

Office of Inspector General

Review of the
Office of Consumer Affairs and Dispute
Resolution Services
Processing of Informal Dockets

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March 2011

FEDERAL MARITIME COMMISSION



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Office of Inspector General
Washington, DC 20573-0001

March 16, 2011

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Dear Chairman Lidinsky and Commissioners;

The Office of Inspector General (OIG) has completed its review of the agency's informal docket processing procedures and timeframes. The objective of the review was to assess how efficiently the Office of Consumer Affairs and Dispute Resolution Services (CADRS) processed informal dockets opened in fiscal years 2005 through 2009.

We found that CADRS has made recent strides in closing backlogged cases, starting with the decision by the former director to contract with a retired FMC employee to focus on open dockets and the efforts of the current director to convert these dockets into final decisions. Adjudicated dockets with decisions issued between fiscal years 2005 – 2009 resulted in reparations to consumers totaling \$189,739. CADRS also adopted operating procedures that should help to ensure that dockets are processed uniformly. Written procedures are especially important as CADRS considers staff additions to enhance its outreach mission.

Notwithstanding recent improvements, the OIG believes that further enhancements in processing efficiencies are possible. Many applicants have struggled with the informal docket application, resulting in withdrawn applications or extra staff time to assist applicants. CADRS also lacked an effective means to keep the informal dockets moving, and to close them.

The OIG made six recommendations to improve docket processing. These involve all areas of the docket lifecycle. Perhaps most importantly, we recommended that the Commission simplify the filing process and that CADRS implement a formalized case management system. We do not envision that a complex or expensive system is needed, since the agency opens, on average, less than 10 dockets per year. I am pleased to report that management has already taken steps to address the findings and has begun to implement the OIG's recommendations.

Fieldwork for the review was performed from July 2010 through December 2010, and followed the President's Council on Integrity and Efficiency Inspection Standards, issued in January 2005. We would like to thank CADRS' staff for its assistance throughout the review.

Respectfully submitted,

/Adam R. Trzeciak/
Inspector General

Review of the Office of Consumer Affairs and Dispute Resolution Services Processing of Informal Dockets

The Office of Inspector General (OIG) has completed its review of the agency's informal docket processing procedures and timeframes. The objective of the review was to assess how efficiently and effectively the Office of Consumer Affairs and Dispute Resolution Services (CADRS) processes informal dockets. The OIG has already begun a review of other program areas within CADRS, to include complaints processing (ombuds services) and alternative dispute resolution activities. The results of those efforts will be issued under a separate cover following this review.

Background

Section 11(a) of the Shipping Act of 1984 (46 U.S.C. 41301(a)) allows any person to file a complaint with the Federal Maritime Commission (FMC), claiming a violation occurring in connection with the foreign commerce of the United States, and to seek reparation for any injury caused by the violation.

There are two processes/procedures in CADRS available to consumers when seeking resolution of shipping-related concerns. In the first procedure, an ombuds/ADR service, CADRS acts as a neutral third party to facilitate the discussion between willing parties in working towards a resolution of their problems. With this service, there is no judgment or decision issued by the agency. The solution is what the parties agree to themselves.

The second procedure is the "informal docket." This is similar to a small claims proceeding in a court with requirements for filing, service, responses, etc. No personal appearance is required. There is a \$67 filing fee to be paid by the complainant. The claim must allege a violation of the Shipping Act and damages cannot exceed \$50,000. Claims must be filed within three years from the time the alleged cause of action occurred.¹

The informal docket is filed with the FMC's Office of the Secretary (OS), which reviews the submission, assigns an Informal Docket number and refers the claim to the Director of CADRS for appointment of a settlement officer. The OS may assist parties to comply with filing requirements and may also request CADRS staff to provide assistance.

Following appointment, the settlement officer prepares and serves a "Notice of Filing and Assignment." The Notice, accompanied by a copy of the claim, is served on the respondent. Commission regulations require that a respondent consent to the informal docket procedure within 25 days of being served. Failure to respond, or to indicate consent or refusal, is conclusively deemed to indicate consent. Should the respondent refuse the informal docket procedure, or elect to adjudicate under Subpart T of 502, the claim is assigned to an

¹ Informal docket procedures are governed by Subpart S of the Commission's Rules of Practice and Procedure (*Informal Procedure for Adjudicator of Small Claims*), found at 46 CFR 502.301 – 502.304.

Administrative Law Judge (ALJ) for formal adjudication of small claims. Subpart T provides a more formal process than does Subpart S.

Settlement officer decisions are equivalent to court judgments, and, like judgments, collectability is not guaranteed. However, in cases where respondents possess a bond (e.g., licensed ocean transportation intermediaries), a decision for the claimant can be used to collect against the bond.

The settlement officer's decision is final unless, within 30 days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. Also within 30 days of the final decision, any party may file a petition for reconsideration. Such petition shall be directed to the settlement officer and shall act as a stay of the review period. A petition will be subject to summary rejection unless it specifies a change in material fact or in applicable law, identifies a substantive error in the final decision or addresses a material matter in the decision upon which the petitioner has not previously had the opportunity to comment.

Objectives, Scope and Methodology

The objectives of our review were to assess informal docket processing efficiency and effectiveness. Specifically, we reviewed docket processing steps from receipt in the Office of the Secretary to settlement officer decision. We initially reviewed all informal dockets opened in fiscal years 2007 and 2008 (n = 9). Based on observations we made during this review, we expanded the scope to include fiscal years 2005, 2006 and 2009. We report milestone statistics from fiscal year 2010 dockets (n = 8) but we did not substantively review any 2010 docketed files. For fiscal years 2005 – 2009, we reviewed 44 informal dockets.

We identified key steps common to each docketed case and compared the times required to complete each step. While not an exhaustive list, we believe the following steps, the corresponding dates and the interval of time between them, shed light on processing efficiencies and impediments. We identified, for each case, the following milestones and corresponding dates:

- a. Filing date
- b. Filing forwarded date
- c. Assignment (and reassignment) of the settlement officer
- d. Notice of Filing and Assignment served on the respondent
- e. Settlement Officer decision served
- f. Commission review of decision

Although there are other milestones, these are most useful when looking at processing timeframes for comparison purposes. Each is briefly discussed below.

The **filing date (a)** is the date that the docket is received in the Office of the Secretary. OS reviews each filing before forwarding it to CADRS to ensure it meets basic requirements.

The **filing forwarded date (b)** represents the date the submission was sent to the CADRS director. When compared to the filing date above, it provides insight into how long OS requires to perform its review.

The **assignment (and reassignment) (c)** date(s) provide (i) a measure of how long the filing is maintained with the CADRS director before it is assigned a settlement officer, and (ii) the number of cases that are reassigned within CADRS. Reassignments can slow case processing because momentum is lost, requiring a new settlement officer to come up to speed on what has been done by the prior settlement officer.

The **Notice of Filing and Assignment (d)** is the letter sent to the respondent (with a copy to the complainant), identifying the settlement officer and requesting respondent's reply to the complaint. The document must be served on the respondent; otherwise, the informal proceeding cannot begin.

The **Settlement Officer decision (e)**, which has been reviewed for legal sufficiency by the CADRS director, represents the effective culmination of the proceeding when served on the parties. Delays can result when this review identifies legal problems or does not occur timely. Parties can, within 30 days of service, file a motion for reconsideration with the settlement officer, but we found this rarely occurred.

The **Commission decision (f)** is issued within 30 days from the date of service of the decision and reflects whether the Commission will review the decision. Of the 44 dockets opened between fiscal years 2005 – 2009, only three decisions were reviewed by the Commission, adding 129, 220 and 313 days to the case lifespan.²

We supplemented our review of the informal docket files with interviews of former and current CADRS staff. Appendix B contains a spreadsheet displaying lifecycles and milestones for 52 dockets from fiscal years 2005 – 2010.

The review followed President's Council on Integrity and Efficiency Inspection Standards, issued in December 2005.

Disclosure of Management's Request to Suspend the Evaluation

In September 2009, a new counsel / chief investigator joined the OIG. This attorney had previously worked in CADRS from approximately 2006 - 2009. In July 2010, the attorney attended two meetings associated with the OIG's review of CADRS: an entrance conference with CADRS staff where the review objectives, scope and methodology were discussed by the inspector general (IG), and a meeting with a former FMC employee who processed informal dockets while head of the Office of Consumer Complaints, the CADRS-predecessor office. Management was concerned that this attorney's association negatively impacted the IG's impartiality and asked that the review be terminated until such time that another auditor could be found to lead the evaluation. The IG disagreed with management's conclusion that the IG was no longer neutral and its proposal to stop the evaluation, and instead recused counsel from

² See Informal Docket nos. 1867, 1887 and 1894, respectively.

further involvement in the review. The FMC's managing director filed a complaint with the Council of Inspectors General on Integrity and Efficiency, Integrity Committee (IC) against the IG when the IG did not honor management's request to terminate / suspend the evaluation. The IC decided in favor of the inspector general and dismissed the complaint.

Findings and Recommendations

The purpose or intent of the informal docket is identified in CADRS' October 2009 procedures document: *The Informal Docket procedure was developed by the Commission some years ago to provide a quick, inexpensive means of deciding matters that are essentially "small claims." It provides a means to seek redress for injury caused by Shipping Act violations, without the encumbrance of the legal procedures inherent in filing a complaint under the Commission's formal procedures, and without the need to be represented by an attorney.*

The OIG's evaluation focused on processing steps and timeframes for informal dockets opened in fiscal years 2005 through 2009. While recognizing that each docket is unique, we focused on policies and procedures used by CADRS, and to a limited extent, the Office of the Secretary, to process, adjudicate and close docketed cases. From a case-processing perspective, much can be learned by examining each case to determine why some cases take longer than others. Delays can have a tangible impact on case outcomes because businesses may close or move, documents can be lost or discarded and memories of events may fade with time, making it more difficult for complainants to collect reparations. In many instances, justice delayed is justice denied.

