16TH

ANNUAL REPORT

OF THE

Federal Maritime Commission

FISCAL YEAR ENDED SEPTEMBER 30, 1977

Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

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 Sixteenth Annual Report of the Federal Maritime Commission. This report covers Fiscal Year 1977, a reporting period that began October 1, 1976 and ended September 30, 1977.

Sincerely,

Richard J. Daschbach
Chairman

ADMINISTRATION

Mr. Richard J. Daschbach of New Hampshire was nominated by President Carter to the Federal Maritime Commission on July 27, 1977, and confirmed by the Senate on August 2, 1977. The President designated Mr. Daschbach to succeed Mr. Karl E. Bakke as Chairman of the Commission on August 5, 1977, and he was sworn into office on August 24, 1977, for a five-year term.

Mr. Ashton C. Barrett of Mississippi resigned from the Commission on August 23, 1977, after seventeen years of service.

Mr. Bob Casey of Texas resigned from the Commission effective October 31, 1977. Mr. Thomas F. Moakley of Massachusetts was appointed to the Commission by President Carter on November 4, 1977, to serve the remainder of Mr. Casey's term. On June 30, 1978, Mr. Moakley was reappointed by the President to a full five-year term.

Mr. Clarence Morse of California resigned from the Commission on April 20, 1978, and was succeeded by Dr. Leslie L. Kanuk on April 24, 1978, who was appointed by the President to serve the remainder of Mr. Morse's term.

The current members of the Commission are:

	APPOINTED	TERM EXPIRES
Richard J. Daschbach, Chairman (D) New Hampshire	1977	June 30, 1982
Thomas F. Moakley, Vice Chairman (D) Massachusetts	1977	Reappointed by the President to a term expiring June 30, 1983
James V. Day, Commissioner (R) Maine	1962	June 30, 1979
Karl E. Bakke, Commissioner (R) Virginia	1975	June 30, 1980
Leslie L. Kanuk, Commissioner (D) New Jersey	1978	June 30, 1981

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I. 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; Section 311 of the Federal Water Pollution Control Act; and Subsection 204(c) of the Trans-Alaska Pipeline Authorization Act , 1973.

The Commission is composed of five Commissioners appointed by the President with the advice and consent of the Senate. The Commissioners are appointed for five-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, 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) regulation of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water in the domestic offshore trades of the United States; (3) acceptance, rejection, or disapproval of tariff filings of common carriers engaged in the foreign commerce of the United States; (4) investigation of discriminatory rates, charges, classifications, and practices of common carriers, terminal operators, and freight forwarders in the waterborne foreign and domestic offshore commerce; and (5) licensing of independent ocean freight forwarders.

The Commission also issues certificates evidencing financial responsibility of vessel owners or charterers of ships embarking passengers at United States ports to pay judgments for casualties or to indemnify passengers for nonperformance of scheduled voyages or cruises.

Other certification responsibilities include the issuance of certificates to certain vessels using U.S. ports or waters evidencing financial responsibility for discharges of oil and hazardous substances, as well as certificates ensuring liability for spills of oil that is transported through the Trans-Alaska pipeline.

The Commission is a quasi-judicial body that renders decisions, issues orders, and makes rules and regulations governing all parties within its jurisdiction. Much of its efforts are directed toward the regulation of ocean common carriers. The Commission does not have the authority to set or make rates in our foreign commerce, or to disapprove tariffs already lawfully filed and in effect except after hearing.

II. OCEANBORNE COMMERCE IN REVIEW

TRENDS IN TRADE BY GEOGRAPHIC AREA

Far East

On February 1, 1977, the Pacific Westbound Conference (PWC) implemented their intermodal authority, publishing mini-bridge rates at the same level as those of the Far East Conference (FEC), which provides for all water service from U.S. Atlantic and Gulf Coast ports. Under their right of independent action PWC member lines soon filed over 400 rates which undercut FEC rates. This rate cutting was prompted by the imbalance in our Far East trade and the desire to find cargo to fill otherwise empty return containers.

Effective April 1, 1977, FEC was to have increased all rates by 15 percent, but due to mini-bridge competition, most commodity rates remained at the same level or were reduced. Many FEC members, especially those that were not mini-bridge operators themselves, felt that conference membership was no longer in their best interest and began tendering their resignations. At one point seven of the 14 member lines had tendered their resignations, threatening the continued existence of the Far East Conference. As trade conditions stablilized, all but two resignations were withdrawn.

At present, a competitive status quo exists between FEC and PWC intermodal rates; however, many of the current rates on East Coast origin cargo are now lower than PWC's local all water rates on the same commodities.

Central, South America and Caribbean

Government decrees appear to be a continuing method for the developing Latin American countries to guarantee their national flag and associated carriers a major portion of their import and export cargoes.

In response to these decrees, several cargo sharing and equal access agreements (usually bilateral agreements) have been negotiated by various U.S. carriers in the Latin American trades during the past few years. Waivers are usually granted to the bilateral trading partner so that both partners can have equal access to reserved cargo.

Equal access agreements normally provide for revenue sharing among the parties involved, making them similar to conventional conference pooling agreements. One potential benefit of pooling agreements is that they allow rationalization of services provided, thereby reducing the amount of equipment

required to service a trade and producing cost savings which can result in economic efficiencies to be passed along to the shipping public.

During the past year, numerous conferences in the Latin American trades have begun efforts to institute a more comprehensive self-policing system. Eight conferences have pending before the Commission modifications to their agreements to provide for the appointment of a neutral body in lieu of the present conference system to conduct self-policing.

Europe

The last year has seen a maturing of the intermodal service of many conferences serving the U.S. - Europe trades. Several have demonstrated that the service was sufficiently developed to eliminate the reporting requirements and time limits originally imposed by the Commission as monitoring techniques. Development has been in the direction of control and uniform handling of the inland loading and movement of containers rather than the development of single factor through rates and through liability as originally envisioned. Development of the latter remains handicapped by statutory limitations.

The trend toward more restrictive rate agreements has continued with the filing of a new Gulf-European Freight Association Agreement in conference format and with more restricted independent action provisions.

Middle East

The nations of the Middle East, particularly those of the Arabian Peninsula and on the Persian Gulf, continue to be major purchasers of American products. When these countries began their vast outpouring of petro-dollars, the resulting influx of ocean carriers created serious port congestion problems resulting in surcharges of up to 200 percent being imposed at various ports.

By mid-summer of 1976, the overall level of congestion surcharges had declined somewhat, due in part to improved port clearance and scheduling of vessel arrivals. Another factor in relieving pressure on the Red Sea and Persian Gulf ports has been increased utilization of "Euro-bridge" service, under which cargo is off-loaded at ports in Europe and then moved by truck or rail to its final destination. Similar service is also available utilizing Turkish, Syrian or Lebanese ports.

By the summer of this year, port conditions had improved to the point that surcharges at most ports had been cancelled. Continued improvement is expected. However, the potential for congestion will remain a factor at these ports for the foreseeable future and needs to be monitored by the Commission.

Africa

The first requests for intermodal authority in the United States/African trades were received during the past year. The member lines of the South and East Africa/U.S.A. Conference (Agreement No. 8054) and the United States/South and East Africa Conference (Agreement No. 9502) which operate, respectively, in the inbound and outbound trades between ports in South and East Africa and United States Atlantic and Gulf ports, filed appropriate modifications in June, 1977, for authority to engage in intermodal ratemaking. In July, the member lines of the American West African Freight Conference filed for similar authority in the trade between U.S. Atlantic and Gulf ports and West African ports.

Australia

Frozen meat continues to be the major Australian commodity exported to the United States, with ocean rates negotiated by the Australian Meat Board

(AMB). The AMB is a governmental statutory body which, in addition to rate negotiation, can also purchase, export, or sell meat for export, or take other actions necessary to meet export quotas of Australian meat to the United States.

A formal withdrawal of all but one member of the Northbound Australia/Eastern U.S.A. Shipping Conference was caused by the intervention of the AMB in rate negotiations and the booking of cargo. The Federal Maritime Commission subsequently approved Agreements Nos. 10247, 10248, 10250 and 10250(A) between northbound ocean carriers in the Australian trade, thus re-establishing harmony with the AMB. Ultimately a new Conference Agreement, No. 10268, was entered into by Farrell Lines Incorporated, Columbus Line, Associated Container Transportation (Australia) Ltd., Atlanttrafik Express Service and Refrigerated Express Line (A/Asia) Pty., Ltd., and was approved by the Commission on November 23, 1976. This agreement allowed the parties the right to independent action with respect to carriage of frozen meat upon 48 hours' notice to the other parties and a reduced share of the conference expenses. The new conference agreement has stablilized movement northbound in the Australian trade.

Southbound to Australia from U.S. Eastern and Western coasts, the dominant ocean carriers have been members of either the U.S. Atlantic & Gulf/Australia New Zealand Conference or the Pacific Coast Australasian Tariff Bureau. Recently, ACE Line, Limited, and the Soviet carrier, Far Eastern Shipping Company, (FESCO) have entered the trade as independent carriers.

Bermuda

Approximately six years ago, Bermudan importers began to change their longtime buying habits by transferring their purchases from the more traditional

British and European sources to American suppliers. This change, though gradual in the beginning, has been accelerating ever since. Among the reasons prompting Bermudan importers to turn to American suppliers has been the hardening of the European currencies, the inflation in the European economies, the relative inability of European exporters to supply products on time, and the availability of regular transportation from the U.S.

The growth in the U.S./Bermuda trade has put a strain on the limited container facilities available in Bermuda. Agreement No. 10292 between Pan Atlantic Shipping Ltd., and Bermuda Express Service, designed to eliminate some of this pressure, was approved by the Commission on September 28, 1977.

INTERMODALISM

The introduction of containerization to the steamship industry initiated a technological revolution that has had profound impact upon ocean transportation. One of the attributes of a containerized system is the adaptability of the container to various modes of transportation. This adaptability led to the evolution of the concept of intermodalism, which may be roughly defined as an arrangement for through transportation from shipper to consignee over the lines of two or more transportation modes.

Containerization and intermodalism have in turn spawned several transportation innovations, including land-bridge services. The term "land-bridge" refers to a transportation service which is composed of a combination of an overland and an ocean movement, and it generically encompasses minibridge, microbridge, and maxibridge.

Tariffs

Containerization of cargoes and the continued expansion of the world fleet of sophisticated intermodal vessels were technological advancements that provided the impetus for the establishment of intermodal tariffs.

The Federal Maritime Commission is the transportation agency which is responsibile for the regulation of the dominant part of most intermodal transport systems - ocean transportation. In 1970, the Commission recognized the need to promulgate adequate regulations which would facilitate the through movement of cargo. These rules and regulations are found in Amendment No. 4 to the Commission's General Order 13.

There are now approximately 250 effective intermodal tariffs on file with the Commission, representing services by over 35 ocean carriers and reflecting the extensive use of container and lighter aboard ship (LASH) services. Railroads, motor carriers and inland water carriers participate with the ocean carriers, offering single document bills of lading and joint or through rates and routes. The combination of these factors should lead to improved through service for the American exporter and importer.

While the Commission's records reflect that the preponderance of intermodal tariffs are mini-bridge tariffs, many other intermodal tariffs are now being filed by ocean carriers, such as micro-bridge tariffs.

Mini-bridge is a joint service of ocean carriers and U.S. railroads which provides the shipper with an alternative to the conventional all-sea route. Mini-bridge service involves the receipt of cargo at a U.S. port area for a trans-continental movement to the opposite coast where such cargo is interchanged with an ocean carrier for delivery to a foreign port or, in some instances, to an inland point.

