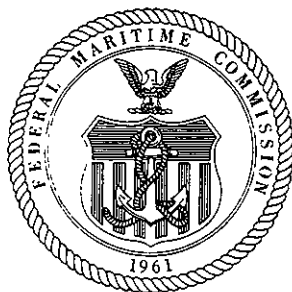
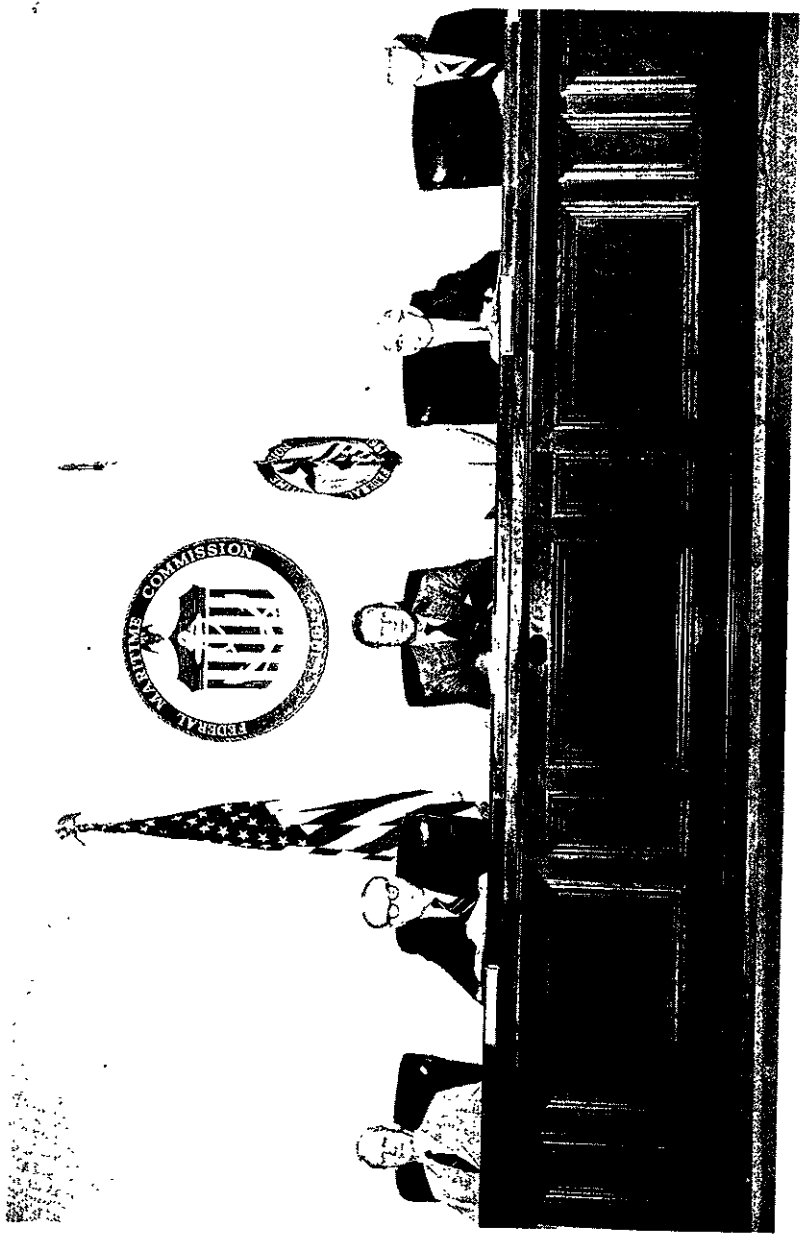


15TH
ANNUAL REPORT
of the
**Federal Maritime
Commission**



FISCAL YEAR ENDED JUNE 30, 1976
and
TRANSITION QUARTER JULY 1, 1976 — SEPTEMBER 30, 1976



Clarence Morse
Vice Chairman

James V. Day

Karl E. Bakke
Chairman

Ashton C. Barrett

Bob Casey

FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

SEPTEMBER 30, 1976

KARL E. BAKKE, CHAIRMAN

CLARENCE MORSE, VICE CHAIRMAN

ASHTON C. BARRETT, MEMBER

BOB CASEY, MEMBER

JAMES V. DAY, MEMBER





Federal Maritime Commission
Washington, D. C. 20573

Office of the Chairman

October 1, 1976

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

Pursuant to section 103(e)(2) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, as amended, I respectfully submit the Fifteenth Annual Report of the Federal Maritime Commission. This report includes Fiscal Year 1976 and the transition quarter July 1, 1976 through September 30, 1976.

Sincerely,

Karl E. Bakke

Karl E. Bakke
Chairman

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SCOPE OF AUTHORITY AND BASIC FUNCTIONS

The Federal Maritime Commission was established as an independent agency by Reorganization Plan No. 7, effective August 12, 1961. Its basic regulatory authorities are derived from the Shipping Act, 1916; Merchant Marine Act, 1920; Intercoastal Shipping Act, 1933; Merchant Marine Act, 1936; Public Law 89-777 of November 6, 1966; and Public Law 91-224, approved April 3, 1970.^{1/}

The Commission is composed of five Commissioners appointed by the President with the advice and consent of the Senate. The Commissioners are appointed for 5-year terms, with not more than three of the Commissioners being appointed from the same political party. The President designates one of the Commissioners to be the Chairman, who also serves as the chief executive and administrative officer of the agency.

The statutory authorities and functions of the Commission embrace the following principal areas: (1) Regulation of services, rates, practices, and agreements of common carriers by water and certain 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 of the United States; (3) regulation of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water in the domestic offshore trades of the United States; (4) licensing independent ocean freight forwarders; (5) investigation of discriminatory rates, charges, classifications, and practices of common carriers in the waterborne foreign and domestic offshore commerce, terminal operators, and freight forwarders; (6) issuance of certificates evidencing financial responsibility of vessel owners or charterers of American or foreign vessels, having accommodations for fifty or more passengers and embarking passengers at United States ports, to pay judgments for personal injury or death, or to indemnify passengers holding tickets in the event of nonperformance of voyages or cruises; (7) issuance of certificates evidencing financial responsibility of vessel owners, charterers and operators of every vessel over three hundred gross tons, using any port or place in the United States to meet the liability to the United States for the discharge of oil and hazardous substances; and (8) rendering decisions, issuing orders, making rules and regulations governing and affecting common carriers by water, terminal operators, freight forwarders, and other persons subject to the Commission's jurisdiction.

^{1/} Executive Order 11548, dated July 20, 1970, delegates to the Federal Maritime Commission the responsibility and authority, pursuant to Public Law 91-224 "Water Quality Improvement Act of 1970," to issue regulations concerning requirements for the certification by the Commission of proof of financial responsibility of certain vessels to meet the liability to the United States for the discharge of oil.

The Commission's headquarters is located at 1100 L Street, N.W. Washington, D.C. 20573. There are field offices located as follows:

Atlantic District-----6 World Trade Center, Suite 603,
New York, New York 10048.

Pacific District-----525 Market Street, 25th Floor,
San Francisco, Calif. 94105.

Sub-Office:

Post Office Box 3184, Terminal Island
Station, San Pedro, Calif. 90731.

Gulf District-----Post Office Box 30550,
610 South Street,
Room 945, New Orleans, La. 70190.

Sub-Office:

Federal Building Courthouse
Room B-8
125 Bull Street
Savannah, Georgia 31401.

Puerto Rico District-----U.S. District Courthouse
Federal Office Building, Rm. 762
Carlos Chardon Street
Hato Rey, Puerto Rico 00917.

HIGHLIGHTS

During the year the shipping industry was faced with the conditions of illegal rebates and other malpractices in the U.S. liner trades; severe rate competition from non-conference Soviet carriers operating as cross-traders in the U.S. liner trades; and the increasing development of containerization, intermodalism, and other technological improvements. The Commission has attempted to move toward resolving these conditions and the problems inherent in them. To this end, the Commission undertook several initiatives during the reporting period in the areas of enforcement, Soviet cooperation, and progress in resolving problems attendant to intermodalism.

In addition, progress has been made in the area of "regulatory reform." In this connection, various changes have been made in the Commission's rules of practice and procedure to streamline and increase the effectiveness of the hearing process and generally to reduce delay, progress has been made in obtaining the necessary data to improve the use of economic analysis in regulatory decisions, and an assessment of a means of improving consumer representation before the Commission was undertaken.

The highlights of the activities during the period are summarized below.

REBATING AND OTHER MALPRACTICES

In April 1976, a major carrier indicated that it would make full disclosure of its rebating practices to the FMC. By August of 1976, the FMC obtained the names of hundreds of shippers who received illegal rebates and has opened separate cases on approximately 100 separate shippers. A large number of these shippers, in turn, have voluntarily disclosed receiving rebates from other steamship lines and separate investigative cases have been opened on many of these carriers.

It is now evident that these practices are quite widespread and it is necessary for the Commission to determine, as nearly as possible, the entire scope, while continuing to pursue the above mentioned individual investigations as evidence turns up.

During the period a comprehensive review of the various self-policing systems currently used by the steamship conferences for reporting violations under the terms of their agreement was initiated. The Commission's General Order No. 9 requires that conference agreements contain a provision for the expulsion of members who fail to abide by the terms and conditions of their agreements. The study will determine the strength and weaknesses of these systems and recommend ways in which the self-policing system might be improved.

The Commission also initiated a factfinding investigation to make an indepth survey of the matter of malpractices generally in our trades.

ENFORCEMENT PROGRAM

An aggressive enforcement program to eliminate rebating and other

malpractices was initiated. The Commission on February 4, 1976, imposed the heaviest malpractice fine in its history involving \$197,000.

In May 1976, Chairman Bakke reestablished the Bureau of Enforcement. In announcing the reestablishment of this Bureau Mr. Bakke impressed upon the Bureau Director the tremendous importance of facing head-on the malpractice problems in ocean transportation.

The Bureau is under a mandate to initiate a program to deal effectively with these problems, particularly the widespread practice of payment of illegal rebates of ocean freight charges by foreign-flag as well as American-flag carriers serving in United States foreign trades.

Recent disclosures already indicate that many steamship lines have paid illegal rebates of ocean freight charges. As a result evidence of varying degrees has been obtained which implicates over a hundred U.S. companies which were recipients of these illegal rebates.

The Bureau of Enforcement has embarked upon the most ambitious program of investigation of ocean transportation malpractices in the history of the Federal Maritime Commission. To the extent resources allow, the Bureau intends to conduct investigations into all major foreign trades of the United States and all major carriers, shippers and forwarders handling shipments in those trades.

EX PARTE NO. 261

On January 30, 1976, the Interstate Commerce Commission rendered a decision in Ex Parte No. 261, *In the Matter of Tariffs Containing Joint Rates and Through Routes for the Transportation of Property between Points in the United States and Points in Foreign Countries*. This latest decision in a rulemaking proceeding originally instituted on July 31, 1969, formalized the existing regulatory pattern whereby the Interstate Commerce Commission exercised jurisdiction only over the inland U.S. portion of joint rail-ocean or motor-ocean rates. Subsequent to the decision of the Interstate Commerce Commission, the Federal Maritime Commission withdrew its appeal to the President that had been made under Section 19 of the Merchant Marine Act of 1920 against the prior assertion by the Interstate Commerce Commission of regulatory jurisdiction over the entire joint rail-ocean or motor-ocean rate (Ex Parte No. 261, decided June 27, 1975). This latest decision by the Interstate Commerce Commission is providing a minimally satisfactory regulatory environment permitting the agencies to cooperate in the furtherance of the intermodal concept. This agency believes that the Congress must eventually resolve the question of a more appropriate regulatory form to deal with the many complexities caused by developing transport technologies.

LENINGRAD AGREEMENT ON FREIGHT RATES

It has been the traditional practice of major worldwide ocean

carriers to band together in conferences on important trade routes to diminish competition and establish a pattern of rates that insure reasonable profits. In 1916, Congress found that if discriminatory steamship practices carried on by independent carriers in the United States foreign commerce continued, it would lead to possible unreasonable prejudice against the small shipper. Subsequently, Congress passed the Shipping Act of 1916, which assigned certain responsibilities to the Federal Maritime Commission to review all agreements between carriers and approve only those that were found not to be unjustly discriminatory or unfair. In its regulatory capacity, the Commission has approved conference agreements in most of the major U.S. foreign trades.

Historically, these agreements have allowed both conference and nonconference carriers to exist side by side. Since the early 1970's, however, a new element has appeared which has been threatening to upset this traditional balance. This element is the increasing number of Communist Bloc merchant ships in world sea lanes. On entering new trades, the Soviets in particular have tended to establish rates at a level that will attract sufficient cargoes to maximize hard currency earnings. The Commission in its studies of rate practices has found that the Soviets in each major trade have established rate patterns which enable them to achieve that objective. The Soviets, by generally operating outside the framework of the conference systems, have caused an uneasiness on the part of other carriers. Industry sources indicate that this situation has caused at least some of the operators to resort to a variety of tactics in an effort to secure sufficient cargoes for their own vessels.

This competitive situation continued to build particularly in the Pacific, with non-Soviet conference carriers seeking to justify malpractices as necessary to attract cargo in the face of Soviet rates that were frequently alleged to be below the break-even point for non-Soviet carriers, and Soviet carriers retorting that their rate levels merely reflected the effective "net" rates in the trade, taking into account alleged rebates or other malpractices by non-Soviet carriers. The confrontation appeared to be out of hand, making it essential for the Commission to act. In the course of our discussions with officials of the major conference/carriers in the Pacific liner trades at an owners' meeting in Japan in April 1976, they agreed that malpractices, particularly rebates, had been proliferating and that the time had come for rededication to a policy of corporate morality and to principles and procedures for effective conference self-policing. This breakthrough and the prompt good faith steps taken, set the stage for receptiveness on the part of Soviet carriers to renewed overtures concerning conference membership in the U.S. liner trades.

At our meeting in July 1976, in Leningrad, with the Soviet Ministry of Merchant Marine, agreement was reached concerning principles to govern participation of Soviet common carriers in the U.S. ocean cargo trades. The Federal Maritime Commission and the Soviet Ministry of Merchant Marine mutually agreed to utilize the good offices of their respective agencies to achieve the following goals:

1. All ocean cargo rates contained in tariffs of Soviet carriers

now engaged as independents in the liner trades of the United States shall, as promptly as it is feasible, be adjusted to a level no less than that of the lowest rate in use for the same commodity of any other independent carriers in those trades.

2. Thereafter, prompt action shall be taken, as necessary, to maintain the foregoing relationship between ocean cargo rates of Soviet carriers engaged as independents in the liner trades of the United States and the ocean cargo rates for the same commodity contained in the tariffs of other independent carriers in those trades.

3. Discussion shall promptly be resumed concerning equitable terms and conditions for conference membership of Soviet carriers in the North Atlantic liner trades of the United States, with particular attention to the principle of temporary rate differentials for Soviet carriers in those trades based upon differences in the services offered by Soviet carriers and by other carriers in those trades, such rate differentials to be (a) reasonably related to the degree of differences of such services, and (b) promptly eliminated as the services in question reach a reasonable degree of comparability.

4. Discussions shall promptly be initiated concerning equitable terms and conditions for conference membership of Soviet carriers in the inbound and outbound conferences serving Pacific liner trades of the United States in which the Soviet carriers are not now conference members, with particular attention to the principle of temporary rate differentials for Soviet carriers as set forth in paragraph 3 above.

The parties hereto have also mutually agreed that henceforth there must be closer working relationships between their respective agencies concerning exchange of factual information and policy questions, and that the necessary steps shall be promptly undertaken.

This Memorandum Agreement was targeted to reach a workable commercial solution to what is essentially a commercial problem. During the months from July to September 1976, a Commission task force was formed to establish working arrangements with the Soviets and to call to their attention rates that appeared to need adjustment. The task force took the following steps in each trade in an effort to obtain meaningful data:

1. Each Soviet tariff was identified;
2. Each trade area of each tariff was identified;
3. A list of every carrier tariffed in those trade areas was prepared;
4. Each tariff from this list was examined in an effort to determine which were "in use";
5. A list of meaningful independent carriers was prepared;
6. Rate comparisons were made on major moving commodities;
7. Assistance from carriers was sought in preparing lists of commodities requiring Soviet rate action; and

8. Each Soviet rate action taken subsequent to September 1, 1976, was recorded.

By the end of September 1976, there were many indications that the Soviets were acting in good faith in that they were already negotiating conference membership in certain trades, and tariff adjustments filings were being made to bring their rates into line with the Agreement. At a meeting on September 20, 1976, held with Soviet agency representatives from Morflot America, we were advised that hundreds of other tariff actions would be taken as a result of the Leningrad Memorandum Agreement.

REGULATORY REFORM

The Commission had made diligent efforts to streamline and improve its regulatory processes. A Committee on Expediting the Hearing Process has been operational for quite some time. The committee is a standing committee that maintains a continuous oversight of the Commission's procedural regulations.

As a result of this committee's recommendations, several changes have been made in the Commission's rules of practice and procedure to reduce the length of evidentiary hearings and eliminate unnecessary evidentiary hearings. To this end, rules have been issued that eliminate ambiguities where they have been found in existing rules, clarify the authority of the presiding Administrative Law Judge, and establish alternative remedied procedures. For example, rule changes have fostered the narrowing of issues by encouraging litigants before the Commission to file prehearing statements and to enter into stipulations.

The Commission has also amended its rules through its decision in Docket No. 76-27, *Miscellaneous Amendments to Rules of Practice and Procedure*, to provide for a specially expedited procedure for rate proceedings, to allow completion of the proceeding and closing of the record no later than four months after the carrier's proposed effective date of the rate changes, and to authorize the presiding Administrative Law Judge to delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying, or interpreting the order. This latter authorization will serve to reduce delay from parties asking the Commission to "clarify" its order.

