



***FEDERAL MARITIME COMMISSION***

***FINAL ANNUAL PERFORMANCE PLAN***

***FOR FY 2009***

**February 2008**

## LIST OF ACRONYMS

<i>1984 Act</i>	<i>Shipping Act of 1984</i>
<i>ADR</i>	<i>Alternative Dispute Resolution</i>
<i>FMC/Commission</i>	<i>Federal Maritime Commission</i>
<i>FISMA</i>	<i>Federal Information Security Management Act of 2002</i>
<i>FSPA</i>	<i>Foreign Shipping Practices Act of 1988</i>
<i>FTE</i>	<i>Full Time Equivalent Employee</i>
<i>FY</i>	<i>Fiscal Year</i>
<i>GPEA</i>	<i>Gov't. Paperwork Elimination Act</i>
<i>GPRA</i>	<i>Gov't. Performance and Results Act</i>
<i>IT</i>	<i>Information Technology</i>
<i>NSA</i>	<i>NVOCC Service Arrangement</i>
<i>NVOCC</i>	<i>Non-Vessel Operating Common Carrier</i>
<i>OMB</i>	<i>Office of Management and Budget</i>
<i>OSRA</i>	<i>Ocean Shipping Reform Act of 1998</i>
<i>OTI</i>	<i>Ocean Transportation Intermediary</i>
<i>SBREFA</i>	<i>Small Business Regulatory Fairness Act of 1996</i>
<i>SC</i>	<i>Service Contract</i>
<i>Section 6(g)</i>	<i>Section 6(g) of the Shipping Act of 1984</i>
<i>Section 19</i>	<i>Section 19 of the Shipping Act of 1984</i>
<i>SOP</i>	<i>Standard Operating Procedure</i>
<i>U.S.</i>	<i>United States</i>
<i>VOCC</i>	<i>Vessel-Operating Common Carrier</i>

## INTRODUCTION

This document comprises the FMC's Final Annual Performance Plan for FY 2009. As set forth in GPRA and general guidelines published by OMB, the Commission has prepared a single Performance Plan so as to present a comprehensive picture of performance across the agency. This plan is closely linked to the agency's Strategic Plan.

This plan differs from the FMC's Initial Annual Performance Plan for FY 2009 submitted in September 2007. In this final plan, the FMC has developed performance measures and targets that are directly linked to the Outcome Goals set forth in the agency's Strategic Plan. This final plan introduces measures that will evaluate the success over time of the Outcome Goals established in the FMC's Strategic Plan, unlike the initial plan which was confined to annual performance goals encompassing particular, current objectives. It is envisioned that further and more comprehensive performance measures will be developed when the Strategic Plan is next updated. That update is scheduled to commence in February, 2008.

For FY 2009, we have continued the modified approach for our annual planning first implemented with our Revised Annual Performance Plan for FY 2005. Agency performance goals are tied directly to Strategic Goals instead of our budget program activities. This has resulted in the development of performance goals better suited to the achievement of agency-wide objectives, as opposed to more narrowly focused goals tailored to the responsibilities of individual units. It also facilitates our aim of utilizing a more inclusive, collaborative approach in conducting our ongoing activities, which we believe both enhances decision-making and improves ultimate results. Addressing our performance goals in this fashion has enabled us to link planning, budgeting and performance more effectively.

The Commission used its existing consultation process in developing this Plan. We continued our ad hoc meetings and visits with industry officials to discuss the state of U.S. ocean shipping and the FMC's oversight responsibilities. In coordination with the various sectors of the maritime industry, we have held periodic briefings by industry experts designed to provide Commission staff with valuable information on industry services, operations, business practices, and regulatory concerns. The information and opinions we received via these various efforts have assisted us in developing our performance goals and implementing approaches. It is clear that those involved in the various sectors of U.S. ocean shipping understand the Commission's major program activities and, at the same time, the Commission is cognizant of the views of all parties with whom it interacts.