We found that CADRS has made recent strides in closing cases, commencing with the decision by the former director to contract with a retired FMC employee to focus on open dockets at various stages of adjudication and the efforts of the current director to convert these dockets into final decisions.³ Adjudicated dockets with decisions served between fiscal years 2005 – 2009 resulted in reparations to consumers totaling \$189,739. CADRS has also developed internal operating procedures that should help to ensure that dockets are processed with greater uniformity. Written procedures are especially important as CADRS considers the addition of staff to enhance its outreach mission.

Notwithstanding recent improvements, the OIG believes that the Commission's goal, to provide pro se litigants a quick and less burdensome alternative to its formal procedures, was not met. Many applicants struggled with the informal docket filing process, resulting in withdrawn filings or additional agency staff time required to assist claimants to understand the procedures they must follow. CADRS new operating procedures appear to recognize this outcome and instruct settlement officers to assist complainants to file the informal docket, but the procedures alone do not go far enough.

³ When the OIG began its evaluation, CADRS had a backlog of approximately 25 informal docket cases that were pending issuance. In November 2009, the agency entered into a contract with a former employee of the Office of Consumer Complaints (the predecessor office to CADRS) who, during his tenure, worked on complaints and informal dockets. Purchase Order (PO) FMC-FMC-10-00010 was issued on November 6, 2009, for services to be provided to the FMC in accordance with "Training and Guidance on Settlement Officer Duties and Responsibilities..." The PO was amended once to add additional funds. Purchase orders totaled to \$20,240.

The informal docket process has generally not provided “quick” resolution to complainants alleging Shipping Act violations. Forty percent of all dockets filed between FY 2005 - FY 2009 were open 25 months or longer. Many of these have been kept open with little or no adjudicative activity performed. While some delays are the result of factors not directly controllable by the settlement officer (e.g., inability of the settlement officer to effect service on the respondent or non-responsiveness by one or both parties), other delays are controllable. Delays, we believe, could have been better managed.

Dockets where service could not be effected remained open, even though CADRS’s efforts to locate the respondent after initial efforts failed were limited. The three-year statute of limitations expired on some of these dockets, however filing a claim before the expiration tolls the statute. Keeping the docket open, especially on dockets where the statute has expired, enables CADRS to serve a respondent, if found. But CADRS did not routinely keep complainants apprised of case status – resulting in complainant frustration, evidenced by requests for updates and filing fee refunds.

Regardless of the causes of delays, dockets should not remain open indefinitely. CADRS did not have effective internal mechanisms to keep the informal dockets moving, and to close them. CADRS focus was on processing consumer complaints, a.k.a. ombuds assistance, as these often involve escalating penalties to the complainants or lost or misplaced cargo. We do not question whether CADRS emphasis is in the right place. But this emphasis has impacted docket lifespan. Unless CADRS actively seeks to keep the dockets moving, they will “take a back seat” to ombuds services, and continue to age and backlog.

Moving forward, CADRS has to review processes with an eye on customer service. There are not so many informal dockets that the office cannot keep them moving and provide more individual attention to complainants to keep them apprised of the status of the docket. It is not unreasonable for complainants, having filed their complaint and paid the \$67 docket filing fee, to expect a decision from the agency in a timely manner, or at least an explanation as to why a decision is delayed or not forthcoming.

CADRS lacked a case management system that effectively tracks the dockets, alerts decision makers when they begin to age, and keeps them moving forward (or closes them at the proper time).⁴ Court districts around the country rely on such systems to move complicated cases to keep backlogs from developing. We believe that there are lessons to be learned from these districts.

Table 1 provides an overview of the dockets processed by CADRS. The fiscal year identifies the year that the filings were received in OS.

⁴ Case management refers to a subset of law practice management and covers a range of approaches and technologies used by law firms and courts to leverage knowledge and methodologies for managing the life cycle of a case or matter more effectively. These generic processes often utilize contemporary technologies to assist in meeting operational demand and help to keep the cases current.

**Table 1. Status of Dockets received in Fiscal Years 2005-2010
(As of 9/30/10)**

Fiscal Year	Dockets Received	Dockets Open on 9/30/10
2005	12	3
2006	11	1
2007	5	0
2008	4	2
2009	12	7
2010	8	6
TOTAL	52	19

Table 1 shows that CADRS opened 52 informal dockets over the most recent six fiscal-year period, for an average of between eight and nine dockets per year. Thirteen (13) of the 19 cases still open on September 30, 2010, were received in FY 2009 or earlier; four (4) dockets opened in FY 2005 and FY 2006 were still open as of September 30, 2010. There were 33 docketed cases closed by September 30, 2010.

Finding 1. A number of Submissions are Rejected before a Docket is Opened

The OIG reviewed the status for 18 informal docket submissions received in OS for the six month period March 2009 through August 2009. Of the 18 filings received, 14 (78 percent) were determined to be “deficient” and were returned to the complainant. Of these 14, five (5) made needed changes / additions and were assigned a docket number.

OS reviews each filing to assess compliance with FMC requirements. For example, OS determines whether (i) the complaint is signed and notarized, (ii) the complainant has standing to file the complaint, i.e., has the legal right to seek relief, (iii) the filing fee is paid, (iv) the filing is in the proper format, (v) a Shipping Act violation is alleged (to include Act section and violation description), and (vi) the filing is timely (within three years from the alleged violation).

Although filings that do not comply with one or more of the requirements may be returned to the complainant, OS officials told us that the most common cause of returned filings, the so-called “fatally flawed” filings, is the failure of the complainant to cite the specific violation of the Shipping Act. For example, of 14 fatally-flawed filings, eight (8) were flawed due to a missing or incomplete Shipping Act citation; three (3) were identified as “completely deficient” (which included Shipping Act citation deficiencies with other errors/omissions), two (2) lacked supporting documentation and one (1) was not notarized.

The OIG reviewed the docket filing package that is sent by OS to the complainant.⁵ We noted that the filing package is seven pages, consisting of a short transmittal letter which provides OS

⁵ Appendix A contains the package OS currently sends to complainants.

contact information (email address and phone) to assist the complainant with filing questions, a two page information sheet describing, in detail, the information needed to be considered a valid claim; two pages comprising Subpart S, Informal Procedures for Adjudication of Small Claims; and Exhibit No. 1 to Subpart S, Sec. 502.304(a) – the form used by the complainant to identify the respondent, to quantify the claim and to swear that the claimant has legal standing to file the claim (two pages). OS told the OIG that sometimes complainants cut and paste examples of correct filings into their own filing, whether or not the example is germane to their claim.

The OIG believes that OS has taken steps to help complainants to complete the filing. For example, providing a telephone number to call for 1:1 assistance is good customer service. We also learned that OS staff is participating in a Commission review of all Sec. 502 processes, including the filing process. We have some observations to offer the review team as it considers possible revisions to the filing process. It seems to us that the nomenclature, “informal complaint” or “informal claim,” (found on pages 1 and 2, respectively, of the instruction sheet provided to all complainants) conveys a “casual” process, akin to simply stating a grievance and providing some documentation. Although Commission literature uses “informal” to distinguish it from the formal process before the ALJ, the informal process is not informal; it is similar to a small claims proceeding in a court with requirements for filing, service, responses, etc. We feel that the agency may inadvertently be sending the wrong message by calling it “informal.” While we leave this to the review team to consider, perhaps “small claims procedure” would be more descriptive and, possibly, result in closer scrutiny and more attention paid by complainants to the filing procedures.

We also noted some limited use of jargon in the package that may confuse some complainants. For example, we identified several references to the requirement to include “tariff” information in the filing. It may be prudent to include a parenthetical after tariff, for example, “price list, schedule of charges or fees,” to explain this and other terms that may be unfamiliar to the complainant.

Finally, we also noted that the informal docket package is not available for download from the agency’s website. Placing the seven page package on the web would not result in less confusion or “fatally flawed” filings, but it would be a more efficient way to serve the public, while reducing agency costs. Ideally most of the package could be completed electronically, reducing paperwork requirements.

Until October 2009, CADRS operated without documented operating procedures. This caused ambiguity among the staff when it came to assisting complainants to file the informal docket, as discussed below. If CADRS’ policy is to assist complainants, including helping them to complete the docket filing, improvement in the number of fatally flawed submissions are expected. We also support OS efforts to document causes behind “fatally flawed” filings and recommend that these results be periodically reviewed as a basis for making changes to the filing process.

Finding 2. CADRS Docket Procedures provide needed Processing Guidance but more is Needed

In October 2009, CADRS issued its first operating policy and procedures document for staff to follow when processing informal dockets. It identifies the duties of the settlement officer and assigns responsibility to the settlement officer to manage the docket and to follow up with Commission staff, as necessary, to keep the informal docket moving. The new procedures also require that service be made on the parties within five days following assignment by the CADRS director. Additionally, select documents are to be provided to the office's administrative staff to enable that person to maintain a log with major docket milestones. The OIG believes that these procedures are steps in the right direction.

On the other hand, we noted that the new procedures contain very little in the way of docket timeframes or deadlines. The settlement officer now has the responsibility to "keep the docket moving," but it is not clear how this is to be accomplished, as many underlying causes for delays are not addressed, or are outside of the settlement officer's control. For example, one significant cause of delays is the assignment of the settlement officer once the reviewed filing is received in CADRS (from OS). As finding 3(B) illustrates, for fiscal years 2005 – 2010, the average time between docket receipt in CADRS and settlement officer assignment, was 32 days. Another cause of delay was competing demands placed on settlement officers, specifically ombuds complaints. If settlement officers are left to set their own priorities, the OIG believes that dockets will fall behind ombuds complaints. These and other causes for delays are discussed below.

