binding approaches in an effort to minimize litigation expenses.

The Bureau is organized into three offices. The Office of Consumer Complaints ("OCC") has responsibility for developing and implementing an ADR program, and for responding to consumer inquiries and complaints. The Office of Transportation Intermediaries has responsibility for reviewing applications for OTI licenses, and maintaining and updating records about licensees. The Office of Passenger Vessels and Information Processing has responsibility for reviewing applications for certificates of financial responsibility with respect to passenger vessels, managing all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and for developing and maintaining all Bureau databases and records of OTI applicants and licensees. All offices respond to a number of inquiries and concerns about programs for which they are responsible. During fiscal year 2000, the Bureau responded to more than 7,500 inquiries.

2. Alternative Dispute Resolution

The Bureau has responsibility for developing and implementing the Commission's ADR program. Complaints against shipping entities are at an all-time high, and in the long run, it is anticipated that an enhanced ADR program will result in lower costs both to the agency and to the shipping public by offering quicker and less expensive means for dispute resolution.

During fiscal year 2000, the OCC focused on program development and program-specific training for its personnel. Personnel received training to mediate a broad range of disputes -- from informal disputes to those involving already commenced litigation.

At the same time, the program also focused on the Commission's informal complaint-handling activities. In addition to assisting the general public in obtaining various available informational materials, the Bureau receives, records, and tracks complaints received by the Commission, and attempts to resolve problems, such as those involving delay or mishandling of shipments. The Bureau helps secure the recovery of funds improperly collected by industry entities, facilitates the international movement of household goods, and communicates to cruise vessel operators the substance of consumer complaints arising from their services. During fiscal year 2000, the OCC processed a total of 2,916 complaints and information requests. Refunds to the general public of overcharges, refunds and other savings attributable to complaint-handling activities amounted to \$215,800. Since 1991, the OCC and its predecessor office have helped complainants recover more than \$1,600,000.

The Bureau also adjudicates small claims, *i.e.*, claims of shippers seeking reparations up to \$10,000 for violations of the shipping statutes. By agreement of the parties, these small claims are adjudicated by Settlement Officers, rather than ALJs, saving the expense and encumbrances of more formal administrative proceedings.

Although the vast majority of small claims received a few years ago comprised freight overcharge actions against ocean common carriers, the majority of cases now concern claims by individuals against NVOCCs. Those complaints generally involve alleged prohibited acts in connection with the international transportation of household goods. Typical complaints include situations where an NVOCC has received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Tracking down the whereabouts of a shipment can be difficult, and often additional charges have accrued because of delay or because the NVOCC has not made a necessary payment, thus necessitating payment of additional funds to obtain release of the shipment. During fiscal year 2000, two claims were filed, while four pending cases were carried over from the previous year. There were three pending cases at the close of the fiscal year.

Upon its establishment, the Bureau assumed responsibility for the adjudication of special docket applications. These are applications for permission to apply other than tariff rates and to waive or refund freight charges arising from various errors in tariff publications, an inadvertent failure to publish an intended rate, or a misquotation of a rate. From the Bureau's establishment through the remainder of fiscal year 2000, sixteen special docket applications were processed. None were pending at the close of the fiscal year.

In fiscal years 2001 and 2002, the Commission intends to formalize and expand its ADR program, resulting in more ADR involvement after the onset of litigation. The Bureau plans to continue to expand its consumer outreach programs, and strengthen its growing ties to Federal, state, local and private consumer assistance agencies. Also, the Bureau will continue to take advantage of new outreach possibilities made possible by electronic means of communication.

3. Licensing of Ocean Transportation Intermediaries

OTIs are transportation middlemen. There are two different types of such transportation middlemen, NVOCCs and ocean freight forwarders. Both NVOCCs and ocean freight forwarders must be licensed if located in the U.S. Foreign NVOCCs may choose to become licensed, but do not require a license. Whether licensed or not, foreign NVOCCs must establish financial responsibility. In addition, all NVOCCs must publish electronic tariffs.

To be licensed, an OTI must establish that it is qualified in terms of experience and character, as well as establish its financial responsibility by means of a bond, insurance or other instruments. Licensed ocean freight forwarders must establish financial responsibility in the amount of \$50,000, and licensed NVOCCs, \$75,000. An additional \$10,000 coverage is required for each unincorporated branch office of a licensee. In addition, unlicensed foreign NVOCCs must maintain \$150,000 in coverage. The financial instrument must be available to pay any order of reparation assessed under the 1984 Act, claims against the OTI arising from its transportation-related activities, and any judgments for damages against an OTI arising from its transportation-related activities under the 1984 Act.