The Commission is making an effort to improve the use of economic analysis in its decision making. The emphasis in this area has been and continues to be placed on the data gathering process. In order to improve our use of economic analysis, we must first improve the accuracy and sufficiency of the data available to the Commission. Progress was made to this end during the report period.

In Docket No. 73-15, *Non-vessel Operating Common Carriers: Balance Sheet and Income Statements Report*, the Commission promulgated rules and regulations, currently in effect, which impose data reporting requirements upon Non-Vessel Operating Common Carriers (NVOCs) serving the domestic trades. This regulation should increase the Commission's ability to judge the financial condition of such persons, the cost which they sustain, and the reasonableness of the rate structure charged for their service.

U.S. OCEANBORNE COMMERCE IN REVIEW

INTERMODALISM

Containerization of cargoes and the development of container-on-flat car and containership service have given intermodalism a forceful impetus, and, as a technological advance, is a major consideration in ocean shipping in virtually every area of the world. Container services are offered from all U.S. coasts and since 1971, when two U.S. carriers filed the first intermodal minibridge tariffs, intermodalism has grown to the extent that over 170 independent intermodal tariffs and 11 intermodal conference tariffs are filed for the account of more than 35 ocean carriers.

In decades to come, our transport capacity will have to be greatly expanded to accommodate our exploding consumer demand. While the intermodal technology is available to significantly increase capacity of existing physical transport facilities, the multi-agency approach to regulation of international trade has impeded the development and implementation of more efficient intermodal transport systems despite some ten years of discussion and effort to ease regulatory hindrances.

An important point is that the Federal Maritime Commission is the transportation agency which is responsible for the regulation of the dominant part of most intermodal transport systems -- ocean transportation. Consequently, the FMC not only has a vital interest in any law, rule, or regulation which affects ocean transportation, but we are also concerned that progress in intermodalism not be retarded by government inaction. There is consensus that some government action is necessary although it is not agreed whether it should be solely legislative, solely agency, or a combination of the two.

The lack of intermodal legislation has permitted the massive diversion of containerized U.S. exports and imports over Canadian intermodal routes. No effective regulation extends to this traffic to deal with the predatory and disruptive ratemaking induced by competition for these cargoes by carriers operating from and to Canada. This unregulated competition has increased the volume of cargo diverted from the U.S. transportation network and our ports since 1970. In a move to recapture the substantial amount of U.S. midwestern cargo that has been lost to Canadian railroads and ports, several carriers have proposed new tariffs offering direct intermodal service with through bills of lading from key inland U.S. cities to European ports via East Coast ports. This represents a radical departure from the minibridge pattern where the point of departure is a port served by the ocean carriers.

TARIFFS

In fiscal year 1975, 29 conference and rate agreements had intermodal authority and six conference intermodal tariffs were on file with

the Commission. During the report period, conferences and rate agreements with intermodal authority increased slightly to 32. However, conference and rate agreement intermodal tariffs on file increased from six to 13. The intermodal tariffs are in the United Kingdom, European Continent, Mediterranean, Japan, Korea, and Hong Kong trades.

Only the two inbound Far East trade conferences name minibridge rates to U.S. East Coast ports, and the service is via water to U.S. West Coast ports thence overland to East Coast ports. The other 11 intermodal conference or rate agreement intermodal tariffs cover the trade to and from the United Kingdom and Europe and the intermodal service covered thereby is to and from foreign inland points.

There is no conference or rate agreement intermodal tariff on file and in effect with the Commission which names rates to or from U.S. inland points.

AGREEMENTS

The Commission approved the Latin American/Pacific Coast Steamship Conference Agreement No. 8660-5 on May 23, 1972. The filing was an innovation and its provisions have since been used by many conferences to obtain approval of intermodal authority. Any member desiring to establish for itself a through-movement rate, route, arrangement or bill of lading is required first to present the matter to the conference. Only in the event the conference is unable or unwilling within 90 days to establish a through-movement rate, route or arrangement sought by the proposing line, shall the line be free to act unilaterally. The conference at any time has the power and authority to adopt through movement provisions, and thereafter to require the adherence of the said member line to the conference action. The Commission has required such conference intermodal rates to be equally favorable to those of the member line which are being cancelled.

LASH/SEABEE SERVICES

Lighter-Aboard-Ship (LASH) operators continue to offer viable services between U.S. South Atlantic and Gulf ports and Europe as well as between the Pacific Coast and the Far East.

LASH encompasses the use of containers on an intermodal basis and envisages a complement of barges or lighters which are carried between ocean ports on board a mothership. The barges are towed between the ocean ports served by the mothership and either adjacent "outports" or ports on inland waterway systems here and abroad. Whereas all other types of vessels require regular berths, the LASH vessel can operate at anchorages, while insuring that cargo can be discharged or loaded irrespective of whether the facility is adequate to support container operations. This system allows shippers to negotiate credit immediately after cargo has been loaded since each barge is usually a registered vessel and, as such, permits the issuance of on-board bills of lading at the time the cargo is placed in the barges.

CONTAINERIZATION

CONTAINER INTERCHANGE AGREEMENTS

In a continuing effort to maintain inventories and hold costs to a minimum, carriers entered into six more container interchange agreements during the reporting period. This brings the total number of such agreements to twenty-five which the Commission has approved authorizing the parties to interchange containers, container chassis, and/or related equipment. Similarly, two additional agreements have been entered into which provide that one carrier may lease containers and related equipment from another carrier for a per diem charge. A total of six such arrangements are now in effect.

TARIFFS

Containerization has enabled cargo carriers to easily transport shipments by means of more than one transportation mode. Thus, land/sea shipping routes have become common. Ocean carriers now file tariff rates having much greater geographical scope than the traditional port-to-port rates. They include pier-to-house, house-to-pier and house-to-house rates. "House" means a location inland from the port of loading or inland beyond the port of discharge.

SPACE CHARTERING

The Japanese carriers filed a petition to add an additional containership for operation under their approved space chartering agreement in the trade between Japan and the United States Atlantic Coast. Prior thereto, the agreement authorized the parties to operate a total of seven containerships pursuant to their arrangement. Under this type of space chartering arrangement, no money is exchanged; only a system for accounting for the spaces actually used by each participant and each vessel is available to each of the groups. These arrangements reduce the overall cost of operation, allow more frequent calls for each participant and benefit the shippers by assuring an available vessel for their cargoes. The Japanese lines have three such agreements in effect between Japan and the West Coast and one between Japan and the Atlantic Coast.

EQUIPMENT INTERCHANGE AND LEASING

The membership of the Far East Equipment Interchange and Lease Agreement (No. 10032) increased from seven to eleven carriers. In the case of the leasing of empty containers, the parties are to provide information on the per diem charges assessed to the Commission upon its request.

On March 6, 1976, the Commission approved an agreement between Nippon Yusen Kaisha (NYK) and Matson Navigation Company (MNC). This agreement covers an arrangement whereby MNC would provide and coordinate all NYK Inventory Equipment Control System computing, telecommunications and supporting services in connection with NYK's U.S. Pacific Coast operations. The ability of an ocean carrier to inventory, locate, control and identify the status of container equipment and shipments is directly related to economical and efficient vessel and terminal operations, reliable inventory control and superior customer service. This is an example of the new and innovative types of agreements which are frequently being entered into as containerization and intermodalism become more prevalent.

UNITED STATES-CANADIAN FEEDER SERVICE

A carrier that has maintained a feeder service linking United States and Canadian East Coast ports filed two new agreements with the Commission for approval seeking authority to expand its operations to include a similar feedership service on the West Coast. Ports of call in the new operation are to include San Diego, Los Angeles-Long Beach, San Francisco-Oakland, Portland, Seattle-Tacoma, and Vancouver, British Columbia. It is planned that operations will begin in the next fiscal year with two container ships and ultimately be expanded to eight multipurpose replacement ships, each having container, roll-on and lift-on capacity for the transshipment of containers to and from deep sea liner companies.

CONTAINER LEASING AND BARGE INTERCHANGE

Another source of containers is the companies, other than common carriers by water, who own and lease containers to common carriers and shippers. For a fee, generally on a per diem basis, a carrier may lease containers to supplement its own supply. As only one of the parties involved, the common carrier, is subject to the Shipping Act, 1916, such transactions are not subject to Commission jurisdiction.

Because of the limited number of LASH and Seabee vessels in operation relative to container vessels and vessels that can accommodate some containers, only two new barge interchange agreements have been filed with and approved by the Commission. There are now five of this type agreement in effect.

INTERNATIONAL COUNCIL OF CONTAINERSHIP OPERATORS

The International Council of Containership Operators' Agreement membership consists of common carriers by water owning or operating container vessels in the U.S. foreign commerce. The council, which operates under a discussion agreement, is concerned with long-range maritime industry planning with respect to a broad range of factors such as environmental controls, intermodal regulations, technological development, fuel and

energy requirements, monetary and fiscal policies, port development and other governmental programs which affect maritime activities. The minutes and reports filed with the Commission by the parties to this agreement are among the most informative and comprehensive of any minutes filed.

TRENDS IN TRADE BY GEOGRAPHIC AREA

AUSTRALIA

Frozen meat continues to be the major Australian commodity exported to the United States. The Australian Meat Board (AMB) establishes the ocean rate on meat through negotiations with steamship lines or conferences thereof and requires that shipments of meat from all Australian ports be at the same rate, irrespective of differences in the cost of handling cargo and the economics of shipping from ports in different regions of Australia.

The AMB is a governmental statutory body which, in addition to its authority to determine the ocean rate on meat, can purchase meat, export or sell meat for export, or take other actions for the purpose of increasing the quantity of Australian meat exported.

When recent shipping costs began rising, the AMB intervened on behalf of shippers in the trade, an action which resulted ultimately in the demise of the northbound Australia/Eastern U.S.A. Shipping Conference. Specifically, during the years 1974 - 1975, freight rates in the Australia/U.S. East Coast trade increased by 35 percent. Another 13.5 percent increase due to take effect on November 19, 1975, prompted the AMB's intervention. The AMB advised the conference that it would not pay the new rate, and in the alternative, invited the conference lines, individually, to carry meat at the existing rate. The four container lines accepted the AMB's offer and resigned from the conference on 30-days' notice. Subsequently, on March 25, 1976, the next to the last member line resigned therefrom, an action which, in effect, legally terminated the conference agreement on that date. The former conference lines have independent tariffs on file with the Commission, quoting rates on frozen meat acceptable to the AMB.

The Commission approved Agreements Nos. 10247, 10248, 10250 and 10250(A) between carriers in the Australian trade on September 29, 1976. These agreements authorized premium payments by the other member lines to Refrigerated Express Line for the carriage of meat lifted at North west Australian ports destined to U.S. East and Gulf Coast ports; coordination of sailings; the Australian Meat Board's designation of Refrigerated Express Line as the carrier responsible for providing breakbulk service for the carriage of meat from Australia to U.S. East and Gulf Coast ports; and provided that Farrell Line, Columbus Line, Associated Container Transport (Australia) Ltd., Australian National Line and Atlantraffik Express Services guarantee to compensate Refrigerated Express Line for any shortfall in cargo allocated to it. Because of the above concerted activities agreed to by the parties, it is anticipated that a conference agreement will again be filed to cover this trade.

NORTH ATLANTIC

The Commission has under consideration proposals of the Continental North Atlantic Westbound Conference and the North Atlantic/Continental Freight Conference to modify their basic agreements to provide for two classes of membership for the purpose of establishing a two-tier rate system based on differences in the overall service characteristics of the two classes of membership. These modifications would set up standards for conference members.

Under these standards, one class may charge up to 10 percent below the other class members' rates the first year and 6 1/2 percent below the other class's rates after the first year and until they join the other class as a member.

U.S./EUROPE

A number of conferences in the U.S./European trades have sought and received Commission approval of specific authority to establish uniform rules and practices in Europe relative to the inland movement and positioning of containers and related equipment under the control of the carrier. This authority is in addition to the basic authority of these conferences to establish intermodal through rates and is designed to bring these activities under the control of the conferences' self-policing systems. Without such control, the sole purpose and intent of the conference system, i.e., to regulate the rates and practices of its member lines and to maintain stable rates and conditions, is weakened. In fact, without control over inland practices, conference control over port-to-port practices becomes meaningless.

SHIPPERS' COUNCILS

Shippers' councils exist in almost every country involved in the foreign commerce of the United States. The councils serve as a forum wherein shippers collectively negotiate, as one entity, the level of rates and other matters of mutual interest with conferences and/or carriers serving various trades. Consequently, councils are a force to be considered inasmuch as they are directly involved in the process of determining ocean freight rates.

In Australia, Britain, Japan and India, shippers' councils are very powerful institutions of long standing. The power of the Australian Shippers' Council is derived by governmental decree and, as a result, ocean carriers in the foreign trade of Australia are required to negotiate with it rates on all commodities, other than meat. The Japanese Shippers' Council has sought agreement from the two inbound Japanese conferences to amend the conferences' exclusive patronage contract systems to clarify and reduce the amount of damages that are to be paid in instances where a shipper has breached the terms of contract. Conferences in the Indian trades are under constant pressure from the All-Indian Shippers' Council concerning rate levels.

Shippers' councils do not formally exist in the United States; however, shippers' councils were discussed in the Containerization Institute Shipper's Dialogue held during February 1976. Also, the American Importer's Association is seriously studying the possibilities of forming such a national council. The Commission exercises no regulatory control over the actions of shippers' councils, however, it must consider and carefully weigh their influence as it concerns the activities of carriers and conferences operating in our foreign trade.

FREIGHT RATES AND SURCHARGES IN FOREIGN COMMERCE

GENERAL RATE INCREASES

Most of the trade routes in the foreign commerce of the United States were exposed to the institution of at least one general freight rate increase during the reporting period. While the Commission's authority over freight rates is limited, we endeavor to insure that general increases do not exceed the bounds of economic necessity. In addition, conferences and carriers frequently seek the recovery of unexpected and added expenses caused by conditions beyond their control in the form of temporary surcharges. Those who provide marine transportation services are exposed to the same type of inflationary cost pressures as those generally prevailing in recent years on an international, world-wide basis.

SURCHARGES

During the reporting period, the Commission continued to monitor various forms of surcharges that are added to the basic freight rates published by both conferences and independent carriers where they feel a genuine need for additional revenues exists. The Commission is aware of the right of carriers and conferences to impose surcharges upon cargoes moving to or from specific foreign ports as a result of certain valid unforeseen situations or conditions beyond their control which increase vessel operating costs. However, such surcharges may not be set at levels in excess of the need to recover the actual cost to which the carriers are exposed by the involved circumstances. We have found in the past that the majority of these additional costs relate to labor difficulties, port congestion, warlike conditions, currency fluctuations and increases in bunker prices.

The Commission is charged with the statutory responsibility of maintaining close surveillance over surcharges to insure that they are warranted by factual economic conditions. Our program dealing with port surcharges resulting from congestion, labor difficulties, or vessel detention has been quite successful in that numerous surcharges have been reduced or cancelled and others maintained in effect only so long as their need was valid.

During the past several years the Commission has witnessed instability in world currencies. Due to these fluctuations, many carriers found it necessary to file currency surcharges in many trade areas. This action became necessary when the acceptance of a devalued currency for freight payments resulted in financial loss in the international money market. At the present time, most currency surcharges have been cancelled or incorporated into the tariff rate structures. The Commission's surveillance in this activity has been instrumental in assuring that the carriers were not overly compensated by excessive currency surcharges.

The behavior of bunker fuel prices has subsided to the point that the majority of the carriers and conferences regard bunker expenses as a normal part of their operating expenses.

War risk surcharges also receive Commission surveillance. As hostilities and warlike activities flare up in different areas of the world, carriers and conferences publish war risk surcharges predicated on increases in insurance rates and crew bonuses. The Commission has received valuable assistance from the Maritime Administration of the Department of Commerce in furnishing cost figures that enable a determination as to justification for the surcharges as they are filed. Whenever costs are reduced, the Commission promptly contacts the carrier or conference, seeking a reduction or cancellation of the surcharge.

PROPOSED RULEMAKING-SUBMISSION OF REVENUE AND COST DATA-DOCKET 75-28

Despite the general effectiveness of our surcharge programs, the Commission has determined that in view of its statutory responsibilities, a need exists for the promulgation of rules requiring submission of certain revenue and cost data by conferences, members of rate agreements and independent carriers operating in the foreign commerce of the United States. Accordingly, a Notice of Proposed Rulemaking has been published that would require common carriers by water in the foreign commerce to indicate the circumstances of their cost requirements and translate these changing circumstances into justification for the additional revenues being sought in the form of general rate increases or surcharges. Comments from carriers and other interested parties are presently under review.

FREIGHT RATE DISPARITIES

Rate disparities, both reciprocal and third market, have long been a matter of Commission concern. Docket 65-45 dealt with discriminatory ocean freight rates in the North Atlantic United Kingdom trade. The adjudication of the issues in this proceeding provided the Commission with established criteria and a formulated policy which we hoped would permit us to effectively deal with freight rate disparities. The Commission found that the burden of justifying the higher U.S. export freight rate shifted to the carrier/conference with the mere existence of a higher export rate, and the ability of the shipper to demonstrate harm. This

formula applies where the U.S. exporter pays a higher rate than that which applies on the same commodity moving either in the opposite direction of the same trade or from other foreign sources to the same market for which our exporter is competing.

