

# **FEDERAL MARITIME COMMISSION**

## **48th ANNUAL REPORT**

**for**

**Fiscal Year**

**2009**





**TABLE OF CONTENTS**

LETTER OF TRANSMITTAL..... i

**MEMBERS OF COMMISSION..... iii**

SENIOR COMMISSION OFFICIALS..... v

**VISION ..... vi**

FMC MISSION..... vi

**I. THE COMMISSION**

A. History ..... 1

**B. Functions ..... 1**

C. Organization ..... 5

**II. THE YEAR IN REVIEW ..... 7**

A Outreach ..... 9

**B. Trade Developments..... 11**

C. Restrictive Trade Practices ..... 14

**D. Trade Oversight..... 15**

E. Alternative Dispute Resolution..... 16

**F. Enforcement..... 18**

**III. DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES**

A. North Europe ..... 19

**B. Mediterranean ..... 21**

C. Indian Subcontinent and the Middle East ..... 22

**D. Australia and Oceania..... 24**

E. Central America and the Caribbean ..... 27

**F. Asia ..... 28**

G. South America ..... 30

**H. Africa ..... 32**

I. Worldwide ..... 33

**IV. THE FOREIGN SHIPPING PRACTICES ACT OF 1988**

A. In General ..... 37

**B. Top Twenty U.S. Liner Cargo  
Trading Partners ..... 38**

<b>V.</b>	<b>SIGNIFICANT ACTIVITIES BY ORGANIZATIONAL UNIT</b>	
A.	Office of the Secretary.....	43
<b>B.</b>	<b>Office of Administrative Law Judges.....</b>	<b>49</b>
C.	Office of the General Counsel .....	55
<b>D.</b>	<b>Office of Equal Employment Opportunity .....</b>	<b>69</b>
E.	Office of the Inspector General .....	73
<b>F.</b>	<b>Office of Administration .....</b>	<b>77</b>
G.	Office of Operations .....	89
<b>H.</b>	<b>Bureau of Certification and Licensing .....</b>	<b>93</b>
I.	Bureau of Enforcement.....	101
<b>J.</b>	<b>Bureau of Trade Analysis .....</b>	<b>105</b>

**APPENDICES**

A.	Organization Chart .....	125
<b>B.</b>	<b>Commission Proceedings .....</b>	<b>126</b>
C.	Agreement Filings and Status .....	127
<b>D.</b>	<b>Form FMC-1 Tariff Location Addresses - Electronic Service Contract Filings and Special Permission Applications .....</b>	<b>128</b>
E.	Civil Penalties Collected .....	129
<b>F.</b>	<b>Statement of Appropriations, Obligations and Receipts .....</b>	<b>130</b>



**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C. 20573-0001**

March 31, 2010

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, now codified, as amended, at 46 U.S.C. §306(a), I am pleased to submit the 48th Annual Report of the activities of the Federal Maritime Commission for fiscal year 2009.

Sincerely,

A handwritten signature in black ink that reads "Richard A. Lidinsky, Jr." with a stylized flourish at the end.

Richard A. Lidinsky, Jr.

Chairman



## MEMBERS OF THE COMMISSION



*Richard A. Lidinsky, Jr.  
Chairman  
Appointed 2009  
Term Expires 2012*



*Harold J. Creel, Jr.  
Commissioner  
Appointed 1994  
Term Expired 2009*



*Rebecca F. Dye  
Commissioner  
Appointed 2002  
Term Expires 2010*



*Joseph E. Brennan  
Commissioner/Acting Chairman  
June-Sept. 2009  
Appointed 1999  
Term Expired 2008*

*\*Vacant  
Commissioner*

*\*One vacancy as of December 1, 2006*





**SENIOR COMMISSION OFFICIALS**

- Counsel to Chairman Lidinsky.....*Mark Dowd*
- Counsel to Commissioner Brennan .....*Steven D. Najarian*
- Counsel to Commissioner Creel .....*David R. Miles*
- Counsel to Commissioner Dye .....*Edward L. Lee, Jr.*
- General Counsel .....*Peter J. King*
- Secretary.....*Karen V. Gregory*
- Administrative Law Judge.....*Clay Guthridge*
- Director, Office of  
Equal Employment Opportunity .....*Keith I. Gilmore*
- Inspector General .....*Adam Trzeciak*
- Director of Administration.....*Vacant*
- Director of Operations .....*Austin L. Schmitt*
- Director, Bureau of Certification  
and Licensing .....*Sandra L. Kusumoto*
- Director, Bureau of Enforcement .....*Vern W. Hill*
- Director, Bureau of  
Trade Analysis .....*Florence A. Carr*

*Vision*

*Fairness and Efficiency in U.S. Maritime Commerce*

*Mission*

*The FMC's Mission is to:*

- *Develop and administer policies and regulations that foster a fair, efficient and secure maritime transportation system;*
- *Protect U.S. maritime commerce from unfair foreign trade practices and market-distorting activities;*
- *Facilitate compliance with U.S. shipping statutes through outreach and oversight;*
- *Assist in resolving disputes*

## **Federal Maritime Commission**

**Fiscal Year 2009**

### **I**

## **THE COMMISSION**

### **A. HISTORY**

The Federal Maritime Commission (Commission or FMC) was established as an independent regulatory agency by Reorganization Plan No. 7, effective August 12, 1961. Prior to that time, the Federal Maritime Board was responsible for both the regulation of ocean commerce and the promotion of the United States Merchant Marine. Under the reorganization plan, the shipping laws of the U.S. were separated into two categories -- regulatory and promotional. The newly-created FMC was charged with the administration of the regulatory provisions of the shipping laws. The responsibilities associated with the promotion of an adequate and efficient U.S. Merchant Marine were assigned to the Maritime Administration, now located within the Department of Transportation.

The Commission is responsible for the regulation of oceanborne transportation in the foreign commerce of the U.S. The passage of the Shipping Act of 1984 (Shipping Act) brought about major change in the regulatory regime applicable to shipping companies operating in the U.S. foreign commerce. The subsequent passage of the Ocean Shipping Reform Act of 1998 (OSRA), with its deregulatory amendments and modifications to the Shipping Act, further signaled a significant shift in shipping regulation.

### **B. FUNCTIONS**

The principal statutes administered by the Commission are the Shipping Act, the Foreign Shipping Practices Act of 1988 (FSPA), section 19 of the Merchant Marine Act, 1920 (1920 Act), and Pub. L. No. 89-777. These statutes are now codified in Title 46 of the U.S. Code at sections 40101 through 44106.

**Federal Maritime Commission**

**Fiscal Year 2009**

The Commission's regulatory responsibilities include:

- **Reviewing agreements among ocean common carriers and marine terminal operators (MTOs) relating to service in the U.S. foreign oceanborne trades, to ensure that they do not cause substantial increases in transportation costs or decreases in transportation services.**
- **Reviewing service contracts between ocean common carriers and shippers to guard against detrimental effects to shipping in the U.S. foreign trades.**
- **Ensuring that common carriers' tariff rates and charges are accessible to the shipping public in private, electronically accessible systems.**
- **Regulating rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable.**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death, or to refund passenger fares for the nonperformance of a voyage or cruise.**
- **Licensing ocean transportation intermediaries (OTIs) in the U.S. to protect the public from unqualified, insolvent, or dishonest companies.**
- **Ensuring that OTIs maintain sufficient financial responsibility to protect the shipping public from financial loss.**

## Federal Maritime Commission

Fiscal Year 2009

- **Ensuring against harm to the shipping public by investigating rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S.**
- **Taking action to address unfavorable conditions arising out of foreign government or business practices in the U.S. foreign shipping trades.**

The Shipping Act is applicable to the operations of common carriers and other persons engaged in U.S. foreign commerce. It exempts agreements effective under the Shipping Act and the Commission's jurisdiction from the U.S. antitrust laws, as contained in the Sherman and Clayton Acts. The Commission reviews and evaluates agreements to ensure that they do not result in an unreasonable increase in transportation cost or unreasonable reduction in service or otherwise violate the Shipping Act.

In addition to evaluating and monitoring agreements among carriers and marine terminal operators, the Commission is also responsible for ensuring that individual carriers and marine terminal operators, as well as those permitted by agreement to act in concert, treat shippers and other members of the shipping public fairly by not engaging in prohibited acts set out in the Shipping Act. The Shipping Act also requires all common carriers to make their rates, charges and practices available in automated tariff systems that must be available electronically to the public. Ocean common carriers are permitted to enter into service contracts with their shipper customers. Such contracts are confidentially filed with the FMC in its internet-based system. The Commission has, by regulation, also allowed non-vessel-operating common carriers (NVOCC) to offer service to customers under the terms of confidentially-filed contracts called NVOCC Service Arrangements (NSAs). The Commission does not approve or disapprove

**Federal Maritime Commission**

**Fiscal Year 2009**

general rate increases (GRIs) or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned or -controlled carriers.

The Commission is authorized to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties. The Commission may address actions by carriers or foreign governments that either adversely affect shipping in the U.S. foreign oceanborne trades, including the intermodal operations of carriers or the operations of OTIs, or that impair access of U.S.-flag vessels to ocean trade between foreign ports.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths, embarking passengers at U.S. ports, to establish financial coverage to indemnify passengers in cases of death, injury, or nonperformance of transportation. The Commission certifies such operators upon the submission of satisfactory evidence of financial responsibility.

The Commission also ensures that all OTIs have established sufficient financial responsibility to protect shippers from financial loss. Additionally, the Commission licenses all U.S. OTIs.

The Commission carries out its regulatory responsibilities by conducting informal and formal investigations. It holds hearings, considers evidence, renders decisions, and issues appropriate orders and regulations. The Commission also adjudicates and mediates disputes involving the regulated community, the shipping public, and other affected individuals or interest groups.

**Federal Maritime Commission**

**Fiscal Year 2009**

**C. ORGANIZATION**

The Commission is composed of five commissioners appointed by the President with the advice and consent of the Senate. Commissioners serve five-year, staggered terms, and no 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.

The Commission's organizational units consist of: Office of the General Counsel; Office of the Secretary (including the Library and the Office of Consumer Affairs and Dispute Resolution Services); Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Inspector General; Office of Administration (including the Offices of Financial Management, Human Resources, Information Technology, and Management Services); and Office of Operations (including the Bureaus of Certification and Licensing, Enforcement, Trade Analysis and the Commission's Area Representatives).

In fiscal year 2009, the Commission had a total appropriation of \$22,800,000. That appropriation supported the actual employment of 120 full-time equivalent positions during the fiscal year. While the majority of its personnel are located in Washington, D.C., the Commission has Area Representatives in Houston, Los Angeles, New Orleans, New York, Seattle and South Florida.





**Federal Maritime Commission**

**Fiscal Year 2009**

**II**

**THE YEAR IN REVIEW**

In fiscal year 2009, the economic downturn delivered a sharp 14 percent decrease in the total volume of U.S. liner exports shipped worldwide. This was in stark contrast to the preceding fiscal year when exports grew by 16 percent. Liner imports to the U.S. also continued to weaken, declining by 16 percent over the fiscal year. While cargo volume decreased between the U.S. and Asia, China remained our leading trading partner in liner cargo. Consistent with the previous year's pace over half of all the U.S. liner cargo (imports and exports) was concentrated in trade with nations in northeast Asia. At the end of the fiscal year, over 500 containerships were idle; 10 percent of total fleet capacity in TEUs. However, worldwide containership capacity expanded by 10 percent by mid 2009, as new ships with substantial capacity remain on order. In the largest of the U.S. liner trades, the volume of U.S. export cargo to Asia declined by 12 percent in stark contrast to the growth rate of 18 percent in fiscal year 2008. The world's container trade contracted about 11 percent in fiscal year 2009, compared to a growth of 8 percent in 2008. The U.S. share of the world's container trades declined again this year to about 19 percent, compared to 20.5 percent in 2008 (and 21 percent in 2007).

The Commission continued to monitor the international liner trade, focusing in large part on competitive concerns reflected in ocean common carrier and marine terminal operator filed agreements. After review and careful consideration of the changed circumstances, the Commission dismissed FMC Docket No. 08-05, *City of LA, CA, Harbor Department of the City of LA, Board of Harbor Commissioners of the City of Los Angeles, City of Long Beach, and the Board of Harbor Commissioner of the City of Long Beach*. This concluded the Commission's review of the Clean Truck Program (CTP) that was devised as part of the Clean Air Action Plan under the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement* and the *Los Angeles/Long Beach Port/Terminal Operator Administration and*

## Federal Maritime Commission

### Fiscal Year 2009

*Implementation Agreement.* On August 21, 2009, the Commission voted to terminate proceedings regarding certain practices of the Ports of Los Angeles and Long Beach (Ports) and possible violations of the Shipping Act of 1984 citing changes in circumstances concerning the initiative of the Ports.

In 2009, the Commission monitored agreements that had potential for the greatest competitive impacts due to the parties' ratemaking authority or high market share. In September of 2009, the Commission issued a Request for Additional Information (RAI) regarding concerns over the competitive impact of an amendment to add CMA CGM to the Australia and New Zealand-United States Discussion Agreement (ANZUSDA). In addition, the Commission closely examined competitive conditions in the trade from information obtained from its previously-issued section 15 order which required specific pricing and operational data from carriers serving the trade. It was reported that rates declined significantly during the fiscal year. Over the fiscal year, coordinated service changes implemented by carriers through their vessel sharing agreements resulted in capacity reductions in both trade directions. By the end of the fiscal year, the reductions in vessel capacity were estimated at 12 percent in the outbound trade and 17 percent in the inbound trade.