During fiscal year 2000, the Commission received 400 new and amended OTI applications, issued more than 3,000 OTI licenses, and revoked 270 licenses. At the end of the fiscal year, 1,396 freight forwarders, 1,287 U.S. NVOCCs, 761 joint NVOCC/ocean freight forwarders, and 35 foreign NVOCCs held active OTI licenses. An additional 540 foreign NVOCCs maintained proof of financial responsibility on file with the Commission but chose not to be licensed.

A review of Commission records in the spring of 2000 showed that a number of OTIs that were in existence on May 1, 1999, still had not met new OSRA-related requirements effective that date. More

than 500 OTIs were sent warning letters explaining their deficiencies and requiring their compliance. By the end of fiscal year 2000, all but 82 of those entities had corrected the deficiencies and become licensed, or notified the Commission that they had become inactive. During fiscal year 2001, the Bureau will initiate more formal action to bring those entities into compliance.

4. Passenger Vessel Certification

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. app. §§ 817d and 817e), which require evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The program now encompasses 175 vessels and 45 operators, which have evidence of financial responsibility coverage in excess of \$350 million for nonperformance and over \$1 billion for casualty. The certificates issued pursuant to this program are necessary for Customs' clearance of thousands of passenger vessel sailings annually.

During fiscal year 2000, the Commission received 110 applications for passenger vessel certificates, and 41 casualty certificates and 70 performance certificates were approved and issued to passenger vessel applicants.

The Bureau offers information and guidance to the cruising public throughout the year on their rights and obligations regarding monies paid to cruise lines who experience financial difficulties and nonperformance problems. This is in addition to those disputes between cruise lines and the cruising public that are resolved by OCC as part of its ADR responsibilities.

The cruise industry has grown tremendously over the past decade. New cruise lines have entered the business, and existing cruise lines continue to build and/or purchase additional vessels to serve an increasing demand. In addition, applicants continue to

develop more sophisticated means of establishing their required financial responsibility. In mid-September of fiscal year 2000, a major cruise line, Premier Cruise Operations Ltd. dba Premier Cruises and Premier Cruise Lines (“Premier”), suddenly ceased operations upon the seizure of its vessels by creditors. At that time, Premier held Commission certificates for five vessels, supported by a \$15,000,000 performance surety bond. Bureau staff worked closely with the surety, its representative, and Premier to provide information to the public as quickly as possible. Premier’s surety was able to quickly establish a place and method for filing claims, while we assisted in disseminating claims-filing information to the public. By the end of fiscal year 2000, more than 400 inquiries had been received with regard to this single event.

5. Automated Database Systems

A significant function of the Bureau is to support all Commission programs by providing information about all regulated entities and those doing business with the Commission. In addition, a database is maintained that provides information about financial coverage for all OTIs, as well as the status of license applications.

During fiscal year 2001, the Bureau intends to publish on the Commission’s homepage a list of licensed and bonded OTIs, thus assisting carriers in complying with their statutory mandate to do business only with those licensed by the Commission. This is especially helpful as carriers may incur liability for doing business with an unlicensed OTI. An up-to-date list is a safeguard to the shipping public, and also protects licensees from losing business because of an inaccurate determination by a carrier that it may not be licensed. Also during fiscal year 2001, the Bureau plans to expand, upgrade and improve these databases into a more modern configuration that can help achieve greater efficiencies.

H. BUREAU OF ENFORCEMENT

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

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

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

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

During fiscal year 2000, the Bureau continued its investigation and prosecution of malpractices, particularly fraudulent cargo descriptions and measurements in the transpacific trades and secret rebates in the South American trades. Other trades were also the subject of malpractice investigations, including the North Atlantic, Central American and Caribbean trades. These malpractices included unlawful and discriminatory practices such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations have resulted in compromise settlements of civil penalties. However, investigations of several NVOCCs and ocean common carriers have required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

Following up on matters arising from a 1998 investigation into alleged ocean carrier malpractices during peak season in the transpacific trades, the Commission determined that ANERA and its members had violated certain provisions of the 1984 Act and the Commission's regulations by entering into service contracts containing so-called "opt-out" clauses. Under these clauses, various members of ANERA would sign on as participating carriers in conference service contracts, but "opt out" of the lower rates made available to the shipper under the contract. The Commission found that this device rendered the rates uncertain as to shipments tendered to carriers "opting out" of such contracts. In a separate but related action, the Commission entered into a compromise agreement with ANERA and its members under which a sum of \$110,000 was paid for alleged violations of the Commission's regulations in failing to file the "opt-out" provisions of some 105 service contracts in ANERA's essential terms publication.