Other formal proceedings have been instituted since this case. Two dockets (73-28 and 73-29) dealt with 115 disparate commodities in the Far East trade. Recently the Commission discontinued these proceedings on the condition that within 45 days from September 14, 1976, the date of the Order, the proposed corrective rate actions will have been implemented by the respondents.

The Commission's experience with these proceedings has prompted the institution of a new program for dealing with freight rate disparities. The new program will first obtain all of the facts as to whether a higher export rate for a particular commodity is impairing American exporters' ability to market their products overseas. It will also determine whether sufficiently similar cargoes are moving in the trades involved to warrant Commission action. Where appropriate, the carrier/conference publishing the higher U.S. export rate will be called upon to justify same based upon valid transportation considerations.

The program will utilize the cargo movement data which are now available to the Commission on a computerized basis. The use of these data at the initial stages of consideration on disparity problems will greatly assist in identifying most disparities where commodities are sufficiently similar and the higher export rate might be illegal.

The Commission will increase its efforts to encourage the adoption of a uniform commodity classification system on a broad international basis. While both government and industry forces have been working toward uniform commodity classification, we will increase our promotional efforts to the extent feasible, because uniform classification will assist greatly in the elimination of cosmetic disparities due to "paper" rates. Our disparity program will also seek the aid of industry and U.S. Government sources to help us identify those disparities which actually harm the American exporter.

TERMINAL GROWTH

Aside from providing the traditional facilities necessary for handling breakbulk and bulk cargoes, the terminal industry provides the pivotal point of land/sea interface in the intermodal scheme, a point at which the inherent technological advantages and efficiencies of intermodalism over traditional shipping systems can be best maximized. At this point, it appears that the first generation of terminal development and modernization to accommodate container and LASH/SEABEE transportation systems is about completed. Millions of dollars have been invested in construction of new berths and rehabilitation of older facilities. Container cranes and supporting upland handling areas for container traffic, mobile cranes and assembly areas for serving LASH/SEABEE barges, specialized berths for loading and unloading roll-on/roll-off (Ro/Ro) cargo and rail

interchange facilities either have been or are in the process of being constructed at virtually every major and many minor U.S. ports.

It now appears that some ports are faced with some degree of over-capacity in terms of container facilities. In fiscal year 1976, the Commission approved an agreement between two major waterfront proprietors to coordinate the future development of their port area so as to de-emphasize further construction of container terminal facilities and focus their combined efforts on the development of terminal facilities for other types of cargo.

The involvement of our vast inland waterway system in waterborne foreign commerce continues to grow due to the utilization of LASH/SEABEE and miniship systems. Not only is cargo that once moved overland between coastal ports and inland destinations now moving directly to and from the American heartland, but the impetus towards the development of additional export-oriented industry is growing as well, due to the easier access to direct ocean transportation.

SURVEILLANCE/COMPLIANCE/ENFORCEMENT

AGREEMENTS REVIEW

Section 15 of the Shipping Act, 1916, provides that continued approval shall not be permitted any conference agreement which fails to provide certain terms and conditions for admission and readmission to conference membership, and withdrawal therefrom without penalty. It further provides that the Commission shall disapprove any such agreement after notice and hearing, on a finding of inadequate policing of the obligations under it, or for failure to adopt and maintain reasonable procedures for promptly and fairly hearing shippers' requests and complaints. Section 15 also clearly indicates criteria of agreements that will not be approved or permitted continued approval. One of the criteria for denying approval is an agreement that is in violation of the Shipping Act.

In Docket No. 75-56 the Commission served its Order on Petition for Reconsideration on February 26, 1976, concerning the *Canadian-American Working Arrangement, et al.* holding that such agreements are price fixing agreements, and are per se violations of the U.S. antitrust laws. As such, these agreements are contrary to the public interest unless they are ". . . required by a serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose of the Shipping Act," that is, justified. *F.M.C., et al. v. Aktiebolaget Svenska Amerika Linien, et al., (Svenska)* 390 U.S. 238, 240 (1968). The burden of adducing the evidence which shows the need for the agreement is on the proponents of the agreement. Evidence includes factual data submitted by persons other than the Commission staff and data of which the Commissioners may take official notice. Such evidence does not include the arguments of counsel or the lay opinions of the proponents of the agreement. Since the serving of this order the Commission has required the submission of substantive justification in conformity therewith before processing agreements. Guidelines for such justification are found in the case itself, and the precedent cases, *Svenska and Marine Space Enclosures, Inc. v. F.M.C. and United States*, 420 F. 2nd 577 (D.C. Cir. 1969).

During the reporting period 273 carrier agreements were processed under Section 15 (46 during the transition quarter), 64 percent increase over agreements processed in fiscal year 1975. A statistical table of receipts and total active agreements appears as Appendix A.

The surveillance of approved agreements involves a review of the basic agreement and modifications thereof in order to determine that it continues to meet the requirement of Section 15, the applicable Commission's General Orders, i.e., 6, 7, 9, 14, 17, 18, 23 and 24, and is in conformity with the latest Commission and Court decisions. If the agreement is no longer in conformity

with the above criteria, correspondence is undertaken with the agreement parties in an attempt to have the agreement modified to bring it into conformity. Occasionally the agreement parties comply only after the implementation of a formal proceeding.

The Commission is the recipient of reports filed by parties to agreements which are analyzed to determine that no malpractices are being committed by the parties, that the parties are not engaged in activities beyond the scope of their agreement, and to assess the impact of their activities upon competitors and the shipping public.

Reports filed by parties to Section 15 agreements are:

MINUTES OF MEETINGS

It is the responsibility of the Commission to insure that the parties to Section 15 conference and ratemaking agreements are at all times complying with the Shipping Act, 1916, and with their approved agreement. In order to discharge this responsibility, the Commission must be fully and currently apprised of the manner in which conference operations are being and will be carried out, and requires that meaningful and timely reports, such as minutes, be furnished it. As more discussion agreements are entered into, in its orders approving same, the Commission is imposing requirements that minutes of meetings among the parties and copies of data exchanged among the parties be filed with the Commission.

During the reporting period 2,941 minutes of meetings of conference, ratemaking and discussion agreements were filed with the Commission and reviewed by the staff (678 during the transition quarter).

SHIPPER'S REQUESTS AND COMPLAINTS

The phrase "shippers' requests and complaints" means any communication requesting a change in tariff rates, rules, or regulations, objecting to rate increases or other tariff changes, protesting alleged erroneous billings due to an incorrect commodity classification, incorrect weight or measurement of cargo, or other implementation of the tariff. The Commission's General Order 13 requires that all conferences file quarterly reports of shippers' requests and complaints received and to advise the disposition made of same.

During the year July 1975 through June 1976, the conferences received and acted upon 6,551 requests and complaints. The conferences granted 3,708 in whole or in part and denied 1,582 petitions. A total of 1,261 requests and complaints are in a pending status.

For the quarter July 1976 through October 1976, the conferences received and acted upon 1,857 requests and complaints, of which 946 were granted in whole or in part while 608 were denied and 303 are pending decision.

The grand totals for the 15-month period from July 1975 through October 1976, are as follows: 8,408 requests and complaints received, 4,654 were granted in whole or in part and 2,190 were denied and 1,564 are pending.

During the period being reported 429 reports covering shippers' requests and complaints were filed with the Commission and reviewed by the staff (88 during the transition quarter).

SELF-POLICING

Most self-policing reports showing positive activity are received from those conferences which employ a neutral body type policing system. In the Far East trades, Freight Conference Services, Inc. (FCS) is the neutral body presently performing self-policing services for four inbound conferences, two from Japan, i.e., the Trans-Pacific Freight Conference of Japan/Korea and the Japan/Korea-Atlantic & Gulf Freight Conference and two from the Hong Kong/Taiwan area, i.e., the Trans-Pacific Freight Conference (Hong Kong) and the New York Freight Bureau. In addition, FCS conducts self-policing for Rate Agreements Nos. 10107 and 10108 which are agreements between the inbound Hong Kong conferences named above and the major independent carriers in those trades. Outbound, both the Far East Conference and the Pacific Westbound Conference recently took action to employ FCS as their neutral body. It is anticipated that future self-policing reports submitted by these latter two conferences will show much improved self-policing activity.

The Associated North Atlantic Freight Conferences (ANAF) under Agreement No. 9978 polices the activities of the seven member conferences. Thereunder the Executive Director, or his duly authorized representative, in addition to performing self-policing activities based on complaints, may undertake investigations as he considers appropriate. In addition to self-policing and investigative authority covering member conferences, the agreement authorizes the Executive Director to perform cargo inspection services (in order to determine that the contents of a shipment are as indicated on the bill of lading and that the proper charges are being assessed). The agreement further provides, with respect to cargo inspection that any carrier participating therein may appoint the Executive Director as its agent for collecting underpayments of freight and applicable tariff charges.

The Commission conditionally approved Agreement No. 9978-9 on September 1, 1976, the intent of which was to authorize the Executive Director of ANAF to provide self-policing, enforcement, inspection or collection of tariff underpayment charges on behalf of any non-member carriers or conferences operating within the geographic scope of the agreement. Eleven agreements (primarily conference) in the U.S. foreign commerce have given such authority to the Executive Director of ANAF. The Commission's order further held that all such arrangements between ANAF and non-member carriers or conferences thereof must be immediately filed with the Commission for approval pursuant to Section 15.

During the reporting period, 220 semiannual self-policing reports were filed with the Commission and reviewed by the staff (62 during the transition quarter).

POOLING STATEMENTS

Pooling statements are filed with the Commission to keep it apprised of the activities of the parties to pooling agreements (the most anticompetitive type of agreement), providing it with data on the financial settlements made between the parties pursuant to the terms of the pool formula in the basic agreement. Such statements are usually filed on a semiannual and/or annual basis. Additional time is needed when follow-ups are required on delinquent pooling statements to ensure compliance by the parties with the terms of their agreements. The majority of pool agreements cover the Latin American trades. They usually require the approval of the Latin American Government served in addition to Commission approval before they may be implemented. The policy of the foreign government involved and the conditions desired by the participating Latin American flag line (usually government-owned) have to be given due consideration in the processing of such agreements.

Fifty-three pooling statements were filed with the Commission for audit by the staff during the reporting period (10 during the transition quarter). There have been several occurrences of a time lapse between the due date and the actual filing of pooling statements which is caused, to a large degree, by the fact that settlement under the pool must be agreed to by all participants, including the foreign flag participant(s).

OPERATING REPORTS

Reports being submitted by conferences with intermodal authority, by parties to such new agreements as space chartering agreements (primarily in the Japanese trade), by parties to cooperative working arrangements and sailing agreements, are categorized as "Operating Reports." In view of technological changes in the industry, it is expected that such reports will continue to increase in the future. These reports, in many instances, require a detailed analysis in order that the Commission be aware of the activities of the parties, and assured that their operations do not exceed the scope of their approved agreements. One hundred twenty-two operating reports were filed with the Commission and reviewed by the staff in the reporting period (23 during the transition quarter).

NONEXCLUSIVE TRANSSHIPMENT AGREEMENTS

General Order 23 exempts nonexclusive transshipment agreements (agreements which do not prohibit either carrier from entering into similar agreements with other carriers) from the requirements of Section 15. However, such agreements must be filed in the format outlined in the General Order and the involved tariff(s) must contain language required by the Order. The Commission is relieved

of reviewing such filings as they are processed at staff level as provided in General Order 23. Since the publication of this General Order, through September 30, 1976, 778 nonexclusive transshipment agreements have been filed with the Commission. As of September 30, 1976, 446 such agreements were in effect.

DOMESTIC AGREEMENTS

During the reporting period 25 domestic commerce agreements (9 during the transition quarter) were filed for Commission consideration.

TARIFF REVIEW

FOREIGN COMMERCE

FILINGS

The tariffs which are submitted for filing, as well as changes in their rates, rules and regulations, are examined under a continuing program to insure that the rates and practices of ocean carriers operating in the foreign commerce of the United States are in compliance with the Shipping Act, 1916, and other related statutes as well as applicable Commission general orders. Such examination includes, but is not limited to the requirements of:

- Section 18(b) and General Order 13 which prescribe tariff filing rules and regulations.
- Section 15 as to whether a tariff might require approval thereunder or whether rates and practices contained therein might extend beyond those which are authorized.
- Section 14(b) and the various provisions of the dual rate contract systems as approved by the Commission.
- Sections 14, 16 and 17 which proscribe unjust discriminations and undue or unfair preference or advantage.
- General orders of the Commission relating to freight forwarder compensation, import and export demurrage and other matters.

During the reporting period, the Commission received 541 new tariffs while 354 tariffs were cancelled, resulting in a net increase of 187 tariffs on file. This increase brought the total number of active tariffs on file as of September 30, 1976, to 3,361.

During FY 1976, 339,893 tariff pages were filed with the Commission resulting in a 31% increase over FY 1975.

STATISTICAL ABSTRACT

| | <u>Fiscal Year 1976</u> | <u>Transition Quarter</u> |
|---|-------------------------|---------------------------|
| Tariff Filings Received | 339,893 | 90,977 |
| Tariff Filings Rejected | <u>3,342</u> | <u>831</u> |
| Tariff Filings Accepted | 336,551 | 90,146 |
| Special Permission Applications Received | 71 | 26 |

SPECIAL PERMISSION APPLICATIONS

Under Section 18(b) of the Shipping Act, the Commission has the authority, "in its discretion and for good cause," to waive the 30-day notice provision applicable to new or initial filings and those involving an increase in cost to the shipper. During the reporting period the Commission received 97 special permission applications (26 during the transition quarter) requesting waiver of the tariff filing requirements for a variety of reasons. Out of the 97 special permission applications processed, 69 were granted, 22 denied, and 5 withdrawn (21, 5 and 0 respectively during the transition quarter).

In a related area, Incan Superior, Ltd., a common carrier by water in the U.S. Great Lakes/Canada trade, was granted exemption from the tariff filing requirements of Section 18(b) of the Shipping Act, pursuant to section 35 of this Act.

PROGRAMS AND SURVEILLANCE ACTIVITY

The examination of tariff filings is a very important Commission activity. These documents are not analyzed merely to insure compliance with our tariff filing regulations but to insure compliance with all applicable regulations. At the same time, the examination of tariff data is a vital source of information -- it is one means that the Commission has to know, and know timely, what the carriers and conferences it regulates are doing. Accordingly, a careful review of tariff data is essential to satisfy the Commission's responsibility for adequate surveillance over those it regulates.

Programs are maintained to review tariff material to: 1) identify any area of unjust or unfair treatment with respect to shippers, consignees, ports, other carriers, other persons, etc.; 2) identify discriminatory freight rates or charges which are detrimental to our commerce; 3) watch for trends in tariffs which favor or harm competitive geographic areas; 4) watch for the development of intermodal trends, particularly as they affect traditional trade patterns; 5) insure that general rate increases and surcharges are warranted by factual trade conditions; and 6) review very carefully all tariff rules and regulations to insure compliance with applicable Commission regulations and the formation of policies which develop and promote efficient, low cost marine transport services.

RULEMAKING

The Commission's General Order No. 13 (46 CFR 536), prescribes the manner in which the tariffs of ocean carriers engaged in the United States foreign commerce must be filed to comply with Section 18(b), Shipping Act, 1916. In April 1970, the Commission issued an amendment to this General Order to provide for the filing of intermodal tariffs. A completely revised General Order 13, aimed at tariff simplification and standardization, is under consideration. These proposed

revisions represent the limit to which the Federal Maritime Commission can reach to encourage the development of an intermodal transportation network under present regulatory statutes. The revised rules had been approved; however, Petitions for Reconsideration of that decision have been received, based upon the finding of the courts in *Port Royal Marine Corp., et al. v. United States, et al.* The decision of the court in that case casts doubt upon the validity of a joint Federal Maritime Commission/Interstate Commerce Commission understanding as to our respective roles in the regulation of barge traffic and raises broader questions as to our treatment of ocean carriers participating in intermodal operations.

EXEMPTIONS

During the reporting period, a carrier operating between Thunder Bay, Ontario, Canada, and Superior, Wisconsin, was exempted from our tariff filing regulations. This carrier participates in movements of cargoes in railroad cars moving between Canada and the United States, the rates for which are established by the rail carriers and filed with the ICC and the Canadian Transport Commission. Regulation of this same traffic by this agency appeared duplicative and unnecessary.

Under consideration at the close of the reporting period was an exemption of water carriers in the Pacific Northwest connecting railroads in Canada with those in Alaska and Oregon as to that traffic moving between the United States and Canada which is covered by railroad tariffs listing the water carriers as participants.

DOMESTIC COMMERCE

TARIFF MATTERS

The Commission's regulatory responsibilities in the offshore domestic commerce derive mainly from the Shipping Act, 1916, and the Intercoastal Shipping Act of 1933.

During the report period, there were 14,702 tariff pages filed (2,583 during the transition quarter), 1,303 (227 during the transition quarter) of which were rejected for failure to comply with the Commission's regulations as prescribed by Section 2 of the Intercoastal Shipping Act, 1933, and the Commission's Tariff Circular No. 3. In addition, 107 applications for special permission to waive the provisions of the Intercoastal Shipping Act, 1933, or the Commission's regulations were processed (19 during the transition quarter). After formal process, 29 tariffs were cancelled when carriers could not show any active participation in the trades.

As a result of the repeal of Section 6 of the 1933 Act, government tenders on file were reviewed and 120 of 121 tenders were cancelled after consultation with the carriers involved. New regulations have been proposed to streamline our tariff circular to make it more responsive to the contemporary needs of industry and the Commission.

