FEDERAL MARITIME COMMISSION

24th Annual Report for Fiscal Year 1985

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Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

To the United States 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 am pleased to submit the twenty-fourth annual report of the activities of the Federal Maritime Commission for fiscal year 1985 (ending September 30, 1985).

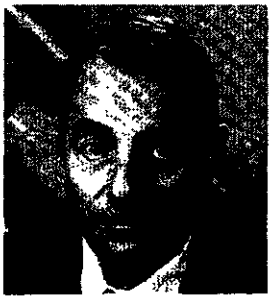
Sincerely,

Edward V. Hickey, Jr.
Chairman

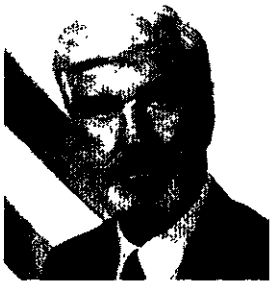
MEMBERS OF THE COMMISSION

Alan Green, Jr. 1/
Chairman
Appointed 1981
Term Expires 1986
(R) Oregon

James J. Carey
Vice Chairman
Appointed 1981
Term Expires 1985
(R) Illinois



Robert Setrakian 2/
Commissioner
Appointed 1983
Term Expires 1987
(D) California



Thomas F. Moakley
Commissioner
Appointed 1977
Term Expires 1988
(D) Massachusetts

Edward J. Philbin
Commissioner
Appointed 1985
Term Expires 1989
(R) California

1/ Resigned May 12, 1985. 2/ Resigned August 31, 1985.

I

THE COMMISSION

A. History

The Federal Maritime Commission was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. As successor to the Federal Maritime Board, the Commission was charged with the administration of the regulatory provisions of the Shipping Act, 1916. The shipping laws of the United States were thus separated into two categories -- regulatory and promotional -- with the responsibilities associated with promotion of an adequate and efficient U.S. Merchant Marine being assigned to the Maritime Administration, now located within the Department of Transportation. The Federal Maritime Commission was given responsibility over the regulation of the ocean commerce of the United States.

B. Functions

The Federal Maritime Commission is responsible for the administration of varying portions of a number of Federal statutes. Chief among these are the Shipping Acts of 1984 and 1916, the Intercoastal Shipping Act of 1933, and the Merchant Marine Acts of 1920 and 1936. The Shipping Act of 1984 represents a major change in the regulatory regime facing shipping companies involved in the oceanborne commerce of the United States.

The Commission's principal regulatory responsibilities are as follows:

* Oversight of certain agreements of U.S.- and foreign-flag common carriers by water and other persons engaged in the U.S. foreign commerce. These agreements include conference, pooling, joint service and space charter agreements.

* Receipt and review of tariff filings (but not the regulation of rate levels) by U.S.- and foreign-flag common carriers by water engaged in the U.S. foreign commerce.

* Guarding the rights of U.S. shippers, and carriers engaged in the foreign commerce of the United States from restrictive or non-market-oriented rules and regulations of foreign governments and/or the practices of foreign-flag carriers that have an adverse effect on the commerce of the United States.

* Maintaining the rights of U.S.-flag shipping companies to transport cargoes in the foreign-to-foreign trades.

* Regulation of rates, charges, classifications, tariffs and practices of U.S. ocean common carriers in the domestic offshore trades of the U.S.

* Licensing of international ocean freight forwarders.

* Issuance of passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.

* Investigations of discriminatory rates, charges, classifications, and practices of U.S.- and foreign-flag ocean common carriers, terminal operators, and freight forwarders operating in the foreign and/or domestic offshore commerce of the United States.

* Rendering decisions, issuing orders, and adopting rules and regulations governing common carriers by water in U.S. foreign and domestic offshore commerce, terminal operators, freight forwarders, and other persons subject to shipping statutes of the United States.

One of the Commission's primary responsibilities involves the administration of agreements filed under section 5 of the Shipping Act of 1984. Section 7 of the Act grants ocean common carriers exemption from U.S. antitrust laws (as contained in the Sherman and Clayton Acts) once agreements filed with the Commission become effective. The FMC reviews and evaluates certain major agreements to ensure that they do not exploit the grant of antitrust immunity, and to ensure that agreements would not result in unreasonably high prices for shipping services or unreasonably low levels of service.

Beyond the Commission's section 5 responsibility to regulate the activities of competing ocean carriers in the commerce of the United States, the FMC is also concerned with the treatment of the shipping public by ocean carriers and conferences. The Shipping Act of 1984 prohibits carriers and conferences from undue discrimination or preferential practices in dealing with shippers or other parties engaged in U.S. commerce. The law also requires carriers and conferences to make their rates and practices (contained in "tariffs") publicly available, and that the applicable rates and charges indicated in the tariff are actually charged for service rendered. Only those rates on file with the Commission can be charged. Except in the case of certain state-controlled shipping lines, the Commission has no authority to disapprove rates in tariffs lawfully filed in the U.S. foreign commerce. The FMC does not limit entry into the oceanborne commerce of the United States.

Generally, the Commission is responsible for ensuring equity and stability in the conduct of U.S. oceanborne commerce. Given the large percentage of U.S. foreign trade that is transported by ocean liner shipping services or facilitated by other entities under the regulatory purview of the Commission, the Commission's role must be to promote efficiency and economy in the U.S. foreign commerce commensurate with commercial requirements, as well as to protect the U.S. shipping public.

C. Organization

The Federal Maritime Commission is composed of five Commissioners appointed by the President for five-year terms with the advice and consent of the United States Senate. Not more than three members of the Commission may belong to the same political party. The President designates one of the Commissioners to serve as Chairman. The Chairman is the chief executive and administrative officer of the agency.

Nine offices are directly responsible and report to the Chairman -- Office of the Secretary, Office of Administrative Law Judges, Office of the General Counsel, Office of Policy Planning and International Affairs, Office of Regulatory Overview, Office of the Director of Programs, Office of Equal Employment Opportunity, Office of Personnel, and Office of Budget and Financial Management. Four operating Bureaus report to the Director of Programs and are responsible for the Commission's regulatory programs, i.e. the Bureaus of Hearing Counsel, Investigations, Tariffs, and Agreements and Trade Monitoring. Appendix A gives a graphic representation of the Commission's organization.

In fiscal year 1985, the Federal Maritime Commission was authorized a total of 239 full-time equivalent positions and had a total appropriation of $12,292,000. The majority of the Commission's personnel are located in Washington, D.C. with field offices in New York, Chicago, San Francisco, Los Angeles, New Orleans, Miami, and Hato Rey, Puerto Rico.

II

THE YEAR IN REVIEW

A. Introduction

During fiscal year 1985, the twenty fourth year since the Federal Maritime Commission was established as an independent regulatory agency in 1961, the Shipping Act of 1984 continued to dominate the Commission and the regulated shipping industry. Most of the Commission's activities involved implementation of the new law through surveillance, rulemaking, actions interpreting statutory language, and processing of filings.

The Shipping Act of 1984 (P.L. 98-237, 46 U.S.C. app. 1701-1720) was signed into law by President Reagan on March 20, 1984 and became effective on June 18, 1984. It was the product of several years of legislative consideration, and may have been the most significant reform of the United States shipping statutes since the original Shipping Act was enacted in 1916. The stated purposes of the Act are to:

* **Establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;**

* **Provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices; and**

* **Encourage the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security needs.**

This part of the Annual Report provides a brief explanation of the 1984 Act's major features and the Commission's progress in administering the statute during the first full year of the Act's effectiveness.

B. Rules to Implement the New Statute

The 1984 Act required that the Commission issue interim rules by June, and all final, implementing rules by December of 1984. During the previous fiscal year, the Commission not only developed interim rules required by new provisions in the 1984 Act, but also, updated, edited and completely restructured all of its other regulations contained in Title 46 of the Code of Federal Regulations, Parts 500 to end.

In the first quarter of fiscal year 1985, the final regulations implementing the 1984 Act, as well as all other edited regulations, became effective. Moreover, the cut-off date for regulations appearing in the Code of Federal Regulations' (CFR) annual supplement was extended from September 30 to December 31, 1984, in order that all of the new rules could appear in the one volume which was published in early 1985. All this was done in consultation with, inter alia, the Office of the Federal Register which was most cooperative and helpful to the Commission in this gigantic undertaking.

The final rules were restructured as follows:

Subchapter A -- General and Administrative Provisions (Parts 500-505);

Subchapter B -- Regulations Affecting Ocean Freight Forwarders, Marine Terminal Operations and Passenger Vessels (Parts 510-540);

Subchapter C -- Regulations Affecting Maritime Carriers and Related Activities in Domestic Offshore Commerce (Parts 550-569); and

Subchapter D -- Regulations Affecting Maritime Carriers and Related Activities in Foreign Commerce (Parts 572-587).

In December, 1984, before the ink had dried on the new, final regulations, the Commission was considering further rules and amendments that might facilitate the purposes of the 1984 Act. The Office of Regulatory Overview was established to coordinate the new rulemaking efforts and each of the Commission's major operating units identified and began working on potentially desirable, new regulations.

The most important rulemaking activities begun in fiscal year 1985 included regulations clarifying the legal status and/or modifying procedures involving:

* Transshipment agreements [Docket No. 84-37];
* Non-substantive agreements [Docket No. 84-26];
* Independent action [Docket Nos. 85-7 and 85-8];
* Commodities excepted from tariff-filing requirements [Docket No. 85-6];
* Electronic filing of tariffs [Docket No. 84-35];
* Marine terminal agreements [Docket No. 85-10];
* Tariff refunds [Docket No. 85-12];
* Miscellaneous modifications to agreements [Docket No. 85-4];
* Financial reports of domestic carriers [Docket No. 85-17];
* Free time and detention charges applicable to interchanged equipment [Docket No. 85-19]; and
* Service contracts [to be published as a proposed rule in fiscal year 1986].

The rulemaking activity of the Commission is further discussed elsewhere in this report. See, for example, pp. 58-65, describing the activities of the Office of the General Counsel.

C. Agreements

1. General

A major reason for the enactment of the Shipping Act of 1984 was to expedite the agreements process. The regime established under the Shipping Act of 1916 had resulted in significant delays between the time certain agreements were filed and the time they were approved by the Commission. The reasons for these delays were complex but many believed that a series of decisions had placed such a burden on the proponents of certain anticompetitive agreements that parties opposed to a particular agreement could, with a high degree of success, demand that the Commission hold an investigation before approving the agreement. This legal process could and did result in significant regulatory lag.

The Shipping Act of 1984 superseded the Shipping Act, 1916 with respect to the regulation of agreements by or among ocean common carriers, and certain other persons, in the foreign commerce of the United States. The 1984 Act made significant changes with regard to:

* **The kinds of agreements that are within its scope;**
* **The mandatory content of certain kinds of agreements;**
* **The procedures for filing, processing, and reviewing agreements; and**
* **The parameters of the antitrust immunity which the Act confers on agreements.**

Other areas of significant change include new statutory definitions, and a somewhat modified exemption authority.

Under the 1984 Act, agreements take effect automatically, without Commission approval, 45 days after filing, unless:

* The agreement is rejected for failure to meet certain format requirements;
* The Commission seeks more information concerning the effects of the agreement; or
* The Commission obtains an injunction against the operation of the agreement.

The Commission is also authorized to shorten the 45-day statutory review period to not less than 14 days after notice of the agreement's filing is published in the Federal Register.

The broad public interest standard against which the competitive impact of agreements was measured was replaced by a new general standard, which puts at risk primarily those agreements reducing competition to the point where shippers' costs are unreasonably increased or shippers' service is unreasonably decreased. If the Commission believes that an agreement will operate "in violation" of the general standard, it can go to district court and seek to enjoin the operation of the agreement. Under such circumstances, the burden of proof is squarely on the Commission and no intervenors are allowed in the court action.

2. Agreements Subject to the Act

The 1984 Act applies to agreements by or among ocean common carriers to:

* **Discuss, fix or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;**
* **Pool or apportion traffic, revenues, earnings, or losses;**
* **Allot ports or restrict or otherwise regulate the number and character of sailings between ports;**
* **Limit or regulate the volume or character of cargo or passenger traffic to be carried;**
* **Engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators or non-vessel-operating common carriers;**
* **Control, regulate, or prevent competition in international ocean transportation; and**
* **Regulate or prohibit their use of service contracts.**

Significantly, agreements among non-vessel-operating common carriers and among freight forwarders are no longer subject to the Commission's jurisdiction.

The major types of agreements filed at the Commission are further discussed at pp. 81-86. There were 1023 agreements on file at the end of fiscal year 1984. See Appendix C.

3. Independent Action

Under the 1916 Act, conferences did not have to allow their individual members to take independent action on rates, if the member was dissatisfied with the conference rate and was unable to change it within the conference system. Some conferences permitted independent action and some did not.

The 1984 Act requires all conference agreements to contain a provision stating that a conference member can take independent action on any rate or service item, on not more than 10 calendar days' notice to the conference. In fiscal year 1985, all approved conference agreements were amended to contain the necessary provisions for independent action.

The statutory right of independent action does not apply to conference service contracts. The new law allows a conference to permit, restrict or prohibit its members from entering into service contracts.

4. Antitrust Immunity

The 1984 Act clarifies and expands the antitrust immunity granted to agreements. Under the Act, antitrust immunity applies to any agreement which has been filed and becomes effective. It also applies to activities of carriers undertaken with a "reasonable basis to conclude" that they were pursuant to an effective or exempt agreement. In addition, any exemption granted from the Act's filing requirement carries with it antitrust immunity. The new Act also precludes private parties from suing for treble damages or injunctive relief under the antitrust laws with respect to violations of its provisions.

5. Intermodal Authority

The 1984 Act authorizes vessel operating carriers to enter into conference and other agreements establishing intermodal rates and extends antitrust immunity to these arrangements. Under the 1916 Act, the Federal Maritime Commission had authorized a number of conferences to set through intermodal rates between points in this country and points abroad. The Department of Justice had challenged this action on jurisdictional grounds, but the matter was never fully resolved.

The 1984 Act clarifies this situation by expressly including "the fixing of through rates" within the activities to which conference members can agree. In fiscal year 1985, the filed conference agreements and tariffs reflected widespread utilization of this important intermodal authority.

6. Agreement Processing

In order to prepare for the Shipping Act of 1984, agreement processing procedures had been established prior to the Act's effective date and the Bureau of Agreements and Trade Monitoring had been restructured to meet the rigid statutory demands of time so that agreements could proceed rapidly through the system. It was also necessary to ensure the existence of a staff organization with the ability to monitor conditions in various, important trades to prevent excessive market power which could result in an unreasonable increase in rates or unreasonable decrease in service.

Since the effective date of the new law, when agreements are initially filed with the Commission, they quickly flow through a reception procedure. They are receipted, numbered, examined for technical compliance with the administrative aspects of the Commission rules, and a notice of the agreement is prepared for forwarding to the Federal Register. The law requires that such notice be forwarded to the Federal Register not later than seven days following the date the agreement is filed.

The 1984 Act gives the Commission the authority to reject any agreement which fails to conform with its regulations. Thus far, the Commission has not rejected any agreements for technical rule deficiencies. Rather, every effort is made to work with the filing parties to quickly correct deficiencies on an informal basis. This avoids imposing unnecessary burdens upon the industry and obtains compliance in a more expedited manner.

Under the new statute, once the initial stages of agreement processing are complete, the notice which is forwarded to the Federal Register invites public comment. This notice normally is published on a 10 or 15 day public comment basis, depending upon the relative importance of the agreement. Under the old law once a public protest against approval of an agreement was filed, an ex parte situation was created whereby the Commission's staff could not discuss the agreement provisions with any of the involved parties without their opponents being privy to the same record. However, under the new law, no ex parte situation is created because the Commission cannot prevent an agreement from becoming effective on its own, but rather must seek a court injunction. One of the primary benefits of this situation is the staff's ability to negotiate issues with the parties to agreements on an informal basis, thereby frequently resolving issues without the necessity of a long, protracted and costly hearing.

The new law does provide for procedures whereby the Commission can shorten the otherwise prescribed 45-day-review period between the time an agreement is filed and its effective date. Specifically, it is authorized to shorten the review period to as little as 14 days after notice in the Federal Register. Additionally, the statute also allows the Commission to extend the 45-day review period in situations where the Commission believes that more review time is necessary in order to obtain additional information to fulfill its regulatory responsibilities of agreement review. During fiscal year 1985, the Commission extended the 45-day review period in only six situations but 120

agreements were handled on a shortened review basis. In most cases involving shortened review, the agreements were considered to be of a less significant nature.

The new flexibility offered by the 1984 Act is demonstrated by the total number of agreements and amendments filed in fiscal year 1985, i.e. 532, as compared with 354 in fiscal 1984. At the same time, however, the number of conference and interconference agreements on hand at the end of the fiscal year decreased from 119 to 73, most likely as a result of the conference consolidations effectuated in various trades. This is described in detail at pp. 27-44.

For some time, the Commission has been developing and using agreement tracking systems on a fully, automated basis, including the utilization of personal computers to improve monitoring capabilities.

D. Loyalty Contracts

A loyalty contract, or dual-rate contract as it was previously known, is a contract by which an ocean common carrier or conference offers a lower rate for all or a fixed portion of a shippers' cargo. Loyalty contracts were formerly permitted and granted antitrust immunity under the 1916 Act, if approved by the Commission. The Commission had approved 33 such contracts, all but one for use by conferences.

The 1984 Act prohibits the use of a loyalty contract, except in conformity with the antitrust laws. The Act's legislative history indicates that loyalty contracts offered by a single carrier may be acceptable, but that concerted use of such a contract by a conference is likely to violate the antitrust laws.

E. Shippers' Associations

The Shipping Act of 1984 recognizes shippers' associations for the first time as entities in international ocean transportation. They are defined in the Act as groups of shippers which, on a non-profit basis, consolidate their cargoes to secure volume rates or enter into service contracts. The Act expressly requires that carriers and conferences negotiate with shippers' associations. It also provides that such associations can enter into service contracts on behalf of their members. Shippers' associations have not been granted antitrust immunity under the 1984 Act. In fiscal year 1985, a few shippers's associations became parties to service contracts.

F. Tariffs and Service Contracts

1. Tariffs

The 1984 Act retains the requirement that common carriers and conferences file with the Commission tariffs showing all their rates and charges. However, bulk cargo, forest products, recycled metal scrap, waste paper and paper waste have been excepted from this requirement. Common carriers may also offer rates in their tariffs which vary with the volume of cargo offered over a specified period of time, i.e. time/volume rates.

During fiscal year 1985, there were some 620,000 pages of tariffs filed with the Commission, including terminal and other rates involving transportation in foreign and domestic commerce. At the end of fiscal year 1985, there were on hand over 5,000 tariff publications on file. See Appendix D.

2. Service Contracts

Service contracts are arrangements by which a shipper commits to a minimum amount of cargo over a fixed period and an ocean common carrier or conference commits to a rate or rate schedule and a defined service level. The contract must be filed confidentially with the Commission and a

concise statement of its essential terms must be published in tariff format. The essential terms must also be made available "to all shippers similarly situated."

The essential terms of a service contract include:

* **The origin and destination port ranges or geographic areas;**
* **The commodity involved;**
* **The minimum volume;**
* **The line-haul rate;**
* **The duration;**
* **Service commitments; and**
* **Liquidated damages for nonperformance, if any.**

The variables which can be manipulated pursuant to service contracts are almost infinite. They thus give carriers and shippers significant freedom to tailor transportation arrangements suitable to their commercial needs.

During fiscal year 1985, there were filed with the Commission over 2100 service contracts. See Appendix D. In contrast to fiscal year 1984, when service contracts of about 5 pages in length were first filed with the Commission, the average service contract filed towards the end of fiscal year 1985 was 15-20 pages in length. This demonstrates the commercial complexity involved in the arrangements between shipper and carrier in the United States foreign commerce.

G. Anti-Rebate Certifications

The new Act continued to require periodic "anti-rebate" certifications from vessel-operating common carriers by water in foreign commerce. It added, however, the provision that the same type of certification must also be required of non-vessel-operating common carriers (NVOCC's) in foreign commerce. This change appeared in the rules implementing the new statute at 46 CFR Part 582.

During fiscal year 1985, a show cause order was served on NVOCC's who did not comply with the new rule's requirements to file anti-rebate certifications and the formal proceeding was still pending as of September 30, 1985. See p. 91.

H. Controlled Carriers

The 1984 Act retains the same requirements for state owned or controlled carriers which applied as a result of the Ocean Shipping Act of 1978. These include, in addition to other procedural requirements, the requirements that controlled carrier rates not become effective sooner than 30 days after they are filed and that such rates be just and reasonable.

During fiscal year 1985, two carriers were added to the Commission's list of controlled carriers; two more carriers were being considered by the Commission for addition to the list; and one carrier requested to be deleted from the list. See p. 89.

I. Ocean Freight Forwarders

No person may act as an ocean freight forwarder unless licensed by the Commission. Licenses may be issued to any person who is qualified by experience and character to render forwarder services and furnishes an acceptable bond. A person whose primary business is the sale of merchandise may forward shipments for its own account without a license. However, a forwarder who has a direct or indirect beneficial interest in a shipment may not receive compensation by the ocean carrier on this shipment.