Micro-bridge service is also a joint service of U.S. railroads and, in some cases, U.S. motor carriers, which provides the shipper with a joint rate and through route, usually over the shortest route to the gateway located between the shipper and the receiver. Microbridge service eliminates any backhaul that might have resulted in the mini-bridge service and results in a faster and more economical service. Several carriers now have micro-bridge tariffs on file including one carrier with multi-modal services. In addition to mini-bridge and micro-bridge tariffs many carriers are serving the European Continent and the Middle East under tariffs which provide for through rates and routes to an inland destination point.

Agreements

During Fiscal Year 1977, conferences and rate agreements with intermodal authority increased from 32 to 43. Conference and rate agreements that had actually filed intermodal tariffs increased from 13 to 19. These tariffs included the United Kingdom, Continent, Mediterranean, Scandinavian, Iberian, Japan, Korea, Hong Kong, Far East and Straits trades.

Interagency Committee on Intermodal Cargo

The staff of the Federal Maritime Commission participates in the Interagency Committee on Intermodal Cargo (ICIC), which was established in 1972. The ICIC functions as an information exchange organization. The ICIC therefore provides a forum where these exchanges allow each agency to become more responsive to the shipping industry on problems which might affect the growth of intermodalism.

Inland Rules and Practices

During the fiscal year numerous conferences, rate agreements, joint services and consortia serving Continental European, Iberian Peninsula and Mediterranean ports were granted authority to establish uniform inland rates, rules and practices in Europe.

Conferences and rate agreements found that they needed to expand their intermodal services to meet customer demands. Inland services were growing beyond the historical sales or marketing functions to include necessary transportation services such as pick-up and delivery of containers, providing chassis for drayage, establishing off-pier depots for receiving or delivering containers, establishing rules governing shipper-owned or leased containers, and haulage to or from interior points.

Intermodal arrangements with inland carriers also became necessary. These activities developed to the point where the services required on the European inland segment of the cargo movements had to be set forth in tariffs so they would be authorized and they would serve as a gauge for determining what services were legitimate. Conferences and rate agreements not only had to establish rules and practices but also had to regulate them if they were to be effective.

Consortia and joint services were forced to request intermodal authority so they could operate coextensively with the conferences or rate agreements to which they belonged. They were not free to automatically expand their operating authority without prior Commission approval.

Competitive pressure led to the filing of numerous agreements to establish and regulate inland rules and practices. Agreements were approved to enable the respective applicants to resolve inland transportation problems to preserve ocean

trade stability, and to extend self-policing authority to apply to entire cargo movements so the regulations could become more effective.

Lash/Seabee and Ro/Ro Services

Roll-on/roll-off (ro/ro) service, a relatively new type of shipping technology, is growing in popularity on trade routes around the world, and is being used extensively at ports, particularly in developing nations, where there are limited wharfage and loading facilities.

The vessels employed in ro/ro service are constructed to permit wheeled cargoes, such as automobiles and agricultural machinery, to be driven aboard the ship on massive ramps and driven off the ship in reverse order. In addition to wheeled cargoes, ro/ro vessels can accommodate various other types of cargoes, including container, palletized, unitized, heavy lift, and other cargoes that generally do not lend themselves to containerization.

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 envisions a complement of barges or lighters which are carried between ocean ports on board a mother ship. The barges are towed between the ocean ports served by the mother ship and either adjacent "outports" or ports on inland waterways here and abroad. Whereas all other types of vessels require regular berths, the LASH vessels can operate at anchorages, while insuring that cargo can be discharged or loaded irrespective of whether the facility is adequate to support container operations.

DEVELOPMENT OF CONTAINERIZATION

Many carriers have found it expedient to enter into container interchange agreements to limit the number of containers they must own. Twenty-six such agreements have been approved by the Commission authorizing the parties to interchange containers, container chassis and/or related equipment. In addition to these interchange agreements, there are eight approved container lease agreements whereby one carrier leases containers and related equipment from another carrier for its own use for a per diem charge.

The Japanese carriers continue to operate their containerships with maximum utilization in the Japan-U.S. trade because of their space charter agreements.

The four Japanese space charter agreements were extended during Fiscal Year 1977. Agreement No. 9835 is presently scheduled to expire in August, 1979, while Agreements Nos. 9718, 9731, and 9975 have an August, 1980, expiration date. Three of the agreements (9718, 9731, and 9835) cover the trade between Japan and the U.S. West Coast while Agreement No. 9975 covers the trade between Japan and the Atlantic Coast.

Under these agreements, no money is required to be exchanged between carriers in order to charter space to and from each other in equal blocks. 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.

Agreement No. 10186 is a space charter arrangement between Korea Shipping Corporation (KSC) and Orient Overseas Container Line, Inc., (OOCL) whereby KSC is authorized to charter a certain number of container slots per month aboard

vessels operated by OOCL. This agreement permits Korea's national flag line to offer a containership service between the United States and eight Far Eastern countries.

Agreement No. 10051, among six carriers serving the U.S. East Coast/Mediterranean trades, provides authority for the parties to charter space on each other's vessels in times of emergencies.

Agreement No. 10254, between American Export Lines and Zim Israel Navigation Co., allows AEL to charter space on Zim's vessels in the trade between U.S. ports and Israel.

Containerization has enabled cargo carriers to easily transport shipments by means of more than one mode of transportation. 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.

Cargo Diversion

The development of containerization has encouraged the diversion of containerized U.S. exports and imports over intermodal routes through contiguous nations, particularly Canada. The Commission has been concerned with this diversion, and the problems it creates because of the adverse effect upon the U.S. Maritime industry. Containerization has prompted carriers to choose one or two ports on each coast which they would serve by a vessel call while assuming some or all of the costs of moving the goods to their ships from ports they have chosen not to serve. The loss of cargoes through diversion via adjacent foreign countries adversely affects U.S. foreign commerce by depriving our domestic transportation networks and our ports of revenue, and by fostering pricing practices favoring diverted traffic.

The Shipping Act clearly establishes jurisdiction over carriers and conferences serving a U.S. port, regardless of any prior or subsequent movement. By its order in Docket 73-66, in which the Commission found Austasia Container Express (ACE) to be a common carrier by water in the foreign commerce of the U.S. within the meaning of the Shipping Act, 1916, the FMC affirmed its jurisdiction, although the order has been appealed.

FREIGHT RATES AND CHARGES IN FOREIGN COMMERCE

While the Commission's authority over freight rates is limited, we try to ensure that general increases do not exceed the bounds of economic necessity in keeping with our efforts to ensure that shippers transport and consumers receive goods and services at a fair and equitable price. Substantial rate increases have been recorded during the past year, however, due in part to the inflationary cost pressures that prevail throughout the world.

General Rate Increases

The Commission has devoted considerable time to the evaluation of general rate increases to ensure that rates and charges assessed by carriers and conferences do not become an undue burden on our foreign commerce or are not otherwise contrary to the Shipping Act, 1916. The Commission maintains a program of surveillance over general freight increases published by conferences in the United States foreign trade. When a conference publishes a general rate increase, a detailed justification is required. The staff will request the following data: (1) the method used by the carriers and conferences in establishing the level of rate increase; (2) the carrier expenses considered in the computation; and (3) what action the carriers/conferences contemplate to ensure that the proposed rates will

not impede American exporters in marketing their products overseas. An analysis of the data submitted then determines if the general rate increase is justified.

Surcharges

Carriers and conferences establish surcharges to compensate for extraordinary expenses resulting from temporary incidences of port congestion, labor problems, and currency fluctuations. Carriers have the right to offset additional cost situations and the Commission has the responsibility to ensure that these charges are necessary and that they are not imposed longer than is required. In maintaining an effective surveillance program, the Commission's staff utilizes the expertise of agencies such as the Department of State in obtaining up-to-date foreign commerce and port information used to analyze the conference's justification for the surcharge.

Program for Rate Disparities

The Commission has been highly aware of its role in the area of shipping regulation as it pertains to the protection of U.S. exporters from rate discrimination by common carriers in the U.S. foreign commerce or of conferences of such carriers. The Commission has tried to prevent outbound carriers or conferences from charging U.S. exporters of a particular commodity higher rates than are charged to foreign shippers of essentially the same commodity in the reciprocal inbound trade.

Due to the limitations of Section 18(b)(5) of the Shipping Act, the Commission intends to meet its responsibilities to control rate disparities through some of the following methods:

- Utilization of its computer system to consider cargo movement data;

- Consideration of modifying General Order 14 to give shippers a greater awareness of possible rate disparities;

- Promotion of a Uniform Tariff Commodity Classification System;

- Use of its authority under Section 21 of the Shipping Act, where necessary, to secure data from carriers or conferences relating to complaints over alleged disparity in rates.

Exemptions

During the reporting period, Foss Launch & Tug Co., as well as all other water carriers participating in a through rail service between United States Puget Sound ports and ports in British Columbia, Canada, and between ports in British Columbia, Canada and ports and points in Alaska, were exempted from the Commission's tariff filing requirements. These carriers connect railroads in Canada with those in Alaska and the Pacific Northwest, and their traffic is covered by railroad tariffs listing the water carriers as participants. Since rates are filed with the ICC and the Canadian Transport Commission, regulation of this same traffic by the FMC was unnecessary.

Incheon Outport Arbitrary Rate Assessments

On September 20, 1976, the Commission served a Section 21 Order on member lines of the Far East Conference, Pacific Westbound Conference, Japan/Korea-Atlantic and Gulf Freight Conference, Trans-Pacific Freight Conference of Japan/Korea and eight independent carriers which had tariffs that published arbitrary rate assessments to and from the port of Incheon, Korea.

A total of 31 carriers were served with orders requiring them to provide data supporting a conference-wide arbitrary rate as justified by valid economic transportation conditions.

After a review of the data submitted by the carriers pursuant to the above mentioned Section 21 Order, the Commission issued an order to the Conferences requiring that they show cause why the Commission should not find the conferences' authority to be contrary to the standards for continued approval under Section 15 of the Shipping Act, 1916, and accordingly, why such authority should not be relinquished. If relinquished, each individual member line of the respective conferences could establish rate differentials, if any, which would be based upon valid economic transportation conditions attendant with each line's service to or from the port of Incheon, Korea.

Far East Conference

On September 27, 1977, show cause orders were served on the Far East Conference and its member lines regarding the assessment of wharfage and other accessorial charges at U.S. Atlantic and Gulf coast ports. The proposed tariff amendment filed by the conference (to become effective January 1, 1978) provides that wharfage charges which are assessed by the terminal operators against the vessel will be rebilled by the carrier for the account of the cargo.

Wharfage charges are currently assessed against the vessel at the majority of Atlantic coast ports where carriers have, in the past, absorbed these expenses, except at New York where wharfage is included in the stevedoring contracts. At U.S. Gulf coast ports wharfage is for the account of the cargo.

The proposed tariff modification would reverse past practice at most Atlantic coast ports and, in effect, result in the assessment of varying charges at

ports in the U.S. Atlantic and Gulf range. These differing charges representing freight collections within the carriers' control may contravene Section 205, Merchant Marine Act, 1936, and may violate sections 15, 16 First, and 17 of the Shipping Act, 1916.

Dangerous and Hazardous Cargo Rule

During Fiscal Year 1977 numerous complaints were received from shippers concerning the filing of new rules for the handling of hazardous and dangerous cargo published by the U.S. Atlantic and Gulf/West Coast of South America Freight Conference. The rule required that the shippers make advance bookings with the carrier for hazardous cargo, burdening them with additional paper work. The Commission made an in-depth analysis of the problem and was successful in getting the rules postponed. As part of its analysis, the Commission's staff arranged a meeting between interested carriers, shipper associations, and government officials to discuss the impact of the rules. The proposals that were developed during these discussions were used to modify the rules to the benefits of all parties concerned.

O.C.P. Fact Finding

On August 23, 1977, the Commission initiated Fact Finding Investigation No. 10 concerning the proposed phasing out of Overland/Overland Common Point (OCP) cargo in the trade between the Far East and Pacific Coast ports of the United States.