In the U.S./North Europe trades, cases of possible unfiled agreements in Docket No. 97-07, *Possible Unfiled Agreement Between Hyundai Merchant Marine Company, Ltd. and Mediterranean Shipping Co., S.A.*, and Docket No. 97-08, *Possible Unfiled Agreements Among A.P. Moller-Maersk Line, P&O Nedlloyd Limited and Sea-Land Service, Inc.*, were concluded with the payment of penalties pursuant to compromise agreements with the Commission without the admission of any violations.

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

In fiscal year 2000, the Bureau continued its OTI audit program. This program is conducted from headquarters, primarily by mail, and reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations, particularly as modified by OSRA. This program identified several OTIs operating in violation of the 1984 Act and Commission regulations. The audit program also includes review of entities holding themselves out as vessel-operating common carriers ("VOCCs") with no indication of vessel operations.

When the fiscal year began, 40 enforcement cases were pending final resolution by the Bureau. During the fiscal year, 30 new enforcement actions were commenced. Thirty-four were compromised and settled, administratively closed, or referred for formal proceedings. Thirty-six enforcement cases were pending resolution at fiscal year's end.

The Bureau entered the fiscal year as party to 16 formal proceedings, and participated in 7 new formal proceedings during the year. Fourteen of these proceedings were completed, with the remaining 9 pending at the end of the fiscal year.

At the beginning of fiscal year 2000, there were 63 requests for legal advice pending in the Bureau. Fifty-seven such requests were received during the fiscal year, and 60 legal advice projects were completed. Accordingly, 60 legal advice matters were pending in the Bureau on September 30, 2000.

In fiscal year 2001, the Bureau will continue to pursue fraudulent and market-distorting practices and activities and will continue to monitor U.S. trades to encourage compliance with the changes and regulations resulting from OSRA.

I. BUREAU OF TRADE ANALYSIS

1. General

The primary function of the Bureau is to plan, develop, and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the 1984 Act as amended by OSRA. Further, the Bureau is responsible for administering the Commission's agreements and service contract programs, and monitoring the accessibility and accuracy of all tariffs published by common carriers, conferences of such carriers, and MTOs. The Bureau's major program activities include:

- # **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting waterborne liner transportation.**
- # **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**
- # **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**
- # **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.**

- # **Processing and analyzing ocean common carrier and marine terminal agreements.**
- # **Reviewing and processing service contracts and service contract amendments filed by ocean common carriers and conferences of such carriers, including service contract statements of essential terms published by such entities.**
- # **Reviewing tariff publications in private automated systems of carriers and conferences and ensuring that tariffs under OSRA are accessible and accurate.**

2. Monitoring

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

For a description of the Bureau's monitoring activities for fiscal year 2000, *see* Section III. A, *Monitoring*.

3. General Economic Analysis

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

and FSPA. They also contribute to speeches and provide briefings for senior agency officials.

Key projects the Bureau completed in fiscal year 2000 included: (1) preparation of the service contract, carrier agreement, and tariff accessibility sections of the Commission's interim status report on OSRA; (2) industry interviews and data collection for the Commission's final two-year OSRA Impact Study; (3) economic analyses of newly filed carrier agreements under the competition standards of section 6(g) of the 1984 Act; (4) compilation and analysis of trade and industry data for agency testimony before various Congressional committees, along with responses to Congressional inquiries; (5) an informational memorandum to the Commission concerning the voluntary service contract guidelines filed by major agreements; (6) an analysis and outline of the major issues concerning the Commission's regulations on the content and filing of minutes of agreement meetings; (7) a review of carrier alliance agreements, focusing on developing and implementing specific reporting requirements relating to their operations; (8) an evaluation of the regulations on agreement reporting requirements; (9) responses to various informal complaints and requests for information from other Government agencies or maritime entities on a variety of matters; (10) classification of agreements to determine each agreement's monitoring report requirements for calendar year 2000; (11) updated audits on the regulatory compliance of tariffs electronically published by carriers; (12) analysis of requests by agreements, including TACA, for relief from the monitoring report requirements; and (13) review of quarterly monitoring report data submitted in accordance with the Commission's agreement reporting requirements.

