The background of the entire page is a close-up, slightly blurred image of the American flag, showing the stars and stripes in a curved, draped perspective.

**FEDERAL MARITIME COMMISSION**  
**BUDGET ESTIMATES**  
**FISCAL YEAR 2009**

**SUBMITTED TO THE APPROPRIATIONS COMMITTEE**

February 4, 2008



**TABLE OF CONTENTS**

	<u>Page</u>
<b>Summary and Highlight Statement</b> . . . . .	1
<b>Justification Materials:</b>	
Organizational Chart.....	9
Appropriation History (Graph).....	10
Full-Time Equivalent History (Graph).....	11
Summary of Requirements.....	12
Program by Activities.....	13
Summary of Employment.....	14
Summary of Salaries and Benefits Expenses.....	15
Summary of Travel and Administrative Expenses.....	16
<b>Budget Justifications:</b>	
Formal Proceedings Program.....	17
Equal Employment Opportunity Program.....	29
Inspector General Program.....	30
Operations Program.....	32
Administration Program.....	45
Alphabetical Listing of Abbreviations (Appendix A).....	49
 <b>Attachment: 2009 Final Annual Performance Plan</b>	

**Summary and Highlight Statement**

**Budget Estimates, 2009**

The Federal Maritime Commission (“FMC” or “Commission”) regulates oceanborne transportation in the foreign commerce of the United States. The Commission administers the Shipping Act of 1984 (“1984 Act” or “Shipping Act”) as amended by the Ocean Shipping Reform Act of 1998 (“OSRA”); section 19 of the Merchant Marine Act, 1920 (“1920 Act”); the Foreign Shipping Practices Act of 1988 (“FSPA”); and Public Law (“P. L.”) 89-777. The Commission monitors the activities of ocean common carriers, marine terminal operators (“MTOs”), conferences, ports and ocean transportation intermediaries (“OTIs”) who operate in the U.S. foreign commerce to ensure that they maintain just and reasonable practices; maintains a trade monitoring program to detect and appropriately remedy malpractices and prohibited acts under the Shipping Act; monitors the laws and practices of foreign governments which could have adverse impact on shipping conditions in U.S. trades and imposes remedial action as appropriate under section 19 of the 1920 Act or the FSPA; enforces regulatory requirements applicable to carriers owned or controlled by foreign governments; processes and reviews carrier agreements, service contracts and service arrangements for compliance with the Shipping Act, and reviews carriers’ privately published tariff systems for public accessibility and accuracy as required by OSRA. The Commission also issues licenses to qualified OTIs in the U.S., ensures that all OTIs are bonded to protect the shipping public from financial loss and, under P.L. 89-777, ensures that passenger vessel operators (“PVOs”) demonstrate adequate financial responsibility to indemnify passengers in case of injury or nonperformance of transportation.

Summary and Highlights

**The Commission's activities during the past fiscal year include the following:**

- ◆ Improved further the Commission's monitoring program of agreements which address such supply-chain and operational issues as port congestion, security, air pollution and environmental concerns that affect local communities and industry stakeholders, including conducting a review and analysis of the clean air action plan proposed by the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*, which established new programs to reduce air pollution from motor carriers serving marine terminals. Staff also reviewed an amendment to the West Coast MTO Agreement permitting the terminal operators to institute measures anticipated under the ports' new programs seeking to reduce pollution from trucks calling in the port areas. Also monitored developments at the Port of Los Angeles and the Port of Long Beach relating to the Clean Trucks Program. The Port of Los Angeles and the Port of Long Beach ("the Ports") are members of *FMC Agreement No. 201170, Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*. This agreement permits them to discuss, consult, and agree on the establishment and implementation of programs and strategies to improve port-related transportation infrastructure and to decrease port-related air pollution. The Ports are currently in the process of developing a Clean Trucks Program as the first initiative under their joint Clean Air Action Plan. The Ports' goal is to significantly reduce air pollution from port drayage trucks by replacing or retrofitting an estimated 16,000 trucks servicing the Ports over a 5-year period. Certain groups have asserted that the proposed Clean Trucks Program may violate certain provisions of the Shipping Act. The Commission held a closed meeting on November 28, 2007, to consider the proposed Clean Trucks Program, and it will continue to monitor developments at the Ports.
- ◆ Heard oral argument in Docket No. 06-03, *Premier Automotive Services, Inc. v. Robert L. Flanagan and F. Brooks Royster, III*. Premier Automotive Services, Inc. ("Premier") filed a complaint against Robert L. Flanagan and F. Brooks Royster, III (collectively "Flanagan") alleging that Flanagan's marine terminal leasing practices violated the Shipping Act. Flanagan filed a Motion to Dismiss arguing that (1) the case is barred by constitutional principles of state sovereign immunity; (2) the Shipping Act does not authorize private complaints for injunctive relief, and (3) the respondents should not be held liable as individuals under provisions of the Shipping Act which are specifically applicable to common carriers, OTIs and MTOs. Premier's response argued that the action is within the *Ex parte Young*, 209 U.S. 123 (1908), exception to state sovereign immunity and that the Shipping Act provides for prospective injunctive relief. The ALJ granted the motion to dismiss on March 31, 2006, finding that the complaint was barred by sovereign immunity since *Young* did not apply. Premier appealed the ALJ's decision, and the proceeding is currently pending before the Commission.
- ◆ Administered the Commission's oversight authority over filed carrier agreements by reviewing developments relating to a number of our most important U.S. ocean trading lanes, including preparation of a report and economic analysis of the competitive impact of expanding the geographic scope of the *Transpacific Stabilization Agreement* ("TSA") to include the Indian Subcontinent; and an analysis of competitive impacts anticipated from the announcement that TSA would add CMA-CGM, S.A., Mediterranean Shipping Company, S.A. and Zim Integrated Shipping Services Ltd., as members. Although the addition of carrier parties increased TSA's market position, anticompetitive concerns at present are mitigated by the decline in rate levels in the Transpacific over the past year.
- ◆ On a 3-2 vote, issued an order in Docket No. 02-08, *Odyssey Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority*, Docket No. 04-01, *International Shipping Agency, Inc. v. The Puerto Rico Ports Authority*, and Docket No. 04-06, *San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority*, finding that the Puerto Rico Ports Authority ("PRPA") is not an arm of the Commonwealth of Puerto Rico and, therefore, is not entitled to sovereign immunity. Complainants had alleged that PRPA's marine terminal leasing practices violate the Shipping Act, and that PRPA's activities are contrary to the terms of an agreement filed with the Commission. PRPA sought dismissal of the action, arguing that the complaints are barred by PRPA's sovereign immunity as an arm of the Commonwealth of Puerto Rico. The Commission's decision affirmed the Administrative Law Judge's ("ALJ's") decision that PRPA was not entitled to sovereign

immunity. PRPA sought review of the Commission's decision in the U.S. Court of Appeals for the D.C. Circuit. Further proceedings have been stayed by that court pending its review.

- ◆ Commenced financial and documentary reviews of PVOs under section 3, P.L. 89-777 to evaluate PVO compliance in reporting unearned passenger revenue, and to determine whether passenger receipts are timely and accurately deposited by the cruise operator into the FMC-approved escrow account. An initial review was conducted at the offices of a New York-based cruise operator having an escrow account, and a second review was instituted in July 2007 at the Rhode Island offices of a small PVO establishing financial responsibility by means of a surety bond.
- ◆ Exercised the Commission's continuing oversight over land-side agreements affecting marine terminals and intermodalism by preparing an analysis of an agreement between and among ocean common carriers participating in the Ocean Carrier Equipment Management Association, the South Carolina State Ports Authority, and the Georgia Ports Authority to establish a regional chassis pool at marine terminals and inland intermodal terminals in the South Atlantic region of the United States. The Commission allowed the agreement to become effective upon determining that the agreement likely would enhance efficiency at the terminals and inland intermodal terminals concerned.
- ◆ Placed an Area Representative in Houston, TX due to significant growth in container volumes transiting the port. The AR will serve Houston and other major port cities and transportation centers within the geographic area. In addition to monitoring and investigative functions, ARs represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze information of regulatory significance, and assess industry conditions.
- ◆ Initiated an evaluation of the effectiveness of the PierPASS program after two full years in operation, including a detailed assessment of the program's pricing mechanisms, cost allocation methods, and revenue redistribution systems. The PierPASS program was designed and implemented by members of the West Coast MTO Agreement in conjunction with other industry stakeholders to ameliorate road and terminal congestion at the ports of Los Angeles and Long Beach and to help mitigate pollution associated with port-related activities. The program substantially extended the use of marine terminals during off-peak hours by imposing a "traffic mitigation fee" on certain containers using terminal gates during peak times.
- ◆ Implemented electronic filing of an automated Form FMC-18, Application for an Ocean Transportation Intermediary License, permitting filers to complete an OTI application on-line, scan and attach required documents, and submit the application electronically. The filing system incorporates significant security features for the purpose of protecting applicant data, and detecting and preventing unauthorized system intrusions.
- ◆ Completed a biannual financial analysis of user fees by staff. A proposed rule updating the Commission's schedule of user fees for services provided will be issued in the near future.
- ◆ Following work with staff from the Bureau of Public Debt and auditors regarding the Audit of the Fiscal Year 2006 Financial Statement, the Commission received an unqualified opinion as to our fiscal year 2006 financial statement audit.
- ◆ A peer review was conducted in 2007 of the Office of Inspector General's ("OIG's") quality control program. OIG received a clean opinion.
- ◆ Established links in the agreement database as a first step to providing public access, through the agency's website, to marine terminal agreements.
- ◆ Completed review of passenger pay-out procedures with respect to two defunct PVOs under escrow agreements previously established under provisions of 46 C.F.R. Part 540. Following coordination with the agency's Office of Consumer Affairs and Dispute Resolution Services to ensure that passenger fare refunds were completed to all qualified passengers embarking at a U.S. port, the Commission approved final pay-out

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## Federal Maritime Commission

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and termination of escrow accounts on behalf of CQ River Cruises L.L.C. (d/b/a American Rivers Cruise Line and Great American River Journeys); and Royal Olympic Cruises Ltd. (d/b/a Royal Olympia Cruises and R O Cruises, Inc), PVOs who previously discontinued cruise operations without performing contracted cruises.

- ◆ Completed modernization of the Regulated Persons Index (“RPI”). The agency posts on its website a list of OTIs which are licensed, bonded, and have provided their tariff location, if required, so that carriers and others can ascertain whether an OTI has met FMC requirements. The list is also of use to the U.S. Customs and Border Protection (“CBP”) and other Federal agencies in conjunction with homeland security initiatives.
- ◆ Conducted continuing informational outreach conducted by the Commission’s Area Representatives (“ARs”) at locations around the country. Fiscal year 2007 activities included: addressing the Surfside Business Association to provide information on the jurisdiction and functions of the FMC; addressing the Cargo Committee of the Greater Miami Chamber of Commerce; and addressing a general membership meeting of the Florida Customs Brokers and Freight Forwarders Association, among others. A single TV interview on Univision’s New York area station (TV Channel 45) netted over 50 inquiries directed at unlicensed OTIs.

**In addition to the above, the Commission, as part of its ongoing activities:**

- ◆ Continued to accumulate information on the laws and practices of foreign governments and monitor activities in the U.S. foreign trades to address appropriately any condition which appears unfavorable to U.S. shipping interests.
- ◆ Received and processed 741 original non-vessel-operating common carrier (“NVOCC”) Service Arrangements (“NSAs”) and 886 subsequent amendments that were filed by NVOCCs. As part of the Commission’s decision to allow NSA filings, staff also conducted a comprehensive review of all NSAs filings received during the first year of effectiveness of the rule.
- ◆ Monitored service contract and tariff filings to ensure fair and equitable trading conditions. Received and processed 44,608 new service contracts and 262,076 contract amendments.
- ◆ Continued an exchange of enforcement information with CBP in accordance with a Memorandum of Understanding. Cooperation with CBP has expanded into joint field operations to investigate entities suspected of violating both agencies’ statutes or regulations. Such cooperation often includes local police and U.S. Citizenship and Immigration Services (formerly INS). FMC Area Representatives also conferred with CBP regarding ongoing matters of mutual interest such as misdescriptions of shipments inbound from China to the United States, industry malpractices, and terminal OTIs.
- ◆ Received 73 applications for passenger vessel certificates (casualty and performance). Currently, 200 vessels and 48 operators have evidence of financial responsibility coverage on file with the Commission in excess of \$354 million for nonperformance and over \$690 million for casualty.
- ◆ Issued 352 new and 154 amended OTI licenses, approved 94 other actions such as replacement of qualifying individuals or business structure changes, and revoked 237 licenses; bonds for 67 non-U.S.-based unlicensed NVOCCs were cancelled.
- ◆ Continued an investigation into the operations of unlicensed, unbonded OTIs that provide transportation of household goods and personal effects, including enforcement of the prohibition on Vessel-Operating Common Carriers (“VOCCs”) and licensed NVOCCs providing service to such unlawful operators.
- ◆ Continued working with the industry to obtain statutory compliance in all major trades and with all segments of the transportation industry, i.e., carriers, carrier agreements, MTOs, PVOs, and OTIs. Particular emphasis was placed on service contract activities in order to ensure fair trading conditions and adequate protection of the public.

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## Federal Maritime Commission

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- ◆ Continued its program designed to identify controlled carriers effectively and quickly, and to ensure appropriate monitoring of controlled carrier activities. This included reviewing documents and information relating to the controlled carrier status of a number of carriers. As part of the program, produced a detailed study of service contract rate levels for major commodities moving between key port-pairs in the U.S. transpacific trade.
- ◆ Monitored agreement activities and trade conditions affecting oceanborne foreign commerce by reviewing, evaluating and processing 181 carrier agreement filings and 10 marine terminal agreement filings.
- ◆ As part of its agreements program, the agency also received 908 sets of minutes of agreements meetings and 163 submissions of voluntary service contract guidelines, as well as 99 monitoring reports containing market share, cargo, revenue, and service data for agreement parties. Additionally, four applications for waiver requests were processed.
- ◆ Worked with industry parties to establish an automated interface with the Service Contract Filing System (“SERVCON”) upgrades implemented last fiscal year, facilitating streamlined filing process for service contracts and NSAs, and providing other performance enhancements to the system.
- ◆ Continued a program of semi-annual meetings with carrier representatives of the Trans-Pacific Stabilization Agreement pursuant to settlement terms agreed to in Fact Finding Investigation No. 25, *Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*.
- ◆ Posted 4,372 active/current tariff location addresses for carriers, conferences, and MTOs on the agency’s website to ensure public access to tariff data. Commission staff also maintains a historical record of 2,140 inactive/cancelled tariff location addresses, which are available for public access.
- ◆ Continued to monitor accessibility to tariffs published in carriers’ automated tariff systems (“CATS”). Contacted particular entities to address high fees for CATS access.
- ◆ Conducted, through the Office of Inspector General, annual reviews of the agency’s financial statement and information security and privacy assurance controls, as well as other programmatic audits and reviews of FMC programs and activities.
- ◆ Made extensive use of a new point-and-click web-based Port Import Export Reporting Service (“PIERS”) data analysis system developed for the agency’s Bureau of Trade Analysis (“BTA”) in assessing the competitive impact of new agreements or modifications to existing agreements and to monitor trade conditions and agreement activities.
- ◆ Maintained an agreement database and library containing up-to-date information pertaining to effective agreements. Continued adding copies of marine terminal agreements to the agency’s electronic agreement library. Public access to the marine terminal agreements library will be established through links on the agency website
- ◆ Revised the Form FMC-1 database system to provide better computer security and require use of log-on identification and passwords for users accessing the system.
- ◆ Developed an internal automated database system for tracking OTI/NVOCC activities to ensure compliance related to tariff cancellations, inactive Form FMC-1s and current bonds/licenses.
- ◆ Collected \$1,372,117 in fines and penalties. The Commission also collected \$592,720 in fees for publications and photocopies, ocean freight forwarder/NVOCC licensing, passenger vessel certifications, special permissions and other applications. These revenues were deposited in the U.S. Treasury general fund account.
- ◆ Participated in interagency groups and international maritime discussions, including the Committee on the Marine Transportation System (“CMTS”), a cabinet-level inter-agency organization whose goal is to ensure

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## Federal Maritime Commission

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the development and implementation of national CMTS policies consistent with national needs.

