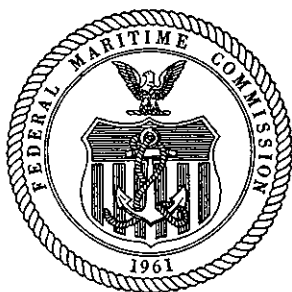


Annual Report  
of the  
**Federal Maritime  
Commission**



Fiscal Year Ended June 30, 1963

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

*June 30, 1963*

THOMAS E. STAKEM, *Chairman*

JOHN HARLEE, *Vice Chairman*

ASHTON C. BARRETT, *Member*

JAMES V. DAY, *Member*

JOHN S. PATTERSON, *Member*

THOMAS LISI, *Secretary*

## LETTER OF TRANSMITTAL

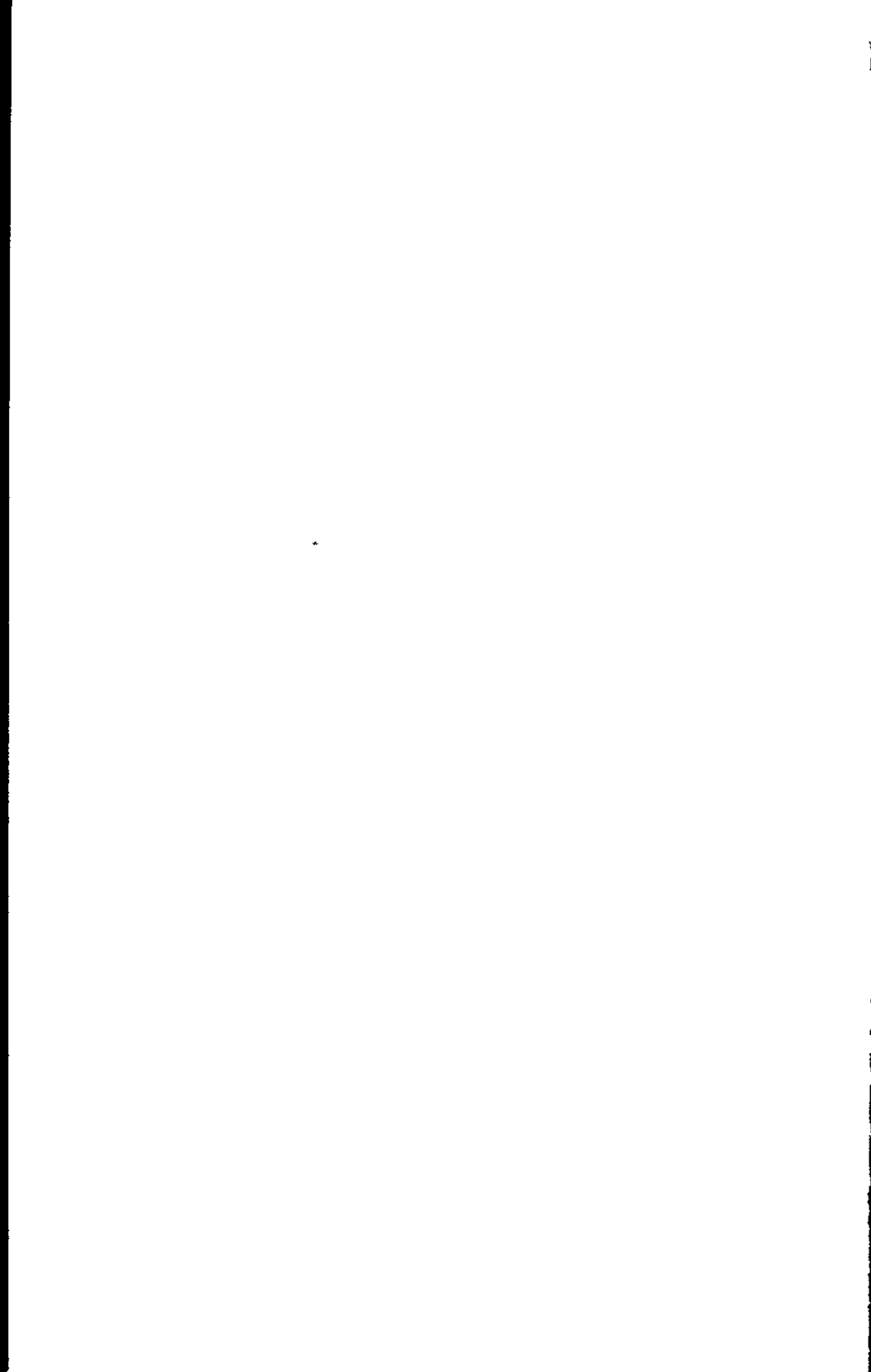
FEDERAL MARITIME COMMISSION,  
Washington, D.C., 20573,  
August 15, 1963.

*To the Senate and the House of Representatives:*

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, I respectfully submit the Annual Report of the Federal Maritime Commission for the fiscal year 1963.



THOMAS E. STAKEM,  
*Chairman.*

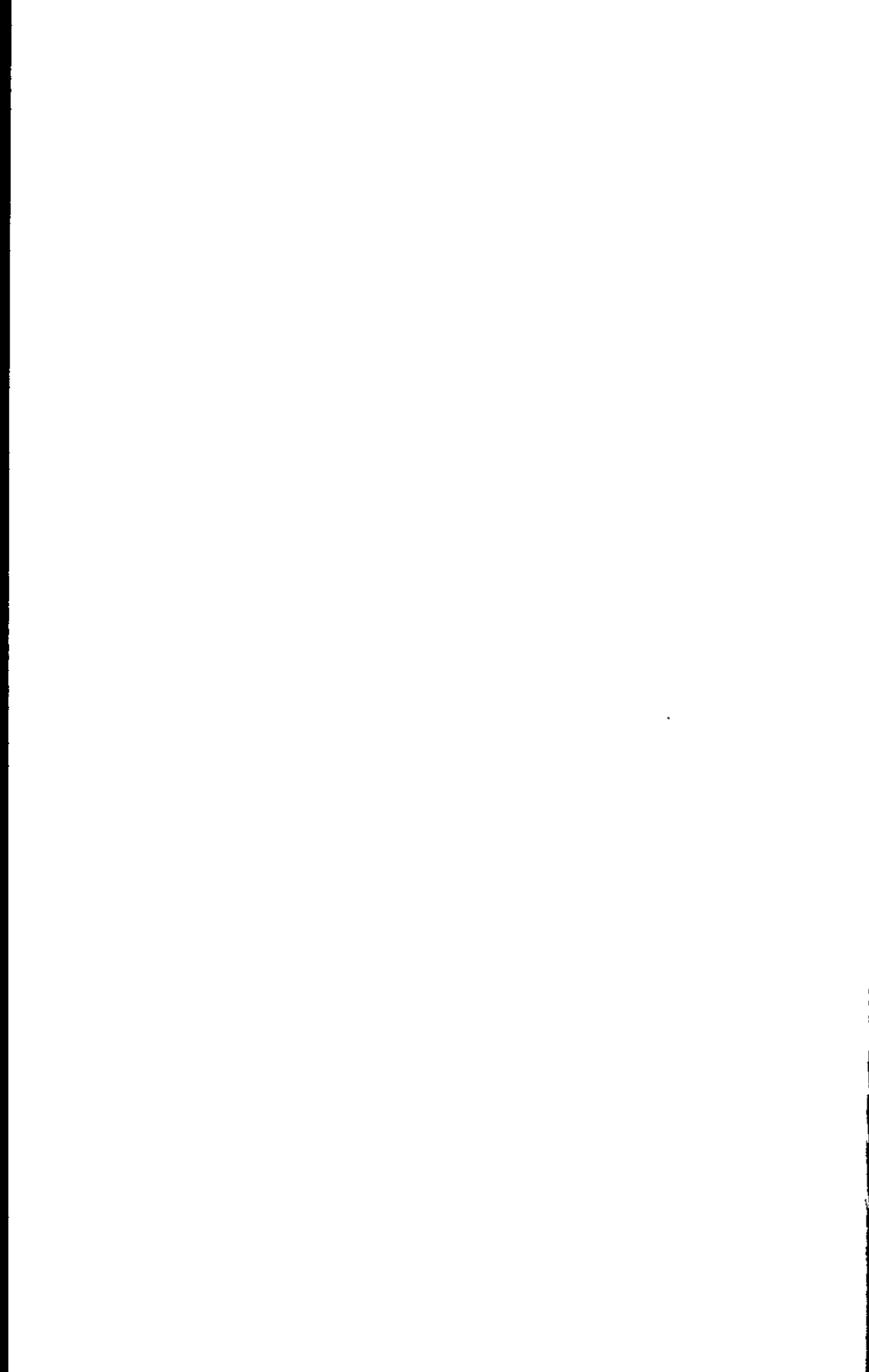


# TABLE OF CONTENTS

	<i>Page</i>
THE YEAR IN SUMMARY . . . . .	1
SCOPE OF AUTHORITY AND BASIC FUNCTIONS . . . . .	3
U.S. FOREIGN COMMERCE . . . . .	4
Carrier Agreements . . . . .	4
Exclusive Patronage (Dual Rate) Contracts . . . . .	5
Freight Rates . . . . .	6
International Relations . . . . .	7
DOMESTIC OFFSHORE CARRIERS . . . . .	8
Tariff Filings . . . . .	9
Carrier Agreements . . . . .	9
Special Studies . . . . .	9
Noteworthy Developments in Industry . . . . .	10
TERMINAL OPERATORS . . . . .	11
FREIGHT FORWARDING . . . . .	12
FINANCIAL AND ECONOMIC ANALYSIS . . . . .	13
ENFORCEMENT AND COMPLIANCE . . . . .	14
Informal Complaints . . . . .	14
Matters Referred by Antitrust Subcommittee of the House Committee on the Judiciary . . . . .	14
Factfinding Proceedings . . . . .	14
Field Investigations . . . . .	15
Formal Proceedings . . . . .	15
PROCEEDINGS BEFORE HEARING EXAMINERS . . . . .	16
Final Decisions of the Commission . . . . .	16
Decisions of Hearing Examiners . . . . .	21
RULEMAKING PROCEEDINGS . . . . .	22
LITIGATION INVOLVING COMMISSION ORDERS . . . . .	23
LEGISLATION AND LEGISLATIVE ACTIVITIES . . . . .	24
ADMINISTRATION . . . . .	25

## APPENDIX

A Statement of Appropriation and Obligation for the Fiscal Year Ended June 30, 1963 . . . . .	27
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REPORT OF THE  
**FEDERAL MARITIME COMMISSION**

**The Year in Summary**

The fiscal year 1963 was the first full year of operations of the Federal Maritime Commission as an independent regulatory agency pursuant to Reorganization Plan No. 7. The year also marked the commencement of intensive activity under broader regulatory responsibilities assigned to the agency under Public Laws 87-346 and 87-254.