At the end of fiscal year 1985, there were almost 1600 licensed ocean freight forwarders, - - a slight decrease from the previous fiscal year. See pp. 94-97.

J. Access to Cross Trades

Section 13(b)(5) of the 1984 Act authorizes the Commission to suspend the tariffs of foreign-flag carriers or take other appropriate action when such carriers or their host nations unduly impair access of U.S.-flag carriers in a foreign-to-foreign trade, or cross-trade. Section 13(b)(5) is intended to complement section 19 of the Merchant Marine Act of 1920, which gives the Commission broad authority to counter discriminatory actions by foreign governments and foreign-flag carriers in the U.S. trades. Section 13(b)(5) reflects a Congressional concern about the impact of the United Nations Code of Conduct for Liner Conferences (U.N. Liner Code), particularly its cargo sharing features, on U.S.-flag carriers' continued ability to lift cargo in cross-trades where the Code applies.

With the advent of more productive containerships, more efficient and effective intermodal networks, and round-the-world and other extended service patterns, the cross trades have or will become an essential element of a liner operator's service. Therefore, section 13(b)(5) may become one of the more important features of the new Act to U.S.-flag carriers.

By the end of fiscal year 1985, no petitions had been filed under section 13(b)(5) of the Shipping Act of 1984. During the fiscal year, however, representatives from U.S.-flag carriers were contacted to assure them that the Commission plans to preserve and protect U.S. flag carriers' competitive access in foreign trades. Meetings were held with these representatives to identify potential trouble spots where 13(b)(5) action might be necessary.

K. Prohibited Acts

Section 10 of the 1984 Act sets forth certain activities which are prohibited by the Act. These essentially restate prior proscribed activities, e.g., that carriers adhere to their tariff rates, that no one obtain transportation at other than the tariff rates, and that

carriers not discriminate against shippers or ports. They also include some new ones, for example:

* **Using a loyalty contract not in conformity with the antitrust laws;**

* **Refusing to negotiate with a shippers' association;**

* **Boycotting or taking other concerted action which results in an unreasonable refusal to deal;**

* **Engaging in conduct that unreasonably restricts the use of intermodal services; and**

* **Engaging in any predatory practice designed to eliminate the participation or deny entry in a particular trade.**

L. Penalties

Under the 1984 Act, a violation of the Act, regulation issued thereunder, or Commission order, can result in a civil penalty not to exceed $5,000 for each violation, except where otherwise provided for in the Act. If the violation was willfully and knowingly committed, the amount of civil penalty could be as much as $25,000 for each violation. Each day of a continuing violation is a separate offense. In addition, the Commission may suspend a common carrier's tariff or its right to use a conference tariff, for violations of certain provisions of the Act.

During fiscal year 1985, most of the penalties assessed or compromised by the Commission were for violations of the 1916 or 1933 Acts, because it was too early to develop cases involving violations of the new statute. A list of the penalties assessed or compromised during fiscal year 1985 appears at Appendix E.

M. Complaints, Investigation, and Reparations

Any person may file a complaint alleging a violation of the 1984 Act, except for section 6(g), and may seek reparations therefor. The Commission may on its own motion investigate any conduct or agreement which its believes may be in violation of the Act. The Commission or a complainant may seek an injunction in district court against any activity thought to be in violation of the Act. If the complainant loses, reasonable attorney's fees shall be awarded to the respondent.

In foreign commerce, for any complaint filed within three years of the accrual of the cause of action, the Commission can award the complainant reparations for actual injury (including loss of interest) plus reasonable attorney's fees. If the injury was caused by violation of certain prohibited acts, the award could be as much as twice the amount of actual injury.

During fiscal year 1985, the Commission amended its Rules of Practice and Procedure to provide for interest and attorneys' fees in reparations cases, not only in foreign commerce under the 1984 Act, but also, in domestic commerce under section 2 of the Intercoastal Shipping Act of 1933. See 46 CFR § 502.253. In fiscal year 1986, the Commission will develop further regulations involving attorneys's fees.

Fiscal year 1985 saw a significant decrease in the number of formal proceedings, i.e. from 46 to 28. This was, in large part, due to the 1984 Act's new procedures for the processing of filed agreements, which obviated the need for many Commission-instituted, formal investigations into agreement activities. At the same time, however, the number of informal-docket, reparations (complaint) cases increased from 58 in fiscal 1984 to 91 in fiscal 1985, - - primarily because the Commission had increased the monetary amount for an informal-docket (small claims) case from $5,000 to $10,000. See 46 CFR §§ 301-305. See also Appendix B.

N. Data Collection and Studies

For a period of five years following enactment of the Act, the Commission must collect data on the impact of the Act on:

* **Increases or decreases in the level of tariffs;**
* **Changes in the frequency or type of common carrier service;**
* **The number and strength of independent carriers; and**
* **The level, frequency, and cost of proceedings before the Commission.**

The Commission must consult with the Department of Justice (DOJ), Department of Transportation (DOT) and Federal Trade Commission (FTC) on this data collection effort and must provide them access to the data.

An Advisory Commission on Conferences in Ocean Shipping will be established 5 years after enactment of the Act. At that time, the Commission must submit to Congress and the Advisory Commission an analysis of the impact of the Act. DOJ, DOT, and FTC must submit their analyses 60 days later.

One year after the Advisory Commission is established, it must provide Congress a comprehensive study on conferences in ocean shipping and must recommend whether conferences should be prohibited, remain open, or become closed. For additional information on the five-year study and the steps taken thus far in fiscal year 1985 to comply with this mandate, see the discussion at pp. 73-77.

O. Automation of Tariff Filings

During Fiscal year 1984, the Commission initiated an effort to explore the automation of tariff filings. This undertaking continued in fiscal year 1985 and would include the electronic collection, examination and dissemination of tariff information. During fiscal year 1986, a study will

be performed of the technological and economic considerations of proceeding with this effort, and the Commission hopes to arrive at a decision with respect to the overall feasibility of this project. In reaching this decision, the Commission will be taking into account, through an Industry Advisory Committee, the input and viewpoints of representatives of the information industry and various elements of the shipping industry. See the more detailed discussion at pp. 48-49.

P. Miscellaneous Developments

During fiscal year 1985:

* Further progress was made to institute an automated tariff system. See pp. 20, and 48-49.

* Volume 23 of the Commission's Reports was finalized for publication. See p. 50.

* A draft of the Commission's recodification of its parts of Title 46, United States Code, was submitted to Congress for eventual inclusion in the reenactment of that Title. See pp. 65 and 79.

* The Commission participated extensively in policy matters involving international shipping. See pp. 27-44.

* The Office of Regulatory Overview was established. See pp. 78-79.

* The Office of Director of Programs increased the effectiveness of its supervision of the Commission's operating bureaus for better implementation of the 1984 Act. See pp. 79, et seq..

* Over 100 passenger vessels remained certified for performance and casualty situations. See p. 98.

* The Commission continued to investigate potential violations of the the shipping statutes which it administers and to assess appropriate civil penalties. See pp. 99-101.

* The Commission's administrative support functions continued to facilitate the availability of sufficient and appropriate human and monetary resources for its operating programs. See pp. 102-107.

III

SURVEILLANCE

A. General

If there is one word that would summarize or describe the regulatory philosophy of the Shipping Act of 1984, it would be "surveillance." While not brand new to the regulation of ocean shipping, the concept of "surveillance" was so emphasized in the 1984 Act (and its legislative history) that it deserves special mention.

Just after the passage of the 1984 Act, and more intensively during fiscal year 1985, the Commission initiated programs to achieve sufficient surveillance of the ocean shipping industry so as to minimize the deleterious effects on United States foreign commerce caused by prohibited acts, -- both by prevention, where feasible, -- and, where prevention is not feasible, then, by correction. Also, during the fiscal year, the majority of the Commission's other actions were designed to identify viable areas for "surveillance" and to facilitate its implementation.

B. Tariffs

1. Compliance and Surveillance Pilot Program

During fiscal year 1985, the Bureau of Tariffs completed its portion of the Commission's Pilot Compliance and Surveillance Program which was conducted on the U.S. North Atlantic/United Kingdom trade. The Bureau's participation included auditing tariffs of the conferences and major independent, vessel-operating common carriers (including Polish Ocean Lines, the sole controlled common carrier) serving the subject trade for compliance with the requirements of 46 C.F.R. 580 and the Shipping Act of 1984. Of the ten tariffs audited, analyses were made of general

rate increases, surcharges, freight forwarders compensation activities, independent action activity, and carrier entry or exit in the trade, during a 12-month period ending mid-July 1985. In all instances, the audits resulted in letters being issued to the conferences and carriers requesting correction of deficiencies found in the tariffs. At the end of the fourth quarter, all deficiencies in seven of the tariffs had been corrected. Of the remaining three tariffs audited, the majority of the needed corrective actions had been initiated and follow up letters have been sent requesting correction of the remaining deficiencies.

Also reviewed for compliance with the Shipping Act of 1984 and applicable Commission rules and regulations were service contracts, anti-rebate certifications, controlled common carrier compliance with the statutory 30-day notice requirement, and financial reports filed by common carriers with the Securities and Exchange Commission.

2. Review of Tariff Supplements

During the third quarter, the Bureau of Tariffs reviewed all incoming tariff supplements to insure their compliance with 46 CFR 580. It was discovered that a majority of the supplements filed were deficient as to format and/or content. To resolve this problem, a tariff advisory letter was prepared citing deficiencies in the filing of supplements. Included with the letter were samples of the most frequently filed types of supplements, along with a detailed explanation of the samples. It is anticipated that the letter will be dispatched in the next quarter.

C. Prohibited Acts

The Bureau of Investigations, during fiscal year 1985, revised its entire operating plan for Fiscal Year 1986 to incorporate the increased responsibility for monitoring and surveillance of service contracts, ocean freight forwarders

and non-vessel operating common carriers, as well as its investigative activity into the "Prohibited Acts" outlined in the Shipping Act, 1984. Also, during fiscal year 1984, a new operating plan was developed for the Bureau of Hearing Counsel. This plan was fully implemented in fiscal year 1985, and strengthened the Bureau's functions as legal advisor to the Commission's staff by providing for closer coordination with the Commission's other Bureaus and Offices, especially in carrying out the Commission's, surveillance, enforcement and other regulatory responsibilities under the new statute.

D. Agreements

Under present statutory authority, the Commission is responsible for maintaining adequate surveillance over the activities of parties to filed agreements and others subject to its jurisdiction in order to ensure continued compliance with the Shipping Act, 1916, the Shipping Act of 1984 and Commission rules. The Office of Trade Monitoring in the Bureau of Agreements and Trade Monitoring has been charged with the responsibility for monitoring these activities. Appendix C indicates the various types of agreements filed with the Commission.

The drastic changes which the 1984 Act made in the area of agreement processing provide, perhaps, the most significant impetus for trade surveillance. Under the new statute, it is clear that, unless a given agreement is subject to rejection for technical reasons or is contrary to the standards of section 6(g) of the Act, the agreement should be permitted to take effect, with the Commission maintaining surveillance over the concerted activities. In order to satisfy this statutory need, and the need to detect possible violations of other prohibited acts proscribed by the Shipping Act of 1984, the Bureau of Agreements and Trade Monitoring refined its surveillance activities to ensure effectiveness in the monitoring area.

During the past fiscal year, the industry, in response to the expanded commercial freedoms granted under the Shipping Act of 1984, formed several of the largest conference agreements in the history of the Commission. For example, in the Far East trades, the Trans-Pacific Westbound Rate Agreement and the Asia-North America Eastbound Rate Agreement encompass the trade areas (excluding the inbound Japan trade) of sixteen previous conferences and include almost all of the major carriers serving the Far East.

Accordingly, in fiscal year 1985, the Bureau of Agreements and Trade Monitoring implemented a monitoring/surveillance program that includes the periodic review of selected trades, specifically those covered by these new "super-conferences." A series of surveillance reports, including operator market-share data, cargo tonnages of major-moving commodities, shipper identification, relevant tariff rates and rate histories, use of service contacts, and an agreement-document analysis, as well as an analysis of the existence of prohibited acts, is being prepared. In addition, the report will provide an overall assessment of changing trade conditions and suggested areas of focus for possible investigation.

Surveillance of specific "target" trades has been implemented through the Office's involvement in a pilot program of the U.S./North Atlantic-United Kingdom trade. The essential goal of the audit was to gather trade information to establish whether the regulated industry is observing relevant shipping statutes and Commission rules. The pilot study disclosed that the subject trade was free of flagrant carrier involvement in any prohibited act as defined by the 1984 Act.

In fiscal year 1984, the Hong Kong Shippers' Council (HKSC) filed a petition pursuant to section 11(c) of the 1984 Act alleging that a general rate increase put into effect by the two eastbound Hong Kong/U.S.A. conferences violated the general standard of section 6(g) of the 1984 Act. The HKSC sought to enjoin further implementation of the GRI pursuant to section 6(h) of the Act. Based on trade

data gathered through its surveillance program, the Bureau of Agreements and Trade Monitoring prepared an analysis of the petition for investigation and recommended that the Commission deny the petition. By Order served September 13, 1985, the Commission denied the requested investigation.

The Bureau of Agreements and Trade Monitoring also initiated several inquiries and projects concerning activities relating to possible unfiled carrier agreements and to activities of parties which could be outside the scope and authority of a filed agreement.

E. Surveillance Plans for the Future

The surveillance activities listed in this part were conducted by operating bureaus under the coordination and direction of the Director of Programs. The Commission's major plans for surveillance in the near future have been identified by the Director of Programs as follows:

* **Implementation of continuing target trade surveillance program.**

* **Development of economic criteria to guide surveillance and enforcement activities.**

* **Pursuit of tariff automation.**

* **Automation of freight forwarding, service contracts, and passenger vessel processing.**

* **Revising the program for monitoring controlled carriers to attain better efficiency and effectiveness.**

IV

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. Transatlantic Trade

Fiscal year 1985 ushered in the first of several new superconferences, the agreements for which have been filed since the effective date of the Shipping Act of 1984. On October 12, 1984, two new conferences, one eastbound and one westbound, became effective, replacing seven conferences in the North Atlantic trade and two conferences in the South Atlantic trade. On November 19, 1984 and December 23, 1984, two new westbound conferences became effective, replacing six conferences in the westbound U.S. Atlantic and Gulf trade. This action resulted in all trade areas being represented by one conference tariff outbound and two conference tariffs inbound. In the European Trade, during the year, the outbound conference implemented one general rate increase while the inbound conferences implemented two.

During fiscal year 1985, three new interconference agreements in the Transatlantic trade became effective. On January 13, 1985, an interconference agreement, between the eastbound and westbound North Europe/U.S. Atlantic Conferences, became effective, permitting the conferences to collectively deal with shippers. On February 22, 1985, an interconference agreement between the eastbound and westbound Gulf/Europe Conferences became effective, authorizing collective ratemaking. Also, on September 23, 1985, a discussion agreement between Evergreen Lines and the U.S. Atlantic/European Conferences, was filed, and a ratefixing agreement, between those conferences and Polish Ocean Lines, was filed with the Commission.

During fiscal year 1985, the transatlantic trade experienced changes in the form of new entrants and exits, and changes in the service of existing carriers. Activity among the independents flourished with the establishment of new services such as: Mediterranean Shipping Company, S.A., Scan America, Gearbulk, Independent Container Line and Samband Line. Hafskip, which previously serviced the trade

via a feedship service through Iceland, inaugurated direct service to Europe. Double Eagle joined the trade as a conference member.

Competition in the trade brought about the demise of four carriers. The casualties include American Coastal Line, Parklines, Double Eagle and Scan America. Double Eagle and Scan America withdrew from the trade within six months of entering.

During the year, the position of the conference was strengthened by the addition of Compagnie Generale Maritime and Intercontinental Transport (ICT) B.V. and the announced expansion plans of Sea-Land Service and Hapag-Lloyd. Sea-Land announced its intention to increase the carrying capacity of three of its containerships and Hapag-Lloyd ordered the conversions of four containerships of its North Atlantic fleet. As Sea-Land and Hapag Lloyd embarked on their ship enlargement programs, Atlantic Container Line completed its expansion with the delivery of a fifth new giant containership.

Despite the new entrants and added capacity, the westbound trade appears stable. The eastbound trade has received no relief from the overtonnaging which has existed. Despite the poor eastbound trade, the availability of European cargo and the effort to maintain market share appears to be an incentive for carrier expansion programs. The increase in capacity may encourage rationalization among carriers during the next fiscal year.

The transatlantic trade experienced a significant upswing in inter-carrier space charter/rationalization, joint service and discussion agreements during the first full year the 1984 Act was in effect:

* A new major space charter and rationalization agreement (No. 217-010649) was established in the U.S. West Coast/Northern Europe trade among the Johnson Scanstar Joint Service, Hapag Lloyd and the Pacific Europe Express Joint Service, authorizing the operation of a fleet of up to 12 vessels aggregating over 13,000 TEU's.

* Agreement No. 217-010658 established the Automar/Atlantic Container Line Cooperation Agreement, authorizing the charter of a roll-on/roll-off vessel in the U.S. Atlantic/Europe trade.

* Agreement No. 217-010723 established the International Navigation Limited/LASH Carriers, Inc., Space Charter and Cooperative Working Arrangement, involving westbound space charters on 3 LASH vessels operating in the U.S. Atlantic and Gulf/Europe trades.

* Agreement No. 217-010738 provides for the charter of up to 8 vessels aggregating 300,000 DWT from the Barber Blue Sea Joint Service to Open Bulk Carriers in the eastbound U.S. Atlantic and Gulf/Europe trade.

* The Trans Freight Lines/Lykes Bros. Steamship Co. Space Charter Agreement (217-010792) authorizes Lykes' use of space on Trans Freight Lines' vessels in the U.S. Gulf/Europe trade.

* Agreement No. 207-010666 established the Scandinavian North American Services Joint Service Agreement, operating two vessels in the U.S. North Atlantic/Scandinavian trade.

* Agreement No. 207-010680 established the Forest Products Carriers (International) Joint Service between Mitsui O.S.K. Lines and the East Asiatic Company, authorized to operate up to five 40,000 DWT forest product bulk vessels in the Pacific Coast/Europe trade.

* Agreement No. 203-010664 established the Pan-Atlantic Carrier Trade Agreement in the U.S./Europe trade, providing a forum for ocean common carriers to discuss matters of mutual concern, including the reduction of over-capacity through rationalization of services, encouragement of technological innovations, resolution of commercial disputes and deterrence of malpractices and trade instability.

B. Mediterranean Trade

The 1985 fiscal year featured a complete reorganization of the inbound Mediterranean-United States conference system, as four existing conferences merged to form the new MEDUSA. The new superconference established jurisdiction over the trade from Mediterranean ports and points to Atlantic and Gulf ports of the United States. The scope of MEDUSA also includes inland and coastal points served intermodally by microbridge and minibridge. The member

lines expressed the hope that the new conference would contribute to the stabilization of the trade.

In July 1985, two new conferences, one eastbound and one westbound, were established to replace two existing conferences in the trade between the U.S. North Atlantic and Israel. The Commission postponed the effectiveness of these conferences in order to acquire additional information with which to assess their effect on the trade because of their expanded geographic scopes and increased ratemaking authority.

During fiscal year 1985, five new interconference agreements between the Mediterranean and the Transatlantic trades became effective. On October 31, 1985, an interconference agreement became effective permitting joint service contract authority for the carriage of olives from Spain to the U.S. Atlantic and Gulf. On December 24, 1984, four interconference agreements between A.P. Moller-Maersk Line and four Mediterranean/U.S. Atlantic Conferences, became effective. Although problems of overtonnaging and declining rates have continued to afflict the Mediterranean trade, fiscal 1985 saw the entry of a number of new carriers into the competition. Evergreen Line inaugurated a weekly service between U.S. East Coast ports and the Mediterranean, while Maersk Line and Barber Blue Sea have both added Mediterranean ports of call to their Mideast services. Torm Line and Cie. Nationale Algerienne de Navigation had initiated new services as the year began. Additionally, Westwood Shipping Lines resumed its Mediterranean forest products service, and Adriatic Shipping began liner operations between the Adriatic and the U.S. Gulf Coast. Meanwhile, Atlantrafik Express Service initiated direct service between Leghorn, Italy, and the U.S. East Coast. Other carriers contributed to the overtonnaged situation with additional vessels and increased ports of call.

A number of rationalization agreements were negotiated during the 1985 fiscal year:

* Spanish Compania Transatlantica Espanola joined with the Italian state owned Italia de Navigazione in a joint service to the U.S. East Coast.

* Lykes Bros. Steamship Co. entered into a space-chartering and equipment interchange agreement with Costa Line, and Costa came to a similar agreement with Compania Transatlantica Espanola.

* The Costa Armatori/Trasatlantica Space Chartering and Sailing Agreement (213-010786) authorizes the operation of up to 5 vessels aggregating 5,500 TEU's in the U.S. South Atlantic and Gulf/Italy-France-Spain-Portugal trade.

* The Med America Express Joint Service (207-010737) was established between Italian Line and Spanish Line in the U.S. Atlantic/Mediterranean trade, with authority to operate up to 8 vessels aggregating 10,000 TEU's.

These and similar rationalizations represented attempts on the part of established carriers to meet the increasing competition.