The OIG noted that the procedures also instruct the settlement officer to advise the parties on how to comply with procedural matters – specifically to assist parties to properly file a claim. Staff we spoke with indicated that, in practice, this has led to assisting complainants to identify specific Shipping Act sections or with other substantive assistance at any point in the docket process. While the procedures note that the "Commission's staff historically has assisted parties in properly filing a claim..." the majority of CADRS' settlement officers we spoke with had concerns about assisting claimants while, at the same time, serving as impartial adjudicators.

CADRS' procedures include some steps to promote neutrality. For example, the procedures note that ombuds complaints filed in CADRS that convert to informal dockets should not be assigned to the same CADRS staff that processed the complaint, as ombuds services often involve advocacy, as the CADRS acronym implies. But some CADRS' attorneys felt that this did not go far enough. For example, assisting complainants while assigned as the settlement officer, they believed, was tantamount to acting as that complainant's attorney, rather than as a neutral adjudicator. Similarly, legal assistance provided to respondents, according to some in CADRS, also establishes an inappropriate attorney / client relationship. In either instance, this creates an improper role for neutral adjudicators and at least in appearance, this impacted their ability to impartially process cases.

While we could not identify disparate treatment from the docket file, it is likely that some claimants were treated differently, depending on the settlement officer assigned to the docket, e.g., some settlement officers, to include those who did not believe assistance violated neutrality,

were likely to be more helpful to complainants needing assistance to file a claim than were others. The OIG does not take a position on whether CADRS should assist either or both parties. Rather, we emphasize the importance of having a uniform set of guidelines for staff to follow when interacting with parties. Again, documenting these expectations in the procedures document is a step in the right direction. Moving forward, the procedures should clearly identify the kinds of assistance that should be provided to complainants / respondents to eliminate ambiguity and establish goals for processing documents to assess timeliness of settlement officer decisions.

Finding 3. Delays in Processing Informal Docket Filings

To begin the analysis of docket processing timeframes, we prepared a spreadsheet of 52 dockets opened between FY 2005 and FY 2010 along with the corresponding milestone dates and docket lifecycles, identified above in the “Objectives, Scope and Methodology” section of this report. We relied on the official informal docket file maintained by OS for the information, supplemented by discussions with settlement officers. Table 2 provides summary statistics identifying the age in months of 52 informal dockets, segregated by whether the docket was opened or closed by September 30, 2010:

**Table 2. Aging Analysis of Informal Dockets
FY 2005 - FY 2010**

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	Total
	12	11	5	4	12	8	52
Months							
1 - 6	0 / 2	0 / 1	0 / 0	0 / 0	0 / 2	3 / 0	3 / 5
7 - 12	0 / 4	0 / 1	0 / 1	0 / 0	0 / 0	3 / 2	3 / 8
13 - 24	0 / 1	0 / 3	0 / 1	0 / 0	7 / 3	0 / 0	7 / 8
25 - 36	0 / 1	0 / 1	0 / 2	2 / 2	0 / 0	0 / 0	2 / 6
37 - 48	0 / 0	0 / 1	0 / 1	0 / 0	0 / 0	0 / 0	0 / 2
49 - 60	0 / 0	1 / 3	0 / 0	0 / 0	0 / 0	0 / 0	1 / 3
61 - 72	3 / 1	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	3 / 1
Total							
	3 / 9	1 / 10	0 / 5	2 / 2	7 / 5	6 / 2	19 / 33

 Open as of 9/30/10 (n=19)
 Closed by 9/30/10 (n=33)

Review of Table 2 shows that there were 52 dockets opened between FY 2005 and FY 2010. Thirty-three (33) of these dockets were open for between 1 and 72 months but were closed by

September 30, 2010. The remaining 19 dockets were open between 1 and 72 months, and were still open on September 30, 2010. Looking at fiscal year 2005 as an example, there were 12 dockets opened that year. Two (2) dockets opened in that year were closed in under 6 months; one docket opened in that year stayed open for between 61 and 72 months. Three dockets opened in fiscal year 2005 were still open on September 30, 2010. Looking at just the 44 dockets opened between FY 2005-FY 2009, 33 were open one year or more; just under one-third of these (10) remained open three years or more.

Appendix B provides a “case-by-case” summary of docket lifespan in calendar days, for dockets opened in fiscal years 2005 – 2010, from receipt in OS to settlement officer decision. The average case lifespan was 678 calendar days. Removing FY 10 dockets increases the average lifespan to 766 days.

A. OS Review for Minimum Filing Requirements

The OIG review of the lifespan of a docket began with the receipt in OS. As discussed above, OS reviews docket filings for content, timing and payment of fees. Our analysis of the amount of time required by OS to complete its review produced varied results. For example, in FY 2005, OS completed its review, on average, in 10.6 days, with a range of one to 76 days. Yet, the very next year, that average review required 28.6 days with a range of two days to 143 days. OS staff explained that extremes in review times were likely the result of assisting complainants to file their claim, as there was often substantial exchanges with the complainant before the filing met the filing requirements.

One of the observations frequently made by CADRS staff was that OS, prior to the implementation of its new procedures, sent dockets to CADRS that they believed were not thoroughly reviewed, requiring CADRS to either return the docket to OS or to work with the complainant to complete the filing requirements.

OS officials told the OIG that, during FY 2006, in order to address the increase in both the number of filings and OS staff time required to work with complainants to perfect deficient filings, the Secretary split the responsibility for working with filers between the OS and CADRS. In situations where a complainant who had filed a deficient complaint had previous communication with CADRS staff, CADRS staff was to work with the filer to help it perfect the filing. In situations where there had been no previous communication with CADRS staff, and a filing was deficient, OS staff would work with the filer. The goal was to improve perfection time by increasing the number of Commission staff working with filers procedural matters relating to the docket submission. However, a noticeable improvement in review time did not occur until FY 2007.

During the spring of 2009, OS amended its complaint assistance procedures. The “split review” approach adopted in FY 2006 was discontinued. All reviews for filing compliance are now performed by OS staff. A “check list” was developed and is used to return deficient filings and provide guidance on how to perfect filings. OS will not assist complainants with substantially incomplete submissions nor will it forward them to CADRS for assistance. Rather, these are returned to the complainant with the filing fee and an explanation of the deficiency. Filings that

are substantially complete will be reviewed and forwarded to CADRS after consulting with CADRS.

With the new procedures in place, the OIG focused on the most recent fiscal year in our analysis of processing times, as this would be the most indicative of the impact of the new procedures on review timeframes. We noted significant improvement in FY 10, with the average OS review time falling to 5.5 days.

The OIG believes that OS new processing procedures will help to maintain reduced review times, especially with the increased interaction between OS and CADRS.

Docket 1866(I) illustrates what can happen when dockets are submitted to CADRS when the submission is not perfected. In this instance, CADRS attempted to assist the applicant to provide missing information, but the applicant instead requested a refund of her filing fee:

1866(I) The claimant filed a complaint with the OS on April 12, 2005. Although the filing included exhibits depicting damaged goods, records of conversations between the claimant and the respondent, a detailed description of the alleged violation and the bill of lading, the file did not identify which section of the Shipping Act the individual alleged was violated. A docket number was nonetheless assigned by OS but service was not attempted by CADRS. Three months after filing the claim (July 2005), the claimant requested a refund. No refund was made and no explanation was provided to the complainant. The docket remained open until June 2010.

This docket was not served because the claimant failed to complete the filing satisfactorily. A docket number should not have been assigned by OS. In this instance, CADRS informed the claimant of the deficiency but the complainant did not respond with the missing information. In a June 2010 memorandum closing the docket, the settlement officer cited the missing Shipping Act citation as justification for closing the docket. We believe CADRS did try to assist this applicant but we could not determine why the docket remained open for five years.

Under OS' new procedures, filings like 1866(I) would most likely be processed because it contained enough substantive information to enable CADRS to proceed. Both the CADRS director and OS told the OIG that communication between the offices serves to identify those filings that can be opened with information supplied. This new process should help to ensure that only complete docket filings are sent to CADRS, eliminating some of CADRS' need to assist the complainant.

B. Assignment of Settlement Officer

When the OS completes a review of the file, it is forwarded to CADRS to begin the adjudication process. The first step in CADRS is the director's assignment of a settlement officer to the docket. CADRS' new procedures do not assign a timeframe standard for this step. Several dockets were assigned soon after they were forwarded to CADRS. In other instances, the delays were lengthy. For example, in fiscal years 2005 – 2010, settlement officers were assigned

dockets, on average, 32 days after the docket was received in CADRS. Summary information for each year is provided in Table 3:

Table 3. Average Days for Settlement Officer Assignment 2005-2010⁶

Fiscal Year	Dockets Received	Average Days to Assign Docket to Settlement Officer
2005	5	62
2006	3	88
2007	5	7
2008	3	36
2009	6	12
2010	5	17
Average		32

The OIG notes that in fiscal year 2006, the average is skewed by one docket. In this year, there were three filings where we identified sufficient information in the file to calculate assignment times. The time from receipt in CADRS to assignment on these three filings was one, six and 256 days, which resulted in an average of 88 days. Appendix B provides specific assignment timeframe information for 27 dockets. As indicated, we could not identify assignment memoranda in the docket files for all filings in our universe.