AUTOMOBILE GUIDE

In August 1976, the Commission published the 10th Annual Edition of the FMC Guide on Shipping Automobiles, Automobile Manufacturers' Measurements containing the specifications for the 1977 model year automobiles. The current publication contains data submitted by 17 automobile manufacturers, including all major American manufacturers.

GUAM, MARIANAS ISLANDS

Service to Guam, an unincorporated territory of the United States, was disrupted early in the spring of 1976. This western Pacific island is subject to the cabotage laws and, accordingly, its domestic cargoes may only be carried by United States registry vessels. Guam essentially is served by only two such vessel operating common carriers, Matson Navigation Company (Matson) and United States Lines, Inc. (USL). In mid-April Matson advised the Commission that the two vessels which it uses to serve Guam were in need of extensive repairs before their Coast Guard certifications could be renewed. Consequently, one of Matson's scheduled voyages was delayed from late April until mid-June and a second sailing was delayed from late April to early July. Shipments originating in the contiguous United States were diverted from Matson's California ports to Seattle and one ship was diverted from Matson's Hawaiian service to the Guam service. The service to Guam was cut in half during the months of May and June, 1976.

These operational changes required corresponding tariff amendments to accommodate the changes in equipment used and ports served. While some of these changes could be handled under currently applicable regulations, certain of the changes required relief from the Commission's rules. Since the best interests of the trade were obviously to alleviate this area of any regulatory burden to insure adequacy of service, the tariff filing requirements were relieved to the extent necessary.

AMERICAN SAMOA

General increases averaging 17 and 19 percent were filed by Polynesia Line, Ltd. and Pacific Island Transport Line, respectively, to become effective in July 1976. These increases were the first to be filed in the American Samoa trade since 1973. Polynesia and Pacific Islands, both of whom are foreign flag operators utilizing Liberian registry vessels, cited rapidly escalating longshore labor costs, the evolving containerized nature of the service, and the generally unprofitable nature of the service, making the proposed-increases compulsory. The proposed increases drew nominal protests and in the absence of any other tangible evidence, the Commission permitted the increases to become effective without suspension or investigation.

VIRGIN ISLANDS

Trailer Ship Line (TSL) (the only active vessel operating common carrier formerly serving the Miami/Virgin Islands trade) ceased operations on March 14, 1976, since the vessels that were being utilized were removed from the trade by TSL's owners. Their weekly service to St. Croix and St. Thomas was replaced by Tropical Shipping and Construction Co., Ltd., who filed its initial tariff, effective on April 9, 1976. Trailer Container Line (TCL) was another new carrier in the trade, and basically replaced TSL's Ro/Ro operation with a containerized service at rates approximately 15 percent higher.

During the latter part of the fiscal year, Interisland Intermodal Lines, Inc. (Interisland), entered the Puerto Rico/Virgin Islands trade. Berwind Lines, Inc. (Berwind), the predominant carrier formerly serving this area ceased operation, filing complete cancellations of its tariff publications. Interisland is a wholly-owned subsidiary of the Crowley Maritime Corporation.

ALASKA

Common carriers providing service in support of the trans-Alaska pipeline would ordinarily have to comply with statutory imposed requirements of filing tariff publications for this specialized service. By Order served February 5, 1976, the Commission exempted Puget Sound Tug & Barge Company, Alaska Barge & Transport, Inc., Foss Launch & Tug Company, and Foss Alaska Line, Inc., from the tariff filing requirements of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. This exemption, which will expire December 31, 1978, applies to the carriage of general cargoes between all ports and points on navigable water in the contiguous continental United States (excluding the Mississippi River system above Baton Rouge, Louisiana) and Prudhoe Bay, Alaska.

An initial joint FMC/ICC tariff was filed in the Alaska trade by Artic Lighterage Company (Artic) and it consists of lighterage from ship's anchor to shore at Kotzebue and Nome, and services between both ship's anchor and shore at Kotzebue and Nome and various Alaska points.

PUERTO RICO

Rico Lines, Inc. (Rico) filed an initial commodity tariff, effective December 26, 1976. This new service operated between Camden, New Jersey, Norfolk, Virginia, and the Puerto Rican ports of Ponce, Mayaguez, and San Juan. In May 1976, Rico halted its Puerto Rican operations, reportedly due to a dispute between Rico and Gulf Overseas Corporation (Gulf).

Seatrain Gitmo, Inc. (Seatrain) entered the Puerto Rico trade in November, offering service between East Coast ports and Puerto Rico. The advent of this service adds an additional 481 forty-foot containers

to the Puerto Rico trade at rate levels comparable to that of Puerto Rico Maritime Shipping Authority presently serving this area.

A fifteen percent across the board increase filed by Puerto Rico Maritime Shipping Authority (PRMSA) was allowed by the Commission to become effective September 21, 1975, as scheduled. However, the rate increase was placed under investigation in Docket No. 75-38. The Commission's Order of Investigation set forth specific goals and determinations to be reached since the unique regulation of PRMSA, a government-owned operation, raises new and, as yet, unexplored questions.

Proposed increases on selected commodities filed by Trailer Marine Transport Corporation (TMT), were placed under investigation by the Commission and the rates suspended, to and including September 16, 1976 (Docket No. 76-28).

HAWAII

United States Lines (USL) and Matson Navigation Company (Matson) were named as respondents in a formal docketed proceeding to determine whether the carrier's forty-foot container rates on Foodstuffs, All Kinds and Freight, All Kinds, established in July 1975, will subject any person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage.

Due to the Commission's informal staff/investigative suggestions and the cooperation of Matson and USL, the carriers have deleted bogus container yard addresses, established by each carrier in response to bilateral competitive pressures in the West Coast/Hawaii trade. It was disclosed by the Commission's Pacific District that certain shippers/consignees were receiving drayage allowances by the establishment, by the respective carriers, of bogus container yards located at the business address of the involved shippers/consignees.

Variable percentage increases, filed by Matson to become effective in December 1975 and January 1976, were suspended and placed under investigation.

Effective in January 1976, Matson increased its rates applicable to bulk molasses moving from Hawaii to the Pacific Coast. Despite this substantial percentage increase the rates are still at levels substantially below Matson's system averages. It is anticipated that while the molasses cargo will account for seven percent of Matson's total revenue tonnage, it will only provide 1.7 percent of Matson's projected ocean carriage revenue.

Effective June 1, 1976, Matson deleted all but a few of its less than containerload rates from its Hawaii-bound container service. Matson's professed purpose was to eliminate rates which were either under-utilized or which did not provide an adequate profit margin. At the same time, Matson served notice to the Commission and the shipping public, that it would no longer absorb increases in costs until a general increase was filed, but would rather pass them through as increases at the time they incurred. An example of this was Matson's subsequent increases in drayage charges attendant to its pickup and delivery service on the West Coast.

Matson also deleted its published rates on paper products and related articles from its Pacific Northwest to Hawaii tariff, effective June 22, 1976. These commodities will now move under rates published in Matson's tariff which applies from the entire West Coast to Hawaii. This was done to allow Matson to effect rates more acceptably profitable. The deleted rates, allegedly, had been maintained at a depressed, marginally remunerative, level in response to barge competition. As there is no longer any significant barge competition, Matson deleted the rates. Although the deletions did result in increases of approximately 25 percent the deleted rates were found to be only marginally remunerative, if at all; there was no viable competitive reason to maintain the depressed rates; and deletion of the rates was a step toward restoring rate parity between Pacific Northwest ports and those of the South Pacific Coast. The Commission, therefore, saw fit to allow these deletions to become effective as scheduled.

DUAL RATE CONTRACT SYSTEMS

Section 14b of the Shipping Act, 1916, authorizes the Commission to approve dual rate contract systems by any common carrier or conference of such carriers in foreign commerce which would otherwise be violative of the antitrust laws.

The American West African Freight Conference dual rate contract system (second westbound) covering nine specific commodities moving westbound was extended for a three year period on July 11, 1975. Also, the Scandinavia Baltic/U.S. North Atlantic Westbound Conference's institution of a dual rate contract system on general cargo in the Scandinavian sector (Norway, Denmark, and Sweden) was approved for a three year period on December 18, 1975.

The Trans-Pacific Freight Conference of Japan/Korea, and the Japan/Korea-Atlantic and Gulf Freight Conference filed modifications to their approved forms of dual rate contracts. The former conference would extend its contract scope to inland points in the United States, and the latter conference would extend its contract scope to include inland points in Japan and the United States. A protest and request for hearing was filed by Seatrain International, S.A. An order of investigation and hearing was served on March 2, 1976, in Docket No. 76-11, *Agreements Nos. 150 DR-7 and 3103 DR-7*. The matter is now pending before an Administrative Law Judge.

The North Europe/U.S. Pacific Freight Conference had dual rate contracts for general cargo and wines and spirits approved by the Commission on August 15, 1973, for a three year period. An application was submitted to extend the approval for a three year period. Comments thereon were received from the Wine and Beverage Wholesalers of California and the National Association of Alcoholic Beverage Importers. The dual rate contracts had never been implemented. Due to lack of justification for such extension the Commission served an order of investigation and hearing on September 21, 1976, in Docket No. 76-52, *Agreement No. 93 DR-1 Modification of the Merchant's Rate Agreement of the North Europe/U.S. Pacific Freight Conference*. Subsequently, at the request of the conference, the proceeding was discontinued.

TERMINALS

The marine terminal industry, whose role is to furnish the vital connection between the ocean carrier and the shipping public it serves, is also regulated by the Commission. All U.S. terminal operators serving common carriers by water are required to publish and file with the Commission tariffs specifying the rates, charges, rules and regulations governing the services offered at their facilities. Also, certain agreements between terminal operators and/or common carriers by water are required to be filed prior to their implementation for a determination by the Commission as to whether or not they qualify for the antitrust immunity accorded under Section 15 of the Shipping Act, 1916.

TARIFF FILINGS

In the course of the report period a total of 7,246 tariff filings were received and processed on behalf of terminal operators (1,668 during the transition quarter). At the conclusion of the transition quarter, the Commission had a total of 590 active terminal tariffs on file.

AGREEMENTS REVIEW

During the period, 244 terminal agreements (40 during the transition quarter) were filed for Commission consideration. As of September 30, 1976, there were 416 approved terminal agreements on file.

CONFERENCE MINUTES

During the entire period, 168 minutes of meetings of terminal and domestic offshore carrier conference and ratemaking agreements were filed with the Commission and reviewed by the staff.

RULEMAKING

The continuing trend of marine terminal operators to operate simultaneously as stevedores and operators of terminal facilities, coupled with the tremendous increase in containerized movements and roll-on/roll-off vessels has resulted in the filing of agreements between terminal operators and water carriers providing for all-inclusive terminal/stevedoring services. Such agreements raise jurisdictional problems inasmuch as the question of jurisdiction over the activities of entities acting strictly as stevedores has never been ruled on by the Commission. In order to provide guidance to the industry with respect to the Section 15 filing requirements for these types of agreements, the Commission has decided to revise the proposed rules in Docket No. 71-75, *Rules Governing the Filing of Agreements Between Common Carriers and/or "Other Persons" Subject to the Shipping Act, 1916*. The purpose of the revision is to clarify

the status of terminal/stevedore agreements and to propose an exemption under Section 35, Shipping Act, 1916, for certain types of agreements.

In its November 11, 1974, order in Docket No. 73-30 (*American Warehousemen's Association v. The Port of Portland*), the Commission announced its intention of looking into the legal and practical consideration presented by ports' utilization and operation of inland distribution centers.

The Commission, in its final decision in Docket No. 70-3 (*United Stevedoring Corporation v. Boston Shipping Association*, 16 F.M.C. (1972) (on remand from the U.S. Court of Appeals for the First Circuit)) considered the issues of (1) whether it has jurisdiction under Section 15 over articles of incorporation or association and by-laws of a maritime trade association, one of whose purposes is multi-employer collective bargaining; and (2) whether it likewise has jurisdiction over agreements otherwise subject to Section 15 but which are embodied in a collective bargaining agreement. In its conclusions, the Commission, for the first time, adopted the concept of a "labor exemption" applicable to both collective bargaining agreements and those agreements setting forth the articles of incorporation and by-laws establishing maritime multi-employer collective bargaining units, provided certain criteria were met. In discussing the application of these criteria to the matters then before it, the Commission announced its concurrence with the recommendations of Hearing Counsel and the Department of Justice that a Section 35 rulemaking proceeding be considered "in order to exempt for the future this class of agreements from some or all of the requirements of Section 15 of the Shipping Act, 1916, thereby not jeopardizing collective bargaining by any threat of a pre-approval implementation penalty." Such a proposed rulemaking is now being prepared.

In General Order 35 the Commission has promulgated rules and regulations to implement a solution to delays in the handling and interchange of freight between ocean and motor carriers at the Port of New York. The General Order was published in the *Federal Register* on November 10, 1975. In order to permit terminal operators sufficient time to publish necessary tariff changes and instruct personnel in procedures to be followed in processing trucks at the terminals, the effective date of the Order was delayed until April 8, 1976, with the penalty provisions of the Order effective July 5, 1976. The Commission is monitoring all activity in connection with this rule and currently maintains a list of contacts as required by the rule, and is prepared to assist in the handling of claims, disputes, informal complaints and other questions that may arise in connection with this matter.

TARIFF MATTERS

Because of the continuing effects of inflation, terminal rates continue to rise, generating comments and complaints from users of terminal facilities. The Commission's staff is closely watching this situation and, where deemed appropriate, has requested terminal operators to provide justification for the increased rates.

A dispute between Encinal Terminals and competitive terminals on the West Coast was successfully resolved. Encinal had protested what it considered to be excessive free time allowances granted crude rubber by the Port of Tacoma, and petitioned for a modification to the Commission's Order in Docket No. 555. After considerable correspondence and discussions with the various parties involved, tariff changes were proposed and accepted which satisfied all concerned and resulted in Encinal withdrawing its petition.

This dispute is one of several instances where it appears that some ports may be granting excessive free time on certain types of cargo, resulting in situations which may result in placing competitive ports at an unfair disadvantage. Commission staff have met with various port personnel and, in addition, have issued a circular letter to the industry on this matter. Results of the meetings and comments that have been received to date are presently under review for appropriate action.

On April 22, 1976, the California Association of Port Authorities (CAPA), rescinded its decision to establish wharfage assessments on the basis of weight or measure, whichever produced the greater revenue. CAPA officials had suggested the change in an attempt to resolve alleged inequities currently existing with respect to wharfage assessments on certain types of cargoes. Particular abuses were cited on "high cube" cargoes (cargoes whose weight to measurement ratio is very low). Several complaints were filed with the Commission and directly with CAPA. Discussions between the Commission and CAPA officials ensued in an effort to resolve this controversy. Inasmuch as the contemplated change has now been withdrawn, no further action is deemed necessary.

The Commission has instituted three proceedings relating to the problems Seatrain Gitmo, Inc., has been encountering in obtaining adequate container terminal facilities at San Juan, Puerto Rico. One is a show cause proceeding intended to determine whether or not violations of Sections 15 and 16 of the Shipping Act may have occurred in the administration and use of certain container terminal facilities located at the Isla Grande portion of San Juan Harbor. The second is an investigation and hearing arising out of a protest by Seatrain Gitmo, Inc., against Commission approval of four terminal agreements at the Puerto Nuevo portion of San Juan Harbor. The third proceeding is intended to determine whether the Puerto Rico Ports Authority is violating Sections 16 First and/or 17 of the Shipping Act, 1916, by refusing to assign Seatrain Gitmo to berths at Isla Grande, San Juan, and whether the Puerto Rico Shipping Authority, the Puerto Rico Ports Authority, or both are violating Section 16 First or Section 17 of the Shipping Act, 1916, by refusing Seatrain access to the container cranes at Isla Grande.

OCEAN FREIGHT FORWARDERS

The Commission, under the provisions of the Shipping Act, 1916, as amended, is charged with the licensing and regulation of independent ocean freight forwarders. The Commission's General Order 4 sets forth the criteria which must be met by freight forwarder applicants in order to be licensed, and governs the conduct and activities of regulated forwarders.

LICENSING

To date, approximately 1900 freight forwarders have been licensed after having been found "fit, willing and able" to properly carry on the business of freight forwarding. On September 30, 1976, there were 1217 active forwarders and 697 separate branch offices maintained by those forwarders. The Commission maintains regulatory surveillance over their activities and must, on a continuing and current basis, carry forward this regulatory and licensing program.

During the report period the Office of Freight Forwarders received 219 new applications (46 during the transition quarter) of which 187 (37) were licensed. Also during this period 197 new branch offices of licensees were approved.

In 1975, a new program was implemented by the Commission whereby investigation of freight forwarder license applicants is conducted by the freight forwarder regulatory staff in Washington by correspondence and telephone. Prior to that time, each application was sent to the Commission's field offices for investigation and, for the most part, was an expensive and time-consuming endeavor. The type of investigation now conducted by telephone and correspondence within the Washington office has been found to be fully adequate in the majority of instances. In certain applications, however, there are problems which arise and do require field investigatory processing. Out of the total of 219 applications received during the report period, 21 cases were sent out for field investigations because of the complexities involved.

Nevertheless, the program has resulted in more efficient utilization of the Commission's staff and has substantially reduced the time between the filing of an application and approval of the license from an average of nearly six months to approximately five weeks.

DENIALS AND REVOCATIONS

During fiscal year 1976 and through the transition quarter ending September 30, 1976, the Commission revoked 63 outstanding licenses for various reasons and 38 applications were denied or revoked.