During the year, action was instituted in the Italian Parliament to protect national-flag carriers from allegedly unfair competitive practices. Concern was expressed in regard to the "predatory pricing" practices of certain cross-traders, and the government expressed its desire that Italian carriers gain an equitable share of bilateral cargoes. Although Italy had not ratified the U.N. Liner Code and its so-called "40-40-20 Rule," the government indicated that forty percent would represent an equitable share.

C. African Trade

The African trades experienced about the same level of inter-carrier agreement activity as during the preceding Fiscal Year:

* Agreement No. 207-010640 established the Armada/GLTL East Africa Service Joint Service Agreement in the U.S. Great Lakes, Atlantic and Gulf/Southern Africa trade.

* Agreement No. 217-010643, between Farrell Lines and SITRAM, superseded an earlier space charter agreement between these lines in the westbound Ivory Coast/U.S. Atlantic trade.

* Agreement No. 217-010663 established a somewhat similar arrangement between Torm West Africa Line and SITRAM in the Ivory Coast/U.S. Atlantic and Gulf trade.

* Agreement no. 213-010753 established a space charter and sailing agreement between Safmarine and the Bank Line involving eight vessels in the U.S./South and East Africa trade.

D. Transpacific Trade

The transpacific trades suffered from severe cargo shortages during fiscal year 1985. Although carriers had long been plagued with serious westbound overtonnaging, the eastbound trades have been generally healthy in recent years. Unfortunately, that is no longer true. The decline of the dollar during the summer, contributed to a sharp decrease in import demand, while continuing fleet augmentation programs have caused steady growth in supply. As a result, inbound rates fell nearly thirty percent in less than one year. Certain key commodities, including footwear, textiles and electronics, have experienced drops of fifty percent or more. At the close of the fiscal year, most informed observers anticipated a continuation of this trend. In some respects, the prevailing situation constituted a more classic rate war than existed during earlier periods of declining prices. In prior years, certain modernized carriers were able to compensate for higher rates with superior service features; today, virtually all service is high quality, and competition tends to center solely on price.

The fear of carrier bankruptcies and the prospect of indiscriminate ratecutting provided major incentives for the reorganization of the transpacific conference system during the 1985 fiscal year. In January, the Transpacific Westbound Rate Agreement (TWRA) began operations in a westbound scope covered previously by seven smaller conferences, i.e. the trade outbound from Ports and Points in the United States to Ports and Points in Southeast Asia, Singapore, Malaysia, Indonesia, Thailand and Philippines. The agreement has 18 participating carriers who had approximately 119 independent tariffs on file prior to their joining TWRA. Due to the enormous task involved in the

filing of the TWRA tariffs, which included the cancellation of the members' independent tariffs, the TWRA common conference tariff did not become effective until May 1, 1985.

August of 1985 saw the advent of the Asia-North America Eastbound Rate Agreement (ANERA). ANERA replaced ten former conferences and partially superseded three others. While the parameters of TWRA encompass the entire outbound U.S.-Far East trade, the scope of ANERA excludes Japan from its inbound jurisdiction. This exclusion appears to have been related to the impressive strength of the traditional conference system among Japanese carriers, and the reluctance of Japanese lines to dilute that strength.

By contrast, the Korea-U.S. trade has long been dominated by independents, and radical conference reform was deemed necessary. Also in January, two new bridging agreements, between two Hong Kong/Macao/Taiwan-Eastbound Conferences and two Japan/Korea-Eastbound Conferences, became effective, permitting the conferences to cooperate with each other concerning shippers and consignees under conference-established service contracts and volume incentive programs.

Although both superconferences have succeeded in attracting the large majority of carriers in the trades, neither has, as yet, succeeded in reversing the unfavorable rate trends. Although the prevailing economic conditions bear ultimate responsibility, the massive use of mandatory independent action and a proliferation of service contracts have functioned as proximate causes. At the end of the fiscal year, both conferences had taken action to limit the independent implementation of service contracts.

In July, the Commission instituted Docket 85-18, an Order of Investigation and Hearing concerning Member Lines of the Transpacific Westbound Rate Agreement - Possible Violations of the Shipping Act of 1984. This action concerned the implementation by the TWRA of minimum tariff revenue levels and alleged unfiled agreements concerning the

utilization of service contracts. The institution of minimum revenue levels is allegedly violative of the mandatory independent action provisions of the Act. Although the resolution of Docket 85-18 was undetermined at the close of the fiscal year, it had become clear that the Conference's questioned policies had not succeeded in stabilizing westbound rates. The planned minimum levels were repeatedly reduced, postponed, and, on many key commodities, ultimately cancelled. Simultaneously, service contracts were being negotiated at alarmingly low levels.

During the fiscal year, both major conferences suffered defections from several original members, and neither had succeeded in gaining the participation of any of the remaining independents. Observers remained divided on the crucial question of the superconferences' ultimate contribution to rate stability.

Sea-Land, U.S. Lines, COSCO, and several smaller carriers planned expansion programs that promised aggravation of over-capacity problems. On the other hand, new rationalization measures offered some hope of easing the situation. On another front, a major reorganization of the Korean lines simultaneously reduced the number of carriers and decreased competition on several trade routes. Overall, the trans pacific trade featured numerous innovative cooperative arrangements, as Sea-Land, Evergreen Hapag-Lloyd, and EAC Line were among the carriers forming new rationalization agreements.

Seawinds entered bankruptcy proceedings early in the fiscal year, and withdrew completely from the trade. Although no other carrier had ceased Pacific operations by the close of the fiscal year, numerous observers were predicting that certain of the remaining carriers would ultimately follow suit. Meanwhile, Sanko, a large Japanese firm, was forced into reorganization; although Sanko conducts liner operations elsewhere, its participation in the transpacific has been essentially non-liner.

The trend toward round-the-world service (RWS) continued, as Evergreen and U.S. Lines fully implemented their innovative programs. During Fiscal 1985, NOL and OOCL announced their intentions to jointly serve the Far East - U.S. East Coast route on an RWS basis, and K Line announced plans to join this grouping.

On the governmental front, carriers expressed concern with the world trend toward protectionism. In addition some carriers were alarmed by steps taken by the South Korean authorities to set minimum rates on both inbound and outbound routes. Although the purpose of this program is to maintain order in the shipping market, some lines viewed the concept as unjustified interference in commercial matters.

In the U.S./Japan trade, efforts were made to accommodate U.S.-flag carriers' desire to share in markets effectively closed to them (e.g., the automobile and tobacco trades). During January, 1985, Commission staff members served as technical advisors at the U.S/Japan negotiations in Washington, D.C. The purpose of these meetings was to discuss such trade irritants as Japanese road restrictions on the movement of high-cube containers; the lack of participation of U.S.-flag carriers in the movement of both U.S. leaf tobacco exports to Japan and Japanese automobile exports to the U.S.; and Japanese intermodal and port-service restrictions on foreign liner operators.

During fiscal year 1985, progress was made on the issues of port service restrictions and tobacco carriage. It appeared that progress was also made on the use of high-cube containers when, in April of 1985, Prime Minister Nakasone announced in his market-opening package that U.S. carriers would be able to transport high-cube containers, subject to certain conditions. It now becomes evident that those conditions, i.e. limited times of transit, highway restrictions, and the necessity to obtain trip permits for virtually every container movement, may have resulted in a situation which is only cosmetically different from the pre-April, 1985 situation.

The U.S. is also concerned about the possibility of Japan becoming a contracting party to the U.N. Liner Code; thus far, Japan has not taken that step. This issue was also discussed in bilateral meetings.

The Japanese interest in the introduction into the U.S./Japan trade of a "Fidelity Commission System," a rule for tariff refunds for shippers, was also discussed. This proposal resulted from Japanese concern about the impact on small shippers of certain provisions of the Shipping Act of 1984. Subsequently, two freight conferences filed a petition for declaratory order with the FMC, in an effort to remove uncertainty as to whether the Fidelity Commission System constitutes a loyalty contract under section 3(14) of the Shipping Act of 1984. This petition currently is pending before the Commission.

One of the major events in this trade area was the reconfiguration in the operations of six major Japanese-flag operators. In the Japan/California trade, these operators had previously operated under the auspices of two arrangements, Agreements Nos. 9718 (which involved four carriers) and 9731 (which involved two carriers). The six operators reconfigured their operations in this trade in a manner whereby none of their space charter/rationalization agreements involved more than two parties (Agreements Nos. 213-010654, 213-010655, and 213-010657), and established a separate revenue pool (Agreement No. 212-010697) applying to their overall U.S. Pacific/Japan operations.

The transpacific trades also experienced a significant upswing in inter-carrier agreements during the first full year of the 1984 Act, particularly in the area of space charter and rationalization arrangements:

* Agreement No. 217-010651 established the Sea-Land Service/Hapag-Lloyd Transpacific Reciprocal Space Charter and Sailing Agreement, authorizing the rationalization of a fleet of 15 vessels aggregating 23,180 TEU's in the U.S. Pacific/Far East Trades.

* Agreement No. 213-010601, a space charter and rationalization agreement originally between Neptune Orient Lines and Orient Overseas Container Line, added Kawasaki Kisen Kaisha to its Far East/U.S. Atlantic Service. This arrangement also reconfigured its routing to serve the U.S. Atlantic/Far East trade eastbound through the Suez Canal, rather than the more customary westbound routing through the Panama Canal, thus transforming this arrangement into an "around-the-world" service configuration.

* Agreement No. 213-010699 established the PAD Line Forest Products/Bulk/Parcel Cooperative Working Agreement among the PAD Line Joint Service, Transpacific Bulk Marine Limited and the ACTA Joint Service. This arrangement authorizes PAD Line and one or both of the other parties to cooperate when PAD Line is unable to meet shippers' transportation needs due to a lack of space, or in the event such carriage would be inefficient or disrupt its schedule.

* Agreement No. 213-010703 established a space charter/sailing agreement between two Korean-flag operators (Korea Marine Transport Co., and Hanjin Container Lines), with authority to operate eleven vessels aggregating 13,494 TEU's in the U.S. Pacific/Far East trades.

* Agreement No. 217-010712 established a space charter arrangement between EAC Lines TPS and Thai Maritime Navigation in the U.S. Pacific/Thailand trade.

* Agreement No. 213-010719 established a space charter and sailing arrangement between the East Asiatic Company and Mitsui O.S.K. Lines in the Far East/U.S. Pacific trades (excluding Japan), authorized to rationalize the operation of up to 8 vessels aggregating 20,000 TEU's.

* The Columbus/PACE Cross Charter and Sailing Agreement authorized the rationalization of a fleet of up to 16 vessels aggregating 28,400 TEU's in the U.S. Atlantic and Gulf/Australasia trades.

* Agreement No. 217-010801 authorizes the Westwood Transpacific Joint Service to charter two vessels from the Canadian Transport Company on eastbound voyages from Japan/Korea to the U.S. Pacific.

E. Latin America and The Caribbean

Fiscal year 1985 was a very dynamic time in the Latin American trades. While cargo volumes southbound from the United States decreased, imports from Latin America

increased. This trade imbalance was due to the strength of the U.S. dollar abroad, import restrictions enforced by many debt-laden South American countries and aggressive export policies practiced by most countries in the region.

On December 15, 1984, a new conference became effective in the trade between the U.S. Atlantic and Gulf and the Netherlands Antilles. On January 12, 1985, a new conference became effective in the trade between South Florida and the Leeward/Windward Islands. On February 28, 1985, a new conference became effective in the trade between the U.S. South Atlantic and Gulf and Central America.

In the Caribbean and Central America trades, available cargo space increased as more carriers entered the trades induced by favorable conditions. Toward the end of 1984, both Evergreen Line and Zim Container Service began serving the Caribbean. Evergreen Line scheduled stops in Kingston, Jamaica in both directions of its round-the-world service. Around the same time, Zim began using Kingston as a load center for its Mediterranean/U.S./Far East service. In addition, both carriers started new services between the U.S. Gulf and the Caribbean to act as a feeder service to their larger trade routes.

Another new service in the Caribbean trade was also started in fiscal year 1985. In November, 1984, Antilles and Amazon Line was launched. It operates a refrigerated and general cargo service between the U.S. East Coast and the Leeward and Windward Islands. Additionally Tec Line, which has operated in the Caribbean since 1975, was reformed into a new liner service, Tecmarine, in September 1985.

The composition of competition in Central America also changed substantially in 1985. Due to the cessation of service during 1984 of Johnson Scanstar, Pacific Europe Express and Delta Line in this trade, a shortage of cargo space existed. The situation reversed, however, at the start of 1985. Overtonnaging is currently a major problem. The cause of the overtonnaging is attributed to the inauguration of three new services and the extension of a

fourth. Independence Line, owned by France's Compagnie Generale Maritime, began fortnightly service in January. British Colombia Line, a Canadian company, started its new service in February on a fortnightly basis. Also in February, the Danish PVC Line extended its Europe/Central American service to include the U.S. West Coast. It operates on a monthly sailing schedule. In August, Atlas Line, owned by former principals of Guatemala Line, began a new fortnightly service.

Also of interest in this region during fiscal year 1985 was the trade embargo imposed on Nicaragua by President Reagan in May which impacted the liner services of those carriers operating in the Central American trade, particularly in light of the overtonnaging situation. Those carriers affected included Concorde Shipping, Coordinated Caribbean Transport, Seaboard Marine and Sea-Land Service.

The biggest news in the South America trade during fiscal year 1985 may have been the buyout of Delta Steamship by United States Lines. The takeover received final approval from the Maritime Administration in January, 1985. U.S. Lines paid Delta $36.6 million in the form of 366,000 shares of preferred stock. In return, they received eleven Delta-owned ships and their associated debt; Delta's interest in three new ro/ro vessels and the approval to build a fourth in a non-U.S. shipyard; 549 LASH barges; and Delta's three operating differential subsidies. These subsidies were in the U.S. Atlantic-West Coast of South America, U.S. Gulf-West Africa and U.S. Pacific-Caribbean East and West Coast of South America, Mexico, and Central America trades. Through this deal, U.S. Lines consolidated its position as the principal U.S. flag carrier to South America and West Africa.

In August of 1985, U.S. Lines lost the rights to the three operating subsidies by not meeting the necessary conditions. At the end of the fiscal year, Lykes Brothers Steamship and Farrell Line were petitioning the Maritime Administration for the subsidy rights.

During fiscal year 1985, the Commission employed its authority under section 19 of the Merchant Marine Act, 1920, in several instances, both on its own motion, and also in response to specific complaints about discriminatory actions by foreign governments and carriers in the U.S. foreign trades. These cases focussed on: the overall competitive conditions in the trades with Brazil and Argentina; a specific carrier complaint regarding the Argentina trade; and a specific carrier complaint regarding the Venezuela trade. All of these cases, notably, dealt with Latin American trades, emphasizing the often different approaches towards shipping policy taken by the U.S. and many of our Latin American trading partners.

In Docket 84-33, begun as fiscal year 1984 came to a close, the Commission on its own motion initiated a proceeding pursuant to section 19 to investigate whether conditions unfavorable to shipping exist in the U.S. trades with Argentina and Brazil. The Commission's decision to initiate such a wide-ranging investigation of trade conditions under section 19 authority related to the long-standing complaints about economic injury in the trade, by both U.S. shippers and U.S. and third-flag carriers. These problems were alleged to have resulted largely from extensive systems of cargo reservation laws, decrees, and practices of the governments of Brazil and Argentina.

On October 19, 1984, the U.S. Executive Agencies (U.S. Departments of State, Transportation, Commerce, Justice, and the Office of the U.S. Trade Representative) filed a motion seeking to limit Docket 84-33 to the finding of facts and to defer any consideration of proposed remedies, and also asked to be granted permission to participate in the proceeding without being characterized as either a proponent or respondent. The presiding Administrative Law Judge denied the first part of the motion, but granted the latter. On December 26, 1984, the Commission itself denied the U.S. Executive Agencies' motion to limit the investigation to the finding of facts.

Meanwhile, proponents (arguing that there were unfavorable conditions in the trades) and respondents (arguing that there were not) filed their statements on December 31, 1984 and February 19, 1985, respectively. Rebuttal statements were submitted in March 1985. In addition, the presiding Administrative Law Judge requested from the FMC Bureau of Hearing Counsel (proponents in the case) and from the U.S. Executive Agencies, memoranda of law on topics including the legal status of a "Memorandum of Understanding," and the limitations that such an agreement places on Commission action. These memoranda were submitted in March 1985.

In April 1985, the U.S. Executive Agencies submitted a motion asking the Commission to suspend Docket 84-33 and to defer the filing of final briefs. The motion argued that the interests of U.S. foreign policy would be best served if the Commission were to suspend the investigation. In June 1985, the Commission issued a Notice of Intent to Restructure Proceeding, leaving the discretion to structure the proceeding to the presiding Administrative Law Judge. The Commission emphasized in the Notice its original fact-finding purpose, recommending the removal of "irritants" such as the question of final sanctions. Thirty days were allowed for comment on the Notice. The matter was pending as fiscal year 1985 ended.

In September 1984, A.S. Ivarans Rederi (Ivarans or Ivarans Lines), a Norwegian-flag carrier, i.e. a third-flag carrier in the U.S. trades with Argentina but not a member of a northbound pooling agreement, petitioned the Commission under section 19 to remedy alleged conditions unfavorable to shipping in the U.S.-Argentina trade. In particular, Ivarans argued that Argentine Resolution 619 limited the carriage of Argentine exports to the U.S. to pooling agreement members, thus discriminating against Ivarans. The Commission accepted the petition, and contacted the U.S. Departments of State and Transportation to request diplomatic assistance in this matter. In March 1985, the Commission was notified that U.S. officials had been

informally assured by Argentine authorities that they did not intend to enforce Resolution 619. In April, 1985, Ivarans notified the Commission that it had received assurances directly from the Argentine Undersecretary for Maritime and River Transport, that neither Resolution 619 nor any other measures would be used to prevent Ivarans from loading cargo in Argentina. Ivarans stated its satisfaction at this resolution, and on May 13, 1985, the Commission issued an order discontinuing the proceeding.

In January, 1985, Concorde/Nopal Line, a third-flag carrier, filed a section 19 petition concerning the U.S./Venezuela trade. Concorde/Nopal alleged that the existence and enforcement of Venezuelan cargo reservation laws and decrees, as well as currency exchange decrees, was preventing Concorde/Nopal from a viable opportunity to serve the trade. Within a month, the Commission determined to issue a Notice of Proposed Rulemaking, which would have permitted the Commission to take quick action. Simultaneously, the Commission notified the Department of State in an effort to resolve the problem diplomatically. However, in February of 1985, Concorde/Nopal requested the Commission to defer action, asserting that it hoped to resolve the problem amicably, through a permit by Venezuelan authorities for Concorde/Nopal to compete in the South Florida/Venezuela trade. Concorde/Nopal renewed its request for Commission delay in March, and again in May, stating in its letter of May 6, 1985, that it appeared it would be permitted to serve the trade up to three times per month, on up to three vessels nominated in advance. The Commission therefore determined to dismiss Concorde/Nopal's petition, and served an order to that effect on May 16, 1985.

In terms of non-conference inter-carrier agreements, this trade was marked by the formation of new space charter and joint service arrangements at a level corresponding to other trades (such activity was rare prior to the passage of the 1984 Act):

* Agreement No. 217-010072 established a space charter arrangement in the Florida/Dominican Republic trade between Sea-Land Service and Movaline.

* Agreement No. 217-010683 established a space charter and rationalization agreement between Transnave and Ecuadorian Line in the Miami-Gulf/Ecuador, Central America and Mexico trade.

* Agreement No. 213-010704 established a space charter and rationalization agreement in the U.S. Atlantic and Gulf/Venezuela trade between Transamerica Steamship Corporation and C.A. Maritima Oceanica Granelera.

* Agreement No. 207-010791 established the Wallenius/Transroll Joint Service for the carriage of vehicles and other cargoes in the Brazil/U.S. Atlantic and Gulf trades.

* Agreement No. 207-010811 established the Peru Lines Service between Naviera Neptuno and Empresa Naviera Santa in the U.S. South Atlantic and Gulf/Peru and Chile trade.

F. Middle East Trade

On May 30, 1985, a new conference became effective in the trade from the U.S. West Coast to the Middle East and West Asia.

The Middle East trades experienced a significantly higher incidence of non-conference, inter-carrier agreement activity during Fiscal Year 1985:

* Agreement No. 217-010731 established a space charter arrangement between Sea-Land Service and the United Arab Shipping Company in the U.S. Atlantic and Gulf/Red Sea-Arabian Sea-Persian Gulf trades.

* Agreement No. 213-010739 established the Nedlloyd/ Barber Blue Sea North American-Middle East Reciprocal Space Charter and Coordinated Sailing Agreement, authorizing the rationalization of up to 13 vessels aggregating 400,000 DWT in the U.S. Atlantic and Gulf/Mediterranean and Middle East trades.

* Agreement No. 203-010762 established the United States Eastbound Discussion Agreement, authorizing the parties to discuss transportation matters and issues of mutual concern in this trade, including rationalization, cargo handling, utilization problems, general economic problems and improvements in both the conference system and carrier services.