The enactment of these statutes and anticipatory actions of the Commission in effectively discharging its responsibilities were the subject of a number of protests from both U.S. and foreign-flag carriers serving the U.S. foreign commerce. To bring about a better understanding between industry and government, the Commissioners invited representatives of U.S. and foreign-flag lines, shipper associations, and steamship conferences to meet with them in a series of informal discussions of their problems.

These meetings, commencing in November 1962, and concluded in February 1963, were attended by representatives of 25 U.S.-flag lines, 7 shipper organizations, 19 steamship conferences, 7 U.S. companies operating foreign-flag ships, and 30 foreign-flag lines including the United Kingdom, Europe, Japan, the Far East, Latin America, and Canada. The issues discussed included tariff filing requirements, dual rate systems, conference supervision, shipper complaints, the availability of foreign carrier shipping documents, and alleged unilateral regulation of international shipping.

Through the media of these meetings, discussions with foreign shipping attachés, and participation in two international conferences held in Europe, the Commission laid the groundwork for a workable solution of regulatory problems in the foreign and domestic waterborne commerce.

One of the most controversial provisions of Public Law 87-346, dual rate contract systems, called for a refileing of all such agreements and a reexamination by the Commission to insure compliance with specific statutory requirements. Existing agreements which did not meet prescribed standards became unlawful unless amendments in compliance with the Act were filed with the Commission by April 3,

1962. Amendments so filed became lawful until April 3, 1963 (subsequently extended to April 3, 1964, by Public Law 88-5) during which period the Commission was required to take action of approval, disapproval, modification or cancellation. The 61 amended dual rate contract systems were in process of hearing under formal docketed proceedings as of the close of fiscal year 1963.

In other regulatory activities the Commission in this fiscal year: instituted, on its own motion, 37 formal proceedings under statutory provisions of the Shipping Act, 1916, and the Intercoastal Shipping Act of 1933; issued 34 final decisions involving 54 formal proceedings; initiated action to resolve in excess of 400 informal complaints and concluded its findings and action with respect to half of these complaints; approved over 200 section 15 conference and carrier agreements and maintained surveillance over all approved agreements; issued 172 freight forwarder licenses and approved over 300 freight forwarder agreements; participated in 17 cases in litigation before the courts; examined 75,000 tariff filings involving over 178,000 rate changes; granted 328 and denied 38 special permission requests to effect new or increased tariff rates in advance of statutory filing time; and concluded in excess of 600 field investigations of violations of the shipping statutes and the qualifications of applicants for freight forwarder licenses.

Otherwise, the Commission directed its attention to the coordination of its program requirements in financial and economic analysis with other Federal agencies having a mutual interest in the international commerce and transportation regulatory activities. In joint meetings with the Interstate Commerce Commission and the Civil Aeronautics Board, notable progress was made in coordinated audit, statistical and economic research programs. Liaison with the Department of Commerce, Department of State, and the Tariff Commission provided the basis for a coordinated approach toward the procurement and use of basic transportation data for substantive economic research in the Commission's program sphere.

Late in the fiscal year the Commission was called before the Congressional Joint Economic Committee on the subject of disparities between export and import freight rates in the waterborne commerce of the United States and their impact upon our economy.

The Commission's program to determine the reasons for and the effects of the disparities between export and import freight rates was discussed with the Joint Economic Committee on June 20, 1963. In addition to a formal investigation of the export and import rates on steel products, ordered by the Commission on June 3, 1963, the Commission at the close of the fiscal year was concentrating on factfinding investigations, formal hearings, and freight rate studies as the means of developing the reasons for disparities in ocean freight rates and the effects of such disparities upon the commerce of the United States.

The Commission's fiscal year activities are reflected in more detail in subsequent sections of this report.



## Scope of Authority and Basic Functions

The Federal Maritime Commission was established by Reorganization Plan No. 7 of 1961, effective August 12, 1961. One of the basic objectives of the plan was to provide in an independent regulatory agency the responsibilities for the administration of the Federal program for the regulation of waterborne shipping in the foreign and domestic offshore commerce of the United States.

The Commission is composed of five members, appointed for 4-year terms by the President, by and with the consent of the Senate, with no more than three members appointed from the same political party. One member is designated by the President to be the Chairman, and he is the chief executive and administrative officer of the Commission.

The statutory authorities and functions of the Commission embrace the following principal areas: (1) regulation of services, practices, and agreements of common carriers by water and other persons engaged in the foreign commerce of the United States; (2) acceptance, rejection or disapproval of tariff filings of common carriers engaged in the foreign commerce; (3) regulation of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water in the domestic offshore trade of the United States; (4) investigation of discriminatory rates, charges, classifications, and practices in the waterborne foreign and domestic offshore commerce; and (5) rendering decisions, issuing orders, and making rules and regulations governing and affecting common carriers by water, terminal operators, freight forwarders and other persons subject to the shipping statutes. The broad areas of responsibility are more specifically defined under the following headings:

**Agreements.**—The Commission approves or disapproves agreements filed by common carriers, including conference agreements, interconference agreements, and cooperative working agreements between common carriers, terminal operators, freight forwarders, and other persons subject to the shipping laws, for compliance with the provisions of law and the rules, orders and regulations of the Commission.

**Practices.**—The Commission regulates the practices of common carriers by water and other persons engaged in the foreign and domestic offshore commerce of the United States, and conferences of such common carriers in accordance with the requirements of the shipping statutes and the rules, orders and regulations of the Commission.

**Tariffs.**—The Commission accepts or rejects tariff filings of domestic offshore carriers or common carriers in the foreign commerce of the United States, or conferences of such carriers in accordance with the requirements of statute or the Commission's rules and regulations; in the domestic offshore trade the Commission has the authority to set maximum or minimum rates or suspend rates. It approves or disapproves Special Permission applications submitted by domestic offshore carriers or carriers in the foreign commerce, or conferences

of such carriers for relief from a statutory and/or Commission tariff requirement.

**Licenses.**—The Commission issues or denies the issuance of licenses to persons, partnerships, corporations, or associations desiring to engage in ocean freight forwarding activities.

**Informal Complaints.**—The Commission reviews and determines the validity of alleged or suspected violations of the shipping statutes and rules and regulations of the Commission by common carriers by water in the domestic offshore or the foreign commerce of the United States, terminal operators, freight forwarders, and other persons subject to the provisions of the shipping statutes. It concludes such complaints after investigation by administrative action, formal proceedings, referral to the Department of Justice, or by achieving voluntary agreement between the parties.

**Formal Adjudicatory Procedure.**—The Commission conducts formal investigations on its own motion and adjudicates formal complaints pursuant to the Administrative Procedure Act.

**Rulemaking.**—The Commission makes and promulgates rules and regulations to interpret, enforce and assure compliance with the shipping statutes of common carriers by water and other persons subject to the statutes.

**Field Investigation, Inspection and Audit.**—The Commission prescribes and administers programs to assure compliance with the provisions of the shipping statutes of all persons subject thereto, including without limitation those for: (a) the submission of regular and special reports, information, and data; (b) the conduct of a plan for the field investigation and audit of activities and practices of common carriers by water in the domestic offshore trade and the foreign commerce of the United States, conferences of such carriers, terminal operators, freight forwarders, and other persons subject to the shipping statutes; (c) rate and related financial analysis studies, economic studies, and the preparation of reports reflecting the various trade areas, the extent and nature of competition, commodities carried, and future commodity trends.

**Foreign Discriminations.**—The Commission, in conjunction with the Department of State, conducts activities to effect the elimination of discriminatory practices on the part of foreign governments against U.S.-flag shipping.

## U.S. Foreign Commerce

### *Carrier Agreements*

Section 15 of the Shipping Act, 1916, requires, in substance, that all agreements and modifications of agreements among common carriers in the waterborne commerce of the United States, which fix rates, control competition, pool or apportion earnings or traffic, allot

ports or regulate sailings, regulate freight or passenger traffic or otherwise provide for exclusive, preferential or cooperative working arrangements, must be filed with and approved by the Commission prior to effectuation. Such agreements or modifications are examined and analyzed to determine whether they are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers or ports, or between American exporters and their foreign competitors; whether they will operate to the detriment of the commerce of the United States and the public interest or will violate any provision of the Shipping Act. The Commission must approve the agreement or modification or institute a hearing to determine whether, based upon criteria established by said section 15, to disapprove, cancel, or modify such agreements or modifications of existing agreements.