The results indicate that CADRS has exhibited modest improvement over prior years, but additional improvement is still possible. Nevertheless, FY 2010 data is encouraging. Another concern is the inconsistency of documentation maintained in the official file folders for the dockets we reviewed. For example, we noted missing assignment memoranda in about half of the official docket files that would identify assignment of the settlement officer by name and date. Conversely, files routinely contained the Notice of Filing and Assignment and settlement officer decision, when applicable.

C. Failure to Effect Service Results in Aging, Open Cases

FMC regulations require that the respondent be served with the complaint. We identified instances where service could not be made on some respondents, but this was not a cause for delays in many cases. For example, of the 44 dockets opened between FY 2005 and FY 2009, 36 complaints (82 percent) were served on the respondent and six (6) were not served because the respondent could not be located. The two (2) remaining dockets were missing Shipping Act citations and were not served.⁷ Only on one of the six complaints that could not be served on the respondent was an address subsequently found. (See 1868(I) below.)

⁶ Averages are computed based on a review of 27 assignment notices in the file. The remaining 25 files contained no formal assignment memorandum in the docket file.

⁷ It is not clear why these dockets were assigned a docket number without a Shipping Act citation identified.

CADRS now relies on overnight mail service and, on occasion, will seek the assistance of an area representative to track down a respondent. The most common reason for not effecting service is CADRS' inability to locate the respondent, i.e., bad address. For example, unlicensed operators may have gone out of business. Some may have set up operations at a new address using a different name. Presumably, FMC licensees would have accurate contact information on file with the FMC and could be located using file data. However, CADRS staff told the OIG that even this is no guarantee of service. Sometimes, licensed companies fail to inform the FMC of address changes.

In instances when CADRS could not effect service, we noted that the docket file remained open to allow for the receipt of information that may become available at a future date that would permit service to proceed. CADRS staff explained that if the file is closed, and the three year statute of limitations expires, CADRS could not serve the respondent even if the respondent was found. But there is no formal policy regarding service and no procedures regarding what actions CADRS will take during the period the file remains open, including what will be communicated to the complainant, how long the docket will be kept open without service, whether refund requests will be honored and under what circumstances, and how quickly CADRS will react when an address becomes available.

Besides being unable to provide consumers a quick adjudication of their claim, these complainants were frequently "put on hold" pending new information regarding respondent whereabouts. While we identified numerous instances where CADRS communicated with claimants to explain delays, we also identified instances where no updates were provided, even after several requests by complainants:

1865(I) An informal docket submission was received in OS on June 16, 2005. OS sent the package to CADRS on June 24, 2005. Attempted service of the Notice of Filing and Assignment was made on August 3, 2005. Between September 23, 2005 and May 3, 2006, the complainant sent the settlement officer seven e-mails asking for an update on the case. Eight (8) months after the initial request, the settlement officer responded (May 5, 2006) that the respondent could not be served. CADRS explained that service must be effected before an investigation can be opened and asked the complainant if he had a recent address for the respondent. It appears that CADRS made additional attempts to serve the respondent after this dialog.

Over three years later, on September 23, 2009, the complainant contacted CADRS again asking for an update on service of the docket, as it appears from the file no updates were provided by CADRS since May 2006. On September 25, 2009, CADRS responded that it had already informed the respondent years earlier that the respondent could not be served and that CADRS planned to dismiss the case. On September 28, 2009, the docket was reassigned to another settlement officer. The docket was still open as of September 30, 2010.

It appears that this complainant may not have understood service requirements and how a lack of service can stop a case in its tracks. The complainant's unanswered requests likely added to his

confusion. We also question how three years could pass without communication with the complainant.

CADRS appears to have lost track of 1874(I) and, when service was subsequently attempted years later, the respondent could not be served:

1874(I) An informal docket was filed in OS on January 31, 2006. The docket was transmitted to CADRS on February 2, 2006. On May 3, 2006, the complainant contacted CADRS asking for the docket status. CADRS responded that same day that it would check on the status. On October 16, 2006, the CADRS director appointed a settlement officer. On November 9, 2006, the complainant e-mailed again, to inform that she had not heard back from CADRS and to request a refund of the filing fee. We identified a Notice of Filing and Assignment in the file dated November 20, 2009, almost four years after the filing was received and three years after a settlement officer was appointed. On December 14, 2009, CADRS informed the complainant that the complaint could not be served and that the file would be closed within three weeks. This docket was closed on June 28, 2010. No refund was processed.

When new information becomes available regarding a respondent who previously could not be served, service on the respondent should be a priority. On docket 1868(I), a respondent was located years after initial service attempts failed. A complaint filed with CADRS on another matter identified the respondent and an updated address. An FMC area representative visited the respondent and CADRS staff spoke with him about the new complaint. The information was shared with the settlement officer on 1868(I) but service was not timely made:

1868(I) This docket was received on August 30, 2005 in OS. According to records in the file, service was attempted on the respondent on December 22, 2005. There was no documentation in the file identifying activity until May 17, 2007, when the docket was reassigned within CADRS. In July 2007, the settlement officer was informed of the respondent's location, but for reasons not specified in the file, service was not attempted until months later on March 13, 2008, but unsuccessfully. No activity was recorded in the docket file after that date. The docket remained open as of September 30, 2010.

Service problems clearly derailed this docket initially. However, when an address became available as a result of another CADRS docket, the settlement officer on 1868(I) did not serve the respondent quickly. The companion docket that revealed the new location, conversely, was successfully served. The complainant who filed 1868(I) missed out as a result, while the complainant on the companion docket received a settlement officer decision.

Service delays are a relatively small part of processing delays in CADRS, but they are to blame for some of the more egregious (e.g., aged) dockets in CADRS. While these delays may be understood by some complainants, others appeared not to understand them. We found no mention in the complainant information package of potential delays that will result from the inability to effect service or any explanation of service requirements generally. In fact, language provided in Sec. 502.304(e) in the informal docket package, may unintentionally mislead some complainants. For example, the regulations state that “(f)*ailure of the respondent to indicate*

refusal or consent in its response will be conclusively deemed to indicate such consent.” This misleads because the respondent may have been served but did not respond – which indicates consent, or may not have been served and did not respond - which does not indicate consent. In other words, two non-responses indicate two entirely differently outcomes. Better communication with complainants on the instruction sheet provided would help.

CADRS also should establish a policy regarding service deadlines and actions CADRS will take if a docket is kept open to allow for future service. Based on discussions with staff, experience indicates that, with rare exception, if service is not effected within the first few months, chances are the respondent will not be identified at all and service will not occur. If CADRS determines to leave these dockets open, it should explain the decision to complainants, who may be delaying other remedies pending the docket outcome in CADRS.

D. Delays Caused by Assignment of Non Attorneys as Settlement Officers

It was difficult to assess whether the assignment of non attorneys impacted processing delays. All cases we reviewed were assigned to attorneys. However, we did make some observations that may shed light.

There is considerable precedence going back to the early 1990s when it was primarily non attorneys who served as settlement officers. The contractor recently hired to help with the backlog of informal dockets is not an attorney. Also, it is difficult to argue with the productivity of the contractor who was able to process approximately 25 dockets in eight months, albeit with no other assigned responsibilities.

On the other hand, informal dockets are the equivalent of small claims cases. As such, legal training is desirable. For example, a settlement officer without legal training may have difficulty discerning among admissible and inadmissible forms of evidence. Also, staff told us that when complainants call, they often begin talking about their docket with the adjudicator. To maintain neutrality, substantive ex parte communications are discouraged. However, because the Commission’s procedural rules do not apply to informal dockets, ex parte communications are not prohibited. Further, CADRS staff told the OIG that cases today are more complex than they were 10 years ago, and legal training is needed to address more complex issues.

E. Competing Demands in CADRS

In fiscal year 2005, the then CADRS director assigned six informal dockets to two of the agency’s Administrative Law Judges during a period of unusually high activity. Informal docket 1857(I) through 1861(I) were assigned on March 11, 2005 and the respondent was served within two weeks. The sixth case did not contain information in the file regarding the ALJ assignment date, but it was served on the parties on April 12, 2005.

The former CADRS director told us that when he assigned the informal dockets to the ALJ office, its case load was not demanding, enabling it to focus on the informal dockets. For the six

cases assigned to the ALJ's, the average processing time (from receipt in the ALJ to settlement officer decision) was five months, with a range of two months to 10 months.⁸

Five other cases opened in FY 2005 and early FY 2006 were processed by one CADRS employee who, by prior agreement with the CADRS director, was able to work from home one day per week and focus her efforts on processing multiple dockets assigned to her rather than on complaints, e.g., ombuds services. This employee told the OIG that this enabled her to increase her (docket processing) efficiency. All CADRS staff indicated that having dedicated time to focus on informal dockets would enable staff to more efficiently and effectively process them. The five CADRS-processed cases are summarized below:

1863(I) Open as of September 30, 2010. This informal docket is discussed further in the next finding. (Note: the settlement officer prepared a notice of Intent to Issue a Default Judgment eight months after the filing was received in OS.)