In line with OMB guidance, the Commission has reflected the resources needed to accomplish its various functions. We have provided FTE and funding figures for each Strategic Goal, which reflect what we believe will be required to accomplish the performance goals and "steady state" functions under each respective Strategic Goal. Accordingly, all Commission resources are accounted for in this Plan, i.e., the figures under each Strategic Goal, when summed, reflect the full FTE and funding levels of our FY 2009 budget.

The Commission will post this Final Annual Performance Plan on its Internet website to ensure that it is readily accessible to interested parties, and will advise all employees to take the time to review it. Additionally, all employee performance plans are required to comport with the agency's Strategic and Annual Performance Plans, and contain specific elements and standards with a clear explanation of what is expected of the employee in support of the agency achieving its goals. This process in turn has the effect of directly furthering the Administration's initiative on strategic human capital management. Performance of managers and staff is evaluated in part on how they achieve the objectives in this plan.

## FMC VISION AND MISSION

The FMC's vision is:

*Fairness and Efficiency in U.S. Maritime Commerce.*

To achieve its vision, the FMC's mission is to:

- *Develop and administer policies and regulations that foster a fair, efficient and secure maritime transportation system.*
- *Protect U.S. maritime commerce from unfair foreign trade practices and market-distorting activities.*
- *Facilitate compliance with U.S. shipping statutes through outreach and oversight.*
- *Assist in resolving disputes.*

OSRA and the events of September 11, 2001, have significantly changed the manner in which the business of ocean shipping is being conducted. The industry continues to restructure its operations to adapt to dynamic economic conditions, emerging trends, and maritime security efforts. International trade remains dependent upon an efficient ocean transportation system. Therefore, it is imperative for the FMC to ensure that its oversight activities produce a competitive trading environment in U.S. ocean commerce that is in harmony with and responsive to international shipping practices, and permits fair and open commerce. We must focus our energies and efforts on this mission, and assure that the agency is organized and managed in a manner best suited to accomplish it with a minimum of government intervention and regulatory cost. Effective use of emerging information technologies will facilitate our efforts. Our actions also must encourage the development of a sound U.S.-flag liner fleet. Accordingly, the FMC has established the following five strategic goals to carry out its statutory mandates.

## FMC STRATEGIC GOALS

1. *Efficient Regulatory Process:* Provide a timely, efficient and decisive regulatory process, including alternative dispute resolution, to enable all segments of the industry to operate more effectively, with a minimum of regulatory costs.
2. *Compliance:* Promote efficiency and fairness in U.S. foreign waterborne commerce through various means, including outreach and monitoring, to protect the public and assist stakeholders in achieving compliance with ocean transportation statutes administered by the FMC.
3. *Balanced Enforcement:* Foster economic efficiencies, reliance on marketplace factors and maritime security by administering U.S. shipping statutes in a balanced and equitable manner to redress excessive anticompetitive actions and other unlawful activities.
4. *Technological Efficiencies:* Employ technological enhancements to improve efficiency and to facilitate the exchange of information.
5. *Management Capabilities:* Ensure the FMC has the appropriate organizational framework and management systems to carry out its statutory mandates.

## LINKAGE BETWEEN MISSION STATEMENT AND STRATEGIC GOALS

Our strategic goals address essential FMC statutory, programmatic, and management responsibilities. They were developed with a specific focus on accomplishing the basic purposes of our mission and attaining the competitive, nondiscriminatory shipping environment envisioned by the 1984 Act, as amended by OSRA.

The primary intention of Strategic Goal 1 is to minimize regulatory costs by maintaining timely and decisive regulatory processes, and providing various dispute resolution services. This will render the FMC more effective in addressing discrimination or other actions that preclude industry efficiency, while reducing the costs of pursuing matters before the Commission. Decisive action and effective assistance in resolving informal complaints or disputes will help to remove uncertainties as to statutory interpretations or the application of FMC rules. Such uncertainties may impede operational efficiencies or technological changes, each of which can foster a more economical ocean shipping system.