Eighty-eight new agreements and 151 modifications of existing agreements were approved in fiscal 1963. This brought under Commission surveillance a total of 737 carrier agreements comprising 142 conference and rate agreements, 63 joint service agreements, 35 pooling agreements, 32 sailing agreements, and 465 transshipment and miscellaneous working agreements.

### ***Exclusive Patronage (Dual Rate) Contracts***

Section 14b of the Shipping Act, 1916, enacted by Public Law 87-346, effective October 3, 1961, authorizes the Commission to permit with certain specified safeguards, the institution by carriers or conferences of a contract system, available to all shippers and consignees equally, which provides lower rates to a shipper or consignee who agrees to give all, or a fixed portion, of his patronage to such carrier or conference. Since such "dual rate" contracts may have a direct impact upon the commerce of the United States, it is essential that every effort be made to assure that freight rates that are assessed shippers and receivers of freight pursuant to such contracts are not discriminatory or prejudicial to our American exporters and importers and that approval of such contracts is not contrary to the public interest.

Under Public Law 87-346, existing agreements which did not meet prescribed standards became unlawful unless amendments in compliance with the act were filed with the Commission by April 3, 1962. Amendments so filed became lawful until April 3, 1963 (subsequently extended to April 3, 1964, by Public Law 88-5), during which period the Commission is required to take action of approval, disapproval, cancellation, or modification. Publication in the Federal Register of 61 amended forms of dual rate contracts brought forth over 500 comments highlighting specific controversial elements. To organize and present these comments for the information of all concerned, the Commission published a two-part book in four volumes entitled "Dual Rate Contracts and Comments," which included each contract and

the comments received. The 61 amended rate contract systems were in process of hearings under formal docketed proceedings at close of fiscal 1963.

## ***Freight Rates***

Public Law 87-346 radically altered the then existing requirements regarding the filing of rates and charges for transportation services offered by common carriers and conferences of such carriers engaged in the foreign commerce of the United States. In order to assure equality of rates to all shippers and consignees and to preclude opportunity for unjustly discriminatory practices, the statute provides, in essence, that (1) all rates, inbound and outbound, and rules and regulations governing the application of such rates, charged by common carriers by water in the foreign commerce of the United States, must be filed with the Commission; (2) rate increases and new or initial rates must be filed at least 30 days in advance of the effective date of such rates, unless the Commission, for good cause shown, grants special permission for the effectiveness of such rates on less than the statutory period of notice; rate decreases may become effective upon filing; (3) no common carrier by water shall charge, demand or collect a greater, less or different compensation than the rates on file with the Commission; (4) the Commission shall disapprove any rate or charge which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

Of the 71,227 tariff filings received by the Commission in fiscal year 1963, 70,056 were accepted and 1,171 were rejected by the Commission for failure to comply with section 18(b) of the Shipping Act, 1916.

The volume of special permission applications increased substantially in fiscal 1963. A total of 284 special permission applications were received of which 229 were approved, 35 disapproved, and 20 withdrawn prior to final action.

Special rate studies and related projects included a review of project rates to determine the necessity for issuance of rules and regulations to govern such rates; a study to determine the history of rate action and the significance thereof in the trades between the North Atlantic/Gulf and Continent; and an analysis of tariffs to determine the frequency of freight rate changes on lumber and lumber products throughout the various world trades.

All steamship conferences and independent carriers having freight tariffs on file were requested to provide the Commission with certain basic information related to the section 18(b) requirement that all tariffs shall be made available to any person and that a reasonable charge may be made therefor. This data is now being analyzed to determine the practices adopted by the conferences and carriers to comply with the intended requirements of the act and the charges being made for tariffs.

**Rulemaking proceedings** progressed to final considerations in Docket No. 964 "Filing of Tariffs by Common Carriers by Water in

the Foreign Commerce of the United States and by Conferences of Such Carriers." Since the proposed rule represented a departure from the customs of an old industry, numerous comments and suggestions were received from carriers, conferences, shippers, and receivers of freight and from a number of foreign governments. During fiscal 1963, the comments and suggestions were analyzed and the proposed rules were reviewed in light of such analysis. On May 4, 1963, a revision of the original rule was published in the Federal Register, and it is expected that the new rule will become effective in fiscal 1964.

Preliminary to rulemaking proceedings, conferences in the foreign commerce were circularized to ascertain existing procedures for handling shippers' requests and complaints in order to determine whether such procedures are adequate or whether changes are required in compliance with section 15 of the Shipping Act, 1916, as amended by Public Law 87-346. As a result of analysis of the replies, it is planned in fiscal year 1964 to promulgate rules setting forth the Commission's minimum requirements and the steps to be taken to maintain constant surveillance in this area.

### *International Relations*

Regulatory activities in the foreign commerce, as expanded by Public Law 87-346, have resulted in an increasing volume of problems with an international significance having an effect upon the relations of the United States with foreign maritime nations engaged in the foreign commerce of the United States. These matters arise either through the application of the United States shipping statutes and/or orders and regulations of the Commission issued pursuant thereto upon foreign-flag shipping or discriminatory practices of foreign governments against U.S. shipping lines.

The major difficulty arises from a difference in the international shipping philosophies of the United States and the other major shipping countries of the world. The United States believes in regulated competition in the international shipping field; however, the major shipping interests of the world feel that the United States, through its various shipping laws, is attempting to unilaterally regulate what they believe to be an international activity and they feel that the U.S. regulation of shipping in the U.S. international commerce is an infringement on their sovereign rights and prerogatives. To emphasize the foregoing, the major shipping countries of Europe as well as Japan have submitted official protests through the Department of State. Generally, these protests allege that under Public Law 87-346 the Federal Maritime Commission is attempting to regulate international shipping, that is, to regulate unilaterally something that is of concern to more than one country; secondly, that this regulation will inevitably result in heavy expenses for the shipowners and obstruct them in their operation in requiring that they must file their tariffs in advance of their effective date; thirdly, that there is an infringement on the sovereignty of the other countries with respect

to requests for the production of documents not located in the United States.

The Commission in fiscal year 1963 held extensive discussions with shipping attachés in the foreign embassies; held a series of meetings with foreign shipping officials and conference chairmen; participated in two international shipping conferences held in Europe (OECD Maritime Transport Committee); and in cooperation with the Department of State carried out the necessary discussions and representations to eliminate certain discriminatory practices of foreign governments against U.S.-flag shipping.

At the present time the foreign shipping lines are complying with the U.S. law and have filed their agreements and tariffs. The question of the production of documents located abroad is presently in the Department of Justice for a court decision in connection with the "Mitsui Case."

**Foreign Discriminations.**—Section 19 of the Merchant Marine Act of 1920 places the responsibility for correcting foreign shipping discriminations with the Federal Maritime Commission. This requires that the Commission follow closely the various laws and regulations issued by the governments of the world to determine whether these laws contain discriminatory provisions against the operation of the U.S. shipping services to those countries. Currently, the Commission is engaged in discussions with Brazil and Uruguay on the removal of shipping discriminations in those countries and is observing the activities of the Transport Committee of the Executive Committee of the Latin America Free Trade Area (LAFTA). This Committee has had several meetings and has recommended the conclusion of a Convention between LAFTA member countries which would, if it became effective, establish a regional cabotage area including all of South America and Mexico with the exception of Bolivia and Venezuela. This would be discriminatory against the operation of U.S. shipping lines within this area.

**Liaison.**—The Commission maintains close liaison with the Department of State on all types of international shipping problems such as foreign operations and regulatory matters, port charges, port conditions, international transportation conferences, and other allied problems which might affect the operation of U.S. shipping services. The Commission also maintains liaison with other government agencies handling international shipping problems as well as international organizations and foreign shipping attachés.

## Domestic Offshore Commerce

The Commission regulates rates and practices of domestic offshore common carriers by water serving the trades between continental United States and Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands, pursuant to the provisions of the Intercoastal Shipping Act of 1933 and the Shipping Act, 1916.

## *Tariff Filings*

The Intercoastal Shipping Act of 1933 requires that carriers file with the Commission and keep open to public inspection schedules showing all the rates, fares, and charges for or in connection with transportation between ports served in the domestic offshore trades. The Commission accepts, suspends, or rejects tariff filings in accordance with the requirements of the statute and the Commission's rules and regulations.

In fiscal year 1963, the Commission received and acted upon 3,834 freight and passenger tariff filings. Forty-four filings, totaling 295 pages, were rejected and the remainder accepted. The Commission instituted 19 formal proceedings placing tariff matters under investigation and/or suspension.

**Special Permission Applications.**—Under the provisions of section 2 of the Intercoastal Shipping Act of 1933, no change may be made in tariff provisions except by publication, filing, and posting of new tariff schedules. Such changes become effective not earlier than 30 days after the date of filing with the Commission. However, upon application of the carrier, the Commission may in its discretion and for good cause shown, allow changes to become effective upon less than 30 days. The Commission approved 99 applications for special permission, denied 3, and 10 were withdrawn by the applicants.

## *Carrier Agreements*

Agreements between carriers in the domestic offshore trade are regulated under section 15 of the Shipping Act, 1916.

Seven carrier agreements were filed during fiscal year 1963. Each was examined to determine whether it would be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports; that it would not operate to the detriment but to the benefit of the commerce of the United States; did not violate any of the provisions of the Shipping Act; and was not contrary to the public interest. One agreement was approved as submitted; three were approved after certain conditions, deemed by the Commission to be in the public interest, were imposed; and four are pending further review.