- ◆ Provided consumer assistance consistent with the policies of Executive Order 12160, “Providing for Enhancement and Coordination of Federal Consumer Programs,” while also assisting regulated entities in achieving compliance with statutory requirements.
- ◆ Consulted with Congressional staff in support of a recently-adopted bill to revise, codify and re-enact maritime laws administered by FMC as part of Title 46, U.S. Code, Shipping.
- ◆ Reviewed 105 other bills, proposals and Congressional inquiries referred to the General Counsel for determination of impact on Commission programs, policies or operations; and to evaluate need for formal or informal contacts with Congressional staff.
- ◆ Developed internal controls vulnerability assessments in line with OMB Circular A-123, *Management Responsibility for Internal Controls*.
- ◆ Completed the agency’s Program Performance Report for fiscal year 2006, finalized its Annual Performance Plan for fiscal year 2008, and developed its Initial Annual Performance Plan for fiscal year 2009, in accordance with the Government Performance and Results Act of 1993.
- ◆ Continued information technology efforts to ensure compliance with statutory regulatory requirements and to ensure effective coordination of the Commission’s automation program, including initiating procurements assisting implementation of the government’s new Internet upgrade initiative (“IPv6”).
- ◆ Initiated new system for electronically scanning/imaging Commission records, and successfully migrated data from old scanning system. The process of scanning new Commission records continued during fiscal year 2007, improving staff response time to public inquiries and facilitating public access to electronic files.
- ◆ Continued emphasis upon employee development programs and activities to address executive succession, such as initiating a Senior Executive Service (“SES”) Candidate Development Program, implementing an Emerging Leaders Program for staff at the GS-11 level and above, and enhancing employee skills through initiation of agency-wide use of Individual Development Plans.
- ◆ Through the Small Agency Human Resources Consortium, pursued development and implementation of the Electronic Official Personnel Folder (“eOPF”) system to convert all agency personnel records to digital format.
- ◆ Refined the Commission's Continuity of Operations Plan dealing with recovery of operations in the event of displacement or disaster. Successfully conducted a Continuity of Operations (“COOP”) test in May 2007, activating the agency’s remote command center and verifying communications capabilities and access to mission critical systems.
- ◆ Prepared budget justifications and estimates for the fiscal year 2008 Congressional budget and fiscal year 2009 Office of Management and Budget (“OMB”) budget, and produced the agency’s fiscal year 2007 Management’s Discussion and Analysis (“MD&A”), and its Performance and Accountability Report (“PAR”).

**As part of its program objectives for fiscal years 2008 and 2009, the Commission plans to conduct the following:**

- ◆ Analyze current uses of antitrust immunity by vessel operators and MTOs operating in U.S. trades, and assess competitive impacts of European Union (“EU”) action repealing the block exemption for liner shipping conferences in US-EU liner trades.
- ◆ Continue to participate in activities to help identify any service contract provisions that may bear on maritime security concerns.

- ◆ Evaluate how effectively the agency monitors agreements that are designed to address specific supply-chain issues such as port-related congestion, security, and environmental problems affecting local communities and industry stakeholders.
- ◆ Update the agency's Strategic Plan.
- ◆ Continue timely and expert monitoring program over agreement activities and trade conditions relevant to our most important U.S. ocean trading lanes, and prepare reports and economic analyses covering a wide variety of developments impacting key U.S. trades and supply chain arrangements.
- ◆ Continue implementation of Homeland Security Presidential Directive 12 ("HSPD-12"), the government-wide identification card system.
- ◆ Continue to process and review agreements, service contracts and NSAs to ensure equitable trading conditions and focus enforcement efforts on activities which have market-distorting effects or which impact most directly on the shipping public.
- ◆ Fine-tune standard operating procedures for monitoring OTI/NVOCC tariff activities as related to bonding and licensing requirements for compliance with the Commission's rules regarding OTI financial responsibilities and tariff requirements.
- ◆ Complete evaluation of the impact of the new agreement rules on the industry and the internal processes of the agency, adopted by the Commission in FMC Docket No. 03-15, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*.
- ◆ Further enhance public access to filed agreements, as well as developing and implementing procedures for the electronic filing of agreements, agreement monitoring reports, and agreement meeting minutes.
- ◆ Continue, through its Inspector General program, to conduct and supervise audits and investigations relating to the programs and operations of the FMC, and make recommendations designed to promote efficiency and effectiveness in agency administration, and to combat fraud and abuse.
- ◆ Develop a rule to provide additional remedial alternatives in addressing cruise lines that fail to file PVO reports timely.
- ◆ Redesign the functionality of the OTI list on the homepage to include more information and improve search capability.
- ◆ Implement a plan to support the electronic filing of OTI bonds. Electronic submission will contribute to a speedier and more efficient licensing process.
- ◆ Develop a plan for automating the preparation and filing of Form FMC-131, the PVO Application form.
- ◆ Migrate to an updated platform for paperless check conversion for financial transactions, and implement use of Pay.gov for agencywide acceptance of electronic payments.
- ◆ Continue to update and upgrade the Commission's technology infrastructure, including completion of the IPv6 upgrade and implementing Voice over Internet Protocol ("VoIP").
- ◆ Implement migration to eOPF-compliant electronic records system, including scanning of applicable employee records now in paper format and providing training for human resources staff and agency employees as to the capabilities of and access to the new system.

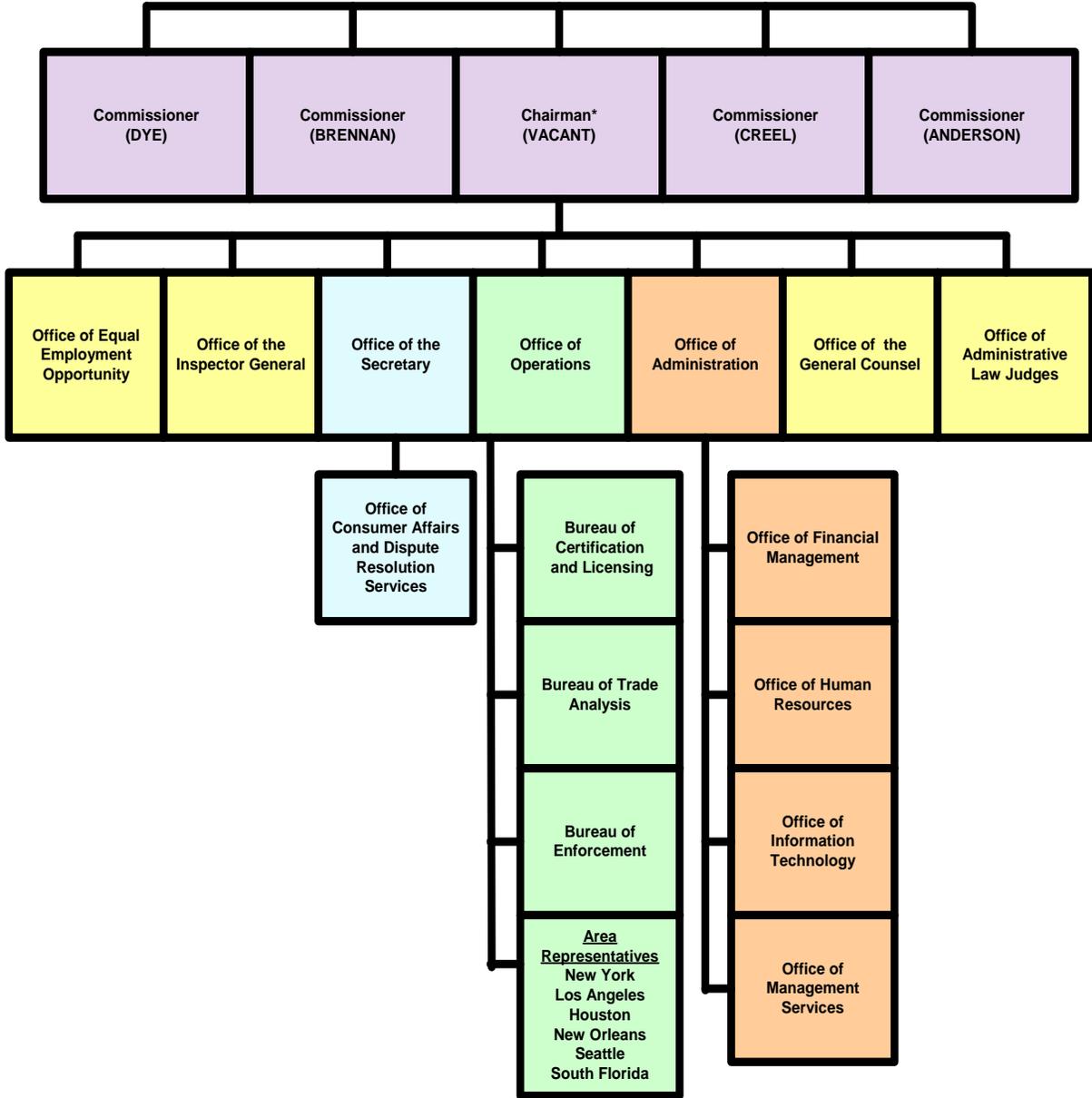
## **Federal Maritime Commission**

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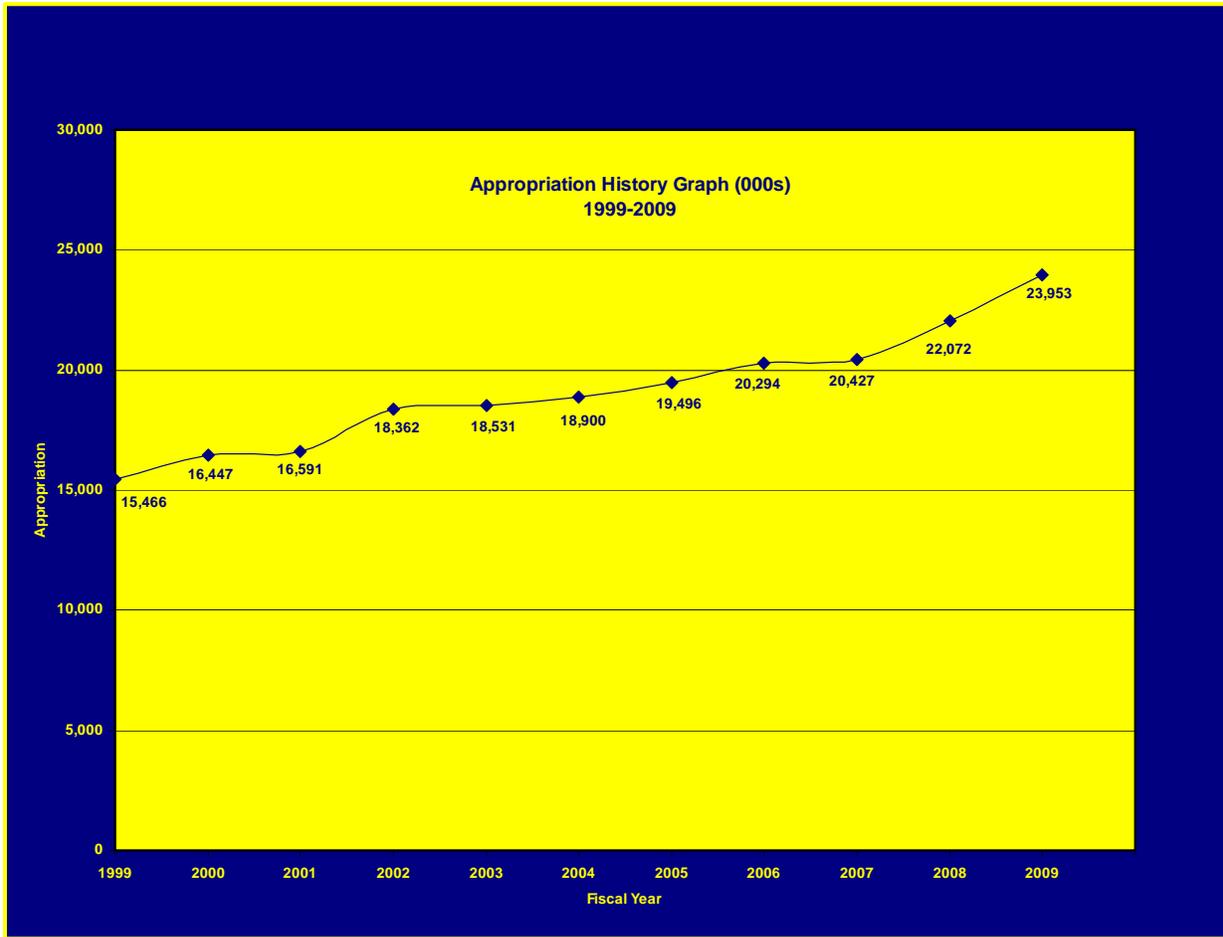
- ◆ Assess expansion of the agency's telework program to encourage employee usage and advance efficiency of operations.
- ◆ Implement an on-line catalogue of Commission's reference and law library materials, facilitating desktop access for agency employees.
- ◆ Link the new PIERS data analysis system to the enhanced Agreements database to facilitate the review of new agreements or modification of existing agreements.
- ◆ Enhance the usefulness of service contract and NSA data through upgrades to the SERVCON system so that trends and relevant developments may be determined more easily.

The Commission's budget estimates for fiscal year 2009 in the amount of \$23,953,000 provide funding for 131 work years ("WY") of employment. Funding at this level enables the Commission to maintain and continue its existing statutory programs effectively and efficiently. The fiscal year 2009 request is an increase of \$1,881,000 over the fiscal year 2008 appropriation level. The increase is comprised of \$1,467,000 for salaries and benefits to support current Commission programs, \$24,000 for travel cost increases, and \$390,000 in administrative expenses.

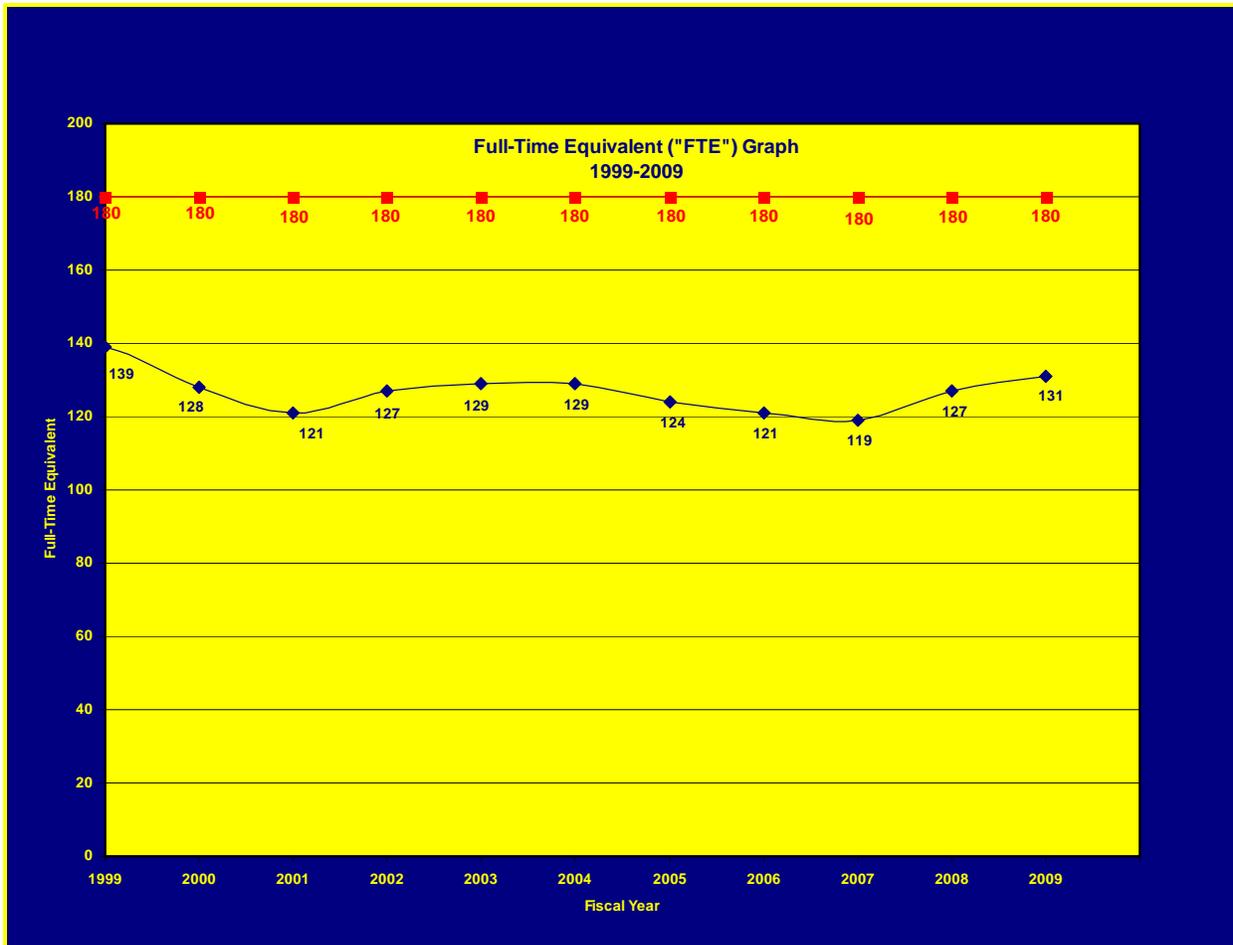
**Federal Maritime Commission  
Organization Chart  
(February 4, 2008)**



\*On August 2, 2007, the President nominated Commissioner Anderson for an additional term and designated him Chairman upon his confirmation.