Our second strategic goal centers on achieving compliance with the substantive provisions of the shipping statutes the FMC administers, and protecting those involved in U.S. ocean commerce from unfair practices. We will address this goal particularly by interacting with all sectors of the industry, and by vigilant monitoring of ongoing commercial activities. Accomplishing this goal should minimize the unjust discrimination and undue preference or prejudice that precludes certain shipping interests from obtaining rates or service levels that can render their businesses more economic and efficient. Increasing industry compliance should enable stakeholders to concentrate on fair and legal means of enhancing operational efficiency, secure in the knowledge that competitors are not engaging in widespread illegal actions aimed at improving short-term profits. The agency's focus on the qualifications of intermediaries operating in the U.S. trades will afford greater protection to our stakeholders and contribute to national maritime security. And cruise passengers also will be protected through the demonstration of financial responsibility by passenger vessel operators.

Strategic Goal 3 is designed to foster economic efficiencies, assist maritime security initiatives, promote reliance on marketplace factors, and redress excessive anticompetitive practices harmful to international commerce. This is a direct link to our mission statement's call for an efficient, secure, competitive, market-driven ocean transportation system. Our continuing efforts to address the actions of foreign governments that adversely affect U.S. interests and our foreign trade comport with that aspect of our mission aimed at creating an environment "free of unfair foreign maritime trade practices." Our focus on commercial malpractices enhances our objective of limiting unlawful activities.

We also have a specific strategic goal that focuses on making effective use of advancements in IT to improve the efficiency of our operations and enhance our exchange of information with external parties. Carrying out the agency's mission in times of budgetary limitations dictates that we appropriately utilize all available resources. Dynamic changes continue to be made in this area, and the Commission intends to take advantage of any improvement that can enable it to perform its functions more effectively. We hope to improve our business operations so as to add efficiency to the Commission's dissemination and receipt of information. We intend to perform the research and analysis necessary to identify the best options for implementing technical enhancements to facilitate our efforts to achieve our mission.

Finally, our fifth strategic goal addresses Commission management and operations. In order to achieve the objectives of our mission, we must maintain effective processes that enhance efficiency, without serving as ends in themselves. It is essential that we manage for results, and that we effectively tie our budget needs to our performance. This strategic goal serves as the internal underpinning that enables us to accomplish the policy objectives set forth in our mission statement. This goal also ensures continuation of a comprehensive approach to the strategic management of our human capital.

Achieving these mission-driven goals will enable us to address the external factors we face, while assuring an equitable and efficient administration of the shipping statutes under our jurisdiction. Our processes and procedures will be refined or updated as necessary. We are committed to accomplishing our strategic goals and the Outcome Goals related to them. Therefore, specific means have been identified to enable the FMC to achieve these goals in the most cost-efficient and least disruptive manner possible.

**Strategic Goal No. 1: Efficient Regulatory Process**

Provide a timely, efficient and decisive regulatory process, including alternative dispute resolution, to enable all segments of the industry to operate more effectively, with a minimum of regulatory costs.

43 FTEs and \$8,500,000.00 will be required to accomplish this goal.

**A. 2009 Steady State Activities:**

- Adjudication and resolution of complaints.
- Adjudication and resolution of investigatory proceedings, including fact-findings and show cause proceedings.
- Issuance of rules through the rulemaking process.
- Commission decision-making activities through meetings (formal and notation) that comply with the Government in the Sunshine Act.
- Public information and assistance processes such as press relations, responses to legislative and regulatory inquiries, and compliance with Freedom of Information Act and Privacy Act requirements.
- Other regulatory processes, including activities such as appeals of delegated authority actions, policy issuances, and formal petition processes.
- Providing timely legal counsel to the Commission in order to facilitate regulatory action that is consistent with statutory mandates, representing the Commission's interest in matters before Congress and OMB.
- Reviewing and refining Commission rules to determine their economic impact and ensure that they reflect the current industry environment, as well as meet the needs of the Commission's regulatory mandate.
- Compiling, organizing, and maintaining Commission records.
- Monitor, review and modify, as necessary, Commission regulations to address changing trade conditions, industry practices or statutory modifications.