SIGNIFICANT PROCEEDINGS

During the 15 month period various formal proceedings were initiated and/or decided by the Commission involving freight forwarder applicants and licensees. They were:

Docket 75-37, *Independent Ocean Freight Forwarder Applicant-International Air Services, Ltd.* In this proceeding, the Commission denied the application for an independent ocean freight forwarder's license because it found the applicant unfit for licensing and the experience of applicant's officers inadequate to properly

carry on the business of forwarding as required under Section 44, Shipping Act, 1916.

Docket 75-47, *Independent Ocean Freight Forwarder Application-Korea Express U.S.A., Inc.* This proceeding was instituted after investigation of the application revealed a shipper connection which appeared to be disqualifying under the statutes. The case, however, was dismissed upon the withdrawal of the application.

Docket 76-48, *Independent Ocean Freight Forwarder License No. 161-J.T. Steeb & Co., Inc.* This proceeding was instituted after determination that a purchase of Steeb's license may result in an unlawful shipper connection barred by the statutes. That case is now pending.

Docket 74-31, *Independent Ocean Freight Forwarder Application-Lesco Packing Co., Inc.* The Commission in this proceeding found the applicant for an independent ocean freight forwarder license unfit and denied the application.

Docket 75-17, *Independent Ocean Freight Forwarder Application-Cleto Hernandez d/b/a PanInter.* This proceeding involved an employee of an export shipper who was also a licensed independent ocean freight forwarder. The Commission found that the control exercised by the employer was sufficient grounds to revoke the license.

Docket 75-11, *Independent Ocean Freight Forwarder Application-Sequoia Forwarders Company.* The Commission instituted this proceeding to determine whether the applicant was sufficiently independent of shipper control and without beneficial interest in export shipments. The application was approved after a final evidentiary hearing.

AUTOMATIC DATA PROCESSING SYSTEM

The Commission has continued to upgrade its automatic data processing system for maintaining current and accurate information with respect to licensed freight forwarders. As the freight forwarder industry is a dynamic and changing business, new forwarders are constantly entering the field and older forwarders are dropping out, and branch offices are constantly being relocated or new ones opened. Therefore, it is essential that we maintain a current and accurate record keeping system regarding licensed ocean freight forwarders.

RULEMAKING PROCEEDINGS

The Commission is reviewing existing regulations which apply to the licensing and regulation of ocean freight forwarders and is in the process of major revision of these rules. As experience has demonstrated, some of the rules no longer apply to current

circumstances and should be eliminated or modified. In other areas, experience has shown that rulemaking proceedings should be conducted in an effort to make the Commission's regulations more effective in carrying out its regulatory responsibility and to make such regulations more directly related to the business practices of the regulated forwarders.

PASSENGER VESSEL FINANCIAL RESPONSIBILITY

The Commission is charged with the responsibility of administering Sections 2 and 3 of Public Law 89-777 under which owners, charterers and operators of passenger vessels having 50 or more accommodations and embarking passengers at United States ports are required to establish their financial responsibility to meet their liabilities for death or injury to passengers and other persons on voyages to and from United States ports and to indemnify passengers in the event of nonperformance of voyages or cruises.

CERTIFICATES ISSUED

During the reporting period, the Commission received 91 applications for certificates of financial responsibility (10 during the transition quarter). Eighty-five applications were approved (13 during the transition quarter) consisting of 18 new applications for Certificates of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation; 14 new applications for Certificates of Financial Responsibility to Meet Liability Incurred for Death or Injury; and 53 applications for amendments to existing certificates reflecting changes in ownership, chartering, corporate and vessel name changes, revision of corporate ownership structures and changes in evidence of financial responsibility.

CERTIFICATES REVOKED

Nineteen certificates were revoked during Fiscal Year 1976 and 8 during the transition quarter as vessels were retired from service, sold or withdrawn from the United States trade.

ENFORCEMENT

Fiscal Year 1976 was one of the most difficult experienced by the passenger lines. The effect of the Greek Line and Inces Line cessations of operations continued to be felt by the industry. As a consequence of heavy losses sustained by the guarantors, the Commission was faced with numerous 30-day notices of cancellation of guaranties by guarantors. The passenger lines in turn applied to the Commission to re-evaluate their respective Section 3 requirements, and approve

changes in the amount or type of evidence of financial responsibility.

The public continued to benefit from the provisions of Public Law 89-777. During fiscal year 1976 the Commission assisted in halting several situations where cruises were promoted without complying with Section 3 of the law. As a consequence of such efforts, the Commission believes no passengers sustained financial loss.

The Commission adopted the initial decision, dated March 8, 1976, in Docket No. 73-54 - *Windjammer Cruises, Inc. and Windjammer Cruises Ltd.*, in which the Administrative Law Judge found that Windjammer Cruises, Inc. had violated Section 3 of Public Law 89-777 and 46 CFR 540.3 in arranging, offering, providing, and selling passage to passengers who embarked on the FLYING CLOUD at Mayaguez, Puerto Rico, without having complied with the financial responsibility requirements of the statute and the Commission's regulation.

The Commission has under consideration a Petition for Declaratory Order filed on behalf of American Cruise Lines, Inc. which seeks an order from the Commission declaring that the provisions of Section 3 of Public Law 89-777 are inapplicable to a carrier operating pursuant to the authority of, and in accordance with, the requirements of the Interstate Commerce Commission.

The Commission has written to many of the passenger lines concerning trade-out agreements. Many cruise lines advertise with various media on a trade-out basis. The media obtains cruise credits in exchange for its promotion and advertising. The Commission is interested in determining whether or not the cruise credits are made available to other than the media personnel and, if so, whether such activity may result in undue or unreasonable preference or advantage to any particular persons and whether such activity may be in violation of Section 3 of Public Law 89-777.

PASSENGER CONFERENCE AND CARRIER AGREEMENTS

The Commission approved 3 passenger vessel conference and passenger carrier agreements in the reporting period. The Commission presently has pending before it Agreement No. 10072 filed by 25 passenger lines which, if approved, would permit them to organize themselves as a conference known as the Cruise Lines International Association (CLIA). The Commission also has pending before it Agreement No. 10072-1, the proposed administrative rules of CLIA which have been filed with the Commission to be considered for approvability under Section 15 of the Shipping Act, 1916, as amended.

The purpose of CLIA (as a conference) is to provide a forum where companies engaged in the marketing of the cruise and passenger liner industry in North America can discuss matters of common interest and develop and agree on activities aimed at promoting and marketing the concept of shipboard holidays, represent its members in dealing with industry conferences and/or associations and governmental agencies, and also represent its members in matters relating to the qualification and appointment of travel agents.

WATER POLLUTION FINANCIAL RESPONSIBILITY

The Federal Maritime Commission is charged with the administration of the provisions of section 311(p)(1) of the Federal Water Pollution Control Act.

Section 311(p)(1) of the Act requires domestic and foreign vessels over 300 gross tons, including certain barges of equivalent size, using any port or place in the United States or the navigable waters of the United States including the Panama Canal, to establish and maintain with the Federal Maritime Commission evidence of financial responsibility to meet the liability to the United States to which such vessels could be subjected for the removal of oil or hazardous substances discharged into or upon United States waters.

The financial responsibility requirements with respect to oil have been in effect since April 3, 1971. The financial responsibility requirements with respect to hazardous substances, however, cannot become effective until the Environmental Protection Agency establishes necessary regulations, including a definition of such substances, the quantities of each substance which would constitute a harmful discharge, etc. The Environmental Protection Agency's proposed rulemaking to establish such regulations was published in December 1975, and final publication is expected at any time.

LEVEL OF RESPONSIBILITY

The evidence of financial responsibility required by the Federal Water Pollution Control Act must be in the amount of \$100 per gross ton of a subject vessel or \$14 million, whichever is the lesser. Such evidence, usually in the form of insurance, is maintained to reimburse the United States Government for costs incurred in the removal of oil which has been discharged into United States waters.

The Commission's regulations implementing the oil pollution financial responsibility requirements, General Order 27, provide for the certification of vessels having complied with the statutory financial responsibility requirements; set forth the procedures whereby the owners or operators of subject vessels may establish the required evidence of financial responsibility; and establish the qualifications required by the Commission for the issuance of certificates, as well as the basis for denial, revocation, modification, or suspension of certificates. No subject vessel is free to use United States waters without carrying a valid certificate and presenting such document to authorized enforcement officials upon request.

ENFORCEMENT PROGRAM

The Federal Water Pollution Control Act Amendments of 1972, enacted on October 18, 1972, provide that any vessel not in compliance with the financial responsibility requirements is subject to a fine not to exceed \$10,000, denial of entry into United States waters and detainment by the Coast Guard, and denial of clearance from United States waters by the U.S. Customs Service.

These enforcement provisions are administered under a joint program involving the United States Coast Guard, the United States Customs Service, and the Federal Maritime Commission. The Panama Canal Company also is involved with enforcement under a separate program with the Commission.

Because the statutory enforcement authority with respect to the financial responsibility requirements involves dovetailing but completely separate field functions of the Coast Guard, the Customs Service, and the Panama Canal Company, it is necessary for the Commission to coordinate the enforcement activities as among the agencies themselves, on the one hand, and as between the shipping industry (i.e., the vessel owners, steamship agents, brokers, etc.) and the three enforcement agencies, on the other hand.

All four involved agencies (FMC, USCG, USCS, and PCC) have been continuously improving upon the enforcement procedures to assure that the interests of the United States are fully protected but that no vessel is detained longer than necessary. For example, because detention costs could run as high as \$40,000 per day and could result from a simple case of a misplaced certificate, during the year the Commission expanded its role in the joint enforcement program by providing regular-hour duty officers on weekends. This seven-day-per-week program has resulted in a unique, quick-response program known worldwide.

During the period the Commission received 1,723 compliance inquiries (437 during the transition quarter) from field locations ranging from Alaska to the Panama Canal and from Guam to the U.S. Virgin Islands. Of that number of cases, detentions of from only a few hours to two days resulted for 76 vessels (15 during the transition quarter). Without the joint enforcement program, however, all 1,723 vessels would have been detained. The most typical cases involved matters such as changing a vessel's name but failing to obtain an amended certificate and misplaced certificates. No detention resulted in such cases because of the Commission's immediate confirmation to the enforcement officers in the field that the involved vessels were in compliance with the financial responsibility provisions of the Act.

HAZARDOUS SUBSTANCES

The Federal Water Pollution Control Act Amendments of 1972 provide for the eventual addition of "hazardous substances" as a class of pollutants for which vessel owners and operators must evidence financial responsibility. The addition of hazardous substances will not become effective, however, until the Environmental Protection Agency issues necessary regulations including a definition of hazardous substances.

At that time, all vessels previously certified by the Commission as having evidenced financial responsibility for removal of oil must be recertified to indicate that they have met the financial responsibility requirements for hazardous substances, as well as oil. The

Commission's regulations implementing this change, General Order 31, have been approved by the Commission and will become effective and completely replace General Order 27 on the date the Environmental Protection Agency's regulations governing hazardous substances becomes effective.

INSURERS EXAMINED

Generally, vessel owners and operators elect to evidence financial responsibility by submission of evidence of insurance. Such insurance is written not only by American insurance firms but by underwriters throughout the world.

The Commission must analyze and determine the financial capabilities of a particular insurer before accepting any insurance executed by such insurer. During the period the Commission approved six foreign underwriters for this purpose. Applications for six additional foreign insurers were pending at the close of the period.

CERTIFICATES ISSUED

During the period, applications were received covering 4,307 vessels (902 in transition quarter); certificates were issued to 3,996 vessels (839 in the transition quarter); certificates covering 2,926 vessels (517 during the transition quarter) were revoked for various reasons, including sale of the vessel to new owners; and applications covering 214 vessels were withdrawn (72 during the transition quarter).

At the close of the report period, 23,866 vessels were covered by valid certificates, and applications involving certification of 715 additional vessels were pending. In addition, 183 vessels were covered by special certificates termed "master" certificates, i.e., a type of blanket certificate applicable only to entities such as shipyards and scrappers which are never certain from one day to the next as to the vessels for which they will be responsible.

The workload does not diminish once a vessel is certified. In fact, it increases due to changes of insurance companies by vessel operators, substitution of one type of evidence of financial responsibility by another, annual submission of financial data by self-insurers, transfer of ownership, charters, vessel name changes, and similar situations which necessitate daily updating and continuous servicing of records as well as the revocation, recall, and reissuance of numerous certificates.

AUTOMATIC DATA PROCESSING

An automated record retention system concerning the certification of vessels is operational. This system provides accurate and current lists of vessels, vessel particulars (i.e., type, flag, tonnage,

certificate number, etc.), owners and operators, and the underwriter covering each vessel. This system is a constant and indispensable source of initial reference with respect to the enforcement inquiries from Coast Guard, Customs, and the Panama Canal Company.

Further, if a previously approved underwriter ceases to be acceptable to the Commission due to a failing financial condition or other reason, the vessel owners and operators covered by such insurer must immediately be identified and instructed to obtain substitute coverage in order to protect the validity of their certificates. The automatic data system is capable of such identification. During the year a revised and vastly expanded ADP system was developed in connection with the forthcoming hazardous substances recertification.

INFORMAL COMPLAINTS

This function of the Commission is to provide the consuming public, as well as the regulated industry, with a point of contact to air grievances and secure prompt, inexpensive and uniform resolution of problems on an amicable and cooperative basis.

Through its informal complaints activity, the Commission (1) examines informal complaints or protests against the practices, methods and operations of common carriers by water in the foreign or domestic offshore commerce of the United States, or conferences of such carriers, ocean freight forwarders, terminal operators and other persons subject to the regulatory jurisdiction of the Federal Maritime Commission; and (2) takes appropriate action relative thereto by resolution through voluntary agreement of the parties; recommendation that the complaint or protest be rejected as not violative of the shipping statutes or rules or orders of the Commission; or referral to the Bureau of Enforcement for investigation.

During the reporting period, informal complaints, both domestic and foreign (except foreign complaints dealing with rates and rate problems) continued to be handled by the Office of Domestic Commerce, Bureau of Compliance.

There were 73 informal complaints pending at the beginning of fiscal year 1976, and during the year, 330 new ones were received (52 during the transition quarter). At the end of the reporting period 64 complaints were carried forwarded into fiscal year 1977, final action having been concluded on 339 (44 during the transition quarter). Of the new complaints received during the reporting period, 275 (83 percent) related to practices of water carriers in the foreign and domestic offshore trades, 28 (9 percent) related to practices of marine terminal operators, 18 (5 percent) related to the activities of independent ocean freight forwarders and nine (3 percent) related to shippers.

In addition to the foregoing, the Bureau's Office of Tariffs and Intermodalism handled informal complaints dealing mainly with rate problems and/or protests. The informal protest program is

designed to have maximum effectiveness on an informal basis. To achieve this effectiveness, the staff, upon receiving a complaint, corresponds both with the complaining parties, as well as the carrier/conference that the complaint involves in order to be able to resolve the complaint on an informal level.

At the close of fiscal year 1975, 159 informal complaints of this nature were pending. During the reporting period, 175 new complaints were received (30 during the transition quarter), making a total of 334 cases to be acted upon. At the close of the reporting period, 162 cases had been resolved (46 during the transition period), leaving 172 to be carried forward into fiscal year 1977.

The Commission's District Offices also handle informal complaints which fall within their immediate area of expertise.

ENFORCEMENT ACTIVITIES

The Commission's Bureau of Enforcement consists of a headquarters office in Washington, D.C., with strategically situated District Offices on the Atlantic, Gulf and Pacific coasts, and Puerto Rico. The Atlantic District office is located in New York City, the Gulf District office in New Orleans, and the Pacific District office in San Francisco, with a sub-office in San Pedro, California, to serve the port areas of Los Angeles/Long Beach. Another sub-office is scheduled for establishment at Savannah, Georgia, in early FY 1977. These offices represent the Commission within their geographical areas and provide liaison between the shipping industry and headquarters in Washington, D.C. Primarily, they investigate, for enforcement action, violations of the shipping statutes administered by the Commission. These investigations are conducted mainly in connection with the activities of common carriers by water, ocean terminal operators, ocean freight forwarders, shippers, and consignees. In addition, another important function of the Bureau is to conduct passenger vessel audits underlying certification of financial responsibility as a protection to U.S. passengers. District offices also furnish information, advice, and access to Commission public documents for interested persons and handle consumer complaints.

FIELD INVESTIGATIONS

New field investigations for the period totaled 894 (184 during the transition quarter). Of these, 207 (82 during the transition quarter) were malpractice cases which include unlawful rebates of freight charges and misdescriptions, misdeclarations, mismeasurements and misweighing of shipments to obtain (or allow) ocean transportation at less than the applicable freight charges. Possible tariff or agreement violations numbered 268 (28 during the transition quarter). The remainder of the cases include 208 (48 during the transition quarter) forwarder applicants for licenses and 211 (26 during the transition quarter) other forwarder matters requiring investigation.

At the beginning of the year 537 cases were under investigation. New cases added totaled 894. Thus, the Bureau had 1431 cases for investigation. Completed investigations totaled 769 (144 during the transition quarter), leaving 662 pending at the end of the reporting period.

FINES AND PENALTIES COLLECTED

During the reporting period fines and penalties totaling \$396,307.21 were imposed on 37 companies, including steamship lines, nonvessel operators, ocean freight forwarders and shippers. About half this amount was collected as a result of settlement of a single case which the Commission had referred to the Department of Justice for penalty action. Thirty-six percent was collected pursuant to the Commission's authority under P.L. 92-416 and the Federal Claims Collection Act of 1966. The remainder was collected as a result of court imposed fines in cases which the Commission referred to the Department of Justice for penalty action.