This investigation was prompted by the planned action of the Trans-Pacific Freight Conference of Japan/Korea to eliminate the OCP rate system.

The purpose of the Commission's investigation is to assess the impact of the Conference's action on the shipping community. The investigation calls for a

report to the Commission every three months with a final report of findings and recommendations due in August, 1978.

DOMESTIC COMMERCE

The Intercoastal Shipping Act, 1933, and specific portions of the Shipping Act, 1916, mandate the Commission to oversee the activities of the domestic commercial maritime community. The Commission has an obligation to make sure that common carriers, shippers, freight forwarders and terminal operators alike abide by the terms of the statutes governing our domestic offshore trades. In the exercise of its authority, the Commission must ensure that all rates, charges, and practices involved in the movement of cargo in the domestic offshore commerce are just and reasonable.

Puerto Rico

In late May and early June, 1977, the Puerto Rico Maritime Shipping Authority (PRMSA), Gulf Caribbean Marine Lines, Inc., (GCML) and Trailer Marine Transport Corporation (TMT) filed 10.4 percent general rate increases. Numerous protestants objected to PRMSA's increase in view of a 1975 fifteen percent increase which is currently the subject of Docket No. 75-38.

In light of the pending proceeding, the increase was placed under investigation in Docket No. 77-30. A question regarding the financial submissions of TMT and GCML caused the suspension and investigation of their proposed increases in Dockets No. 77-27 and 77-28, respectively.

TMT and GCML requested that these suspensions be vacated and the investigations discontinued. Both carriers submitted additional data and the

Commission determined that no useful purpose could be achieved by continuing the suspensions. Since other issues remained unresolved, however, the investigations were continued.

Sea-Land Service, Inc. (Sea-Land) re-entered the North Atlantic/Puerto Rico trade with a containerload service only, effective February 25, 1977. Soon after, Sea-Land took steps to change its Freight All Kinds (FAK) tariff provisions from shipperload to carrierload (southbound and northbound). The tariff matter for southbound movements was initially rejected and then refiled. The northbound provisions became effective.

Following strong opposition from the shipping public, the Commission decided that the provisions could be unfairly discriminatory or otherwise unjust and unreasonable. Both the original southbound and northbound provisions were placed under investigation in Docket No. 77-17, while the southbound shipperload amendments, which never went into effect, were also suspended. Sea-Land later indicated its desire not to defend the FAK provisions, reinstated the prior provisions, and the proceeding was discontinued.

Seatrain Gitmo, Inc. (Seatrain) and Sea-Land proposed rates and provisions applicable to the carriage of government cargo in May and July, 1977, respectively. The provisions of each were identical to those of PRMSA, which were suspended in June, 1975, and which are still under investigation in Docket No. 75-20. Both other carriers' proposals were placed under investigation only, Seatrain in Docket No. 77-18 and Sea-Land in Docket No. 77-38.

PRMSA also dominated other developments in the Puerto Rico trade. The Governor of Puerto Rico campaigned in part on a platform proposing the Commonwealth's sale of PRMSA. The Legislature authorized a sale in June, 1977,

and bids were received. At the end of Fiscal Year 1977, PRMSA was reviewing the bids and negotiating with the bidders.

The West Coast/Puerto Rico trade saw Sea-Land, the only water carrier in the trade, put a 10 percent general rate increase into effect on April 1, 1977. In May and June, 1977, Sea-Land again tried to increase its minimum charge per trailer and to raise certain other rates. The carrier withdrew these increases in the face of several protests. Effective September 29, 1977, Sea-Land proposed a 24 percent general increase. Numerous protests were received and the increase was suspended in Docket No. 77-48. The basis for suspension was the possible understatement by Sea-Land of its profit levels due to use of container mile statistics as opposed to the required revenue ton statistics.

Alaska

Foss Alaska Line, Inc., (Foss) filed an approximate 15 percent general increase in the Seattle/Western Alaska trade and filed its initial tariff in the Seattle/Southern Alaska trade in January, 1977. Foss voluntarily postponed its general increase and new tariff to March 4, 1977, when the State of Alaska protested the filings. The Commission permitted both the general increase and new tariff to become effective, and later denied a petition for reconsideration filed by the State of Alaska.

Northland Marine Lines, Inc. (Northland), a barge operator between the West Coast and Alaska/Hawaii, filed a bankruptcy petition in Seattle, Washington, in October, 1976. Northland self-insured certain cargo and then its barge KOKOHEAD capsized in the Gulf of Alaska in August, 1976, it was incapable of honoring all insurance claims. Northland submitted a reorganization plan to the Court and

indicated its intentions to continue operations, but the Court rejected the plan and Northland has entered into final bankruptcy.

Alaska Cargo Lines, Inc. (ACL) filed its tariff between Seattle and Western Alaska in May, 1977, and appears to be the successor-in-fact to Northland.

Pacific Alaska Line, Inc. (PAL) and Arctic Lighterage Company (Arctic) filed a joint protest alleging that ACL's proposed rates applicable at Nome and Kotzebue were noncompensatory. The Commission determined that the representations submitted were not sufficient to warrant either suspension or investigation.

During the spring of 1977, both PAL and Foss reduced their rates to meet ACL. ACL continued to reduce rates on individual items and to offer substantial incentives for volume shipments, and Foss and PAL again followed suit. Foss and ACL both entered into connecting carrier arrangements with Arctic Lighterage, which resulted in through rates that were essentially identical for all three carriers.

Black Navigation Company, Inc., effectuated a 15 percent general increase in its tariff applicable at St. Michael, Alaska on July 1, 1977.

Hawaii

Matson Navigation Company (Matson) moves the vast majority of cargo in the trade, with United States Lines, Inc., (USL) Sause Bros. Ocean Towing Co., Inc., (Sause), and Hawaiian Marine Lines, Inc. (HML) offering minor competition. HML, a Crowley-owned tug and barge operator, added a new section of per container rates and rules effective February 1, 1977, and at the same time expanded its service to additional ports.

In March, HML proposed new proportional rates on lumber, with a limited application to the Oregon counties of Land and Douglas. HML hoped to attract

lumber cargoes to move out of the Port of Portland. Sause serves the Land and Douglas County area, with a service nearly identical to HML's, and there were no indications that the Sause service was inadequate. HML also proposed to increase its Portland to Hawaii lumber rates while proposing a reduced rate application on the same commodities moving through the same port but with different origins. The diversion of lumber from Sause's local service to HML's service out of Portland was considered to be potentially prejudical, and the Commission suspended HML's proportional rates on April 14, 1977. HML subsequently withdrew its suspended rates and the proceeding was discontinued.

In June, 1977, Matson proposed a 2 percent general rate increase, with United States Lines following soon after. Protests were filed against both carriers' increases , and after consideration of the facts, the Commission permitted both increases to become effective.

Guam

After remaining dormant for a number of years, the trade between U.S. mainland ports and Guam came to life during the past fiscal year. This trade is essentially served by only two vessel operating common carriers, Matson Navigation Company (Matson) and United States Lines, Inc., (USL). In the early part of the fiscal year, these carriers filed tariff revisions amending several provisions governing shipments of groceries. These tariff revisions were protested; however, the Commission allowed them to become effective as scheduled.

Triggered by a substantial increase in terminal and port charges filed by the Port of Guam, the carriers filed five percent accross-the-board increases in rates and charges. The increase of USL was placed under suspension and the Commission

acted to initiate an investigation into the reasonableness of the rates of both carriers. Subsequent to the suspension of the USL increase, Matson postponed its increase while USL cancelled its increase altogether.

American Samoa

Late in the last quarter of Fiscal Year 1977, the carriers serving the trade between the U.S. Mainland and Pago Pago, American Samoa, filed a ten percent increase in rates, proposed to be effective on or about October 1, 1977. The increase was not protested. However, various operational difficulties forced the postponement of the increases.

III. LEGISLATIVE DEVELOPMENT

PROPOSED LEGISLATION

Regulatory Reform

S. 263, "The Interim Regulatory Reform Act of 1977," was given active consideration by the Congress in the early days of the 95th Congress. An amended version was subsequently passed by the Senate on June 10, 1977. As introduced, the legislation would have required seven regulatory agencies, including the Federal Maritime Commission, to undertake comprehensive reviews of the laws they administer and propose statutory changes to Congress, and to recodify their own rules and regulations.

Although the Commission supported the spirit of S. 263, substantial problems with many of its provisions were highlighted in testimony by former Chairman Bakke on April 4, 1977 before the Senate Commerce, Science, and Transportation

Committee. After receiving testimony from all subject agencies, the Committee decided to delete the recodification requirement from S. 263. However, separate bills were thereafter introduced that included recodification provisions for the individual agencies. Thus S. 1532 was introduced to require the Federal Maritime Commission to review and systematically recodify the rules and regulations which it has promulgated and which are still in effect.

S. 1532 also includes provisions for (a) timely consideration of petitions; (b) Congressional access to information; (c) representation in civil action; (d) avoidance of conflict of interest; (e) appointment of the Chairman by the President by and with the advice and consent of the Senate; and (f) Congressional oversight through the process of an authorization of appropriations not to exceed four years. S. 1532 passed the Senate June 28, 1977 and was referred to the House Merchant Marine and Fisheries Committee. S. 263 passed the Senate as amended June 10, 1977 and was referred to the House Judiciary Committee.

Comprehensive Oil Spill Liability Fund

H.R. 3711, the original "superfund" bill in the 95th Congress, provided for a comprehensive system of liability and compensation for oil spill damage and removal costs. Because of certain ambiguities in the language of the bill and anticipated difficulties adhering to the compliance date, the Commission voiced objections to the bill in a letter to the House Committee on Merchant Marine and Fisheries. H.R. 3711 was subsequently amended, and the revised version, H.R. 6803, was passed by the House September 12, 1977.

During the first session of the 95th Congress, the Senate also introduced a number of bills dealing with the establishment of a system of liability and

compensation for oil spill damage, including S. 121, S. 182, S. 687, S. 898 and S. 1187. The Commission commented upon these bills on August 17, 1977 in a letter to the Senate Commerce, Science, and Transportation Committee. In this report, the Commission stated it would support enactment of S. 1187 provided certain modifications were made, but opposed enactment of the other subject bills. On September 12, 1977, S. 2083 was reported by the Committee in lieu of these bills, and was referred to the Senate Committee on Environment and Public Works for further consideration.

Rates in Domestic Offshore Trades

H.R. 6503, a bill designed to amend the Intercoastal Shipping Act of 1933 in order to revise the Commission's regulatory authority over the United States domestic offshore commerce, is an amended version of H.R. 10841 which was passed by the House on September 20, 1976 and subsequently was passed on September 30, 1976 by the Senate with Senate amendments. The House concurred on October 1, 1976 and included additional amendments. However, adjournment of Congress prevented any further action on the legislation.

Thus H.R. 6503 was introduced on April 21, 1977, at the beginning of the 95th Congress. If enacted, the bill would (1) permit common carriers in the domestic offshore trades to file, without suspension, annual general rate increases or decreases of seven percent or less; (2) extend the suspension period; (3) require the Commission to order refunds to overcharged shipper, if it found after hearing any given rate increase to be unjustified; (4) require the Commission to explain its reasons for instituting a hearing on rate changes; and (5) provide for expeditious Commission decision-making by prescribing time limits for completion of rate hearings, initial decisions and final decisions. Former Vice Chairman Morse

testified before the House Merchant Marine and Fisheries Committee's Merchant Marine Subcommittee on May 23, 1977, suggesting numerous modifications to the bill. After the hearing, the Commission's legislative staff met with Committee staff on several occasions. As a result of these consultations, the bill was modified during Committee markup, and the concerns of the Commission were substantially reduced. The bill was reported by the Committee on Merchant Marine and Fisheries June 30, 1977.