* Agreement No. 217-010784 provides for Transamerica Steamship Corporation to charter space and equipment on vessels operated by the National Shipping Company of Saudi Arabia from the U.S. Atlantic and Gulf to the Red Sea.

G. Worldwide Trade

The first full year of effectiveness of the 1984 Act also marked an increase in inter-carrier agreements with "around-the-world" service characteristics:

* Agreement No. 207-010668 provided for the expansion of the worldwide Overseas Containers Limited Joint Service into U.S. foreign trades.

* Agreement No. 226-010779 established the Carriers' Container Interchange Agreement authorizing the participants to exchange empty containers and related equipment on a world-wide basis.

V. DEVELOPMENTS IN MAJOR U.S. DOMESTIC TRADES

A. U.S. Mainland/Puerto Rico/Virgin Islands.

On December 13, 1984, Sea-Land filed its Special Permission Application No. 527 for an indefinite extension of authority granted under FMC Special Permission No. 6737 which was scheduled to expire on January 25, 1985. The special permission previously granted permitted Sea-Land to file tariff matter on not less than 8 days' notice postponing increases to its tariffs FMC-F Nos. 34, 53, and 59 for a new one-year period. While an indefinite extension was sought, the Commission denied Sea-Land's request and the current authority which Sea-Land had at the time was allowed to expire as scheduled on January 25, 1985. This action was designated as Special Permission No. 6807.

Sea-Land Service, Inc., filed a supplement on December 14, 1984, to its tariff FMC-F No. 34 applicable between U.S. Atlantic and Gulf ports and ports in Puerto Rico, publishing a notice of cancellation effective January 15, 1985. The tariff was cancelled in its entirety and the rates were filed with the Interstate Commerce Commission. Sea-land was the last major carrier in the Puerto Rico trade with a tariff on file with this Commission for containerizable and non-containerizable cargo. However, in April, 1985, Sea-Land filed a similar tariff with the Commission designated as Freight Tariff FMC-F No. 61 applicable between U.S. Atlantic & Gulf Ports and Puerto Rico, effective May 16, 1985. The port application was slightly different from the previous cancelled tariff FMC-F No. 34.

A proposed general rate increase (GRI) of 10 percent filed by Trailer Marine Transport Corporation (TMT) with a scheduled effective date of August 19, 1985 was considered by the Commission on August 14, 1985 and permitted to become effective as scheduled. The increase was reviewed in connection with protests submitted by interested parties and supporting data submitted by TMT. It was found that the representations of the protestants were not sufficient to warrant suspension or investigation of the GRI. It was

further determined that while, on its face, the financial material submitted by TMT appeared to support the increase, the Commission's staff would audit the data to assure that the submissions fully complied with statutory and regulatory requirements.

On September 12, 1985, the Government of the Virgin Islands (GVI) filed a petition for reconsideration of the Commission's August 14, 1985 decision and requested a stay of TMT's 10-percent general rate increase in the Puerto Rico/Virgin Islands trade. A reply to this petition was filed by TMT on September 24, 1985. The matter was pending at the end of the fiscal year.

B. U.S Mainland Atlantic Coast/Hawaii

The Commission was notified by memorandum dated March 15, 1985, of a proposed rate increase of 2.9 percent in the Atlantic Coast/Hawaii trade filed by United States Lines, Inc. (USL). Since the increase was the third 2.9-percent, overall rate increase published by USL in this trade during the preceding twelve months and the increase, when aggregated with two other 2.9-percent rate increases, resulted in an overall increase of less than 9 percent, the Commission determined not to suspend or investigate USL's rate increase but to conduct a review into alternatives to the methodology used for financial reporting and possible changes to the Commission's regulations.

C. U.S. Mainland Pacific Coast/Hawaii

On November 19, 1984, Matson Navigation Company, Inc. filed a proposed 2.5 percent overall rate increase on all rates and charges on commodities (except on bulk Molasses) in the Pacific Coast/Hawaii trade effective January 1, 1985. The Commission issued an Order of Investigation and Hearing to determine whether the 2.5 percent increase was just and reasonable. A final decision was not rendered by the Commission in this proceeding due to the fact that a quorum

vote could not be reached within the required statutory period, thus the rates were deemed to be just and reasonable for the purposes of Section 3 of the Intercoastal Shipping Act, 1933.

VI

TARIFF AUTOMATION

Tariff automation has been a pervasive issue for the maritime community and the Commission for a number of years. Tariffs have, as a whole, comprised, perhaps, the single most important piece of information available to the conduct of business for oceangoing common carriers. In the current manual form, however, they are inefficient to manage and are not effective in providing the necessary information for certain types of analyses.

The tariffs filed at the Commission comprise perhaps one of the largest public data bases in the world. There are approximately 5,000 foreign tariffs on file at the Commission. Approximately 600,000 pages are filed annually. The number of tariffs on file has increased substantially over the years from 1,651 tariffs at the end of fiscal year 1963 to 4,998 tariffs at the end of fiscal year 1985. The annual filing volume has increased at an even steeper rate. In fiscal year 1962, 52,000 tariff filings were received by the Commission. By fiscal year 1985 this volume had grown to 601,418 tariff pages in the foreign trades.

With an ever-increasing workload as related to manpower, the Commission has had to undertake significant changes in order to be able to keep up with the workload. However, the only avenue available to facilitate this in the long run is automation.

Rate analysis is also excessively difficult when information must be gathered through a painstaking manual search of tariffs and tariff pages. The time involved in capturing relevant data reduces the amount of effective analysis that can be done to an unacceptable level.

The Commission, therefore, has a twofold need for automation of tariffs. One is for the filing and receipt of tariffs, and the other is for the retrieval of tariff information. With respect to tariff usage as a whole,

however, the Commission accounts for very little of the overall usage made of tariff information. The real value of tariffs accrues to the industry itself in that tariffs are a marketing and contracting tool used extensively by carriers and conferences. It appears that significantly increased efficiencies can be achieved by the industry through a system of tariff automation that facilitates the automatic rating of cargo and the preparation of bills of lading as well as automated tariff filing.

In August 1984, Chairman Alan Green, Jr. appointed Vice Chairman James J. Carey to chair a task force to review the feasibility of Tariff Automation. The Commission issued a report in August 1985 outlining the objectives and issues of this effort. The Commission has since established its first industry advisory committee which is chaired by Commissioner Edward J. Philbin and which is designed to obtain the advice and input of the private sector in this endeavor. The Committee is composed of representatives of carriers, conferences, non-vessel operating common carriers, freight forwarders, ports, shippers, importers, exporters, and transportation support firms. The Committee will hold its first meeting in early 1986. The Commission will also perform a technical feasibility study during 1986 in order to ascertain the most feasible future course of action in the tariff automation project.

VII

SIGNIFICANT OPERATING ACTIVITIES BY ORGANIZATIONAL UNIT

A. Office of the Secretary

1. General

The Office of the Secretary is responsible for preparing a regular weekly agenda of matters subject to consideration by the Commission and recording subsequent action taken by the Commission on these items; receiving and processing formal complaints involving violations of the shipping statutes and other applicable laws; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings; receiving and responding to subpoenas directed to Commission personnel and/or records; administering the Freedom of Information, Government in the Sunshine, and Privacy Acts; responding to information requests from the Commission staff, maritime industry, and the public; authenticating instruments and documents of the Commission; issuing agency publications and documents related to formal proceedings before the Commission; and compiling and publishing bound volumes of Commission decisions. The Secretary's Office also participates in the development of rules designed to reduce the length and complexity of formal proceedings, the ongoing evaluation of the efficiency of the Commission's organizational structure, and implementation of legislative changes to the shipping statutes.

During fiscal year 1985, this Office:

* **Coordinated the handling of all administrative matters by the Commission as a body during the extended period the agency was without a Chairman;**

* **Finalized for publication Volume 23 of the Commission's decisions;**

* **Continued to review rules of procedure in light of changes resulting from legislative action; and**

* **Implemented the initial steps of an overall automation plan for the Office.**

2. Informal Dockets Activity

This Activity is responsible for the initial adjudication of claims filed by shippers against common carriers by water engaged in the foreign and domestic offshore commerce of the United States. These claims must be predicated upon violations of the Shipping Act of 1984, or the Intercoastal Shipping Act, 1933, for which reparation of less than $10,000 is sought. The vast number of claims received under this program constitute shippers' requests for freight adjustments arising from alleged overcharges by carriers. During fiscal year 1985, the Informal Docket Activity received 75 new cases, an approximate 35% increase over fiscal year 1984. The Activity disposed of 88 informal docket claims, which was an approximate 50% increase over fiscal year 1984. The Activity also continued to review certain legal and/or jurisdictional matters that have arisen in light of changes brought about by the Shipping Act of 1984.

3. Office of Informal Inquiries and Complaints

This Office coordinates the informal complaint handling system throughout the Agency. The Office processed 1062 complaints and information requests during fiscal year 1985, an increase over the previous year. Based on this activity, complainants recovered nearly $106,000 through savings and refunds in fiscal year 1985.

The Office acted as liaison between shippers, carriers, forwarders, conference executives and the other offices and bureaus within the Agency, enabling meetings with industry representatives and appropriate Commission officials. During fiscal year 1985, this Office continued to answer inquiries and provide information on the new Shipping Act of 1984, and also continued to represent the Commission on the President's Consumer Affairs Council, which presents the Administration's views on consumer topics to federal agencies.

4. Office of Energy and Environmental Impact

This Office ensures Commission compliance with the National Environmental Policy Act of 1969 and the Energy Policy and Conservation Act of 1975. These Acts require the Commission to complete analyses of the energy and environmental aspects of agreements and docketed proceedings before it. Where Commission action is likely to have a significant impact upon energy conservation or the environment, the Office is called upon to complete an analysis of the situation, and when necessary, to prepare energy and environmental impact statements. During fiscal year 1985, the Office reviewed 509 agreements and 27 docketed proceedings. Of these, 434 were categorically excluded from environmental analysis, 95 required no formal action, and analysis of the remaining 7 resulted in "findings of no significant impact." It was not necessary to prepare any formal energy or environmental impact statements during the year.

5. Administrative Services Activity

This Activity provides and administers physical resources and facilities support for the Commission and its field offices. It is responsible for: managing Commission space, property, supply, communications, and mail operations; furnishing contracting, procurement, duplicating, printing, and graphics services; safety and emergency evacuation; and transportation and parking control.

During fiscal year 1985:

* **Contracting services increased considerably, with agreements entered into with the Bureau of Census, American Management Systems (GSA), Journal of Commerce, Lloyds of London, and Bekins, to name a few;**

* **The property function automated several of its tasks through the purchase and installation of an IBM PC-XT;**

* **The Activity was very active in ADP procurement in support of the Commission's automation plans;**

* **Communications services were improved via better utilization of the data transferring capabilities of the Commission's word processors and personal computers;**

* **Renovation/redesignation of office space within the Bureaus of Tariffs, Agreements, and Hearing Counsel was begun to provide better space utilization and improve working environment; and**

* **The emergency evacuation program was reestablished and reorganized with other building occupants.**

6. Management Analysis Activity

This Activity is responsible for obtaining Office of Management and Budget clearances of reporting and recordkeeping requirements imposed on the public, and otherwise implementing the Paperwork Reduction Act of 1980. The Activity also is responsible for records management; conducts internal management studies and audits to assess efficiency, effectiveness, and economy in the management of agency resources; and determines if desired program objectives are effectively achieved. The Activity acts as liaison with other government agencies with respect to Federal Emergency Preparedness, the Federal Civilian Work Force Productivity project, the Catalog of Federal Domestic Assistance, and the U.S. Government Manual.

In fiscal year 1985, the Activity:

* **Coordinated OMB clearance of several additional rules implementing the Shipping Act of 1984, as well as other proposed rules;**

* **Updated Commission records retention data with GSA;**

* **Continued necessary liaison with other government agencies concerning the submission of information and data; and**

* **Assisted various offices within the Commission on special projects and internal studies.**

7. Final Decisions of the Commission

During fiscal year 1985, the Commission heard oral argument in two formal proceedings and issued decisions concluding 9 formal proceedings. Seven formal proceedings were discontinued or dismissed without decision (including

determinations not to review Administrative Law Judge orders terminating proceedings). Seven Administrative Law Judge initial decisions in formal proceedings became administratively final upon expiration of the period for Commission review.

The Commission also concluded 151 special docket applications and 91 informal dockets which involve claims against carriers for less than $10,000.

In rulemaking proceedings, the Commission issued sixteen final rules and discontinued two proceedings without decision. As with last fiscal year, the Commission finalized rulemakings to implement the Shipping Act of 1984 and continued to institute other rulemakings where they appeared to be necessary or desirable. Several rulemakings initiated this fiscal year will be completed in fiscal year 1986.

B. Office Of Administrative Law Judges

1. General

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

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

At the beginning of fiscal year 1985, 58 proceedings were pending before Administrative Law Judges. During the year, 155 cases were added, which included 5 proceedings remanded to Administrative Law Judges for further

proceedings. The judges held 11 prehearing conferences, conducted hearings in 10 cases, and issued 14 initial decisions in formal proceedings, one initial decision in an informal proceeding, and 151 initial decisions in special docket applications.

Cases otherwise disposed of involved 9 formal proceedings and one special docket application.

2. Commission Action

The Commission adopted 3 formal decisions and 2 special docket decisions. Four formal decisions, one informal decision, and 130 special docket decisions became administratively final.

3. Decisions of Administrative Law Judges (in proceedings not yet decided by the Commission)

*** "50 Mile Container Rules" Implementation by Ocean Common Carriers Serving U.S. Atlantic and Gulf Coast Ports - Possible Violations of the Shipping Act, 1916 [Docket No. 81-11]**

The case involved a collectively bargained work rule which, in its simplest form, prohibited ocean carriers from supplying shipping containers to persons located within 50 miles of the carrier's pier unless the containers were to be loaded by either members of the International Longshoremen's Association or the shipper's own employees at the shipper's own facilities. Against charges that the so-called 50 mile rule violated both the Shipping Act, 1916, and the Shipping Act, 1984, it was held that neither the Commission nor those opposed to the rule had demonstrated its unlawfulness.

*** Stevens Shipping and Terminal Company v. South Carolina State Ports Authority [Docket No. 83-44].**

Complainant, a stevedore operating at the Port of Charleston, South Carolina, complained that respondent Ports Authority operated the port under five tariff provisions which were unreasonable, in violation of section 17 of the Shipping Act, 1916. The challenged tariff provisions required users of port services under the tariff to consent to all tariff rules and to indemnify the Port Authority in case of claims against the Ports Authority; made vessels,

owners, and their agents liable for damages even if the Ports Authority were negligent; imposed liability on stevedores renting Port Authority cranes for the negligence of Ports Authority crane operators; and required users of cranes to rent Ports Authority cranes if suitable and available in preference to privately-owned cranes. The proceeding arose out of an accident in which a locomotive being lifted at the port by a Ports Authority crane and its operator was dropped, causing damage to the locomotive and the premises and subsequent lawsuits in a federal court in Charleston. It was held by the presiding administrative law judge that the user-consent provision was not unlawful but had no legal significance; that the provisions requiring users to indemnify the Ports Authority and imposing liability on vessels, owners, and agents were unlawful because they could be used to impose liability upon users of Ports Authority facilities even if the Ports Authority were negligent; that the provision imposing liability on crane renters was not unreasonable because renters did not have the right to control the Port Authority's crane operators; and that the provision requiring users to rent Ports Authority cranes if suitable and available was not unlawful. The Ports Authority was ordered to cease and desist from carrying out the unreasonable practices embodied in the unlawful tariff provisions.

* **The Coca-Cola Export Corporation v. Peruvian Amazon Line [Docket No. 84-10].**

In the complaint case, the shipper alleged that the carrier had exacted a higher rate than was lawfully applicable by improperly classifying the shipment under the carrier's tariff. It was held that the classification was proper and that the lawful rate had been charged.

* **Ariel Maritime Group, Inc., et al [Docket No. 84-38].**

This case was initiated as a Commission Order of Investigation to determine whether or not certain corporations as freight forwarders, NVOCC's or VOCC's, violated section 16, Initial Paragraph, of the Shipping Act, 1916, by misdeclaring and misdescribing the cargo, by giving

inaccurate weight or measurement and by collecting a higher rate from the shipper under one bill of lading and paying a lower rate to the carrier under a second bill of lading. Violations of section 16 were also alleged to have arisen by declaring cargo was being transshipped when in fact that was not the case. The case also involves an alleged violation of section 18(b)(3) of the Shipping Act, 1916, because shippers were charged rates that were not included in a tariff on file with the Commission. Inherent in both types of violations is whether or not penalties should be imposed.

* **Carrier International Corporation v. Waterman Steamship Corporation** [Docket No. 85-1].

Complainant's shipment of air conditioning equipment from Savannah, Georgia, the Port Sudan, Sudan, found to have been subjected to a congestion surcharge, and to have been overcharged, because the applicable rate was all-inclusive. The Commission's authority to award reparation is discretionary, and under the circumstances reparation in part was awarded.

* **Matson Navigation Company, Inc. Proposed General Rate Increase of 2.5 Percent between United States Coast Ports and Hawaii Ports** [Docket No. 85-3].

Matson Navigation Company, Inc., a carrier operating between Hawaii and Pacific Coast ports, increased its rates overall by 2.5 percent, seeking to earn a return of 13.65 percent on its rate base. The Commission's Hearing Counsel argued that Matson's rate of return should be limited to 12.6 percent; the State of Hawaii argued for 12 percent; and a shipper argued that the rate increase should be reduced to levels that existed before the increases were filed. The presiding administrative law judge found that the rate increase was not unreasonable; that Matson should be allowed to earn a return between 13.68 and 13.69 percent on its rate base; and that the Hearing Counsel, the State, and the shipper underestimated Matson's competition and, in urging lower rates of return, relied upon depressed data, unacceptable methodologies and understated calculations of risk. The judge also found that Matson had lost business in the

subject market area, had introduced cost-savings devices and had made substantial investments leading to greater efficiencies, all of which factors could be weighed when determining a reasonable rate of return. On June 28, 1985, the Commission announced that, because of a vacancy on the Commission and for other reasons, the Commission would not be issuing a final decision and that, as provided by section 3 of the Intercoastal Shipping Act, 1933, the rates under investigation would therefore be deemed just and reasonable.

Judges also issued initial decisions in Docket Nos. 83-27, 83-32, 83-36, 83-41, 84-6, 84-8, 84-9, 84-11, in Informal Docket No. 1469(F), and in 151 Special Dockets.

4. Pending Proceedings

At the close of fiscal year 1985, there were 37 pending proceedings, of which 8 were investigations initiated by the Commission. The remaining proceedings were instituted by the filing of complaints or applications by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

C. Office of the General Counsel

1. General

The Office of General Counsel advises the Commission on legal issues and provides it with legal counsel on matters under consideration. The Office reviews the legality of proposed Commission rules, drafts proposed rules to implement Commission policies, renders formal and informal written opinions on pending adjudicatory matters, and prepares draft decisions and orders for Commission ratification. The Office of the General Counsel is also responsible for defending and enforcing Commission orders in court. This litigation work largely consists of representing the Commission upon petition for review of its orders filed with the Circuit Courts of Appeals. This Office also represents the Commission or its employees

before other tribunals where the Commission's interest may be affected by litigation. Finally, the Office is responsible for preparing or presenting testimony to Congress on various maritime regulatory matters. The following are representative of matters prepared by this Office.

2. Commission actions

* **Financial Reports by Vessel Operating Common Carriers by Water in the Domestic Offshore Trades [Docket No. 85-17], 23 S.R.R. 355 (July 31, 1985).**

This proceeding was initiated to amend the Commission's rules governing the filing of financial reports by carriers in the domestic offshore trades. The Commission utilizes financial reporting forms promulgated by the Maritime Administration for domestic water carriers. Changes in those forms by the Maritime Administration required similar amendments to the Commission's regulations.

* **In the Matter of the Independent Action Provisions of the Atlantic and Gulf/West Coast of South America Conference Agreement, Order Granting Petition For Declaratory Order [Docket No. 85-8], 23 S.R.R. 390 (1985).**

The Commission issued an order granting the petition which determined that neither brokerage nor freight forwarder compensation is a "rate or service item" within the meaning of section 5(b)(8) of the Shipping Act of 1984 and that the Act therefore does not provide for a mandatory right of independent action with regard to forwarder compensation or freight brokerage.

* **Matson Navigation Company Proposed Overall Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports [Docket No. 85-3], 23 S.R.R. 263 (June 28, 1985).**

This proceeding was initiated to determine the reasonableness of a rate increase filed by Matson Navigation Company. An initial decision found the rate increase to be justified. On exception, the Commission could not reach a final decision due to an evenly divided vote that resulted from a vacancy on the Commission. The rates in question were deemed to be just and reasonable by operation of the Intercoastal Shipping Act, 1933, for purposes of that Act.

* **Electronic Filing of Tariffs By Common Carriers in the Foreign and Domestic Offshore Commerce of the United States [Docket No. 84-35], 23 S.R.R. 82 (March 14, 1985).**

The Commission promulgated rules for the utilization of electronic tariff filing services by common carriers. The rules provide that carriers may electronically file amendments with registered electronic filing services located in the Commission's Washington, D.C. headquarters building. These services must then file hard copy tariff pages with the Commission by 9:00 a.m. of the following day.