Additionally, all existing carrier agreements were reexamined to determine whether they were in conformity with the provisions of Public Law 87-346, an amendment of section 15 of the Shipping Act, 1916. A conference agreement was found not to be in full compliance and corrective action is being taken.

## *Special Studies*

Studies were concluded in connection with (1) exemption from Part II of the Interstate Commerce Act of motor carriers performing

pickup and delivery services for domestic offshore water carriers in terminal areas; (2) the effect of experimental rates on competitive carriers and shippers; and (3) rates in the Puerto Rican trade from January 1, 1962, to March 1, 1963. Other studies, in process, are: (1) the effect of the suspension of section 27 of the Merchant Marine Act, 1920 (The Coastwise Laws) with respect to the transportation of lumber; (2) benefits to the public, if any, to be derived from requiring certification of carriers; (3) the extent to which protective coastwise laws profit the shipping industry and the public; (4) reduction of litigation on rate matters through the use of informal conferences; (5) solutions to problems involved in efficient regulatory control of the so-called "non-vessel operating common carriers by water," and (6) policing rules in connection with "freight, all kinds" rates.

### *Noteworthy Developments in Industry*

**Tariff Simplification in Alaskan Trade.**—Several matters of special significance took place in the domestic offshore trade. Alaska Steamship Co. made considerable progress in achieving tariff simplification in the Alaska trade by publishing a tariff naming rates on all commodities on a weight basis instead of on a weight-or-measurement basis depending on the density of the cargo. The new publication will permit shippers to compute transportation charges before the cargo is measured on the dock by the carrier. The new tariff currently is the subject of investigation by the Commission in Docket No. 1132 to determine its impact on the Alaska economy.

**Containerization.**—The trend toward containerization continued through fiscal year 1963. Seatrain Lines entered the U.S. Atlantic/Puerto Rico trade introducing 40-foot containers and expects to carry rail cars as soon as terminal facilities are completed. Waterman Steamship Corp. of Puerto Rico converted from a conventional stowage operation to a combination breakbulk-container-ship operation. Sea-Land Service, Inc., instituted a trailership service into the Pacific Coast/Puerto Rico trade. In the Alaska trade, Alaska Steamship Co. and Puget Sound-Alaska Van Lines, as well as many of the smaller carriers who operate tug and barge services, continued to carry most of their cargo in containers. In the Hawaiian trade, Matson Navigation Co. expanded its containerization program instituted in 1960, and the Oliver J. Olsen Co. expanded its lumber service and introduced a general cargo container service based upon a new rate-making concept. The new concept in rate-making charges a flat rate per container regardless of contents, in lieu of the conventional method of applying rates on individual commodities within a container. This innovation is being carefully studied by the Commission to determine its impact upon competing carriers and the general public.



# Terminal Operators

The Commission is responsible for the regulation of the activities of marine terminal operators pursuant to the provisions of the Shipping Act, 1916. This entails processing of terminal agreements under section 15 of the Shipping Act and policing and regulating terminal practices under sections 16 and 17 of the Shipping Act.

In carrying out this responsibility the Commission in fiscal year 1963:

1. Held meetings with representatives of the terminal industry to discuss proposed legislation which would require (a) the filing of terminal tariffs 30 days in advance of the effective date; (b) authorize the Commission to regulate minimum and maximum rates of terminal operators; and (c) provide the Commission authority to reject or suspend tariffs. Numerous comments have been received from interested parties in connection with the proposed legislation.

2. Instituted factfinding investigations to develop facts to determine whether free time, demurrage, and storage practices at terminals are unfair and whether terminals discriminate against truck traffic in favor of rail traffic. Factfinding No. 4 covers North Atlantic ports from Hampton Roads, Va., to Searsport, Maine. Factfinding No. 5 encompasses South Atlantic and Gulf ports from, but excluding Hampton Roads, Va., to Brownsville, Tex. Hearings are now in progress.

3. Amended the proposed rules in Docket No. 875, a rulemaking proceeding to prescribe rules requiring terminal operators to file tariffs and prescribing uniform definitions of terminal services. Comments received from terminal operators and other interested parties in all sections of the country are being analyzed.

4. Examined 2,767 terminal tariff filings to determine whether they were in conformity with the provisions of the Shipping Act, 1916, or with an approved conference agreement to which the terminal may have been a party.

5. Reviewed the minutes of 43 terminal conference meetings to determine whether any action therein reflected was violative of the Shipping Act or the provisions of the conference agreement.

6. Analyzed 56 terminal agreements; determined that 15 were not subject to section 15, Shipping Act, 1916; approved 22; instituted formal investigations relative to three; and is conducting further review on 16.

Terminal agreements are examined to determine whether they may be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports; that they will not operate to the detriment of the commerce of the United States and the public interest; and that they do not violate any provisions of the shipping acts. Activities under approved agreements are kept under continuous surveillance to assure that these standards are maintained.

# Freight Forwarding

The Commission licenses and regulates independent ocean freight forwarders, promulgates and enforces rules and regulations, and approves or disapproves agreements pursuant to the provisions of the Shipping Act, 1916, as amended.

**Licensing.**—The law authorizes the Commission to issue licenses to those independent ocean freight forwarders found to be fit, willing, and able to function as such. As a consequence the Commission is required to conduct sufficient investigation as to each applicant to enable such a finding.

At the beginning of fiscal year 1963, there were 912 investigation cases pending initiation or completion. In the conduct of these investigations, so as not to deprive the licensees of a livelihood, priority was given to new applicants or those previously registered forwarders who missed the deadline filing date as stipulated in Public Law 87-254.

During the fiscal year, 172 licenses were issued, 12 denied, and 869 continued in process. Of the latter, 797 applicants are authorized to conduct freight forwarder operations pursuant to grandfather operating rights conferred by statute, pending disposition of their applications.

It is expected that virtually all applications will be processed in fiscal year 1964.

**Agreements.**—Ocean freight forwarders frequently enter into joint working agreements or cooperative working arrangements. For example, a forwarder who controls the routing of the shipments may arrange with a forwarder located at the port of exportation to prepare, complete or process one or several of the necessary export documents. Such agreements are filed for Commission approval pursuant to section 15 of the Shipping Act, 1916.

During the fiscal year 1963, 873 freight forwarder agreements were filed with the Commission, a 400-percent increase over the number filed the previous year. Of these, 344 were approved and the remainder are pending further review.

*Rules Governing Practices of Licensed Independent Ocean Freight Forwarders, Ocean Freight Brokers, and Ocean-Going Common Carriers*, were adopted by the Commission on April 2, 1963. The rules establish a code of business practices, duties, and obligations applicable to freight forwarder licensees. It was recognized at the outset that these rules would be controversial, far-reaching in effect, and would, in some instances, conflict with certain local practices that came into being through custom of the trade. Both the Commission and representatives of the forwarding industry spent considerable time and effort in analyzing, evaluating, and attempting to resolve the many complex technical problems involved in the development of a practicable set of rules. Three petitions requesting reconsideration of certain of the rules were filed in May. The Commission denied the petitions on May 24, 1963. On May 29, 1963, the U.S. Court of Appeals for the Second Circuit enjoined and restrained the Commission

from putting into effect 10 of the most important of these substantive rules. Thereafter, on June 29, 1963, the Commission, in compliance with the court's order, postponed the effective date of the rules for 30 days after final decision of the court.

General Order 4, amendment 3, was adopted by the Commission on September 27, 1962. The amendment permits separately incorporated, but related, applicants to obtain a license for each corporation. Such revision was designed to minimize the difficulty encountered by affiliated corporations in delineating their respective areas of liability.

General Order 4, amendment 4, which prescribed temporary bonding requirements applicable to applicants holding grandfather operating rights, was adopted by the Commission on January 8, 1963.

## Financial and Economic Analysis

In fiscal year 1963, attention was directed to improving the basic financial data available to the Commission.

Heretofore, carriers in the domestic offshore trades were required to file semiannual financial statements with the Commission. This requirement recognized the fact that many of the carriers were under the jurisdiction of either the Interstate Commerce Commission or the Maritime Administration, and so quite logically the Federal Maritime Commission adopted the pattern already established for these reports, prepared from accounting systems prescribed by these two agencies. Subsequent experience with these reports, coupled with the advice of industry officials, indicated that annual rather than semiannual statements of this kind would suffice for certain of the needs of the Commission. The Commission, therefore, on May 29, 1963, changed General Order 5 so that now annual financial reports only are required. Missing, however, was meaningful information regarding costs and other operating data on company operation in the trade or on specific classes of commodities. To fill this need a new reporting system is being designed to obtain the cost data that needs to be considered in the ratemaking process.

The field audit program was activated, representing the first organized effort on the part of the Commission to verify financial data submitted by carriers.

In fiscal year 1964, it is expected that the coordination program with the Interstate Commerce Commission and Civil Aeronautics Board will result in fruition of the following plans, all of which have been agreed to in principle:

(a) Uniform audit procedures to be utilized by the three agencies.

(b) Free interchange of audit information so that audit by one agency would be utilized by the other agencies having a jurisdictional interest in the carriers' affairs.

(c) Coordinated audit programs whereby audits of carriers subject to the jurisdiction of several agencies can be assigned on an equitable basis as between the agencies.

In the area of economic analysis attention was directed to (1) studies of rates of return, (2) a compilation of the tonnages carried, by commodities, in the foreign commerce of the United States, (3) liaison with the Departments of Commerce, Agriculture, and Interior, the U.S. Tariff Commission, and other Government agencies, to identify common interests and source material for economic research, and (4) the development and implementation of a program for the conduct of export and import freight rate studies.