Regulation of U.S. Cargo Diverted to Canada

Legislation to provide for regulation under the Shipping Act, 1916, of U.S. cargo being transported via Canada to foreign countries, was given consideration in the House and Senate in the form of three bills, S. 887, H.R. 6034 and H.R. 6224. The bills required carriers who solicit cargo in the United States and transport through Canadian ports to file tariffs with the Commission. In reports to the House Merchant Marine and Fisheries Committee and the Senate Commerce, Science, and Transportation Committee, the Commission expressed opposition to the enactment of this legislation for several reasons.

The Commission maintained that the assertion of such jurisdiction by the United States would be viewed by the foreign nations concerned as an infringement of their sovereignty and would be opposed by them. The Commission further believed that the bill would unduly restrict freedom of trade by denying U.S. shippers the right to avail themselves of foreign port-to-port services, and that the parity requirement imposed in the bill could place U.S. shippers at a competitive disadvantage with Canadian or Mexican shippers and could operate to the detriment of U.S. commerce. Finally, the Commission was of the opinion that it already had jurisdiction over carriers who offer a through service in the foreign commerce of

the United States via Canadian or Mexican ports and therefore recommended that the legislation be amended to clarify the Commission's jurisdiction over all intermodal services.

OTHER LEGISLATIVE ACTIVITIES

Energy Policy and Conservation Act - Energy Use

Pursuant to section 382(a) of Public Law 94-163, the Energy Policy and Conservation Act, a report was submitted on December 17, 1976 to the House Committee on Interstate and Foreign Commerce and the Senate Committee on Interior and Insular Affairs.

To assist its preparation of the study, the Commission requested information from all vessel operating common carriers in the foreign and domestic offshore commerce of the United States regarding amounts of fuel consumed, current programs by carriers to reduce fuel consumption, Commission administered statutes that inhibit efficient use of fuel, and suggestions for fuel use reduction.

The Commission finally reported that although there appear to be concerted efforts by carriers to minimize fuel consumption, the likelihood of reducing consumption to ten percent below 1972 levels, as proposed by the Act, was extremely remote given existing economic trends and fuel availability. Current programs now in effect by carriers to maximize fuel efficiency include monitoring fuel consumption, reduction in vessel speed, alteration of ship schedules, technological advances, and education of personnel as to the importance of fuel consumption.

The Commission and responding carriers agreed that there are no particular statutes administered by the Commission which require, permit or induce the

inefficient use of energy. Finally, the Commission emphasized its commitment to energy conservation programs undertaken by vessel operating common carriers in the private sector.

Financial Reporting

On September 23, 1977, the Office of Management and Budget cleared proposed legislation drafted by the Commission for submission to Congress. The legislation would amend the Intercoastal Shipping Act, 1933, to make public the financial reports of common carriers by water in interstate commerce. If enacted, this legislation would permit the Commission to make annual reports or statements of rate base and income which are filed with the Commission available to the public. Similar authority is presently held by the Civil Aeronautics Board and the Interstate Commerce Commission.

Illegal Rebating in the Foreign Commerce of the United States

The Senate Committee on Commerce, Science, and Transportation, which is charged with Commission oversight responsibilities, began a study of illegal ocean shipping practices in United States commerce. Former Chairman Bakke appeared before the Commerce Committee's Merchant Marine and Tourism Subcommittee to discuss the problem of rebating and related malpractices in the foreign ocean commerce on March 18, 1977. The Chairman addressed the problem of overtonnaging which often leads to rebating, stated his intention to implement recommendations made in an independent study concerning conference self-policing, and discussed the Commission's Fact Finding Investigation No. 9, which was undertaken to investigate worldwide rebating practices. The hearings were expected to lead to the introduction of legislation designed to combat illegal rebating activities.

IV. FORMAL PROCEEDINGS

BEFORE THE COMMISSION

During Fiscal Year 1977, the Commission heard oral argument in five formal proceedings and issued decisions terminating 34 others. Thirty-five proceedings were discontinued or dismissed without decision (including determinations not to review Administrative Law Judge orders terminating proceedings), and three were referred or remanded to the Office of the ALJ's.

The Commission also issued 35 decisions involving special docket applications and 35 decisions in informal dockets involving claims against carriers for less than $5,000.

Among the more noteworthy Commission decisions were the following:

Docket No. 73-44 - Kraft Foods v. Moore McCormack Lines, Inc. - In proceedings on remand from the D.C. Court of Appeals, it was determined that a carrier tariff rule requiring a claim for adjustment of freight charges to be filed with the carrier before shipment leaves the carrier's custody cannot bar filing of a claim with the Commission within the two-year statutory period.

Docket No. 73-66 - Austasia Container Express (ACE) - A nonvessel operating carrier transporting United States cargoes from the Detroit, Michigan, area to Australia via the west coast of Canada was found to be a carrier subject to the Shipping Act and was ordered to file an appropriate tariff with the Commission. It was held that Shipping Act jurisdiction is not dependent upon the physical use of a United States port by an ocean going vessel. A petition for review is pending in the Court of Appeals for District of Columbia Circuit.

Docket No. 73-79 - Household Goods Forwarders Association of America, Inc. v. American Export Lines, Inc., Sea-Land Service, Inc., and United States

Lines, Inc. - The practice of certain American-flag carriers in making special rates available to shippers of used household goods belonging to U.S. Government personnel (under International Through Government Bills of Lading) which were generally lower than the rates available to civilian shippers the was held not to constitute unjust discrimination within the meaning of Shipping Act Section 17, despite the 1974 repeal of Section 6 of the Intercoastal Shipping Act. A petition for reconsideration is pending before the Commission.

Docket No. 74-18 - Dow Chemical International, Inc. v. American President Lines, Limited, et al. - The Commission decided that where the carrier's tariff was ambiguous with regard to the applicability of a handling charge to shipper-packed containers tendered to the carrier, the ambiguity would be resolved in favor of the shipper, entitling the shipper to reparations.

Docket Nos. 75-4 and 75-5 - Department of Defense and Military Sealift Command v. Matson Navigation Company - Complainants failed to meet their burden of proving that Matson's failure and refusal to file appropriate military class rates is an unjust and unreasonable practice, within the meaning Sf section 18(a) of the Shipping Act, 1916, and Section 4 of the Intercoastal Shipping Act, 1933.

Docket 75-13 - Petition of North Atlantic French Atlantic Freight Conference and North Atlantic Baltic Freight Conference for a Declaratory Order - In this proceeding the Commission declared that Section 14b(2) of the Shipping Act, 1916, requires only that a carrier give the contract shipper at least 90 days' notice of any increase in the contract rates.

Docket No. 75-15 - The Carborundum Company v. Royal Netherlands Steamship Company and Docket No. 75-27 Abbott Laboratories v. Venezuelan Line - The Commission determined that carrier tariff rules requiring rating of cargo as

N.O.S. when the bill of lading description is by trade name cannot be used to preclude Commission consideration of the nature of the cargo when a claim is filed with the FMC.

Docket No. 75-30 - Agreements Nos. 9718-3 and 9731-5 - In this proceeding, the Commission found that an agreement among six Japanese carriers providing for the sharing of space on their respective vessels, and for the coordination of the sailing and itineraries of those vessels, was approvable under Section 15 of the Shipping Act because the agreement tended to ameliorate the overtonnaged condition of the trans-Pacific trades, yet at the same time contributed toward keeping a high number of common carriers in those trades.

Docket No. 76-2 - Borden Inc. International v. Venezuelan Line - A carrier tariff provision requiring statement of value at time of shipment may not be used to deny shippers opportunity to establish actual value in a claim before the Commission.

Docket No. 76-37 - American Cruise Line, Inc. - Petition for Declaratory Order - The Commission has jurisdiction to determine evidence of financial responsibility under Section 3 of P.L. 89-777 for passenger-carrying ocean carriers which are otherwise regulated by the Interstate Commerce Commission.

Other Commission decisions issued during the reporting period involved the billing practices of certain freight forwarders, jurisdiction over terminal lease agreements, approvability of preferential berthing arrangements, cancellation of active tariffs, and a wide range of ocean carrier conference activities.

The Commission also adopted initial decisions in Docket Nos. 75-3 - Chevron Chemical Company v. Mitsui O.S.K. Lines, Ltd.; 75-31 - CSC International, Inc. v. Waterman Steamship Corp.; 75-44 - E.S.B. Incorporated v. Moore McCormack Lines; 76-1 - CSC International, Inc. v. Orient Overseas Container LIne, Inc.; 76-25

- Trane Company v. South African Marine Corp. (N.Y.); 76-30 - Pan American Health Organization v. Prudential LInes, Inc. and 76-39 - Caterpillar Overseas, S.A. v. South African Marine Corporation (N.Y.) - all involving claims for overcharge of ocean freight. The Commission determined not to review the order of the Administrative Law Judge in Docket No. 76-26 - Transconex Inc. - Proposed General Rate Increase in the Virgin Islands Domestic Offshore Trade finding respondent's rate increase not unjust or unreasonable.

At the beginning of Fiscal Year 1977, 74 proceedings were pending before Administrative Law Judges. During the year, 106 cases were added, which included four cases reopened and remanded to Administrative Law Judges for further proceedings. The judges held 28 prehearing conferences, conducted hearings in nine cases, issued 19 initial decisions in formal proceedings, and 31 initial decisions in special docket applications. Cases otherwise disposed of involved 37 formal proceedings. The Commission adopted four formal decisions and 28 special docket decisions.

In proceedings not yet decided by the Commission, the following initial decisions of the Commission's ALJ's included:

Docket No. 71-76 - Bethlehem Steel Corporation v. Indiana Port Commission. A harbor service charge contained in a port commission's tariff was found to be an unjust and unreasonable charge in violation of section 17 of the Shipping Act, 1916, where a port dedicated to the public use contributes no substantial service and benefit to vessels using either public or nonpublic facilities thereof.

Docket No. 72-35 - Pacific Westbound Conference - Wastepaper and Woodpulp from United States West Coast to Far East. It was found that the respondent conference had engaged in ratemaking practices which were in violation

of Section 15 of the Shipping Act, . 1916. Respondent's conference agreement was ordered modified and member lines were ordered to file and observe reasonable and fair wastepaper rates.

Docket No. 73-22 - Matson Navigation Co. - Proposed Changes in Rates Between the U.S. Pacific Coast and Hawaii, Docket No. 73-22 (Sub. No. 1) - Matson Navigation Co. - General Rate Increase in the Hawaiian Trade, and Docket No. 74-36 (Sub No. 1) - Matson Navigation Co. - Proposed Increase in Auto Rates. An investigation of rates under Section 18(a) of the Shipping Act, 1916, and Section 4 of the Intercoastal Shipping Act, 1933, which finds the rates unjust and unreasonable cannot support an award of reparation where the rates in question were no longer in effect at the time of the investigation.

Docket No. 73-38 - Council of North Atlantic Shipping Associations, et al. v. American Mail Lines, Ltd., et al. Respondents' minibridge service was found not violative of Section 16 First, 17, or 18(b)(5) of the Shipping Act, 1916. However, a reevaluation of past criteria and precedent for determining the lawfulness of intermodal or minibridge service in the light of present advances in transportation, particularly in containerization and the developments fostered by it, is necessary.

Docket No. 74-45 - Agreement No. 8005-7 Between Members of the New York Terminal Conference (NYTC). An agreement establishing selective free time and demurrage rules for particular trades or commodities was not violative of Section 15 of the Shipping Act, 1916. Control over such rules by one terminal conference tariff rather than by multiple carrier conference tariffs was suggested.

Docket No. 76-10 - Joy Manufacturing Co. v. Lykes Bros. Steamship Co., Inc. It was found that the party which initially paid the ocean freight charges is the proper party to recover overcharges or to be subjected to payment of undercharges. The proceeding was held open for submission of applicable charges.