1867(I) A filing was submitted to OS on August 18, 2005. The Notice of Filing and Assignment was served on February 2, 2006, 5.5 months after the filing was submitted. The settlement officer issued her decision on September 25, 2006, 7.5 months after assignment of the docket. **Status: Closed.**

1870(I) A Notice of Filing and Assignment was served on December 22, 2005. The respondent was served January 9, 2006 and did not respond. An Intent to File Default Judgment was issued May 8, 2006, about five months after assignment. **Status: Closed**

1873(I) The respondent was served on February 15, 2006. On May 4, 2006, the settlement officer served a notice of Intent to File a Default Judgment. On August 3, 2006, the settlement officer emailed the complainant asking for support for the amount claimed so that she could render a decision. The complainant was not responsive to this request and to one subsequent request made three months later. The settlement officer dismissed the docket January 29, 2007, the several month delay resulting from the complainant's failure to respond. **Status: Closed**

1875(I) A Notice of Filing and Assignment was made on March 21, 2006. Within two months, the settlement officer filed an Intent to Issue a Default Judgment. This generated communication among the settlement officer, complainant and the respondent between June-September, 2006. The settlement officer issued a decision on October 10, 2006. **Status: Closed**

These outcomes support what several CADRS staff told us in interviews regarding the processing of case files: to process informal dockets efficiently, it is best to have dedicated time away from ombuds complaints. These complaints often concern "real time" problems that frequently result in increasing monetary liability the longer they remain unresolved. Consequently, complainants are frequently more vocal, and call or email often. For example, many complainants in dispute with an ocean transport company incur daily demurrage charges to

⁸ All ALJ's serving as settlement officers are no longer employed by the FMC. Consequently we could not discuss docket processing observations and timeframes with them.

store goods. Any delay results in increased charges to the complainant. These problems, according to staff, demand immediate attention. Dockets, on the other hand, involve less urgency because complainants allege violations of the Shipping Act and while many seek damages, the amounts claimed in damages generally do not fluctuate with time. The OIG noted that, notwithstanding staff priorities, all staff performance standards require issuance of informal docket decisions within six months.

The OIG identified a wide variation in the number of ombuds complaints received in CADRS. For example, according to the FMC Annual Reports, CADRS processed between 509 (FY 2007) and 943 (FY 2005) ombuds complaints for fiscal years 2005 – 2009. We leave it to the discretion of the director as to what constitutes heavy ombuds complaint workload, necessitating dedicated time to work on dockets.

F. Informal Dockets were not Adequately Tracked

As we reviewed the files and met with CADRS staff to identify causes of processing delays, a common theme emerged: dockets, once opened, were not adequately tracked. CADRS staff told the OIG that CADRS used a log in the past, primarily to identify cases and settlement officers. However, staff also indicated that the log was not used to track or manage docket progress. There were no deadlines imposed on the settlement officers.

We identified a number of dockets that remained open for months (or years) that should have been closed sooner. For example, as Appendix B illustrates, the lifespan of dockets opened between fiscal years 2005 – 2009 averaged 766 calendar days. When dockets stay open for lengthy periods, often without explanation from the FMC, complainants become frustrated, evidenced by the number of consumers who request a filing fee refund. Dockets involving thousands of dollars may become stale and the claimant's ability to collect on the judgment can be negatively impacted. With a formalized method to monitor dockets, it is far easier to identify the stage each is in when the docket begins to age to prevent it from "slipping through the cracks."

1891(I) The complainant filed an informal docket on April 28, 2008, which was then forwarded to CADRS on May 1, 2008. We did not identify a Notice of Filing and Assignment in the case file. There was, however, a May 7, 2010 decision by the settlement officer, two years after the filing date. The settlement officer concluded that the FMC did not have jurisdiction, as the complaint involved the shipment of goods between foreign ports.

Since we did not identify a Notice of Filing and Assignment in the docket file, we could not determine if and/or when the docket was assigned to a settlement officer. Clearly this complainant should have been notified upon submitting the filing that the complaint was not within FMC's jurisdiction. Instead the complainant paid the \$67 filing fee and waited two years for a response that could have been received, along with a refund, before the docket was filed.

Often the informal dockets involve allegations with substantial monetary implications.

1872(I) The Notice of Filing and Assignment was filed on this docket January 13, 2006. A decision was served 4.5 years later on July 8, 2010. The decision notes that “the record as it exists does not permit a resolution of the claim (and) reparations of \$28,067.48 are denied.”

The OIG reviewed the CADRS log for the time period which indicated the case was reassigned. Based on the wording in the July 8, 2010 decision, we could not determine whether any attempt was made to contact the parties to obtain documentation that could have enabled the new settlement officer to consider reparations.

1878(I) The complaint was received in OS on April 27, 2006, sent to CADRS on May 5, 2006, and served on the respondent November 27, 2006. The complainant was seeking reparations of \$35,304. The docket remained open as of September 30, 2010.

We could not determine why 1878(I) has not been adjudicated. It appears from the file that the respondent was served, evidenced by a dated return receipt. Based on discussions with the settlement officer, there was a dialog ongoing between the complainant, respondent and the settlement officer, accounting for about one year of the docket lifespan.

1882(I) The delayed issuance of this docket likely impacted the claimant’s ability to collect on the settlement officer’s recommended award of \$4,206. By the time the decision was issued, the respondent was out of business and the claimant was not able to collect his full award. The informal docket was filed October 2, 2006, assigned to a settlement officer on October 16, 2006, and reassigned on January 17, 2007. A decision was not issued by CADRS until December 4, 2008.

Delays in issuing a decision on some of these dockets possibly impacted an award. A tracking system could have alerted CADRS management to these stalled dockets with the intent to move them forward.

We also noted in some of the dockets we reviewed a lack of communication between CADRS and complainants regarding the status of the docket. Some examples of this frustration have already been presented above in 1865(I) and 1874(I). In 1864(I), the claimant’s frustration is apparent in the length of time required to process the docket and the lack of information on its status:

1864(I) An informal docket was filed on June 8, 2005 and sent to CADRS within one week. The next correspondence in the file was the Notice of Reassignment, dated February 2, 2006. Draft decisions were provided to the CADRS director on July 26, 2007 and again on August 30, 2007.

On January 29, 2008, the complainant e-mailed the settlement officer asking for the status of the docket: “*I am not trying to hurry anyone up although it is 2.5 years since I lodged the docket.*” Since the settlement officer did not know the status of the docket, she referred the complainant to the CADRS director. The CADRS director assured the

complainant that a decision would be issued in the next week. The decision was served on March 5, 2008.⁹

Initial stages of this investigation were slowed because the complainant lived abroad making communication cumbersome. Also there were currency exchange issues that had to be sorted out to identify the claim in U.S. dollars. We could not determine whether this complainant's status request expedited the decision.

1863(I) An informal docket filing was received on June 1, 2005 and sent to CADRS the following day. A Notice of Filing and Assignment was served on July 18, 2005 and a Notice of Reassignment on January 23, 2006. We identified a Notice of Intent to Issue a Default Judgment dated February 13, 2006, as it appears that the respondent did not answer requests for information from the settlement officer. However, we found no information in the file to help us determine the docket status as of the conclusion of our fieldwork. We did not identify a decision in the docket file nor was the docket on a CADRS log of open cases. After our queries, CADRS management located the docket and indicated that it would be processed. This claimant sought reparations but has not received a decision as of our report issuance date.

This docket is the only docket we reviewed that appeared to be removed from CADRS log of open cases without a settlement officer decision issued.

Sometimes cases were not closed, even though CADRS work was complete. Previously-discussed instances where service could not be effected, we believe, could fall into this category. Other cases that do not involve service complications also fall into this category, as the following example illustrates:

1871(I) A filing was received on December 20, 2005 with assignment made January 5, 2006. According to records in the file, both parties consented to mediation, and both parties agreed to a settlement on January 24, 2007.

It appears that the parties implemented the settlement agreement on July 18, 2007. Without explanation, a decision was not issued in this proceeding until January 25, 2010.

While the docketed cases presented above are substantively different, all appear to have remained open for longer periods of time than necessary. In some instances, it appeared to be an administrative oversight that permitted the file to remain open with no impact on the parties to the decision. In other instances, delays appeared to have had a material effect and impacted consumer perceptions of the agency-administered informal docket process. A case management / tracking system, with deadlines to monitor docket progress, could have assisted management to close many of these dockets faster.

⁹The complainant asked for reconsideration, resulting in a final decision on April 29, 2009.

Conclusion

The OIG analysis of informal docket processing procedures in CADRS identified areas where improvements are possible to speed up docket processing. In some instances, the changes are policy based, in other instances, procedures should be modified.

An important policy change recently made in CADRS involves the amount of assistance the office provides to complainants. According to CADRS' procedures, informal dockets provide a quick means of deciding matters that are essentially small claims, without the need for attorney representation. Yet, the filing submission, the first step, is too difficult for some "pro se" complainants to complete – at least without the assistance of the OS and/or CADRS staff. The level of assistance varied depending on which attorney was assigned the docket, as some CADRS attorneys indicated that this assistance violated attorney ethics and rules of professional responsibility. As many applicants have difficulty with the requirement to identify specific Shipping Act violations by section of the Act, the FMC should consider revisions to this requirement – specifically allowing claimants to describe the violation in lieu of citing the Shipping Act. Other amendments to the filing instructions to better explain service requirements and consequences, putting the filing submission package on the internet and renaming the "informal claim" process should also be considered by the Sec. 502 review team.

If the informal docket process is to be streamlined, there will have to be tradeoffs made with the ombuds complaints process. We believe that dedicating up to one-quarter of a staff year, away from complaints, may be needed during periods of high ombuds complaint activity to allow staff to focus on the dockets. Allowing staff to "telework" one day a week seemed to enable staff to work on dockets more efficiently and effectively by removing office distractions. Holding settlement officers accountable to meet deadlines through the annual performance appraisal would also highlight the importance this activity has in CADRS.

Too often informal dockets remained open in the hopes of getting service, yet experience indicates that service is not likely after initial unsuccessful attempts. As long as the docket stays open, complainants likely felt that the docket was being actively worked, when it generally was not. A lack of communication with complainants on some dockets increased complainants' frustration levels to the point of asking for refunds. CADRS should enhance its communication with complainants to explain docket status, especially when service cannot be effected. It is not unreasonable to suspect that some, given the potential for lengthy delays, may want to explore other legal options – and the sooner this is done, the better it may be for the complainant.