CARGO LOSS AND DAMAGE

On July 1, 1974, the Commission published final rules to become effective August 5, 1974, requiring domestic offshore carriers to file quarterly reports of cargo loss, damage and theft claims. As a result of almost total opposition from the steamship industry the Commission stayed the effective date of the rules and subsequently withdrew the rules altogether.

The Commission is now considering informal approaches to collecting cargo loss and damage data in ocean transportation.

SPECIAL STUDIES AND PROJECTS

SECTION 19 ACTION

On July 1, 1975, Delta Steamship Lines, Inc. filed a protest against the further approval of Agreement No. 10040, a cooperative working arrangement in the Miami/Guatemala trade between Flota Mercante Gracentroamericana, a Guatemalan flag line, and Pan American Mail Line, a U.S. flag line, on the grounds that the agreement was in furtherance of Guatemalan Decree No. 41-71, which, Delta maintained, prevented it from having complete, unrestricted access to cargoes moving in the U.S./Guatemala trade. In response to Delta's protest, a Section 21 Order was served by the Commission on July 25, 1975, on all liner operators serving the trade from United States Atlantic and Gulf ports to ports in Guatemala to aid the Commission in determining whether conditions unfavorable to U.S. flag shipping in the foreign trade of the United States had been created by Guatemalan Decree No. 41-71, and whether remedial action should be taken pursuant to Section 19 of the Merchant Marine Act, 1920.

On December 4, 1975, the Commission found that the Guatemalan Decree No. 41-71 had created conditions unfavorable to the foreign commerce of the United States in violation of Section 19 and requested that the Secretary of State seek resolution of the matter through diplomatic channels. In a letter to the Secretary, the State Department was requested to obtain from the Guatemalan Government by February 14, 1976, a withdrawal of its Decree 41-71 in its entirety failing which the Commission would take formal action. In the event the Department's diplomatic efforts were unsuccessful, the Commission intended to issue regulations pursuant to Section 19 of the Merchant Marine Act, 1920, designed to offset the effects of the Guatemalan law in the trade between the U.S. and Guatemala. However, because of the earthquake which struck Guatemala on February 4, 1976, the Commission postponed issuance of such regulations until November 15, 1976. At the close of the fiscal year members of the Commission's staff were conferring with Guatemalan officials to explore an amicable solution to restrictions on the access of both U.S. flag and third flag shipping lines to the transportation of cargo between the U.S. and Guatemala.

TIMELY FILING OF REPORTS

The timely filing of reports pursuant to the Commission's General Orders 7, 14, 18 and other reports pursuant to Commission orders of approval or Section 15 agreement terms has not been achieved in a number of instances. Such late filings can adversely affect the Commission's regulatory functions. These reports cover such diverse subjects as self-policing, shippers' requests and complaints, minutes of meetings, pooling statements and operations. The latter category

includes space-charter, sailing and intermodalism, among others. On April 23, 1976, Circular Letter No. 1-76 was sent to all common carriers by water in the foreign commerce of the United States, and conferences of such carriers. Therein the reporting requirements were explained. The addressees were requested to timely file such reports.

Reports filed in fiscal year 1975 totaled 2,543, while those filed for the period from July 1, 1975, through June 30, 1976, totaled 2,904. Some of this increase is directly attributed to the above circular letter. More timely report filings are anticipated during fiscal year 1977. If such is not the case a follow-up procedure will be implemented.

CURRENCY EXCHANGE RATES

The continued pattern of volatility in currency exchange rates has led to the establishment of a study program, on a regular basis, of international currency relationships and exchange rates. The current data are maintained daily on significant currency rate fluctuations and disseminated monthly on selected currencies.

NVOCC REPORTS OF RATE BASE AND INCOME ACCOUNT

The data accumulation and evaluation activities continued. The first reports were received and reviewed under the portion of General Order 11 relating to NVOCCs. As part of this review, a program of identification of common errors or difficulties was established with the objective of permitting early revision of the order or the issuance of further guidance, as necessary. A substantial telephone follow-up effort was utilized in obtaining compliance from and rendering assistance to these first-time data reporters.

FIELD AUDITS

A long desired objective of performing field examinations of carrier financial and statistical data was commenced in part. Several companies' data were reviewed on site in conjunction with hearings on other issues and one company was selected for audit under the recurring audit program. Six additional companies were selected for audit by the period end.

STANDARD COST INFORMATION AND REPORTING SYSTEM

The joint project with the Maritime Administration to develop a recurring, standard, cost information system for processing of carrier cost and statistical information by MARAD's ADP configuration passed several milestones. The programming has been tested and proven workable on data developed by the team; the users manual has been distributed to interested parties; a port-pair mileage table involving some 2,000 port

pairs has been developed and is in process of being distributed for carrier evaluation; and several carriers have been selected for on-site testing with actual financial and statistical data. The system will serve carriers, MARAD and FMC. Commission interest is in the production of unit cost data to be used in the regulation of military rates under G.O. 29.

FORMAL PROCEEDINGS

ADJUDICATORY PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGES

Administrative Law Judges preside at hearings held after receipt of a complaint or institution of a proceeding on the Commission's own motion.

Administrative Law Judges have the authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken whenever the ends of justice would be served thereby; regulate the course of the hearing; hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests or similar matters; make decisions or recommend decisions; and take any other action authorized by agency rule consistent with the Administrative Procedure Act.

At the beginning of fiscal year 1976, 84 proceedings were pending before Administrative Law Judges. During the reporting period 99 cases were added (18 during the transition quarter), which included 9 cases reopened and remanded to Administrative Law Judges for further proceedings. During the reporting period the judges held 43 prehearing conferences, conducted hearings in 33 cases (6 during the transition quarter), and issued 46 initial decisions (6 during the transition quarter) in formal proceedings, and 16 initial decisions (5 during the transition quarter) in special docket applications. Cases otherwise disposed of involved 47 formal proceedings (5 during the transition quarter).

COMMISSION ACTION

The Commission adopted 9 formal decisions, 11 special docket decisions, and remanded 2 formal proceedings.

DECISIONS OF ADMINISTRATIVE LAW JUDGES (IN PROCEEDINGS NOT YET DECIDED BY THE COMMISSION)

Docket No. 73-17 - *Sea-Land Service, Inc. and Gulf Puerto Rico Lines, Inc. - Proposed Rules on Containers* and Docket No. 74-40 - *Puerto Rico Maritime Shipping Authority - Proposed ILA Rules on Containers*. Puerto Rico Maritime Shipping Authority was found to be a common carrier by water operating between the East and Gulf Coasts of the United States and Puerto Rico but it was also found that its present tariff rules on containers are unlawful and that it must publish new tariff rules on containers which are lawful under the Shipping Acts.

Docket Nos. 73-42, 73-61, 73-69, and 74-4 - *Board of Commissioners of the Port of New Orleans, et al. v. Seatrains International S.A.* Joint rail-water service between New Orleans, Houston, Beaumont and Galveston, and ports in Europe and the United Kingdom, utilizing the Port of Charleston, was found not unlawful, unfair, unjustly discriminatory or illegal

within the meaning of sections 16, 17 and 18 of the Shipping Act, 1916, nor violative of section 8 of the Merchant Marine Act of 1920.

Docket No. 74-10 - *Freight Forwarder Bids on Government Shipments at United States Ports Possible Violations of the Shipping Act, 1916, and General Order 4*. The General Services Administration was found to have required bids for ocean freight forwarding services which, in certain instances, violated section 16, First, of the Shipping Act, 1916, and to have required the rendering of forwarding services at less than fully compensatory rates in violation of General Order 4. It was also held that freight forwarder services, unless rendered in connection with certain relief agencies or charitable organizations, must be charged uniformly to avoid giving unreasonable preference or advantage.

Docket No. 74-18 - *Dow Chemical International, Inc. v. American President Lines, Ltd., et al.* A provision in a conference tariff establishing conditions under which handling charges would be applied must be reasonably construed. However, the rule that ambiguities should be resolved against the carrier and in favor of the shipper must give way where resolution of the ambiguity would result in a strained and unreasonable interpretation of the tariff provision.

Docket No. 74-30 - *Sea-Land Service, Inc. - General Increase in Rates in the U.S. West Coast/Puerto Rico Trade*. An investigation of the justness, reasonableness and lawfulness of tariff rates under section 18(a) of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, was discontinued for mootness because the primary purpose of a ratemaking proceeding is to establish the reasonableness of rates for the future and the rates under investigation were no longer in effect, having been canceled and superseded by rates in a tariff which became effective after the commencement of the investigation.

Docket No. 74-35 - *Agreement No. T-2880, as amended, et al.* and Docket No. 74-42 - *Pouch Terminal, Inc. v. The Port Authority of New York and New Jersey*. Terminal agreements which dealt with the receiving, handling, storing or delivery of property were found not to subject complainant terminal to undue or unjust prejudice or disadvantage or to establish unjust and unreasonable regulation and practices in violation of sections 16 and 17 of the Shipping Act, 1916.

Docket No. 74-41 - *Agreement Nos. 8200, 8200-1, 8200-2 and 8200-3 between the Pacific Westbound Conference and Far East Conference*. An interconference agreement which among other things provided a "negotiated arbitrary" \$6 differential authority cannot, because of insufficient record information, be modified to provide for rate differentials between the conferences that reflect differences in cost of transportation.

Docket No. 74-51 - *Pacific Coast European Conference v. Southern Pacific Marine Transport, Inc., and The Southern Pacific Company*. It was found that while respondent was a nonvessel-owning common carrier it was not carrying on the business for forwarding without a license.

Docket No. 74-53 - *Agreement No. 17-34 - Application of the Far East Conference for Intermodal Authority*. It was found that the restraint imposed by the proposed agreement providing for intermodal authority was not necessitated by a serious transportation need.

Docket No. 75-3 - *Chevron Chemical Company v. Mitsui O.S.K. Lines, Ltd.* It was found that product OLOA 229 was properly classified as an Additive, Non-Hazardous N.O.S. Lubricating Oil. However an improper rate was assessed on one of three shipments and reparation was awarded.

Docket No. 75-8 - *Puerto Rican Forwarding Company, Inc. et al. - Possible Violations of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.* It was found that respondent operated as a nonvessel-owning common carrier without a tariff on file with the Commission in violation of section 18(a) of the Shipping Act, 1916, and section 2 of the Intercoastal Shipping Act, 1933, and also knowingly and wilfully obtained transportation by water at less than the otherwise applicable rate in violation of section 16 of the Shipping Act, 1916.

Docket No. 75-15 - *The Carborundum Company v. Royal Netherlands Steamship Company (Antilles) N.V.* It was found that the complainant failed to meet the heavy burden of proof requirement in its claim for reparation.

Docket No. 75-27 - *Abbott Laboratories v. Venezuelan Line.* It was found that respondent's tariff provision imposing a higher rate on commodities shipped by trade name was valid and reparation was denied.

Docket No. 75-30 - *Agreements Nos. 9718-3 and 9731-5.* It was found that respondents' containership service agreements, whereby space chartering, multiple solicitation, and spacing of sailings were permitted, had become, through doubling the aggregate size of their fleet, an excessive invasion of antitrust policies as well as a source of unfair competition and therefore approval was accorded upon condition that the size of their fleet operating thereunder be reduced.

Docket No. 75-31 - *CSC International, Incorporated v. Waterman Steamship Corporation.* It was found that the claim for reparation was barred by limitations.

Docket No. 75-35 - *Agreement Nos. T-1685 as Amended and T-1685-6: Between the City of Anchorage and Sea-Land Service, Inc.; and Agreement No. T-3130: Between the City of Anchorage and Totem Ocean Trailer Express, Inc.* Terminal agreements were approved if modified to indicate with greater clarity that the annual tonnage fees are applicable only against the specified number of annual preferential calls; that the Port Director may suspend preferential berthing rights when port and vessel safety so necessitate; that space will be made available for parking mobile homes; that space be available for off-loading cement; and that certain improvements be made for off-loading petroleum products.

Docket No. 75-44 - *E.S.B. Incorporated v. Moore McCormack Lines, Inc.* Reparation denied because complainant failed to meet the required heavy burden of proof.

Docket No. 75-50 - *Commercial Solvents Corporation International Inc. v. Moore-McCormack Lines, Inc.* Reparation awarded because shipment improperly described.

Docket No. 75-51 - *Perry's Crane Service v. Port of Houston Authority of Harris County, Texas.* Respondent's rental of cranes to stevedores operating on its facilities was held to compete with private crane owners

and renters and its requirement that its cranes be given first call for jobs and its right to "bump" private crane owners from jobs not yet completed constitute violations of sections 16 First and 17 of the Shipping Act. Termination of these practices ordered.

Docket No. 76-2 - *Borden Inc. International v. Venezuelan Line*. Reparation denied because complainant failed to meet the required heavy burden of proof.

Docket No. 76-16 - *MSA International v. Chilean Line*. Reparation denied because complainant failed to meet the required heavy burden of proof.

Docket No. 76-30 - *Pan American Health Organization v. Prudential Lines, Inc.* Reparation awarded because shipment was improperly described.

Docket No. 76-39 - *Caterpillar Overseas, S.A. v. South African Marine Corporation (N.Y.)*. Complaint dismissed because respondent was not a common carrier by water and therefore not subject to jurisdiction of the Commission.

Judges also issued initial decisions in Docket Nos. 69-57, 71-2, 71-8, 71-26, 71-34, 75-11, 75-12, Special Docket Nos. 466, 467, 468, 468 (on remand), 471, 472, 473, 474, 475, 477, and 479 described under "Decisions of the Commission." Judges also issued initial decision in Special Docket Nos. 476, 478, 480, 482, and 486 pending before the Commission.

PENDING PROCEEDINGS

At the close of the reporting period there were 74 pending proceedings, of which 34 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, the Department of Defense, and instrumentalities thereof.

FINAL DECISIONS OF THE COMMISSION

During the reporting period, in proceedings other than rulemaking the Commission heard twelve oral arguments, issued 19 decisions, and terminated 23 proceedings (1, 4, and 8 respectively in the transition quarter), one of which was remanded in part to the Office of Administrative Law Judges. Ten proceedings were discontinued or dismissed without decision and five were referred to the Office of Administrative Law Judges for hearing (4 and 3 respectively in the transition quarter).

The Commission also issued twelve decisions involving special docket applications and eight decisions in informal dockets involving claims against carriers in the amount of \$5,000 or less (1 and 2 respectively in the transition quarter).

Docket No. 69-57 — *Agreement No. T-2336 - New York Shipping Association Cooperative Working Arrangement* consolidated with Docket Nos. 71-2, 71-8, 71-26 and 71-34 — *Transamerican Trailer Transport, Inc., Seatrain Lines, Inc., Daniels and Kennedy, Inc., Chandris America Lines, Inc., Greek Line, Inc., Home Line Agency, Inc., Ingres Line v. the New York Shipping Association*. A claim of a group of carriers consisting of twelve break-bulk lines against the New York Shipping Association (NYSA) for over-assessments to cover benefits of longshoremen for the 1969-1971 period was found justified in the amount of \$689,599. The NYSA was directed to satisfy the claim and notify the Commission of the method of satisfaction. Provisions were also made for filing of additional claims by other persons seeking a refund for the 1969-1971 period.

Docket No. 72-46 — *Agreement No. 57-96 - Pacific Westbound Conference Extension of Authority for Intermodal Services*. An agreement granting Pacific Westbound Conference authority over intermodal rates was approved pursuant to section 15 of the Shipping Act, 1916, for a period of 18 months on condition that the agreement be modified to permit the member lines to individually offer intermodal service as to interior intermodal traffic as well as to minibridge traffic until such time as the Conference implements its authority.

Docket No. 73-54 — *Windjammer Cruises, Inc. and Windjammer Cruises, Ltd.* Respondent was found to have violated section 3 of Public Law 89-777 and section 540.3 of the Commission's regulations in arranging and providing passage on the FLYING CLOUD for persons embarking at Mayaquez, Puerto Rico, without having complied with the financial responsibility requirements of these laws and regulations.

Docket No. 73-73 — *Port of Houston Authority v. Lykes Bros. Steamship Co., Inc., et al.* Complainant was found to have failed to demonstrate that respondent's practices at the Ports of Galveston and Corpus Christi relating to handling of cotton cargoes violated sections 16, 17, or 18(b)(3) of the Shipping Act, 1916.

Docket No. 74-8 — *European Trade Specialists, Inc. and Kunzle & Tasin v. Prudential-Grace Lines, Inc., and the Hipage Co., Inc.* In a complaint alleging violations by a forwarder and carrier in regard to the proper classification of a particular cargo shipment, both the forwarder and carrier were found not to have violated section

16 of the Shipping Act, 1916, and the carrier not to have violated section 17 of the Act. Proceedings were remanded for further hearing on the issue of violation of section 17 by the forwarder and on the issue regarding the proper classification of the cargo by the carrier under section 18(b) of the Act.

Docket No. 74-14 — *Possible Violations of Section 18(a) of the Shipping Act, 1916, and Section 2 of the Intercoastal Shipping Act Arising From Charging Higher Rates Than Specified By Current Tariff.* Respondent Hawaii Freight Lines was found to have operated as a non-vessel operating common carrier subject to the Shipping Acts and to be liable for loss or damage to goods carried by virtue of holding itself out to the general public to carry goods for hire, notwithstanding its disclaimer of liability. Respondent was also found to have charged rates higher than those specified in its tariff.

Docket No. 74-17 — *Agreement No. 9955-1 - A/S Billabong; Westfal-Larsen and Co. A/S; Fred Olsen and Co.; and Star Shipping A/S.* An agreement between carriers setting up a procedure whereby another entity acts as the vehicle through which the other parties conduct a joint service and share profits or losses was found to be subject to section 15 of the Shipping Act, 1916, and approvable under that section since services are of benefit to shippers, ports and other persons. FAK rate structure and volume discount rate making practices of the joint service were found not to violate provisions of the Shipping Act.