Docket No. 76-41 - Berthing of Seatrain Vessels in San Juan, Puerto Rico. It was found that (1) the Commission had authority over the Puerto Rico Ports Authority and the Puerto Rico Maritime Shipping Authority (PRMSA) by virtue of Section 1 of the Shipping Act, 1916; (2) the Ports Authority violated Section 16 First of the Act by failure to prevent public areas which had private fixtures and property thereon from becoming dedicated to private and exclusive use; (3) the Ports Authority also violated Section 17 of the Act by failure to establish and enforce just and reasonable regulations concerning assignment of berths and utilization of public areas at Isla Grande; (4) PRMSA violated Section 16 First of the Act by its exclusive utilization of container cranes and rails thereby giving itself an unreasonable preference and subjecting other potential users to an unreasonable disadvantage; and (5) PRMSA violated Section 17 of the Act by its failure to establish just and reasonable regulations concerning secondary utilization of its container cranes and rails located in the public areas at Isla Grande.

Judges also issued initial decisions in Docket Nos. 74-44, 75-31, 75-38, 75-45, 76-24, 76-25, 76-42, 77-2, and the thirty-one special dockets noted earlier. At the close of Fiscal Year 1977, ninety-three proceedings were pending before the Commission's Administrative Law Judges.

V. RULEMAKING

The following rules were published during the reporting period as a result of rulemaking proceedings. Several were the result of the enactment of the "Government in the Sunshine Act."

Docket Nos. 76-49, 76-61, 77-12 - Rules of Practice and Procedure - Amendments to the Rules of Practice and Procedure designed to expedite the conduct of administrative proceedings before the Commission. (General Order 16; Amendments 16, 18 and 20).

Docket No. 76-65 - Rules Implementing the Government in the Sunshine Act - Implementation of "Government in the Sunshine Act" provisions requiring conduct of agency business in open sessions of Commission meetings insofar as possible. (General Order 22, Amendment 8).

Docket No. 76-66 - Extraneous and Ex Parte Communications - Implementation of Section 4 of the Sunshine Act (P.L. 94-409, September 13, 1976), which amended the Administrative Procedure Act (5 U.S.C. 551, et seq.), in the area of ex parte communications. The rule prohibits a party, an agent of a party, or any interested person, from communicating on the merits of a proceeding with any Commission member, Administrative Law Judge or Commission employee, who is or may reasonably be expected to be involved in the decision-making process of that proceeding. (General Order 16, Amendment 17).

Docket No. 77-14 - Appearances and Practices before the Commission by Former Employees - Amendments to the Rules of Practice and Procedure to prohibit any former Commission member, officer or employee from practicing, appearing, or representing anyone before the Commission within one year of the termination of his or her service with the Commission unless it is shown that the particular matter under consideration by the Commission was not under the official responsibility of such person at any time within one year of the termination of his or her service with the Commission (General Order 16; Amendment 21).

Docket No. 77-24 - Oil Pollution Certificates (Alaska) - Certification of operators of vessels carrying Alaskan oil by sea to other ports in the United States (General Order 37.).

The following rulemaking proceedings instituted during the reporting period were still in progress as of September 30, 1977.

Docket No. 76-58 - Report by Common Carriers by Water in the Domestic Trades.

Docket No. 76-63 - General Order 24 Amendments by Common Carriers and Other Persons; Supporting Statements and Evidence.

Docket No. 77-22 - Actions to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States (Guatemala).

Four rulemaking proceedings were discontinued without adoption of final rules.

VI. ACTION IN THE COURTS

At the beginning of the 1977 Fiscal Year, the Federal Maritime Commission was a party in fifteen proceedings before various United States Courts of Appeal. Of these cases, ten involved petitions to review orders of the Commission and five were appeals from actions in United States District Courts. During the Fiscal Year ending September 30, 1977, eighteen petitions to review were filed and three appeals were taken from District Court action. The Commission is also directly participating in six actions in United States District Courts.

During the 1977 Fiscal Year twenty one proceedings before the Courts of Appeal were either completed or withdrawn. Fifteen cases are either pending briefs, argument, or decision.

The Commission referred nine enforcement actions to the Department of Justice during the Fiscal Year.

Significant Cases

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

FMC & USA v. Pacific Maritime Association, et al. - U.S. Supreme Court No. 76-938. This case is on certiorari from a decision of the Court of Appeals for the D.C. Circuit, Pacific Maritime Association v. FMC, 543 F.2d 395 (D.C. Cir. 1976), which held that the FMC lacks the power to require pre-implementation approval of agreements negotiated directly between labor unions and employers of longshore labor. The Commission had held that an agreement between the members of the Pacific Maritime Association (PMA), a maritime employers' collective bargaining association, and the International Longshoremen's and Warehousemen's Union (ILWU) which represents longshoremen hired by both PMA and nonmember employers, was subject to the pre-implementation approval requirement of Section 15, Shipping Act, 1916. The Commission maintained that the agreement, in attempting to impose fringe benefits and other conditions on non-PMA member employers, "controlled competition" within the meaning of Section 15 and that the mere existence of an anti-trust exemption for labor related agreements did not necessarily exempt themfrom Section 15 approval requirements. The briefs have been filed, but argument has not yet been scheduled.

United States v. Sea Land Service, Inc. 3rd Cir. No. 77-2142. This case represents a civil penalty action brought on the Commission's behalf by the Department of Justice against Sea-Land Service, Inc., for violations of Section 18(a)

of the Shipping Act, 1916, Section 2 of the Intercoastal Shipping Act, 1933, and a Commission order of suspension.

Sea-Land, in conformity with its labor agreement with the International Longshoremen's Association and the ILA Rules on Containers, had filed a tariff provision which would deny containers to consolidators within a 50-mile radius of the New York Harbor. Sea-Land's tariff provision was suspended by the Commission. Sea-Land nevertheless implemented the ILA rules on containers and refused containers to consolidators. The government sought penalties of $151,000 for 151 days of continuing violation, based upon the daily violation language of sections 18 and 32 of the Shipping Act, and section 2 of the Intercoastal Act. The New Jersey District Court, however, refused to find a continuing violation and awarded only $5,000 in civil penalties based on a finding of five discrete violations. The case is on appeal to the Third Circuit Court.

United States Lines v. FMC and USA, D.C. Circuit 76-2004 and 77-1470. Case No. 76-2004 is a review of a Commission Order which approved Agreement No. 9902-3 without a hearing. Agreement No. 9902-3 was an amendment of the Euro-Pacific Joint Service Agreement between Hapag-Lloyd, A.G. and Compagnie Generale Transatlantique, which added Intercontinental Transport, B.V. as a party and allowed the joint service to substitute six containerships for its existing combination break/bulk and container vessels. United States Lines filed protests to the agreement and requested a hearing.

Case No. 77-1470 is a review of a Commission order granting approval pendente lite to a continuation of the Euro-Pacific Joint Service Agreement, as amended through Agreement No. 9902-3. That order also instituted Commission Docket No. 77-4, an investigation and hearing into the continued justification for

the joint service, and Euro-Pacific's proposals to expand its fleet to eight fully containerized vessels and to use separate agents. United States Lines and Sea-Land Service, Inc., filed protests to the agreements and United States Lines sought review of the Commission's approval of Agreement No. 9902-3 pendente lite without a hearing. Briefs have been filed, but a date for argument has not been scheduled.

Austasia Container Express v. FMC, D.C. Cir. No. 77-1236. Often referred to as the "ACE" case, this court action is a petition for review of a Commission decision finding a through container freight service from Detroit, Michigan to Australia, via Windsor and Vancouver, Canada, to be subject to the tariff filing requirements of the Shipping Act, 1916. The operation in question routes the containers overland by Canadian railroad to Vancouver. No ocean port in the United States is involved. The case is one of first impression and turns on construction of Sections 1 and 18 of the Shipping Act. Briefs have been filed and oral argument is expected to be scheduled on or about February, 1978.

New York Foreign Freight Forwarders & Brokers Assn , et al. v. ICC & USA, D.C. Cir. No. 75-1867. This is a review of an Interstate Commerce Commission rulemaking proceeding (Ex Parte 261 (Sub 1)), in which the ICC held that non-vessel operating common carriers by water (NVOs) subject to FMC jurisdiction should be excluded on "policy" grounds from participating in international joint rates with ICC-regulated equipment operating carriers. FMC-regulated vessel operating carriers are allowed to participate in such joint rates. The FMC is one of five petitioners challenging the ICC's order. Briefs have been filed, and the case is awaiting argument.

Delta Steamship Lines v. FMC, E.D. La., Civil No. 77-2239, Section G. This case was brought under the Freedom of Information Act, 5 USC 552, following

denial of access to the documents supplied to the Commission by Sea-Land Service, Inc., in connection with settlement of its civil penalty liabilities for rebating violations under Sections 16 and 18(b) of the Shipping Act, 1916. The case is pending argument on a summary judgment motion.

Ryoichi Takazato and Kanematsu-Gosha, Inc. v. FMC, et al., C.D. Cal., Civil No. 77-1575 WHO. This is a case in which plantiffs have sued the Commission and two of its officials for alledgedly exceeding their authority in the issuance of an investigational subpoena to plaintiffs. They seek declaratory relief in the form of a court order directing the Commission to quash the subpoena. The subpoena was issued in the course of Fact Finding Investigation No. 9. Plaintiffs contend that the Commission's subpoena authority is limited to formal adjudicatory proceedings brought pursuant to Section 22 of the Shipping Act, 1916. The Commission has filed an answer and counterclaim for enforcement.

U.S. v. Deutsche Dampfschiffahrts, (Atlantica) et al., S.D.N.Y. Civ. No. 77-2737. Civil penalty action filed by Justice upon request of the Commission for receipt by this joint service (Germany's Hansa Line; France's Fabre Line; and Italy's Fassio Service) of rebates on over 262 shipments. Maximum penalties for the Section 16 violations would total $1,310,000, and for the parellel Section 18(b) violations $1,628. This case has not yet been set for trial.

U.S. Lines v. Boyce Luckett, N.D. Cal. Div. No. C77-1507 WHO. This is a private civil action brought by United States Lines to enforce a subpoena duces tecum of an Administrative Law Judge for certain foreign documents in the custody of Hapag-Lloyd's business agent, Boyce Luckett. The Commission intervened, both to have the subpoena enforced and to be covered by the ongoing court order in the event that the Commission's Hearing Counsel experiences further difficulties in obtaining compliance with its discovery demands. On August 2, 1977, the subpoenas were ordered enforced.

Other significant proceedings included New York Shipping Association v. FMC and USA, a review of the Commission's Order in Docket No. 69-57, requiring certain adjustments in assessments made by the NYSA to fund benefits for maritime laborers; Ceres Terminals, Inc. and Ceres Marine Terminals, Inc. v. FMC, a proceeding brought by lessees of terminal facilities which the Commission had found to be operating under an unapproved agreement in violation of Section 15; and several civil penalty and enforcement actions initiated by the Commission as part of Fact Finding Investigation No. 9 into illegal rebating in our ocean commerce.

Non-Adjudicatory Matters

The Commission initiated 19 claims for civil penalties during Fiscal Year 1977. During the period, several claims were compromised resulting in collections of civil penalties totalling $1,899,600. Of this amount $1,500,000 represented the first installment of a $4,000,000 penalty which arose from a claim asserted against Sea-Land Service, Inc., for violations of the rebating provisions of the Shipping Act, 1916. The claims asserted and collected during the period involved alleged violations of Sections 15, 16, 18 and 44 of the Shipping Act. Of particular importance during the fiscal year were a number of disclosures of violations of the anti-rebating provisions of the Shipping Act. These disclosures are expected to result in a significant increase in enforcement claims issued in Fiscal Year 1978.