4. Agreement Analysis

Under sections 4 and 5 of the 1984 Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo or revenue, allot ports or regulate sailings, limit or regulate the volume or character of cargo or passengers to be carried, control

or prevent competition, or engage in exclusive or preferential arrangements are required to be filed with the Commission. Except for certain exempted categories, agreements among MTOs and among one or more MTO and one or more ocean common carrier are also required to be filed with the Commission.

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

There are two broad categories of agreements filed with the Commission. The first category is pricing agreements, where the main focus is the discussion and fixing of rates. Types of pricing agreements include conference and rate discussion agreements. The other category is operational agreements that authorize operational cooperation between the parties, such as sharing vessel space. There are a number of other agreement types that fall under the operational category. Brief descriptions follow of the various agreement types.

(a) Conference Agreements

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Although conference carriers are allowed to act independently, the expectation is that they will adhere

to rates and terms and conditions of service adopted by the group. These agreements publish a common rate tariff in which all the parties participate.

In fiscal year 2000, the Bureau received one new conference agreement and 33 modifications to existing conference agreements. The Bureau analyzed and processed 34 filings during the year. At the end of the fiscal year, there were 21 active conferences. Activities under two conferences in the inbound transpacific trades remained suspended at the end of the fiscal year.

(b) Discussion Agreements

Discussion agreements fall under two types: rate and non-rate agreements. Like conferences, rate discussion agreements focus on the fixing of rates, but any consensus reached under these agreements is non-binding on the parties. There is no common rate tariff; each party publishes its own tariff.

Non-rate discussion agreements generally provide a forum for discussing matters of mutual interest, and are not geared to rate matters. In some instances, they operate much like a trade association. Examples of this latter description are the cruise association agreements and the Box Club, a group of containership operators that meets once or twice a year to discuss policy and legislative issues that affect their industry.

During the fiscal year, the Bureau received three new discussion agreements and 83 modifications to currently effective agreements. At the end of the fiscal year, there were 36 rate discussion agreements and 11 non-rate discussion agreements on file.

(c) Vessel-Sharing Agreements

VSA's are by far the largest group of agreements on file with the Commission. There are several different kinds of these agreements, ranging from those that involve a high degree of operational cooperation with respect to space and services, to agreements that merely provide for the swapping of container slots. The high end of these agreements are broad alliances, while the low end are routine space charters. Most VSA's authorize some level of service rationalization. The objective of these agreements is to provide a high-quality service, while reducing individual operating costs.

During fiscal year 2000, the Bureau received 32 new VSA agreements and 54 modifications to existing VSA's. The Bureau processed 75 filings during the year. At the end of the fiscal year, there were 148 VSA's on file.

(d) Joint Service Agreements

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

One new joint service agreement and five agreement modifications were filed during fiscal year 2000. The Bureau processed all six filings during the year. Four joint services were terminated last year, leaving only 14 joint service agreements on file at the conclusion of the fiscal year.

(e) Cooperative Working & Other Agreements

Cooperative working agreements ("CWAs") do not fit under any of the foregoing agreement types. Generally, they deal with

policing matters, unique management arrangements between carriers, participation in joint service contracts, and the provision of administrative services. Other agreements include agency, transshipment, and equipment interchange agreements.

The Bureau received 39 filings under these categories of agreements in fiscal year 2000. There were 19 CWAs and other agreements on file at the end of the fiscal year.

(f) Marine Terminal Agreements

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

During fiscal year 2000, the Bureau analyzed 45 terminal agreements relating to port and marine terminal services and facilities. Commission rules exempt certain classes of marine terminal agreements from the waiting period requirements of the 1984 Act, permitting them to become effective upon filing. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. At the end of the fiscal year, 434 terminal agreements were on file with the Commission.

The number of marine terminal agreement filings has decreased drastically since fiscal year 1992. That year, to lessen the regulatory burden on the industry, the Commission exempted terminal lease agreements from filing. Prior to that time the Commission was receiving approximately 340 terminal agreements a year. In fiscal year 2000, the Commission received only 46 terminal agreements.

5. Overview of Agreement Filings

In fiscal year 2000, the Bureau received 359 agreement filings. This number was a slight decrease (1.1 percent) from the previous fiscal year. The Bureau processed 348 agreement filings during the year. Appendix C contains a breakdown of receipts and processing categories for the fiscal year.