## **Enforcement and Compliance**

### ***Informal Complaints***

On June 30, 1962, there were pending 108 informal complaints alleging violations of the shipping statutes and during fiscal year 1963, an additional 340 complaints were received. Action was completed on 218 cases, of which 80 were found to be not violations of the statutes, and 138 were settled by adjustment between the parties. Of the remainder, 15 were found to warrant formal proceedings; 33 were assigned for field investigation; 5 were referred to the Department of Justice; and 177 were in process of staff review on June 30, 1963.

The subject matter of the complaints included those concerning claims for damages or overcharges, violations of section 15 agreements, protests against rates, unjust or unfair discriminatory practices, and tariff filing violations.

### ***Matters Referred by the Antitrust Subcommittee of the House Committee on the Judiciary***

Continued attention was directed to the possible violations of the shipping statutes developed by subject subcommittee during 1959, 1960, and 1961. Twenty-four of the items have been referred to the Department of Justice; 50 are in Commission hearing or rulemaking proceedings; corrective measures have been taken with respect to 7; 26 items were closed as not warranting further action or barred by the statutes of limitation; and final action is pending with respect to the remainder.

### ***Factfinding Proceedings***

Through factfinding proceedings, quasi-formal in nature, the Commission obtains data upon which to base its decision for further action which may include (1) formal investigation, (2) rulemaking proceedings, or (3) direct referral to the Department of Justice.

Four factfinding proceedings were instituted, two of which were concluded: (1) Investigation into the general practices of common carriers by water serving ports in the Great Lakes area. The report of findings was sent to the carriers and conferences serving the trade with a request for compliance. Failing compliance and upon receipt of further complaints alleging unjust discrimination at the Port of Duluth, formal investigations have been initiated in order that final orders might be issued as warranted by findings after full hearing; and (2) factfinding proceedings as to possible malpractices by members of the American West African Freight Conference. The investigation, after hearings, resulted in the referral of the record to the Department of Justice.

Factfinding proceedings are in process with respect to Terminal Practices at North Atlantic Ports (Hampton Roads, Va., to Searsport, Maine), and Terminal Practices at South Atlantic Ports (from, but excluding Hampton Roads, Va., to Brownsville, Tex.).

### **Field Investigations**

There were 1,019 investigative cases pending as of July 1, 1962. Of these cases 912 involved freight forwarder license applications, and the remainder consisted of alleged malpractices in contravention of shipping laws. During the year, 432 new cases were opened and 624 investigations were completed. The majority of these cases pertained to freight forwarder license applications.

Investigative activity resulted in seven convictions for criminal violations of the shipping statutes, all based on pleas of guilty or *nolo contendere*, and assessed fines, savings, and recoveries amounting to \$191,710.49. Additionally, at the close of the fiscal year there were 5 other matters pending court action which involve a possible 28 defendants.

### **Formal Proceedings**

The Commission on its own motion instituted during the year 37 formal proceedings involving the propriety of rates, alleged malpractices, freight forwarder licensing, and rulemaking. The status of the Commission docket in formal proceedings is indicated below:

	Beginning fiscal 1963	New dockets	Concluded fiscal 1963	Pending beginning fiscal 1964
Investigations:				
Section 15.....	15	12	8	19
Sections 14, 16, 17.....	8	2	3	7
Section 18(b)(5).....		4		4
Dual rate contracts.....	60	10	7	63
Freight forwarder licensing.....		4		4
Rate proceedings.....	17	4	11	10
Rulemaking.....	11	1	2	10
Totals.....	111	37	31	117

# Proceedings Before Hearing Examiners

At the beginning of the fiscal year, 93 proceedings were pending before the hearing examiners, and there were added during the fiscal year, 70 cases; 2 cases were remanded for further proceeding, making a total of 165 cases. The examiners conducted 37 hearings and issued 55 recommended or initial decisions. The Commission heard oral argument in 24 cases and issued 34 final decisions involving 54 formal proceedings. Eighteen cases were disposed of without report. At the end of fiscal year 1963, there were pending 19 formal proceedings for final decision by the Commission.

## *Final Decisions of the Commission*

Docket No. 854—*Swift & Company and Swift & Company Packers v. Gulf and South Atlantic Havana Steamship Conference, et al.* It was determined that complainants were entitled to reparation for the period January 1, 1959, to March 8, 1959, in accordance with Stipulation and Agreement of August 14, 1962. Respondents were ordered to pay reparation.

Docket No. 864—*International Latex Corporation v. Bull Insular Line, Inc.* It was determined that the rates charged on shipments of clothing from San Juan, Puerto Rico, to Baltimore, Maryland, were inapplicable. Respondent was ordered to pay reparation.

Docket No. 870—*In the Matter of the Pacific Coast European Conference—Exclusive Patronage Contracts.* It was determined that respondents had not entered into or carried out unapproved interpretations or modifications of Rate Agreements involving FOB/FAS transactions in the Pacific Coast European Conference Trade in violation of section 15, Shipping Act, 1916; that respondents' construction of Rate Agreements was not unjustly discriminatory nor unfair as between carriers, shippers, exporters, importers, or ports, nor between exporters from the United States and their foreign competitors; that said agreements are not in violation of the Shipping Act, 1916, have not operated to the detriment of the commerce of the United States, and are not contrary to the public interest. It was further determined that the respondents had not violated section 14, Third or section 16, First by reason of their practices with respect to the application of the conference's shipper exclusive patronage agreements. It was finally determined that Public Law 87-346, enacted October 3, 1961, 87th Congress, became a part of the Shipping Act subsequent to the present proceedings and the new standards of section 14b are inapplicable and not an issue. The Commission decided that, since the matter is under investigation in docket No. 1007, to dismiss the proceeding under docket No. 870.

Docket No. 881—*General Increases in Alaskan Rates and Charges.* Rates, fares and charges of Alaska S.S. Co. for the transportation of property by water in interstate commerce between Pacific Coast ports of the United States and ports in the State of Alaska, and also between ports within Alaska, as increased, found to be just, reasonable and lawful.

Rates, fares and charges of Puget Sound Alaska Van Lines, Inc., Alaskan Northern Express, Inc., Alaska Freight Lines, Inc., and Garrison Fast Freight Division of Consolidated Freightways, Inc., for the transportation of property by water in interstate commerce between Pacific Coast ports of the United States and ports in the State of Alaska, as increased, remanded to the Examiner for the taking of further evidence.

Docket No. 885—*Unapproved Section 15 Agreement—North Atlantic Spanish Trade.* The language of a carrier's interoffice memoranda, referring to an "undertaking" to abide by a conference tariff and to a "verbal understanding" with the conference, together with surrounding circumstances such as the fact the carrier after it had resigned from the conference continued to be consulted

by the conference on rate changes, establishes the existence of an agreement or understanding between the carrier and the conference and its members within the meaning of section 15. The carrier, the conference, and its members violated section 15 both by failing to file their agreement or understanding and by carrying it out absent approval.

Docket No. 896—*Unapproved Section 15 Agreement—Coal to Japan/Korea*. The purpose of this proceeding was to determine whether certain common carriers had entered into and carried out an agreement fixing rates for the transportation of coal from United States Pacific Coast ports to Japan and Korea without approval as required by section 15, Shipping Act, 1916. Some of the respondents to the proceeding were found to have effectuated such an unlawful agreement.

Docket No. 901—*General Increases in Rates—Pacific-Atlantic/Guam Trade*. General increases in rates between United States and Guam, Mariana Islands, Midway Islands, Wake Island, Ebeye, and Eniwetok, for the carriage of commercial cargo, including cement, found to be lawful and just and reasonable. Carriage of military cargoes should be excluded in determining the reasonableness of rates under consideration. A fair return on fair value standard should be used in determining the reasonableness of rates and the prudent investment standard should be used to arrive at the fair value of the property devoted to the trade. A rate of return of 6.4 percent on property valued on the basis of the prudent investment standard is not unreasonable.

Docket No. 903—*Pacific Coast Puerto Rico General Increase in Rates*. Tariff rates between Pacific Coast ports and Puerto Rico as increased by 15 percent were found to be just, reasonable, and lawful. A modified revenue basis was approved as proper, and a unit method of determining costs was allowed. Allocation of costs on an out-of-pocket basis to determine net income was held to be improper.

Docket No. 905—*United States Lines—Gondrand Brothers, Violation of Section 16*. Gondrand Brothers found to have knowingly and wilfully obtained from United States Lines Company transportation of logs by water from North Atlantic Range ports to the ports of Antwerp and Rotterdam at less than the rates or charges which would otherwise have been applicable during the period 1954 to 1959, in violation of section 16 of the Shipping Act, 1916.

United States Lines Company found to have allowed Gondrand Brothers to obtain such transportation in violation of section 16 of the Shipping Act.

Docket No. 906—*In the Matter of Agreements, Charges, Commissions and Practices of the North Atlantic Westbound Freight Association*. It was determined, in denying an appeal from the hearing examiner's ruling granting the motion of hearing counsel for discovery and production of certain documents alleged to be in the custody and control of the respondents, Anchor Line, Ltd., Bristol City Line, Cunard Steamship Co., Ellerman's Wilson Line, Furness, Withy & Co., Irish Shipping Ltd., Manchester Liners, Ltd., Ulster Steamship Co., Ltd., and United States Lines Company, and located outside the United States, that an investigation limited to the practices of the respondents as common carriers by water in the foreign commerce of the United States is within the jurisdiction vested in the Commission by the Shipping Act, 1916, and therefore the hearing examiner was empowered to make the ruling in question. It was decided by the Commission that the respondents in this proceeding had to cease and desist from the practices under investigation, and the proceeding therefore was discontinued.