In the inbound trade, the combined market share of the rate discussion members of the *Transpacific Stabilization Agreement* (TSA) dropped from 86 percent to 83 percent due to the membership withdrawal of Mitsui O.S.K. Lines. In the outbound trade direction, members of the rate discussion agreement, the *Westbound Transpacific Stabilization Agreement* (WTSA), had a combined market share of 63 percent. Attempts by WTSA and TSA carriers to implement rate increases in the trade were largely unsuccessful due to the declines in cargo volume and the weak economy. Transpacific carriers cut rates in an attempt to protect or gain market share. With reduced container volumes and unit revenues, most transpacific carriers reported significant financial losses for the first half of calendar year 2009.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

Commission staff also closely monitored the market changes in the liner trade between the U.S. and North Europe following the October 2008 expiration of antitrust immunity in the European Union and the formation of the Container Trade Statistics Agreement. The latter established a system of exchange information between its members.

This Report highlights areas of particular interest and provides an office-by-office synopsis of activities and accomplishments during the past fiscal year.

#### **A. OUTREACH**

During fiscal year 2009, the Commission continued its ongoing effort to enhance public awareness of agency resources, remedies and regulatory requirements through education and outreach. Several initiatives were undertaken to expand contact with all segments of the maritime community and public, including participating on industry discussion panels, coordinating and hosting industry briefings, and updating informational material. The Commission maintained its regular meeting schedule during fiscal year 2009 as well, thus providing a public forum for Commission discussion and action on industry and administrative matters before the Commission.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

The Commission also promoted agency transparency and accountability by evaluating, developing and implementing improvements to the Commission's website. During the fiscal year, the Office of the Secretary made adjustments to how information is presented, increased the amount of information available, and added functionality to the Commission's website. For example, in May 2009, the Commission introduced a publicly accessible, data-sharing tool for carrier service contract statistics through the Commission's website. This enhancement provides greater public awareness and real-time access to the number and type of filings in the Commission's confidential service contract database. Providing access to this information illustrates the Commission's efforts to continually evaluate areas where it can balance security and legal requirements with the mandate for open government on its website.

The Commission continued to expand information and filed documents available electronically to the public and improve responsiveness to requests for public information. Through its Document Management Program, the Commission makes key documents filed in formal proceedings available on its website. The availability of these documents to the public in electronic form on the internet has proven to be a useful and cost effective resource, especially for attorneys practicing before the Commission. The Document Management Program encompasses an array of electronic Commission documents thus enabling agency staff to conduct more efficient research and improve response time to public inquiries as well.

**Federal Maritime Commission**

**Fiscal Year 2009**

**B. TRADE DEVELOPMENTS <sup>1</sup>**

In fiscal year 2009, the total volume of U.S. liner exports shipped worldwide fell sharply by 14 percent in contrast to the preceding fiscal year when exports grew by 16 percent. Similarly, the total volume of liner imports to the U.S. declined by 16 percent compared to a decline of 6 percent in fiscal year 2008. For every loaded twenty-foot equivalent unit (TEU) container exported out of the U.S., 1.5 TEUs were imported. On a global scale, the container trade contracted by 11 percent due to the weak economy, which also negatively affected the demand for containerships. By fiscal year end, over 500 containerships were idle, or 10 percent of the total fleet capacity in TEUs, as compared to 2 percent in fiscal year 2008. Nevertheless, worldwide containership capacity had expanded by 10 percent as of July 2009, as new ships continued to be delivered and a substantial amount of capacity remains on order. While cargo volume was down between the U.S. and Asia, China remained the leading trading partner in liner cargo with the U.S., and trade with nations in northeast Asia continued to account for over half of the total cargo volume of the U.S., in imports and exports combined. Concentration among carriers remained relatively unchanged from the preceding fiscal year, with the top 10 carriers controlling about 60 percent of the containership capacity worldwide.

In the largest of the U.S. liner trades, the volume of U.S. export cargo to Asia declined by 12 percent in stark contrast to the growth rate of 18 percent in fiscal year 2008. Import cargo from Asia to the U.S. also declined. Compared to the preceding fiscal year, Asian imports fell sharply by 16 percent. Nonetheless, Asian import cargo continued to dominate the trade. For every TEU of U.S. exports moved outbound, 2.2 TEUs of imports from Asia were shipped

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<sup>1</sup>As to developments in particular trade lanes, please see section III, “Developments in Major U.S. Foreign Trades.”

## Federal Maritime Commission

### Fiscal Year 2009

inbound. In the outbound trade direction, members of the rate discussion agreement, the *Westbound Transpacific Stabilization Agreement* (WTSA), had a combined market share of 63 percent. In the inbound trade direction, the combined market share of the rate discussion members of the *Transpacific Stabilization Agreement* (TSA) dropped from 86 percent to 83 percent due to the membership withdrawal of Mitsui O.S.K. Lines. Attempts by WTSA and TSA carriers to implement rate increases in the trade were largely unsuccessful due to the declines in cargo volume and the weak economy.

In the liner trade between the U.S. and North Europe, cargo volume dropped significantly in both trade directions. U.S. exports fell by 28 percent compared to the preceding fiscal year. Shipments of containerized automobiles, the top export commodity to North Europe, sharply declined by 60 percent. Import cargo from North Europe decreased by 18 percent. To cope with the declines in cargo volume, major carriers in the trade cut back their services to remove excess vessel capacity and coordinated their operations through agreements with one another. By the end of the fiscal year, it was reported that annualized vessel capacity in the trade was reduced by 18 percent in the outbound direction and 11 percent in the inbound direction, but, on average, utilization was low at 68 percent in both directions. In October 2008, the European Union (EU) repealed its block exemption for liner shipping conferences. In place of a conference agreement, carriers in the U.S.-EU trades formed the *Container Trade Statistics Agreement* (CTSA), which established a system of information exchange between its members along with the formation of the *European Liner Affairs Association*, a trade association of CTSA members. In addition, the European Commission renewed a revised version of its block exemption regulations for consortia agreements between ocean carriers effective for the period from April 2010 through April 2015.

## Federal Maritime Commission

### Fiscal Year 2009

Between the U.S. and the region of Australia, New Zealand, and the Pacific Islands, the volume of liner cargo fell by about 10 percent in both trade directions, and remained substantially imbalanced. U.S. export cargo exceeded import cargo by 70,000 TEUs, or about 40 percent. Over the fiscal year, coordinated service changes implemented by carriers through their vessel sharing agreements resulted in capacity reductions in both trade directions. By the end of the fiscal year, the reductions in vessel capacity were estimated at 12 percent in the outbound trade direction and 17 percent in the inbound trade direction. In addition, a series of membership changes occurred in the rate discussion agreements among carriers in both trade directions. In the outbound direction, Wallenius Wilhelmsen Logistics, S.A. (WWL) withdrew from the *United States/Australasia Discussion Agreement* (USADA). However, WWL's withdrawal had no real impact on the market share of the USADA, which remained high, at approximately 85 percent. In the inbound direction, Maersk Line withdrew from, and then later rejoined, the *Australia and New Zealand-United States Discussion Agreement* (ANZUSDA). In July 2009, an amendment was filed to add CMA CGM to the ANZUSDA, which would have increased the market share of the agreement to upwards of 90 percent. Concerns over the competitive impact of the amendment led the Commission to issue a Request for Additional Information in September 2009. In addition, the Commission closely examined competitive conditions in the trade from information obtained from its previously-issued section 15 order.

Between the U.S. and South America, as a whole, liner exports in the outbound trade direction declined by 18 percent, and liner imports moving inbound decreased by 14 percent, in comparison to the preceding fiscal year. The volume of cargo shipped inbound and outbound was closely balanced. The region is generally divided into two liner trade sectors: the west coast of South America and the east coast of South America. In the western sector, most of the major carriers that provide direct service are members of the *West Coast of South*

## **Federal Maritime Commission**

**Fiscal Year 2009**

*America Discussion Agreement* (WCSADA), a discussion agreement with voluntary rate authority between the U.S. and nations along the west coast of South America. During the fiscal year, a number of membership changes occurred in WCSADA. Mediterranean Shipping Company (MSC) withdrew from and later rejoined the agreement, and Maersk Line also joined WCSADA. With these additional members, the market share of WCSADA increased to 85 percent in the outbound direction and 63 percent in the inbound direction. Carriers operating between the U.S. and east coast of South America do not participate in a broad-based discussion agreement.

### **C. RESTRICTIVE TRADE PRACTICES**

The Commission is responsible for identifying and addressing protectionist practices of other countries that unreasonably favor their domestic companies or discriminate against U.S. trade interests in ocean shipping. In this regard, the Commission may issue rules in response to foreign practices that create conditions unfavorable to U.S. shipping in general. It also may institute countermeasures in response to foreign laws or policies that adversely affect U.S. carriers. It also can initiate appropriate action in instances where a U.S.-flag vessel faces unfair barriers in entering a foreign-to-foreign trade.

The Commission continued to monitor regulations and port practices of the Government of Japan. In fiscal year 2001, the Commission imposed its semiannual reporting requirement for U.S. and Japanese carriers. The Commission continued to require semiannual reports and to review them for any developments in Japanese practices.

The Commission's Permanent Task Force on International Affairs, established in 2000, is chaired by an attorney in the Office of General Counsel and made up of personnel from that office and the Bureaus of Enforcement, Trade Analysis, and Certification and Licensing. The Task Force is responsible for identifying and evaluating foreign practices which might have adverse impacts on U.S. shipping interests.



## Federal Maritime Commission

Fiscal Year 2009

### D. TRADE OVERSIGHT

As part of its statutory responsibilities, the Commission maintains systematic oversight of the commercial activities of ocean liner carriers and other regulated entities in the U.S. oceanborne trades. On a regular basis, the Commission also monitors relevant economic and trade conditions that affect the ocean shipping industry. The Commission's oversight helps to ensure regulatory compliance by uncovering unreasonable or unfair industry behavior. These efforts also help identify potentially unfavorable trade practices that could affect U.S. oceanborne commerce.

During the fiscal year, the Commission took action to address a number of competitive concerns relating to the activities of ocean common carriers and marine terminal operators (MTOs) in agreements on file at the FMC. In particular, the Commission reviewed and acted on an amendment to the *Los Angeles and Long Beach Infrastructure and Environmental Programs Cooperative Working Agreement*. The amendment, filed in August 2008, sought to expand the authority of the Ports of Los Angeles/Long Beach to discuss and agree on provisions of their Clean Truck Program (CTP). Upon review, the Commission determined that the amended agreement would likely violate the Shipping Act by unreasonably reducing competition. Consequently, in October and November 2008, the Commission filed a complaint and a motion against the parties to the amended agreement under sections 6(h) and (g) of the Shipping Act, 46 U.S.C. 41307(b), before the U.S. District Court for the District of Columbia to enjoin those authorities that it found to be most commercially harmful and unnecessary to the CTP. In June 2009, the Commission withdrew its complaint in the ATA case. Through its reporting requirements, the Commission monitors the impact of the agreement and other related agreements on file at the FMC.

## Federal Maritime Commission

### Fiscal Year 2009

On other agreement matters, in January 2009, the Commission issued a formal Request for Additional Information (RFAI), pursuant to section 6(d) of the Shipping Act, 46 U.S.C. 40304(d), to conduct a competitive impact assessment of an amendment to the *Transpacific Stabilization Agreement* (TSA). The amendment, filed in December 2008, proposed to allow TSA parties to discuss and agree on a program to coordinate and rationalize their supply of vessel capacity deployed in the inbound trade direction from Asia to the United States. The TSA parties withdrew their amendment in February 2009.

In September 2009, the Commission issued a RFAI for information to assess an amendment to the *Australia and New Zealand-United States Discussion Agreement*. The amendment, filed in July 2009, proposed to add CMA CGM S.A. as a member to the agreement. At fiscal year end, a response from the parties to the RFAI remained pending. The Commission also conducted an extensive economic analysis of the state of competition in the trade between the U.S. and Australia/New Zealand from the specific pricing and operational data that was obtained under section 15 of the Shipping Act, 40 U.S.C. 40104(a).

### E. ALTERNATIVE DISPUTE RESOLUTION

During fiscal year 2009, the Commission continued to emphasize the role of alternative dispute resolution (ADR) in resolving shipping industry disputes, and encouraged parties to disputes to utilize the program in lieu of litigation. Through the Office of Consumer Affairs and Dispute Resolution Services (CADRS), the Commission provides services to assist parties in resolving disputes and problems in the U.S. maritime industry that affect international ocean shipping. These include a broad range of services designed to avoid the expense and delays inherent in litigation, and to facilitate the flow of U.S. ocean commerce.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

Another function of CADRS includes the adjudication of small claims through informal proceedings under 46 CFR Part 502, Subpart S. Office personnel serve as settlement officers in such cases, which involve complaints seeking reparations up to \$50,000 for violations of the shipping statutes. Those claims generally involve alleged prohibited acts in connection with the international transportation of goods, or the failure to establish, observe, and enforce just and reasonable regulations and practices. Fourteen of these complaints were filed in fiscal year 2009. CADRS staff also evaluates and adjudicates applications for permission to apply non-tariff rates, and to waive or refund freight charges arising from various errors in tariff publications, an inadvertent failure to publish an intended rate, or a misquotation of a rate.