**B. Outcome Goals**

**Outcome Goal 1.1: Provide parties to proceedings with alternative means to resolve their disputes, including informal ADR, and encourage their use.**

Measure: Disputes resolved by Office of Consumer Affairs and Dispute Resolution Services

Target: 100

**Outcome Goal 1.2: Conduct hearings in an expeditious and equitable manner, so that litigants and the industry can adjust their behavior accordingly.**

Measure: Percentage of complaints or investigations completed within two years of filing or Commission initiation beginning with cases filed or initiated in FY 2007.

Target: 60%

**Outcome Goal 1.3: Permit and encourage the use of electronic filings and other processes that result in less expense and timely resolution of disputes.**

Measure: Percentage of Active Electronic Docket Logs updated within 72 hours of receipt of key documents issued or filed in Commission proceedings.

Target: 85%

**Outcome Goal 1.4: Update Commission rules as appropriate to adjust to changes in the regulatory and commercial environment.**

Measure: Number of rules pending in Unified Regulatory Agenda.

Target: 2

## Strategic Goal No. 2: Compliance

Promote efficiency and fairness in U.S. foreign waterborne commerce through various means, including outreach and monitoring, to protect the public and assist stakeholders in achieving compliance with ocean transportation statutes administered by the FMC.

31 FTEs and \$5,388,000.00 will be required to accomplish this goal.

### A. 2009 Steady State Activities:

- Reviewing and maintaining a database of SCs between (also NSAs between NVOCCS) ocean common carriers and shippers, and using this database to guard against anticompetitive practices and other unfair prohibited activities under the 1984 Act.
- Ensuring that common carriers' rates and charges are accessible to the shipping public in private, electronically accessible systems.
- Ensuring that OTIs maintain bonds that protect the shipping public from financial losses.
- Providing formal and informal legal opinions and guidance to the Commission's staff and the general public to ensure clarity and understanding of Commission rules and regulations.
- Administering the Commission's international affairs program.
- Coordinate with other agencies regarding maritime security.
- Reviewing operational and pricing agreements among ocean common carriers and marine terminals to ensure that they do not unduly restrict competition.
- 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 voyage or cruise.
- Licensing OTIs to protect the public from unqualified, insolvent, or dishonest companies.
- Responding to informal complaints and informal inquiries from Congress and the public relating to Commission responsibilities.
- Acting as a liaison between the FMC and the public by responding and/or coordinating agency responses to public inquiries.
- Maintaining a specialized maritime law library for agency and public use.
- Conducting audit activity of regulated entities, including OTIs and VOCCs, to promote and ensure compliance with applicable statutes and Commission regulations.
- Responding to inquiries and complaints from the regulated industry and shipping public. Providing information, assistance and forms necessary to comply with applicable statutes and Commission regulations including educational seminars.

### B. Outcome Goals

**Outcome Goal 2.1: Increase the rate of compliance under applicable U.S. shipping laws and regulations relating to tariffs, service contracts, unfair trade practices, antitrust immunity, discriminatory practices, carrier pricing and service, ocean transportation intermediary activities, and passenger vessel operations.**

Measure: Percentage of minutes and monitoring reports received within regulatory deadlines or formal extension.

Target: 95%

Measure: Percentage of new and amended OTI applications that are processed within 45 days.

Target: 80%

**Outcome Goal 2.2: Conduct educational programs and provide opportunity for informal exchanges between our stakeholders and the Commission.**

Measure: Number of industry entities invited to address Commission staff.

Target: 3

Measure: Presentation, panel participation and attendance by staff at trade conferences.