Docket No. 909—*City of San Diego Harbor Comm. v. Matson Navigation Company*. The Commission has no power to require that a common carrier service be inaugurated, and its authority under section 16 First relative to discontinuance of an established service is at best restricted. In any event, Matson's discontinuance of its San Diego operations was not shown to result in undue or unreasonable preference to Los Angeles, nor undue or unreasonable prejudice to San Diego. Matson was motivated by its judgment regarding the economics of the situation. Moreover, similarity of transportation conditions is a necessary element of undue preference and prejudice, and there is a great disparity between conditions at San Diego and Los Angeles.

Docket No. 912—*Matson Navigation Company—Container Freight Tariffs*. The tariff of Matson Navigation Company applicable to containerized cargo from California to Honolulu, Hawaii, and publishing single-factor rates which include pickup service in port terminal areas, ocean haul, and delivery at container freight station or container freight yard, was held to be lawful in its present form and not contrary to the provisions of section 2 of the Intercoastal Shipping Act, 1933.

Docket No. 924—*Unapproved Section 15 Agreement—Gulf/United Kingdom Conference*—Docket No. 925—*Unapproved Section 15 Agreement—Gulf/French Atlantic Hamburg Range Freight Conference*. Members of the two respondent conferences were found not to have been acting pursuant to an unfiled and unapproved agreement, in violation of the Shipping Act, 1916, in failing to file tariffs showing certain rates as "open minimum," but such failure was a violation of FMB General Order 83.

Docket Nos. 946, 950, and 953—*Grace Line, Inc. v. Skips A/S Viking Line, et al.; Skips A/S Viking Line v. Grace Line, Inc.; Section 19, Merchant Marine Act, 1920, Investigation of Practices of Viking Line*. No violations of the Shipping Act, 1916, were found in this proceeding, so no reparations are recoverable. An agreement to create a carrier is not subject to section 15, a rate war is not equivalent to the use of a fighting ship, and the rate-cutting is not shown to have subjected complainant to unreasonable prejudice, and disadvantage is not in violation of section 16. The Commission can issue no rule pursuant to section 19 of the 1920 Act (with respect to payment of brokerage or "systematically undercutting" conference rates) until conditions unfavorable to shipping exist in a trade.

Docket No. 952—*Investigation of Tariff Filing Practices of Carriers Between Contiguous States of the United States and Alaska*. The purpose of this proceeding was to determine if certain parties had been operating as common carriers by water in the trade between Alaska and other states without filing tariffs with the Board, thus violating section 2 of the Intercoastal Shipping Act, 1933. Two carriers were found not to be common carriers. Another carrier was found to be a common carrier, but it was determined it had not violated the statute because it had filed a tariff covering its service. Other carriers were found to be common carriers and required to file tariffs covering their services.

Docket No. 954 (Sub. 2)—*Investigation of Increased Rates on Sugar, Refined or Turbinated in Bags in the Atlantic/Gulf Puerto Rico Trade*. Proposed increased rates on sugar, refined or turbinated, in bags, from San Juan, Ponce, and Mayaguez, P.R., to New York, N.Y., Philadelphia, Pa., and Baltimore, Md., found just and reasonable. Order of suspension vacated. Adoption of an allocation formula for operating expenses, based on a ratio of the cubic measurement of sugar to total cargo carried, was not inaccurate or unreasonable, and all that is required in cost finding is that the results obtained represent a reasonably close approximation of the assignable costs. It is not sound regulatory practice or in the public interest to require a carrier to sustain substantial losses on a large segment of the cargo it carries. Such a practice would result in either disproportionately high rates on other cargo or a substantial weakening of the carrier's economic position or both.

Docket No. 967—*Alcoa Steamship Company, Inc. v. Cia. Anonima Venezolana de Navegacion, et al.*—Docket No. 970—*In the Matter of Agreements 8640 and 8640-1, Between Grace Line Inc., and Cia. Anonima Venezolana de Navegacion Covering Pooling in the North Atlantic-Venezuela Trade*. Agreement between Grace Line and Cia. Anonima Venezolana found not to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, ports, or exporters from the United States and their foreign competitors, or any of them, and further not found to be detrimental to the commerce of the United States or to violate the Shipping Act, or to be contrary to the public interest.

Docket No. 974—*Puget Sound Tug & Barge Company v. Alaska Freight Lines, Inc.*—Docket No. 984—*In the Matter of Certain Tariff Practices of Puget Sound Tug & Barge Company and Alaska Freight Lines, Inc.* A tariff rule of Alaska Freight Lines, Inc., which provides for a land haul to be substituted for a portion



of the water transportation between certain points not now served directly by Alaska Freight's vessels, found to be lawful. Section 2 of the Intercoastal Act does not prohibit the filing of rates which include a substituted mode of carriage over a portion of the route.

Docket No. 976—*Agreement 8492 Between T. F. Kollmar, Inc. d/b/a Northland Freight Lines, and Wagner Tug Boat Company in the Alaska Trade.* An agreement between a common carrier tug and barge operator and a non-vessel-operating common carrier, engaged in trade between Seattle and Anchorage, for transportation by the former of its own cargo under its own tariffs, and for transportation by the former of the latter's common carriage cargoes at the latter's tariff rates was approved under section 15 of the Shipping Act. There was no showing that the agreement would operate "to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of the Shipping Act, 1916."

Docket No. 977—*Puget Sound Tug & Barge Company v. Foss Launch & Tug Co., Wagner Tug Boat Company, T. F. Kollmar, Inc., d/b/a Northland Freight Lines.* Tandem tow of Foss barge containing contract carrier cargo with Northland barge containing common carrier cargo does not violate principle that disfavors carrier acting as both common and contract carrier on the same voyage. Wagner's rate on cement and asphalt based on high volume found to be *prima facie* discriminatory and preferential "\* \* \*" but that Wagner should be permitted 30 days to petition for limited remand for purpose of submitting additional evidence in justification of their rates." Respondents' other rates not found to be unreasonably low.

Docket No. 987—*J. M. Altieri v. The Puerto Rico Ports Authority.* A refusal of a terminal operator to refund overpayment of demurrage charges is not a violation of section 16 since complainant importer failed to show a disparity between the treatment accorded him and that accorded other importers, or a violation of section 18 since that section applies only to carriers. Section 17 which refers to "other persons subject to this act" applies to domestic commerce insofar as terminal operators are concerned, and the unjust and unreasonable practices "relating to or connected with the receiving, handling, storing, or delivery of property," intended to fall within the coverage of section 17 are shipping practices.

Docket No. 989—*In the Matter of Certain Tariff Practices of Sea-Land Service, Inc., Puerto Rican Division.* Single-factor rates of a common carrier by water from inland points in Puerto Rico to a port in the United States are required to be filed with the Commission, but a separate statement in the tariff of charges for the included pickup service in Puerto Rico was held not to be required.

Docket No. 990—*Alaska Livestock & Trading Co., Inc. v. Aleutian Marine Transport Company, Inc.* A rate of \$1.10 per cubic foot on wool in bags from the Aleutians to Seattle found not to be unjust or unreasonable. A comparison of this rate with a rate in existence eight years ago is of little value, particularly where it has little or no support based on other record evidence. A comparison of a rate under study with rates of other carriers is an acceptable test of the reasonableness of the former, but the persuasiveness of the test varies directly with the similarity of the circumstances surrounding the rates of the differing carriers. Operation at a loss in the trade supports the view that the rate is not too high and is of some use in determining the reasonableness of the rate on a particular commodity, although it is not controlling.

Docket No. 994—*American Union Transport, Inc.—Increased Rates on Sugar.* Respondent showed that the present rates on sugar, refined or turbinated, in bags, from ports in Puerto Rico to Atlantic ports of the United States are insufficient by a wide margin to pay the full cost of carrying sugar. Based on operating and financial data for 1961, the proposed increased rates are not fully compensatory. The proposed rates are found to be lower than just and reasonable maximum rates and are not otherwise shown to be unlawful.

Docket No. 999—*American Great Lakes-Mediterranean Eastbound Freight Conference—In the Matter of Surcharge on Shipments from Buffalo, New York.* This proceeding was initiated by a show cause order issued by the Commission pursuant to the petition of the Governor of the State of New York under section 6 of Public Law 87-346. It was found that a ten percent surcharge imposed at the Port of Buffalo by respondent American Great Lakes-Mediterranean Eastbound Freight Conference was unjustly discriminatory, and it was ordered set aside. The Conference was ordered to file a tariff amendment indicating that the surcharge was no longer in effect, and the Conference was further ordered to cease and desist from enforcing the surcharge.

Docket No. 1062—*Agreement 8765 Between U.S. Flag Carriers in the Gulf/Mediterranean Trade.* An agreement between conference and nonconference carriers under which the nonconference carriers agree to abide by conference rates with respect to certain commodities was found not to be violative of the Shipping Act. The rate set in the agreement was determined to be reasonable.

Docket No. 1065—*Aleutian Marine Transport Co., Inc.—Rates From, To, and Between Seattle, Washington and Ports in Alaska.* Rates from, to, and between Seattle, Washington, and Alaska ports were found to be just and reasonable.