CADRS should enhance its procedures, to include guidance on how long to hold dockets open, what to communicate to complainants and when, and what actions to take when a docket is held open pending service.

CADRS should implement a case management system that would better track the status of dockets as they move through their lifecycle. While case management in a generalized sense involves collection and storage of the myriad of documents in an adjudication proceeding, the FMC may simply need a management tool to help it move cases forward by setting deadlines and flagging dockets that exceed them. Too often, informal dockets were not given the same priority

as ombuds complaints and were not as aggressively monitored. Each major stage in the lifecycle of an informal docket should be subject to a flexible due date, but whose slippage should be known and approved by the CADRS director. Informal dockets lasting more than one year should require justification to remain open. We found no mechanism to move these cases, which contributed to the backlog, requiring the agency to spend thousands of dollars to eliminate.

Recommendations

1. The FMC should amend the rules to allow complainants to describe allegations of Shipping Act violations rather than require them to identify Shipping Act sections of the law.
2. OS should identify and summarize patterns of problems on “fatally-flawed” filings to determine if changes to the informal docket filing package provided to complainants should be amended.
3. OS should change the name of the “informal” docket to nomenclature that better encompasses its legal stature, review instructional materials to identify vague terms and jargon, and include a discussion of service and its potential impact when not carried out, on the OS instruction sheet provided to complainants.
4. CADRS should amend its internal operating procedures to, at a minimum, (i) provide clearer guidance on the types of assistance settlement officers can provide to complainants and respondents, and (ii) establish timeframes for processing dockets that, when exceeded, require each missed deadline to be signed off on by the CADRS director. Dockets remaining open past one year should be reviewed and a compelling argument made to the director why the case should remain open.
5. During periods when informal docket activity is high, CADRS director should dedicate one CADRS attorney as settlement officer. This individual should be permitted to set aside at least one day per week to focus on informal dockets.
6. CADRS director should implement a case management system that would assist CADRS management to track cases, process them efficiently and close them timely.

Appendices:

Appendix A - Informal Docket Submission Package

Appendix B - Spreadsheet of Docketed Activity: FY 2005 – FY 2010



FEDERAL MARITIME COMMISSION

Office of the Secretary
800 North Capitol Street, N.W.
Washington, DC 20573-0001

Phone: (202) 523-5725

Fax: (202) 523-0014

E-mail: Secretary@fmc.gov

Thank you for your inquiry regarding the filing of an informal complaint with the Federal Maritime Commission. To assist you in preparing an informal complaint, guidelines and the applicable regulations are shown on the following pages. Samples of informal complaints are also enclosed. If you have any questions after reviewing this information, please do not hesitate to contact the Office of the Secretary at (202) 523-5725 or by email at Secretary@fmc.gov.

PLEASE READ AND FOLLOW THESE GUIDELINES. FAILURE TO FOLLOW THESE INSTRUCTIONS CAN RESULT IN THE RETURN OF YOUR COMPLAINT.

Information to Assist in Filing Informal Claims (Small Claims)

Enclosed is a copy of Federal Maritime Commission (“Commission”) regulations governing the filing of an informal claim with the Commission. **This procedure may be used to seek reparations (i.e., damages) from another party (the Respondent) for economic injury not exceeding \$50,000 caused by violations of the Shipping Act of 1984.**¹ Also enclosed are examples of informal claims that you may find helpful.

Informal Claims procedures are governed by Subpart S of the Commission’s Rules of Practice and Procedure (Informal Procedure for Adjudication of Small Claims), found at 46 CFR 502.301 - 502.305 (copy attached). Exhibit No. 1 to these rules provides a format you must use for submitting your claim. Please be sure that your complaint alleges violation(s) of the Shipping Act of 1984 and is limited to a claim of \$50,000 or less.

Your claim must comply with the Commission’s rules. Particularly note the following:

1. **Follow the format shown in Exhibit No. 1** (see attached). Exhibit No. 1 is not a form, and **you may not simply sign and submit the exhibit**. The information shown in brackets [] is to guide you regarding what information you must provide.

For example, in a properly filed complaint, Paragraph I might read:

“The claimant is a corporation operating as an import-export trading company with its principal place of business at 123 Elm Street, North Bergen, New Jersey.”

For your guidance, you are considered the “Claimant” and the person or company that you believe harmed you is considered the “Respondent.”

2. The claim **must state a section of the Shipping Act you allege was violated**. For example, Section 10(d)(1) of the Shipping Act (46 U.S.C. 41102(c)) prohibits common carriers and ocean transportation intermediaries from failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling,

¹ The Shipping Act of 1984, as amended, is available at <http://www.fmc.gov/about/StatutesAndRules.asp>

storing, or delivering property. Please note that an overcharge may only be claimed if you have been charged more than the applicable tariff or service contract rate. For a complete list of prohibited acts and other possible violations of the Shipping Act, please see <http://www.fmc.gov/about/StatutesAndRules.asp>

3. **The claim must be properly signed and sworn** (i.e., verified). Usually, this is accomplished by using a notary public. It may also be met by making one of the following statements and signing the name afterward.
 - a. If you are located in the United States: “I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.”
 - b. If you are located outside the United States: “I declare (or certify, verify or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.”
4. The claim **must be signed and dated**.
5. **An original and two (2) copies** of the claim and supporting documentation must be submitted.
6. **Claims must be filed within three years** from the time the cause of action accrued. (i.e., the date the Shipping Act violation occurred).
7. The **filing fee of \$67.00**, payable to the Federal Maritime Commission, must be included.
8. **The claim and filing fee must be addressed to** the Secretary, Federal Maritime Commission, Washington, DC 20573.
9. Please note that a Respondent may object to the Subpart S procedure within 25 days of being served. Should Respondent refuse the Subpart S procedure, the claim will be assigned to an Administrative Law Judge for adjudication under Subpart T of the Commission’s rules.

TITLE 46--SHIPPING
CHAPTER IV--FEDERAL MARITIME COMMISSION
PART 502--RULES OF PRACTICE AND PROCEDURE--Table of Contents
Subpart S--Informal Procedure for Adjudication of Small Claims

Sec. 502.301 Statement of policy.

(a) Section 11(a) of the Shipping Act of 1984 permits any person to file a complaint with the Commission claiming a violation occurring in connection with the foreign commerce of the United States and to seek reparation for any injury caused by that violation.

(b) With the consent of both parties, claims filed under this subpart in the amount of \$50,000 or less will be decided by a Settlement Officer appointed by the Federal Maritime Commission Alternative Dispute Resolution Specialist, without the necessity of formal proceedings under the rules of this part. Authority to issue decisions under this subpart is delegated to the appointed Settlement Officer.

(c) Determination of claims under this subpart shall be administratively final and conclusive. [Rule 301.]

Sec. 502.302 Limitations of actions.

(a) Claims alleging violations of the Shipping Act of 1984 must be filed within three years from the time the cause of action accrues.

(b) A claim is deemed filed on the date it is received by the Commission. [Rule 302.]

Sec. 502.303 (Reserved)

Sec. 502.304 Procedure and filing fee.

(a) A sworn claim under this subpart shall be filed in the form prescribed in Exhibit No. 1 to this subpart. Three (3) copies of this claim must be filed, together with the same number of copies of such supporting documents as may be deemed necessary to establish the claim. Copies of tariff pages need not be filed; reference to such tariffs or to pertinent parts thereof will be sufficient. Supporting documents may consist of affidavits, correspondence, bills of lading, paid freight bills, export declarations, dock or wharf receipts, or of such other documents as, in the judgment of the claimant, tend to establish the claim. The Settlement Officer may, if deemed necessary, request additional documents or information from claimants. Claimant may attach a memorandum, brief or other document containing discussion, argument, or legal authority in support of its claim. If a claim filed under this subpart involves any shipment which has been the subject of a previous claim filed with the Commission, formally or informally, full reference to such previous claim must be given.

(b) Claims under this subpart shall be addressed to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573. Such claims shall be accompanied by remittance of a \$67 filing fee.

(c) Each claim under this subpart will be acknowledged with a reference to the Informal

Docket Number assigned. The number shall consist of a numeral(s) followed by capital "I" in parentheses. All further correspondence pertaining to such claims must refer to the assigned Informal Docket Number. If the documents filed fail to establish a claim for which relief may be granted, the parties affected will be so notified in writing. The claimant may thereafter, but only if the period of limitation has not run, resubmit its claim with such additional proof as may be necessary to establish the claim. In the event a complaint has been amended because it failed to state a claim upon which relief may be granted, it will be considered as a new complaint.

(d) A copy of each claim filed under this subpart, with attachments, shall be served by the Settlement Officer on the respondent involved.

(e) Within twenty-five (25) days from the date of service of the claim, the respondent shall serve upon the claimant and file with the Commission its response to the claim, together with an indication, in the form prescribed in Exhibit No. 2 to this subpart, as to whether the informal procedure provided in this subpart is consented to. Failure of the respondent to indicate refusal or consent in its response will be conclusively deemed to indicate such consent. The response shall consist of documents, arguments, legal authorities, or precedents, or any other matters considered by the respondent to be a defense to the claim. The Settlement Officer may request the respondent to furnish such further documents or information as deemed necessary, or he or she may require the claimant to reply to the defenses raised by the respondent.

(f) If the respondent refuses to consent to the claim being informally adjudicated pursuant to this subpart, the claim will be considered a complaint under Sec. 502.311 and will be adjudicated under subpart T of this part.

(g) Both parties shall promptly be served with the Settlement Officer's decision which shall state the basis upon which the decision was made. Where appropriate, the Settlement Officer may require that the respondent publish notice in its tariff of the substance of the decision. This decision shall be final, unless, within thirty (30) days from the date of service of the decision, the Commission exercises its discretionary right to review the decision. The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review.