During fiscal year 2009, the Commission also utilized its ADR program to assist ocean transportation intermediaries and shippers that were experiencing financial difficulties due to the economic downturn. Many carriers depend on lines of credit for operating capital and the sudden tightening of credit caused delays in the release of cargo, often resulting in unanticipated charges for storage, demurrage and detention. Some carriers experiencing difficulties are new companies which are undercapitalized, and their underestimation of potential liabilities along with the scarcity of credit and small profit margins rendered them unable to meet their financial obligations. In addition, the increased use of internet marketing enabled other carriers to expand their operations nationwide thereby broadening their customer base. Unfortunately, in some cases such expansion led to growth in liabilities that many were unable to meet. CADRS staff facilitated communication among numerous parties during the economic downturn to ease tensions and mitigate damages. The Commission, through its ADR program, continues to promote discussions between and among carriers and shippers to address carrier and shipper concerns.

**Federal Maritime Commission**

**Fiscal Year 2009**

**F. ENFORCEMENT**

The Commission maintains a presence in Houston, Los Angeles, South Florida, New Orleans, New York and Seattle through Area Representatives. These representatives serve as liaisons between the Commission and various maritime interests in their respective areas and investigate activity that may violate the Shipping Act.

During fiscal year 2009, the Office of Operations, through the Area Representatives and the Bureau of Enforcement, investigated and prosecuted illegal practices in many trade lanes, including the Transpacific, North Atlantic, Central and South American, Mediterranean, West Africa, Oceania, and Caribbean trades. These included market-distorting activities such as various forms of rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these investigations were resolved informally, some with compromise settlements of civil penalties.

Several matters also arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers and marine terminal operators. A major investigative effort completed in fiscal year 2009, into the respective Clean Truck Programs of Los Angeles and Long Beach, CA, concerned the impact on the Ports' users and the compatibility of the respective programs with the Ports' responsibilities under the 1984 Act. Enforcement efforts also continued with respect to a number of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, including the VOCCs and licensed NVOCCs providing service to such unlicensed and unbonded operators.

The Commission collected \$843,000.00 in civil penalties this past fiscal year (*see* Appendix E). These collections represent a wide range of violations in our major trade lanes.

**Federal Maritime Commission**

**Fiscal Year 2009**

**III**

**DEVELOPMENTS IN MAJOR  
U.S. FOREIGN TRADES**

**A. NORTH EUROPE**

In fiscal year 2009, the weakness of the global economy adversely affected the volume of container cargo shipped in both directions of the liner trade between the U.S. and North Europe. In the outbound trade direction, the decline in cargo volume was particularly severe. Compared to fiscal year 2008, U.S. liner exports fell by 28 percent. Notably, containerized automobiles remained the top U.S. liner export in the trade, accounting for 7 percent of the total export cargo volume in TEUs (twenty-foot equivalent units). Compared to fiscal year 2008, however, U.S. exports of containerized automobiles to North Europe dropped substantially by 60 percent. In the inbound trade direction, the volume of liner imports from North Europe decreased by 18 percent. Among the top imported commodities, declines in the shipments of beer/ale, auto parts, and furniture ranged from 10 to 30 percent. Together, these top commodities accounted for 20 percent of the total import cargo volume in TEUs.

With the sharp drop in demand, carriers serving the trade coordinated their operations through agreements to remove excess vessel capacity. Notably, Hamburg Süd discontinued its direct service and instead chartered space from members of the Grand Alliance and Zim Integrated Shipping Services, Ltd. (Zim) under the *Grand Alliance/Zim/HSDG Atlantic Space Charter Agreement*. CMA CGM S.A. opted to share vessel space with the Mediterranean Shipping Company (MSC) under the *MSC/CMA CGM North Europe-U.S. Atlantic and Gulf Vessel Sharing Agreement* and terminated its vessel sharing agreement with Evergreen Line (Evergreen) and China Shipping Container Lines Co., Ltd. (China Shipping). In turn, China Shipping removed its vessels and no longer

## Federal Maritime Commission

### Fiscal Year 2009

serves the trade directly. Evergreen discontinued its independent pendulum service in favor of sharing vessel space with members of the CKYH group (i.e., *The Cosco/KL/YMUK/Hanjin Worldwide Slot Allocation and Sailing Agreement*) under the *ELJSA/CKYH Vessel Sharing Agreement*. Further, Maersk Line announced plans to reduce capacity by terminating one of its service strings of vessels and reconfiguring its slot allocation with members of the New World Alliance under the *New World Alliance/Maersk Line Slot Exchange Agreement*. By the end of the fiscal year, it was reported that annualized vessel capacity in the trade was reduced by 18 percent in the outbound direction and 11 percent in the inbound direction. Nonetheless, over the course of the fiscal year, the average utilization of vessel capacity remained weak at around 68 percent in both trade directions.

In October 2008, the European Union (EU) repealed its block exemption regulations for liner shipping conferences (Council Regulation 4056/86). In place of a conference agreement, and in accordance with the guidelines for maritime transport services issued by the European Commission (EC), 20 carriers operating in the U.S./EU trades, around 90 percent in terms of market share, formed the *Container Trade Statistics Agreement* (CTSA), which became effective under the Shipping Act in October 2008. CTSA provides for a system of information exchange between its members and the formation of the *European Liner Affairs Association* (ELAA) as a trade association under which the members may conduct meetings. In addition, in September 2009, the EC renewed a revised version of its block exemption regulations for consortia agreements between ocean carriers (EC Regulation 906/2009). The regulations legally exempt types of cooperative operational agreements between carriers that, *inter alia*, do not involve price fixing or exceed a combined market share threshold of 30 percent. The new consortia regulations will be in effect for the period from April 2010 through April 2015.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

Major carriers serving the trade, including Maersk Line, Hapag-Lloyd AG, CMA CGM, and Evergreen, independently implemented sizable general increases in their tariff rates on September 1, 2009, prior to the start of their service contract negotiations. Given the poor market conditions, however, it is doubtful that rate increases of any magnitude in the trade were achieved. According to the latest price index data published by ELAA, the monthly average revenue earned by CTSA carriers, as a whole, operating between Europe and North America in August 2009, compared to the base period in 2008 declined by 20 percentage points in the outbound trade direction and 34 percentage points in the inbound trade direction, *i.e.*, from 100 in 2008, the price index was at 80 outbound and 66 inbound as of August 2009.

### **B. MEDITERRANEAN**

Liner trade between the U.S. and the Mediterranean region contracted due largely to declines in consumer spending. For fiscal year 2009, compared to the preceding fiscal year, U.S. exports to the Mediterranean decreased by 18 percent. Paper products, which remained the top U.S. export to the region accounting for 15 percent of the total export cargo volume in TEUs, were down by 14 percent. Exports of containerized automobiles fell by 23 percent. Of note, however, U.S. exports of edible nuts rose by 37 percent. In the inbound trade direction, liner imports from the Mediterranean fell sharply by 20 percent in comparison to the preceding fiscal year. Among the top imports, the U.S. demand for wine and olive oil, which together accounted for 16 percent of the total import cargo volume in TEUs, remained relatively strong. However, imports of household furnishings from the region, including ceramic tiles and marble, were down by about 40 percent. Even with the slump in demand, the imbalance in cargo volume continued to favor imports. For every TEU moved outbound from the U.S., 1.3 TEUs of cargo moved inbound.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

With a significant amount of excess capacity in the trade, carriers acted collectively to rationalize their services and remove vessel space from the market. Most notably, in March 2009 CMA CGM and Maersk Line removed vessels from the trade by terminating their two separate services and jointly initiating one new weekly loop service under the *CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Agreement*. The new service replaced Maersk Line's WestMed loop service, and CMA CGM's Amerigo Express/MUS loop service that it operated through a vessel sharing agreement with Evergreen. In turn, Evergreen removed its vessels from the trade. By the end of the fiscal year, it was reported that annual vessel capacity was reduced by about 10 percent in both trade directions. On average, the utilization of vessel space remained low at 45 percent outbound and 60 percent inbound, which suppressed any rate restoration initiatives. Carriers serving EU member states in the South Europe region of the Mediterranean must also comply with the EU's prohibition of conference and pricing agreements as well as the revised consortia regulations that become effective in April 2010.

### **C. INDIAN SUBCONTINENT AND THE MIDDLE EAST**

Despite the downturn in the global economy, U.S. container exports in fiscal year 2009 grew by 18 percent to the Indian Subcontinent, and by less than 1 percent to the Middle East. The U.S. exported approximately 372,000 TEUs to the Indian Subcontinent and 475,000 TEUs to the Middle East. The *Westbound Transpacific Stabilization Agreement* (WTSA) is the only major rate agreement covering part of the U.S. outbound container trade. These were the only trade areas to achieve an increase in U.S. export container volumes for the fiscal year.



**Federal Maritime Commission**

**Fiscal Year 2009**

WTSA's geographic scope covers U.S. exports to the Indian Subcontinent countries of Bangladesh, Pakistan, and Sri Lanka (but not India or the Middle East).<sup>2</sup> Throughout most of the fiscal year, the WTSA's geographic scope also included India, the U.S.'s largest trading partner in the Indian Subcontinent. However, as the result of India implementing competition laws that do not exempt ocean liner agreements, WTSA informed Commission Bureau staff that it had suspended discussions regarding India. For the fiscal year, WTSA's market share for U.S. exports to Bangladesh, Pakistan, and Sri Lanka was 42 percent.

Until June, the *Middle East Indian Subcontinent Discussion Agreement* (MIDA) covered U.S. exports to the Indian Subcontinent and Middle East. Shortly after India's competition laws became effective, however, MIDA suspended operations altogether. Because of that decision, no major rate discussion agreements now cover U.S. exports to the Middle East.

In fiscal year 2009, U.S. container imports from the Indian Subcontinent declined by 10 percent and by 4 percent from the Middle East. The U.S. imported approximately 563,000 TEUs from the Indian Subcontinent and 129,000 TEUs from the Middle East.

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<sup>2</sup> WTSA's geographic scope also includes northeast and southeast Asia.

**Federal Maritime Commission**

**Fiscal Year 2009**

The *Transpacific Stabilization Agreement* (TSA) is the only major rate discussion agreement covering U.S. inbound container movements from the Indian Subcontinent countries of Bangladesh, Pakistan and Sri Lanka.<sup>3</sup> Similar to WTSA, TSA reported to the FMC it had suspended India from its geographic scope in May 2009 in response to India implementing its competition laws. For the fiscal year, TSA had a 58 percent market share for U.S. imports from the countries of Bangladesh, Pakistan and Sri Lanka. There were no major rate agreements covering Middle East imports to the U.S.

**D. AUSTRALIA AND OCEANIA**

The Oceania region includes Australia, New Zealand, Papua New Guinea, Western Samoa, and other South Pacific Islands. Total trade in this region shrank to about 409,000 TEUs in fiscal year 2009, which is a decrease of 11 percent from fiscal year 2008. The trade is imbalanced, with almost 240,000 TEUs of exports from the U.S. to Oceania and over 170,000 TEUs of imports. Exports from the U.S. to Oceania were reduced over 11 percent in fiscal year 2009, following over 17 percent growth in fiscal year 2008. The reduction in U.S. exports to the region was caused by the worldwide economic downturn;

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<sup>3</sup> Like WTSA, the TSA's geographic scope also includes southeast Asia and northeast Asia.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

however, due to the strength of the Australian economy and the weakness of the U.S. dollar, the drop in U.S. exports to this market was smaller than the drop in other developed markets (such as between the U.S. and Europe). Imports from Oceania fell about 10 percent in fiscal year 2009, following a 1 percent reduction in fiscal year 2008.

There were many notable agreement changes in the Oceania region in fiscal year 2009. Of particular interest are the Australia and New Zealand-United States Discussion Agreement (ANZUSDA), the U.S./Australasia Discussion Agreement (USADA), the CMA CGM/Marfret Vessel Sharing Agreement, the Hamburg Sud/Maersk Line Vessel Sharing Agreement, and the U.S. Pacific Coast-Oceania Agreement (OVSA). Changes to the vessel sharing agreements, particularly the removal of one service string by the OVSA, resulted in capacity reductions estimated at 12 percent of southbound capacity and 17 percent of northbound capacity by the end of the fiscal year.

ANZUSDA, the rate discussion agreement covering cargo moving northbound from Australasia to the United States, was amended four times in FY 2009. In April 2009, the first amendment (amendment 26) reflected that Maersk Line was leaving the agreement; two months later, ANZUSDA was amended again (amendment 27) as Maersk Line was rejoining the agreement. In that same month, the Agreement was amended in order to reduce its guaranteed minimum service levels. The final amendment to ANZUSDA in FY 2009 was submitted in July 2009, and the purpose of that amendment was to add CMA CGM to the rate discussion agreement. In September 2009, the Commission responded to that amendment by issuing a formal Request for Additional Information in order to assess the impact of CMA CGM joining ANZUSDA.