* **Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States; Co-loading Practices by NVOCC's [Docket No. 84-27], 23 S.R.R. 123 and 350 (1985).**

After soliciting comments from interested persons, the Commission issued a rule governing the co-loading practices of non-vessel operating common carriers (NVOCCs). The rule requires NVOCCs to indicate in their tariffs whether they engage in co-loading with other NVOCCs and, if so, requires them to notify the underlying shipper that its cargo has been co-loaded and with whom. In addition, the rule prohibits special rates in an NVOCCs' tariff solely for co-loading with other NVOCCs. Subsequently, several NVOCCs raised questions concerning the application of the rule. As a result, the Commission modified the rule to clarify that all NVOCCs are required to comply with its requirements, regardless of the type of co-loading relationship they have established with another NVOCC. The rule was further amended to clarify that the name of any NVOCC with whom the shipment is co-loaded must appear on the face of the bill of lading, in a clear and legible manner.

* **Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984 [Docket Nos. 84-26 and 84-32], 22 S.R.R. 1453 (1984).**

The Commission issued a Final Rule which implemented those provisions of the Shipping Act of 1984 governing agreements by or among ocean common carriers as well as certain marine terminal operator agreements.

* **Actions to Address Conditions Unduly Impairing Access of U.S. - Flag Vessels To Ocean Trade Between Foreign Ports [Docket No. 84-22], 22 S.R.R. 1408 (1984).**

The Commission issued a Final Rule which implemented section 13(b)(5) of the Shipping Act of 1984. The Rule addresses, among other things, factors which would indicate conditions unduly impairing access of U.S.-flag vessels in cross trades, petitions for relief, proceedings, decisions, definitions, and sanctions.

* **Service Contracts, Loyalty Contracts and Filing of Tariffs By Common Carriers in the Foreign Commerce of the United States [Docket Nos. 84-21, 84-23 and 84-24], 22 S.R.R. 1424 (November 9, 1984)**

These consolidated proceedings implemented the provisions of the Shipping Act of 1984 relevant to tariff filing by common carriers and the use of loyalty contracts and service contracts by such carriers. Major features of the new regulations include substantially streamlined provisions governing the filing of through transportation rates, reduced requirements for the filing of new inland points for intermodal rates and rate reductions, and new rules governing the filing of rates by conferences on behalf of controlled carriers. Provisions relating to service contracts include the filing requirements for such contracts and their related statements of essential terms, a prohibition against modifications during the term of such contracts unless provided for in the contract and the establishment of return and rejection procedures. The use of loyalty contracts without prior clearance by the Department of Justice was not specifically prohibited by the Commission's rules in light of the applicability of the antitrust laws to such agreements

* **Order Denying Petitions For Reconsideration [Docket Nos. 84-21, 84-23, 84-26], 23 S.R.R. 117 (1985).**

The Commission issued an order denying certain petitions for reconsideration filed in response to the issuance of final rules on service contracts, loyalty contracts, and agreements.

* **Port Authority of New York v. New York Shipping Association [Docket Nos. 84-6 and 84-8], 23 S.R.R. 21 (1985).**

The Commission found that the agreement used by the New York Shipping Association to fund longshoremen's benefits was unfair and unjustly discriminatory to the Port of New York and New Jersey and a carrier in the Puerto Rico trade. The Commission modified the agreement to remove the unfairness and unjust discrimination and ordered assessment adjustments in favor of the carrier in the Puerto Rican trade. Court appeals by all major parties followed. The parties thereafter entered into a settlement which made assessment adjustments in favor of the Puerto Rico carrier, established a new assessment agreement, and provided for withdrawal of the appeals.

* **California Cartage Co., Inc. et. al. v. Pacific Maritime Association [Docket Nos. 82-1 and 82-10], 23 S.R.R. 212 (May 23, 1985) and 23 S.R.R. 420 (Aug. 15, 1985).**

This proceeding was remanded to the Commission by the Ninth Circuit Court of Appeals. Thereafter, the Pacific Maritime Association moved to dismiss the proceeding on the basis that the standing available to the complainants was extinguished by enactment of the Shipping Act of 1984, which, *inter alia*, amended the Maritime Labor Agreements Act, 1980. The Commission denied that motion but held that the 1984 Act amendments limited the relief available to complainants to reparations rather than the prospective relief they sought. The complainants rejected the reparations remedy and moved for a final disposition of the case. The Commission dismissed the proceeding. The case is now before the Court of Appeals on a Petition for Review filed by Complainants

* **Application of Hapag-Lloyd AG for the Benefit of General Motors Corporation [Special Docket Nos. 1220 and 1225], 23 S.R.R. 200 (1985); Application of United States Lines (S.A.) Inc. for the Benefit of Miles Laboratories [Special Docket No. 1168], 23 S.R.R. 428 (1985).**

The Commission announced a new policy applicable to freight charge refund or waiver requests under section 8(e) of the Shipping Act of 1984, the "special docket" procedure. In a

reversal of previous policy, the Commission stated that a carrier that has negotiated an intermodal service with a shipper, but failed through clerical error to file a tariff covering that service prior to shipment, and that can comply otherwise with the jurisdictional requirements of the special docket procedure specified by the statute, need not prove that it actually provided the full service originally contemplated in strict accordance with its tariffs in order to file a special docket application for the benefit of its shipper.

* **In the Matter of Petition for an Amended Statement of Policy Concerning the Status of Shippers' Associations Under the Shipping Act of 1984, 22 S.R.R. 1629 (1985).**

The American Institute for Shippers' Associations, Inc. filed a petition with the Commission seeking a determination that membership and participation in shippers' associations is limited to the "owners or beneficial owners" of the goods shipped through the association. The Commission denied the Petition, primarily on the ground that the applicable statutory provisions, together with their legislative history, do not permit the interpretation urged by AISA. AISA subsequently appealed the Commission's decision to the United States Court of Appeals for the District of Columbia Circuit. Upon motion of the Commission, that appeal was dismissed for lack of jurisdiction.

* **Definition of "Package", 23 S.R.R. 111 (1985).**

The Commission denied, as beyond its authority, a petition of Dow Chemical Company for a rulemaking proceeding to define "package" for the purposes of the Carriage of Goods by Sea Act.

* **In the Matter of Petition for Rulemaking Concerning Shippers' Associations, 22 S.R.R. 1624 (1985).**

Several conferences petitioned the Commission to initiate a rulemaking proceeding which would set forth certain procedures which would have to be followed by a purported shippers' association prior to a common carrier or conference having an obligation to negotiate with it. The Commission determined that Petitioners' fears of potential

antitrust exposure were not sufficiently compelling to justify the proposed rule. In addition, the Commission noted that carriers or conferences can promulgate their own tariff rules concerning the subject matter. Accordingly, the Commission denied the Petition.

* **Part 500 - Employee Responsibilities and Conduct, 49 Fed. Reg. 44363 (November 6, 1984).**

The Commission issued a revision of its Standards of Conduct (46 C.F.R. Part 500). This revision made modifications to the rules governing gifts, entertainment, and favors, added procedures relating to enforcement of restrictions on post employment activity and made other technical and clarifying changes.

3. Litigation

* **American Institute for Shippers' Associations, Inc. v. F.M.C., D.C. Cir. No. 85-1227 (1985).**

The American Institute for Shippers' Associations, Inc. filed a petition for review of the Commission's order denying its Petition for an Amended Statement of Policy Concerning the Status of Shippers' Associations Under the Shipping Act of 1984, served February 15, 1985 (22 S.R.R. 1629). Subsequently, in response to the Commission's Motion to Dismiss, the Court of Appeals for the District of Columbia Circuit dismissed the petition for review, on the ground that it lacked jurisdiction.

* **Puerto Rico Maritime Shipping Authority and Puerto Rico Marine Management, Inc. v. FMC & USA, and consolidated cases (No. 85-1129, et al., D.C. Cir.).**

Five petitions for review of the New York assessment cases (FMC Docket Nos. 84-4 and 84-6) were filed by all the major parties. Subsequently, these Petitions were dismissed pursuant to a settlement embodying a new assessment agreement.

4. Legislative Developments

The primary focus of the Commission's legislative activity during the past year was an attempt to amend the Administrative Orders Review Act of 1950 (28 U.S.C. § 2342)

to clarify that all rules, regulations and final orders issued by the Commission will be initially reviewed in the United States courts of appeals, rather than first in the federal district courts, with a subsequent right of appeal to the courts of appeals. This activity was prompted by passage of the Shipping Act of 1984, without a concomitant amendment to 28 U.S.C. § 2342.

The Commission prepared a draft bill and explanatory statement and sent them to the relevant Congressional committees. The Senate subsequently adopted the Commission's proposed bill as an amendment to the Maritime Appropriation Authorization Act for Fiscal Year 1986 (S. 679). The House did not adopt similar legislation, however, and instead, Congressman Rodino introduced H.R. 3049. This bill will essentially accomplish the same results as the proposed bill originally proferred by the Commission. It was referred to the House Judiciary Committee and was the subject of hearings held on July 29, 1985 before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice. At that time, the Commission's Vice Chairman submitted a prepared statement in support of the bill. The bill was recently approved for full committee action.

During fiscal year 1985, 74 bills, proposals and Congressional inquiries were referred to the Office of Legislative Counsel for comments. Action was timely completed on all of these referrals. The Office of Legislative Counsel also prepared and coordinated testimony for five Congressional hearings.

Pursuant to the requirements of section 2(j) of the Act of August 26, 1983 (Pub. L. 98-89, 97 Stat. 599), the Commission submitted to Congress a draft bill to codify those laws within the Commission's jurisdiction relating to shipping and maritime matters. The Commission developed this submission in consultation with the Law Revision Counsel of the House of Representatives. The proposed bill makes extensive style and organizational changes but no substantive changes in the basic laws.

D. Office of Policy Planning and International Affairs

1. General

The Office of Policy Planning and International Affairs is responsible for a wide range of international affairs activities, strategic planning, policy briefings, economic analysis, and information systems to support the Commission in its statutory mission. In its planning function, the Office ensures that the Commission is aware of current developments and can anticipate future trends likely to affect liner shipping and the maritime trades. Major activities of the Office include:

* **Monitoring the actions of foreign governments -- laws, decrees, and cargo preference policies affecting ocean shipping in the foreign trades;**
* **Providing technical assistance regarding U.S. maritime regulatory policy in intragovernmental, government-to-government and multilateral discussions of international shipping policy;**
* **Forecasting trade developments and world economic trends; and**
* **Analyzing legislative actions and operational and structural changes in the shipping industry that may influence the environment of international liner shipping.**

The Office carries on economic research and analysis, conducts studies, and develops trade information to enable the Commission to meet its regulatory responsibilities. The Office also provides expert economic testimony in the Commission's formal administrative proceedings. A newly assigned Office function is responsibility for developing and coordinating the Commission's data resources and information systems.

2. Policy Planning Issues

During fiscal year 1985, a major policy issue was the development of a systematic plan for the introduction of personal computers into virtually every unit within the Commission. The need for automated systems was acute because the Commission receives an enormous quantity of tariffs, agreements and investigation data on a routine

basis. In addition, the requirement in the Shipping Act of 1984 that the Commission conduct a five-year study of the impact of the Act means that market share data (from Census and the Journal of Commerce), rate data (from tariffs filed at the Commission) and service pattern data (Lloyd's of London) must be accumulated and analyzed.

As a result, the office designed a plan which specified the requirements for computer hardware and software to meet the Commission's automation needs. The plan resulted in the acquisition of 31 personal computers, which replaced the one minicomputer the Commission had previously leased. The short-term results were that the Commission increased its computer power significantly while actually reducing its ADP expenditures. The placement of computer technology in the hands of the ultimate users of information should result in long-term gains in efficiency for the Commission.

The office continued its policy of accumulating information on the laws and practices of foreign governments which could have an adverse impact on shipping conditions in U.S. trades. The Shipping Act of 1984 expanded the Commission's role in ensuring that governmental or commercial practices do not unduly restrict U.S.-flag carriers' access to foreign-to-foreign trades. Section 13(b)(5) was included in the Act to enable the United States to protect itself from growing protectionism stemming from the United Nations Code of Conduct for Liner Conferences (U.N. Liner Code). The Office developed an extensive database on foreign government laws and decrees and worked closely with other agencies in the government, such as the Departments of State and Transportation, to ensure that the interests of the United States would be protected.

3. International Affairs

In our increasingly interdependent world, the actions of one nation can affect the vital interests of a trading partner or even a group of trading partners. As a consequence, the Commission must be cognizant of world political and economic events and remain abreast of

technological developments that can dramatically reshape the structure of the liner shipping industry. Foreign governments have become more active in implementing various cargo sharing regimes, through laws and decrees, and in the pricing decisions and other activities of carriers and conferences operating in their liner trades.

Cargo preference schemes often reserve large shares, or in some instances, specific commodities, for transport by national-flag lines and the carriers of the reciprocal trading partner. Usually, such schemes provide for the use of third-flag carriers under a system of waivers. The Commission has broad statutory authority, under section 19 of the Merchant Marine Act of 1920, to protect the interests of carriers and shippers in the U.S. foreign trades. Such authority has been recently exercised on a number of occasions on the Commission's own motion to resolve complaints filed with the Commission. See pp. 39-42.

The cargo preference schemes of foreign nations can also serve to bar the entry or restrict the operations of U.S.-flag carriers in the cross-trades. A provision in the Shipping Act of 1984 empowers the Commission to impose retaliatory sanctions against the carriers of nations that discriminate against U.S.-flag carriers in the foreign-to-foreign trades. Specifically, under section 13(b)(5), the Commission has the authority to investigate potentially unfair actions by a carrier or a foreign government that unduly impair the access of a U.S.-flag carrier in the ocean trade between foreign ports and to take appropriate action, up to and including tariff suspension. This legislative provision augments and strengthens the Commission's role in its efforts to preserve and protect an efficient transportation system and ensure the carriage of cargoes at competitive rates in the liner trades.

During the year, Commission staff members served as technical advisors to the Interagency Maritime Policy Group. This government policy group is composed primarily of representatives from the Departments of State, Transportation, Commerce and Justice, and the Office of the

U.S. Trade Representative, and is designed to formulate and coordinate U.S. shipping policy. The Commission has also been represented by staff members in a technical capacity in U.S. discussions with European and Japanese government officials in the Consultative Shipping Group (CSG). The U.S. and CSG members meet to discuss and seek solutions for problems facing the international shipping community. With the entry into force of the U.N. Liner Code, and the proliferation of cargo preference schemes, the CSG and the U.S. have continued their dialogue about approaches designed to maintain open and competitive access to the world's liner trades. The Commission has also been represented by the staff in bilateral shipping policy discussions between U.S. and foreign government officials from Japan during the year. The Commission was actively involved in a number of ways in the field of international affairs during fiscal year 1985. These activities are expected to continue into fiscal year 1986 and beyond. The principal areas of concentration are outlined below.

4. Restrictive Cargo-Sharing Decrees and Laws of Foreign Governments

The trend towards cargo preference legislation to develop and maintain national-flag fleets has been increasingly evident during the past decade. In large part, this can be attributed to the stimulus of the U.N. Liner Code -- with its emphasis on cargo sharing -- which entered into force in October 1983. Several foreign governments have enacted laws, decrees, and other cargo preference measures, or implemented onerous trade restrictions on oceanborne cargoes, which discriminate against U.S. and third-flag carriers in the U.S. liner trades.

These limitations have, in certain instances, reduced the access to certain trades for U.S. and third-flag shipping lines and also served to reduce the options of shippers to obtain the best available service at the most favorable rates, thereby adversely affecting the U.S. export and import commerce. Complaints about such discriminatory activities have resulted in Commission actions designed to

remove conditions unfavorable to shipping in the U.S. liner trades. Under section 19 of the Merchant Marine Act, 1920, the Commission possesses significant authority to retaliate against unfair acts of discrimination by foreign carriers and governments. See pp. 39-42 and p. 68.

The cargo preference schemes of foreign nations may also serve to limit the activities -- or bar the presence -- of U.S.-flag carriers in the trades between foreign ports. Under its new authority contained in section 13(b)(5) of the 1984 Act, the Commission can protect our carriers seeking to enter the cross-trades. While this authority has yet to be tested, it represents a significant addition to the Commission's powers to safeguard U.S. foreign-trade interests. To date, no petitions have been filed under section 13(b)(5) of the Shipping Act of 1984. This year, representatives from U.S.-flag carriers were contacted to assure them that the Commission plans to preserve and protect U.S.-flag carriers' competitive access in foreign trades. Meetings were held with these representatives to identify potential trouble spots where 13(b)(5) action may be necessary.

During the fiscal year, the Commission continued its cargo promotion reporting program to provide information about the actions of foreign governments which may result in complaints and petitions filed by carriers and shippers under section 19 of the Merchant Marine Act, 1920, and section 13(b)(5) of the Shipping Act of 1984. These reports contain information on foreign government cargo preference laws and decrees, implementation practices relating to access to cargoes, indirect trade practices, and countermeasures available in the event of discrimination against national-flag or foreign carriers in the nation's trade.

5. U.S./Consultative Shipping Group (CSG) Discussions

During the fiscal year, Commission staff members participated in the discussions between the U.S. and the CSG. During these meetings, and in the planning and

preparatory sessions of the U.S. Interagency Maritime Policy Group, Commission representatives provided technical advice on pertinent matters under discussion.

6. Bilateral Negotiations

The liner shipping policies of the U.S. and certain developed and developing countries have clashed on a number of occasions in the past few years and resulted in increased activity in the area of government-to-government bilateral negotiations and discussions. Commission staff members served as technical advisors at the U.S/Japan negotiations in Washington, D.C., during January of 1985. The purpose of these meetings was to discuss such trade irritants as Japanese road restrictions on the movement of high-cube containers; the lack of participation of U.S.-flag carriers in the movement of both U.S. leaf tobacco exports to Japan and Japanese automobile exports to the U.S.; and Japanese intermodal and port service restrictions on foreign liner operators. See pp. 35-36.

7. Foreign Maritime Laws and Regulations

The Commission has continued to develop and update its reference files on foreign maritime laws, decrees, regulations and regulatory structures. By augmenting and updating its files on counterpart agencies abroad, the Commission can more readily respond to regulatory problems and conflicts arising with our trading partners. The Commission is continuing to monitor the progress of the EEC's Proposed Regulation on Maritime Transport, and the maritime regulatory activities of a number of developing countries. This year the Commission began a study of foreign nations' tariff filing requirements. Over 130 Diplomatic and consular posts abroad were requested to solicit responses from foreign government maritime officials regarding tariff filing requirements. Ninety-five responses were received and are being analyzed.

8. Information Resources

The information resources program is established as a major component of the Office of Policy Planning and International Affairs. The function provides automation, planning and coordination of the management information efforts of the Commission. With recent innovations in microcomputer technology, the concept of decentralizing data processing operations to the Commission's operating divisions was adopted. The relatively small size of the Commission, potential size of data sets, and the management style at the Commission all contributed to the decision to decentralize. A comprehensive plan for hardware, software and telecommunications was implemented during fiscal year 1985. The Commission's objective of positioning computer equipment and data base responsibilities closest to those who need the information most -- the users -- has largely been met. Systems analysis and design as well as comprehensive training of Commission personnel will be undertaken during the coming year to fully realize the efficiencies, flexibility and long-run savings available through automation.

Microcomputer equipment is currently supporting the section 18 study, a major Commission responsibility under the Shipping Act of 1984 (the Act). The Commission is charged with collecting vast quantities of data that reflect the effects of the 1984 Act on common carrier prices, services, freight movements, and surveillance activities undertaken to protect U.S. interests from unreasonable commercial practices and undue government interference in liner shipping. To the greatest extent possible, this is being accomplished by automated means, utilizing government, commercial and internal databases. Other automated systems, now in place or soon to be completed, include information regarding service contracts, freight forwarders, and agreements.

Office automation efforts were continued this year with the installation of additional office automation network equipment for word processing, telecommunications, and some

information processing. Equipment was installed at the Commission and at the Miami and Los Angeles field offices. The equipment includes the capability to electronically transfer documents between these offices and headquarters.

9. Section 18: The Mandate for a Five-Year Study of the effects of the Shipping Act of 1984 and FMC Progress to Date

(a) General

Within six months after expiration of the five-year period of data collection, the Commission shall report the information, with an analysis of the impact of the Act, to Congress, to the Advisory Commission on Conferences in Ocean Shipping (Advisory Commission), and to the DOJ, DOT and FTC. The Advisory Commission will be appointed at that time. The three aforementioned agencies will also submit their own analyses on the impact of the Act 60 days after the FMC submission.

The Act further specifies, in section 18(c), that the following three topics should be addressed in the above analyses:

* **The advisability of adopting a system of tariffs based on volume and mass of shipment;**
* **The need for antitrust immunity for ports and marine terminals; and**
* **The continuing need for the statutory requirement that tariffs be filed and enforced by the Commission.**

The Advisory Commission is charged with conducting a comprehensive study of, and making recommendations concerning, conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Advisory Commission shall, within one year after its establishment, make its recommendations to Congress.