(h) Within thirty (30) days after service of a final decision by a Settlement Officer, any party may file a petition for reconsideration. Such petition shall be directed to the Settlement Officer and shall act as a stay of the review period prescribed in paragraph (g) of this section. A petition will be subject to summary rejection unless it: (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order; (2) identifies a substantive error in material fact contained in the decision or order; (3) addresses a material matter in the Settlement Officer's decision upon which the petitioner has not previously had the opportunity to comment. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. Upon issuance of a decision or order on reconsideration by the Settlement Officer, the review period prescribed in paragraph (g) of this section will recommence. [Rule 304.]

Exhibit No. 1 to Subpart S [Sec. 502.304(a)]--
**Small Claim Form for Informal Adjudication
and Information Checklist**

Federal Maritime Commission, Washington, DC.

Informal Docket No. _____

(Claimant)

vs.

(Respondent)

I. The claimant is [state in this paragraph whether claimant is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

II. The respondent named above is [state in this paragraph whether respondent is an association, corporation, firm or partnership, and if a firm or partnership, the names of the individuals composing the same. State the nature and principal place of business.]

III. That [state in this and subsequent paragraphs to be lettered A, B, etc., the matters that gave rise to the claim. Name specifically each rate, charge, classification, regulation or practice which is challenged. Refer to tariffs, tariff items or rules, or agreement numbers, if known. If claim is based on the fact that a firm is a common carrier, state where it is engaged in transportation by water and which statute(s) it is subject to under the jurisdiction of the Federal Maritime Commission].

IV. If claim is for overcharges, state commodity, weight and cube, origin, destination, bill of lading description, bill of lading number and date, rate and/or charges assessed, date of delivery, date of payment, by whom paid, rate or charge claimed to be correct and amount claimed as overcharges. [Specify tariff item for rate or charge claimed to be proper].

V. State section of statute claimed to have been violated. (Not required if claim is for overcharges).

VI. State how claimant was injured and amount of damages requested.

VII. The undersigned authorizes the Settlement Officer to determine the above-stated claim pursuant to the informal procedure outlined in subpart S (46 CFR 502.301-502.305) of the Commission's informal procedure for adjudication of small claims subject to discretionary Commission review.

Attach memorandum or brief in support of claim. Also attach bill of lading, copies of correspondence or other documents in support of claim.

(Date) _____

(Claimant's signature) _____

(Claimant's address) _____

(Signature of agent or attorney) _____

(Agent's or attorney's address) _____

VERIFICATION

State of _____, County of _____, ss: _____,
being first duly sworn on oath deposes and says that he or she is _____

The claimant [or if a firm, association, or corporation, state the capacity of the affiant] and is the person who signed the foregoing claim, that he or she has read the foregoing and that the facts set forth without qualification are true and that the facts stated therein upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of _____, County of _____, this ____ day of _____, 20___. (Seal)

(Notary Public)

My Commission expires, _____

Informal Dockets 10/1/04 -- 9/30/10

APPENDIX B

#	ID #	(a) Date Rec'd by OS	(b) Sent to CADRS	(c) Transmit'l from CADRS Director to SO	(d) Notice of Filing & Assgn't (Comp. & Respon.)	(c) Notice of Reassign't	(e) SO's Decision	Motion to Recon.	Comm. Notice to Review SO's Dec.	(f) Comm Dec.	Informal Docket Lifespan (days)	SO's Decision - Comm. Decision	Lifespan Converted into Months
1	1857(I)	12/28/04	12/29/04	3/11/05	3/28/05	5/25/05	7/6/05	8/2/05	N/A	N/A	190		7
2	1858(I)	12/30/04	1/4/05	3/11/05	3/28/05	5/25/05	7/7/05	N/A	N/A	N/A	189		7
3	1859(I)	1/24/05	1/26/05	3/11/05	N/A	7/6/05	1/20/06	N/A	N/A	N/A	361		12
4	1860(I)	2/14/05	2/15/05	3/11/05	3/16/05	N/A	5/4/05	6/1/05	N/A	N/A	79		3
5	1861(I)	2/8/05	N/A	3/11/05	3/16/05	7/6/05	1/20/06	N/A	N/A	N/A	346		11
6	1862(I)	3/28/05	4/4/05	N/A	N/A	5/25/05	6/8/05	N/A	N/A	N/A	72		3
7	1863(I)	6/1/05	6/2/05	N/A	7/18/05	1/23/06	9/30/10	N/A	N/A	N/A	1,947		63
8	1864(I)	6/8/05	6/14/05	N/A	N/A	2/2/06	3/5/08	3/18/08	N/A	N/A	1,001		33
9	1865(I)	6/16/05	6/24/05	N/A	8/3/05	10/6/09	9/30/10	N/A	N/A	N/A	1,932		63
10	1866(I)	4/12/05	6/27/05	N/A	N/A	N/A	6/28/10	N/A	N/A	N/A	1,903		62
11	1867(I)	8/19/05	8/26/05	N/A	2/2/06	N/A	9/25/06	11/8/06	2/16/07	5/3/07	402	220	13
12	1868(I)	8/30/05	9/2/05	12/16/05	12/22/05	3/13/08	9/30/10	N/A	N/A	N/A	1,857		61
1	1870(I)	11/29/05	N/A	12/19/05	12/22/05	N/A	5/8/06	N/A	N/A	N/A	160		6
2	1871(I)	12/20/05	12/23/05	N/A	1/5/06	1/5/06	1/25/10	N/A	N/A	N/A	1,497		49
3	1872(I)	1/6/06	1/11/06	N/A	1/13/06	N/A	7/8/10	N/A	N/A	N/A	1,644		54
4	1873(I)	9/12/05	2/2/06	N/A	2/2/06	N/A	1/29/07	N/A	N/A	N/A	504		16
5	1874(I)	1/31/06	2/2/06	10/16/06	11/20/09	N/A	6/28/10	N/A	N/A	N/A	1,609		53
6	1875(I)	1/26/06	N/A	N/A	3/21/06	N/A	10/10/06	N/A	N/A	N/A	257		9
7	1876(I)	10/20/05	12/15/05	N/A	5/1/06	8/31/07	6/22/07	11/20/07	N/A	N/A	610		20
8	1877(I)	4/10/06	4/27/06	4/28/06	5/12/06	6/2/06	11/19/07	N/A	N/A	N/A	588		19
9	1878(I)	4/27/06	5/5/06	N/A	11/22/06	N/A	9/30/10	N/A	N/A	N/A	1,617		53
10	1879(I)	5/25/06	6/6/06	N/A	4/4/07	N/A	4/1/10	N/A	N/A	N/A	1,407		47
11	1881(I)	7/18/06	7/20/06	7/26/06	7/28/06	N/A	8/5/08	N/A	N/A	N/A	749		25
1	1882(I)	10/02/06	10/10/06	10/16/06	N/A	1/17/07	12/4/08	N/A	N/A	N/A	794		26

2	1884(I)	11/09/06	11/14/06	11/15/06	11/17/06	N/A	1/25/10	N/A	N/A	N/A	1,173		38
3	1886(I)	04/11/07	4/20/07	5/11/07	5/16/07	N/A	4/28/09	N/A	N/A	N/A	748		24
4	1887(I)	07/11/07	7/20/07	7/25/07	3/10/08	7/25/07	8/27/09	N/A	10/1/09	7/6/10	778	313	25
5	1888(I)	08/14/07	8/21/07	8/21/07	N/A	7/8/08	7/17/08	N/A	N/A	N/A	338		11
FY 08													
1	1889(I)	1/16/08	1/18/08	1/18/08	3/24/08	4/15/08	9/30/10	N/A	N/A	N/A	988		32
2	1890(I)	4/22/08	5/1/08	6/23/08	7/1/08	N/A	7/8/10	N/A	N/A	N/A	807		27
3	1891(I)	4/28/08	5/1/08	N/A	N/A	N/A	5/7/10	N/A	N/A	N/A	739		25
4	1892(I)	1/14/08	5/1/08	6/27/08	7/2/08	8/21/08	9/30/10	N/A	N/A	N/A	990		32
FY 09													
1	1893(I)	10/1/08	10/22/08	11/19/08	1/6/09	3/23/09	9/30/10	N/A	N/A	N/A	729		23
2	1894(I)	12/23/08	1/6/09	N/A	2/4/09	3/9/09	5/7/10	N/A	5/10/10	9/13/10	500	129	17
3	1895(I)	3/16/09	3/19/09	3/26/09	5/9/09	N/A	9/30/10	N/A	N/A	N/A	563		18
4	1897(I)	12/17/08	3/19/09	3/26/09	12/14/09	N/A	9/30/10	N/A	N/A	N/A	652		21
5	1899(I)	4/15/09	4/29/09	4/30/09	5/21/09	N/A	7/13/10	N/A	N/A	N/A	454		15
6	1900(I)	5/21/09	6/1/09	N/A	N/A	N/A	7/13/10	N/A	N/A	N/A	418		14
7	1901(I)	6/19/09	6/19/09	N/A	7/29/09	9/17/09	9/30/10	N/A	N/A	N/A	468		15
8	1902(I)	6/23/09	7/10/09	N/A	8/5/09	8/28/09	9/30/10	N/A	N/A	N/A	464		15
9	1903(I)	7/23/09	7/27/09	8/14/09	9/1/09	N/A	9/30/10	N/A	N/A	N/A	434		14
10	1904(I)	7/31/09	8/4/09	8/14/09	8/18/09	N/A	1/25/10	N/A	N/A	N/A	178		6
11	1905(I)	7/1/09	8/4/09	N/A	8/21/09	1/28/10	9/30/10	N/A	N/A	N/A	456		14
12	1906(I)	8/5/09	8/14/09	N/A	8/20/09	9/14/09	12/8/09	N/A	N/A	N/A	125		4
FY 10											Average 2005 - 2009		766
1	1907(I)	10/28/09	11/2/09	N/A	N/A	12/16/09	9/30/10	N/A	N/A	N/A	337		11
2	1908(I)	12/9/09	12/15/09	N/A	1/5/10	2/26/10	9/30/10	N/A	N/A	N/A	295		9
3	1909(I)	12/17/09	12/18/09	2/4/10	2/17/10	N/A	7/22/10	N/A	N/A	N/A	217		7
4	1910(I)	1/25/10	2/2/10	2/18/10	2/24/10	N/A	9/30/10	N/A	N/A	N/A	248		8
5	1911(I)	3/5/10	3/18/10	3/24/10	3/25/10	N/A	8/13/10	N/A	N/A	N/A	161		5
6	1912(I)	4/5/10	4/6/10	4/14/10	4/22/10	N/A	9/30/10	N/A	N/A	N/A	178		5
7	1913(I)	7/23/10	7/28/10	8/5/10	8/6/10	N/A	9/30/10	N/A	N/A	N/A	69		2
8	1914(I)	9/16/10	9/21/10	N/A	N/A	N/A	9/30/10	N/A	N/A	N/A	14		0
											Total Average	678	