At the end of fiscal year 2000, the Bureau had a total of 251 carrier agreements and 434 terminal agreements on file. Appendix C also provides a breakdown by various agreement type.

6. Tariffs

Since May 1, 1999, section 8 of the 1984 Act requires common carriers and conferences to publish tariffs in private automated systems. These tariffs set forth the rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau reviews and monitors the accessibility and accuracy of the private systems, as prescribed under the 1984 Act, and reviews published tariff material for compliance with the Act's requirements. The Bureau acts on applications for special permission to deviate from tariff publishing rules and regulations and recommends Commission action on tariff publishing activities and regulations. The Bureau also collaborates with other components of the Commission to verify OTI/NVOCC financial responsibility as it relates to tariff publication.

The Bureau initiated two Circular Letters in fiscal year 2000, No. 00-1, *Public Access to Tariffs and Tariff Systems under the Ocean Shipping Reform Act of 1998*, and No. 00-2, *Charges Assessed for Access to Tariffs and Tariff Systems*, that the Commission addressed to all common carriers, conferences of common carriers and publishers of carrier/conference automated tariff systems. The circular letters were issued because the Commission found that the public's ability to access some tariff systems appeared to be limited. The Commission stated that it would seek compliance by the conferences,

carriers and publishers through the cooperative efforts of its staff and industry representatives before any other type of remedial action required by OSRA or under the Commission's regulations is taken. The staff has been in regular contact with the carriers, conferences and the tariff publishers to assist in the resolution of this issue.

The Bureau is directly involved in the processing of the Commission's Form FMC-1, which is usually electronically submitted from the Commission's homepage and identifies the location of the carrier's tariffs or the MTO's schedules, including carriers' and conferences' service contract essential terms publications. A total of 2,456 Form FMC-1 tariff location addresses regarding OTI/NVOCCs were posted on the Commission's homepage during fiscal year 2000.

During fiscal year 2000, the Bureau also received and processed 19 foreign commerce special permission applications to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff publishing regulations. The total number of special permission applications received decreased drastically from the previous fiscal year's 238, when a number of NVOCCs needed to put tariffs into effect by April 30, 1999, in order to be provisionally licensed as OTI/NVOCCs on and after the May 1, 1999, effective date of OSRA.

7. Service Contracts

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

Since OSRA's effective date of May 1, 1999, all contracts are required to be filed electronically. Initially two systems were developed, one which was Internet-based and another which used a dial-up approach. This latter system was predicated on the Commission's former Automated Tariff Filing and Information System

("ATFI"), and was provided as an option to facilitate contract filing during the transition to OSRA requirements. The dial-up system expired at the end of fiscal year 1999, and all service contracts now are required to be filed in the Internet-based system. The Internet-based system is designed for flexibility. It does not require contract terms to be filed in any prescribed order, and it allows carriers to submit service contracts in WordStar, WordPerfect, Microsoft Word and ASCII formats. Some are also filed in other electronic formats such as Excel and HTML. Certain enhancements have been made to the original system, *e.g.*, the ability of a service contract filer to retrieve service contracts filed into its individual directory at the Commission.

During fiscal year 2000, the Commission received thousands of service contract filings. There were 35,190 new service contracts (compared to 22,018 the last five months of fiscal year 1999 under OSRA), and 110,780 amendments (compared to 32,256 amendments the last five months of fiscal year 1999 under OSRA).

8. Controlled Carriers

A controlled carrier is an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government. Section 9 of the 1984 Act, provides that no controlled carrier may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts. In addition, tariff 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 publication.

By Order on March 27, 1998, the Commission granted one controlled carrier, COSCO, a limited exemption from the 30-day notice period applicable to controlled carriers, to reduce rates to meet

or exceed the filed rates of competing ocean common carriers. (Petition No. P1-98, *Petition of China Ocean Shipping (Group) Company for a Limited Exemption from Section 9(c) of the Shipping Act of 1984*.) In fiscal year 2000, COSCO exercised the authority granted by the Commission's Order in 33 instances. In October 2000, China National Foreign Trade Transportation (Group) Corp. (Sinotrans) petitioned for a similar exemption to that granted COSCO. Just before the end of fiscal year 2000, the Commission published in the *Federal Register* the updated list of controlled carriers under the 1984 Act.