Federal Maritime Commission



Federal Maritime Commission

<b>FEDERAL MARITIME COMMISSION</b>				
Appropriation: Salaries and Expenses				
Budget Year: 2009				
Summary of Requirements				
<b>ID Code:</b> <b>65-0100-0-1-403</b>	2008 Estimate	2009 Estimate	Difference	Difference %
<b>Direct obligations:</b>				
11.1 Full-Time Permanent	12,632,000	13,801,000	1,169,000	9.25%
11.3 Other than full-time permanent	68,000	70,000	2,000	2.94%
11.5 Other personnel compensation	0	0	0	0.00%
<b>11.9 Total personnel compensation</b>	<b>\$12,700,000</b>	<b>\$13,871,000</b>	<b>\$1,171,000</b>	<b>9.22%</b>
12.0 Civillian personnel benefits	2,939,000	3,235,000	296,000	10.07%
21.0 Travel and transportation of persons	261,000	285,000	24,000	9.20%
22.0 Transportation of things	12,000	15,000	3,000	25.00%
23.1 Rental payments to GSA	3,197,000	3,288,000	91,000	2.85%
23.2 Communications, utilities, and miscellaneous charges	225,000	228,000	3,000	1.33%
24.0 Printing and reproduction	153,000	174,000	21,000	13.73%
25.0 Other services	2,292,000	2,626,000	334,000	14.57%
26.0 Supplies and materials	230,000	231,000	1,000	0.43%
31.0 Equipment	63,000	0	-63,000	-100.00%
<b>Totals</b>	<b>\$22,072,000</b>	<b>\$23,953,000</b>	<b>\$1,881,000</b>	<b>8.52%</b>

<b>FEDERAL MARITIME COMMISSION</b>			
<b><u>Program by Activities</u></b>			
	2007	2008	2009
	Actual	Estimate	Estimate
<b>Formal Proceedings</b>	6,139,510	6,952,000	8,042,000
<b>Equal Employment Opportunity</b>	166,244	186,000	199,000
<b>Inspector General</b>	490,044	534,000	529,000
<b>Operations</b>	9,213,534	9,999,000	10,664,000
<b>Administration</b>	4,414,067	4,401,000	4,519,000
<b>Total Obligations</b>	<b>20,423,399</b>	<b>22,072,000</b>	<b>23,953,000</b>

<b>FEDERAL MARITIME COMMISSION</b>			
<b><u>Summary of Employment</u></b>			
<b>Offices</b>	<b>2007 Actual Workyears</b>	<b>2008 Estimate Workyears</b>	<b>2009 Estimate Workyears</b>
<b>Formal Proceedings</b>	<b>34</b>	<b>37</b>	<b>39</b>
Office of Commissioners	7	10	11
Office of the Secretary	14	13	14
Office of the General Counsel	11	12	12
Office of Administrative Law Judges	2	2	2
Office of Equal Employment Opportunity	1	1	1
Inspector General	3	3	3
<b>Office of Operations</b>	<b>58</b>	<b>62</b>	<b>64</b>
Office of the Director	4	5	5
New York Area Representative	2	2	2
New Orleans Area Representative	1	1	1
Los Angeles Area Representative	1	1	1
Houston Area Representative	1	1	1
South Florida Area Representative	2	2	2
Seattle Area Representative	1	1	1
Bureau of Trade Analysis	19	20	21
Bureau of Certification and Licensing	17	19	19
Bureau of Enforcement	10	10	11
<b>Office of Administration</b>	<b>23</b>	<b>24</b>	<b>24</b>
Office of the Director	4	4	4
Office of Information Technology	6	6	6
Office of Human Resources	3	4	4
Office of Financial Management	5	5	5
Office of Management Services	5	5	5
<b>Total Work Years (FTE)</b>	<b>119</b>	<b>127</b>	<b>131</b>

<b>FEDERAL MARITIME COMMISSION</b>								
<b><u>Summary of Salaries and Benefits Expenses</u></b>								
	2007 Actual		2008 Estimate		2009 Estimate		Difference	
	WY	Amount	WY	Amount	WY	Amount	WY	Amount
<b>Permanent Employment</b>	118	11,775,693	126	12,632,000	130	13,801,000	4	1,169,000
<b>Temporary and Part-Time Employment</b>	1	62,458	1	68,000	1	70,000	0	2,000
<b>Overtime</b>		0		0		0		0
<b>Awards</b>		0		0		0		0
<b>Total Salaries</b>	<b>119</b>	<b>11,838,151</b>	<b>127</b>	<b>12,700,000</b>	<b>131</b>	<b>13,871,000</b>	<b>4</b>	<b>1,171,000</b>
<b>Personnel Benefits</b>		<b>2,586,722</b>		<b>2,939,000</b>		<b>3,235,000</b>		<b>296,000</b>
<b>Total Salaries and Benefits</b>	<b>119</b>	<b>14,424,873</b>	<b>127</b>	<b>15,639,000</b>	<b>131</b>	<b>17,106,000</b>	<b>4</b>	<b>1,467,000</b>

The salaries estimates for fiscal year 2009 are increased by \$1,171,000 over fiscal year 2008. The funding provides for annualization costs of 2008 salary increases; for general schedule pay step increases (within grades); for the anticipated 2009 pay increase @ 3.0 %, and for career-ladder promotions. This request funds the staffing anticipated to be on board when fiscal year 2009 begins.

Personnel benefits amount to \$3,235,000 in fiscal year 2009 for current programs, which includes the FMC's contribution to Civil Service Retirement System ("CSRS"), Federal Employee Retirement System ("FERS"), Social Security, group life insurance and Federal Employee's Health Benefits ("FEHB"), and worker's compensation and medical benefits. This is an increase of \$296,000.

<b>FEDERAL MARITIME COMMISSION</b>				
<b><u>Summary of Travel and Administrative Expenses</u></b>				
	<b>2007 Actual</b>	<b>2008 Estimate</b>	<b>2009 Estimate</b>	<b>Difference</b>
<b>Travel</b>	185,566	261,000	285,000	24,000
<b>Administrative Expenses</b>	<b>5,812,960</b>	<b>6,172,000</b>	<b>6,562,000</b>	<b>390,000</b>
<b>Transportation of Things</b>	7,000	12,000	15,000	3,000
<b>Rental Payments to GSA</b>	2,977,981	3,197,000	3,288,000	91,000
<b>Communications, Utilities and Miscellaneous Charges</b>	179,586	225,000	228,000	3,000
<b>Printing and Reproduction</b>	103,000	153,000	174,000	21,000
<b>Other Services</b>	1,777,812	2,292,000	2,626,000	334,000
<b>Supplies and Materials</b>	244,617	230,000	231,000	1,000
<b>Equipment</b>	522,964	63,000	0	-63,000
<b>Total Travel and Administrative Expenses</b>	<b>5,998,526</b>	<b>6,433,000</b>	<b>6,847,000</b>	<b>414,000</b>

Travel funding is necessary to allow Commission staff to meet with representatives of the shipping industry to resolve problems through direct negotiations, conduct on-site audits of carriers, consult with foreign trading partners to ensure comity in international regulatory affairs, and expand compliance oversight into interior U.S. points not otherwise readily accessible to FMC Area Representatives from their base port locations. Travel estimates are increased for fiscal year 2009 for anticipated per diem and airfare increases, as well as to accommodate planned, significant increases in outreach, alternative dispute resolution and compliance activities for the agency's five Presidential appointees and agency staff, and to accommodate an increase in staff travel in furtherance of training opportunities and casework.

In fiscal year 2009, administrative expense estimates reflect a net increase of \$390,000. Included in the request is a \$91,000 increase in rent to accommodate rent rate increases. Additionally, transportation of things through Federal Express ("FEDEX") is increased by \$3,000, communications are increased by \$21,000, printing and reproduction is increased by \$21,000, supplies are increased by \$1,000, and other services are increased by \$334,000 for increases to commercial and government contracts. These increases are partially offset by a reduction of \$63,000 for furniture and equipment.

### **Formal Proceedings Program**

The Offices of Commissioners, Secretary, General Counsel and Administrative Law Judges comprise the Formal Proceedings Program. Within this program, the Commission conducts hearings, renders formal decisions in the disposition of docketed cases, compiles and maintains all official documents arising from proceedings, and conducts external representation activities before the Congress, courts of law, and other agencies. The duties, responsibilities, and accomplishments of the offices within the program are provided in the following summary.

#### **Linking Program Funding to Strategic/Performance Goals**

*The Formal Proceedings program generally contributes to accomplishment of Strategies 1 through 3 of the Commission's Annual Performance Plan by providing a forum for Commission action in formal matters ranging from rulemakings to facilitate compliance to issuance of Commission orders enforcing the Shipping Act. For fiscal year 2009 we have specifically linked the Formal Proceedings program to Strategy No .4: Technological Efficiencies in the Agency's Strategic Plan. More specifically, pursuant to the Strategic Plan's Outcome Goals 4.1: Streamline the Commission's work processes through effective utilization of information technology, and 4.2: Use electronic technology for the receipt of documents filed with the Commission as envisioned by the Government Paperwork Elimination Act ("GPEA"), we are pursuing an initiative with Formal Proceedings to improve our services to stakeholders and the public. This improvement is intended to integrate and increase the use of information available internally by increasing the use of electronically submitted forms by regulated entities versus receipt of traditional paper-driven applications and processes.*

*We are also linking Formal Proceedings to Strategic Plan Outcome Goal 4.4: Disseminate Commission and staff issuances through the use of electronic technology by increased uploading of Commission issuances to the agency's website and encouraging the public to more frequently use this important vehicle of agency information to access and retrieve critical documents.*

**Office of the Commissioners**

The Chairman of the Commission is designated by the President of the United States and serves as the agency's chief executive and administrative officer. Accordingly, the Chairman has exclusive authority over agency personnel matters, organization and supervision, distribution of business and use of funds for administrative purposes. During most of fiscal year 2007, there was a vacancy in the Commission Chairmanship. The authority to execute administrative functions was therefore transferred to the remaining four Commissioners, who will retain this authority until a new Chairman is confirmed. On August 2, 2007, the President nominated Commissioner Anderson for an additional term and designated him to be Chairman upon his confirmation.

The Commissioners are responsible for making decisions and determinations in the disposition of docketed cases, and ensuring the efficient, equitable and expeditious resolution of all matters arising under statutes administered by the Commission. The Commission promulgates rules and regulations and issues decisions which interpret, enforce and assure compliance with the 1984 Act, as amended by OSRA, the 1920 Act, FSPA, and P. L. 89-777. During the fiscal year ending September 30, 2007, the Commission issued 20 reports, orders, and notices in docketed proceedings.

### **Office of the Secretary**

The Office of the Secretary serves as the focal point for matters submitted to and emanating from the Commission. It is the public's main contact point with the FMC. The Office receives and processes a variety of documents filed by the public, including: complaints initiating adjudicatory proceedings for alleged violations of the shipping statutes and other applicable laws; special docket applications and applications to correct clerical or administrative errors in service contracts or NSAs; all communications, petitions, notices, pleadings, briefs, or other legal instruments in administrative proceedings; and subpoenas served on the FMC, its members or employees.

The Office is responsible for preparing and submitting regular and notation agenda matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these matters; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings and Commission regulations; issuing publications; and authenticating instruments and documents of the Commission. The Office also responds to information requests from Commission staff, the maritime industry, press, and the public; administers the Freedom of Information, Government in the Sunshine, and Privacy Acts; compiles historical Commission decisions; maintains a public reference/law library and a Docket Activity Library; manages the Commission's Internet website; and participates in the development and coordination of agency-wide public relation/outreach strategies and initiatives. The Office of the Secretary also oversees the Office of Consumer Affairs and Dispute Resolution Services.

During fiscal year 2007, the Office of the Secretary continued to administratively process and direct all major filings addressed to the Commission and its component offices, including agreements filed under section 5 of the 1984 Act, which must be reviewed and processed within 45 days. Through the Office of the Secretary the Commission also issued 20 orders in docketed proceedings.

The Office serves as the Commission's public information/press office. Accordingly, it prepares or coordinates the preparation of Commission news releases; responds to public and press inquiries or directs inquiries to the appropriate Commission bureau/office; and monitors the trade press for matters of agency interest for referral to the Chairman, Commissioners and staff.

The Office also remained involved in the Commission's ongoing effort to expand contact with all segments of the maritime community and the public during the fiscal year. Several initiatives were undertaken by Commission staff to improve industry outreach, including updating educational and informational material.

The Office continued to make improvements to the Commission's website by adjusting how information is presented and increasing the amount of information available. The Office coordinated and posted new and revised Frequently Asked Questions and updated links throughout the Commission's site. The Office continues to evaluate the overall usefulness of the site and works closely with other offices and bureaus to improve its content and user-friendliness.

The process of electronically scanning/imaging Commission records also continued during fiscal year 2007. Data migration from the old system to the new one was completed, and the new system became fully functional during the fiscal year. The new system has helped support the agency's initiatives for continuity of operations by improving preservation of and Commission staff access to Commission documents, as well as improving Commission staff response time to public inquiries and public access to electronic files. In addition to continuing to scan its own office files, during fiscal year 2007, the Office commenced scanning documents from the agency's Office of the General Counsel and Bureau of Enforcement. It also began planning for the scanning process for the agency's Bureau of Trade Analysis, the Bureau of Certification and Licensing and the Commissioners' offices.

During fiscal year 2007, the Office continued to take the lead in accomplishing the agency's performance goals

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## **Federal Maritime Commission**

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related to making more Commission information and filed documents available electronically and to improving responsiveness to requests for public information. Specifically, the Office continued to make key documents filed in formal proceedings available through its website; integrated the Commission's internal complaints database with other internal databases; and began the process for redesigning the agency's Intranet.

In fiscal year 2008, the Office will complete and launch a new version of the agency's Intranet. The Office will also complete assessments and evaluate recommendations for the development of an online catalogue for the Commission's law/reference library collection. In fiscal year 2009, the Office will implement the plan for the online catalogue for the agency's law/reference library collection. This plan will employ technology to improve workforce productivity by providing an in-house library access station, as well as online access of the catalogue to all staff on their individual desktops.

Also, during fiscal year 2008, the Office plans to begin collecting or refining data that will serve as a benchmark for additional quantitative performance goals and measures. Initially, plans are to collect data with respect to the number of complaints or investigations completed within a given timeframe; the percentage of Commission decisions or issuances posted to the Commission's website within a given timeframe; and the processing time for Freedom of Information Act ("FOIA") requests. This information will be used to develop additional quantitative performance measures and goals for fiscal year 2009.