VII. COMPLIANCE, SURVEILLANCE, AND ENFORCEMENT

AGREEMENTS REVIEW

Section 15 of the Shipping Act, 1916, clearly indicates criteria for initial or continued approval of ocean carrier conference agreements. The Commission's consideration of these agreements is perhaps its most visible activity. The anticompetitive effect of any agreement received by the Commission must be weighed against its potential public benefits.

Section 15 also provides that approval shall not be granted or continued approval permitted to any conference agreement which fails to provide certain terms and conditions for admission and readmission to conference membership, or withdrawal from membership 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.

During Fiscal Year 1977, 231 carrier agreements were processed under Section 15. A statistical table of agreements received and total active agreements appears in Appendix A.

The surveillance of approved agreements involves a constant review of the agreement and its modifications in order to determine that it continues to meet the requirements of Section 15 and the applicable General Orders of the Commission, i.e., 6, 7, 9, 14, 17, 18, 23 and 24. Agreements must also remain in conformity with the latest Commission and court decisions. If the agreement no longer meets any one of these criteria, correspondence is undertaken with the parties to the

agreement in an attempt to have it modified in order to bring it into conformity. Occasionally the parties comply only after the implementation of a formal proceeding.

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

Minutes of Meetings

It is the responsibility of the Commission to ensure that the parties to Section 15 conference and ratemaking agreements comply with the Shipping Act at all times and within the terms of their approved agreement. In order to discharge this responsibility, the Commission must be fully apprised of the manner in which conference operations are carried out, and requires receipt of meaningful and timely reports, including minutes.

In Fiscal Year 1977, 2,166 minutes of meetings of conference, ratemaking and discussion agreements were filed with the Commission and reviewed by the staff.

Shippers' 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 objections concernings any other aspect of the tariff.

In Fiscal Year 1977, 300 reports covering shippers' requests and complaints were filed with the Commission and reviewed by the staff. Fifty-two reports were received and reviewed covering terminal conferences.

Self-Policing Reports

These reports are intended to inform the Commission of the extent to which conferences and rate agreements are policing the activities of their member lines with respect to malpractices and breaches of agreements or tariffs. In Fiscal Year 1977, 186 semiannual self-policing reports were filed with the Commission and reviewed by the staff.

Conferences are turning in increasing numbers to neutral body self-policing mechanisms in order to effectively curb malpractices among their member lines. In evaluating the continued viability of the conference system as an effective ocean transportation strategy, the Commission attaches great significance to the respective conferences' ability to police themselves. At the end of Fiscal Year 1977, the Commission was developing rules which would set forth updated, uniform self-policing requirements for conferences within our jurisdiction.

Pooling Statements

Pooling statements are filed with the Commission to keep it apprised of the activities of the parties to pooling agreements, providing us 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 an annual or semiannual basis. 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.

Forty-seven pooling statements were filed with the Commission for audit by the staff during Fiscal Year 1977.

Operating Reports

Reports submitted by parties to agreements such as space chartering agreements (primarily in the Japanese trade), cooperative working arrangements, consortia, and sailing agreements, are categorized as "Operating Reports." These reports require a detailed analysis of the activities of the parties to ensure that their operations do not exceed the scope of the approved agreements. In view of technological changes in the industry, it is expected that such reports will continue to increase in the future.

Ninety-one operating reports were filed with the Commission and reviewed by the staff in Fiscal Year 1977.

Nonexclusive Transshipment Agreements

General Order 23 exempts nonexclusive transshipment agreements from the requirements of section 15. These are agreements which do not prohibit either carrier from entering into similar agreements with other carriers. However, the parties involved must file these agreements according to the format outlined in the General Order and the tariff(s) involved must contain language required by the order. The Commission does not need to review such filings, G.O. 23 provides that they be processed at staff level. Ssince the publication of this General Order, 875 nonexclusive transshipment agreements have been filed with the Commission through September 30, 1977. As of this date, 467 such agreements were in effect.

Agreements in the Domestic Trades

During Fiscal Year 1977, 20 domestic offshore carrier agreements were filed for Commission approval; thirty-three such agreements were on file at the close of the fiscal year.

FOREIGN TARIFF REVIEW

The tariffs that are submitted for filing to the Commission as well as changes in their rates, rules, and regulations, are carefully examined under a continuing program to ensure 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.
- Section 14(b) and the various provisions of the dual rate contract systems as approved by the Commission.
- Sections 14, 16 and 17.
- General Orders of the Commission relating to freight forwarder compensation, import and export demurrage and other matters.

During Fiscal Year 1977, the Commission received 367 new tariffs while 393 were cancelled, resulting in a net decrease of 26 tariffs on file. This decrease reflects the beginning of the Commission's program to eliminate inactive tariffs from its files. Active tariffs on file totalled 3,291 as of September 30, 1977.

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 statutory notice provision applicable to new or initial filings and those involving an increase cost to the shipper. During Fiscal Year 1977, the Commission received 98 special permission applications requesting waiver of the tariff filing requirements. Of the 98 special permission applications processed during the Fiscal Year 1977, 66 were granted, 20 denied and 12 withdrawn.

Programs and Surveillance Activity

The Shipping Act and the Commission's General Order 13 require tariffs to be filed with the Commission and prescribe the technical filing requirements. Although these filings are carefully reviewed for compliance with such technical requirements, they are also examined to ensure compliance with all applicable regulations. Tariff filings constitute accurate, timely, and valuable information which enables the Commission to carry out its statutory responsibilities.

Tariff material filed with the Commission is reviewed to: (1) ensure that the various provisions of bills of lading do not conflict with statutory requirements; (2) to determine whether conference tariffs are consistent with the authority granted under approved agreements; (3) monitor the level of freight forwarder and consolidator compensation; (4) identify any area of unfair or unjust treatment with respect to shippers, consignees, ports, other carriers, other persons, etc.; (5) identify discriminatory freight rates or charges which are detrimental to our commerce; (6) watch for trends in tariffs which affect competitive geographic areas; (7) observe development of intermodal trends, particularly as they may have

an impact on traditional trade patterns; (8) monitor general rate increases and surcharges to ensure that they are warranted by actual trade conditions; and (9) carefully analyze all tariff rules and regulations to ensure compliance with applicable Commission regulations.

Cancellation of Inactive Tariffs

The Commission issued a Show Cause Order requiring independent carriers which were believed to be no longer in operation to demonstrate why their tariffs should not be cancelled. The Show Cause Order was published in the Federal Register and resulted in the cancellation of 21 carrier tariffs.

Phase II of the cancellation program was instituted to identify those independent tariffs on file with the Commission that have not been amended by the filing of changes in rates within a 12-month period, thereby indicating that common carrier services were not being performed. Seven hundred and sixty-five tariffs were identified and an Order was issued requiring carriers to show cause why the tariffs should not be cancelled. As the fiscal year closed, carrier responses resulted in the voluntary cancellation of 299 tariffs by the carriers.

DOMESTIC TARIFF REVIEW

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

The Domestic Tariff Circular No. 3 (46 CFR 531) has been in effect since April, 1948. During the past 29 years, the tariff circular has been amended several

times in an effort to provide for the changing nature of the industry. With the continued develpment of containerization and the trend toward true intermodal through movement, the neeed for new rules was again required. It, therefore, appeared prudent to revise rather than amend the tariff circular. Fiscal Year 1977 saw the completion of this revised publication and barring any further delays, the new rules, designated as Commission Order No. 38, will become effective on January 1, 1978, with full compliance required by January 1, 1979.

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 our foreign commerce which would otherwise be violative of the antitrust laws.

The Pacific Coast European Conference, Agreement No. 5200, has a dual rate system modification pending before the Commission which is noteworthy because it results from intermodalism and symbolizes its effect upon the dual rate contract system.

The modification provides for the extension of the dual rate contract system to intermodal rates applying from U.S. Pacific Coast ports or port area points to destination ports of call. Protests have been received against the modification. The primary objection is the denial to the contract signatory of a choice of routes across the United States. In addition, protestants argue that the Interstate Commerce Act does not authorize two levels of rates in tariffs filed with that agency for that portion of the movement under its jurisdiction.

Two dual rate contract modifications similar to that filed by the Pacific Coast European Conference were filed by the Trans-Pacific Freight Conference of Japan/Korea and the Japan/Korea-Atlantic & Gulf Freight Conference. These modifications are the subject of Docket No. 76-11, In Re: Agreements Nos. 150-DR-7 and 3103 -DR-7, on which hearings were held in Fiscal Year 1977.

Seven other dual rate contract system modifications were processed by the Commission, and one application for implementation of a dual rate system was denied.

TERMINALS

The terminal industry provides the facilities and labor for interchanging cargo between land and sea carriers as well as providing the facilities at which shippers and consignees may directly deliver or receive cargo.

In order to keep pace with ever changing technology in ocean transportation and to facilitate the interchange of cargo, terminal operators have invested huge sums of money to modernize their terminals and have entered into various types of leases, preferential berthing assignments, cooperative working arrangements and agreements which permit operators to jointly discuss problems and matters which are common to the industry as a whole.

The Commission closely monitors these arrangements, and where approval is required, appropriate action under Section 15 of the Shipping Act, 1916, is taken.

In certain instances, the demand for adequate berthing facilities has resulted in litigation involving the approval of some agreements, owing to the fears of involved parties that preferential assignments or leases to others may be detrimental to their individual interests.

Competition between carriers for suitable berthing space, as well as competition between ports for available traffic, will continue to require vigilance on the part of the Commission and its staff to assure that the legitimate interests of the shipping public, terminal operators, and carriers are protected.

Section 16 of the Act forbids both carriers and terminal operators from making or giving any undue or unreasonable preference or advantage to any particular person, locality or description of traffic.

Tariff Filings

During the reporting period, a total of 5,188 tariff filings were received and examined on behalf of terminal operators. By the end of the year, the Commission had an all-time high of 609 active terminal tariffs on file.

Agreements Review

During Fiscal Year 1977, 173 terminal agreements were filed for Commission consideration. As of September 30, 1977, there were 401 approved terminal agreements on file.

Rulemaking

The trend toward more integrated terminal services, where a terminal operator also acts as a stevedore, continues to grow apace with new technological developments. Agreements with carriers often provide for all-inclusive terminal/stevedoring services. These more sophisticated agreements have raised jurisdictional problems since the Commission has never specifically ruled on its authority over the activities of parties acting strictly as stevedores. In order to provide some guidance to the industry with respect to Section 15 filing

requirements for these types of agreements, the Commission instructed the staff to prepare a new proposed rule which would: (1) clarify the status of terminal/stevedore agreements; (2) propose an exemption under Section 35, Shipping Act, 1916, for certain types of agreements; and (3) clarify the extent of the Commission's jurisdiction over the use of inland waterway terminals by LASH and SEABEE operators.

Tariff Matters

A total of 520 terminal operators in nine separate geographical locations appear in the Commission's master automatic data processing address file. Communication with the operators and receipt of statistical information is facilitated through the use of this system.

As a result of continuing economic pressures, terminal rates have increased noticeably during the past 12 months, particularly in the second half of Fiscal Year 1977. Most terminal operators cite inflation and current contract negotiations with ILA labor as the primary reason for the upward rate adjustments.

OCEAN FREIGHT FORWARDERS

The Commission, under the provisions of the Shipping Act, 1916, carries out a program of licensing and regulating independent ocean freight forwarders. Section 44 of the Shipping Act, 1916, mandates the licensing of persons carrying on the business of forwarding, provided they are first found to be fit, willing and able to properly perform forwarding services on behalf of export shippers. It prohibits the licensing of any person related to an export shipper or any person who has a beneficial interest in export cargoes; prohibits brokerage payments to forwarders who do not perform services on behalf of the vessel; and requires that licensed

forwarders maintain a bond to insure financial responsibility and the supply of services in accordance with contracts, arrangements or agreements relating to forwarding activities.

The Commission's General Order 4 sets forth specific criteria which must be met by freight forwarder applicants in order to be licensed, and governs the conduct and activities of regulated forwarders.