9. Non-Vessel-Operating Common Carriers

Ocean freight forwarders and NVOCCs in the U.S. have been combined by OSRA into a new entity known as ocean transportation intermediaries ("OTIs"). The Commission's Bureau of Consumer Complaints & Licensing now monitors and reviews compliance with OTI/NVOCC financial responsibilities under OSRA, while the Bureau of Trade Analysis reviews the accessibility and accuracy of NVOCC tariff publications in the carriers' private automated systems. During fiscal year 2000, the Bureau posted 2,456 tariff location addresses for OTI/NVOCCs that had been submitted to the Commission on Form FMC-1.

10. Marine Terminal Activities

Pursuant to OSRA, a marine terminal operator ("MTO") may make available to the public, subject to section 10(d) of the 1984 Act, a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. Pursuant to the Commission's regulations governing MTO schedules, any terminal schedule that is

made available to the public must be available during normal business hours and in electronic form. Each MTO must notify the Bureau of the electronic location of its terminal schedule by submitting Form FMC-1 before commencing operations. During fiscal year 2000, the Bureau posted 177 electronic location addresses for MTO terminal schedules on the Commission's homepage.

11. Automated Database Systems

The Bureau currently maintains and uses the following automated database systems: (1) Form FMC-1 System; (2) Tariff Profile System; (3) Service Contract System for filing service contracts and related Form FMC-83 for registration to file service contracts; (4) Microfiche System; (5) historical ATFI tariff database; (6) the tariff and service contract portions of the FMC Imaging System; and (7) the Agreement Profile System. During fiscal year 2000, the Form FMC-1 System reflected the tariff location addresses of 415 VOCCs, 2,456 OTI/NVOCCs, 177 MTOs and 20 conferences. Information in the Tariff Profile System is used to review and analyze carrier tariffs and service contract essential terms publications to ensure compliance with Commission rules and regulations under OSRA, particularly the accessibility and accuracy of carrier tariffs. The Service Contract System contains certain key service contract data, some of which is only available to the Commission's staff because of OSRA's confidentiality requirements. Registration to file service contracts into the system is authorized by Form FMC-83 submission. The historical ATFI database contains all tariff and service contract essential term publication data filed electronically with the Commission between February 22, 1993, and April 30, 1999. The Microfiche System provides a means of locating canceled tariffs and amendments which have been microfiched. The FMC Imaging System, among other things, provides for document storage and retrieval of canceled tariffs and service contracts. The Agreement Profile System contains information about the status of carrier and terminal agreements, as well as related monitoring reports. These

databases provide support for many of the Commission's programs. Certain information contained in the databases is also available to the public.