### **Office of Consumer Affairs and Dispute Resolution Services ("CADRS")**

The Office of Consumer Affairs and Dispute Resolution Services is responsible for developing and implementing the Commission's Alternative Dispute Resolution ("ADR") program. Through this program, the Commission provides services to assist parties in resolving disputes and shipping problems in the U.S. ocean shipping commerce. These include a broad range of services designed to avoid the expense and delays inherent in litigation, and to facilitate the flow of U.S. ocean commerce.

CADRS encourages parties to avail themselves of mediation or other ADR processes such as conciliation, facilitation, fact finding, mini-trials, or arbitration as means to resolve disputes. The Commission makes trained neutrals, such as mediators, available to facilitate the resolution of shipping disputes, whether prior to or after commencement of the litigation process. If parties prefer outside neutrals, the Office will assist parties in locating acceptable neutrals such as mediators, with appropriate expertise.

During fiscal year 2007, CADRS staff provided mediation services in several dispute resolution proceedings, thus assisting parties in avoiding significant litigation costs and risks. CADRS also provides *ombudsman* services to participants in ocean shipping transactions. Typical complaints include situations where an NVOCC or VOCC has placed a lien on cargo in its possession, often for sums owed under a different contract of carriage, and cases in which an NVOCC has received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Tracking the whereabouts of a shipment can be difficult, and often additional charges have accrued, necessitating payment of additional funds to obtain release of the shipment.

During fiscal year 2007, 509 complaints were received that necessitated the opening of a case to provide dispute resolution services. These included 220 complaints about cruise issues, 144 about household goods matters, and 145 about cargo shipment matters. During 2007, cargo shipment complaints involved more complex legal issues than had been typical in previous years. An increased portion of complaints involved demurrage and detention issues, the failure to present accurate original bills of lading, and failure to release one party's shipments as a result of prior debts of unrelated co-loading partners. In addition to complaints, a large volume of routine information requests was processed, with answers being provided on a relatively quick basis.

For the first time in several years, fewer household goods complaints were received than for other cargo matters. This may have been attributable to improved outreach and the previous year's institution of a formal Commission investigation of several problem movers. In addition to opening that proceeding, injunctions were obtained against several companies and individuals to prohibit their continued operation. As a result, several entities ceased operations, thereby reducing the number of complaints against those entities. In addition, the Commission's

website has been expanded to provide consumer advice and to caution consumers to deal only with properly licensed OTIs.

With respect to passenger matters, a cruise line that had ceased operations during fiscal year 2004 approached Commission staff for the purpose of closing out an existing escrow account. CADRS worked closely with the line's Chief Executive Officer in order to resolve 29 complaints remaining from passengers affected by the 2004 cancellation of voyages.

Another function of CADRS includes the adjudication of small claims through informal proceedings under 46 CFR Part 502, Subpart S. Office personnel serve as Settlement Officers in such cases, which involve complaints seeking reparations up to \$50,000 for violations of the shipping statutes. Those claims generally involve alleged prohibited acts in connection with the international transportation of goods, or the failure to establish, observe, and enforce just and reasonable regulations and practices. CADRS staff also evaluate and adjudicate 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.

In fiscal years 2008 and 2009, CADRS intends to further expand awareness of the ADR program through education and training and other outreach efforts. Further efforts will be made to increase shipping industry awareness of less adversarial, more cost-effective means of resolving disputes in a manner that enables the parties to control the outcome. Use of mediation, in particular, will be promoted to assist in resolving formal proceedings and other significant disputes. CADRS will continue to make consumer protection information available and will expand its outreach through various websites and media sources. The real value of these efforts will be the number of consumers that are forewarned and thereby avoid problems. Through this means, assistance may be provided to many more consumers than could be possible through post-shipment problem resolution. Also, during fiscal year 2008, CADRS plans to begin collecting data that will serve as a benchmark for additional quantitative performance goals and measures. Initially, the plan is to collect data with respect to the number of cases resolved, monetary savings to complaints, and the number of cases closed within a given time frame. Performance goals for fiscal year 2009 will be based on these benchmarks.

### **Library**

The Office of the Secretary also administers the Commission's Library. The Library serves the Commission's research and information needs, and is a specialized repository of current and basic materials primarily covering the shipping industry, the history of shipping, and regulations covering all phases of shipping in the U.S. foreign trade. It contains a variety of books, directories, encyclopedias, journals, magazines, reports, microforms, and videos. The Library also contains material on several related fields such as engineering, economics, political science, and a collection of legal publications. The Library collection includes law encyclopedias, engineering textbooks, legal treatises, and selected titles of the National Reporter system. The Library's holdings consist of approximately 8,700 volumes and numerous microfiches, CD-ROMs, and on-line services.

**Federal Maritime Commission**

<b>Formal Proceedings Program</b>										
<b>Office of the Secretary</b>										
<b>Statistical Workload Summary</b>										
Workload Units	Fiscal 2007 Actual			Fiscal 2008 Estimate			Fiscal 2009 Estimate			
	On Hand 09/30/06	Receipts	Output	On Hand 09/30/07	Receipts	Outputs	On Hand 09/30/08	Receipts	Outputs	On Hand 09/30/09
Commission Docketed Proceedings (Formal, Special & Informal)	14	14	20	8	25	25	8	25	25	8
Commission Non-Docketed Proceedings	0	0	0	0	5	5	0	5	5	0
Service Contract Correction Applications	0	0	0	0	2	2	0	2	2	0
Non-Docketed Informal Complaints *	158	509	471	196	530	580	146	560	600	106
Docketed Informal Complaints *	18	7	5	20	6	14	12	6	10	8
Special Dockets	0	1	1	0	1	1	0	1	1	0
Agenda Items	0	163	163	0	100	100	0	90	90	0
Pages of Minutes	0	190	190	0	110	110	0	100	100	0
Federal Register Notices	0	281	281	0	300	300	0	300	300	0
FOIA Requests	1	16	13	4	40	40	4	50	50	4
Certifications	0	14	14	0	10	10	0	10	10	0
* - The count for the number of items on hand on 09/30/06 has been adjusted to correct database errors.										

### **Office of the General Counsel**

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

#### **Decisions**

The following are adjudications representative of matters prepared by the OGC:

***Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority, [Docket No. 02-08]; International Shipping Agency, Inc. v. The Puerto Rico Ports Authority, [Docket No. 04-01]; and San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority, [Docket No. 04-06], 30 S.R.R. 1339 (March 5, 2007)***

These cases came before the Commission for a determination of whether the Puerto Rico Ports Authority (“PRPA”) is an arm of the Commonwealth of Puerto Rico and therefore entitled to sovereign immunity. Odyssea Stevedoring of Puerto Rico, Inc., International Shipping Agency, Inc., San Antonio Maritime Corp. and Antilles Cement Corp. (collectively “complainants”) allege that PRPA’s marine terminal leasing practices violated sections 10(b)(10), 10(d)(1), 10(d)(3), and 10(d)(4) of the Shipping Act. Further, Intership alleges PRPA violated section 10 (a) (3) of the Shipping Act, by failing to act in accordance with the terms of an agreement filed with the Commission. PRPA filed motions for summary judgment or motions to dismiss in all three cases, arguing that the complaints were barred by PRPA’s sovereign immunity as an arm of the Commonwealth of Puerto Rico. In *Odyssea* and *Intership*, the ALJ ruled that PRPA was not entitled to sovereign immunity. The Commission, *sua sponte*, decided to review the ALJ’s decision. On November 30, 2006, the Commission issued an order, on a 3-2 vote, finding that PRPA is not an arm of the Commonwealth of Puerto Rico and is therefore not entitled to sovereign immunity. The Commission’s order was appealed to the U.S. Court of Appeals for the D.C. Circuit (Case No. 16-1407). The Court heard oral argument on October 26, 2007, and the case is currently pending decision.

***The Lake Charles Harbor and Terminal District v. West Cameron Port, Harbor and Terminal District [Docket No. 06-02], 30 S.R.R. 1043 (June 7, 2007)***

This proceeding was initiated by complaint of Lake Charles Harbor and Terminal District (“Lake Charles Harbor”) alleging that West Cameron Port, Harbor and Terminal District (“West Cameron”) threatened to impose “wharfage” on the passage of vessels through the Calcasieu River Ship Channel on the way to, or from, Lake Charles, Louisiana, and that such wharfage does not bear a reasonable relationship to any services, facilities or benefits provided by West Cameron. Lake Charles Harbor alleged West Cameron violated sections 10(d) (1), 10(d) (4) and 5(a) of the 1984 Act.

By Order dated June 7, 2006, the ALJ granted the motion to dismiss filed by West Cameron, ruling that the Commission lacked subject matter jurisdiction because, among other things, West Cameron is not a marine terminal operator under the Shipping Act. Lake Charles Harbor appealed the dismissal to the full Commission for the purpose of determining whether the Commission has subject matter jurisdiction over the matters alleged in the Complaint. The appeal was denied and the proceeding was discontinued on August 2, 2007.

***Premier Automotive Services, Inc. v. Robert L. Flanagan and F. Brooks Royster, III, [Docket No. 06-03], 30***

**S.R.R. 970 (March 31, 2006)**

Premier Automotive Services, Inc. (“Premier”) filed a complaint against Robert L. Flanagan and F. Brooks Royster, III (collectively “Flanagan”) alleging that Flanagan’s marine terminal leasing practices violated sections 10(b)(10), 10(d)(1) and 10(d)(4) of the Shipping Act, 46 U.S.C. §§ 41102, 41104 and 41106. Mr. Flanagan and Mr. Royster were the Maryland Secretary of Transportation and the Executive Director of the Maryland Port Administration (“MPA”), respectively, and were sued because MPA possesses sovereign immunity. Flanagan filed a Motion to Dismiss arguing that (1) the case is barred by constitutional principles of state sovereign immunity; (2) the Shipping Act does not authorize private complaints for injunctive relief, and (3) the respondents should not be held liable as individuals under provisions of the Shipping Act which are specifically applicable to common carriers, OTIs and MTOs. Premier responded to the motion arguing that the action is within the *Ex parte Young*, 209 U.S. 123 (1908), exception to state sovereign immunity and that the Shipping Act provides for prospective injunctive relief. The ALJ granted the motion to dismiss on March 31, 2006, finding that the complaint was barred by sovereign immunity since *Young* did not apply. Premier appealed the ALJ’s decision to the Commission. Oral argument was heard on June 13, 2007. The case is currently pending before the Commission.

**Litigation**

The OGC 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 OGC 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 is representative of matters litigated by the OGC:

***Puerto Rico Ports Authority v. The Federal Maritime Commission and the United States of America, D.C. Circuit, Case No. 06-1407.***

This proceeding is an appeal of the Commission’s November 30, 2006, order in Docket Nos. 02-08 (Odyssey Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority); Docket No. 04-01 (International Shipping Agency, Inc. v. The Puerto Rico Ports Authority); and Docket No. 04-06 (San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority). The Commission’s order, on a 3-2 vote, found that the PRPA is not an arm of the Commonwealth of Puerto Rico and is therefore not entitled to sovereign immunity. PRPA appealed the order, arguing that it is entitled to sovereign immunity. The Commission proceedings before the ALJ have been stayed by the Court pending resolution of the appeal. The Commission’s brief was submitted on June 28, 2007; oral argument was heard on October 26, 2007. This appeal is pending decision by the Court of Appeals.

**Legislative Activities**

The OGC represents the Commission’s interests in all matters before Congress. This includes preparing testimony for Commission officials, responding to Congressional requests for information, commenting on proposed legislation, and responding to the Office of Management and Budget (“OMB”) requests for views on proposed bills and testimony.

During fiscal year 2007, 105 bills, proposals and Congressional inquiries were referred to the OGC for comment. The office prepared briefing materials for a confirmation hearing before the U.S. Senate Committee on Commerce, Science and Transportation. The OGC also consulted with Congressional staff on the continuing efforts to revise, codify and enact certain maritime laws as part of Title 46, U.S. Code (“U.S.C.”), Shipping, which was signed into law October 6, 2006.

In fiscal years 2008 and 2009, the OGC will provide assistance and technical advice to Congress. The Commission may recommend legislative amendments as necessary to ensure uniformity with other federal initiatives and to allow for the efficient and secure flow of ocean transportation.

### **Other Significant Activity**

#### ***The Port of Los Angeles and Port of Long Beach Proposed Clean Trucks Program, and FMC Agreement No. 201170, Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement***

The Port of Los Angeles and the Port of Long Beach (“the Ports”) are members of an agreement, currently on file with the Commission, that permits them to discuss, consult, and agree on the establishment and implementation of programs and strategies to improve port-related transportation infrastructure and to decrease port-related air pollution (FMC Agreement No. 201170, Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement). This agreement became effective on August 10, 2006. The Ports are currently in the process of developing a Clean Trucks Program as the first initiative under their joint Clean Air Action Plan. The Ports’ goal is to significantly reduce air pollution from port drayage trucks by replacing or retrofitting an estimated 16,000 trucks servicing the Ports over a five-year period. In early November 2007, each of the Ports adopted identical tariffs requiring a progressive ban on older and non-retrofitted drayage trucks, beginning October 1, 2008. The Ports are considering ways to finance and implement the Clean Trucks Program, including a possible cargo fee and a concessions system, which may require trucking companies to use only employee drivers, rather than independent contractors. The Commission has received information and letters from various stakeholders expressing support for or opposition to certain aspects of the proposed Clean Trucks Program. Certain groups have asserted that the proposed Clean Trucks Program may violate provisions of the Shipping Act, 46 U.S.C. §§ 40101-41309 (2006). The Commission held a closed meeting on November 28, 2007, to consider the proposed Clean Trucks Program and continues to monitor developments at the Ports.

### **Foreign Shipping Restrictions and International Affairs**

The OGC is responsible for the administration of the Commission's international affairs program. The OGC 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 that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the U.S.

In fiscal year 2007, the Commission continued to monitor potentially restrictive shipping practices of the Government of Japan, including the effects of amendments to the Port Transportation Business Law enacted in 2000 and 2005. The Commission continued to receive and evaluate semi-annual reports from its proceeding in Docket No. 96-20, *Port Restrictions and Requirements in the United States/Japan Trade*. The OGC also pursued informally several matters that involved potentially restrictive foreign practices including new legislation, new interpretations of existing legislation and new regulations of non-domestic carriers’ terminal handling charges.

OGC staff served as technical advisors to the U.S. delegation to the semi-annual US-Japan Regulatory Reform talks held in Washington, D.C. on March 26 and 27, 2007.

The Commission’s Permanent Task Force on International Affairs, chaired by the Deputy General Counsel, is a network of representatives from a number of Commission bureaus and offices. The Task Force 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 Task Force was internally evaluated in 2006 and a draft set of recommendations to improve its performance and effectiveness were outlined. These recommendations are presently under review.

Another responsibility of the OGC is the identification and verification of controlled carriers subject to section 9 of the Shipping Act. Common carriers that are owned or controlled by foreign governments are required to adhere to

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## **Federal Maritime Commission**

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certain requirements under the Act, and their rates are subject to Commission review. The OGC investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The OGC, in conjunction with other Commission components, also monitors the activities of controlled carriers.

In fiscal years 2008 and 2009, the OGC will continue to take the lead in accomplishing the agency's performance goals relating to eliminating restrictions that unjustly disadvantage U.S. interests. Through the Permanent Task Force on International Affairs, OGC will monitor foreign laws and practices to determine whether there are any unjust non-market barriers to trade. The OGC will recommend appropriate action to the Commission.

### **Designated Agency Ethics Official**

The Designated Agency Ethics Official is administratively within the Office of the Chairman, but the position is performed presently in an acting capacity as a collateral duty by the General Counsel.

The Commission's Ethics Official is responsible for administering public and confidential financial disclosure systems in order to prevent conflicts of interest from arising in the execution of the agency's regulatory functions. The Ethics Official conducts annual ethics training and provides the day-to-day advice and guidance to ensure compliance with the standards of ethical conduct that apply to Executive Branch officials.