Target: 3

**Outcome Goal 2.3: Maintain fair competition in U.S. ocean commerce.**

Measure: Achieve positive outcomes in matters for which formal request for additional information is made to parties of filed ocean common carrier or marine terminal operator agreements.

Target: 90 %

**Outcome Goal 2.4: Protect the public and users of ocean transportation services from activities that violate the shipping statutes.**

Measure: Number of investigations opened to address alleged harm to the public as a result of Shipping Act violations.

Target: 50

**Strategic Goal No. 3: Balanced Enforcement**

Foster economic efficiencies, reliance on marketplace factors and maritime security by administering U.S. shipping statutes in a balanced and equitable manner to redress excessive anticompetitive actions and other unlawful activities.

16 FTEs and \$2,861,000.00 will be required to accomplish this goal.

**A. 2009 Steady State Activities:**

- Investigating discriminatory rates, charges, classifications, and practices of common carriers, terminal operators, and OTIs operating in the foreign commerce of the U.S.
- Representing the FMC before U.S. courts and other administrative agencies.
- Reviewing staff recommendations and initial decisions for legal sufficiency and preparing final decisions and orders.
- 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.
- 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.
- Prosecuting formal proceedings initiated by the Commission.
- Monitoring activities and conducting investigations of regulated entities and of SC activity to ensure compliance with statutes and regulations administered by the Commission.
- Conducting non-adjudicatory fact-finding proceedings as directed by the Commission.
- Providing liaison between the Commission and the shipping industry, the public and other governmental entities.
- Coordinating and cooperating with other government entities to improve homeland security by effective exchange of information and assistance regarding foreign ocean transportation.

**B. Outcome Goals**

**Outcome Goal 3.1: Assure carriers do not exercise their antitrust immunity in a manner that results in unreasonable practices, rate increases or service decreases.**

Measure: Percentage of rate agreements analyzed for 6(g) compliance.  
Target: 100%

Measure: Number of memoranda, special reports or studies on significant competition related issues.  
Target: 3

**Outcome Goal 3.2: Ensure that Commission actions are taken with appropriate consideration of their impact on the industry and users of transportation services, including small business considerations, and are directed at market-distorting activities.**

Measure: Number of un-addressed comments received in rulemakings regarding SBREFA concerns.  
Target: 0

**Outcome Goal 3.3: Provide regulatory assistance and encourage voluntary compliance with shipping statutes and regulations through consistent industry outreach and education efforts.**

Measure: Number of compliance presentations by staff to industry and shipping public.  
Target: 3

**Outcome Goal 3.4: Neutralize, or affirmatively address, restrictive trade practices of foreign governments.**

Measure: Number of unresolved FSPA and Section 19 proceedings.  
Target: No more than 2

**Outcome Goal 3.5: Improve maritime security by curtailing unlawful participation in the U.S. ocean transportation system.**

Measure: Percentage of identified unlicensed OTIs sent compliance warning letters.  
Target: 95%

**Strategic Goal No. 4: Technological Efficiencies**

Employ technological enhancements to improve efficiency and to facilitate the exchange of information.

17 FTEs and \$2,987,000.00 will be required to accomplish this goal.

**A. 2009 Steady State Activities:**

- Implementing a wide range of IT programs and services, including operating the agency's local area network, strategic planning for short- and long-term IT initiatives, IT security, data telecommunications, database development and management, and Internet page development and maintenance to enhance productivity and efficiency.
- Maintaining and updating internal databases to enhance the ability of the public and Commission to obtain relevant program-related information and enhance staff productivity.
- Converting Commission records into electronic format to enable easier public access to information.

## B. Outcome Goals

### **Outcome Goal 4.1: Streamline the Commission's work processes through effective utilization of information technology.**

Measure: The number of technology solutions that are designed and implemented and used by the Commission to facilitate process improvement through the use of databases and record keeping systems.

Target: 6

Measure: Cumulative number of technology solutions that are designed and implemented and used by the Commission to facilitate process improvement through the use of databases and record keeping systems since FY 2007 (including current fiscal year).