Memorandum

TO : Inspector General

DATE: March 10, 2011

FROM : /Vern W. Hill, Director/
Office of Consumer Affairs and Dispute Resolution Services

/Karen V. Gregory, Secretary/
Office of the Secretary

SUBJECT : Review of the Office of Consumer Affairs and Dispute Resolution Services Processing of Informal Dockets

We have reviewed the findings and recommendations contained in the instant review. Please note that the Office of the Secretary has responded to Recommendations 1-3, and the Office of Consumer Affairs and Dispute Resolution Services has responded to Recommendations 4-6.

Recommendation 1. The OIG recommends that the FMC should amend its rules to allow complainants to describe allegations of Shipping Act violations rather than require them to identify Shipping Act citations in the law.

Response: As the OIG is aware, at its December 8, 2010 meeting, the Chairman directed that a Team be formed to review and present for Commission consideration and decision, recommendations that will modernize and improve the Commission's Rules of Practice and Procedure, 46 C.F.R. Part 502. While the 502 Team is tasked with review of and making recommendations for revisions, only the Commission can direct revisions to its rules. The team is working to provide the Commission with recommendations that will ensure revised rules are modern, efficient and user-friendly, while preserving the integrity of the Commission's processes. One of the key areas of focus in this review is on the rules relating to 46 C.F.R. Part 502.301 – *Informal Procedure for Adjudication of Small Claims*. The team is reviewing this section of the rules with an eye towards reducing burden, streamlining the process and making the rules clearer and more user-friendly. As this recommendation is related to on-going work of the 502 Team and subject to Commission decision, this matter is considered completed.

Recommendation 2. The OIG recommends that OS should identify and summarize patterns of problems identified on “fatally flawed” applications to determine if changes to the informal docket filing package provided to complainants should be amended.

Response: The OS compiles this information on an on-going basis and has found that the majority of returned “informal docket” submissions are returned because the Complainant either has not stated a Shipping Act violation or has not adequately described allegations of Shipping Act violations, thus not meeting the statutory requirement for filing a complaint. This information has been provided to the 502 Team.

While the instructional docket filing package was recently reviewed and updated to, among other things, address this issue, in cooperation with CADRS, the OS will review the instructional package and determine if additional clarification would improve the instructions. However, as this recommendation also is related to on-going work of the 502 Team and subject to Commission decision, this matter is considered completed.

Recommendation 3. The OIG recommends that OS should change the name of the “informal” docket to nomenclature that better encompasses its legal stature, review instructional materials to identify vague terms and jargon, and include effects of service problems on the instructional package.

Response: Exhibit 1 to Subpart S, 502.304(a) uses the phrase “Informal Docket No. ---” as the numbering system for the adjudication of Small Claims. As noted in response to Recommendation 1 above, only the Commission can direct revisions to its rules. This issue has been relayed to the 502 Team for consideration. At such time as the Commission may make such a change to its rules, the OS will change its numbering system for this type of filing and update the instructional package to be consistent with those changes. As this recommendation also is related to on-going work of the 502 Team and subject to Commission decision, this matter is considered completed.

Regarding the recommendation on the effects of problems encountered during service of complaints, issues of service are also under consideration by the 502 Team. The OS will work with CADRS to develop language based on the Commission’s current rules and practices, and update the instructional package by May 31, 2011.

Recommendation 4. The OIG recommends that CADRS amend its internal operating procedures to (i) provide clearer guidance on the types of assistance settlement officers can provide to complainants and respondents, (ii) establish timeframes for processing dockets that, when exceeded, require missed deadlines to be signed-off on by the Director of CADRS, and that dockets remaining open longer than one year be reviewed and a compelling argument made to the CADRS director why the case should remain open.

Response: (i) Guidelines are in place and regular discussions with staff are conducted to address issues related to assistance to be provided to complainants and respondents in Informal Docket proceedings. The current procedures will be reviewed and modified as necessary to reinforce a policy of “consumer assistance.” Procedures will be reviewed and provided to CADRS staff to address both

communications which take place prior to the submission of an Informal Docket filing and subsequent thereto. By rule, the ex parte communication prohibitions do not apply to Informal Docket matters; nevertheless, the issues of “neutrality” and “acting as attorney for” require constant consideration, although they do not lend themselves necessarily to “black and white” procedures. (ii) Current guidelines regarding timeframes for processing Informal Dockets in CADRS will be reviewed and modified or adopted to insure timely processing of all filings. Staff will be advised of the guidelines and expectations and the Director of CADRS will be responsible to ensure that Informal Dockets proceed to Decision appropriately. The OIG Report correctly states that current performance plans for attorneys in CADRS (those generally assigned as Settlement Officers) provide that Informal Dockets are to proceed to decision within six months. This will continue to be the goal of CADRS, and the Director of CADRS will monitor the activities of CADRS staff to ensure that cases are timely processed and that there are appropriate reasons for matters to continue beyond the desired timeframe. There are many legitimate reasons for matters to be delayed beyond the desired timeframes. These include incomplete or insufficient filings, problems with service of process, and failure of cooperation or participation by filing or responding parties. Some of these procedural issues are to be addressed in the Commission’s review of its Rules of Procedure currently in progress. Changes in the rules regarding notice and service and sufficiency of filings will serve to improve the timely and efficient processing of Informal Dockets. Corrective action under this recommendation is considered completed.

Recommendation 5. The OIG recommends that during periods when informal docket activity is high, the Director of CADRS should dedicate one attorney as settlement officer, permitted to set aside at least one day weekly to focus on informal dockets.

Response: This recommendation appears to seek to address a perceived conflict discussed in the Report regarding competing demands of CADRS staff to process ombuds complaints and Informal Docket assignments. It is true that CADRS staff, particularly the attorneys in CADRS, have responsibilities for both ombuds complaints and Informal Dockets assigned to them as Settlement Officers. It becomes the responsibility of CADRS staff and their supervisor to both prioritize and monitor the case activity to meet the requirements of the assignments. Certainly the workload of personnel will be adjusted for particular needs and additional resources sought if the assignment workload exceeds the time limitations of the CADRS staff as a whole or of an individual staff member. The suggestions of the OIG for dedicating an attorney, or providing dedicated time to work on Informal Docket assignments, will certainly be among the possible actions to be taken to ensure that all assignments, and particularly Informal Dockets, are accomplished within established timeframes. However, generally it will continue to be the practice within CADRS that all attorneys, or other dispute resolution specialists with Informal Docket responsibilities, will be assigned an Informal Docket caseload. If needs require, other personnel within the agency can be assigned as Settlement Officers for Informal Dockets by the CADRS Director as provided for by the Commission’s Rules of Procedure. Corrective action under this recommendation is considered completed.

Recommendation 6. The OIG recommends that a case management system would assist management to track cases, process them efficiently, and close them timely.

Response: It is agreed that an effective case management system would assist in the efficient processing of Informal Dockets. CADRS currently has a database system for the tracking of progress of Informal Dockets which includes information as to parties, dates of filing, assignment, notice, and decision. It also allows for comments or information regarding the processing of the case. All CADRS personnel have access to the database and are required to update it on a timely basis. It is reviewed at least monthly by the CADRS Director to monitor the status and progress of all assigned Informal Dockets. The database currently used, with appropriate modifications, will be incorporated into the CADRS database presently used for the ombuds complaints. There will be a single CADRS database system which will include each of the CADRS activities, to better monitor all assignments and workload of CADRS staff. This will improve both the effectiveness and efficiency of CADRS, and as pertinent to Informal Dockets, insure that cases are not unassigned, unattended, or otherwise delayed or delinquent without reason. The improved and comprehensive database system is currently being tested, and should be in operation within 60 days.

The Report identified a backload of Informal Dockets and discussed several cases as examples of delayed processing of Informal Dockets received in Fiscal Years 2005 – 2010. It was reported that of 52 cases received, 19 remained open as of September 30, 2010. As of this date, only 10 of the 19 remain open, and 5 of the 10 open cases were received in FY 2010. The remainder of the reported backlog will be resolved within the next few months. With an effective case management system, CADRS intends to remain current and to provide an effective and timely Informal Dockets process for use by the industry and public to resolve transportation disputes. Corrective action under this recommendation is considered completed.

If you have any questions regarding the above responses, please let us know.

cc: Ronald D. Murphy, Audit Followup Official
Kathleen L. Keys, Special Assistant to the Managing Director