(b) The Data-Collecting Task

From the FMC's perspective, the section 18 mandate involves three major areas of responsibility. The first is the collection of data; the second is ongoing consultation with the DOJ, DOT and FTC concerning data collection; and the third is the analysis of the data in order to determine the impact of the 1984 Act on the ocean transportation industry.

(c) Consultation with Other Agencies

Sources of information available to the Commission include tariffs and service contracts on file, published material (such as exchange rates compiled by the International Monetary Fund), Bureau of Census data, and information requested from carriers, shippers and ports. The choice of data to be collected for a period of several years before and after the Act depends partly on what can be obtained from the various sources and partly on the intended analysis. It is expected that the analytical approach which will be adopted by the FMC will differ in some respects from the approach of the other agencies. It was the apparent intention of Congress to allow for a reasonable diversity by forming an Advisory Commission whose task, among other things, is to evaluate the separate opinions. The sharing of data was clearly intended to avoid the costly duplication of activity by the separate agencies.

(d) FMC Progress to Date

(i) General. In February 1984, when it became clear that section 18 was likely to become part of the Shipping Act of 1984, the FMC prepared a preliminary operational plan which identified the major areas of anticipated activity. Progress in fiscal year 1985 is reported under a similar list of major areas:

* **Establish and maintain an Interagency Group of representatives from the DOJ, DOT, FMC, and FTC.**

* **Identify major issues and problems.**

* **Work with the shipping industry in acquiring sources of information, advice and opinion.**

* **Research the usefulness of analytical and statistical procedures which can be applied to the collected data.**

* **Continue the data collection effort.**

(ii) The Interagency Group of Representatives. The FMC held its initial consultative meeting with the section 18 Interagency Group on June 8, 1984. Six additional meetings were held in FY 1984 and seven meetings were held in FY 1985. Although a wide range of topics was discussed, from confidentiality problems of certain data sources to interpretations of what Congress intended under section 18, the discussions have become increasingly more specific regarding the nature of the intended analysis by the FMC and the information requirements of the other agencies in fulfilling their reporting obligations. That trend is expected to continue during FY 1986.

(iii) Identify Major Issues and Problems. The FMC's initial assessment of the data collection mandate focused on sections 18(a)(1), (2), and (3) of the new Act by examining the conceptual issues and problems associated with data collection pursuant to each section. Although specific tasks continue to be assigned on a section-by-section basis, the need for a more integrated approach became apparent during FY 1985. The need arose partly in response to the desire to automate the data-collecting tasks for the years following the establishment of the data files, and partly from the concern that all pertinent data should be listed and compiled now rather than at some later date when the information is no longer current.

(iv) Work with the Ocean Shipping Industry. Tentative arrangements were made to establish a cooperative working arrangement among carriers to assist the FMC in developing information for the section 18 study. The arrangements will be particularly important for certain types of data for which the carriers are considered to be the primary data source (such as information relating to service contracts, through rates, and stowage factors). The working group will also be useful as a verifying authority for data which are

FMC-sourced. Similar arrangements may be initiated with port representatives, and it is hoped that useful information can be exchanged early in FY 1986.

(v) Analytical and Statistical Procedures. During FY 1985, several documents were prepared for the purpose of outlining the statistical methodology which could be followed. After further discussion during FY 1986, these documents will be expanded to include the data-file listings and information-system procedures which will be applied to all data series collected for the section 18 study.

(vi) Continuation of Data Collection. Of greatest interest during FY 1985 was the compilation of tariff rates for the following major, country-to-country trades which were selected for the section 18 study:

* **Australia -**
  - **U.S. West Coast to Australia**
  - **U.S. East Coast to Australia**
  - **Australia to U.S. West Coast**
  - **Australia to U.S. East Coast**

* **Brazil -**
  - **U.S. Gulf to Brazil**
  - **U.S. East Coast to Brazil**
  - **Brazil to U.S. Gulf**
  - **Brazil to U.S. East Coast**

* **Italy -**
  - **U.S. North Atlantic to Italy**
  - **Italy to U.S. North Atlantic**

* **Japan -**
  - **U.S. West Coast to Japan**
  - **U.S. East Coast to Japan**
  - **Japan to U.S. West Coast**
  - **Japan to U.S. East Coast**

* **Netherlands and Germany -**
  - **U.S. North Atlantic Ports to Netherlands and Germany**
  - **U.S. South Atlantic Ports to Netherlands and Germany**
  - **Netherlands and Germany to U.S. North Atlantic Ports**
  - **Netherlands and Germany to U.S. South Atlantic Ports**

* **Taiwan -**
  - **U.S. West Coast to Taiwan**
  - **U.S. East Coast to Taiwan**
  - **Taiwan to U.S. West Coast**
  - **Taiwan to U.S. East Coast**

Details concerning the procedures for compiling the tariff rates are given in Appendix I.

Other important data which were collected during FY 1985 include market shares for conference carriers and non-conference carriers. An example of the tables which have been prepared appears in Appendix H. Plans were also made to survey shippers, carriers, and ports regarding facts and opinions relating to the Act. At the close of FY 1985, the FMC was awaiting OMB approval to distribute the survey instruments to associations and to individuals within the industry.

10. Future Plans and Proposed Activities

For the coming year the Office plans to increase its efforts to collect and analyze data required for the five-year study mandated by the Shipping Act of 1984. It is expected that freight rate indexes for the major trades will be completed. These indexes will be computerized and updated for the remainder of the study period. It is also anticipated that an analysis of service to ports and geographic regions for calendar year 1985 will be completed. For the sake of comparison, similar data for the Europe/Far East trade should be finalized. The strength and number of independent lines should be completed for calendar years 1984 and 1985. It is anticipated that the Information Resources Program will also act as the Commission-wide coordinator for data base design, development and implementation with the future goal of establishing a local area network for information sharing throughout the agency.

In the area of international affairs, it is projected that the laws, decrees, and regulations of additional countries will be compiled and added to the existing data bases. Continued participation in the U.S./CSG dialogue and in bilateral discussions is also contemplated.

A major portion of the Office's activities in the next few years will involve the preparation of the five-year study required by section 18.

E. OFFICE OF REGULATORY OVERVIEW

The Office of Regulatory Overview was established in early fiscal year 1985, contemporaneously with the finalization of the Commission's regulations to implement the Shipping Act of 1984 which, by law, had to be in place by December, 1984. In addition to regulations for new statutory requirements, the Commission restructured and updated all of its parts of the Code of Federal Regulations and, as a result of this effort, Title 46 CFR, Parts 500 to End, was published in April of 1985.

In order to produce rules occasioned by the passage of the 1984 Act within stringent deadlines, the Commission established novel procedures which made that achievement possible. These included scheduling of the assigned drafting of new rules, quality-circle editing and close monitoring of progress to completion. The Office of Regulatory Overview was established to refine and continue these important functions for the rest of the fiscal year.

In addition to the final rules appearing in the Code of Federal Regulations, the Office, in Fiscal Year 1985, coordinated the development of the Commission's own official copies of each CFR part with amendments incorporated as they were finalized.

The Office of Regulatory Overview monitors existing and proposed Commission rules and regulations to ensure their effectiveness and compatibility with law, Commission policies, and regulations of other Government agencies; advises and consults with other bureaus and offices regarding necessary or desirable changes to such regulations; ensures the compatibility of internal procedures with new and existing rules and regulations; and acts as liaison with other Government agencies to ensure Commission compliance with their substantive and technical rulemaking requirements. In Fiscal Year 1985, the Office drafted and circulated to Commission offices a synopsis of Administration goals and a rulemaking style and checklist manual to facilitate drafting of regulations and to ensure

compatibility with Administration policies and Federal Register style.

The Office maintains and promulgates the Commission's Regulatory Calendar which involves the duty to make semiannual submissions of regulatory agendas to the Office of Management and Budget to be published in the Unified Agenda which appears in the Federal Register. Submissions were made in February and August of 1985.

After the identification of each rulemaking project, the status of which is updated periodically for Commission monitoring, the Office of Regulatory Overview coordinates all changes to existing and proposed rules and regulations in accordance with Administration rulemaking policies, and drafts and edits recommended changes for Commission promulgation, including model provisions. During Fiscal Year 1985, 30 rulemaking projects were identified for study and/or drafting and 21 rules were published in the Federal Register, out of which 16 were final rules affecting 24 different CFR parts.

In Fiscal Year 1985, the Office of Regulatory Overview, in consultation with the Office of General Counsel, prepared the Commission's draft of the recodification of its portions of Title 46 of the United States Code as required by law to be submitted to Congress in August of 1985. This, along with other chapters of Title 46, is expected to be enacted during Fiscal Year 1986. The Office of Regulatory Overview also performed special drafting projects as requested.

F. DIRECTOR OF PROGRAMS

1. General

This Office is responsible for the planning, coordination, and management direction of the Commission's four operating Bureaus: the Bureau of Agreements and Trade Monitoring, the Bureau of Investigations, the Bureau of Hearing Counsel and the Bureau of Tariffs. Congress, through the Shipping Act of 1984, enacted legislation which

completely transformed the Commission's role in regulating the maritime transportation industry. With the advent of this new law, it became necessary to refocus the Commission's resources and create regulatory programs consistent with the Commission's newly established mandate. Operating plans have been designed for each major responsibility assigned to the operating bureaus, establishing specific goals and time frames. Particular attention has been given to surveillance and enforcement programs and improving efficiency in the receipt and handling of agreements, tariffs, and service contracts.

2. Accomplishments

Principal accomplishments for FY 85 included:

* **Developing procedures to expedite settlement activities through emphasizing priority civil penalty claim matters reducing the age of pending cases and the number of less significant investigations, and establishing better coordinated policies among bureaus.**

* **Developing more aggressive regulatory positions in docketed proceedings.**

* **Improving efficiency in processing agreements, tariffs, service contracts, and anti-rebate certificates.**

* **Identifying tactics to ensure compliance by NVOCCs with the 1984 Act.**

* **Designing and implementing on a pilot basis a target trade surveillance program to ascertain whether regulated parties were meeting statutory and regulatory requirements.**

* **Finalizing rules to implement the 1984 Act.**

3. Plans

Major plans for FY '86 include:

* Implementation of continuing target trade surveillance program.

* Development of economic criteria to guide surveillance and enforcement activities.

* Pursuit of tariff automation.

* Automation of freight forwarding, service contracts, and passenger vessel processing.

* Revising the program for monitoring controlled carriers to attain better efficiency and effectiveness.

4. Tariff Automation

This Office played a major role during Fiscal Year 1985 in the Commission's project to explore the feasibility of the automation of tariff filings. The tremendous volume of paper filings continues to grow each year. Processing hard copy filings is expensive and time consuming for the Commission and for the industry. The Commission is exploring the feasibility of tariff automation from the perspective of satisfying the needs of the industry for tariff information, as well as the Commission's processing needs. This will remain an important priority.

G. BUREAU OF AGREEMENTS AND TRADE MONITORING

1. General

The primary function of the Bureau is to plan, develop and administer the programs related to the regulation of concerted actions of common carriers by water and other persons within the definitions of the Shipping Act of 1984 and the Shipping Act, 1916.

2. Surveillance

[See pp. 22-26.]

3. Types of Agreements

(a) Conference and Ratemaking Agreements

Conference and ratemaking agreements provide for the collective discussion, agreement and establishment of ocean freight rates and practices by groups of ocean carriers. Such agreements are limited to a geographic area or trade route, with the traditionally accepted distinction between "conference" and "rate" agreement being that a "conference" agreement is usually a more formal institution exercising a dominant influence on rates within the trade, whereas a "rate" agreement is more loosely structured and has a lesser influence on rates. However, this distinction is becoming

blurred as evidenced by two major exceptions in the Far East trade within the past year with the creation of the Trans-Pacific Westbound Rate Agreement and the Asia-North American Eastbound Rate Agreement. As indicated previously, these agreements encompass the trade areas (excluding the inbound trade from Japan) of 16 previous conferences and include the major carriers serving the Far East. Although more loosely structured than the previous conferences, they do exercise a dominant influence on rates within the trade. Also, the Commission's rules currently do not distinguish between conference and rate agreements for purposes of determining applicability of the so-called "mandatory provisions."

During fiscal year 1985, the Commission concluded the processing of 230 conference and rate agreements, including amendments to existing agreements, pursuant to the Shipping Act of 1984. The most significant occurrence was the merging of 37 conferences and rate agreements into 16 conferences and rate agreements, reducing to 63 the total number of conferences and rate agreements in effect. Major mergers took place in the European, the Mediterranean and the Far East trades.

Twelve conferences enlarged their intermodal authority to encompass a broad range of intermodal services in the United States and overseas. Forty-four additional agreements were completely reformatted during the year to comply with the Commission's form and content requirements. Only 12 conference agreements had not met these requirements by the end of the year and these had been granted short extensions of the October 1, 1985 deadline.

(b) Pooling and Equal Access Agreements

Pooling agreements are commercial arrangements among carriers in given trades which provide for the pooling and apportionment of cargo and/or revenues in the interest of the increased efficiencies which such arrangements can provide as a result of their stabilization of competitive conditions. These agreements also often set forth sailing requirements and other features relating to overall service

efficiency. Equal access agreements serve to formalize national-flag carrier access to cargo which is controlled by the governments of reciprocal trading partners as a result of cargo preference laws, import quotas or other restrictions.

At the conclusion of Fiscal Year 1985, there were seven pooling agreements, three equal access agreements and four combined pooling/equal access agreements in effect. The preponderance of these agreements continues to apply to the U.S./South American trades. Eleven agreements of this type have a significant impact on U.S. ocean liner commerce with Argentina, Brazil, Chile and Colombia.

(c) Space Charter Agreements

Space charter agreements authorize the chartering (or cross-chartering) of vessel space or container slots between or among vessel operators. The essential objective of arrangements of this type is to facilitate carrier access to vessel accommodations in given trade routes beyond that which would otherwise be available, to facilitate the rationalization of overall fleet operations and to reduce overtonnaging in given trades. These agreements also generally contain authority to agree on schedules, itineraries and the exchange of equipment.

In terms of non-conference ocean common carrier activity, the area of space charter agreements experienced the largest growth of any single category of agreements during Fiscal Year 1985, registering an increase in active agreements of 63 percent over the preceding fiscal year. Fully 88 percent of new space charter agreement filings (and 69 percent of all space charter agreement filings, including both basic agreements and modifications) during Fiscal Year 1985 required staff negotiations in the interest of removing statutorily impermissible authority; to clarify agreement terms to meet the specificity requirements of the Commission's rules, including the removal of open-ended authority; or to informally develop sufficient information to assess the likelihood and/or reasonableness of reductions

in transportation service resulting from proposed service rationalization authority. In virtually every instance, these negotiations met with material success, and the agreements involved were permitted to take effect upon the expiration of the initial period. At the end of Fiscal Year 1985, there were 44 active space charters in effect.

(d) Discussion Agreements

Discussion agreements provide authorized forums for ocean common carriers, or conferences thereof, to meet, exchange views and recommend action on matters of industry concern. Discussion agreements do not as a rule, however, authorize the implementation of agreements on specific actions concerning matters discussed without further filing for 1984 Act effectiveness. At the conclusion of Fiscal Year 1985, there were 15 such agreements in effect.

(e) Joint Service/Consortia Agreements

Joint service and consortia agreements generally establish a new and separate line or service to be operated by otherwise independent liner operators as a joint venture in a given trade. The resulting line or service operates generally as a single carrier, fixing its own rates, publishing its own tariffs and issuing its own bills of lading, but its authority is strictly confined to that which is specifically set forth in the agreement authorizing its operation.

The 1984 Act significantly expanded the range of inter-carrier ratemaking activities defined to constitute "conference" agreements, with the sole exception being joint service/consortia agreements. Consequently, joint service/consortia agreements are now the only class of carrier agreements with ratemaking authority that are not required to have the so-called "mandatory provisions" concerning independent action, membership, shippers' requests and complaints, etc., that are required for all other carrier ratemaking agreements, which are uniformly regulated as "conferences" under the 1984 Act. For this reason, and in view of the ability of a joint

service/consortium agreement to channel concerted competitive activity in a manner that is not only not subject to the checks and balances of the mandatory conference provisions, but which is also likely to produce tangible transportation service and/or cost impacts that are identifiable on a pre-effectiveness basis, this class of agreements was subjected to close scrutiny during Fiscal Year 1985. Every one of the new joint service/consortia agreements filed during the Fiscal Year (and 69 percent of all joint service/consortia filings, including both new agreements and modifications) were the subject of staff negotiations on a wide variety of issues, ranging from concerns that agreements with ratemaking authority styled as a "joint service/consortium" (but not fully meeting the definitions in the Commission's regulations) could be used to evade otherwise-applicable mandatory provisions, to the need to remove open-ended authority and sufficiently identify the resources contributed in order to permit an informed assessment of the likely transportation service/cost impacts under the standards of section 6(g) of the 1984 Act. Although staff negotiations in this area were generally successful during the initial review period, it was necessary to extend the review period an additional forty-five days in two instances, one of which involved jurisdictional questions in the parcel tanker area.

At the conclusion of Fiscal Year 1985, 22 joint service and consortia agreements were in effect, covering virtually every major U.S. foreign trade.

(f) Marine Terminal and Shoreside Agreements

Marine terminals, operated by both public and private entities, provide the facilities and labor for the interchange of cargo between land and sea carriers, and for the receipt and delivery of cargo to shippers and consignees. Agreements entered into between terminal operators are still required to be filed with the Commission, however they no longer require its approval. Absent some intervention by the Commission or injunctive court action, they become effective 45 days subsequent to filing.

During fiscal year 1985, the Bureau processed to completion 177 agreements and agreement modifications providing for the use and provision of port and terminal services and facilities.

The Commission is also charged with handling certain labor-management agreements pursuant to the Maritime Labor Agreements Act of 1980 (P.L. 96-325, 94 Stat. 1021). The Act provides that such agreements, to the extent they provide for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized, shall be deemed effective upon filing with the Commission. During fiscal year 1985, 10 labor-management agreements of this type were filed.

H. BUREAU OF TARIFFS

1. General

The Bureau of Tariffs plans, develops, administers and analyzes programs and activities in connection with the pricing of services provided by common carriers by water, conferences of such carriers and terminal operators in the foreign and domestic offshore commerce of the United States; reviews, files and rejects tariff filings; approves or disapproves special permission applications; and initiates recommendations, collaborating with the Bureau of Hearing Counsel and other elements of the Commission as warranted, for formal action and proceedings by the Commission. The Bureau is also responsible for the licensing of ocean freight forwarders under the provisions of the Shipping Act of 1984; and under Public Law 89-777, the certification of the financial responsibility of owners and operators of passenger vessels to satisfy liability incurred by nonperformance of voyages or resulting from injury or death. The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations with respect to its program activities.

A significant development during fiscal year 1985 was the abolishment of the Office of Domestic Tariffs and transfer of such functions to the Office of Foreign Tariffs. Activity in the domestic commerce had decreased and, from an administrative standpoint it was determined that the functions could be combined.

2. Rulemakings involving Tariffs

During the fiscal year the Commission issued final rules for the publishing and filing of tariffs (Docket 84-24) and service contracts and time/volume rates (Docket 84-21). These rules further modified the interim rules as they pertained to tariff content and organization, definitions, intermodal tariff filing requirements, service contracts and time/volume rates. The significant changes in the tariff filing rules, prompted by the Shipping Act of 1984, include the addition of service contracts, filing exemptions for forest products, - recycled metal scrap, waste paper and paper waste, and the elimination of the port-to-port "breakout" in intermodal "through rate" tariffs. In addition, the time for filing shippers' claims for overcharges was increased from two to three years, a provision extending tariff notice requirements of an anti-rebate policy to NVOCCs was implemented and the use of correction numbers in tariffs was made optional.

The Commission also published its final rule in Docket No. 84-27, relating to the practices of Non-Vessel-Operating Common Carriers (NVOCCs) combining cargo, usually for the purpose of attaining full container loads, such practices being commonly known as co-loading. The rule established tariff filing regulations to require each NVOCC to describe in its tariffs the undertaking to perform co-loading. Further, the rule requires that NVOCCs give actual notice to a shipper that its cargo has been co-loaded and of the identify of the other NVOCC's involved in the co-loading. Such notice must be shown on the face of the bill of lading in a clear and legible manner. Additionally, the rule prohibits NVOCCs publishing special rates for the exclusive use of other NVOCCs. The final rule became effective on September 5, 1985.

During fiscal year 1985, in Docket 84-35, the Commission published its final rule, effective April 18, 1985, which amended its foreign and domestic offshore tariff filing rules by permitting, subject to certain conditions, the electronic receipt of filings outside of the Commission's offices but within the building where its offices are located.

Also, during the year, based on a petition from American President Lines, the Commission initiated Docket 85-19, Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers or their Agents. The proposed rule would revise the Commission's foreign and domestic offshore tariff filing rules to require the publication of free time and detention charges applicable to a carrier's equipment interchanged with shippers or their agents. The Commission staff has received comments to the proposed rule and is in the process of preparing a recommendation to the Commission.

3. Foreign Commerce

In fiscal year 1985, the number of tariff pages filed increased by 20,443 or approximately 3.5 percent. The number of official tariffs on file increased 454 or approximately 10 percent over the previous fiscal year.