USADA, the rate discussion agreement covering cargo moving southbound from the United States to Australasia, was amended twice in FY 2009. The first amendment, in November 2008, reflected Wallenius Wilhelmsen's departure from the agreement. In July 2009, USADA was amended to reflect a reduction in the Agreement members' guaranteed minimum service levels.

## Federal Maritime Commission

### Fiscal Year 2009

The U.S. Pacific Coast-Oceania Agreement is a space charter and sailing agreement between Maersk Line, Hamburg-Sud, Hapag-Lloyd, and ANL Singapore (wholly owned by CMA CGM) that operates between the U.S. West Coast and Australasia. Parties jointly deployed two services under this agreement; one fortnightly service to the Pacific Northwest and a weekly service to the Pacific Southwest. A third service, a fortnightly service called the Pacific Southwest 2 (PSW2), was deployed when ANL Singapore joined in June 2008, but the PSW2 sailings were suspended in December 2008. On June 4, 2009, the Agreement was amended to formalize the withdrawal of the PSW2 service.

There are two vessel sharing agreements that carry containerized cargo between the U.S. East Coast and Australasia. The first is a fortnightly pendulum service operated by CMA CGM and Marfret. The second vessel sharing agreement is the Hamburg Sud/Maersk Line Vessel Sharing Agreement. This agreement provides a weekly service on which Hapag Lloyd takes space. It was amended in April 2009, as the carriers changed the service loop from a pendulum service calling in Europe, the U.S. East Coast and Australasia to a direct end-to-end service that operates sailings between the U.S. East Coast and Australasia.

During FY 2009, Commission staff closely examined conditions in the U.S.-Australasia trade. On August 26, 2008, the FMC issued a *Section 15 Order on Competition, Rates and Service in the U.S.-Australia/New Zealand Northbound and Southbound Trade*. The Order cited the FMC's concern that the combined effect of activities of carriers acting under the two rate discussion agreements and the three vessel sharing agreements, highlighted above, may have the effect of reducing competition in a manner that may affect prices and service in the U.S.-Australia/New Zealand trade to an unreasonable extent, or may otherwise be violative of the Shipping Act. The Order required participants in the trade to furnish information and documents. Using those materials, staff prepared a report on the competitive conditions in that trade.

**Federal Maritime Commission**

**Fiscal Year 2009**

**E. CENTRAL AMERICA AND THE CARIBBEAN**

In fiscal year 2009, significant changes occurred in liner cargo volume between the U.S. and Central America. U.S. export cargo fell 10.3 percent to 487,070 TEUs and imports from Central America fell 6.5 percent to 609,727 TEUs. Waste paper accounted for the largest share of U.S. containerized exports at 12 percent. The second largest export commodity was fabrics, yarns, and raw cotton accounting for 11 percent, and the third was used automobiles accounting for almost 9 percent. Fruits accounted for nearly half of all imports from the region, three-quarters of which consisted of bananas. The second largest import was apparel with nearly 20 percent of the total.

Most of the largest carriers in the U.S./Central America trade participate in the *Central America Discussion Agreement* (CADA). The only change to CADA provisions or membership was the departure of Trinity Shipping at the beginning of the fiscal year. With this departure, the combined market share of CADA members for exports and imports dropped modestly from 68 percent and 76 percent in fiscal year 2008 to 65 percent and 72 percent in fiscal year 2009, respectively.

In the liner trade between the U.S. and the Caribbean, the volume of cargo decreased sharply in both trade directions compared to the preceding fiscal year. U.S. exports, mainly of food, consumer, and manufactured products, dropped by 16 percent to 497,472 TEUs, while imports to the U.S. dropped by 13 percent to 151,582 TEUs.

## Federal Maritime Commission

### Fiscal Year 2009

Carriers in the U.S./Caribbean trade participate in four rate discussion agreements covering discrete trades: (1) the *Hispaniola Discussion Agreement*, (2) the *Caribbean Shipowners Association*, (3) the *Florida-Bahamas Shipowners and Operators Association*, and (4) the *Aruba Bonaire and Curacao Discussion Agreement*. Tropical Shipping left the Hispaniola Discussion Agreement and the Florida-Bahamas Shipowners and Operators Association in August 2009. They also left the Caribbean Shipowners Association along with Sea Star Line in September 2009. There were no membership changes for the Aruba Bonaire and Curacao Discussion Agreement this fiscal year.

## F. ASIA

In terms of containerized cargo, Asia is by far our largest trading region. In fiscal year 2009, Asia accounted for 64 percent of all U.S. inbound and outbound containerized cargo. Seventy-one percent of all U.S. container imports originated from Asia, and the region took 52 percent of all U.S. container exports.

The major agreement in the transpacific trade, the *Transpacific Stabilization Agreement* (TSA), is a fourteen-member discussion and policy-setting agreement with voluntary pricing authority covering the inbound container trade from northeast and southeast Asia to all of the U.S.<sup>4</sup> During fiscal year 2009, TSA's market share of the U.S. inbound Asian trade was approximately 83 percent, compared to 86 percent the previous fiscal year. The decrease in market share was mainly due to the resignation of Mitsui O.S.K. Lines in November 2008.

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<sup>4</sup> TSA's geographic scope also includes parts of the Indian Subcontinent that is discussed under a separate heading.

**Federal Maritime Commission**

**Fiscal Year 2009**

During the fiscal year, Asian container imports decreased by 16 percent. Northeast Asia accounted for 87 percent of transpacific imports, with most originating in China. For the fiscal year, the U.S. imported 10.8 million TEUs of Asian goods compared to 12.9 million TEUs last year. The sharp decline in Asian imports was due to the severe global recession that was triggered by the financial crisis in September 2008.

For the annual service contract season that began on May 1, 2009, TSA tried to maintain rate levels but failed. It was reported that rates declined significantly during the fiscal year. Transpacific carriers cut rates in an attempt to protect or gain market share. With reduced container volumes and unit revenues, most transpacific carriers reported significant financial losses for the first half of calendar year 2009.

The major agreement in the outbound transpacific trade is the *Westbound Transpacific Stabilization Agreement* (WTSA). Like TSA, the ten-member WTSA operates as a forum for the exchange of information between its members that enables them to discuss and agree upon rate levels for cargo exported from the U.S. to Asia. WTSA's geographic scope covers all U.S. outbound shipments to northeast and southeast Asia.<sup>5</sup>

U.S. exports to Asia declined by 12 percent. For the fiscal year, the U.S. exported 5.2 million TEUs of goods to the region. Eighty-four percent of all U.S. container exports to Asia are destined for northeast Asia, which includes China, Taiwan, South Korea and Japan.

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<sup>5</sup> Like TSA, WTSA's geographic scope also includes parts of the Indian Subcontinent that is discussed under a separate heading.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

WTSA does not have a distinct start to its annual service contract season like that of the TSA. Instead, WTSA members agree to voluntary service contract guidelines for different types or groups of commodities throughout the year. This practice is dictated by the seasonality of the major U.S. agricultural export commodities, which have different growing seasons and peak times when they are shipped. Like TSA, WTSA members experienced a significant drop in freight rates during the fiscal year.

### **G. SOUTH AMERICA**

Between the U.S. and South America, U.S. export cargo dropped 18.2 percent to 745,784 TEUs, eliminating all gains made in the previous fiscal year. Import cargo from South America to the U.S. fell by 14 percent to 769,371 TEUs.

The South America region is generally divided into two trade areas – one to the west coast and the other to its east coast. Just over 45 percent of the U.S./ South America cargo moved between the U.S. and the west coast of South America in fiscal year 2009, a two percent increase over the previous year. In fiscal year 2009, U.S. export cargo to the west coast of South America fell 11.9 percent to 333,548 TEUs and imports from the region fell 6.5 percent. Waste paper accounted for the largest share of U.S. containerized exports at 13.4 percent. The second and third largest export commodities were synthetic resins and used automobiles at 8.6 percent and 3.8 percent, respectively. Fruits accounted for 29.8 percent of imports from the west coast of South America. The second largest import commodity was logs and lumber at 5.7 percent. Still wines were the third largest commodity from the region at 5.2 percent of the total.

By the end of fiscal year 2009, annualized vessel capacity had increased 2.5 percent to 749,568 TEUs in the northbound trade, and remained virtually the same for the southbound trade at 784,567 TEUs.



## Federal Maritime Commission

### Fiscal Year 2009

Most of the carriers that provide direct service to the west coast of South America are also members of the *West Coast of South America Discussion Agreement* (WCSADA). There were two significant changes to membership during this fiscal year. Mediterranean Shipping Company (MSC) left the agreement at the beginning of the fiscal year but rejoined 10 months later in August of 2009, and Maersk Line joined the agreement in September 2009. During the second quarter of 2009, MSC had a 22.7 percent market share in the southbound trade and 15.5 percent in the northbound trade, while Maersk Line had market shares of 10 percent and 9.4 percent, respectively. Following these additions in membership, the WCSADA share of the trade increased to 85.4 percent for cargo moving southbound and 63.6 percent for cargo moving northbound.

Carriers also served the trade indirectly via trans-shipment services based at ports in Mexico, Panama, and the Caribbean. In fiscal year 2009, nearly 20 percent of all southbound cargo and 40 percent of all northbound cargo was transshipped to and from the west coast of South America through these ports.

Liner cargo in the trade between the U.S. and the east coast of South America accounted for almost 55 percent of the U.S./South America liner cargo. U.S. exports to the east coast of South America fell 22.8 percent to 412,236 TEUs during fiscal year 2009. Imports from the region fell 21.1 percent to 364,053 TEUs during the same period. The top export commodity was auto parts at 7.1 percent. Synthetic resins were the second top export commodity at 6.1 percent. Logs and lumber were the top import commodity at 6.3 percent. The second and third top commodities from the region were granite and coffee at 5.4 percent and 4.9 percent, respectively.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

By the end of fiscal year 2009, annualized vessel capacity in this trade had dropped 5 percent to 907,755 TEUs for the northbound trade, and by only 1 percent in the southbound trade. Unlike the west coast of South America trade, carriers serving the east coast of South America do not actively participate in a broad-based rate discussion agreement spanning the entire geographic scope of the trade.

#### **H. AFRICA**

Cargo volumes between the United States and the Africa trade region dropped by 10 percent in fiscal year 2009, following two years with growth of about 15 percent. The decrease in cargo volumes was generated by an 8 percent decrease in U.S. exports to Africa from the previous fiscal year to 230,000 TEUs. Imports from Africa shrank by 14 percent from the previous fiscal year to about 82,000 TEUs. The trade continues to be heavily imbalanced, with approximately 1 TEU inbound for every 2.7 TEUs that moved outbound. South Africa dominates the U.S. liner trade with Africa, accounting for about 27 percent of the overall container volume and 49 percent of the imported containers. Nigeria is the United States' second largest trading partner in the region, with 14 percent of container volumes, and Morocco and Ghana are the third and fourth largest partners with about 6 percent each.

There were no significant mergers, acquisitions, or changes in liner services during the fiscal year. Maersk Line, Safmarine (wholly owned by Maersk Line), and MSC continued to operate their joint weekly AMEX service under the authorities of the Southern Africa/Oceania Agreement. This service, which sails from the U.S. East Coast to Port Elizabeth, Durban and Cape Town, utilizes eight vessels of about 2,400 TEUs in size. Those three carriers are also the top carriers in the Africa trade, carrying approximately 70 percent of the containers traveling between the United States and Africa. These three carriers provide one of only two direct weekly container services between the U.S. and Africa.

**Federal Maritime Commission**

**Fiscal Year 2009**

The Southern Africa/Oceania Agreement is subject to special reporting requirements due to its unique features, including a revenue pool. The revenue pool, the distributions from which were capped in March 2005, is a rare method used by the three carriers to share the risks of operating this service. To ensure that the Agreement complies with the Shipping Act's section 6(g) and does not violate its other prohibitions, the member carriers provide revenue and capacity information to the FMC for each northbound and southbound sailing.

**I. WORLDWIDE**

The world's container trade contracted about 11 percent in fiscal year 2009, compared to a growth of 8 percent in 2008. As the fiscal year came to a close, 548 containerships lay idle, representing 11.6 percent of the total number of cellular ships or 10 percent of the total fleet capacity measured in TEUs. In contrast, only about 2 percent of the containership fleet capacity lay idle at the end of fiscal year 2008.

Container volumes in the U.S. liner trades in fiscal year 2009 contracted almost 15 percent to 25.1 million TEUs, compared to 29.6 million last year. The U.S. share of the world's container trades declined again this year to about 19 percent, compared to 20.5 percent in 2008 (and 21 percent in 2007). U.S. container imports declined for the second consecutive year, falling by 15.6 percent to 15.3 million TEUs, compared to 18.1 million in 2008. U.S. container exports also contracted. The latter fell by 13.9 percent to 9.9 million TEUs. The U.S. container imbalance improved marginally. For every 100 loaded containers exported from the U.S. 154 were imported, compared to 157 last year.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

Container cargo through Pacific Northwest ports, such as Seattle, Tacoma and Portland, fell by about 17 percent. This coastal region's share of U.S. container volume fell slightly to 10.6 percent from 10.9 percent. The Pacific Southwest region, which includes the ports of Los Angeles, Long Beach and Oakland, saw container cargo fall by about 15 percent. This coastal region's share of U.S. container volume fell slightly to 38.9 percent from 39.2 percent. Ports along the U.S. Atlantic coast performed no better. Their container volumes also contracted by 15 percent, but volumes at Gulf coast ports fell only 8 percent. The Atlantic coast ports managed to maintain their share of U.S. container cargo at 42.1 percent, while Gulf coast ports lifted their share from 6.7 to 7.3 percent.