Docket No. 74-31 — *Independent Ocean Freight Forwarder Application Lesco Packing Co., Inc.* An application for an independent ocean freight forwarder license was denied on the grounds that applicant was unfit in view of a long history of statutory and regulatory violations.

Docket No. 75-11 — *Independent Ocean Freight Forwarder Application Sequoia Forwarders Company.* An applicant for an independent ocean freight forwarder's license was found to be independent of shipper or consignee interests as required by section 1 of the Shipping Act, 1916, inasmuch as its affiliation with a produce broker does not make it a "purchaser" within the meaning of that section.

Docket No. 75-12 — *Crestline Supply Corporation v. The Concordia Line and Boise-Griffin Steamship Co., Inc.* A claim by a shipper for overcharge of ocean freight based on alleged ambiguity of tariff was denied where the particular provision, while perhaps requiring close judgments in rating cargo, was sufficiently clear as published to advise experts and laymen alike as to what commodities qualified thereunder.

Docket No. 75-17 — *Independent Ocean Freight Forwarder License Cleto Hernandez R. d/b/a Pan Inter.* An independent ocean freight forwarder license was revoked where failure to remit sums due a principal and failure to pay over ocean freight charges due a common carrier demonstrate a lack of financial responsibility, and where qualification for a license was impaired by employment by a shipper.

Docket No. 75-35 — *Agreement Nos. T-1685, as Amended, and T-1685-6: Between the City of Anchorage and Sea-Land Service, Inc.; and Agreement No. T-3130: Between the City of Anchorage and Totem Ocean Trailer, Inc.* An agreement granting a carrier preferential

berthing rights at the Port of Anchorage was found unapprovable in that a real possibility existed that it would serve to effectively preclude another carrier from offering a competitive service at the Port during period of severe icing conditions.

Docket No. 75-37 — *Independent Ocean Freight Forwarder Application - International Freight Services, Ltd.* An application for freight forwarder's license was denied because it lacked both the fitness and ability necessary (in view of applicant's false representations made in its application and later to an investigator) and because of its lack of experience to conduct the forwarding business.

Docket 75-41 — *Filing of Mail Rates by Common Carriers by Water - Petition for Declaratory Order and Application for Exemption.* In the absence of a clear mandate to the contrary in the Postal Reorganization Act, the requirements of the Shipping Act, 1916, were found fully applicable to the water transportation of mail. Ocean carriers were, however, granted an exemption from the tariff filing requirements of section 18(b)(1) of the Shipping Act, 1916, as to carriage of mail inasmuch as such exemption will not impair effective regulation by the Commission.

Docket No. 75-52 — *Cities Service International, Inc. v. Lykes Brothers Steamship Co., Inc.* A complaint seeking reparation for alleged overcharge was granted when complainant had shown that contract rate should have been applied when shipper was a subsidiary of contract signatory, and the cargo in question was proprietary cargo.

Docket No. 75-54 — *Union Carbide Inter-America, Inc. v. Venezuelan Line (Compania Anonima Venezolana De Navegacion)*; Docket No. 75-55 — *Union Carbide Inter-America, Inc. v. Venezuelan Line*; and Docket No. 75-58 — *Union Carbide Inter-America, Inc. v. Venezuelan Line.* These three cases involved claims by shippers for overcharges of ocean freight. The claims were granted where it was clearly shown that misratings had occurred because of inadvertent mistakes in descriptions on the bills of lading. Carrier tariff provision limiting time for bringing of claims does not preclude filing before the Commission within two year limitation.

Docket No. 76-5 — *Ace Machinery Company v. Hapag-Lloyd Aktiengesellschaft.* A dismissal of a claim for reparation on alleged overcharge of ocean freight was upheld where complainant had failed to timely challenge such ruling before the Commission, and where no overriding public interest considerations warranted a reopening and subjecting of respondent to further litigation.

RULEMAKING

The following rulemaking proceedings instituted during the reporting period are still in progress.

Docket No. 75-28 — *Submission of Revenue and Cost Data Concerning General Rate Increases and Certain Surcharges Filed by Common Carriers, Conferences, and Member Carriers of Rate Agreements.*

Docket No. 76-40 — *Filing of Freight and Passenger Rates, Fares and Charges in the Domestic Offshore Trade; Publication and Posting.*

Docket No. 76-49 — *Miscellaneous Amendments to Rules of Practice and Procedure.*

The following rules were published during the reporting period as a result of rulemaking proceedings.

General Order 36 — *Significant Vessel Operating Common Carriers in the Domestic Offshore Trade - Reports of Rate Base and Income Account - Docket 67-57.*

General Order 13 — *Filing of Tariffs by Common Carriers by Water in the Foreign Commerce of the United States and by Conferences of Such Carriers - Docket 72-19. (Effective date postponed pending reconsideration.)*

General Order 35 — *Truck Detention at the Port of New York - Docket 72-41.*

General Order 33 — *Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States - Docket 72-62.*

General Order 13, Tariff Circular 3 — *Exemption of Military Household Goods and Personal Effects Transported by Nonvessel Operating Common Carriers Engaged in Intermodal Traffic Movement - Docket 73-4.*

General Order 19, Amdt. 1 — *Currency Adjustment Surcharges Prompted by Change in Exchange Rate of the Tariff Currency - Docket 73-53.*

General Order 22, Amdt. 6 — *Procedures for Protection of Privacy of Individuals Identified in Commission Records - Docket 75-26.*

General Order 16, Amdt. 14 — *Miscellaneous Amendments to Rules of Practice and Procedure - Docket 75-36.*

General Order 22, Amdt. 7 — *Clarification of Procedures for Protection of Privacy of Individuals Identified in Commission Records - Docket 75-59.*

General Order 16, Amdt. 15 — *Miscellaneous Amendments to Rules of Practice and Procedure - Docket 76-27.*

The following rulemaking proceeding was referred to the Office of Administrative Law Judges for hearing and initial decision.

Docket 72-43 — *Criteria for Establishing Level of Military Rates Not Detrimental to Commerce of the United States Under Section 18(b)(5), Shipping Act, 1916.*

Two rulemaking proceedings were discontinued without adoption of final rules.

ACTION IN THE COURTS

The Federal Maritime Commission had pending before the various U.S. Courts of Appeals at the beginning of the 1976 fiscal year 15 proceedings that included twelve petitions to review orders of the Commission and three to review District Court decisions dealing with one or more parts of FMC's statutory authority. During the fiscal year ending June 30, 1976, nine more petitions were filed to review Commission orders, two appeals were taken from a District Court action against the FMC, and the Commission participated as amicus and filed briefs in the appeals of two District Court decisions in actions brought by private parties.

During the reporting period July 1, 1975 to September 30, 1976, 13 appeal proceedings had either been completed or withdrawn (one during the transition quarter) and the remaining eleven were pending briefing, argument or decision. One petition for certiorari to review a Circuit Court decision involving an FMC order was filed in the Supreme Court during this period.

The Commission assisted in one civil and four criminal actions under the shipping statutes instituted by the Department of Justice.

SIGNIFICANT CASES

The more important cases involving statutes administered by the Commission included the following:

Cargill, Inc. v. Federal Maritime Commission, 530 F.2d 1062 (D.C. Cir. 1976) was a proceeding challenging the Commission's decision in its Docket No. 71-29, *Baton Rouge Marine Contractors, Inc. v. Cargill Incorporated*, served January 7, 1975. The Court of Appeals affirmed the Commission's determinations that: (1) a terminal is authorized to impose charges against a stevedore under a Commission approved agreement between the terminal and a port; (2) it was not unlawful for the terminal to utilize a wholly-owned stevedoring subsidiary; and (3) certain specific allocations made for the purpose of assessing charges against stevedores were unlawful. A petition for writ of certiorari filed with the Supreme Court with respect to the first of these issues was denied on October 4, 1976.

Pacific Maritime Association (PMA) v. Federal Maritime Commission, et al. and International Longshoremen's and Warehousemen's Union v. Federal Maritime Commission, et al., D.C. Cir. Nos. 75-1140 and 75-1215, were consolidated proceedings challenging the Commission's order in its Docket No. 72-48, *Pacific Maritime Association - Cooperative Working Arrangements; Possible Violations of Sections 15, 16, and 17, Shipping Act, 1916*, served January 30, 1975, in which the agency found subject to its jurisdiction under Section 15, Shipping Act, 1916, that portion of a collective bargaining agreement which requires that nonmembers of PMA must adhere to certain provisions of the collective bargaining agreement before they can employ longshoremen in the PMA-ILWU joint work force. On August 27, 1976, the D.C. Circuit reversed the Commission, holding that the agency lacked jurisdiction under Section 15 over

provisions in collective bargaining agreements. The Commission has sought certiorari in the Supreme Court.

Wolfsburger Transport-Gesellschaft v. FMC, D.C. Cir. No. 74-1934, is a proceeding challenging the Commission's decision in its Docket No. 73-24, Agreement No. T-2635-2, *PMA Final Pay Guarantee Plan*, served June 25, 1975, in which the Commission found lawful, with respect to its application to automobiles, the assessment formula of the Pacific Maritime Association (PMA) used to fund a pay guarantee plan for long-shoremen's benefits, on the basis that assessments under the formula were reasonably related to benefits flowing to automobiles, and were not unlawfully disadvantageous to automobiles. The case has been briefed and argued and is now pending decision by the D.C. Circuit Court.

Federal Maritime Commission v. Interstate Commerce Commission, et al., D.C. Cir. No. 75-1924, was an action challenging, on jurisdictional grounds, rules promulgated by the ICC with respect to the filing of international joint rates and through routes participated in by ICC- and FMC-regulated carriers. Following filing of the FMC's petition for review on September 9, 1975, the ICC reconsidered its action, and issued a supplemental report and order, *International Joint Rates and Through Routes*, 351 ICC 490 (1976), which provided that the ICC's jurisdiction under its rules would be limited to the portion of the rate relating to the transportation by ICC-regulated carriers. Thereafter, on motion by the FMC, granted March 18, 1976, the proceeding was dismissed by the D.C. Circuit Court.

In *Kraft Foods v. Federal Maritime Commission*, 538 F.2d 445 (D.C. Cir. 1976) the D.C. Circuit Court of Appeals vacated the Commission's Order in Docket No. 73-44, *Kraft Foods v. Moore McCormack Lines, Inc.*, and remanded the case to the Commission for further proceedings. The Court held that the tariff rule requiring claims for adjustment of freight charges based on errors of description, weight or measurement to be filed before the shipment left the carrier's custody are invalid as conflicting with Section 2 of the Shipping Act.

In *Crowley Maritime Corporation v. Federal Maritime Commission*, D.C. Cir. (1976) No. 76-1606, the holding companies of several carriers sought to have a Commission Section 21 Order for production of documents vacated on the ground that the Commission lacked jurisdiction over the holding companies. Although the Court initially stayed the Commission's Order as to the holding companies, the stay was vacated after the issue was briefed. The petition for review was then withdrawn.

United States v. Blue Sea Line, et al., 5th Cir. No. 76-1566, is an appeal from a decision by the District Court for the Southern District of Florida dismissing a 266-count indictment charging violations of the rebating provisions of Section 16 of the Shipping Act, 1916. The District Court found that the P.L. 92-416 amendments to Section 16 in August 1972, were remedial in nature, and therefore civil penalty sanctions are to be applied retroactively to the offenses listed in the indictment (S.D. Fla. Cr. No. 75-588-Cr.JE). The case has been briefed and is pending argument before the Fifth Circuit Court of Appeals.

United States v. Sea-Land Service, Inc., D.M.J. Civ. No. 74-1664, is a civil penalty action for \$151,000 against Sea-Land for its non-compliance with a Commission order of suspension of certain tariff rules in the Puerto Rican trades governing the availability of containers for consolidators located within a fifty-mile radius of the Port of New York. This case has been argued and is awaiting a decision.

NON-ADJUDICATORY MATTERS

The Commission initiated 38 claims under the settlement and compromise authority of the Federal Claims Settlement Act of 1966 and Public Law 92-416 during fiscal 1976. During this same period 31 claims were compromised. These claims were made for alleged violations of Sections 15, 16, 18 and 44 of the Shipping Act, 1916, and Section 2 of the Intercoastal Shipping Act, 1933. The majority of the alleged offenses, however, involved infractions of the tariff filing provisions under the shipping statutes. Settlements from the enforcement claims program resulted in collections exceeding \$151,000 in the period 1 July 1975 through 30 June 1976. An additional \$10,000 was collected in the transition period. In addition, fines or penalties levied by the Court for Shipping Act offenses totaled more than \$250,000 during the 15 month period.

LEGISLATIVE DEVELOPMENT

SIGNIFICANT LEGISLATION ENACTED BY THE CONGRESS

P.L. 94-163 -- ENERGY POLICY AND CONSERVATION ACT

On December 22, 1975, President Ford signed into law S. 622, legislation designed to increase domestic energy supplies and availability, restrain energy demand, and prepare for national energy emergencies. Of particular significance to the Federal Maritime Commission is Title III, Part E, Section 382 of the Act. Under section 382, certain energy use and conservation responsibilities were assigned to five regulatory agencies, specifically the Civil Aeronautics Board, the Interstate Commerce Commission, the Federal Power Commission, the Federal Aviation Administration, and the Federal Maritime Commission.

On February 26, 1976, this Commission submitted a 60-day report to the Congress pursuant to subsection 382(a)(1) of the Act, summarizing the energy conservation policies and practices which the Commission had instituted subsequent to October 1973. Similarly, on April 20, 1976, a 120-day report was submitted to the Congress pursuant to subsection 382(a)(2) of the Act, describing "the content and feasibility of proposed programs for additional savings in energy consumption" by persons subject to Commission regulation "which have as a minimum goal a 10-percent reduction, within 12 months of the institution of such programs, in energy consumption from the amount of energy consumed during calendar 1972." This 120-day report also discussed new areas of legislation that would be necessary in order to achieve the abovestated energy use goal. The Act required, pursuant to subsection 382(a)(3), that the Commission conduct a study and submit a one-year report with respect to laws administered by the Commission or any major regulatory action by the Commission that it determined had the effect of "requiring, permitting, or inducing the inefficient" use of energy, and a statement of the purpose for such requirements or actions. In conjunction with developing this final report, the Commission consulted with the Federal Energy Administration and other sister agencies, and mailed a voluntary energy-use questionnaire to all vessel operating common carriers in the domestic offshore and foreign waterborne commerce of the United States to solicit their views on the subject addressed in subsection 382(a)(3) of the Act.

Finally, subsection 382(b) of the Act requires the Commission to include in any major regulatory action it takes a statement of the probable impact of such action on energy efficiency and energy conservation. The Commission in fact had been following this practice prior to enactment of the Act, in connection with environmental studies undertaken pursuant to the National Environmental Policy Act of 1969.

The Commission is presently administering P.L. 94-163 at no additional staffing costs.

P.L. 94-409 -- GOVERNMENT IN THE SUNSHINE ACT

On September 13, 1976, S. 5 was signed into law by the President. This legislation is designed to insure that the public receives "the fullest practicable information regarding the decision making processes of the Federal Government." The Act, to become effective six months after enactment, focuses on two primary areas, open Commission meetings and strict control over *ex parte* communications between Commission officials and individuals having matters pending Commission resolution.

On July 9, 1975, the Commission submitted its views on the bill to the Chairman of the Senate Committee on Government Operations. Although it fully supported the objectives of the bill, the Commission opposed enactment of S. 5 out of concern for the way those objectives were to be carried out. The Commission was concerned that the implementation of certain of the provisions of the bill would impair administrative flexibility for scheduling meetings, result in burdensome record keeping for an agency as small as the Commission, and deter Commission officials from engaging in a full and candid exchange on all aspects of a matter before the Commission. The Commission also was of the opinion that S. 5 was superfluous in light of the Freedom of Information Act Amendments (P.L. 93-502) and the Privacy Act of 1974 (P.L. 93-579).

S. 5 passed the Senate on November 6, 1975, with amendments, and the House on July 28, 1976, with amendments. On August 31, 1976, the bill was cleared for White House action.

The Commission has published for comment proposed regulations to implement the open meeting requirements of the Act and intends to administer P.L. 94-409 at no additional staffing costs.

PROPOSED LEGISLATION

MINIMUM RATE PROVISIONS FOR NON-NATIONAL FLAG CARRIERS IN U.S. FOREIGN COMMERCE

H.R. 7490, a bill to provide for minimum rate provisions by non-national ("third-flag") carriers, received close scrutiny in hearings before the Merchant Marine Subcommittee. The Commission testified on July 22, 1975, on H.R. 7940 in strong support of enactment of the bill, which, as introduced, was designed to prevent predatory rate practices on the part of all non-national carriers operating in the U.S. waterborne foreign commerce. A companion bill in the Senate, S. 868, was the successor bill to S. 2576, the original third-flag bill introduced during the 93rd Congress.

After time for reflection and further consideration, Chairman Bakke testified on behalf of the Commission before the subcommittee on May 26, 1976, suggesting that H.R. 7940 be redrafted to limit its application to independent carriers which were owned or controlled by a government entity. This would more specifically address the

real problem at hand, namely predatory rate practices on the part of the Eastern Bloc, state-owned shipping lines. Following these hearings, a new "Controlled Carrier" bill, H.R. 14564, was introduced which incorporated many of the Commission's suggestions. Shortly thereafter, following discussions with Soviet Merchant Marine Ministry officials, Chairman Bakke signed a Memorandum Agreement under which the Soviet authorities undertook in behalf of the Soviet carriers in the Pacific and North Atlantic trades of the United States to take certain measures designed to alleviate the unfavorable conditions the pending legislation was designed to correct. Further Congressional legislative action was thereafter deferred pending careful analysis by both the Commission and the Congress of the implementation of these undertakings pursuant to the guidelines of the Memorandum Agreement. To date, the Soviets appear to be carrying out their commitments.