Special Docket No. 244—*Martini and Rossi s.p.a., et al. v. Lykes Bros. S.S. Co.* Permission is granted to Lykes Bros. S.S. Co. to waive collection of undercharges on shipments transported from Italy to the United States. The rate charged was lower than the legally applicable rate because of an oversight, and the parties were acting in good faith. Permission granted since the record discloses no discrimination. Such a waiver, however, does not excuse the parties from any statutory penalties to which they may be subject.

Special Docket No. 245—*Uddo & Taormina Corp. v. Concordia Line, etc.;* Special Docket No. 246—*Domestic Edible Oil Co. v. Concordia Line, etc.;* Special Docket No. 247—*A. Sargenti & Co., Inc. v. Concordia Line, etc.;* Special Docket No. 248—*Krasdale Foods Inc. v. Concordia Line, etc.;* Special Docket No. 249—*Joseph L. Sclafani v. Concordia Line, etc.;* Special Docket No. 250—*D. & A. Sclafani v. Concordia Line, etc.;* Special Docket No. 251—*Capitol Foods v. Concordia Line, etc.;* Special Docket No. 252—*Rinaldi Bros. v. Concordia Line, etc.;* Special Docket No. 253—*Packer Bros. Inc. v. Concordia Line, etc.;* Special Docket No. 254—*Daniele & Co., Inc. v. Concordia Line, etc.;* Special Docket No. 255—*Luisi Caso v. Concordia Line, etc.;* Special Docket No. 256—*Vitelli-Elvea Co. Inc. v. Concordia Line, etc.;* Special Docket No. 257—*Marino Bros. v. Concordia Line, etc.* It was determined in these proceedings that Concordia Line should be authorized and directed to refund excess freight charges as reparation and be permitted to waive collection of underpayments.

Special Docket No. 258—*Jondi Inc. v. Hellenic Lines Limited;* Special Docket No. 259—*Uddo & Taormina Corp. v. Hellenic Lines Limited;* Special Docket No. 260—*M. De Rosa, Inc. v. Hellenic Lines Limited;* Special Docket No. 261—*Giacomo Foti v. Hellenic Lines Limited.* It was determined in these proceedings that Hellenic Line should be permitted to refund freight charges on shipments transported from Italy to the United States.

Special Docket No. 262—*Lutcher, S.A. v. Columbus Line.* It was determined that Columbus Line should be permitted to waive collection of undercharges of freight on certain shipments of Lutcher, S.A. from New York to Santos, Brazil.

Special Docket No. 263—*United Nations Children's Fund (UNICEF) v. (Columbus Line) Hambury-Suedamerikanische Dampfschiffahrts-Gesellschaft Egger & Amsinck.* Voluntary payment of reparation was allowed for freight overcharges which resulted from omission of a tariff rule through a stenographic error. There was no discrimination against other shippers as complainant was the only shipper of the type of commodities involved on respondent's vessels.

Special Docket No. 264—*Lykes Bros. Steamship Co., Inc.—Application for Authority to Refund in Part Freight Charges Collected on Shipment by the SS Charlotte Lykes from Houston, Texas, to LeHavre, France.* It was determined that Lykes Bros. Steamship Co., Inc., be permitted to refund freight charges on certain NATO shipments.

Special Docket No. 265—*Lykes Bros. S.S. Co.—Application to Refund Overcharges.* Carrier failed to file rates on several items which were very rarely shipped, and this failure led to a "Not Otherwise Specified" rate being charged. The application to refund the overcharges is granted. The relief sought "here will relieve an innocent shipper of the consequences of the carrier's failure to file a proper rate."

## **Decisions of Hearing Examiners**

(Not reviewed by Commission at year end)

Docket No. 805—*Parsons & Whittemore, Inc. v. Rederiaktiebolaget Nordstjernen (Johnson Line)*; Docket No. 809—*Parsons & Whittemore, Inc. v. Compagnia Generale Transatlantique (French Line)*; Docket No. 810—*Parsons & Whittemore, Inc. v. The Blue Star Line Ltd. (Blue Star Line)*; Docket No. 811—*Parsons & Whittemore, Inc. v. Furness, Withy & Co., Ltd. (Furness Line)*; Docket No. 812—*Parsons & Whittemore, Inc. v. Westfal-Larsen & Co. A/S (Interocean Line)*; Docket No. 813—*Parsons & Whittemore, Inc. v. Fred Olsen & Co. (Fred Olsen Line)*. It was determined in these proceedings, which were consolidated for hearing, that the complainant violated Shippers Rate Agreement by shipping cargo on nonconference vessels through the use of a subsidiary as an evasion or subterfuge; that the complainant was therefore not entitled to the contract rate thereafter and the action of respondents in charging the noncontract rate was not a violation of the Shipping Act, 1916. It was further determined that the arbitration clause does not deprive the Commission of jurisdiction.

Docket No. 873—*Investigation of Passenger Steamship Conferences Regarding Travel Agents.* It was determined that Agreements No. 7840 and No. 120 of Atlantic Passenger Steamship Conference and Trans-Atlantic Passenger Steamship Conference, as they relate to travel agents, were not in principle violative of section 15 of the Shipping Act, 1916, if modified by the conferences in accordance with the recommendations of the examiner.

Docket No. 936—*Hellenic Lines, Ltd.—Violation of Section 16 and/or Section 17.* It was determined that respondent charged different rates to similarly situated shippers in the green Ethiopian coffee trade from Djibouti, French Somaliland, to New York for the same transportation service and thus violated section 16 of the Shipping Act. It was further determined that by demanding, charging, and collecting unjustly discriminatory rates the respondent also violated section 17 of the Act.

Docket No. 947—*International Trading Corporation of Virginia and International Trading Corporation of New England v. Fall River Line Pier, Inc.* It was determined upon further hearing on remand that reparation should be awarded in connection with free time and storage charges of respondent, previously found by the Commission to have been in violation of sections 16 and 17 of the Shipping Act, 1916, as amended.

Docket No. 966—*Reduction in Rates—Pacific Coast-Hawaii Oliver J. Olson & Co., C. R. Nickerson, Agent.* It was determined that rates from, to, and between Pacific Coast ports and ports in the Hawaiian Islands were lawful and just and reasonable and the proceeding should be discontinued.

Docket No. 969—*Alaska Steamship Company—General Increase in Rates in the Peninsula and Bering Sea Areas of Alaska*; Docket No. 1067—*Northern Commercial Co. River Lines—General Increases in Rates in the Yukon Area of Alaska.* It was determined that the rates from, to, and between U.S. Pacific Coast ports and ports in Alaska, and rates between Seattle and Tacoma, Washington, and points along the Yukon River in Alaska, were unjust and unreasonable to the extent they produce a rate of return in excess of 12 percent, but otherwise they were just and reasonable.

Docket No. 1070—*Selden & Co., Inc. v. The Board of Trustees of the Galveston Wharves.* It was determined that respondent's failure to provide adequate notice of changes in its terminal tariffs is an unreasonable practice under section 17 of the Shipping Act, 1916, and respondent should be required to

establish and observe just and reasonable regulations and practices in connection therewith. It was further determined that respondent's increased demurrage charges were not shown to be unlawful.

Docket No. 1081—*West Coast of India and Pakistan/U.S.A. Conference Exclusive Patronage (Dual Rate) Contract*. It was determined that permission be granted to respondent under section 14b of the Shipping Act, 1916, to use the proposed exclusive patronage (dual rate) contract with shippers, provided the form of the contract is modified in accordance with the decision.

Docket No. 1085—*A/B Atlantrafik v. Federal Steam Navigation Company, Limited, et al.* It was determined that respondent conference members unlawfully required, as a condition of admission to their conference agreement, that complainant must become a party to a separate approved agreement between conference members and a nonmember carrier, which was a joint subsidiary of three conference members, excluding the nonmember carrier from the conference trade and excluding conference members from Canadian trade to the same destinations, so that complainant would be bound to give up its Canadian service should it become a party to the separate agreement. It was further determined that said requirement constitutes effectuation of an unfiled and unapproved agreement, and results in unreasonable and unequal conditions for admission to conference membership, all in violation of section 15 of the Shipping Act, 1916, as amended.

Special Docket No. 267—*Government of Israel Supply Mission v. American Export Lines, Inc.* It was determined that American Export Lines, Inc., be permitted to waive collection of a portion of the applicable charges on two shipments of dry milk powder from the Port of New York to Haifa, Israel.

Examiners also issued in fiscal year 1963 decisions in Docket Nos. 854, 864, 870, 924/925, 946/950/953, 977, 987, 989, 990, 994, 999, 1062, 1065, and SD 245 through 265, all described above under "Final Decisions of the Commission."

## **Pending Proceedings**

At the close of the fiscal year there were 146 proceedings pending before hearing examiners. Some 60 cases involve dual-rate contracts which the Commission must pass upon prior to April 3, 1964, pursuant to Public Law 87-346, 87th Congress, as amended. Upon petition of numerous shippers, the Commission severed the five most important issues from these proceedings and ordered them heard by a panel of five hearing examiners. This was done to minimize the burden of litigation on the parties involved, to achieve optimum uniformity of decision, and to expedite the cases in order to meet the above-mentioned deadline.

## **Rulemaking Proceedings**

At the end of the fiscal year, the following significant rulemaking proceedings were in process.

Docket No. 875—*Filing of Tariffs by Terminal Operators*. The initial proposed rules were revised to include uniform terminal definitions.

Docket No. 964—*Filing of Tariffs by Common Carriers by Water in the Foreign Commerce of the United States and by Conferences of Such Carriers*. Revision of initial proposed rules were published in the Federal Register, May 4, 1963.

Docket No. 965—*Investigation of and Proposed Rules Relating to Practices of Pacific Coast Terminals in Granting Free Time and Collecting Wharf Demurrage and Service Charges*.