In fiscal year 2009, the U.S.'s top five liner cargo trading partners remained unchanged, namely, China, Japan, South Korea, Taiwan and Hong Kong. While U.S. liner trade with China and Hong Kong fell by about 15 percent, trade with Taiwan fell by 43 percent, Japan by 29 percent, and South Korea by 23 percent. Collectively, these five trading partners accounted for 53 percent of the total U.S. container trade, the same as last year. This year, trade with China accounted for 38.1 percent of the total U.S. container trade, compared to 35.7 percent in fiscal year 2008.

On a worldwide basis, containership capacity continued to grow despite this year's severe contraction in container demand. By July 2009, the containership fleet's nominal capacity had grown by almost 10 percent compared to the same month last year. As the end of the fiscal year approached, 4,672 containerships, with a fleet capacity exceeding 12.5 million TEUs, were available to serve the world's container trades. Only 129 containerships were added to the world fleet, net of vessels scrapped, compared to over 400 at the same time last year. As of July 2009, there were orders worldwide for over 1,000 new containerships with an aggregate capacity of 5.3 million TEUs. This amount of ship capacity on order is equivalent to almost 43 percent of the existing fleet capacity, down from 60 percent at the same time last year.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

The world's container shipping industry became marginally less concentrated during fiscal year 2009. Among the top one hundred container operators at the end of fiscal year 2009, the top five operators controlled 42 percent of the world's containership fleet capacity, the top ten controlled about 59 percent, and the top twenty controlled 80 percent (compared to 43, 60 and 82 percent, respectively, last year). In descending order of containership fleet capacity, the top four liner operators remained Maersk Line, MSC, CMA CGM and Evergreen Line. However, the Singapore-based operator, APL, overtook Hapag-Lloyd to occupy fifth position. The Chinese operator, COSCO Container Line, slipped one place to seventh, below Hapag-Lloyd in sixth. Another Chinese carrier, China Shipping Container Line, remained in eighth place. NYK Line remained in ninth position and Hanjin Shipping completed the top ten ranking.



**Federal Maritime Commission**

**Fiscal Year 2009**

**IV**

**THE FOREIGN SHIPPING  
PRACTICES ACT OF 1988**

**A. IN GENERAL**

The Foreign Shipping Practices Act of 1988 (FSPA), which became effective on August 23, 1988, directs the Commission to investigate and address adverse conditions affecting U.S. carriers in U.S. oceanborne trades, when such conditions do not exist for foreign carriers in the U.S. under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

In fiscal year 2009, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no direct FSPA action was necessary.

**Federal Maritime Commission**

**Fiscal Year 2009**

**B. TOP TWENTY U.S. LINER CARGO  
TRADING PARTNERS**

Pursuant to the Foreign Shipping Practices Act, the FMC must include in its annual report to Congress “a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States,” 46 U.S.C. § 306 (b)(1).

The Journal of Commerce’s Port Import Export Reporting Service (PIERS) database was used to derive the Commission’s list of top twenty trading partners. PIERS obtains data on U.S. import and export shipments from tapes of manifests filed electronically with U.S. Customs and Border Protection via the Automated Manifest System (AMS). PIERS also stations personnel at individual ports to manually collect shipment data that is incomplete or not filed through AMS. The company edits the raw shipment data and distinguishes liner shipments from non-liner shipments, and also employs additional procedures to increase data accuracy.

The most recent complete calendar year for which data are available is 2008. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 2008. The figures in the Table 1 represent each country’s total U.S. liner imports and exports in thousands of TEUs.



**Federal Maritime Commission**

**Fiscal Year 2009**

**Table 1: Top Twenty U.S. Liner Cargo  
Trading Partners (2008)**

<u>Rank</u>	<u>Country</u>	<u>TEUs (000s)</u>
1	China (PRC)	10,561
2	Japan	1,584
3	South Korea	1,284
4	Taiwan	1,225
5	Hong Kong <sup>4</sup>	980
6	Germany	783
7	Brazil	616
8	India	592
9	Vietnam	556
10	Italy	556
11	Indonesia	551
12	Belgium and Luxembourg	546
13	Thailand	544
14	Netherlands	475
15	United Kingdom (incl. N. Ireland)	438
16	Malaysia	387
17	Honduras	342
18	Chile	301
19	Guatemala	300
20	Australia	298

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**4** On July 1, 1997, Hong Kong reverted to Chinese control as a special administrative region. However, PIERS continues to report data separately for Hong Kong because of its status as a major transshipment center.

*Source: All data are aggregated from the PIERS (Port Import Export Reporting Service) database maintained by the Journal of Commerce.*

## **Federal Maritime Commission**

### **Fiscal Year 2009**

Only nine of the top twenty trading partners saw gains in volume. Again, U.S. liner trade with Vietnam experienced the largest percentage growth over the previous year, this time at 16 percent, a slower pace than the 30 percent recorded in 2007. U.S. liner trade with China shrank by 6 percent in terms of volume but the country easily maintained its top ranking. This is the first decrease in volume for China since establishing itself in 1997 as the top ranked trading partner. South Korea swapped ranking positions with Taiwan with an increase of 6 percent over 2007; Taiwan saw a decrease of 5 percent. U.S. liner trades with India, Indonesia, Malaysia, Honduras, Chile and Guatemala all had increases of less than 5 percent. Hong Kong's liner trade with the U.S. continues to decline, this time by 9 percent. Australia gained a foothold in the top twenty ranking with a 7 percent increase from 2007, pushing Costa Rica off the list.

**Federal Maritime Commission**

**Fiscal Year 2009**

**V**

**SIGNIFICANT ACTIVITIES**

**BY**

**ORGANIZATIONAL UNIT**



**Federal Maritime Commission**

**Fiscal Year 2009**

**A. OFFICE OF THE SECRETARY**

**1. In General**

As the focal point for matters submitted to and emanating from the members of the Commission, the Office of the Secretary is the main public contact for the FMC. The Office receives and processes a variety of documents filed by the public including: complaints initiating adjudicatory proceedings for alleged violations of the Shipping Act and other applicable laws; special docket applications and applications to correct clerical or administrative errors in service contracts or NVOCC service arrangements; all communications, petitions, notices, pleadings, briefs, or other legal instruments in administrative proceedings; and subpoenas served on the FMC, its members or employees.

The Office is responsible for preparing and submitting regular and notation agenda matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these matters; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings and Commission regulations; issuing publications; and authenticating instruments and documents of the Commission. During fiscal year 2009, the Commission issued orders finalizing sixteen formal proceedings and three informal dockets. In addition, two rulemaking proceedings were finalized.

The Office also responds to information requests from Commission staff, the maritime industry, press, and the public; administers the Freedom of Information, Government in the Sunshine, and Privacy Acts; compiles historical Commission decisions; maintains a public reference/law library and a Docket Activity Library; manages the content and organization of the Commission's Internet website; and participates in the development and coordination of agency wide public relation/outreach strategies and initiatives. The Office of the Secretary also oversees the Office of Consumer Affairs and Dispute Resolution Services.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

As the Commission's public information/press office, the Office of the Secretary prepares or coordinates the preparation of Commission news releases; responds to public and press inquiries or directs inquiries to the appropriate Commission bureau/office; and monitors the trade press for matters of agency interest for referral to the Chairman, Commissioners, and Commission staff.

The Office is significantly involved with the Commission's ongoing objective to enhance public awareness of agency resources, remedies and regulatory requirements through education and outreach. Several initiatives were undertaken during the fiscal year to expand contact with all segments of the maritime community and public, including participating on industry discussion panels, coordinating and hosting industry briefings, and updating informational material. During fiscal year 2009 the Office continued to facilitate the Commission's regular meeting schedule, thus providing a public forum for Commission discussion and action on industry and administrative matters before the Commission.

The Office promotes transparency and accountability on behalf of the Commission by evaluating, developing and implementing improvements to the Commission's website. During the fiscal year, the Office made adjustments to how information is presented, increased the amount of information available, and added functionality. For example, in May 2009, the Office worked with other Commission components to provide a publicly accessible, data-sharing tool for carrier service contract statistics through the Commission's website. This enhancement provides greater public awareness and real-time access to the number and type of filings in the Commission's confidential service contract database. Providing access to this information illustrates the Commission's efforts to continually evaluate areas where it can balance security and legal requirements with the mandates for open government on its website.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

During the fiscal year, the Office made substantial progress towards completion of a large-volume public information project. The contents of 28 bound volumes of historical Commission decisions issued between the years 1919 and 1987 are in the process of being posted to the Commission's website. These historical decisions are no longer available to the public in bound volume form, however, with the completion of this project, the entire body of historical Commission decisions issued in its adjudicatory proceedings will be available on the FMC website. Making this information readily available to the public in electronic form has proven to be a useful and cost effective resource, especially for attorneys practicing before the Commission. While significant data preparation was completed in FY 2009 to further this project, limited staff resources were reallocated to meet the demands of preparing for, conducting and follow-up of twice-monthly Commission meetings. Pending staff resources, the Office plans to complete this project in fiscal year 2010.

In fiscal year 2009, the Office continued to take the lead in accomplishing the agency's performance goals related to making more Commission information and filed documents available electronically and to improving responsiveness to requests for public information. For example, through its Document Management Program the Office continued to make key documents filed in formal proceedings available through its website. Not only does the Office electronically convert all official Commission files (both current and historical), it is responsible for planning, scheduling and systematically scanning documents for other agency components. The Document Management Program that the Office oversees also supports the agency's initiatives for Continuity of Operations (COOP) by: improving preservation of and staff access to Commission documents, improving staff response time to public inquiries, and providing direct public access to electronic files.

## Federal Maritime Commission

Fiscal Year 2009

### 2. Office of Consumer Affairs and Dispute Resolution Services

The Office of Consumer Affairs and Dispute Resolution Services (CADRS) is responsible for developing and implementing the Commission's Alternative Dispute Resolution (ADR) program. Through this program, the Commission provides services to assist parties in resolving disputes and problems in the U.S. maritime industry that affect international ocean shipping. These include a broad range of services designed to avoid the expense and delays inherent in litigation, and to facilitate the flow of U.S. ocean commerce.

With respect to matters already involved in litigation, or moving toward initiation of litigation, parties to a dispute are encouraged to avail themselves of mediation or other ADR processes such as conciliation, facilitation, fact finding, mini-trials, or arbitration, as a means to resolve disputes. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes at all stages.

During the fiscal year, Commission mediators provided mediation services in several matters, thus assisting parties in avoiding significant litigation costs and risks. The Office mediated a matter involving an ocean carrier, two NVOCCs, a shipper, and a U.S. port that concerned oil leakage from containers which posed an environmental hazard. These containers had been detained at the port and the parties were on the verge of filing at least three lawsuits. As a result of CADRS' mediation, the parties reached an initial agreement to fund and effect environmentally safe cleaning and removal of the containers. CADRS also provides *ombudsman* services to participants in ocean shipping transactions. Typical complaints continue to include situations where an NVOCC or VOCC has placed a lien on cargo in its possession, often for sums owed under an unrelated contract of carriage. A number of cases involved an unlicensed NVOCC that had received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Tracking the whereabouts of a shipment can be difficult, and often additional charges have accrued, necessitating payment of additional funds to obtain release of the shipment.



## **Federal Maritime Commission**

### **Fiscal Year 2009**

During fiscal year 2009, 727 complaints were received that necessitated the opening of a case to provide dispute resolution services. These included 164 complaints concerning cruise issues, 333 concerning household goods matters, and 230 concerning cargo shipment matters. During 2009, the number of cruise complaints declined 13 percent, while the number of household good complaints increased by 68 percent and the number of other cargo cases increased by approximately 27 percent. Cargo shipment complaints continued to be of increasing complexity. Problems involving co-loaded shipments and the transparency of such arrangements continued to be a significant issue. CADRS received a substantial increase in the number of complaints involving licensed NVOCCs that experienced difficulties with their co-loading arrangements and foreign agents that required a neutral party to facilitate communication. In addition to the above complaints, approximately 650 information requests were processed.

As illustrated by the cases reported above, the worldwide economic downturn has affected all parties in the logistics chain. Particularly affected were NVOCCs focusing on household goods shipments, reflected in the 68 percent increase in this type of complaint. The tightening of credit contributed to cash flow problems for NVOCCs and some ceased operations, leaving customers with unpaid VOCC freight charges and little information to track the location of their shipments. Co-loading arrangements involving multiple NVOCCs added to the difficulty in locating cargo and securing its release. In many cases, Office staff arranged for the correction of shipping documentation with carriers and foreign agents to facilitate the release of shipments to their owners. CADRS staff also handled a number of complaints in which cargo delivered to the railhead for inland transport required devanning due to differing weight limitations between VOCCs and rail carriers. In such cases, disputes centered on responsibility for the unanticipated costs related to devanning. The economic downturn also led to a broader spectrum of shipping complaints that required coordination with multiple parties to resolve, including local warehouses, law enforcement officials, state agencies, foreign governments and companies, shippers, and carriers. During this time, CADRS staff worked diligently with all parties to resolve disputes and facilitate the delivery of cargo where possible.