INTERMODAL TRANSPORTATION LEGISLATION

During the last several Congresses, the Commission has transmitted proposed legislation which would provide for the establishment of single-factor rates under a through bill of lading for the transportation of property in the foreign and domestic offshore commerce of the United States.

In the 93rd Congress, extensive hearings were held on two intermodal bills, H.R. 12428 and H.R. 12429. These bills were reintroduced in the 94th Congress as H.R. 1080 and H.R. 1069, respectively. On September 15, 1976, Chairman Bakke testified before the Merchant Marine Subcommittee on H.R. 1080, strongly supporting enactment of some form of intermodal legislation, stating that "intermodal legislation is desperately needed to allow American importers and exporters the opportunity to realize fully the benefits of containerization." Chairman Bakke further emphasized that "if the full benefits of intermodalism are to become available to the shipping public, the Congress will eventually have to enact legislation to provide for regulation of intermodal transportation," and the enactment of H.R. 1080 would be "a step in the right direction and would provide a basis for the further development of intermodalism." Although no further Committee action was taken on intermodal legislation following those hearings, it is hoped that legislative movement will occur in the first session of the 95th Congress.

PROPOSED LEGISLATION TO AMEND THE INTERCOASTAL SHIPPING ACT OF 1933

Several bills were introduced during the 94th Congress that would have amended the Intercoastal Shipping Act of 1933 to revise the Commission's regulatory authority over the United States domestic offshore commerce. These bills were H.R. 10841 and its companion

bills S. 3260, S. 3180, and S. 3261. H.R. 10841 and S. 3260 were initiated and strongly supported by Matson Navigation Company, which carries approximately 90 to 95 percent of the traffic in the West Coast/Hawaiian trade. While the various bills as introduced differed somewhat in their approach and scope, each would have had significant effect on the regulatory responsibilities of the Commission, if enacted.

First, the Commission would have been required periodically to promulgate "rate of return" or "adequate revenue level" guidelines for ocean common carriers operating in our domestic offshore trades; second, a limitation would have been placed on the Commission's suspension authority in connection with proposals by such carriers for general rate increases; and third, these bills would have authorized the Commission, having found any given rate increase, after hearing, to be unjustified, to order refunds to overcharged shippers.

Chairman Bakke testified on June 8, 1976, before the Senate Commerce Committee's Subcommittee on Merchant Marine on S. 3180, S. 3260, and S. 3261, and on June 16, 1976, before the House Merchant Marine and Fisheries Committee's Subcommittee on Merchant Marine on H.R. 10841. In both appearances the Chairman stressed that the Commission had no objection in general to promulgating and administering rate or return guidelines, so long as the Commission retained the discretion to evaluate each carrier and its trade to determine a fair rate of return for that particular carrier. However, none of the bills provided for this, but instead opted for across-the-board guidelines which the Commission felt were inappropriate due to the vast array of economic, geographical, financial, and operating conditions of each carrier.

Under Section 3 of the 1933 Intercoastal Shipping Act, the Commission is now authorized, but not required, to suspend any proposed increase or decrease in rates, for a period not to exceed four months, whenever it orders an investigation and hearing into the reasonableness of any such rate changes. As Chairman Bakke stated before the House Subcommittee, "it has been the practice of the Commission to suspend only when there is serious question regarding the justification for a proposed rate increase." The Commission stressed its belief that the existing suspension authority is beneficial to the shipping public, and therefore testified strongly for its retention. Nonetheless, the proposed legislation would have severely limited the Commission's suspension authority over many general rate increases, and H.R. 10841, S. 3260, and S. 3261 would have provided for across-the-board rate increase formulas without suspension, based on what the Commission felt were highly nebulous numerical standards. Moreover, under H.R. 10841 and S. 3260, in a relatively short span of five years every carrier could have implemented a compounded increase of forty percent in its schedule of rates, without concern about suspension at any point along the way.

Finally, the proposed legislation would have authorized the refund of overcharges to shippers, following final disapproval of rates by the Commission. The Commission took the position that such a provision was unworkable, in that it would fail to accomplish the desired goal, namely, to reimburse the ultimate consumer for any charges assessed under a rate subsequently found to be unlawful.

For these and many other related reasons, the Commission opposed enactment of any of the pending bills. H.R. 10841 passed the House, with amendments, on September 20, 1976, and the Senate, with amendments, on September 30, 1976, but no final action was taken by the Congress prior to its adjournment on October 1, 1976. It is most likely that this legislation will be reintroduced in the 95th Congress.

PROPOSED LEGISLATION ON HOUSEHOLD GOODS SHIPMENTS

During the 94th Congress, legislation was introduced designed to provide for the competitive movement at fair and equitable rates and charges of household goods shipments moving in the foreign commerce of the United States. Initiated by the Household Goods Forwarders Association, H.R. 8849 and its companion measure, S. 2023, were prompted by the Department of Defense's departure from its traditional rotational method of allocating overseas household goods traffic among carriers through its adoption of the so-called "Okinawa Trial" experiment. The Okinawa Trial grants contracts on household goods cargo to a limited number of low-bidding carriers for six-month periods.

On October 6, 1975, the Commission submitted a report to the Senate Commerce Committee concerning S. 2023, in which it expressed its general support of the legislation, with certain modifications, based on the Commission's strong belief that no common carrier should be precluded from competing for the carriage of governmental household goods. On November 17, 1975, a similar report was submitted to the House Merchant Marine and Fisheries Committee regarding H.R. 8849. On December 16, 1975, the Senate Commerce Committee, without holding hearings, ordered S. 2023 reported to the full Senate, and on March 29, 1976, the Senate passed the bill, with amendments, and referred it to the House.

Chairman Bakke testified on H.R. 8849 and S. 2023 before the House Merchant Marine Subcommittee on May 11, 1976, generally restating the position of the Commission expressed in its earlier reports. The Department of Defense also appeared to testify in strong opposition to the bills. The Chairman stressed several points in his testimony, most particularly that under the Shipping Act, 1916, government cargoes have no right to lower rates of carriage than those charged for regular commercial cargoes, and that under the conditions and facts known to the Commission at that time, it appeared that there was a real threat that viable competition would soon be driven from the household goods market. Following Chairman Bakke's

appearance before the Subcommittee, numerous representatives of the household goods movers industry were called as witnesses to provide evidence in greater detail of the real economic damages that were currently being suffered and that were projected as a result of the Okinawa Trial. The Subcommittee was unconvinced by the factual representations of the movers industry that a need existed for the legislation, and voted on July 20, 1976, not to report the bill to the full Committee for further action.

OIL POLLUTION LIABILITY LEGISLATION

On January 29, 1976, Vice Chairman Morse testified on behalf of the Commission in support of H.R. 9294, a bill to provide a comprehensive system of liability for oil spill damage and removal costs, and to provide the mechanics for implementing the International Convention on Civil Liability for Oil Pollution Damage, and in strong opposition to H.R. 10756, which would have also established a uniform and comprehensive regime governing liability and compensation for damages and cleanup costs caused by oil pollution.

The financial responsibility and certification provisions of Titles I and II of H.R. 9294 were very similar to the existing requirements under the present Federal Water Pollution Control Act, which are now administered by the Commission pursuant to Executive Order. Title I involved domestic financial responsibility and certification, and Title II involved international financial responsibility and certification requirements under the International Convention on Civil Liability for Oil Pollution Damage.

Vice Chairman Morse emphasized that because of the Commission's administrative expertise in such certification programs, in all likelihood it would be called upon by the President to administer the certification provisions under H.R. 9294, and made several recommendations for technical amendments to the bill. The Commission opposed H.R. 10756, inasmuch as it would have vested the subject certification responsibilities in the Department of Transportation rather than leaving the matter to Presidential discretion. The Commission's testimony concluded numerous hearings on the subject legislation, and on September 9, 1976, the full Committee favorably reported H.R. 9294, with amendments, to the House. No further action was taken by the House, however, nor were hearings held nor substantive action taken in the Senate on S. 2162 and S. 2666, the companion measures to H.R. 9294, and H.R. 10756, respectively.

OTHER LEGISLATIVE ACTIVITIES

STUDY AND REFORM OF REGULATORY AGENCIES

During the 94th Congress great focus was given to possible reform of regulatory agencies. Many proposals were introduced, ranging from those calling merely for internal administrative reforms to those providing for the outright abolition of many agencies. Although no request was received from the Congress to testify on general regulatory reform legislation during the period July 1, 1975, through September 30, 1976, the Federal Maritime Commission submitted numerous reports on pending reform bills in response to requests from Congressional Committees.

Two notable bills the Commission commented upon were H.R. 12048, the "Administrative Rule Making Act of 1976" and S. 3308, the "Interim Regulatory Reform Act of 1976," neither of which was enacted by the Congress before adjournment. H.R. 12048 included provisions for Congressional review of agency rulemaking, which the Commission opposed as being a burden on the Congress and an impediment on the rulemaking process, and judicial review of rulemaking, also opposed by the Commission, on the basis that it was tantamount to review *de nova*, would be duplicative of the Commission's own rulemaking process, and would substantially delay final disposition of issues initiated at the administrative level. S. 3308 included a provision providing for the periodic review of agency rules, which the Commission supported in principle. However, the Commission opposed that provision of the bill that would have required complete repromulgation of all its rules, and stressed its existing internal oversight procedures for reviewing and updating rules, now being accomplished through a high-level staff committee headed by the Vice Chairman. This committee has been meeting at regular intervals for over two years to address just such matters. The Commission also expressed support for the bill's provisions to permit it to prosecute civil suits in its own name in certain situations and to provide for the simultaneous transmission of budgetary and legislative recommendations to the Congress and the Office of Management and Budget.

The Commission was also a contributing participant in the regulatory reform study undertaken jointly by the Senate Committees on Government Operations and Commerce pursuant to Senate Resolution 71. During the second session of the 94th Congress, the study focused on regulatory delay and the quality of appointments to regulatory agencies.

In addition, the Executive Office of the President also held meetings on several occasions with representatives of the various regulatory agencies on assessing and reforming their powers and responsibilities. In this connection, the Commission submitted two reports to the President on administrative reforms it had initiated or completed.

ADDITIONAL LEGISLATION STUDIED

In addition to the proposals discussed above, during fiscal year 1976 and the transition quarter, the Commission made studies of many other bills that had been introduced in the Congress, and advised the Congress, the Office of Management and Budget and other agencies and departments on various legislative proposals submitted to it for comment.

ADMINISTRATION

Presidential action was taken on two Members of the Federal Maritime Commission in Fiscal Year 1976.

Mr. Karl E. Bakke of Virginia was nominated by President Ford to succeed Chairman Helen Delich Bentley, who resigned effective November 15, 1975. On November 12, 1975, the Senate confirmed Mr. Bakke's appointment to a full 5-year term expiring June 30, 1980.

Mr. Bob Casey of Texas was nominated November 13, 1975, by President Ford to serve as Commissioner for the remainder of the term of Mr. George H. Hearn of New York who resigned effective June 2, 1975. Mr. Casey's appointment was confirmed by the Senate January 21, 1976, for a term expiring June 30, 1978.

The current members of the Commission are:

| | <u>Appointed</u> | <u>Term Expires</u> |
|---|------------------|---------------------|
| Karl E. Bakke, Chairman (R) Virginia | 1975 | June 30, 1980 |
| Clarence Morse, Vice Chairman (R) California | 1971 | June 30, 1976 |
| Ashton C. Barrett (D) Mississippi | 1961 | June 30, 1977 |
| James V. Day (R) Maine | 1962 | June 30, 1979 |
| Bob Casey (D) Texas | 1976 | June 30, 1978 |

STATEMENT OF APPROPRIATION AND OBLIGATION FOR THE FISCAL YEAR ENDED
JUNE 30, 1976 AND THE TRANSITION QUARTER ENDED SEPTEMBER 30, 1976

June 30
1976

Sept. 30
1976

APPROPRIATION:

Public Law 94-121, 94th Congress, approved October 21, 1975: For necessary expenses of the Federal Maritime Commission, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902; Provided, That not to exceed \$1,500 shall be available for official reception and representation expenses-----

\$7,840,000

For "Salaries and expenses" for the period July 1, 1976 through September 30, 1976; Provided, That not to exceed \$375 shall be available for official reception and representation expenses-----

1,960,000

Public Law 94-303, 94th Congress, approved June 1, 1976; Second Supplemental Appropriation Act, 1976 to cover increased pay costs-----

75,000

2,035,000

8,040,000

Appropriation availability-----

5 OBLIGATIONS AND UNOBLIGATED BALANCE:

2,056,359

7,890,624

149,376

-149,376

128,017

STATEMENT OF RECEIPTS: DEPOSITED WITH THE GENERAL FUND OF THE TREASURY FOR THE FISCAL YEAR ENDED JUNE 30, 1976 AND THE TRANSITION QUARTER ENDED SEPTEMBER 30, 1976:

Publications and reproductions-----
Water pollution applications and certificate fees-----
Fines and penalties-----
Miscellaneous-----

24,339
151,844
347,166
6,389

2,745
38,035
18,536
1,618

60,934

529,738

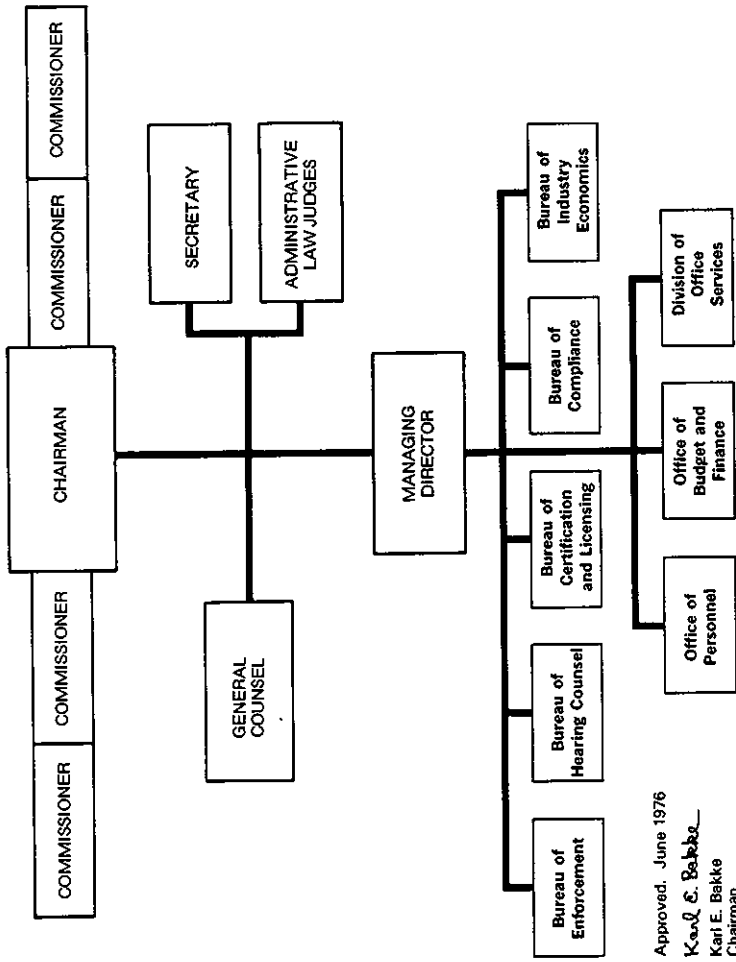
Total general fund receipts-----

APPENDIX A

STATISTICAL ABSTRACT OF FILINGS

| | FISCAL YEAR 1976 | TRANSITION QUARTER |
|--|---------------------|-----------------------|
| SECTION 15 AGREEMENTS: | | |
| Foreign commerce----- | 223 | 53 |
| Domestic offshore----- | 19 | 9 |
| Terminal----- | 204 | 40 |
| SECTION 14b DUAL RATE CONTRACTS: | | |
| New systems (includes modifications)----- | 6 | 2 |
| REPORTS REVIEW (FOREIGN COMMERCE): | | |
| Shippers' requests and complaints----- | 342 | 88 |
| Minutes of meetings----- | 2,263 | 678 |
| Self-policing of conference and rate agreements----- | 158 | 62 |
| Pooling statements----- | 43 | 10 |
| Operating reports----- | 99 | 23 |
| APPROVED AGREEMENTS ON FILE AS OF SEPTEMBER 30, 1976: | | |
| Conference----- | | 83 |
| Rate----- | | 45 |
| Joint conference----- | | 10 |
| Pooling----- | | 21 |
| Joint service----- | | 44 |
| Sailing----- | | 21 |
| Transshipment----- | | 166 |
| Cooperative working, agency and container interchange----- | | 157 |
| Domestic offshore----- | | 32 |
| Terminals----- | | 416 |
| Dual rate contract systems----- | | 67 |
| TARIFFS: | | |
| Tariff pages filed: | | |
| Foreign----- | 339,893 | 90,977 |
| Domestic offshore----- | 12,119 | 2,552 |
| Terminal----- | 5,578 | 1,668 |
| Tariffs on file as of September 30, 1976: | | |
| Foreign----- | | 3,317 |
| Domestic offshore----- | | 208 |
| Terminal----- | | 590 |

FEDERAL MARITIME COMMISSION



Approved, June 1976
Karl E. Bakke
Karl E. Bakke
Chairman