**Federal Maritime Commission**

<b>Formal Proceedings Program Office of the General Counsel</b>										
<b>Statistical Workload Summary</b>										
Workload Units	Fiscal 2007 Actual			Fiscal 2008 Estimate			Fiscal 2009 Estimate			
	On Hand 09/30/06	Receipts	Output	On Hand 09/30/07	Receipts	Outputs	On Hand 09/30/08	Receipts	Outputs	On Hand 09/30/09
Litigation	2	2	1	3	2	2	3	3	3	3
Legislation	0	105	105	0	110	110	0	115	115	0
Legal Opinions, case summaries, decisions and final orders	0	118	118	0	125	125	0	130	130	0
Sec. 19/sec. 13 (b)(5) FSPA Proceedings	1	0	0	1	2	1	2	1	1	2
International affairs reports, policy papers, briefings, controlled carrier recommendations	0	30	30	0	35	35	0	40	40	0
Speeches, articles, presentations	0	15	15	0	20	20	0	25	25	0
Interagency & international group participation	0	30	30	0	35	35	0	40	40	0
Response to requests for information, oral & w ritten	0	275	275	0	280	280	0	285	285	0

**Office of Administrative Law Judges**

Administrative law judges regulate the course of proceedings, conduct hearings, approve settlements, and render decisions in adjudicatory proceedings held after receipt of a private complaint or when instituted by the Commission. ALJs have authority to administer oaths and affirmations; issue subpoenas; rule upon motions and offers of proof; receive evidence; authorize depositions; regulate the course of hearings; hold pre-hearing conferences for the settlement or simplification of the issues involved; refer matters to mediation when appropriate; dispose of procedural requests; act as settlement judges in particular cases; and take any other action authorized by agency rule or the Administrative Procedure Act.

The case load of the Office is governed by the number of complaints and applications filed, the number of formal proceedings instituted by the Commission on its own motion, and other matters assigned in furtherance of the Commission's regulatory functions. Proceedings which come before the Office include, but are not limited to, the adjudication of discriminatory or unfair and unreasonable practices between various parties subject to the shipping acts, and adjudication of shipper complaints. ALJs also can process special docket applications on an as-needed basis.

At the beginning of fiscal year 2007, there were 10 formal proceedings pending before the Office of ALJs. During the year, 12 formal proceedings and one informal proceeding were added (the informal proceeding subsequently was converted to a formal proceeding). The Office of ALJs issued an initial decision in two formal proceedings. Two formal proceedings were dismissed, and two formal proceedings were settled.

<b><u>Formal Proceedings Program</u></b>										
<b><u>Office of the Administrative Law Judges</u></b>										
<b><u>Statistical Workload Summary</u></b>										
<b>Workload Units</b>		<b>Fiscal 2007 Actual</b>			<b>Fiscal 2008 Estimate</b>			<b>Fiscal 2009 Estimate</b>		
	On Hand 09/30/06	Receipts	Output	On Hand 9/30/07	Receipts	Outputs	On Hand 09/30/08	Receipts	Outputs	On Hand 09/30/09
<b>Formal Proceedings</b>	10	13	4	19	9	8	20	5	9	16
<b>Special Proceedings</b>	0	0	0	0	0	0	0	0	0	0
<b>Informal Proceedings</b>	0	0	0	0	0	0	0	0	0	0

### **Office of Equal Employment Opportunity Program**

The Office of Equal Employment Opportunity (“EEO”) follows Federal EEO and personnel management laws, procedures and regulations to develop, implement and manage a comprehensive program of equal employment opportunity. The EEO program is statutorily mandated with required activities in complaints processing, adjudication, affirmative employment program planning, workforce diversity management, special emphasis programs, community outreach, monitoring, and evaluation.

The Chairman of the Commission is responsible for ensuring equal opportunity in the Commission. The Chairman has delegated this authority to the Director of Equal Employment Opportunity. Operational responsibility for compliance with EEO policies and programs lies with the Commission's front-line managers. The Director of EEO (“DEEO”) works independently under the direction of the Chairman to provide advice to the Commission's senior staff and management in improving and carrying out its policies and program of non-discrimination, workforce diversity and affirmative employment program planning. The DEEO arranges for EEO counseling or ADR for 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. In addition, the DEEO represents the agency on several intergovernmental committees, coordinates all affirmative program planning efforts, directs programs of special emphasis, and coordinates the activities of the Selective Placement and Federal Equal Opportunity Recruitment Coordinators. The DEEO also supervises two collaterally-assigned EEO counselors.

The Office works closely with senior management and with the Commission's Office of Human Resources (“OHR”) to: (1) monitor affirmative employment programs; (2) expand outreach and recruitment initiatives; (3) improve the representation, career development and retention of women, minorities, and persons with disabilities; (4) provide adequate career counseling; (5) facilitate early resolution of employment-related problems; and (6) develop program plans and progress reports.

#### **Significant accomplishments for fiscal year 2007:**

For the third year in a row, women and minorities continued to represent a majority of the workforce in fiscal year 2007. Significant accomplishments include the following: (1) provided EEO briefings to senior staff and new employees; (2) continued providing information to employees about Internet sites with diversity/EEO-related information; (3) updated the No FEAR Act statistics on the FMC's website at <http://www.fmc.gov/home/NoFearAct.asp> and coordinated the No FEAR Act refresher training for all employees; (4) provided counseling assistance to Commissioners, managers, supervisors, and employees; (5) continued to provide support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce; (6) reviewed and assessed management and human resource activity and actions; (7) maintained an effective discrimination complaint process that resolved issues informally, expeditiously, and at the lowest possible level; (8) held special commemorative programs for all FMC employees for National Hispanic Heritage, National Disability Employment Awareness, National American Indian Heritage, African American History, Women's History, Asian Pacific American, Gay and Lesbian Pride months and Dr. Martin Luther King, Jr. Day; (9) participated in meetings of several inter-agency councils in the special emphasis areas; (10) coordinated activities of the FMC's Advisory Council on Women's Issues; (11) participated in EEO-related training/conferences; (12) prepared all required affirmative employment program accomplishment reports and plans; and (13) managed the Commission's Emerging Leaders Program.

During fiscal years 2008 and 2009, the Office of EEO will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles, including monitoring workforce diversity, outreach, retention, and career-development initiatives.

### **Inspector General Program**

The Office of Inspector General (“OIG”) operates pursuant to the Inspector General Act of 1978 (1978 Act) (5 U.S.C. App. 3) as amended in 1988. The 1988 amendments created additional statutory offices of inspector general at various designated Federal entities, including the FMC.

The purpose of the 1978 Act, as amended, and as applicable to the FMC, is to create an independent and objective unit to conduct audits; review operations and programs; investigate possible fraud, waste, and mismanagement of Commission resources; and promote economy, efficiency and effectiveness in programs and operations administered by the FMC.

The OIG is staffed by an Inspector General (“IG”), an Assistant Inspector General and an administrative assistant.

The IG works independently under the general supervision of the Chairman. The IG does not report to, and is not subject to supervision by, any other officer or employee of the FMC. The OIG has memorandums of understanding (“MOUs”) with the FMC’s Office of the General Counsel for legal assistance when needed, and with Inspector General offices at the Social Security Administration and the Federal Trade Commission for criminal investigative assistance and audit quality assurance support, respectively. In addition, the Office utilizes the expertise of outside contractors to assist in performing specialized audits and reviews.

During fiscal year 2007, the Office issued an audit of the agency’s fiscal year 2006 financial statements and a companion report to management containing financial-related findings and recommendations resulting from the audit. The OIG also issued reports to management on agency compliance with FISMA, including a vulnerability scan of the agency’s internal network and an external penetration test of its “firewall.” In addition to these statutorily-required reports, the OIG performed an audit of contract administration for a large consulting service contract and an evaluation of the accuracy of information reported to Congress, OMB and agency stakeholders in the Fiscal Year 2006 Performance and Accountability Report (“PAR”). An OIG audit report during the period questioned approximately \$56,000 in agency expenditures, recommending that the agency collect these funds from the vendor.

The office investigated allegations of wrongdoing by FMC staff, responded to two public requests to look into various maritime-related issues and referred five “hotline” complaints to the appropriate FMC program offices for disposition.

In fiscal year 2007, the OIG received a clean opinion from a peer review of its quality assurance program and performed an identical review of a sister OIG. The Office also prepared a narrative summary of management challenges facing the FMC for inclusion in the Fiscal Year 2006 PAR. The OIG contracted with an independent public accounting firm to assist the IG in issuing an opinion of the agency’s fiscal year 2007 financial statements. Finally, the OIG issued two semiannual reports to Congress discussing the Office’s audit and investigative activity for the fiscal year.

In addition to these audit and investigative outcomes, the OIG revised its strategic plan for fiscal years 2008 - 2013, developed a memorandum of understanding between the Office of Inspectors General at the FMC and the Federal Trade Commission to implement a quality assurance program for our audit function, and worked with FMC senior management to implement an internal control questionnaire to assist management to comply with regulations issued by the Office of Management and Budget in Circular A-123, *Management’s Responsibility for Internal Control*.

During fiscal years 2008 and 2009, the OIG will continue to place high priority on audits and reviews with the objective of improving agency programs and operations. The OIG will complete statutorily-required reviews to include an audit of the agency’s annual financial statements and an evaluation of the agency’s information security

## **Federal Maritime Commission**

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program and privacy assurance controls as required by FISMA.

The OIG will continue to actively participate in OIG community activities and maintain membership in the Executive Council on Integrity and Efficiency (“ECIE”) and the Federal Audit Executive Council (“FAEC”). The OIG will continue to work with the OMB, ECIE and FAEC on joint projects which affect the IG community. The Office will also continue to keep the FMC Chairman, Commissioners, OMB and the Congress fully informed regarding its audit and investigative activities.

## **Operations Program**

### **Linking Program Funding to Strategic/Performance Goals**

*The Office of Operations (“OPS”) is responsible primarily for the management and coordination of the agency’s program areas. As such, OPS specifically supports the goals of Compliance and Balanced Enforcement in the agency’s Strategic Plan. Under Compliance, OPS is specifically focused on Outcome Goal 2.1, which focuses on increasing compliance with regulations directed toward ocean common carriers, PVOs and OTIs, and Outcome Goals 2.3 and 2.4, which focus on maintaining fair competition and protecting the public from unlawful activity. OPS has included such outcome measures as tracking investigations of Shipping Act violations, the closure rate of formal proceedings, the number of unlicensed OTIs qualifying for licenses and the percentage of new and amended OTI applications that are processed within 45 days. Finally, in support of Balanced Enforcement, OPS is specifically focusing on Outcome Goals 3.1: Assure carriers do not exercise their antitrust immunity in a manner that results in unreasonable practices, rate increases or rate decreases, and Outcome Goal 3.3 in the Agency’s Strategic Plan, which calls for consistent industry outreach and education to encourage voluntary compliance. Measures have been developed to evaluate our economic analysis in support of the carrier agreements program, and to emphasize compliance presentations to the industry.*

### **Office of Operations**

#### **Office of the Director**

The Director of Operations, as a senior staff official, is responsible to the Chairman for the management and coordination of the:

Bureau of Trade Analysis;  
Bureau of Certification and Licensing; and  
Bureau of Enforcement.

OPS oversees the development and operation of various Commission programs and recommends new programs and necessary changes in staff objectives. Also, the Director of Operations has been designated as the agency’s Performance Improvement Officer (“PIO”). Subject to the direction of the Chairman, the PIO supervises the Commission’s performance management activities, including development of the goals, plans and performance reports.

In addition, OPS oversees the Commission’s Area Representatives. The Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York, and Seattle through ARs based in each of those cities, and in fiscal year 2007 placed an additional AR in Houston, TX, due to significant growth in container volumes transiting the port in that area. These representatives serve other major port cities and transportation centers within their respective areas. In addition to monitoring and investigative functions, ARs represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. Liaison activities involve cooperation and coordination with other governmental agencies and departments, providing regulatory information and relaying Commission policy to the shipping industry and the public, and handling informal complaints within each representative's area of responsibility. ARs also work on Commission outreach through seminars, participation at various conferences and trade shows, presentations, and local community contacts.

OPS continued to support the operational bureaus through oversight and guidance towards the accomplishment of many programmatic achievements during fiscal year 2007. In particular, OPS worked extensively with the bureaus

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## **Federal Maritime Commission**

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and other agency offices to review Commission rules and regulations with regard to business practices in the OTI sector. OPS worked with the agency's Bureau of Certification and Licensing and the Bureau of Enforcement to report to the Commission with regard to emerging industry changes in the OTI sector.

OPS continues to lead the Bureau of Enforcement and the Bureau of Certification and Licensing in review and coordination of compliance and enforcement policy. Significantly, OPS worked with the bureaus and other agency offices to take action against the illegal conduct of household goods movers. OPS worked with staff members from all bureaus to make technological advances, including work on the automated form FMC-18.

OPS' key objectives for fiscal years 2008 and 2009 include instituting the Commission's policies by refining and enhancing agency programs and operations, as well as monitoring the accomplishment of agency performance goals. In particular, OPS will expand the agency's outreach effort and raise public awareness of agency regulations and services. OPS also will review agency policies and regulations to ensure alignment between the FMC and the industry, and on automating certain processes. Finally, OPS will continue to refine cooperation and integration of the three agency bureaus.

### **Bureau of Trade Analysis**

The Bureau of Trade Analysis plans, develops, and administers Commission programs for the following activities: (1) monitoring general trade conditions and economic developments in liner shipping; (2) overseeing individual and concerted carrier and MTO activity; (3) developing economic studies and analyses in support of the Commission's regulatory responsibilities; (4) processing and analyzing carrier and marine terminal agreements; (5) providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices; (6) processing, reviewing, and monitoring confidential service contracts and amendments filed by ocean common carriers, conferences, and agreements; (7) reviewing requests to correct clerical or administrative errors in service contracts; (8) ensuring that statements of certain essential terms associated with service contracts are published in tariffs and made available to the public; (9) auditing tariff publishing systems to ensure that tariffs are accessible and accurate; (10) processing FMC-1 registration forms submitted by carriers and conferences and posting and updating the location of carrier tariffs on the Commission's website; (11) acting on special permission applications to deviate from tariff publishing rules; (12) monitoring the activities of state-controlled carriers; and (13) supporting other Commission components with regard to the Commission's regulatory requirements.

The Bureau's three operating offices under the supervision of the Bureau Director are: the Office of Agreements, the Office of Economics and Competition Analysis, and the Office of Service Contracts and Tariffs. The Office of Agreements is responsible for processing and analyzing carrier and marine terminal agreements filed with the Commission and maintaining various agreement databases. The Office of Economics and Competition Analysis develops and administers programs overseeing individual and concerted carrier activities, carriers' dealings with shippers and intermediaries, activities of state-controlled carriers in U.S. foreign commerce, foreign shipping practices, and overall U.S. liner trade conditions. The Office of Service Contracts and Tariffs is responsible for processing, reviewing, and monitoring confidential service contracts and NSAs and ensuring that the statements of certain essential terms associated with service contracts and NSAs are published and made available to the public. Further, the Office ensures that carrier tariffs are accessible and accurate; that the location of carrier tariffs as submitted in FMC-1 registration forms is correct; and that those locations are published on the Commission's website and updated on a periodic basis.

#### **Agreement Program Activities**

The focus of the Bureau's agreement program is to analyze what impact a carrier or terminal agreement will have on competition, in particular whether it is likely that the agreement will result in an unreasonable increase in transportation cost or decrease in service.

During fiscal year 2007, the Bureau received 181 carrier agreement filings and 10 terminal agreement filings. The Bureau reviewed, evaluated, and processed 179 carrier filings, including one pending from fiscal year 2006, and 11 terminal filings, also including one pending from the previous fiscal year.

Operational agreements, those involving the sharing of vessel space, and amendments to such agreements, continued to be the predominant type of agreement filing. These agreement filings accounted for over 47 percent of the total carrier agreement filings in 2007. Although the addition of parties increased TSA's market position, the Bureau's anticompetitive concerns were mitigated by the fact that rate levels in the transpacific declined by 5% from first quarter 2006 to first quarter 2007. Conferences, once the dominant pricing forum, have lost much of their influence over the last nine years.

With regard to marine terminal agreements, after a slight increase in 2006, when 28 filings (including terminations) were received, there were only ten filings (including terminations) in fiscal year 2007. It would appear that terminal operators are continuing to take advantage of the Commission's filing exemption for terminal leases and terminal services agreements. The above notwithstanding, the Bureau has seen an increase in the number of new discussion agreements among MTOs. Since fiscal year 2005, the number of MTO discussion agreements on file has increased by 57 percent, from seven to eleven. This increase represents the largest percentage gain by any class of MTO agreements during that time period. During that same time frame, the number of MTO conferences dropped by 33 percent, from 15 to 10.