During the fiscal year the Commission continued its program to place cancelled tariffs on microfiche for permanent record keeping purposes in lieu of the physical transfer of such files to government storage facilities. In addition, cancelled pages to active tariffs were also transferred to fiche due to limited shelf space in the tariff library. By the end of fiscal year 1985, approximately 3 million cancelled tariffs and active tariff cancelled pages had been recorded on microfiche. Additional tariff activity is summarized in Appendix D.

4. Foreign Controlled Carrier Activities

During the first half of the fiscal year the Commission added Flota Bananera Ecuatoriana S.A., an Ecuadorean flag common carrier, and Sudan Shipping Line Limited, owned by the Government of Sudan, to its list of controlled carriers.

During the third quarter, the Commission received a petition from South African Marine Corporation, Limited (Safmarine), requesting that it be removed from the Commission's list of controlled common carriers and that it be relieved from the advance tariff filing and other requirements of section 9 of the Shipping Act of 1984. Processing of the petition was delayed until verification of the information submitted by Safmarine was received from the Department of State. Final action by the Commission is expected to be taken early in fiscal year 1986.

Also continued under review for possible listing as controlled common carriers are National Shipping Corporation of the Philippines (Philippines) and Nauru Pacific Line (Republic of Nauru).

5. Compliance and Surveillance Pilot Program

[See pp. 22-26.]

6. Significant Activities within Specific Trade Areas

(a) European Area

A significant change took place in the European trade area. The U.S. Atlantic-North Europe Conference and the North Europe-U.S. Atlantic Conference were formed consolidating approximately 10 active North and South Atlantic European Conferences into two conferences. This action resulted in all trade areas being represented by one conference tariff outbound and two conference tariffs inbound.

Regarding rate activity in the European trade, it was noted that in fiscal 1985, the outbound conference implemented one general rate increase while the inbound conference implemented two.

(b) Far East Area

The Transpacific Westbound Rate Agreement (TWRA) was formed in fiscal 1985 covering the trade outbound from Ports and Points in the United States to Ports and Points in Southeast Asia, Singapore, Malaysia, Indonesia, Thailand and the Philippines. The agreement has 18 participating

carriers who had approximately 119 independent tariffs on file prior to their joining TWRA. Due to the enormous task involved in the filing of the TWRA tariffs, which included the cancellation of the members' independent tariffs, the TWRA common conference tariff did not become effective until May 1, 1985.

In addition to a new conference being formed representing the outbound trade to the far east area, the Asia North American Eastbound Rate Agreement (ANERA) was created representing the trade from far east ports, except Japan, to the United States. All conference tariffs and independent tariffs that fall within the ANERA scope have been adopted by the agreement. Eventually ANERA will publish common tariffs encompassing all of the adopted tariffs of the participating conferences and independent carriers.

7. Proposed ADP Index and Relabelling of Tariff Library

The Commission is continuing its program to establish an ADP index of all tariffs in the tariff library. Once the system is established it will provide data that will include the name of every carrier with a current tariff on file; the scope of each carrier's operation as reflected in its tariff; and the name of all participating carriers to each conference or agreement tariff. The ADP system will provide a complete and continually updated alphabetically-arranged printout of all tariffs on file.

In addition, the Commission, in fiscal 1985, began placing certain service contract information on computers in order to develop a data base to support the Commission's responsibility in monitoring service contract activity.

8. Non-Vessel-Operating Common Carriers in the Foreign Commerce Subject to Anti-Rebate Certification Requirements

The Commission served a show cause order on March 7, 1985 (Docket 85-5) on the NVOCCs who failed to timely file their initial anti-rebate certification due December 15, 1984. The matter is currently pending final action by the Commission. See also pp. 15-16.

9. Service Contracts

The Shipping Act of 1984 ushered in a change in the shipping statutes in the foreign commerce of the United States which permits carriers and conferences to enter into service contracts with shippers or shippers' associations. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, wastepaper, or paper waste, each contract entered into under section 8(c) of the Shipping Act of 1984 must be filed confidentially with the Commission and, at the same time, a concise statement of its essential terms must be filed with the Commission and made available to the general public in tariff format. The essential terms must be available to all shippers similarly situated.

While the Commission received only 160 service contracts between the effective date of the Shipping Act of 1984 and the end of fiscal year 1984, during fiscal year 1985, over 2100 service contracts were filed. These contracts were filed by 55 individual ocean common carriers and 21 conferences. They involved approximately 2500 primary and secondary shippers. A primary shipper is the person or firm signing a service contract, and a secondary shipper is a person or firm included under a contract as a subsidiary or affiliate of the signatory shipper entitled to receive services under the contract. Signatory shippers that entered into service contracts with carriers and conferences in fiscal year 1985 may be categorized as manufacturers, wholesalers, retailers, shippers' associations, and NVOCCs.

The service contracts filed cover specifically described commodities and, in certain instances, cover "freight all-kinds." The geographic scopes of the contracts include the U.S. Atlantic, Pacific and Gulf coasts and specifically describe points in the United States and points and ports in the Far East, Australia, United Kingdom, Europe, Scandinavia, Africa, Central and South America, both in the inbound and outbound trades.

At the close of the fiscal year, the number of service contracts filed was increasing at a rapid pace.* It is anticipated that the increased filings will continue into fiscal year 1986. In certain major trades, service contracts cover a significant portion of the cargoes.

The Commission implemented its filing regulations governing the use of service contracts in 1984. However, our experience with service contracts indicates such regulations may require amendment in order to address issues not originally contemplated. The Commission, therefore, intends to enter into a rulemaking proceeding in fiscal 1986 to accomplish this purpose.

10. Domestic Commerce

The Intercoastal Shipping Act, 1933 and section 18(a) of the Shipping Act, 1916, require the filing of rates, charges and rules describing the practices of common carriers in the U.S. domestic offshore trades. The statutes require the Commission to ensure that the rates and practices of domestic offshore carriers are just and reasonable. The staff reviews and analyzes tariff filings of such common carriers in the domestic offshore commerce between the U.S. Mainland and Alaska, Hawaii, Guam, Puerto Rico, American Samoa, U.S. Virgin Islands, Midway, Johnston, Wake and the Northern Marianas Islands. Terminal operators in the United States are also required to file tariffs showing their rates and practices.

(a) Tariff Activity

The Bureau of Tariffs has on file 275 domestic offshore tariffs filed by 345 carriers, and 440 terminal tariffs filed by 325 terminal operators. There were approximately 12,000 domestic tariff revisions and 7,000 terminal tariff revisions filed during the year. In addition, 52 special permission applications were processed. The domestic tariff activity statistics are summarized in Appendix D.

* At the beginning of the fiscal year, service contract filings were averaging 16 per week. At the close of the fiscal year, this had increased to 70 per week.

(b) Significant Commission Activities by Trade Area

[See pp. 27-47.]

11. Financial Analysis

The Office of Financial Analysis provides accounting and financial expertise to help ensure the reasonableness of rates for the transportation of cargo and other services provided by common carriers in the offshore waterborne commerce of the United States. The Office also provides technical assistance to other activities within the Commission.

The Office continued to monitor the activities of carriers in the domestic offshore commerce of the United States. This effort involved the receipt and review of financial and operating data submitted in compliance with 46 CFR Part 552. The staff also evaluated the financial data submitted in support of a general rate increase in the Virgin Islands Trade.

The Commission requires the submission of financial reports from vessel operators engaged in the domestic offshore trades. Work was completed on amendments to the governing regulations and the revision of the forms used by self-propelled vessel operators. Having completed that project, the Office has undertaken a similar effort with respect to the reports of tug and barge operators. Together, these changes will result in a lessening of the regulatory burden imposed on all carriers in the domestic offshore trades.

Under the direction of the Director of Programs, the Office undertook the development of a comprehensive membership listing of conferences operating in the foreign commerce of the United States. This listing covered the period January 1, 1976 to September 30, 1984, and showed entry and exit dates, as well as scope of operations.

The Office has devoted and will continue to devote substantial efforts to the Commission's automation program. This activity includes the development and maintenance of

various data bases. These data bases include the regulated person index, as well as profiles of all tariffs and service contracts on file with the Commission.

12. Freight Forwarders

The ocean freight forwarding industry is comprised of persons who, in effect, hold themselves out to shippers as export departments for hire. Ocean freight forwarders serve export shippers by arranging for the ocean transportation of cargo by common carriers, and by handling the paperwork, legal requirements, safety requirements and other incidentals related to such exports. Ocean freight forwarders receive payment for handling an export shipment from the exporter. Forwarders also receive booking compensation from the ocean carrier whose vessel was selected by the forwarder to carry the cargo.

Congressional findings in 1961, focusing on malpractices within the ocean freight forwarder industry, led to the enactment of section 44 of the Shipping Act, 1916 (46 U.S.C. 841b) which vested the Commission with authority for the licensing and regulation of independent ocean freight forwarders. At that time, malpractices in the export trades were rampant. Given the importance of maintaining a favorable climate for U.S. businesses, especially small businesses which lack the expertise to do their own exporting, Congress found that licensing and limited oversight of ocean freight forwarders was necessary to eliminate secret, illegally preferential rebates, and to ensure that unscrupulous, incompetent and financially irresponsible persons were prevented from operating as ocean freight forwarders. Although the number of ocean freight forwarders has increased since 1961, forwarder-initiated malpractices are now more the exception rather than the rule.

The continued maintenance of fiduciary responsibility, technical qualifications and financial responsibility of an ocean freight forwarder are currently assured by means of a license issued by the Commission and a surety bond which is

In addition to applications for new licenses, in fiscal year 1985, the Commission received one hundred sixty-one applications requesting approval of transfers of licenses and other organizational changes. Seven applications for transfers and other organizational changes were carried over from the previous fiscal year. One hundred forty-four of these requests were approved during Fiscal Year 1985. Sixteen requests were administratively closed as applicants did not wish to pursue their requests.

On-site compliance investigations are conducted as part of the Commission's effort to ensure that licensed ocean freight forwarders comply with the provisions of the shipping statutes and the Commission's regulations. During the year, one hundred twenty-two investigative reports were reviewed. Sixty-one of these reports resulted in the issuance of warning letters or referral to the Bureau of Hearing Counsel for the assessment of appropriate civil penalties. Sixty-one cases were determined to require no formal corrective action.

Other activities during the year included:

* **The processing of 891 surety bond actions including new bonds, riders to bonds and the cancellation of bonds;**

* **The review and processing of 57 informal complaints concerning, in the majority of cases, the non-payment of freight charges by forwarders to carriers;**

* **The receipt and review of 2,163 anti-rebate certifications required to be filed by forwarders pursuant to the 1984 Act and the Commission's implementing regulations;**

* **The review of 32 Dunn and Bradstreet reports; and**

* **The review of 64 claims, totaling in excess of $2,000,000, that were filed against forwarder bonds.**

With regard to the forwarder anti-rebate certification program, during the past fiscal year, the Commission instituted a formal hearing and investigation against 74 forwarders who failed to file the required certification. The proceeding was dismissed as those forwarders still active complied by filing the required certification.

required to be maintained on file with the Commission. Once issued, a license need not be renewed. The amount of the bond depends upon the number of offices through which an ocean freight forwarder provides ocean freight forwarding services.

With the enactment of the Shipping Act of 1984, the Commission's regulatory responsibilities over the forwarding industry are now found in section 19 of that Act. Under the new shipping statute, the basic licensing requirements remain essentially in place. However, the prohibition of export shippers from receiving a license has been dropped. Thus, any person (that is, individual, corporation or partnership) may receive a license, if found qualified. However, licensed forwarders are barred from collecting compensation from carriers on shipments in which the forwarders may have a beneficial interest.

The new statute also provides that persons operating as forwarders in the domestic off-shore trades of the United States are not required to obtain a license to do so, nor are such entities required to file a surety bond. Nevertheless, such forwarders are still subject to the applicable sections of the 1916 Act that now apply solely to the domestic trades of the United States.

Under the new statute, agreements by and among forwarders engaged in the foreign commerce of the United States are no longer required to be filed with the Commission for approval. Hence, such agreements are afforded no anti-trust immunity.

During fiscal year 1985, the Commission received one hundred fifty-two applications for ocean freight forwarder licenses, in addition to the sixteen applications pending from Fiscal Year 1984. One hundred seventeen of these applications were approved; one was denied; seven were withdrawn during the processing stage; and twenty-seven incomplete applications were returned to the applicants. One hundred thirty-seven previously-issued licenses were revoked, primarily because the forwarders failed to maintain the surety bonds required by statute.

At the end of the year, there were 1,595 licensed ocean freight forwarders, representing a decrease of 32 licensees from Fiscal Year 1984.

13. Passenger Vessel Certification

The Commission is responsible for administering sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817d and e), which have been implemented by the Commission's regulations found in 46 C.F.R. 540 - "Security for the Protection of the Public." Owners, charterers and operators of American and foreign vessels having berth or stateroom accommodations for fifty or more passengers which embark passengers at United States ports, must establish that they are financially responsible: first, to meet any liability they incur for death or injury to passengers or other persons on voyages to or from United States ports and second, to indemnify passengers (by refunding deposits and fares) in the event that they fail to perform voyages or cruises.

Persons must qualify separately for each certificate by means of insurance, surety bond, escrow account, guaranty or as a self-insurer. A different means of establishing financial responsibility may be selected for each certificate.

Section 2 of the law, as well as Commission rule 46 C.F.R. 540.24(a), contains a schedule to determine the amount of coverage required for death or injury liability based upon the maximum number of passenger accommodations aboard the vessel. A person meeting the requirements of section 2 and the Commission's regulations is issued a Certificate (Casualty).

Section 3 of the law places the responsibility with the Commission to determine the amount of coverage necessary for indemnification of passengers in the event of nonperformance of transportation. Such factors as the vessel's passenger capacity, itinerary, fare structure, number of voyages or cruises, trade served, type of operation, past experience and collection policy are considered by the Commission in

determining the amount of evidence of financial responsibility required for a Certificate (Performance).

Under the Commission's regulations implementing Section 3, the maximum amount of evidence of financial responsibility required of any certificant is 10 million dollars (except a self-insurer which could require a greater amount). Each certificant submitting less than $10-million coverage, must report unearned passenger revenue (advance sales) to the Commission. Some 127 reports of unearned passenger revenue were received by the Commission and, when necessary, certificants increased the amount of their evidence of financial responsibility to meet the Commission's requirements. The Commission also received 215 financial statements from certificants and insurers and documents, such as surety bonds, insurance, and guarantees.

A person meeting the requirements of section 3 and the Commission's regulations is issued a Certificate (Performance).

The certificates must be presented to the United States Customs officials at the port or place of departure of the vessel from the United States. Under the law, the U.S. Customs Service shall refuse clearance of the vessel if it does not have certificates on board until such time as the Commission confirms compliance with the law.

During fiscal year 1985, the Commission approved 15 new applications for performance certificates, 17 new applications for casualty certificates and 51 applications for amendments to existing certificates. At the end of the year, over 100 vessels remained certified.

I. BUREAU OF HEARING COUNSEL

The Bureau of Hearing Counsel participates as trial counsel in formal adjudicatory dockets, non-adjudicatory investigations, rulemaking proceedings when designated by Commission Order, and other proceedings initiated by the Commission. Bureau attorneys serve as Hearing Counsel,

where intervention is permitted, in formal complaint proceedings instituted under section 22 of the 1916 Shipping Act and section 11 of the 1984 Shipping Act. In addition to the formal proceedings in which the Bureau participates as a party, the Bureau monitors all other formal proceedings in order to ascertain that major issues affecting the shipping industry and/or the general public, as distinguished from purely private disputes between the litigating parties, are adequately developed. On request, the Bureau also furnishes advice to the staff and the shipping public. On occasion, the Bureau may participate in matters of court litigation by or against the Commission. Bureau attorneys review enforcement reports developed by the Bureau of Investigations, prepare and serve claim letters, and may compromise and settle such civil penalty claims for alleged violations of the shipping statutes and regulations. If settlement is not reached, the Bureau acts as prosecutor in formal Commission proceedings that may result in the assessment of such penalties.

At the close of fiscal year 1984, 98 reports of violations were pending final Commission action. During fiscal year 1985, 32 new reports of violations were received by the Bureau and 85 were compromised and settled, administratively closed, or referred for formal proceedings or action by other Bureaus. As a result, 45 reports of violations were pending final action on September 30, 1985. The amounts of civil penalties assessed or compromised by the Commission in fiscal 1985 are set forth in Appendix E.

As of the close of fiscal year 1984, the Bureau had 17 formal proceedings pending. During the year, 15 new proceedings were received and 9 were completed, resulting in 23 formal proceedings on hand as of September 30, 1985. The Bureau provided advice to the staff on more than 270 projects during the fiscal year.

The Bureau also participated in an advisory capacity in the development of Commission rules and regulations.

During fiscal year 1984, a new operating plan was developed for the Bureau. This plan was fully implemented in fiscal year 1985, and strengthened the Bureau's functions as legal advisor to the Commission's staff by providing for closer coordination with the Commission's other Bureaus and Offices especially in carrying out the Commission's enforcement and other regulatory responsibilities under the Shipping Act of 1984.

J. BUREAU OF INVESTIGATIONS

The Bureau of Investigations monitors the ocean commerce of the United States in an effort to curtail illegal rebating and other malpractices by carriers, shippers, consignees, and other persons subject to the Shipping Acts. In addition to the headquarters office in Washington, D.C., offices are located in New York, San Francisco, New Orleans, Chicago, Miami, Los Angeles and Hato Rey, Puerto Rico. These offices represent the Commission within their geographical area; provide liaison between the Commission and the maritime industry and the shipping public; monitor and conduct surveillance activities of the shipping industry to determine compliance with the various shipping statutes; maintain a high awareness of industry-wide conditions; and investigate alleged violations of the statutes and regulations administered by the Commission. Such violations can include, but are not limited to the following:

* **Carrier and shipper malpractices, such as illegal rebates of freight charges, and misclassification, misdescription or misdeclaration of cargo shipments;**

* **Unlawful common carrier rates in U.S. foreign and domestic offshore trades;**

* **Unlawful agreements among carriers or other persons subject to the Commission's jurisdiction; and**

* **Unlicensed ocean freight forwarder activity.**

Fiscal Year 1985 was the first full year of operation under the Shipping Act of 1984, enacted on March 20, 1984 and effective on June 19, 1984. The emphasis of the Shipping Act, 1984 on surveillance and monitoring of the regulated industry has caused the Commission as a whole, and the Bureau of Investigations in particular, to refocus its strategies in these areas. The Bureau of Investigations has, as a result, revised its entire operating plan for Fiscal Year 1986 to incorporate the increased responsibility for monitoring and surveillance of service contracts, ocean freight forwarders and non-vessel operating common carriers, as well as its investigative activity into the "Prohibited Acts" outlined in the Shipping Act of 1984.

The Bureau of Investigations continues to rely heavily on the utilization of sophisticated automated information sources as a means of properly monitoring the shipping industry. This has enhanced our ability to maximize our resources and develop high profile, quality cases, which have the greatest impact on fulfilling the mission of the Bureau and the Agency.

At the beginning of Fiscal Year 1985, there were 171 field investigations in progress. During the year, 299 new investigations were initiated, providing 470 cases on hand and scheduled for investigation. Completed investigations totaled 289, leaving 181 cases pending at the end of the fiscal year. Appendix F summarizes the Bureau's investigative activities.

VIII

ADMINISTRATIVE ACTIVITIES

Several offices of the Commission are involved in the administrative support of the Commission's regulatory programs.

A. Office of Personnel

1. General

The Office of Personnel plans and administers personnel management programs, including recruitment, placement, employee training and development, position classification, occupational safety and health, and employee relations. In these efforts, the Office works closely with operating officials and employees to meet employee, organizational, program, and officials' needs. Significant achievements in these functional areas during fiscal year 1985 are outlined below:

2. Program Development

During fiscal year 1985, the Office implemented a program to provide comprehensive counseling and assistance services to its employees. This confidential, voluntary program makes professional help available to employees on a short term basis, free of charge. Program development work during this period was concentrated on drafting and implementing a comprehensive new performance appraisal and compensation system for Commission middle-level managers and supervisors (Performance Management and Recognition System).

Efforts continued in the project to review and evaluate the capabilities of Federal automated personnel, payroll, and administrative payments systems. As a result of these efforts, the Commission has entered into an agreement with another agency to provide these services at a cost of nearly $13,000 less than the amount currently expended for payroll and administrative payments alone.

Current programs, including internal regulations governing employee details, occupational safety and health, the Senior Executive Service, workforce discipline, and Commission advisory committees, were refined during fiscal year 1985. During fiscal year 1985, the Office continued to monitor actions taken and legislative proposals offered by the U.S. Office of Personnel Management with respect to contemplated regulatory changes in the areas of reduction in force, performance appraisal, and the federal retirement system. Where new regulations were made final, the Office collaborated with staffers from OPM to implement the directed policies and procedures. Finally, during fiscal year 1985, the Office underwent two comprehensive reviews of aspects of its personnel management program which were conducted by the U.S. Office of Personnel Management.

3. Employee Relations

Significant accomplishments in the area of employee relations during fiscal 1985 included:

* Continuation of efforts to enhance the working environment of all Commission employees through numerous programs relating to health and safety.