Since 1962, approximately 2,000 freight forwarders have been licensed after having been found "fit, willing and able" to properly carry on the business of freight forwarding, and 1,310 of those forwarders are still licensed. These licensed forwarders, in addition to their principal office, maintain 759 separate branch offices for which similar prior approval must be granted by the Commission.

During the reporting period the Commission received 200 new applications for licenses, 136 of which were approved. Sixty-two new branch offices of licensees also were approved during the year.

The time between the filing and disposition of an application has been reduced from an average of nearly six months to approximately five weeksin recent years.

Denials and Revocations

During Fiscal Year 1977, the Commission revoked 44 outstanding licenses for various reasons, and 23 applications were denied for failure to meet statutory or Commission requirements.

Significant Proceedings

During the reporting period, two significant formal proceedings were initiated by the Commission involving freight forwarder applicants and licensees.

Docket No. 77-26, Independent Ocean Freight Forwarder License, E. L. Mobley, Inc., involves allegations that the authenticity of certain documents were falsely certified by the licensee in violation of the Commission's General Order 4, which could jeopardize the licensee's "fitness" to remain a licensed independent ocean freight forwarder. This proceeding also involves allegations that the licensee had failed to pay freight monies advanced by shippers to the ocean carriers entitled to payment within the time period specified by the Commission's regulations.

Docket No. 77-37, Independent Ocean Freight Forwarder License, Sergio E. Vasquez, involves allegations that the licensee is under the control of a seller of export shipments in the foreign commerce of the United States. As a consequence, the licensee does not appear to meet the definition of an independent ocean freight forwarder as defined in Section 1, Shipping Act, 1916.

Automatic Data Processing

The Commission has continued to upgrade its automatic data processing system for maintaining accurate information with respect to licensed freight forwarders. This system is updated daily so that the lists containing pertinent information relative to independent ocean freight forwarders are maintained in a current status.

Rulemaking Proceedings

The Commission has instituted a proposed rulemaking proceeding, Docket No. 77-53, which proposes to increase the required freight forwarder surety bond from $10,000 to $50,000. Experience has demonstrated that in many instances of forwarder default, the present amount of the bond required does not provide the measure of protection that Congress originally intended. Moreover, inflation has

rendered the bond figure of $10,000, which was set fifteen years ago, obsolete. This is illustrated by the fact that freight rates have in some cases tripled since the original bond for $10,000 was established in 1962.

The proposed rulemaking also deletes obsolete regulations and would change procedures with respect to applicants who fail to file the required surety bond.

The Commission also is reviewing the full range of existing regulations which apply to the licensing and regulation of forwarders, and we are contemplating revisions which would address current needs and problems in the independent ocean freight forwarding industry.

WATER POLLUTION FINANCIAL RESPONSIBILITY

The Federal Maritime Commission is responsible for the administration of the financial responsibility provisions contained in Section 311 of the Federal Water Pollution Control Act (FWPCA) and, since January, 1977, Subsection 204(c) of the Trans-Alaska Pipeline Authorization Act (TAPAA). Due to major differences between the two statutes, the FWPCA program is administered separately from the TAPAA program.

Federal Water Pollution Control Act

Section 311(p)(1) of the FWPCA applies to owners or operators of domestic and foreign vessels over 300 gross tons, including non-oil-free 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. Such owners or operators are required to establish and maintain with the Commission evidence of financial responsibility

to meet their potential liability to the United States for the costs incurred in removing 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.

Trans-Alaska Pipeline Authorization Act

Subsection 204(c) of the TAPAA applies to owners and operators of domestic and foreign vessels, including barges, which load crude oil that has been transported through the Trans-Alaska pipeline. The subject vessel operators, without regard to the size of such vessels, are required to establish and maintain with the Commission evidence of financial responsibility to meet their potential liability which would result from a discharge of such oil. Liability imposed under the TAPAA is a more broad and strict liability than is imposed under the FWPCA.

Level of Responsibility

The amount of evidence of financial responsibility required by the FWPCA is $100 per gross ton of a subject vessel or $14 million, whichever is the lesser. Such evidence is arranged by vessel owners or operators in the form of insurance, surety bonds, self-insurance, or guaranties designed by the Commission and is maintained on file with the Commission to assure that the United States Government will be reimbursed for costs incurred in the removal of oil pursuant to Section 311 of the FWPCA.

The Commission's implementing regulations, General Order 27, provide for the certification of vessels which are in compliance with the statutory financial responsibility requirements. 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.

The amount of evidence of financial responsibility required by Subsection 204(c) of the TAPAA is $14 million, without regard to a vessel's tonnage and without regard to any evidence required under the FWPCA. All evidence thus far submitted to the Commission pursuant to the TAPAA requirement has taken the form of insurance designed by the Commission, and has been written only by international Protection and Indemnity Associations. While most of the vessels subject to the TAPAA requirements are U.S. flag vessels, no U.S. insurance companies have agreed to insure the liabilities imposed by the TAPAA.

The Commission's regulations implementing TAPAA financial responsibility requirements are contained in the Commission's General Order 37. No subject vessel may load, carry, transship, lighter, or store oil transpoted through the Alaska pipeline without a valid certificate issued pursuant to General Order 37, unless that oil already has been brought ashore at a U.S. port. After the oil is brought ashore at a U.S. port, it becomes subject to the less strict provisions of the FWPCA just as any non-Alaskan oil would be.

Enforcement Program

During the year, the Commission received 1, 386 compliance inquires from port locations in an area ranging from Alaska to the Panama Canal and from Guam to the U.S. Virgin Islands. Of that number of cases, actual delays resulted for 32 vessels because they were not in compliance with either the FWPCA or TAPAA.

Without the Commission-coordinated enforcement program, however, the majority of the 1,386 vessels would have been delayed. The most typical cases involved the failure to carry certificates. In 1,354 cases, no detainment resulted because of the Commission's confirmation to the enforcement officers in the field that the involved vessels were in compliance with the financial responsibility provisions of the Acts.

Hazardous Substances

Section 311 of the FWPCA provides for the eventual addition of "hazardous substances" as a class of pollutants for which vessel owners and operators must evidence financial responsibility. When the Environmental Protection Agency is able to issue necessary regulations, including a definition of "hazardous substances" and the quantity of each substance which would constitute a "harmful discharge," 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.

Certificates Issued

During the year, applications were received covering a total of 4,511 vessels under the FWPCA and TAPAA programs; certificates were isssued to 4,122 vessels; certificates covering 2,371 vessels were revoked for various reasons, including sale of the vessels to new owners; and applications covering 170 vessels were withdrawn.

At the close of the year, a total of 25,617 vessels were covered by valid certificates under the FWPCA and TAPAA programs, and applications involving certification of 925 additional vessels were pending. In addition, 156 vessels were covered by special certificates termed "master" certificates under the FWPCA

program. The latter are blanket certificates applicable only to entities such as shipyards and scrappers which are never certain from one day to the next for which particular vessels they will be responsible. Vessels covered by "master" certificates are not operated commercially.

Automatic Data Processing

An automated record retention system is vital to the operation of the programs. The existing ADP system provides current lists of vessel particulars (i.e., type, flag, tonnage, certificate number, etc.), the names of the owners or operators, and the underwriter covering each vessel. This system is a constant and indispensable source of initial reference enabling the Commission to respond to the enforcement inquiries from the Coast Guard, Customs, and the Panama Canal Company.

PASSENGER VESSEL FINANCIAL RESPONSIBILITY

The Commission administers Sections 2 and 3 of Public Law 89-777 which requires vessel owners, charterers and operators of American and foreign passenger vessels having 50 or more accommodations and embarking passengers at United States ports, to establish their financial responsibility to meet liability incurred for death or injury and to indemnify passengers in the event of non-performance of a voyage or cruise.

Certificates Issued

During Fiscal Year 1977, the Commission received 43 applications for certificates of financial responsibility. Of the total applications on hand, 33 were

approved, including ten new applications for "Performance" Certificates and eight new applications for "Casualty" Certificates. An additional fifteen applications were approved amending existing certificates as certificants added vessels to their fleets, changed their evidence of financial responsibility, or resumed operations from United States ports. Five applications were denied or withdrawn.

Certificates Revoked

During the reporting period, 63 certificates were revoked to reflect the withdrawal of vessels from service, vessel sales, completion of cessation of cruise programs, transfer to foreign-to-foreign operations, or termination of passenger vessel operations.

Enforcement

On December 14, 1976, the Commission denied the Petition for Declaratory Order filed by American Cruise Lines, Inc. which requested the Commission to declare that the requirements of Section 3 of Public Law 89-777 did not apply to its operations as a carrier operating pursuant to the authority of, and in accordance with, the requirements of the Interstate Commerce Commission. The petition was denied because the Commission found that the language of Public Law 89-777leaves no doubt that its provisions apply to all vessels which embark passengers at U.S. ports and which have stateroom accomodations for 50 or more persons, even if the operations of such vessels otherwise fall within the jurisdiction of another agency.

On January 18, 1977, the Commission ordered a hearing to determine whether good cause exists for the continued waiver of Pacific Far East Line's working capital requiremernt and whether its Certificate (Performance) No. P-88, covering

the passenger vessels MARIPOSA and MONTEREY, should be revoked for failure to comply with the financial responsibility requirements of Section 3 of Public Law 89-777 and the Commission's implementing regulation under General Order 20. Hearings were held and, at the close of the fiscal year, the matter was pending the filing of briefs.

INFORMAL COMPLAINTS

Through its informal complaints activity, the Commission 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. The Commission takes appropriate action to settle the dispute either by resolution through voluntary agreement of the parties, recommendation that the complaint or protest be rejected as not violative of the shipping statutes, rules, or orders of the Commission, or by referral to the Bureau of Enforcement for investigation.

There were 236 informal complaints pending at the beginning of Fiscal Year 1977, and during the year, 267 new ones were received. At year end, 154 complaints were carried forward into Fiscal Year 1978, final action having been concluded on 350 complaints.

During Fiscal Year 1977, the Commission continued to upgrade its consumer assistance program by appointing an Assistant Managing Director for Consumer Affairs to expedite processing of informal complaints other than those dealing with tariff rates and interpretation. The overall program is designed to provide the

consuming public, as well as the regulated industry, with specific points of contact to air grievances and secure prompt, inexpensive and uniform resolution of problems on an amicable and cooperative basis.

The Commission's District Offices also handle informal complaints which are received in their District Offices and which fall within their immediate expertise.

ENFORCEMENT ACTIVITIES

The Commission's enforcement program is carried out in large part through its Bureau of Enforcement which is headquartered in Washington, D. C. and has District offices in New York, New York; New Orleans, Louisiana; San Francisco, California; and San Juan, Puerto Rico. Sub-offices are located in Savannah, Georgia and Los Angeles, California. Another office is scheduled for establishment next year in Chicago, Illinois, to serve the Great Lakes area.

The basic mission of these offices is to represent the Commission throughout the coastal U.S. as well as to investigate violations of the shipping statutes administered by the agency. These investigations delve into the activities of common carriers by water, ocean terminal operators, ocean freight forwarders, shippers and consignees. The types of violations given the highest priority for investigation during Fiscal Year 1977 included: common carriers by water rebating a part of the ocean freight charges to shippers and consignees; shippers and consignees obtaining illegal rebates of freight charges from carriers; and shippers misdeclaring or misdescribing cargoes to obtain transportation at less than tariff charges.

During the past eighteen months, major enforcement emphasis has been placed on investigation and exposure of rampant illegal rebating of ocean freight charges that have been paid by carriers and received by shippers. Investigations are

in progress or have been completed in connection with twenty-seven common carriers by water believed to have paid illegal rebates to obtain business accounts. Hundreds of shippers and consignees are under investigation for accepting illegal rebates.