## **Federal Maritime Commission**

**Fiscal Year 2009**

### **3. Library**

The FMC public reference/law library is an information source for Commission staff, government agencies, private organizations and the public. The library contains a variety of books, directories, encyclopedias, journals, magazines, reports, microforms, and videos. Its holdings consist of specialized material, primarily covering the various segments of the international shipping industry, as well as historical and current regulatory materials covering all phases of shipping in the U.S. foreign trades. It also contains material on several related fields such as engineering, economics, political science and a collection of legal publications. The Library collection includes law encyclopedias, engineering textbooks, legal treatises, Comptroller General Decisions, and selected titles of the National Reporter system. The Library's holdings consist of approximately 8,700 volumes and numerous microfiches, CD-ROMs, and on-line services.

In fiscal year 2009, the Office implemented an online catalogue for the Commission's law/reference library collection that replaced an outdated card catalogue ahead of schedule and within the established project budget. The new automated system employs technology to improve workforce productivity by providing an in-house library access station, as well as individualized agency-wide staff access to library holdings from their desktops. The new system minimizes data entry into multiple library management systems, thus reducing redundancy and increasing administrative efficiencies.

**Federal Maritime Commission**

**Fiscal Year 2009**

**B. OFFICE OF THE  
ADMINISTRATIVE LAW JUDGES**

**1. In General**

Administrative law judges (ALJs) manage the development of an evidentiary record through rulings and conferences with counsel for the litigating parties, rule upon dispositive motions, and preside at hearings held after the receipt of a complaint or institution of a proceeding on the Commission's own motion.

The Office of ALJs has the authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken; 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 2009, twenty formal proceedings were pending before the Office of ALJs. During the year, six formal proceedings were added. The Office dismissed one formal proceeding. The ALJs entered Initial Decisions in ten cases.

**2. Final action by the Office of Administrative Law Judges and subsequent Commission action.**

In fiscal year 2009, the Office of Administrative Law Judges issued initial decisions partially or completely resolving eleven proceedings and referred one motion to dismiss to the Commission, and the Commission issued final decisions in fifteen proceedings that had been decided by administrative law judges.

**Federal Maritime Commission**

**Fiscal Year 2009**

**Anchor Shipping Co. v. Alianca Navegacao e Logistica Ltda., Crowley American Transport Inc., Columbus Line, Inc., and Hamburg Südamerikanische Dampfschiffahrts. [Docket No. 02-04]**

On December 16, 2008, the ALJ served an Order Dismissing Complaint for Failure to Comply with the Commission's Rules of Practice and Procedure and Orders Entered in this Proceeding. On January 22, 2009, the Commission served a Notice Not to Review. On April 1, 2009, the ALJ served an Initial Decision Granting Request to Dismiss Counter-Complaint. On May 1, 2009, the Commission served a Notice Not to Review.

**Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority [Docket 02-08], International Shipping Agency, Inc. v. Puerto Rico Ports Authority [Docket 04-01], San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority [Docket 04-06]**

On September 16, 2004 (02-08), September 17, 2004 (04-01), and September 27, 2004 (04-06), the Commission determined it would review ALJ rulings on the issue of sovereign immunity. On April 8, 2009, the Commission dismissed the proceedings.

***Verucci Motorcycles, LLC v. Senator International Ocean, LLC.* [Docket No. 06-05]**

On January 14, 2009, the ALJ issued an Initial Decision. On February 18, 2009, the Commission served a Notice Not to Review.

***R.O. White & Co. & Ceres Marine Terminals Inc. v. Port of Miami Terminal Operating Company, Continental Stevedoring & Terminals, Inc., et al.* [Docket No. 06-11]**

On July 28, 2009, the ALJ served an Initial Decision. On October 6, 2009, the Commission served a Notice Not to Review.

**Federal Maritime Commission**

**Fiscal Year 2009**

***APM Terminals North America, Inc. v. Port Authority of New York and New Jersey; Port Authority of New York and New Jersey v. Maher Terminals LLC***  
**[Docket No. 07-01]**

On October 24, 2008, the ALJ served an Initial Decision Granting Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice. On April 1, 2009, the Commission served an Order Denying Exceptions and Petition for Stay. On July 2, 2009, the Commission served a Notice consolidating Docket No. 07-01 with Docket No. 08-03.

***Anderson International Transport and Owen Anderson - Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984***  
**[Docket No. 07-02]**

On August 28, 2009, the ALJ served an Initial Decision. On September 9, 2009, the Commission served a Notice of Extension of Time to File Exceptions and Replies.

***Norland Industries, Inc., Linna Textiles Manufacturing Limited, Medcorp Distributors, Inc., Malan Garment Limited and Malan Garment Inc. v. Reliable Logistics, LLC***  
**[Docket No. 07-04]**

On June 9, 2009, the ALJ served a Memorandum and Order on Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice of Claims against Washington International Insurance Company and Motion for Approval of Dismissal Without Prejudice against Reliable Logistics, LLC. On July 27, 2009, the Commission served a Notice Not to Review.

***K.E.I. Enterprise d/b/a KEI Logix v. Greenwest Activewear, Inc.***  
**[Docket No. 07-05]**

On November 4, 2008, the ALJ served an Initial Decision Approving Settlement Agreement and Mutual Release and Granting Motions to Dismiss with Prejudice. On December 5, 2008, the Commission served a Notice Not to Review.

**Federal Maritime Commission**

**Fiscal Year 2009**

***Embarque Puerto Plata Corp. and Embarque Puerto Plata Inc. d/b/a Embarque Shipping and Embarque El Millon Corp., Estebaldo Garcia, Ocean Sea Line, Maritza Gil, Mateo Shipping Corp. and Julio Mateo – Possible Violations of Sections 8(a) and 19 of the Shipping Act of 1984 and the Commission’s Regulations at 46 C.F.R. Parts 515 and 520 [Docket No. 07-07]***

On July 31, 2009, the ALJ served a Memorandum and Order Granting Motions to Dismiss Respondents Estebaldo Garcia, Embarque Puerto Plata, Corp., Embarque Puerto Plata Inc. d/b/a Embarque Shipping, Ocean Sea Line, and Maritza Gil. On September 24, 2009, the Commission served a Notice Not to Review. On August 28, 2009, the ALJ served an Initial Decision on the claims against Mateo Shipping Corp. and Julio Mateo. On September 29, 2009, the Commission served a Notice Not to Review.

***Jamteck International Shipping Inc., and Angella Barnett-Walker – Possible Violations of the Commission’s Regulations at 46 C.F.R. Part 515 [Docket No. 07-09]***

On July 27, 2009, the ALJ served an Initial Decision. On August 31, 2009, the Commission served a Notice Not to Review.

***City of Los Angeles, California, Harbor Department of The City of Los Angeles, Board of Harbor Commissioners of The City of Los Angeles, City of Long Beach, California, Harbor Department of The City of Long Beach, and The Board of Harbor Commissioners of The City of Long Beach - Possible Violations of Sections (10)(b)(10), (10)(d)(1) and 10(d)(4) of The Shipping Act of 1984 [Docket No. 08-05]***

On July 30, 2009, the ALJ referred the Motion of the Bureau of Enforcement for Dismissal of Proceeding to the Commission. On August 21, 2009, the Commission dismissed the proceeding.

***Clutch Auto Ltd. v. International Touch Consolidator, Inc., MacAndrews and Company, Ltd., Rosmarine Shipping Private Limited, and Hitos Liner Agency Private Limited [1880(F)]***

**Federal Maritime Commission**

**Fiscal Year 2009**

***D&W Clutch and Brake v. International Touch Consolidator, Inc., MacAndrews and Company, Ltd., and Rosmarine Shipping Private Limited [1885(F)]***

On November 13, 2008, the ALJ served an Initial Decision. On December 18, 2008, the Commission served a Notice Not to Review.

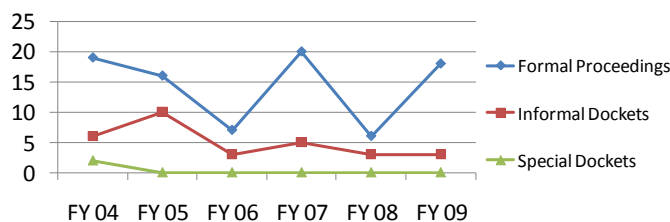
***Frank J. Kuzela v. A.P. Moller-Maersk A/S [1883(F)]***

On June 26, 2008 [FY08], the ALJ served an Initial Decision. On October 13, 2008, the Commission served an Order Denying Exceptions.

**3. Pending Proceedings**

At the close of fiscal year 2009, there were 11 formal proceedings pending before the Office of ALJs. During fiscal years 2010 and 2011, the Office will conduct hearings and render decisions on adjudicatory proceedings and any rulemaking proceedings referred to the Office. Figure 1 shows FMC Commission proceedings over the last five fiscal years, 2004 through 2009.

**Figure 1: Commission Proceedings Initiated  
FY 2004 - 2009**



Note: Formal proceedings include Notices Not to Review, Dismissals, Orders Denying Petitions, Orders of Revocation, Informal Docket Orders, and Settlements; Rulemakings – Final Rules.





**Federal Maritime Commission**

**Fiscal Year 2009**

**C. OFFICE OF  
THE GENERAL COUNSEL**

The General Counsel provides legal counsel to the Commission. This includes reviewing staff recommendations for Commission action for legal sufficiency, drafting proposed rules to implement Commission policies, and preparing final decisions, orders, and regulations for Commission review. In addition, the Office of the General Counsel (OGC) provides written and oral legal opinions to the Commission, its staff, and the general public in appropriate cases. As described in more detail below, the General Counsel also represents the Commission before courts and Congress and administers the Commission's international affairs program.

**1. Rulemakings and Decisions**

The following are rulemakings and adjudications representative of matters prepared by the General Counsel's Office:

**Rulemakings by the Commission**

***Recodification of the Shipping Act as Positive Law; [Docket No. 09-06], \_\_\_\_\_ S.R.R. \_\_\_\_\_ (September 16, 2009)***

The Commission issued a Final Rule revising 46 CFR Parts 501, 502, 503, 504, 506, 508, 515, 520, 525, 530, 531, 535, 540, 545, 550, 551, 555, 560, and 565. The Shipping Act of 1984 and other statutes administered by the Commission were previously codified in the appendix to Title 46 of the United States Code. The House of Representatives introduced H.R. 1442 to complete the codification of the appendix as positive law. On October 6, 2006, H.R. 1442 was enacted as Public Law 109-304. This rule changes prior statutory references in the Commission's regulations to reflect the codification and does not involve any substantive changes.

**Federal Maritime Commission**

**Fiscal Year 2009**

**Decisions by the Commission**

***Odyssea Stevedoring of Puerto Rico, Inc. v. Puerto Rico Ports Authority, [Docket No. 02-08]; International Shipping Agency, Inc. v. The Puerto Rico Ports Authority, [Docket No. 04-01]; and San Antonio Maritime Corp. and Antilles Cement Corp. v. Puerto Rico Ports Authority, [Docket No. 04-06], 30 S.R.R. 1339 (March 5, 2007)***

These cases came before the Commission for a determination whether the Puerto Rico Ports Authority (PRPA) is an arm of the Commonwealth of Puerto Rico and therefore entitled to sovereign immunity. *Odyssea Stevedoring of Puerto Rico, Inc.*, *International Shipping Agency, Inc. (Intership)*, *San Antonio Maritime Corp.* and *Antilles Cement Corp.* allege that PRPA's marine terminal leasing practices violated sections 10(b)(10), 10(d)(1), 10(d)(3), and 10(d)(4) of the Shipping Act. Further, *Intership* alleged PRPA violated section 10(a)(3) of the Shipping Act by failing to act in accordance with the terms of an agreement filed with the Commission. PRPA filed motions for summary judgment or motions to dismiss in all three cases, arguing that the complaints were barred by PRPA's sovereign immunity as an arm of the Commonwealth of Puerto Rico. In *Odyssea* and *Intership*, the ALJ ruled that PRPA was not entitled to sovereign immunity. The Commission, *sua sponte*, decided to review the ALJ's decision. On November 30, 2006, the Commission issued an order, on a 3-2 vote, finding that PRPA is not an arm of the Commonwealth of Puerto Rico and is therefore not entitled to sovereign immunity.

**Federal Maritime Commission**

**Fiscal Year 2009**

The Commission's order was appealed to the U.S. Court of Appeals for the D.C. Circuit (Case No. 06-1407). The Court heard oral argument on October 26, 2007. On July 8, 2008, the Court issued its opinion finding that PRPA is an arm of the Commonwealth of Puerto Rico and is therefore immune from suit absent its consent. Intership filed a motion on August 25, 2008, to stay the Court's mandate pending filing of a petition for writ of certiorari. The Court granted Intership's motion on September 16, 2008. A petition for a writ of certiorari at the United States Supreme Court was filed by Intership on October 8, 2008. The Supreme Court denied Intership's writ on February 23, 2009. The D.C. Circuit issued their mandate for the Commission to dismiss all three cases on March 6, 2009. The Commission dismissed all three PRPA cases on April 8, 2009.