Docket No. 973—*Practices of Licensed Independent Freight Forwarders, et al.* Final rules were published in the Federal Register May 1, 1963. Three petitions requesting reconsideration were denied by the Commission. On May 29, 1963, the United States Court of Appeals for the Second Circuit enjoined and restrained the Commission from putting into effect ten of the most important of these substantive rules. The rules were postponed for 30 days following final Court decision.

Docket No. 981—*Rules Governing Admission, Withdrawal and Expulsion Provisions of Steamship Conference Agreements.* Comments are under consideration.

Docket No. 982—*Rules Governing the Right of Independent Action in Agreements.* Proposed final rules were published in May 1963. Comments are under consideration.

Docket No. 983—*Rules Governing Contract Rate Systems in the Foreign Commerce of the United States.* Proposed final rules were published in January 1963. Comments are under consideration.

Docket No. 1094 (superseding Docket No. 986)—*Rules Applicable to Self-policing and Self-regulatory Systems to be Used by Approved Steamship Conferences.* Revised rules are in process of adoption by the Commission.

There were published in the fiscal year (a) General Order No. 4 (Amendments 3 and 4)—Licensing of Independent Ocean Freight and Forwarders; (b) General Order No. 5 (Amendments 2 and 3)—Reports by Common Carriers by Water in Domestic Offshore Trades; and (c) Manual of Orders, Commission Order No. 1 (Amended)—Organization and Functions of the Federal Maritime Commission.

## Litigation Involving Commission Orders

During the fiscal year 1963, there were 30 cases before the courts relating to decisions and orders of the Commission regulating rates and practices of common carriers by water and others in the foreign commerce of the United States and the offshore domestic trades. Thirteen of these cases were pending at the close of the year.

Several of the more important court decisions were:

*Anglo-Canadian Shipping Company v. F.M.C. and U.S.A.* (9th Cir., Aug. 20, 1962) in which the Court enjoined a Commission order requiring the Pacific Coast European Conference to comply with earlier rulings, applicable to all other outbound conferences, that it is detrimental to the commerce of the United States for a conference of carriers to prohibit brokerage payments to freight forwarders or limit the amount thereof to less than one and one-quarter percent of freight charges. The Court stated that in its opinion there were no "basic findings and supporting reasons" for the Commission's order and the case was remanded to the Commission for further action.

*Hohenberg Bros. Co. v. F.M.C. and U.S.A.* (D.C. Cir., Feb. 14, 1963) wherein the Court upheld the Commission's finding that petitioner's action in attempting to obtain a refund from the carrier on certain cotton shipments, was an "unjust or unfair device or means" under section 16 of the Shipping Act, 1916. The Court also rejected petitioner's argument that fraud is a necessary element to a finding of section 16 violation.

*American President Lines, Ltd., et al. v. F.M.C. and U.S.A.* (D.C. Cir., March 26, 1963), in which the petitioners sought judicial review of an interpretation by the Commission of section 14b of the Shipping Act, 1916, relative to the practice of "opening" and "closing" rates. The Court dismissed the petition on the ground that "the Commission's action in promulgating its interpretation of the statute does not constitute action which is subject to judicial review."

*Alcoa S.S. Co. v. F.M.C. et al.* (D.C. Cir., June 27, 1963), in which the Court declined to upset the Commission's determination under section 15 of the Ship-

ping Act, 1916, that a pooling agreement between the Grace Line and Compania Anonima Venezolana de Navegacion was not unjustly discriminatory or unfair to the petitioners. The Court held that the Commission had the specialized knowledge necessary to make this factual determination and it was supported by substantial evidence. The Court also saw no merit in the argument, advanced in an *amicus curiae* brief, that the Commission's action contravened treaty provisions between the United States and The Netherlands.

*Carnation Company v. Pacific Westbound Conference, et al.* (U.S. District Court, N.D. Calif., June 25, 1963), in which it was held that the Commission under section 15 of the Shipping Act, 1916, had exclusive primary jurisdiction of Carnation's complaint based on an alleged unlawful rate agreement between the defendant conferences, and that the Shipping Act affords a remedy for any violation of the Act. Carnation had sued for treble damages under the antitrust laws. The Court's decision has been appealed by the plaintiff to the United States Court of Appeals for the Ninth Circuit.

The Commission also referred to the Department of Justice for consideration 22 cases involving violations of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, and rendered the Department all necessary assistance in connection therewith.

## Legislation and Legislative Activities

The Commission was concerned with two pieces of legislation during the fiscal year. The first was Public Law 88-5 which extended for 1 year the effective date of the provisions of section 14b of the Shipping Act, 1916, as amended by Public Law 87-346. This extension was necessary to afford the Commission time to complete its hearings and determinations with respect to the 61 different dual rate contracts which have been filed with it for approval.

The second was a proposed amendment to the Shipping Act, 1916, to eliminate the requirement for filing tariffs on lumber.

**Legislative Recommendations.**—All but two of the legislative recommendations contained in the Commission's report for fiscal year 1962 were incorporated into draft bills which have been submitted for clearance within the executive branch. The Commission is anxious that these bills receive the attention of the Congress at an early date.

Not submitted as yet are the following two proposals which are under study within the Commission: (1) An amendment to the Shipping Act, 1916, which would require that terminal operators file with the Commission and keep open to public inspection tariffs containing all their rates, charges, rules, and regulations for the receiving, handling, storing, or delivering of property; and (2) the bill which would authorize carriers under the jurisdiction of this Commission, the Interstate Commerce Commission, and the Civil Aeronautics Board to enter into joint rates and through services under the regulation of a joint board composed of members of these agencies.

Although the Commission has no other legislative recommendations at this time, the matter of clarifying and strengthening the statutes we administer is under constant study.

# Administration

**Commissioners.**—There were no changes in Commission membership during fiscal year 1963. Thomas E. Stakem of Virginia, served as Chairman. The other members were: John Harlee, Rear Admiral, U.S. Navy (retired) of the District of Columbia; Ashton C. Barrett of Mississippi; John S. Patterson of Maryland; and James V. Day of Maine.

In accordance with its policy of rotating the Vice Chairmanship, the Commission on January 3, 1963, elected Ashton C. Barrett as Vice Chairman, succeeding John Harlee. Mr. Barrett's term of appointment as Commissioner expired June 30, 1963.

**Staff Organization.**—To facilitate coordination and administrative direction of staff activities, the position of Managing Director was established on March 31, 1963, replacing the initial position of Executive Director. Responsibilities of the Managing Director include administrative direction of the Office of the General Counsel and Office of International Affairs, which heretofore reported direct to the Chairman. No other organizational changes were made.

**Personnel.**—There were 251 employees on duty as of June 30, 1963, an increase of 63 over total employment on June 30, 1962. Increments, by quarters, are reflected below:

Date	Employment	Date	Employment
June 30, 1962.....	188	February 18, 1963.....	216
October 31, 1962.....	187	June 30, 1963.....	251

<sup>1</sup> 218 in Washington office and 33 in field offices at New York, New Orleans, and San Francisco.

On-the-job training and orientation were intensified to bring the manpower input to fully productive levels as quickly as possible.

A training program for Regulation Examiners was instrumental in attracting college graduates with educational background for development in regulatory examiner specialties of carrier agreements, tariffs, freight forwarding, and terminals. The program provides 18 months' intensive on-the-job training including assignments in all program areas. Upon satisfactory completion of training, the employee receives a permanent assignment in career field of primary interest. Currently there are seven employees in various phases of the training.

Major personnel policy statements were issued including those governing Equal Employment Opportunities; Standards of Conduct; Employee Grievances; Pay Regulations; and Personnel Administration (general).

**Management Improvements.**—Significant management improvements completed or initiated during fiscal year 1963 include the acquisition of office space at 1321 H Street NW., and relocation of employees from initial temporary locations; improvement in adminis-

trative service facilities including reproduction services, mail and files, and communications; the establishment of a law library; establishment of a correspondence control system and elimination of backlogs in unanswered correspondence; implementation, through the Chairman's regularly scheduled staff meetings, of a system of program review and planning; issuance of printed volumes of decisions of the Federal Maritime Commission and its predecessor agencies, dating back to 1947 (vol. 3, Jan. 1947 to Feb. 1952, was issued; vols. 4, 5, and 6 are expected to be issued in fiscal year 1964); a paperwork management study, in conjunction with staff specialists of the National Archives Records Service, with the objective of establishing efficient paperwork management in all program areas; and a study of the feasibility of automatic data processing systems.



# Appendix

## Statement of Appropriation and Obligation for the Fiscal Year Ended June 30, 1963

### APPROPRIATION:

Public Law 87-843, 87th Congress, approved October 18, 1962: For necessary expenses of the Federal Maritime Commission, including services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates for individuals not to exceed \$75 per diem; hire of passenger motor vehicles; and uniforms, or allowances therefor, as authorized by the Act of September 1, 1954, as amended (5 U.S.C. 2131) .....	\$2, 300, 000
Transfer to General Services Administration .....	32, 972
Appropriation availability .....	<u>2, 267, 028</u>

### OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended June 30, 1963 .....	<u>2, 219, 119</u>
Unobligated balance withdrawn by Treasury .....	<u>47, 909</u>

### STATEMENT OF RECEIPTS FROM FEES AND CHARGES DURING THE FISCAL YEAR ENDED JUNE 30, 1963:

Duplication of records and other documents .....	803
Freight forwarder license fees .....	<u>13, 400</u>
Total receipts from fees and charges .....	<u>14, 203</u>