The Bureau also receives and reviews minutes of meetings and reports filed by various agreement parties.

Agreement regulations enacted in fiscal year 2005 allow for low market-share agreements without pricing or capacity rationalization authorities to become effective upon filing. From fiscal year 2005 through fiscal year 2007, the percentage of new agreements filed that qualified for the low market share exemption increased from 12 percent to almost 30 percent.

During the year, the Bureau analyzed a number of significant agreement filings. Brief synopses of some of those follow:

The ocean common carriers participating in the *Ocean Carrier Equipment Management Association*, the South Carolina State Ports Authority, and the Georgia Ports Authority filed an agreement to give them authority to establish a regional chassis pool at marine terminals and inland intermodal terminals in the South Atlantic region of the United States. Due to the likelihood that the agreement would enhance efficiency at the terminals and inland intermodal terminals concerned, the Commission allowed it to become effective.

Evergreen Marine Corp. (Taiwan) Ltd., Italia Maritima S.P.A., and Hatsu Marine Ltd. filed a joint service agreement in which they agreed to cooperate on a worldwide basis and operate under a single trade name, "Evergreen Line." As the members of the joint service are affiliated companies and had already been cooperating with regard to rates and services on a worldwide basis under another agreement, the Commission determined that the establishment of the joint service would not result in a significant reduction in competition or in an unreasonable increase in transportation costs to shippers. Consequently, it allowed the agreement to become effective.

Based on the Bureau's analysis and recommendation, the Commission approved a change in its earlier settlement agreement with the *Transpacific Stabilization Agreement* ("TSA"), requiring the deletion of the Indian Subcontinent from TSA's geographic scope, to allow TSA to expand back into the Indian Subcontinent trade. A subsequent TSA amendment was allowed to become effective. Also during the fiscal year, the TSA added CMA-CGM, S.A., Mediterranean Shipping Company, S.A. and Zim Integrated Shipping Services Ltd., as members. Although the addition of these parties increased TSA's market position, the Bureau's anticompetitive concerns were mitigated by the fact that rate levels in the transpacific have declined somewhat from fiscal year 2006.

NYK/Lauritzen/Cool AB (now NYK/Cool AB) and Seatrade Group NV filed a cooperative working agreement authorizing them to implement, supervise, and administer a code of conduct applicable to the handling of specialized refrigerated cargoes and to implement, manage, and own any such code and any intellectual property rights associated with that code. As the agreement was unlikely to adversely impact competition, the Commission allowed it to become effective.

The parties to the *West Coast MTO Agreement* filed an amendment providing new authority to discuss, implement, or assist in the implementation of measures to improve air quality in port areas and to discuss, agree, test, and implement security-related measures. After the Bureau negotiated clarifying revisions to the amendment and obtained agreement from the parties for specific reporting requirements to assist in monitoring the parties' activities under the amended agreement, the Commission allowed the revised amendment to become effective.

A.P. Moller-Maersk A/S ("Maersk") announced in March 2007 that it would discontinue its NASA Service in the U.S. East Coast – East Coast South America trade and instead take space on a service in the same trade operated by Hamburg-Sud. At the time, Maersk operated six vessels in the trade and provided space on its vessels to two other ocean common carriers. Therefore, Maersk's withdrawal of its vessels from the trade resulted in the termination of two agreements and the filing of two new agreements.

The Bureau maintains an agreements database and library containing up-to-date information pertaining to, and copies of, effective agreements. In fiscal year 2007, the Bureau developed and implemented links in its database to copies of its marine terminal agreements, giving the public direct access to copies of such agreements through the agency's website. The number of hits on the agreement library on the agency's website averaged 500 per month during fiscal year 2007. In fiscal years 2008 and 2009, the Bureau, in conjunction with the agency's Office of the Secretary and the Office of Information Technology, expects to further enhance public access to agreements and to develop and implement the necessary technology and procedures for the electronic filing of agreements.

### **Economic Analysis Program Activities**

To keep the Commission apprised of current trade conditions, emerging commercial and economic trends, and the impact of regulations affecting waterborne liner transportation, the Bureau prepares studies and profiles of major trades, monitoring reports, economic analyses, and agreement/carrier profiles, and undertakes special projects to identify and track relevant competitive and economic activity in major U.S. trade lanes. The Bureau's monitoring activities include surveillance programs to identify: (1) concerted activity without an effective agreement on file with the Commission, or concerted activity exceeding the scope or authority of an effective agreement; (2) activity contravening the mandatory conference agreement provisions required under 46 U.S.C. 40303; (3) the potential for, or emergence of, unreasonable service reductions/cost increases that contravene the general standard in 46 U.S.C. 41307(b)(1); (4) controlled carrier activity in accordance with the statutory requirements in 46 U.S.C. 40701-40706; (5) the occurrence of prohibited activities as proscribed in 46 U.S.C. 41101-41106; (6) economic harm associated with unfair trade practices of foreign governments; and (7) whether the continued operation of an effective agreement in its present form is consistent with the statutes and current Commission decisions, rules, and policies. Activities conducted under certain types of operational agreements among MTOs, particularly those with rate authority, also are monitored. The efficiency claims of these latter agreements are reviewed regularly. The Bureau also develops profiles of major trade areas to assess carrier behavior under agreements, to determine compliance with regulatory requirements, and to ascertain the competitive posture of carriers, shippers, and shippers' associations within each trade.

In fiscal year 2007, the Bureau administered its oversight activities of agreements and prepared various reports and analyses. These included: (1) a report and economic analysis of the competitive impact of expanding the geographic scope of the TSA to include the Indian Subcontinent as provided by the Addendum to the 2003 TSA settlement agreement and the amendment to TSA; (2) an economic analysis of amendments to include New Zealand in the geographic scope of the *Australia/United States Discussion Agreement*, while placing the *New Zealand/United States Discussion Agreement* into dormant status; (3) a review and analysis of the Clean Air Action Plan proposed by the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*, and related amendments to the *West Coast MTO Agreement* to reduce air pollution from motor carriers serving marine terminals; (4) a report on the formation and operation of cooperative chassis pools at U.S. rail and marine terminals implemented by the *Ocean Carrier Equipment Management Association* and its related agreements; (5) an economic analysis of the *Evergreen Line Joint Service Agreement* to form and operate affiliated carriers as a single carrier entity under the brand name of Evergreen Line in the U.S. trades; (6) a report on the comments and hearing statements of interested parties presented before the Antitrust Modernization Commission ("AMC") on the antitrust immunity of the Shipping Act, along with a review of the AMC's final report and an analysis of the relevant issues raised on the Shipping Act; and (7) assistance in the resolution of an informal complaint of a shipper affected by the fees assessed under the PierPASS program formed

Other Bureau projects and initiatives completed or begun in fiscal year 2007 included: (1) an evaluation of the PierPASS program after two years of operation, focusing on the impact of the program's pricing mechanisms, cost allocation methods, and revenue re-distribution system on the various parties; (2) collection of service contract data from random samples of SERVCON to: (a) evaluate the application of surcharges and other terms and practices, and (b) analyze the fairness of controlled carrier rates charged in the Northeast Asia to U.S. trades in accordance with the statutes in 46 U.S.C. 40701-40706; (3) development of a methodology to assess the economic impact of the repeal of the exemption for liner shipping conferences from the competition laws of the EU in the U.S. transatlantic trades; (4) statistical time series forecasts of the growth in container cargo in 48 separate U.S. liner shipping trades; (5) installation of a database and intranet interface system for the commercial trade data purchased by the Commission from the Port Import Export Reporting Service ("PIERS"); (6) a statement of work for the development of a system to facilitate the electronic filing of agreements and related reports that agreement parties are required to file; (7) continued efforts to correct compliance issues and problems with the monitoring reports and minutes of agreement meetings filed by parties to agreements subject to the Commission's reporting regulations; (8) a review and analysis of market conditions in the Bermuda trade with questions to, and meetings with, the parties to the *Bermuda Discussion Agreement*; (9) a report on the competitive impact of modifications that altered the distribution of earnings under the revenue pooling provisions of the *Southern Africa/Oceania Agreement*; (10) review and analyses of a series of membership changes and other amendments to TSA; (11) redevelopment of an electronic research panel to access SERVCON as a stand-alone component for the analysis of service contract data; (12) preparation of data and statistics of the U.S. liner shipping trades for the Maritime Data Working Group as part of the *Maritime Trade and Transportation* publication sponsored by the U.S. Department of Transportation; (13) a template to track and monitor the application of charges that are established in the voluntary service contract guidelines by parties to rate discussion agreements; (14) assistance in preparing a memorandum of understanding with CBP to use the Automated Commercial Environment/International Trade Data System ("ACE/ITDS"); (15) assistance with the preparation of speeches, and trade and agreement information, for official speaking engagements of Commission staff members; and (16) responses to requests, inquiries, and informal complaints on carrier agreements and related agreement trade matters.

During the fiscal year, the Bureau received 908 sets of minutes and 99 monitoring reports containing market share, cargo volumes, revenue, and service data for agreement parties, including capacity and capacity utilization data for certain types of agreements. Monitoring reports are filed quarterly by the potentially more anticompetitive agreements, such as conference agreements and agreements with rate and/or capacity rationalization authority. The Bureau reviews these reports for filing compliance and uses the data to support its monitoring activities. In addition, in fiscal year 2007, four applications for waivers to the minutes and/or monitoring report filing requirements were reviewed and processed.

In fiscal years 2008 and 2009, the Bureau will continue to monitor agreement activities and trade conditions, to prepare reports and economic analyses on developments and issues in key U.S. trades, to report on the activities of controlled carriers, and to respond to inquiries and informal complaints. The Bureau also will focus on: (1) conducting research in support of the statutory standards and the requirements of relevant Commission regulations overseen by this Bureau, as well as other bureaus and offices in the agency; (2) assessing the impact and effectiveness of the regulations governing agreements in 46 CFR part 535, implemented by the Commission in FMC Docket No. 03-15, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*; (3) linking the new PIERS data system to the enhanced agreements database to facilitate production of the Bureau's regular trade monitoring publications and other trade analysis reports; and (4) improve the Commission's monitoring program of agreements designed to address such supply-chain and operational issues as port congestion, security, air pollution and environmental concerns that affect local communities and the industry; and (5) conduct a thorough analysis of how vessel operators and MTOs are using antitrust immunity under the Shipping Act in the current market environment. In addition, the Bureau will continue to assist the Commission's investigative and enforcement initiatives, and oversee international trade issues, such as unfair foreign shipping practices. As a Commission representative, the Bureau will continue to participate in development of ACE/ITDS. As a Participating Government Agency ("PGA"), the Commission is working with the "e-Customs Partnership" and other Federal agencies on developing the ACE/ITDS. The Bureau also will participate in the Maritime Data Working Group and the Interagency Action Team for the National Committee on the Marine Transportation System dealing with data collection and information management issues.

**Service Contracts Program Activities**

The Shipping Act allows ocean common carriers, either individually or through agreements, to negotiate and execute service contracts with one or more shippers or shippers' associations. Under service contracts, shippers make a commitment to provide a certain volume or portion of cargo over a fixed period of time, and carriers commit to a specified rate and a defined service level. These contracts are filed confidentially with the Commission.

Contract flexibility enables carriers to tailor their transportation services to the specific commercial and operational needs of shippers. Overall, service contracts continue to be the predominant pricing mechanism due primarily to their efficiency, flexibility, and confidentiality.

The Bureau continues to improve its Internet-based system for the filing of service contracts (SERVCON) to meet the needs of the agency as well as the shipping industry. In fiscal year 2007, the Bureau upgraded SERVCON to streamline the filing of service contracts and NSAs. In addition, the Bureau works with the agency's Office of Information Technology to assist filers that wish to automate their processes to file service contracts into SERVCON.

During fiscal year 2007, the Bureau received 44,608 service contracts and 262,076 contract amendments. In fiscal years 2008 and 2009, the Bureau will continue to assess and evaluate the efficiency of the SERVCON system. Also, the Bureau implemented an electronic registration procedure for carriers/OTIs filing service contracts and NSAs.

**NVOCC Service Arrangement Program Activities**

In January 2005, the Commission permitted NVOCCs to enter into NSAs with their shipper customers. During fiscal year 2007, 741 original NSAs and 886 amendments were filed by 65 NVOCCs. Since NSAs were first allowed, more than 533 NVOCCs have registered to file NSAs. Of those registered, 96 have filed NSAs.

**Tariff Program Activities**

The Shipping Act requires carriers and conferences to publish their tariffs electronically. Tariffs are to be made available, typically through Internet access, to any person, without time, quantity, or other limitation. Carriers are permitted under law to charge a reasonable fee for providing public access to their tariffs. The Bureau reviews and monitors the accessibility and accuracy of these private systems, and reviews published tariff material for compliance with the Shipping Act's requirements.

The Bureau evaluates applications for special permission to deviate from tariff publishing rules and regulations. During fiscal year 2007, the Bureau received and processed three special permission applications, processed two, and had one on hand at year end. All of the applications sought to advance the effective date of various tariff provisions that require a 30-day notice period.

Unlike carriers, MTOs have the option of publishing or not publishing schedules of their rates, regulations, and practices, including limitations of liability for cargo loss or damage. Last year, 153 MTOs made their schedules available to the public.

The Bureau also monitors the tariff activity and the service contracts of controlled carriers. Under the Shipping Act, no controlled carrier (that is, a carrier whose majority ownership is held by a foreign government) may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, or establish or maintain unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. In addition to monitoring the activities of known controlled carriers, the Bureau reviews trade publications to identify carriers that might be controlled by a foreign government.

The Bureau also collects and processes information provided by carriers, MTOs, and OTIs concerning, among other things, the Internet location of their tariffs and schedules. These Internet locations are made available to the shipping public via the Commission's website. Last year, the Bureau posted on the agency's website 4,372 active/current tariff/schedule Internet addresses. Also, the Bureau posted the historical tariff addresses for 2,140 inactive/cancelled tariffs.

### **Formal Proceedings**

The Bureau furnishes support in formal Commission proceedings arising in the areas of its expertise. The Bureau provides analyses and recommendations on petitions, information demand orders, and Commission-initiated rulemakings, and provides expert witness testimony in investigations of unfair foreign shipping practices. Further, the Bureau prepares economic testimony in Commission investigations.

In fiscal year 2007, the Bureau participated in the following matters: (1) providing cost data for, and a regulatory impact analysis of, a draft proposed rule to update the FMC's filing and service fees to reflect 2007 costs; (2) conducting semi-annual meetings with agreement representatives pursuant to the settlement terms of the Fact Finding Investigation No. 25, *Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*; (3) reviewing the addendum to the Commission's 2003 settlement agreement with TSA parties along with a report to the Commission on the competitive impact of the addendum; and (4) providing economic assistance in Docket No. 02-15, *Passenger Vessel Financial Responsibility*.

The Bureau's support of formal proceedings during fiscal years 2008 and 2009 will depend on the number and subject matter of the proceedings initiated over the period. As the development of an electronic filing system progresses, the Bureau will eventually prepare a proposed rule to modify the Commission's regulations governing agreements in 46 CFR part 535 to provide for the electronic filing of agreements and related reports. In addition, the Bureau will assist the Commission's continuing efforts to address unfair foreign shipping practices under 46 U.S.C. 42101-42307.

### **Bureau of Certification and Licensing**

The Bureau of Certification and Licensing ("BCL") licenses U.S.-based OTIs, including ocean freight forwarders and NVOCCs; receives surety bonds and processes registration for foreign-based (unlicensed) 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; and manages programs assuring financial responsibility of OTIs and PVOs by developing policies and guidelines, and analyzing financial documents.

The Bureau is composed of two offices. The Office of Transportation Intermediaries has responsibility for reviewing and approving 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 PVOs, and for developing and maintaining all Bureau databases.