12. Future Plans and Proposed Activities

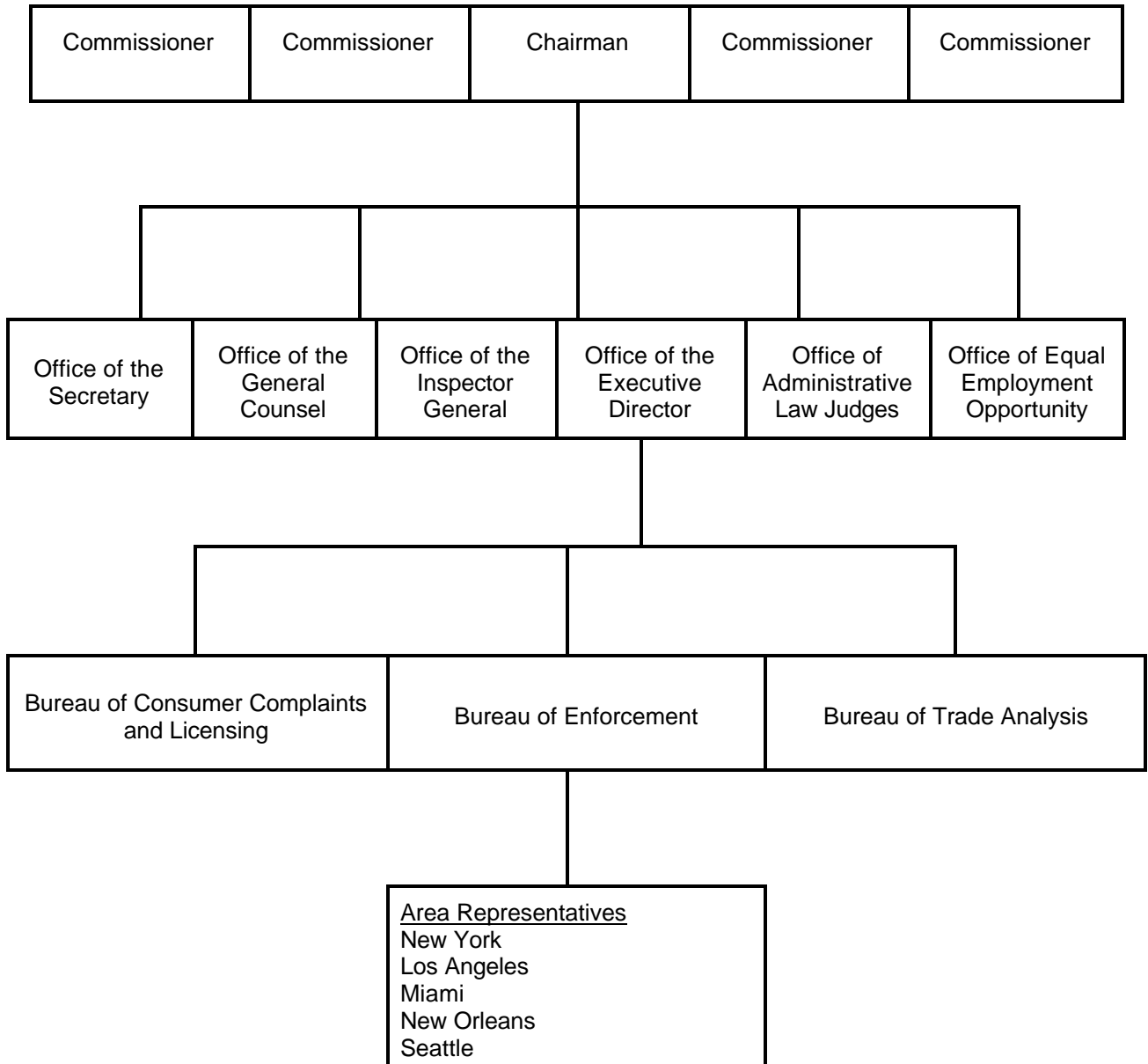
The Bureau's overall monitoring program will: focus on systematic oversight of carrier and trade activity with emphasis on upgrading monitoring systems to incorporate data and information that will be provided by carriers pursuant to Docket No. 94-31, *Information Form and Post-Effective Reporting Requirements for Agreements Among Ocean Common Carriers Subject to the Shipping Act of 1984*; analyze this and other trade data to track trends in the various trades and anticipate areas requiring closer scrutiny; assess the impact of key issues facing the industry in order to monitor developments in major trades and analyze agreements in the foreign trades under the standards of the 1984 Act; and continue to refine its section 6(g) monitoring methodology in evaluating the degree of anticompetitiveness generated by agreements within the context of their commercial environments. The Bureau also will continue to review tariffs and service contracts to ensure that they comply with the 1984 Act and the Commission's regulations.

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

APPENDIXES

APPENDIX A

FEDERAL MARITIME COMMISSION ORGANIZATION CHART Fiscal Year 2000



APPENDIX B

COMMISSION PROCEEDINGS Fiscal Year 2000

Formal Proceedings

| | |
|---|-----------|
| <i>Decisions</i> | 6 |
| <i>Discontinuances & Dismissals</i> | 0 |
| <i>Initial Decisions Not Reviewed</i> | 15 |
| <i>Rulemakings - Final Rules</i> | 4 |
| <i>Total</i> | 25 |

| | |
|----------------------------------|----|
| <i>Special Dockets</i> | 39 |
|----------------------------------|----|

| | |
|-----------------------------------|---|
| <i>Informal Dockets</i> | 5 |
|-----------------------------------|---|

APPENDIX C

AGREEMENT FILINGS AND STATUS Fiscal Year 2000

Agreements Filed in FY 2000 (including modifications)

| | |
|----------------|-----|
| Carrier | 313 |
| Terminal | 46 |
| Total | 359 |

Agreements Processing Categories in FY 2000

| | |
|---|-----|
| Forty-Five Day Review | 80 |
| Shortened Review | 22 |
| Exempt-Effective Upon Filing | 244 |
| Rejection of Filing | 0 |
| Formal Extension of Review Period | 0 |
| Not Subject | 0 |
| Withdrawals | 2 |
| Total | 348 |

Carrier Reports Submitted for Commission Review

| | |
|--|-----|
| Minutes of Meetings and Ad Hoc Reports | 599 |
| Monitoring Reports | 308 |
| Total | 907 |