* Conduct of a comprehensive health fair, giving employees the opportunity to compare health plans and facilities prior to making their final decisions on the purchase of health insurance.

* Continuation of counseling services to those employees contemplating retirement, including the opportunity for them to participate in a pre-retirement seminar.

* Advice to employees on Hatch Act prohibitions and leave account restoration procedures. The Office explored a number of timely health-related issues, in an effort to safeguard employees' well-being at the workplace.

* Assistance to employees and their families in filing applications for disability retirement and claims for on-the-job injury compensation.

* Initiation of the Commission's house organ, the FMC NAVIGATOR, which served to enhance communications to employees on a wide variety of subjects.

* Continuation of efforts to educate supervisors on their responsibilities in the areas of employee performance, conduct, awards, and discipline.

* **Informal counseling of supervisors with respect to particular problems which they faced.**

* **Coordination with Commission legal advisors to ensure that employees affected by disciplinary or non-disciplinary adverse actions were accorded their due rights.**

* **Administration of the Commission's Incentive Awards Program, granting awards to employees for outstanding performance or special achievements.**

4. Performance Appraisal

During fiscal year 1985, the Office implemented the Commission's first annual performance evaluation and pay out under the statutorily-mandated Performance Management and Recognition System (PMRS). In addition, the Office refined and developed common standards for supervisory and managerial employees, and assisted supervisors in preparing new or revised performance standards, necessitated by changes in employee duties. Performance appraisals were conducted for non-PMRS employees (GS-1 through GS-12), and were comprehensively examined in order to identify and correct deficiencies in employee performance. In addition, plans were developed to revise the non-PMRS appraisal system as a result of changes in governing law and regulations.

5. Staffing

In addition to on-going recruitment efforts, during fiscal year 1985 the Office responded to Commission needs to recruit to fill newly-established or redefined positions in offices whose missions were directly affected by enactment of the Shipping Act of 1984. In anticipation of the Act's passage, new recruitment strategies were developed in traditionally hard-to-fill positions. Advice was provided on the feasibility of effecting internal reassignments to meet critical program needs. Efforts continued to furnish human resources within funding limitations, including the use of summer employment, volunteer, and cooperative education programs. The Office assisted the Commission in the establishment of an advisory committee for the purpose of studying the possibility of converting to an automated tariff filing system. In addition, the appointment of

several experts and consultants enhanced the Commission's ability to carry out its responsibilities under the Shipping Act of 1984.

6. Training

The Commission continued the program begun in fiscal year 1984 to train employees in automation techniques. Among the training accomplishments were:

* **On-site aptitude testing, evaluation of numerous ready-made training programs, development of a formal computer literacy training curriculum and training plan.**

* **Presentation of an on-site Introduction to Micro-computers training course for all supervisors and managers, evaluation and purchase of computer-based instruction, and hands-on training and coaching of headquarters employees in micro-computer operations.**

In all, approximately 75% of the Commission's workforce received formal training during Fiscal Year 1985.

7. Position Classification

During fiscal year 1985, the Office participated in efforts to describe newly-created positions and organization work in realigned organizations. The Commission continued its analysis of positions in connection with recommendations for employee promotions. For all positions reviewed, evaluation statements were prepared, and Office staff met with supervisors to discuss alternative job restructuring approaches to enhance certain positions.

B. Office of Budget and Financial Management

1. General

The Office of Budget and Financial Management administers the Commission's financial management program and is responsible for optimal utilization of the Commission's physical, fiscal, and staffing resources. The Office is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the Congress and the

Office of Management and Budget. The Office also administers internal control systems for agency funds, and travel and cash management programs.

2. Objectives

The objectives of this Office are to:

* **Submit annual budget justifications and estimates to OMB and the Congress;**
* **Execute the budget to ensure appropriated funds are properly expended;**
* **Prepare regular financial reports to aid management decisions;**
* **Administer the control system over workyears of employment;**
* **Collect all fees and forfeitures due the Commission;**
* **Process payments to vendors as efficiently and expeditiously as possible;**
* **Make certain resources are used properly to avoid fraud, waste, and error;**
* **Process travel orders and vouchers within established time limits; and**
* **Review internal controls and accounting procedures to ensure they conform to existing regulations and develop procedures to correct deficiencies.**

3. Achievements

During fiscal year 1985, the Office:

* Participated in a review of the Merit Pay system for the years 1982 through 1985 by correcting original calculations to correspond to new guidance issued by the Office of Personnel Management;
* Participated on the task force formed to review and evaluate the capabilities of other Federal agencies to provide personnel processing and accounting services;

* Drafted a revised Commission Order on official travel;

* Evaluated the costs of services and publications provided by the agency to determine new user fees accordingly;

* Fine-tuned the electronic transfer system used for fine and penalty payments in order to accelerate cash deposits to the U.S. Treasury and to reduce the paperwork burden;

* Improved processing of payment of bills to make optimum utilization of available prompt-payment discounts and to eliminate the backlog of prior year problem payments;

* Provided management with information and analysis of positions in grades GS/GM 11-15;

* Reviewed and commented on proposed agency PMRS guidelines;

* Participated in the tariff automation project;

* Monitored workyears, obligations and outlays to ensure conformity to amounts approved and appropriated;

* Collected and deposited receipts from user fees, fines, collections, freight forwarder licensing and vessel certification fees;

* Developed proposed procedures and responsibilities for collecting debts owed the United States by Commission employees; and

* Managed the Commission's travel program.

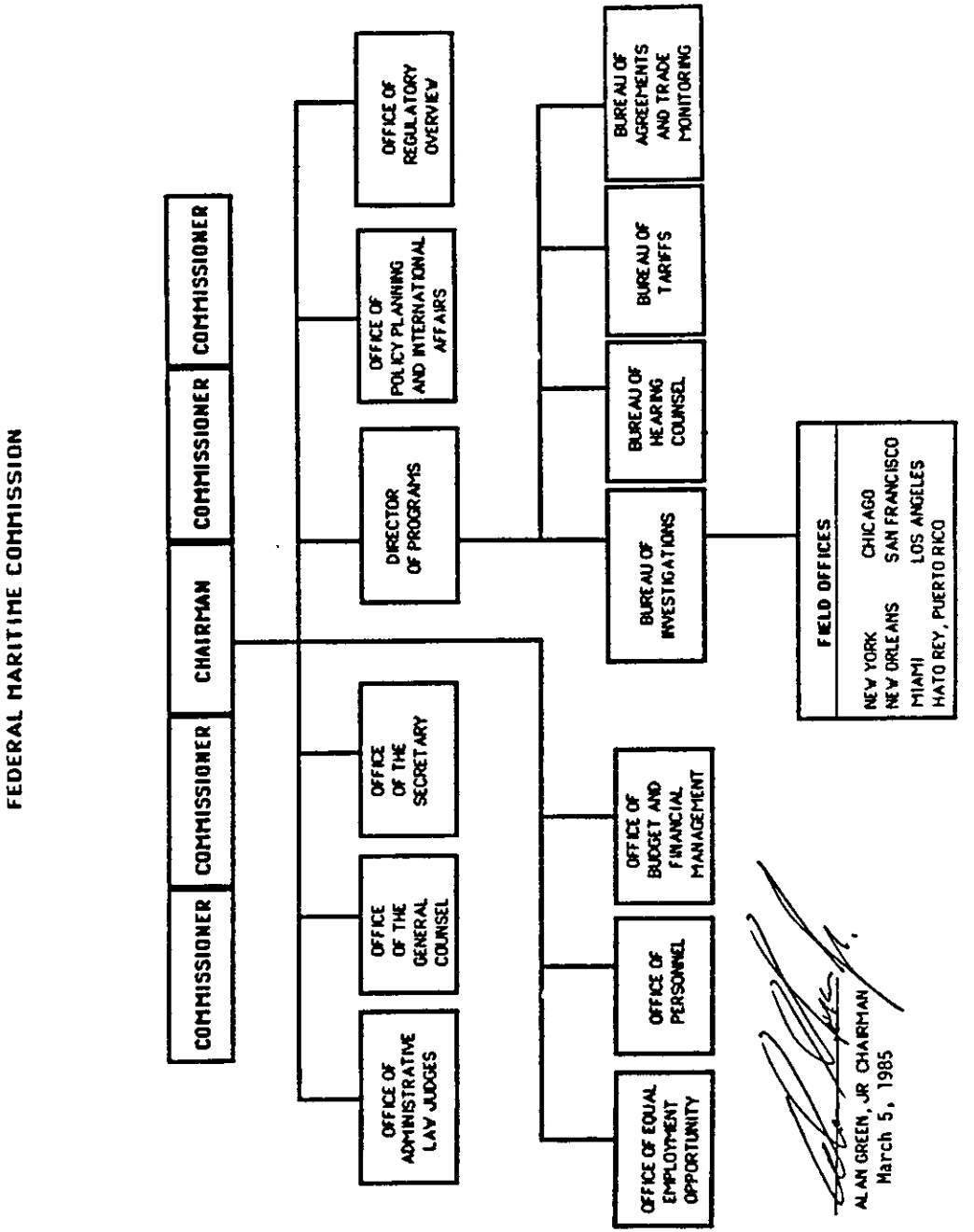
4. Prognosis

During fiscal years 1986 and 1987, this Office will continue to update financial control procedures, refine the financial management system, improve processing of payments, and pursue initiatives leading to economy and efficiency in budget and financial operations.

APPENDICES

APPENDIX A

ORGANIZATION CHART



APPENDIX B

COMMISSION PROCEEDINGS -- FISCAL YEAR 1985

Formal Proceedings

Decisions	9
Reconsiderations	0
Discontinuances & Dismissals	7
Not Reviewed	7
Remand	5
TOTAL	**28**

Special Dockets	**151**
Informal Dockets	**91**
Oral Arguments	**2**

Rulemakings

Final Rules Issued	16
Discontinued	2
TOTAL	**18**

APPENDIX C

AGREEMENT FILINGS AND STATUS
FISCAL YEAR 1985

Agreements Filed in FY 1985 (including modifications)

Foreign and Domestic Commerce	345
Terminals	177
Labor-Management	10
TOTAL	**532**

Agreements Processing Categories in FY 1985

Forty-Five Day Review	277
Shortened Review	120
Exempt-Effective Upon Filing	81
Determination of No Jurisdiction	10
Formal Extension of Review Period	6
TOTAL	**494**

Conference Reports Submitted for Commission Review

Shippers' Requests and Complaints	33
Minutes of Meetings	2030
Pooling Statements	20
Operating Reports	39
Index of Documents	153
Consultations	44
TOTAL	**2319**

Agreements on File as of September 30, 1985

Conference	63
Interconference	10
Pooling & Equal Access	13
Joint Service	22
Sailing	15
Transshipment	2
Cooperative Working, Charter, & Equipment Interchange	56
Terminal	750
Labor-Management Agreements	92
TOTAL	**1023**

APPENDIX D

TARIFF FILINGS AND STATUS -- FISCAL YEAR 1985

Tariff Filings (Pages)

Foreign Filings	601,418
Domestic Filings	11,842
Terminal Filings	7,117
TOTAL	**620,371**

Foreign Rejections	4,631
Domestic Rejections	544

Tariff Publications

Foreign:	On Hand 10/1/84	4,544
	On Hand 10/1/85	4,998
Domestic:	On Hand 10/1/84	229
	On Hand 10/1/85	275
Terminals:	On Hand 10/1/84	430
	On Hand 10/1/85	440

Special Permission Applications

Total Received - Foreign	223
Granted	193
Denied	18
Withdrawn	12
Total Received - Domestic	52
Granted	49
Denied	1
Withdrawn	2

Investigation and Suspension Memoranda

Domestic:

Completed	2
Pending	0

Service Contracts

Filed	2158

APPENDIX E

CIVIL PENALTIES ASSESSED OR SETTLED
FISCAL YEAR 1985

Agromar Lines.....$	2,500
Aloyd Forwarding, Inc.....	2,000
An Mar Project, Int'l.....	1,500
Arrowpac.....	5,000
Baltic Shipping Co.....	102,500
Barber West Africa Line.....	2,000
Central Shipping.....	5,000
Compagnie Maritime d'Affretement.....	3,500
Constellation Line.....	2,500
Dependable Hawaii Express.....	12,000
East Asiatic Company, Ltd.....	3,500
Franklin Export Trading.....	1,500
F.X. Coughlin Co.....	5,000
Harbour Link Int'l Inc.....	3,500
Hawaiian Marine Forwarding, Inc.....	6,000
Hoegh Line.....	3,500
Ivarans Line.....	7,500
James J. Boyle.....	8,000
Kam Container Line (U.S.A.), Inc.....	7,500
Korea Shipping Corp.....	95,000
L & I Shipping Services.....	2,500
Latinvan.....	5,000
Manufacturers Export Service.....	5,000
Med Express Lines.....	7,500
Miami Valley Transportation Co., Ltd..	5,000
Mitsubishi Warehouse & Transportation.	10,000
Ocean World Cruises.....	3,500
Randy Express, Inc.....	5,000
Schenkers Int'l Forwarders, Inc.....	10,000
Shipping Corp. of India.....	5,000
Target Shipping, Inc.....	2,500
Yang Ming Transport.....	45,000
TOTAL....$	**385,000**

APPENDIX F

FIELD INVESTIGATIONS -- FISCAL YEAR 1985

Investigations	**TOTAL**	Mal-practices	Tariff Violations	Forwarder and other Matters
Pending 10/1/84	**171**	74	38	59
Opened FY 1985	**299**	113	44	142
Closed FY 1985	**289**	91	59	139
Pending 9/30/85	**181**	96	23	62

APPENDIX G

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 1985

Appropriations:

Public Law 98-411, approved August 30, 1984: 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 therefore, 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.....**$12,292,000**

Obligations and Unobligated Balance

Net obligations for salaries and expenses for the fiscal year ended September 30, 1985....**$12,214,000**

Unobligated balance returned to Treasury.... **78,000**

Statement of Receipts: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 1985:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications.....$	**147,237**
Fines and penalties.....	**455,061**
Total general fund receipts.....$	**602,298**

EXHIBIT H - EXAMPLE OF MARKET-SHARE TABLE

U.S. PACIFIC COAST IMPORTS FROM JAPAN
TRANSPACIFIC FREIGHT CONFERENCE OF JAPAN/KOREA
January - December 1984

[by tonnage by conference/nonconference sort]

Conference Operator	Share (%)*
C1	10.47
C2	10.03
C3	10.01
C4	7.15
C5	6.41
C6	6.12
C7	4.98
C8	3.63
C9	3.43
C10	2.76
C11	2.06
C12	1.72
C13	1.65
C14	1.50
C15	1.07
(Conference greater than 1%)	**72.98%**
(Conference less than 1%)	**0.05%**
(Conference Subtotal)	**73.03%**

Nonconference Operator	
NC1	3.37%
NC2	3.29
NC3	3.08
NC4	2.75
NC5	2.63
NC6	2.61
NC7	2.00
NC8	1.55
NC9	1.27
NC10	1.07
(Nonconference greater than 1%)	**23.61%**
(Nonconference less than 1%)	**2.53%**
(Nonconference Subtotal)	**26.14%**

(Not Elsewhere Classified Subtotal) **0.84%**

* Percent calculations based on total tonnage in this subtrade.

APPENDIX I

PROCEDURES FOR COMPILING TARIFF RATES FOR SECTION 18 STUDY

Calculating the Tariff Rate Indexes

Tariff rates typically use different rate bases depending on the physical characteristics of the commodity or the "customs and practices" established between carriers and shippers. The major rate bases are:

* **FCL - $ per full container load.**
* **Weight - $ per pound or $ per kilogram.**
* **Measurement - $ per cubic meter or $ per cubic foot.**
* **Weight/measurement - base which yields the higher revenue.**

There are many possible variations within each of these rate bases. One rate may be quoted as $130.25 per 2,000 pounds, and for another weight-based rate the quotation may be $149.50 per 1,000 kilograms. Similarly, an FCL may be given either a lump sum or a set of weight-based rates such as $95.50 per 2,000 pounds for a minimum container weight of 30,000 pounds and $92.50 per 2,000 pounds, for a minimum container weight of 35,000 pounds. Another example of variations which may occur for weight-based rates is packages of a specific commodity which exceed 70 cubic feet in volume per long ton of weight being charged more per weight unit than packages which stow at less then 70 cubic feet per long ton.

In order to aggregate the various rates which are assessed on different bases into an index, it is necessary to convert them into a common unit. The unit chosen was dollars per container. The spreadsheet procedures were intended partly to accomplish the conversion and partly to calculate the index numbers which are subsequently graphed.

Choice of Several Rates in Tariffs

When lump sum rates were given, that rate was generally selected for calculating the index. Exceptions may occur in the unlikely event that the lump sum rate is higher than the lump sum equivalent of another tariff listing. If multiple rates were quoted with no lump sum included, several rates may have been used in the spreadsheet to determine if significant differences exist. Generally, the rate selected produced the smallest revenue per container since it was assumed that most cargo will move under the rate which represents the lowest cost to the shipper.

In some cases, the rate base changed during the study period. Indexes for the previous quarters will be left unchanged unless (a) the new base produces an obvious discontinuity or (b) the change in the rate base for the newer tariffs appears to be motivated by redundancy of the previously selected base over a reasonable period of time.

PROCEDURES FOR COMPILING TARIFF RATES FOR SECTION 18 STUDY

CONVERSION FACTORS

Weight-based rates:

1. The tariff is converted into dollars per long ton.

2. An average weight per container is obtained by:

   a. first confirming that the cargo is such that the deadweight constraint of the container is reached before the volume constraint by comparing the commodity's stowage factor to the maximum ratio of volume capacity to weight capacity of the container;

   b. searching the tariff for minimum weights or for other rules which determine the allowable weight per container; and

   c. using 85% of the maximum deadweight capacity of containers, if no other information was available.

3. Multiplication of the rate in $ per long ton by the long ton capacity produces a rate-per-container equivalent (referred to in the spreadsheet as revenue per container).

Measurement-based rates:

1. The tariff is converted into dollars per cubic foot.

2. An average volume per container is obtained by [whichever cubic capacity from (a) or (b) is greater is the one selected for the calculation]:

   a. dividing the average weight per container, which is usually obtained from the tariff, by 40 cubic feet per long ton, or

   b. using the minimum cubic capacity specified in the tariff.

3. Multiplication of the rate in $ per cubic foot by the cubic capacity of the container produces a rate-per-container equivalent (referred to in the spreadsheet as revenue per container).

Rates expressed in foreign currency:

1. If the tariffs are quoted in a unit of foreign currency, then the calculations are completed in that unit before being converted into U.S. dollars, using the official exchange rate for each quarter.

2. In some cases, the index and the graphs will be formed with both currencies.

PROCEDURES FOR COMPILING TARIFF RATES FOR SECTION 18 STUDY

Calculation of the Index

The tonnage of each commodity shipped in 1984 comprised the quantity weights for the price relatives in calculating the index for all quarters. The tonnage figures were converted into container equivalents and multiplied by the rate per container to produce a weighted revenue for each item. The ratio of each weighted revenue figure and the total weighted revenue was then used to calculate the respective components of the trade index. A separate index for each commodity was also calculated by dividing each quarterly value for the revenue per container by the value in the base year.

For the calculations, a mixture of 20 and 40 foot containers was used, with the choice based upon the information contained in the tariff. If rates were quoted for both types of containers, it was generally assumed that bulky cargo was shipped in the 40 foot units and that dense cargo was placed in the 20 foot units. The assumption can be justified on the basis of optimal utilization of the two type of containers. While the 40 foot unit contains at least twice as much cubic capacity as the 20 foot unit, the 40 foot unit will have, at most, 50% more weight capacity. It is understood that all 40 foot containers moving in one direction must eventually return, so that the optimal utilization is not likely to be realized in practice. It was nevertheless believed that the lower rate which is based on the optimum will continue to apply even if circumstances prevent the use of the correspondingly optimum container. The indexes were calculated from the mixture of units, with the index weights for each commodity based on the same mixture.

In order to compare the price of the all-water service for the individual commodities, the revenue-per-container figures, based upon a mixture of units, will be converted into more comparable units by doubling the revenue calculated for all 20 foot containers. The converted rates are not fully comparable since they represent a rate for a pair of 20 foot units for some commodities and a rate for a 40 foot unit for other commodities, but the difference is not expected to be great. The original revenue-per-container figures were also expressed in terms of a rate per unit of weight and rate per unit of volume. These converted rates are shown at the bottom of the spreadsheet.

PROCEDURES FOR COMPILING TARIFF RATES FOR SECTION 18 STUDY

Add-ons

Currency adjustment factors, bunker surcharges, and terminal charges were added to the revenue total, when appropriate, and any discounts included in the tariff were subtracted.

Separate indexes are available for:

(1) The basic rate without currency adjustment;

(2) The basic rate with currency adjustment; and

(3) The basic rate with all add-ons.

All three indexes will not necessarily appear in each spreadsheet.

The add-on procedures differ considerably among trades, due to variations in "custom and practice" from one conference to another. In fact, the lack of uniformity in tariff practices in general is noticeable, making it difficult to define a standard procedure for compiling tariff rates. It may be interesting to observe the final spreadsheets for the full period of study to determine whether those practices have become more uniform.

This report was prepared by the
Commission's Staff

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and Edited by
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