### **Licensing of Ocean Transportation Intermediaries**

During fiscal year 2007, the Commission received 484 new and 267 amended OTI applications. During this period, BCL issued 352 new and 154 amended OTI licenses and permanently revoked 237 licenses. An additional 67 non-U.S.-based unlicensed NVOCC bonds were cancelled. During fiscal year 2007, the Commission received 86 riders providing optional proof of financial responsibility for carriers serving in the U.S.- China trade for a total of 137 riders. Docket No. 04-02, *Optional Rider for Proof of Financial Responsibility*, implemented rules that permit U.S. NVOCCs to file riders to their existing NVOCC bonds to meet financial responsibility requirements of the Chinese government.

The Bureau continues to experience a backlog of cases. Much of the delay in processing occurs because data provided with the initial submission is incomplete. This requires the Bureau to contact the applicant and request the necessary information before making a determination to issue a license. BCL continues to work diligently with OTI applicants, seeking to promote accurate and complete submissions and to process such applications within 45 days of receipt.

In fiscal year 2007, the Bureau finalized development of an automated Form FMC-18, *Application for an Ocean Transportation Intermediary License*. A rulemaking to effect the filing capability on a voluntary basis with a reduced fee was published in the *Federal Register* in August 2007. Electronic submission will facilitate completeness of the application and will contribute to a speedier licensing review process.

In fiscal years 2008 and 2009, the Bureau will design and implement plans to review applications electronically to support the electronic filing of OTI bonds. Also, in fiscal year 2008, the Bureau will continue its outreach and programs to promote awareness of OTI requirements.

### **Certification of Passenger Vessel Operators**

The Commission administers 46 U.S.C. 44102 and 46 U.S.C. 44103, 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. During fiscal year 2007, the Commission received applications for 73 certificates (casualty and performance), and approved and issued 25 casualty and 35 performance certificates. Currently 200 vessels and 48 operators have evidence of financial responsibility coverage in excess of \$354 million for nonperformance and over \$690 million for casualty on file with the Commission. The certificates issued pursuant to this program are necessary for the CBP clearance of thousands of passenger vessel sailings annually.

The cruise industry continues to be the fastest growing category in the leisure travel market. The volume of passengers reached an all-time high of 12.6 million passengers during 2007, which is an increase of 0.5 million passengers over 2006 bookings. New cruise lines have entered the business, and existing cruise lines continue to build and purchase additional vessels.

In conjunction with CADRS, the Bureau offers information and guidance to the cruising public throughout the year on passenger rights and obligations regarding monies paid to cruise lines that experience financial difficulties and nonperformance problems. Over the past few years, a number of cruise operators filed for bankruptcy or discontinued operations. When cruise lines become bankrupt, the Commission works closely with the cruise line and the financial responsibility provider to facilitate the refund process. The public is kept informed through the issuance of press releases posted on the Commission's website and the dispensing of advice when the passenger public contacts the staff. During fiscal year 2007, while no cruise operator under the Commission's PVO program ceased operation or left the trade, staff continued its efforts to assist PVOs and financial responsibility providers to resolve passenger claims for several cancelled cruises. Staff completed review of pay-out procedures with respect to two PVOs, CQ River Cruises LLC and Royal Olympic Cruises Ltd., which discontinued operations in prior years without performing contracted cruises.

One component of the Bureau's PVO monitoring program is performance of on-site reviews to evaluate PVOs' financial responsibility with respect to oversight of cruise lines participating in the Commission's PVO program. During fiscal year 2007, staff issued two on-site review reports. One on-site review was conducted of a cruise line which established its financial responsibility with an escrow account, and another was performed at the site of a PVO which established its financial responsibility with a bond. Also, the Bureau assessed the effectiveness of the PVO monitoring procedures previously implemented to ensure compliance with FMC rules and regulations, particularly with respect to unearned passenger revenue calculation and submission of reports.

In fiscal years 2008 and 2009, the Bureau will continue to evaluate the agency's PVO program to address the contemporary needs of the cruising public. The Bureau intends to initiate a rulemaking containing new enforcement options against cruise lines that fail to file PVO reports. This provision would provide the Bureau additional flexibility with respect to imposing civil penalties for cruise lines that fail to comply with the reporting requirements of part 540.

**Automated Database Systems**

During fiscal year 2007, BCL completed the modernization of the Regulated Persons Index. A primary function of the Bureau is the maintenance of up-to-date records of licensed OTIs. The Bureau posts on the Commission's website a list of OTIs which are licensed, bonded, and have provided their tariff location, if required, so that carriers and others can ascertain whether an OTI has met FMC requirements. The OTI list also indicates whether an NVOCC has filed an optional rider for additional proof of NVOCC financial responsibility. Furthermore, the Bureau completed implementation of an electronic Form FMC-18, and has taken the lead to ensure accomplishment of the agency's performance goals related to improving the program for updating OTI data and systems integration among Commission databases.

In fiscal years 2008 and 2009, in conjunction with the agency's Office of Information Technology ("OIT"), BCL intends to develop a plan to automate the PVO Application Form FMC-131, *Application for Certificate of Financial Responsibility*, and conduct a corresponding requirements analysis to facilitate the filing of PVO applications. The Bureau also will work with the OIT to initiate a redesign of the OTI list maintained on the Commission's website to increase accessibility to information, facilitate public search capability, and make it more interactive for users. BCL also plans to develop a process to permit fully electronic review of OTI applications by staff and develop a rulemaking to address cruise lines that fail to file PVO reports timely.

**Bureau of Enforcement Program ("BOE")**

The Bureau of Enforcement has primary responsibility for ensuring compliance with the shipping statutes administered by the Commission, principally the Shipping Act. The Bureau is actively involved in the Commission's outreach activities and interacts regularly with all segments of the ocean transportation industry. The Bureau is also active in maritime security and works closely with the agency's BCL to promote prompt licensing of all qualified OTIs, and with the Department of Homeland Security's ("DHS") CBP to ensure submission of complete and accurate shipping data. Bureau attorneys also serve as legal advisors to the Director of OPS and to other bureaus and offices, and may be designated as Investigative Officers in nonadjudicatory fact finding proceedings. Additionally, Bureau attorneys work closely with the Commission's investigatory personnel and participate as trial counsel in formal adjudicatory proceedings. The Bureau monitors all other formal Commission proceedings and relevant court actions in order to identify major regulatory issues and to advise the Director of OPS and the other bureaus and offices. The Bureau also participates with other bureaus and offices in committees and task forces in the development of Commission policies, rules, and regulations. The Bureau also intervenes in formal complaint proceedings, where appropriate.

In liaison with investigative personnel, the Bureau monitors and conducts investigations into the activities of ocean common carriers, OTIs (NVOCCs and freight forwarders), shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission, thereby providing maximum protection to all participants in the ocean transportation shipping industry. Monitoring activities include: (1) service contract and NSA reviews to determine compliance with applicable statutes and regulations; (2) reviews of VOCC and OTI operations, including monitoring OTI compliance with bonding requirements and post-licensing and routine compliance checks of licensees to determine whether operations conform with regulatory requirements; and (3) monitors operation of carrier and MTO agreements, including review of minutes and quarterly reports. Investigations are conducted into alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal rebating, misdescriptions or misdeclarations of cargo, illegal or unfiled agreements, abuses of antitrust immunity, unlicensed OTI activity, untariffed cargo carriage, unbonded passenger vessel operations, unlawful MTO activity and various types of consumer abuses, such as failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays and financial losses for shippers. Through these activities, the enforcement program supports the agency's objectives of obtaining statutory compliance and ensuring equitable trading conditions and focusing enforcement efforts on activities which have market-distorting effects and those which impact most directly on the shipping public.

The Bureau of Enforcement 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, fact finding investigations, ADR processes, rulemaking efforts, and homeland security issues.

During fiscal year 2007, the Bureau worked to obtain statutory compliance in all major trades and with all segments of the transportation industry, i.e., carriers, carrier agreements, MTOs, PVOs, and OTIs. The Bureau also initiated actions to address and seek compliance for market-distorting activities such as various forms of secret rebates and absorptions, misdescriptions of commodities and misdeclarations of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs and joint carrier activities outside the authority of existing agreements or pursuant to unfiled agreements. Particular emphasis was placed on industry service contracting activities to ensure fair trading conditions and protection of the public. Most of these malpractice investigations result in compromise settlements of civil penalties or are treated as compliance matters and closed without action. However, certain investigations of NVOCCs and ocean common carriers have required the institution of formal adjudicatory proceedings in order to pursue remedies under the 1984 Act.

In fiscal year 2007, the compliance audit program continued to expand. This program, conducted from headquarters primarily by mail and telephone, reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also includes review of entities holding themselves out as VOCCs. At the beginning of fiscal year 2007, two audits were pending. During the fiscal year, 106 audits were commenced, 102 audits were completed, and six were pending in the Bureau on September 30, 2007.

At the beginning of fiscal year 2007, 34 enforcement cases were pending final resolution by the Bureau, the Bureau was party to five formal proceedings, and there were 67 matters pending which the Bureau was investigating or for which it was providing legal advice. During the fiscal year, 16 new enforcement actions were commenced; 32 were compromised and settled, administratively closed, or referred for formal proceedings; and 18 enforcement cases were pending resolution at fiscal year's end. Also, four formal proceedings were initiated; two formal proceedings were completed, and seven were pending at the end of the fiscal year. Additionally, 72 matters involving investigation or legal advice were received during the fiscal year, 61 such matters were completed, and 78 were pending in the Bureau on September 30, 2007.

In fiscal years 2008 and 2009, the Bureau will continue to pursue market-distorting, fraudulent, and anticompetitive practices harmful to the industry and the public and to monitor U.S. trades and the implementation of the Commission's revised regulations resulting from OSRA, to the extent that resources permit. The Bureau will continue to pursue initiatives aimed at VOCCs engaged in unfair service-contracting practices, particularly those which permit improper entities to compete unlawfully with carriers and OTIs operating in compliance with U.S. laws, and will continue to expand the OTI monitoring and audit programs. The enforcement and monitoring activities will include focusing on the unlawful operations of household goods carriers - both licensed and unlicensed - which have increasingly caused economic harm to individual consumers, as well as competitive injury to those carriers operating lawfully. The Bureau will also continue its ongoing monitoring of NVOCC activity involving NSAs. Public outreach efforts will continue to educate maritime transportation users and providers with regard to FMC statutes and regulations, and the program will seek to improve participation in security issues as they relate to U.S. ocean commerce, specifically to include efforts to coordinate the use of available database systems with other agencies or government groups engaged in homeland security to improve identification of entities providing and utilizing maritime transportation services.

**Federal Maritime Commission**

<b>Operations Program Bureau of Trade Analysis Statistical Workload Summary</b>										
Workload Units	Fiscal 2007 Actual			Fiscal 2008 Estimate			Fiscal 2009 Estimate			
	On Hand 09/30/06	Receipts	Output	On Hand 09/30/07	Receipts	Output	On Hand 09/30/08	Receipts	Output	On Hand 09/30/09
Agreements Filed:										
Carrier	1	181	179	3	191	184	10	201	201	10
Terminal	1	10	11	0	12	10	2	14	14	2
Rulemakings, Proceedings, Petitions, Demand Orders	0	1	1	0	1	1	0	2	1	1
Waiver Requests	0	4	4	0	4	4	0	5	5	0
Bureau Reports (1)	0	0	149	0	0	149	0	0	149	0
Agreement Reports				0			0			0
Minutes	31	908	924	15	962	962	15	1,015	1,015	15
Monitoring	0	99	99	0	105	105	0	111	111	0
VSCG	3	163	161	5	172	172	5	180	180	5
Service Contracts	0	44,608	44,608	0	46,000	46,000	0	48,000	48,000	0
Contract Amds	0	262,076	262,076	0	262,000	262,000	0	262,000	262,000	0
Special Permissions	0	3	2	1	8	9	0	8	8	0
NVOCC Service Arrangements	0	741	741	0	900	900	0	1,000	1,000	0
Arrangement Amds.	0	886	886	0	1,030	1,030	0	1,180	1,180	0
Informal Inquiries	0	207	207	0	220	220	0	220	220	0
<p>1 Bureau Reports - include weekly reports to Commissioners on agreements filed and weekly Federal Register Notice reports.</p>										

**Federal Maritime Commission**

<b>Operations Program Bureau of Certification and Licensing Statistical Workload Summary</b>										
Workload Units	Fiscal 2007 Actual			Fiscal 2008 Estimate			Fiscal 2009 Estimate			
	*On Hand 09/30/06	Receipts	Output	*On Hand 09/30/07	Receipts	Outputs	*On Hand 09/30/08	Receipts	Outputs	*On Hand 09/30/09
OTI Applications New (1)	222	484	442	264	500	600	164	500	600	64
OTI Applications Amended (1)	85	267	273	79	300	325	54	300	325	29
OTI License Terminations (2)	0	237	237	0	250	250	0	250	250	0
Passenger Vessel Applications (Performance)	1	37	35	3	30	30	3	30	30	3
Passenger Vessel Applications (Casualty)	10	36	25	21	30	30	21	30	30	21
<p>(1) OTI application output figures primarily include the number of (1) licenses issued, and (2) approvals for license and other changes not requiring the issuance of a license.</p> <p>(2) Revoked or surrendered licenses not subsequently re-issued.</p> <p>* This number primarily includes incomplete applications awaiting further information from applicants and completed applications pending applicants' procurement of a bond. The number will decrease because approved applicants will have 120 days to submit a bond.</p>										

**Federal Maritime Commission**

<b>Operations Program Bureau of Enforcement</b>										
<b>Statistical Workload Summary</b>										
Workload Units		Fiscal 2007 Actual			Fiscal 2008 Estimate			Fiscal 2009 Estimate		
	*On Hand 09/30/06	Receipts	Output	*On Hand 09/30/07	Receipts	Outputs	*On Hand 09/30/08	Receipts	Outputs	*On Hand 09/30/09
Audits and Monitoring Activities*	2	106	102	6	110	110	6	115	115	6
OTI Applicant and License Checks	0	605	605	0	615	615	0	625	625	0
Formal Proceedings	5	4	2	7	5	4	8	6	6	8
Civil Penalty Cases	34	16	32	18	20	20	18	25	25	18
Staff Legal Advice	67	72	61	78	70	75	73	70	75	68
<p>* Category of Investigations changed to Audits and Monitoring Activities. Audits and monitoring activity separated from investigations. Investigations are included in other categories in the Statistical Workload Summary.</p>										

**Administration Program**

**Linking Program Funding to Strategic/Performance Goals**

*The Office of Administration is responsible for the management of the agency's program support operations. Thus, the administrative offices contribute primarily to the accomplishment of Strategies 4 and 5 (Technological Efficiencies and Management Capabilities respectively). For example, the Administration Program will support the Strategic Plan's Outcome Goal 4.1: Streamline the Commission's work processes through effective utilization of information technology; we are seeking funding to implement electronic record keeping of employee personnel and training records, in keeping with Federal government e-initiatives, which will reduce paperwork and storage issues while improving accuracy and strengthening data collection, reporting and retention. Also, we are linking the Administration Program to Strategic Plan 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; in FY 2009 we intend to aggressively pursue new financial management strategies, including electronic payments through Pay.gov and electronic check conversion, and to implement Voice-over-Internet-Protocol (VoIP) capacities. A VoIP call can be placed across the Internet and provides cost advantages over traditional telephone networks. Appropriate funding will enable us to accomplish these activities so we can improve phone service and significantly reduce service and financial processing costs in out-years.*

**Office of Administration**

**Office of the Director**

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

Office of Financial Management;  
Office of Human Resources;  
Office of Information Technology; and  
Office of Management Services

Many of the functions and achievements of OA are reflected below in the narratives for these offices.

The Director provides administrative guidance to the Offices of the Chairman, Commissioners, Secretary, General Counsel, Administrative Law Judges and Operations, and administrative assistance to the Offices of the Inspector General and Equal Employment Opportunity. The Director is the FMC's Chief Acquisition Officer, Audit Follow-up and Management (Internal) Controls Official, Senior Agency Official for Privacy, and Forms Control Officer. The Director also represents the FMC as Principal Management Official on the Small Agency Council ("SAC"). As the Chief Financial Officer, the Director provides program oversight for the agency's budget and financial management responsibilities, and ensures agency compliance with the Financial Integrity Act, the Antideficiency Act, and the Debt Collection Improvement Act ("DCIA") of 1996. OA staff act as the point of contact for the Small Business Administration's E-forms initiative.