Agreements on File as of September 30, 2000

| | |
|-----------------------------------|-----|
| Conference | 23 |
| Discussion | 47 |
| Vessel-Sharing | 148 |
| Joint Service | 14 |
| Cooperative Working & Other | 19 |
| Terminal | 434 |
| Total | 685 |

APPENDIX D

FORM FMC-1 TARIFF LOCATION ADDRESSES -ELECTRONIC SERVICE CONTRACT FILINGS AND SPECIAL PERMISSION APPLICATIONS Fiscal Year 2000

Form FMC-1 Filings

| | |
|--------------------------|-------|
| <i>VOCC</i> | 415 |
| <i>OTI/NVO</i> | 2,456 |
| <i>MTO</i> | 177 |
| <i>Conferences</i> | 20 |

Electronic Service Contract Documents

| | |
|--|---------|
| <i>New Service Contracts</i> | 35,190 |
| <i>Service Contract Amendments</i> | 110,780 |

Special Permission Applications

| | |
|------------------------|----|
| <i>Granted</i> | 18 |
| <i>Denied</i> | 1 |
| <i>Withdrawn</i> | 0 |

APPENDIX E

CIVIL PENALTIES COLLECTED Fiscal Year 2000

| | |
|---|--------------------|
| Ace Shipping Corp. | \$23,000.00 |
| AMR Shipping Limited | 140,000.00 |
| AP Moller Maersk Line. | 925,000.00 |
| Asecomer International Corp. | 20,000.00 |
| Asian Express Corp. | 50,000.00 |
| A.T.I. USA, Inc. | 25,000.00 |
| Brian Min dba B & A Express | 20,000.00 |
| Cargonauts, Inc. | 60,000.00 |
| Caribbean General Maritime, Ltd. | 80,000.00 |
| Columbus Line | 70,000.00 |
| Compania Chilena de Nav. Int. (CCNI) | 150,000.00 |
| DSR-Senator Lines GmbH. | 120,000.00 |
| EH Harms USA, Inc. | 40,000.00 |
| Empresa de Navegacao Alianca, SA | 290,000.00 |
| Expeditors Int'l of Washington, Inc. | 112,694.04 |
| Express Container Line, Inc. | 20,000.00 |
| FRT International, Inc. dba Frontier Logistics | 15,000.00 |
| Gstaad, Inc. | 150,794.30 |
| Hyundai Mer. Mar. Co./Med Shipping Co. | 100,000.00 |
| Imex Shipping, Inc. | 55,000.00 |
| Inter-Shipping Chartering Co. | 20,000.00 |
| Jardine Logistics Services | 115,000.00 |
| JF Hillebrand USA, Inc. | 50,000.00 |
| Kin Bridge Express, Inc. | 50,000.00 |
| King Ocean Services, SA. | 200,000.00 |
| Maritime Trading Group, Inc. | 42,000.00 |
| Ocean Bridge International, Inc. | 25,000.00 |
| RCL Agencies, Inc. | 30,000.00 |
| Sea-Land Service/Maersk/ P&O Nedlloyd | 100,000.00 |
| Speed Cargo Service, Inc. | 30,000.00 |
| Suntrans International, Inc. | 25,000.00 |
| Total Marine System, Inc. | 20,000.00 |
| Venchi International Corp. | 50,000.00 |
| Waterman Steamship Lines | <u>8,992.78</u> |

Total Civil Penalties Collected \$3,232,481.12

APPENDIX F

INVESTIGATIONS Fiscal Year 2000

Investigations/Special Inquiries Opened: 54

Audits/Compliance Checks Opened: 23

***Total Openings:* 77**

Investigations/Special Inquiries Completed: 81

Audits/Compliance Checks Completed: 18

***Total Completions:* 99**

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2000

APPROPRIATIONS:

Public Law 106-113: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-02; Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

\$14,150,000

Omnibus Consolidated & Emergency Supplemental Appropriation Act (112 STAT 572-573) and the President's letter dated November 24, 1999

516,000

Public Law 106-113, 106th Congress
Government-Wide Rescissions, 2000

- 53,000

Revised Appropriation

\$14,613,000

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2000.

\$14,612,727

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2000:

Publications and reproductions,
Fees and Vessel Certification,
and Freight Forwarder Applications

\$ 495,516

Fines and penalties

\$3,232,481

Total general fund receipts

\$3,727,997