Target: 12

### **Outcome Goal 4.2: Use electronic technology for the receipt of documents filed with the Commission as envisioned by the Government Paperwork Elimination Act ("GPEA").**

Measure: Percentage use of electronically submitted forms by regulated concerns versus receipt of traditional paper-driven applications and processes.

Target: 50%

### **Outcome Goal 4.3: Safeguard programs and systems as required by the Federal Information Security Management Act of 2002 ("FISMA").**

Measure: Number of technology-related programs and systems developed or implemented that achieve full compliance with Federal information security mandates.

Target: 12

### **Outcome Goal 4.4: Disseminate Commission and staff issuances through the use of electronic technology.**

Measure: The total number of visits and downloads from agency website.

Target: 10 percent increase measured against previous year website traffic statistics, FY 2007 - 2009.

## **Strategic Goal No. 5: Management Capabilities**

Ensure the FMC has the appropriate organizational framework and management systems to carry out its statutory mandates.

24 FTEs and \$4,217,000.00 will be required to accomplish this goal.

### **A. 2009 Steady State Activities:**

- Executing financial management policies and programs, including developing annual budget justifications for submission to the Congress and OMB, managing agency appropriations, administering internal control systems for agency funds, travel and cash management, and coordinating with contractors who provide accounting and payroll services.
- Fostering human resources management principles, including recruitment and placement, position classification and pay administration, occupational safety and health, employee assistance, employee relations, workforce discipline, performance management and incentive awards, employee benefits, career transition, retirement, employee development and training, personnel security, and an equal employment opportunity.
- Ensuring the program operations of the agency are administratively supported via telecommunications, procurement of administrative goods and services, property management, space, printing and copying, mail and records services, facilities and equipment maintenance, and transportation.

- Promoting economy and efficiency in the administration of, and protecting and detecting waste, fraud and abuse in, the agency's programs via auditing agency operations.
- Providing guidance to staff regarding administrative matters, including procurement, personnel and contracting issues.
- Ensuring program compliance with various rules and regulations regarding such areas as forms clearance, Paperwork Reduction, Small Business Paperwork Reduction Act, and other Federally required reports and submissions.

**B. Outcome Goals**

**Outcome Goal 5.1: Organize and manage the agency's staff consistent with established priorities, with an emphasis on workforce planning, diversity, and effective internal communication.**

Measure: Percentage of agency employees who participated in required annual training during the fiscal year (e.g., ethics, IT security, No FEAR, etc.).

Target: 100%

Measure: Number of awareness, recruitment, training, new-employee orientation, workforce development, and quality of life initiatives offered to agency employees.

Target: 250

**Outcome Goal 5.2: Clearly and accurately communicate the Commission's program requirements, activities and decisions in a manner consistent with the Information Quality Guidelines for Federal Agencies.**

Measure: Percentage of internal Commission orders or SOPs reviewed, developed or updated by Office of Administration during the fiscal year.

Target: 33%

Measure: Percentage of agency records which have been assessed with respect to records disposition requirements with respect to the current fiscal year.

Target: 33%

**Outcome Goal 5.3: Respond to changing industry conditions and business environment through use of state-of-the-art automated systems for internal and external processes and a flexible and well-trained workforce.**

Measure: Percentage of agency employees who participated in optional skill-building, management and other training during the current fiscal year.

Target: 25%

Measure: Percent of payments (user fees, penalties, etc.) received electronically via Pay.gov versus older technologies (e.g., checks).

Target: 25%

**Outcome Goal 5.4: Enhance performance and accountability through linking planning, financial management and performance.**

Measure: Percentage of management officials undertaking reviews of internal controls and vulnerability assessments for their programs during the current fiscal year.

Target: 95%

Measure: Number of material deficiencies found in most recent financial statement audit.

Target: 1 or fewer

Measure: Received "unqualified opinion" from financial statement auditors with respect to the current fiscal year.

Target: Yes