Two of the largest enforcement claim settlements in the Commission's history were made in the past year, one by a U.S. flag carrier, Sea-Land Service, Inc. for $4,000,000.00, and one by Sony Corporation and its wholly-owned subsidiary, Sony Corporation of America for $340,000.00. Substantial penalties were assessed against others and are included in the total fines and penalties shown in Appendix B.

For the protection of United States passenger traffic, the Commission's District offices conducted periodic follow-up passenger vessel audits of ships which had been granted certificates of financial responsibility.

Field Investigations

At the beginning of the year, field investigations of all types not yet completed numbered 662. During the year 608 new investigations were initiated into a wide variety of possible statutory violations. Thus, a total of 1,270 cases were scheduled for investigation. Violations included carrier and shipper malpractices (rebates of freight charges, misclassification, misdescription or misdeclaration of shipments), unlawful common carrier rates in U.S. foreign and domestic offshore trades, unlawful agreements, unlicensed ocean freight forwarder activities, and other matters.

Completed investigations totaled 470, leaving 800 pending completion at the end of the year as shown by the table in Appendix C.

VIII. SPECIAL STUDIES AND PROJECTS

Soviet Maritime Activities

Several studies relating to Soviet maritime activities were conducted during the fiscal year. The Commission staff prepared a report entited "Soviet Maritime Activities in Liner Trades of the U.S." at the request of the Senate Commerce Committee, which constituted the agency's contribution to a compendium of papers published as "Soviet Oceans Development" in October, 1976. This report documented the growing presence of Soviet vessels operating in our trades and explored alternative proposals to deal with this phenomenon.

A second study of the extent to which the Soviets have penetrated the U.S. liner trades was prepared for submission to the House Merchant Marine and Fisheries Committee. This report detailed the percentage share of the liner trade the Soviets control, and documented recent Soviet rate levels. These rate levels were then compared to those of the other major carriers in the trade to establish the extent of Soviet rate cutting.

Currency Exchange Rates

The acceptance of the flexible-exchange-rate system by most of the major western nations has had a unusually large impact on the ocean freight industry. The fluctuation in the value of the dollar has led carriers to institute currency surcharges so that they can neutralize the effects of constant currency realignments. The Commission carefully monitors each surcharge request and, using the extensive data base which it has complied, evaluates the propriety of each surcharge request.

Domestic Commerce

A special report on the maritime transportation system serving the U.S./Puerto Rico Trade was prepared for the "Interagency Study Group on the Puerto Rican Economy," which was organized under the auspices of the Department of Transportation to produce the transportation section of a much larger report on the Puerto Rican economy. The overall report is being prepared under the direction of the Department of Commerce and is to be presented to the President of the United States. The President requested the study so that he could better evaluate the requirements of the Puerto Rican economy and Puerto Rico's special relationship with the United States.

The Commission staff completed a major study of the U.S. Mainland/Hawaiian Trade, documenting the current and historical situation in this important trade. Topics covered in this report include the configuration of the fleet serving the trade, the commodities moving, the impact of ocean transportation costs on the cost of living in Hawaii and the recent history of rate increases in the trade.

Environmental and Energy Efforts

The Commission continued its activities under the National Environmental Policy Act of 1969 and initiated additional activities under the Energy Policy and Conservation Act of 1975.

Section 382(b) of the Energy Policy and Conservation Act of 1975 (P.L. 94-163) (EPACA) requires that the Federal Maritime Commission and four other federal agencies write energy impact statements to determine the impact on energy efficiency and conservation of any major regulatory actions they take. Each of these agencies must define "major regulatory action" and the procedures

for conducting energy studies through rulemaking proceedings. All Commission proceedings are now being reviewed by the Office of Environmental Analysis to determine whether EPACA applies to them.

As in the case of EPACA procedures, all Commission proceedings are reviewed to determine whether the requirements of the National Environmental Policy Act of 1969 (NEPA) apply to them. The Council on Environmental Quality Guidelines provide the framework for these environmental assessments. All agreements and other important Commission actions are reviewed to determine the applicability of NEPA. Those actions which may be major Federal actions are then designated for environmental assessment.

The assessment ensures that the public is given the opportunity to comment on how the Commission's decision will affect man's environment and determines the environmental significance of the Commission's final decision.

Metric System

A continued effort was made to assist in the national goal of converting to the metric system of measurement. Industry pressures are causing many segments of the shipping industry to reconsider their use of the traditional weight and measurement system in view of the continuing trend toward standardization and adoption of the metric system. The Commission has continued to assess metrication developments in the shipping industry so that future agency policies and programs can be planned accordingly.

Marine Information System

The computerized Marine Information System (MARIS) has progressed from its developmental stages to an ongoing system, although some refinement,

improvement, and catch-up activities are still underway. Significant accomplishments during FY 1977 include:

- An extensive manual audit of the tariff data coding system to ensure accurate coverage of tariff data characteristics and geographic scope of each tariff;

- Collection of approximately three hundred special statistical reports developed from the consolidated Commission/Census Bureau vessel-cargo movement data;

- Development of the annual agreement book for public use, reflecting selected active agreements;

- Two new reports for the tariff subsystem reflecting worldwide tariff geographic coverage by carrier, in alphabetic sequence, and worldwide tariff geographic coverage by foreign coast;

- The continuing file maintenance of each of the subsystems in a timely and accurate manner producing current reports to assist Commission personnel in performing their duties.

APPENDIX A

Statistical Abstract of Filings

SECTION 15 AGREEMENTS (including modifications):	
Foreign Commerce	253
Domestic Offshore Commerce	20
Terminals	173
SECTION 14b DUAL RATE CONTRACTS (including modifications):	1
REPORTS REVIEW:	
Shippers' Requests and Complaints	300
Minutes of Meetings	2,259
Self-policing of Conference and Rate Agreements	187
Pooling Statements	47
Operating Reports	91
APPROVED AGREEMENTS ON FILE AS OF SEPTEMBER 30, 1977:	
Conference	77
Rate	40
Joint Conference	13
Pooling	16
Joint Service	36
Sailing	30
Transshipment	130
Cooperative Working, Agency, and Container Interchange	125
Dual Rate Contract Systems	61
Domestic Offshore	33
Terminals	401
Non-exclusive Transshipment	467
TARIFFS:	
Tariff Pages Filed:	
Foreign	325,409
Domestic Offshore	12,124
Terminal	5,188
Tariffs on File as of September 30, 1977:	
Foreign	3,291
Domestic Offshore	225
Terminal	609

APPENDIX B

Penalties for Shipping Act Violations, Fiscal Year 1977

Superscope	$ 27,000.00
Pat Fashions Industries, Inc.) Starlight Trading Inc.) Starlight Purchasing Corp., Ltd.)	20,000.00
Sony Corp.) Sony Corp. of America)	340,000.00
Farrell Lines	2,000.00
Western Navigation Corp.) Harper-Robinson & Co.)	20,000.00
Sea-Land Services, Inc.	4,000,000.00
International Warehouse Industries	1,000.00
Total FY 1977	$4,410,000.00

APPENDIX C

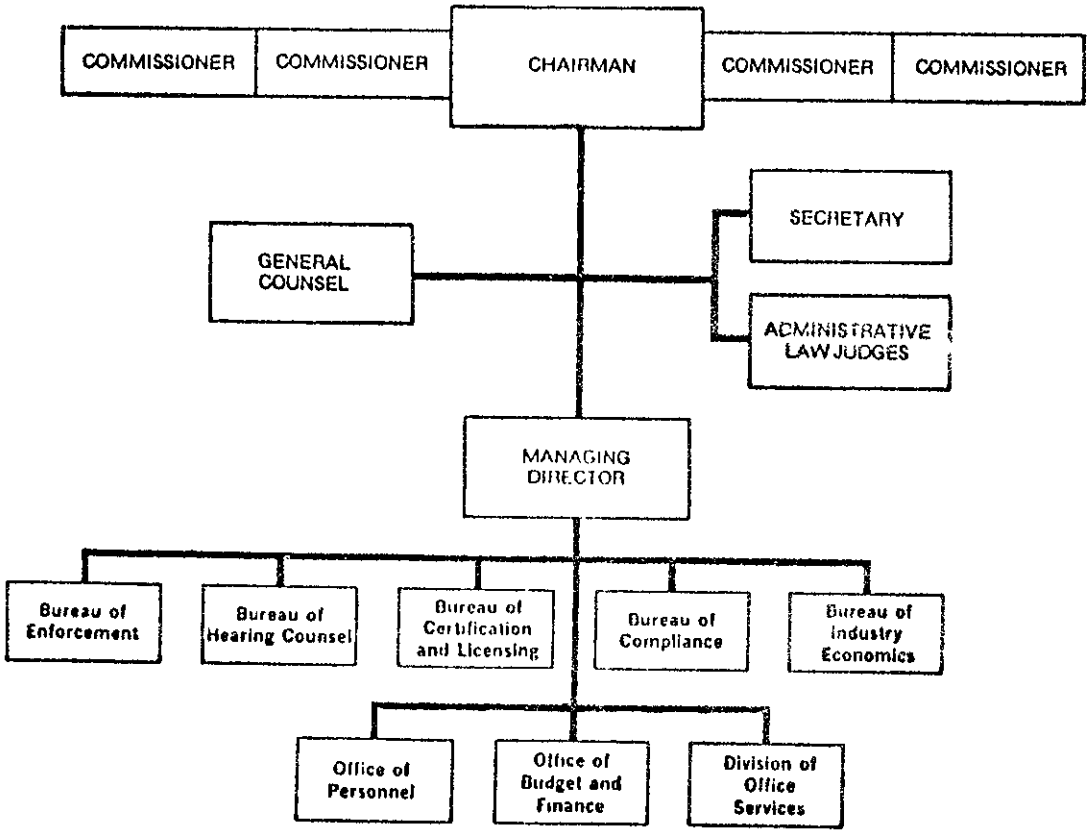
Bureau of Enforcement Field Investigations, Fiscal Year 1977

Investigations	Total	Malpractices	Tariff Violations	Forwarders and Other Matters
Pending 9-30-76	662	234	240	188
Opened FY 1977	608	208	83	317
Completed FY 1977	470	59	146	265
Pending 9-30-77	800	383	177	240

APPENDIX D

Table of Organization

FEDERAL MARITIME COMMISSION



APPENDIX E

STATEMENT OF APPROPRIATION AND OBLIGATION FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1977

	September 30 1977
APPROPRIATION:	
Public Law 94-362, 94th Congress, approved July 14, 1976: 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	$8,300,000
Public Law 95-26, 95th Congress, approved May 4, 1977; Supplemental Appropriation Act, 1977 to cover increased pay costs	340,000
Appropriation availability	8,640,000
OBLIGATIONS AND UNOBLIGATED BALANCE:	
Net Obligations for salaries and expenses	8,545,540
Unobligated balance withdrawn by Treasury	94,460
STATEMENT OF RECEIPTS: DEPOSITED WITH THE GENERAL FUND OF THE TREASURY FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1977:	
Publications and reproductions	22,910
Water Pollution applications and certificate fees	205,775
Fines and penalties	1,886,475
Miscellaneous	7,571
Total general fund receipts	$2,122,731

APPENDIX F

The Commission's headquarters is located at 1100 L Street, N. W., Washington, D. C. 20573. The agency's field offices are 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, California 94105
	Sub-Office: Post Office Box 3184, Terminal Island Station, San Pedro, California 90731
Gulf District	Post Office Box 30550 New Orleans, Louisiana 70190
	Sub-Office: Post Office Box 9927 Savannah, Georgia 31402
	Sub-Office Post Office Box 59-2832 Miami, Florida 33159
Great Lakes District	610 Canal Street Chicago, Illinois 60607
Puerto Rico Area Office	U.S. District Courthouse Federal Office Building, Room 762 Carlos Cardon Street Hato Rey, Puerto Rico 00917