The Deputy Director of Administration is the FMC's Chief Information Officer ("CIO"). The CIO oversees the Office of Information Technology operations and activities administered under the Clinger-Cohen Act of 1996, as well as other applicable laws which prescribe responsibility for operating the program. The Deputy Director also serves as the FMC's Competition Advocate and as Records Management Officer.

The Office of the Director had significant programmatic achievements during fiscal year 2007. The Office guided the agency's continuing efforts to enhance its information technology ("IT") program; during the fiscal year the

agency mitigated a significant deficiency identified during an Inspector General review of agency IT operations. The agency received an unqualified opinion in its fiscal year 2007 financial statement audit. The Office again directed preparation of the Annual Performance Plan and the Annual Program Performance Report, as required by the Government Performance and Results Act (“GPRA”). The Office also prepared the Federal Activities Inventory Reform Act report, and the PAR (which included the MD&A and the Federal Managers Financial Integrity Act report). Also during the fiscal year, the Office directed the update of internal Commission issuances that specify procedures for a variety of programs and activities, including the creation of a comprehensive draft policy with respect to training and development, and guided Commission efforts to comply with GPEA and FISMA. Additionally, the Office guided the development of the fiscal year 2009 budget request to OMB and the fiscal year 2008 President’s Budget submission, and directed all efforts involving the audit of the Commission’s fiscal year 2007 financial statements. Additionally, the Office developed, in coordination with the OIG, several documents designed to improve the assessment of agency internal controls. Also during the year, the Office provided primary support for the OMB clearance and records management programs, guided the further development of the agency’s Continuity of Operations Plan, and coordinated the initiation of the agency’s Individual Development Plan program. Further, the Office guided development of the agency’s breach notification policy, responsive to new OMB requirements.

OA’s key objectives for fiscal years 2008 and 2009 are continuing to implement policy directions aimed at refining and enhancing agency administrative programs and operations; monitoring the accomplishment of agency performance goals, particularly those related to the implementation of Pay.gov and the development of an updated agency Strategic Plan; initiating further information technology improvements, including the replacement, integration or update of agency database systems, the upgrading of network and desktop operating systems, and the implementation of VoIP; and working with senior managers to ensure effective strategic succession planning. The Office also will take the lead in assuring that the agency-wide computer security program is effective, that the agency’s financial management system receives an unqualified opinion in annual financial audits, and that the agency complies fully with the government-wide identity card (“HSPD-12”) initiative.

#### **Office of Financial Management (“OFM”)**

OFM administers the Commission’s financial management program and is responsible for offering guidance on optimal utilization of the Commission’s fiscal resources. OFM’s main responsibilities are to: (1) produce and submit annual budget justifications and estimates to OMB and the Congress; (2) execute the budget to ensure that appropriated funds are properly expended; (3) prepare audited financial reports to aid management decisions; (4) administer the control system over workyears of employment; (5) collect all fees and forfeitures due the Commission; (6) process payments; (7) verify financial, accounting and payroll reports generated by the agency’s fiscal services agents; (8) process travel orders and vouchers; and (9) manage the Commission’s Travel Charge Card and Cash Management programs.

The Commission has an interagency agreement (“IAG”) with the Bureau of Public Debt (“BPD”) to provide such services as general ledger accounting, travel, procurement, and financial reporting. OFM serves as the Commission’s primary contact with BPD and verifies all accounting transactions, oversees the timely submission of quarterly financial statements to OMB, and works to ensure that an unqualified opinion is received on the annual financial statement audit. The National Finance Center (“NFC”) provides the Commission with payroll services via an IAG. OFM serves as the primary contact with NFC regarding time card transmission and verifies all payroll disbursement costs. NFC transmits documentation of payroll costs directly to BPD for inclusion in the agency’s accounting records.

During fiscal year 2007, OFM: (1) collected and deposited to the U.S. Treasury \$1,964,837 from fines and penalty collections, publications, reproductions, and user fees; (2) coordinated and prepared budget justifications and estimates for the fiscal year 2008 Congressional budget and fiscal year 2009 OMB budget; (3) prepared a variety of required external reports; (4) prepared monthly status reports on various budget matters; (5) managed the Commission’s cash management program; (6) maintained procedures for forecasting the cost of performance goals; (7) pursued delinquent receivables; (8) worked with BPD staff and auditors regarding the Audit of the Fiscal Year 2006 Financial Statements (resulting in an unqualified opinion); (9) worked with the Director of Administration to

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## Federal Maritime Commission

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finalize FMC's 2006 Management's Discussion and Analysis and 2006 Performance and Accountability Report and to initiate work on the 2007 versions of those documents; and (10) served on the Commission's committee to review and update user fees.

Goals in fiscal years 2008 and 2009 include: (1) facilitating implementation of Pay.gov for agencywide and industry acceptance of electronic payments; (2) continuing to pursue initiatives leading to economy and efficiency in budget and financial operations; and (3) improving the Cash Management Program, including migrating to updated platforms for the Paperless Check Conversion through the Federal Reserve Bank in Cleveland.

### **Office of Human Resources ("OHR")**

OHR plans and administers a complete human resources management program including: recruitment and placement, position classification and pay administration, occupational safety and health, employee assistance, workforce discipline, performance management and incentive awards, employee benefits, retirement, employee development and training, and personnel security.

Major accomplishments during fiscal year 2007 include the following: (1) monitored activities of the agency's payroll/personnel service provider, NFC, and worked with OA staff to ensure security, continuity and accuracy of payroll and personnel services; (2) coordinated with senior management in administering the SES Candidate Development Program and the Emerging Leaders Program to address executive succession; (3) conducted a comprehensive training program, including drafting agency policy on training and employee development, providing executive training for SES candidates and continuing the college tuition reimbursement program; (4) promoted the Preventive Health and Awareness Program and the Office of Personnel Management's ("OPM") wellness and *Healthier Feds* initiatives, and issued email notices focusing on preventive health themes and related health issues; (5) planned, implemented, and promoted new programs for Personal Financial Literacy Education and Volunteer/Community Service Awareness; (6) conducted numerous employee benefit and charitable contributions programs and open seasons; (7) conducted a comprehensive personnel and information security program, including initiating and adjudicating security investigations for new and reinvestigated employees, completing work necessary for reporting and updating data in the Clearance Verification System pursuant to OPM's e-clearance initiative, and collaborating with CBP to gain access to ACE/ITDS; (8) administered agency compliance with the Enterprise Human Resources Integration project and other e-Gov initiatives such as e-payroll, e-clearance, and e-learning; (9) worked with other entities on pre-implementation issues related to eOPF (Electronic Official Personnel Folder); (10) coordinated with OPM in administering a number of agency-wide surveys; (11) implemented provisions of the Federal Workforce Flexibility Act and related legislation and continued work to establish a Human Capital Plan; (12) coordinated implementation of a new training reporting system required by OPM; and (13) worked with agency staff and GSA to implement pertinent provisions of HSPD-12.

In fiscal years 2008 and 2009, OHR plans to: (1) implement eOPF and convert human resources records to electronic format; (2) monitor processes and database modernization activities of the NFC in conjunction with the government-wide e-payroll initiative and to ensure timely and accurate payroll and personnel services; and (3) evaluate the agency's Human Capital Plan and associated metrics to assess progress in meeting strategic and performance goals and to determine necessary modifications.

### **Office of Information Technology ("OIT")**

The Office of Information Technology provides management support and services with respect to information technology ("IT") systems facilitating the program and administrative operations of the Commission, and thus is responsible for ensuring that the Commission's IT program is administered in a manner consistent with applicable rules, regulations and guidelines. OIT receives program guidance from the agency's CIO.

The OIT Director serves as the Commission's Information Technology Officer, Telecommunications Manager, Help Desk and Database Administration Manager, and oversees the IT security program. The OIT Director plans, coordinates, and facilitates the use of automated information systems.

During fiscal year 2007, significant OIT activities included the following: (1) implementation of an automated FMC Form 18 required for OTI licensing purposes; (2) redesign of the SERVCON system to include a user ID and password system linked to FMC Form 1 and FMC Form 18; (3) implementation of the new web-based OTI List; (4) automation of the training process; (5) testing and implementing IPv6 technology mandated by OMB; (6) updating policies and procedures associated with the technical assistance provided to FMC staff and changes in the IT infrastructure; (7) administration of the agency's IT technical support and assistance contracts; (8) leading the Asset Management Committee, IT Change Control Process, and Technical Users Group; (9) furnishing agency-wide advice and coordination on electronic records; (10) reviewing the FMC's systems and completing security assessments for each; (11) coordination and monitoring of FMC's IT Security Awareness training; (12) improving compliance with FISMA and other Federal IT initiatives; and (13) assuming management of the agency's telecommunications services; and (14) successful testing of remote COOP processes.

For fiscal years 2008 and 2009, major initiatives include plans to: (1) increase compliance with FISMA requirements; (2) implement VoIP; (3) update the FMC Enterprise Architecture Plan; (4) upgrade the existing desktop operating system, software applications, and equipment; (5) improve the Virtual Private Network security infrastructure; (6) support the Pay.gov initiative; and (7) begin development of an Online Agreements system.

### **Office of Management Services ("OMS")**

OMS is responsible for procuring and furnishing all services, office equipment and supplies necessary to support the day-to-day operations and performance goals of the Commission. To accomplish this responsibility, OMS administers a variety of management service functions, including: (1) administering Commission procurement and contracting; (2) controlling and administering the Commission's property utilization, maintenance, inventory and disposition programs; (3) planning and administering programs for improvement of the workplace environment and other space utilization operations for all Commission locations, including office space and provision of office furnishings; (4) managing the receipt, storage, distribution and inventory of all supplies, forms and accessories; (5) coordinating and fulfilling all printing, copying, and graphic service requirements; (6) coordinating the use of the building's physical facilities with respect to maintenance, security and parking; (7) conducting safety inspections and coordinating the Commission's emergency planning and evacuation plan; and (8) directing the Commission's participation, development and goal-setting efforts under the Small Business Act.

During fiscal year 2007, OMS: (1) completed the office space renovation project required to accommodate the Operations and Administration activities in appropriate office space; (2) completed implementation of full-service procurement support through BPD's Administrative Resource Center; (3) through the Office Director, served as the Agency's Technical Representative for oversight of the headquarters building security contract and served as Chairman of the tenants' Building Security Committee ("BSC") for the HQ site; (4) coordinated the annual property inventory of accountable property; (5) worked through the BSC and the Department of Homeland Security's Federal Protective Service ("FPS") in resolving outstanding concerns surrounding the physical security services at FMC's HQ building; (6) arranged for the upgrade of voice telecommunications equipment in the Los Angeles, CA and Florida AR offices; (7) worked with OIT on a seamless transfer of the voice telecommunications program to OIT's control; (8) coordinated with BDP for award of a follow-on contract for ongoing IT assistance during critical application implementation while a new contract for continuing support was established; (9) implemented use of the Library of Congress FEDLINK program to acquire annual publications and on-line subscription services to ensure no disruption in service; (10) in coordination with BPD, arranged for a contract extension for scanning services support while a new statement of work was being developed; (11) coordinated the expansion of the agency's security card access program to provide additional security for physical access to office areas which control files containing personally identifiable information; and (12) coordinated with GSA to acquire temporary office space, motor pool vehicle, and other necessities required for establishing an AR office in Houston, Texas.

In fiscal years 2008 and 2009, OMS' objectives include: (1) continuing to work with GSA, FPS, and other tenant agencies at our HQ facilities and field locations to upgrade and/or improve the buildings' security measures and emergency preparedness; (2) in conjunction with the agency's other administrative offices, continuing the process for implementing HSPD-12; (3) working with BPD on streamlining the FMC's acquisition and procurement program for better efficiency; and (4) continuing to provide advice and assistance regarding innovative support-service approaches to FMC activities.

Appendix A

Alphabetical Listing of Abbreviations

	<b>-#-</b>	
1920 Act		Section 19 of the Merchant Marine Act, 1920
1984 Act		Shipping Act of 1984
	<b>-A-</b>	
ADR		Alternative Dispute Resolution
ACE/ITDS		Automated Commercial Environment/International Trade Data System
ALJ		Administrative Law Judge
AMC		Antitrust Modernization Commission
AR		Area Representative
	<b>-B-</b>	
BCL		Bureau of Certification and Licensing
BOE		Bureau of Enforcement
BPD		Bureau of Public Debt
BSC		Building Security Committee
BTA		Bureau of Trade Analysis
	<b>-C-</b>	
CADRS		Office of Consumer Affairs and Dispute Resolution Services
CATS		Carriers' Automated Tariff Systems
CBP		U.S. Bureau of Customs and Border Protection
CFR		Code of Federal Regulations
CIO		Chief Information Officer
Commission		Federal Maritime Commission
CMTS		Committee on Marine Transportation System
COOP		Continuity of Operations
CSRS		Civil Service Retirement System
	<b>-D-</b>	
DEEO		Director of Equal Employment Opportunity
DCIA		Debt Collection Improvement Act
DHS		Department of Homeland Security
	<b>-E-</b>	
ECIE		Executive Council on Integrity and Efficiency
EEO		Equal Employment Opportunity
eOPF		Electronic Official Personnel Folder
EU		European Union
	<b>-F-</b>	
FAEC		Federal Audit Executive Council
FASA		Fashion Accessories Shippers Association
FEDEX		Federal Express
FEHB		Federal Employee's Health Benefits
FERS		Federal Employee Retirement System
FISMA		Federal Information Security Management Act of 2002
FMC		Federal Maritime Commission
Flanagan		Robert L. Flanagan and F. Brooks Royster, III
FOIA		Freedom of Information Act
FPS		Federal Protective Service
FSPA		Foreign Shipping Practices Act

**Federal Maritime Commission**

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FTE		Full-Time Equivalent
FY		Fiscal Year
<b>-G-</b>		
GAO		Government Accountability Office
GC		General Counsel
GPEA		Government Paperwork Elimination Act
GPRA		Government Performance and Results Act
GS		General Schedule
GSA		Government Services Administration
<b>-H-</b>		
HSPD-12		Homeland Security Presidential Directive 12
HQ		Headquarters (FMC)
<b>-I-</b>		
IAG		Interagency Agreement
IG		Inspector General
IPv6		Internet Protocol Version 6
IT		Information Technology
<b>-L-</b>		
Lake Charles Harbor		Lake Charles Harbor and Terminal District
<b>-M-</b>		
Maersk		A.P. Moller-Maersk A/S
MD&A		Management's Discussion and Analysis
MOU		Memorandum of Understanding
MTO		Marine Terminal Operator
<b>-N-</b>		
NFC		National Finance Center
NVOCC		Non-Vessel-Operating Common Carrier
NSA		NVOCC Service Arrangement
<b>-O-</b>		
OA		Office of Administration
OFM		Office of Financial Management
OGC		Office of General Council
OHR		Office of Human Resources
OIG		Office of the Inspector General
OIT		Office of Information Technology
OMB		Office of Management and Budget
OMS		Office of Management Services
OPM		Office of Personnel Management
OPS		Office of Operations
OSRA		Ocean Shipping Reform Act of 1998
OTI		Ocean Transportation Intermediary
<b>-P-</b>		
PAR		Performance and Accountability Report
PGA		Participating Government Agency
PIERS		Port Import Export Reporting Service
PIO		Performance Improvement Officer

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**Federal Maritime Commission**

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P.L.		Public Law
PREMIER		Premier Automotive Services, Inc
PRPA		Puerto Rico Ports Authority
PVO		Passenger Vessel Operator
	<b>-R-</b>	
RPI		Regulated Persons Index
	<b>-S-</b>	
SAC		Small Agency Council
SERVCON		Service Contract Filing System
SES		Senior Executive Service
Shipping Act		Shipping Act of 1984
	<b>-T-</b>	
the Ports		The Port of Los Angeles and the Port of Long Beach
TSA		Transpacific Stabilization Agreement
	<b>-U-</b>	
U.S.		United States
U.S.C.		United States Code
	<b>-V-</b>	
VOCC		Vessel-Operating Common Carrier
VoIP		Voice over Internet Protocol
	<b>-W-</b>	
West Cameron		West Cameron Port, Harbor and Terminal District
WY		Work Year



***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