***Eurousa Shipping, Inc., Tober Group, Inc. and Container Innovations, Inc. – Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. § 515.27, [Docket No. 06-06], 31 S.R.R. 540 (December 18, 2008)***

This proceeding was instituted by Order of Investigation and Hearing served May 11, 2006, to determine whether respondents violated section 10(b) (11) of the Shipping Act and the Commission's regulations at 46 C.F.R. § 515.27, by knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act. On October 1, 2007, Tober Group, Inc. (Tober) filed a Motion for Summary Judgment. The ALJ granted Tober's Motion for Summary Judgment on June 12, 2008. The BOE filed an appeal on July 8, 2008, and Tober filed a reply on August 12, 2008. An Order on Appeal of the ALJ's Grant of Summary Judgment, granting BOE's appeal and remanding the case to the ALJ, was issued on December 18, 2008.

**Federal Maritime Commission**

**Fiscal Year 2009**

***APM Terminals North America, Inc. v. Port Authority of New York and New Jersey, [Docket No. 07-01], 31 S.R.R. 623 (April 1, 2009)***

APM Terminals North America, Inc., commenced this proceeding by filing a complaint alleging that the Port Authority of New York and New Jersey violated section 10 of the Shipping Act of 1984 alleging it had been harmed by the Port Authority's failure to tender an additional portion of marine terminal property provided for in a lease between APM and the Port Authority. APM also claimed that the Port Authority's actions unlawfully preferred Maher Terminals, LLC, also a marine terminal operator. PANYNJ denied liability and filed a counter-complaint against APM. PANYNJ filed a third-party complaint against Maher Terminals claiming that Maher failed to timely surrender the premises sought by APM.

APM and PANYNJ entered into a settlement agreement and a supplemental agreement to the lease at issue between them resolving their claims and counter claims in this proceeding, which was approved by the presiding ALJ. On April 1, 2009, the Commission affirmed the ALJ's decision. The Commission rejected assertions by Maher to block the settlement as the agreement met the Commission's criteria for settlement and because Maher had not shown that the remaining claims between it and the Port Authority would be prejudiced. Maher's separate claims have been consolidated within its separate complaint case, Docket No. 08-03.

**Federal Maritime Commission**

**Fiscal Year 2009**

***Global Link Logistics, Inc. – Emergency Petition for Declaratory Order, Rulemaking or other Appropriate Relief in Voluntary Disclosure Investigation, [Docket No. 08-07], 31 S.R.R. 718 (June 15, 2009)***

Petitioners Olympus Growth Fund, III, L.P. and Olympus Executive Fund, L.P. petitioned the Commission to issue a Declaratory Order, initiate a rulemaking or grant other appropriate relief to confirm that an industry practice involving domestic inland movements was not a violation of section 10(a)(1) of the Shipping Act. Alternatively, Petitioners requested that the Commission initiate a docketed proceeding for the purpose of granting Petitioners leave to intervene in a formal investigation of the shipment practices of Global Link Logistics, Inc. (Global Link), a non-vessel-operating common carrier in which Petitioners formerly owned a stake. In the Commission's Notice of filing of Petition, it was requested that Global Link and the Commission's Bureau of Enforcement (BOE) reply to the petition. Subsequently, comments were invited from other interested parties with respect to the request in the petition to initiate a rulemaking proceeding. Global Link, BOE, and ABS Consulting filed comments generally opposing the relief sought in the Petition.

On June 15, 2009, the Commission issued an Order Denying the Petition. The Commission denied the request to issue a Declaratory Order, on the grounds that it did not meet the requirements of Commission Rule 68, as Petitioners are private equity funds not subject to the Commission's jurisdiction, and they were not seeking a legal ruling on a proposed future course of action, as the activities in question had already occurred. The Commission also denied the request for a rulemaking, as Petitioners failed to set forth supporting facts and data showing convincing need for the broad regulatory relief envisioned in a rulemaking proceeding. Finally, the Commission denied the request to initiate a formal proceeding, on the grounds that the Commission encourages informal resolution of cases through compromise proceedings and has delegated to BOE authority to compromise civil penalties, and Petitioners did not include in their petition information or evidence justifying the institution of a formal investigation by the Commission.

**Federal Maritime Commission**

**Fiscal Year 2009**

***R.O. White & Company and Ceres Marine Terminals, Inc. v. Port of Miami Terminal Operating Company, Continental Stevedoring & Terminals, Inc., Florida Stevedoring, Inc., Ports America, Ports America Florida, Dante Fascell Port Of Miami Dade, Miami-Dade County Seaport Department and Miami-Dade County; [Docket No. 06-11], 31 S.R.R. 783 (July 28, 2009)***

Complainants filed their complaint on November 22, 2006. Motions to dismiss were filed by Respondents. Complainants maintained that Respondents were marine terminal operators (MTOs) which are subject to the jurisdiction of the Commission. The Complainants also alleged that Respondents operate as MTOs in violation of the Shipping Act by failing to follow agreements that they filed with the Commission and by operating under agreements that should have been filed with the Commission. The Complainants, among other things, also allege that Respondents adopted practices and implemented unfiled agreements which deny them the opportunity to perform stevedoring services for vessels at Respondents' terminal facilities, unlawfully preferred Respondents' stevedoring operations and engaged in unreasonable and discriminatory practices in violation of the Shipping Act.

Though the presiding Administrative Law Judge ruled that the Commission has jurisdiction over Respondents as MTOs, he concluded that Complainants had not met their burden of proof to show that Respondents had sufficient economic power with regard to marine terminal services to force ocean carrier customers to accept the services of Respondents' preferred stevedores. The ALJ also concluded that Complainants had failed to carry their burden to show that Respondents' practices were unreasonable or amounted to unlawful discrimination. The ALJ dismissed the case. Complainants and Respondents separately informed the Commission in writing that they would not file exceptions. As the Commission did not decide to review the Initial Decision on its own motion, it became administratively final pursuant to 46 C.F.R. 502.227 of the Commission's regulations.

**Federal Maritime Commission**

**Fiscal Year 2009**

**2. Litigation**

The General Counsel represents the Commission in litigation before courts and other administrative agencies. Although the litigation work largely consists of representing the Commission upon petitions for review of its orders filed with the U.S. Courts of Appeals, the General Counsel also participates in actions for injunctions, enforcement of Commission orders, actions to collect civil penalties, and other cases where the Commission's interest may be affected by litigation.

The following is representative of matters litigated by the Office:

***Landstar Express America, Inc. and Landstar Global Logistics, Inc. v. Federal Maritime Commission, D. C. Circuit, Case No. 08-1152***

This proceeding is an appeal of the Commission's February 15, 2008 order in Commission Docket No. 06-08, In the Matter of the Lawfulness of Unlicensed Persons Acting as Agents for Licensed Ocean Transportation Intermediaries – Petition for Declaratory Order. The Commission denied the petition filed by Team Ocean Services, Inc., (Team Ocean) following review of the petition and three comments submitted thereon, including the comments of Landstar America, Inc. and Landstar Global Logistics, Inc. (Landstar). On April 14, 2008, Landstar filed a Petition to Review the Commission's Order, asserting in its Petition that it is a party aggrieved by the Commission's denial of Team Ocean's Petition. Petitioners submitted a single issue to be raised to the Court:

Whether the FMC Order's determination that it is unlawful under The Shipping Act of 1984, as amended, for an unlicensed agent to provide Non-Vessel Operating Common Carrier (NVOCC) services in the name of and on behalf of a licensed NVOCC is arbitrary, capricious, contrary to the FMC's statutory authority, jurisdiction and existing precedent, inconsistent with the plain language of the applicable statute, an abuse of discretion, unsupported by substantial evidence, or otherwise contrary to law.

**Federal Maritime Commission**

**Fiscal Year 2009**

Pursuant to the schedule ordered by the Court, Landstar filed its opening brief December 4, 2008, and the Commission filed its brief on January 12, 2009, with Landstar filing its reply brief January 26.

Oral argument was held on April 21, 2009. On June 26, 2009, the Court issued its order and opinion granting Landstar's Petition for Review, Vacating the Commission's Declaratory Order and remanding the case to the Commission. The Court ruled that the plain language of section 19 of the Shipping Act does not provide authority to the Commission to require agents of ocean transportation intermediaries to obtain an OTI license in order to act as an agent. A declaratory order by the Commission responsive to the Court's holding is pending.

***Federal Maritime Commission v. City of Los Angeles, California, Harbor Department of the City of Los Angeles, Board of Harbor Commissioners of the City of Los Angeles, City of Long Beach, California, Harbor Department of the City of Long Beach, and the Board of Harbor Commissioners of the City of Long Beach, U. S. District Court for the District of Columbia, Case No. 08-1895***

On October 31, 2008, the Commission filed a complaint seeking a permanent injunction pursuant to section 6(g) of the Shipping Act against certain aspects of the Ports of Los Angeles and Long Beach (the Ports) Clean Truck Plan and harmonized concession agreements. The CTP and concession agreements are designed to require new, less-polluting trucks to serve the Ports but also add a requirement at Los Angeles that employee drivers be used although trucking at the Port is dominated by independent owner-operators. The Commission's action seeks to enjoin the employee driver requirements on the basis that it results in an unreasonable increase in costs and unreasonable decrease in service. On November 17, 2008, the Commission filed a motion for



**Federal Maritime Commission**

**Fiscal Year 2009**

a preliminary injunction pending the Court's decision on the merits of the Commission's Complaint. On April 15, 2009, the Court denied the Commission's motion for a preliminary injunction, finding that the Commission had not shown that it met the applicable equitable standards for injunction. On June 16, 2009, the Commission filed a motion to dismiss this proceeding, citing changed circumstances including a preliminary injunction issued against the employee driver requirement in unrelated litigation in the Ninth Circuit Court of Appeals and the U.S. District Court for the Central District of California. On July 24, 2009, the Commission and the Ports filed a joint stipulation dismissing the proceeding. The proceeding was terminated as of July 29, 2009.

***National Resources Defense Council, Inc., Sierra Club, Inc. and Coalition for Clean Air, Inc. v. Federal Maritime Commission, U.S. District Court for the Central District of California, Case No. 08-07436***

On November 10, 2008, the Complainants filed a complaint asserting that the Commission cannot take action that would impact the implementation of the Ports of Los Angeles and Long Beach Clean Trucks Program without first complying with the National Environmental Policy Act of 1969 (NEPA) and other environmental regulations. Attorneys from the Department of Justice Environment and Natural Resources Division and U.S. Attorney's Office for the Central District of California defended the Commission and filed a Motion to Dismiss the Proceeding with the Court, which Natural Resources Defense Council, Inc. opposed. Complainants filed a Notice of Voluntary Dismissal on September 11, 2009, which terminated the proceeding on that date.

**Federal Maritime Commission**

**Fiscal Year 2009**

***National Resources Defense Council, Inc. v. Federal Maritime Commission, U.S. District Court for the District of Columbia, Case No. 1:09-cv-00935***

On May 19, 2009, the National Resources Defense Council, Inc. (NRDC) filed a complaint for declaratory and injunctive relief against the Commission for denying NRDC a full waiver of fees under the Freedom of Information Act (FOIA). An Assistant US Attorney is assigned to defend the Commission. An answer to the complaint was filed on July 9, 2009.

On September 28, 2009, NRDC filed its Motion for Summary Judgment on the merits of the case related to whether plaintiff qualifies for fee waivers. Replies to the Motion for Summary Judgment due November 6, 2009.

**3. Legislative Activities**

The OGC represents the Commission's interests in all matters before Congress. This includes preparing testimony for Commission officials, responding to Congressional requests for information, commenting on proposed legislation, and responding to the Office of Management and Budget (OMB) requests for views on proposed bills and testimony.

During FY 2009, 80 bills, proposals and Congressional inquiries were referred to the OGC for review or comment. The Office prepared and coordinated testimony for the agency's FY 2010 budget authorization hearing before the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation. In addition, the Office assisted in the preparation for one confirmation hearing before the Senate Committee on Commerce, Science and Transportation. The Office also worked closely with Congressional staffs on proposed legislation that may affect the Commission.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

In fiscal years 2010 and 2011, the OGC will continue to take the lead in providing assistance and technical advice to Congress regarding issues for possible legislative consideration. The Office may also recommend legislative amendments as necessary to ensure uniformity with other Federal initiatives and to allow for the efficient and secure flow of ocean transportation.

#### **4. Other Significant Activity**

The Port of Los Angeles and Port of Long Beach Proposed Clean Trucks Program, and FMC Agreement No. 201170, Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement and FMC Agreement No. 201178, Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement, Docket No. 08-05.

On September 24, 2008, the Commission initiated FMC Docket No. 08-05, an investigation to determine whether certain practices of the Ports violate the Shipping Act of 1984. The Ports are members of the Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement (FMC Agreement No. 201170), currently on file with the Commission, that permits them to discuss, consult, and agree on the establishment and implementation of programs and strategies to improve port-related transportation infrastructure and to decrease port-related air pollution. Practices under investigation included: the mandate, on a phased-in basis, that Licensed Motor Carriers (LMCs) that serve the Port of Los Angeles (Port) utilize only employee drivers and not independent owners and operators; the ban on independent owner-operators providing drayage service at the Port; Port payments to certain motor carriers as an incentive to provide drayage service at the Port, but not to other similarly situated motor carriers; exemption of some cargo owners from paying a Clean Truck Fee but not others despite the fact that their cargo is moved in compliant trucks; the requirement that motor carriers provide container drayage service at the Port to submit an application for a concession, but not publishing standards or criteria by which such applications will be granted or denied; and,

## **Federal Maritime Commission**

**Fiscal Year 2009**

refusal to deal or negotiate with motor carriers otherwise authorized to provide drayage service at the Port who conduct their port operations using independent owner-operators. This proceeding was distinct from the Commission's section 6 (g) injunction proceeding in the U.S. District Court for the District of Columbia discussed above (i.e., Case No. 08-1895). On July 28, 2009, the Commission's Bureau of Enforcement filed a motion to dismiss this proceeding, to which the Ports replied in support. On August 21, 2009, the Commission issued an order granting the motion due to significant changes in the current circumstances, including the preliminary injunction issued against the employee driver requirement in unrelated litigation in the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court for the Central District of California.

### **5. Foreign Shipping Restrictions and International Affairs**

The OGC is responsible for the administration of the Commission's international affairs program. The OGC monitors potentially restrictive foreign shipping laws and practices, and makes recommendations to the Commission for investigating and addressing such practices. The Commission has the authority to address restrictive foreign shipping practices under section 19 of the 1920 Act and the Foreign Shipping Practices Act. Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect U.S. carriers in foreign trade and that do not exist for foreign carriers in the U.S.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

In FY 2009, the Commission continued to monitor potentially restrictive shipping practices of the Government of Japan, including the effects of amendments to the Port Transportation Business Law enacted in 2000 and 2005. The Commission continued to receive and evaluate semi-annual reports from United States-flag and Japanese-flag vessels operating in the trades with Japan pursuant to its proceeding in Docket No. 96-20, Port Restrictions and Requirements in the United States/Japan Trade. OGC staff served as technical advisors to the U.S. delegation to the semi-annual U.S.-Japan Regulatory Reform talks held in Washington, D.C. in April 2009.

The OGC also pursued informally several matters that involved potentially restrictive foreign practices including new legislation, new interpretations of existing legislation, new regulations of non-domestic carriers' terminal handling charges and implementation by the People's Republic of China of new requirements on carriers to file tariff and service contract rates with a quasi-governmental entity and for that entity to establish a freight index based upon information received. OGC also provided expert assistance relating to non-ratemaking agreements among vessel-operating common carriers for the purpose of discussion by the United States' delegation at the Asian-Pacific Economic Cooperation conference in Singapore in July 2009.

Another responsibility of the OGC is the identification and verification of controlled carriers subject to section 9 of the Shipping Act. Common carriers that are owned or controlled by foreign governments are required to adhere to certain requirements under the Act, and their rates are subject to Commission review. The OGC investigates and makes appropriate recommendations to the Commission regarding the status of potential controlled carriers. The OGC, in conjunction with other Commission components, also monitors the activities of controlled carriers.

## **Federal Maritime Commission**

**Fiscal Year 2009**

The OGC continues to take the lead in accomplishing the agency's performance goals relating to eliminating restrictions that unjustly disadvantage U.S. interests. OGC monitors foreign laws and practices to determine whether there are any unjust non-market barriers to trade. Where appropriate, the OGC will recommend Commission action.

### **6. Designated Agency Ethics Official**

The Ethics Official is administratively within the Office of the Chairman, but the position is performed as a collateral duty by an attorney in the OGC.

The Commission's Ethics Official is responsible for administering public and confidential financial disclosure systems in order to prevent conflicts of interest from arising in the execution of the agency's regulatory functions. The Ethics Official also conducts annual training and offers day-to-day advice and guidance to ensure compliance with the standards of ethical conduct that apply to Executive Branch officials.

**Federal Maritime Commission**

**Fiscal Year 2009**

**D. OFFICE OF EQUAL  
EMPLOYMENT OPPORTUNITY**

The Office of Equal Employment Opportunity (OEEO) manages a comprehensive program of equal employment opportunity, consistent with federal equal employment opportunity (EEO) and personnel management laws, regulations and directives. This program promotes equal employment opportunity, processes complaints of discrimination and identifies and eliminates any discriminatory practices and policies.

The Chairman of the Federal Maritime Commission (FMC) is responsible for ensuring equal opportunity at the Commission. The Chairman has delegated this authority to the Director of Equal Employment Opportunity (DEEO). Operational responsibility for compliance with EEO policies and programs lies with the Commission's managers and supervisors.

The Director of EEO works independently under the direction of the Chairman to provide advice to the Commission's senior staff and management in improving and carrying out its policies and program of non-discrimination, workforce diversity and affirmative employment program planning. In accordance with regulations and guidance issued by the Equal Employment Opportunity Commission, the DEEO arranges for EEO counseling or alternative dispute resolution for employees who raise allegations of discrimination; provides for the investigation, hearing, fact-finding, adjustment, or early resolution of such complaints of discrimination; accepts or rejects formal complaints of discrimination; prepares and issues decisions for resolution of formal complaints; and monitors and evaluates the program's impact and effectiveness. Additionally, the DEEO represents the Commission on intergovernmental committees, directs programs of special emphasis, and coordinates the activities of the Selective Placement and Federal Equal Opportunity Recruitment Coordinators. The DEEO also supervises two collaterally assigned EEO counselors.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

The OEEO works with senior management and with the Commission's Office of Human Resources (OHR) to: (1) promote equal employment opportunity; (2) monitor affirmative employment programs; (3) expand outreach and recruitment initiatives; (4) improve career development and retention of all employees without regard to race, color, sex, national origin, religion, disability, sexual orientation, political affiliation or familial status; (5) provide adequate career counseling; (6) facilitate early resolution of employment related problems; and (7) develop program plans and progress reports.

#### **Significant Accomplishments for fiscal year 2009**

During fiscal year 2009, women and minorities continue to represent a majority of the workforce at the Commission. Significant accomplishments include the following: (1) provided information to employees about Internet sites with diversity/EEO related information; (2) updated the Commission's No FEAR Act statistics on the FMC website at <http://www.fmc.gov/home/NoFEARAct.asp> and began planning for the FY 2010 No FEAR Act refresher training for all employees; (3) provided counseling assistance to Commissioners, managers, supervisors, and employees; (4) insured that all new FMC employees received the No FEAR training; (5) provided support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce; (6) reviewed and assessed human resource activities and actions; (7) supported the Office of Human Resources effort to reform the Federal hiring process through participation on the agency SWAT Team; (8) maintained an effective discrimination complaint process that resolved issues informally, expeditiously, and at the lowest possible level through the use of alternative dispute resolution techniques; (9) held special commemorative programs for all FMC employees for National Hispanic Heritage, National Disability Employment Awareness, National American Indian Heritage, African American History, Women's History, Asian Pacific American Month; (10) participated in EEO-



**Federal Maritime Commission**

**Fiscal Year 2009**

related training/conferences; and (11) prepared all required affirmative employment program accomplishment reports and plans; (12) supported the 2009 Feds Feeds Families food drive which generated over one million pounds of food and other essentials for American families in need.

During fiscal years 2010 and 2011, the OEEEO will continue all existing programs and initiate activities designed to increase an understanding of EEO concepts and principles, including initiating diversity training and monitoring workforce diversity, outreach, retention, and career-development initiatives.



## Federal Maritime Commission

Fiscal Year 2009

### E. OFFICE OF THE INSPECTOR GENERAL

The Inspector General Act of 1978, as amended, establishes the responsibilities and duties of an Inspector General. The Inspector General Act was amended in the 1980's to increase the number of agencies with statutory IGs, culminating in 1988 with the establishment of Office of Inspectors General (OIG) in smaller, independent agencies, including the Federal Maritime Commission. Currently, there are 67 statutory IGs within executive and legislative departments and agencies. The mission of the OIGs, as identified in the IG Act, is to:

- **Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- **Promote economy, effectiveness and efficiency within the agency.**
- **Prevent and detect fraud and abuse in agency programs and operations.**
- **Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- **Keep the agency head and Congress informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers independent IGs to determine what reviews to perform; access to all information for the reviews; and authority to publish findings and recommendations based on the reviews.

During fiscal year 2009, the OIG issued the following audit reports and evaluations:

**Federal Maritime Commission**

**Fiscal Year 2009**

<b><u>Audit Report Number</u></b>	<b><u>Subject of Audit</u></b>
<b>A09-01</b>	<b>Audit of the FMC's FY 2008 Financial Statements</b>
<b>A09-01A</b>	<b>Management Letter to the FY 2008 Audited Financial Statements</b>
<b>A09-02</b>	<b>Review of the Bureau of Enforcement's Time and Attendance Practices</b>
<b>OR09-01</b>	<b>Operational Review – Inspection of the Agency's Checkout Process</b>
<b>A09-03</b>	<b>Review of the Office of the General Counsel Time &amp; Attendance Practices</b>
<b>A09-04</b>	<b>Review of the Bureau of Certification and Licensing Time &amp; Attendance Practices</b>
<b>A09-05</b>	<b>Review of the Office of the Secretary Time and Attendance Practices</b>
<b>A09-06</b>	<b>Review of the Bureau of Trade Analysis Time and Attendance Practices</b>
<b>A09-07</b>	<b>Review of the Office of Consumer Affairs and Dispute Resolution Services Time and Attendance Practices</b>

## **Federal Maritime Commission**

### **Fiscal Year 2009**

In addition to these completed audits and reviews, the OIG performed fieldwork on the FY 2009 financial statement audit and the Federal Information Security Management Act evaluation and began reviews of contract administration on two technology-related contracts. The OIG performed a desktop scan for prohibited (Internet surfing) activities and revisited agency fee-setting processes with the Office of Administration. We discussed best practices regarding webpage design with the FMC webmaster, and visited the New York Area Office, as the first of six visits to FMC field locations, and briefed the Commission on the results of the trip.

On the investigative side, the OIG processed 42 complaints received on the office's hotline and anonymous e-mail link. We opened one preliminary investigation based on information provided to the OIG by a member of the maritime industry.

During the year, the OIG implemented several provisions pertaining to the Inspector General Reform Act of 2008, including revising an internal Commission Order on OIG processes and procedures to reflect Reform Act requirements, developing a Memorandum of Understanding with a sister OIG for counsel support and working with the agency's webmaster to provide a direct link to the OIG's website from the FMC's homepage.

The OIG also coordinated with FMC program staff to provide assistance to other federal agencies. For example, the OIG arranged for a briefing by FMC staff from the Office of Operations (to include the Bureau of Enforcement and the Bureau of Certification and Licensing) to OIG agents from the Export/Import Bank. Also during the period, the OIG requested assistance from the Bureau of Trade Analysis on behalf of the U.S. Army Criminal Investigation Division pertaining to an ongoing investigation.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

The OIG responded to the House Committee on Oversight and Government Reform, Ranking Minority Member's request regarding open (unimplemented) OIG recommendations. On a separate matter, the Inspector General briefed Senate Commerce Committee staff, at staff's request, on background information concerning agency and OIG program activities.

In addition to these audit and investigative activities and outcomes, the Inspector General staff participated in several activities pertaining to the Council of Inspectors General on Integrity and Efficiency (CIGIE), including actively serving on the Legislation Committee where the IG reviewed and commented on several legislative initiatives affecting the OIG community. The OIG also performed a peer review of a sister OIG at the U.S. Election Assistance Commission. The objectives of a peer review are to determine whether an effective quality control system has been established in the office and if policies, procedures and applicable Government Auditing Standards are being followed.

In fiscal year 2010, the OIG will continue to place a high priority on audits and reviews with the objective of improving agency programs and operations. The OIG will complete statutorily-required reviews to include separate audits of the FMC's fiscal year 2010 financial statements and an evaluation of the agency's information security program and privacy assurance controls, as required by the Federal Information Security Management Act. Finally, the OIG will focus remaining resources on the agency's mission critical programs and outreach activities with the objective of enhancing performance and improving outcomes.

**Federal Maritime Commission**

**Fiscal Year 2009**

**F. OFFICE OF ADMINISTRATION**

The Office of Administration (OA) provides administrative support to the program operations of the Commission. OA interprets governmental policies and programs, and administers these in a manner consistent with Federal guidelines, including those involving procurement, information technology (IT), financial management, and human resources. OA initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Director of OA is responsible for the direct administration and coordination of the:

- **Office of Financial Management**
- **Office of Human Resources**
- **Office of Information Technology**
- **Office of Management Services**

The Director of OA provides administrative guidance to the:

- **Office of Operations**
- **Office of the Secretary**
- **Office of the General Counsel**
- **Office of Administrative Law Judges**

and administrative assistance to the:

- **Offices of the Commissioners**
- **Office of the Inspector General**
- **Office of Equal Employment Opportunity**

## **Federal Maritime Commission**

### **Fiscal Year 2009**

The OA Director is the FMC's Chief Financial Officer (CFO), Chief Acquisition Officer (CAO), Audit Follow-up and Management (Internal) Controls Official, Senior Agency Official for Privacy, and Forms Control Officer. The Director also represents the FMC as Principal Management Official to the Small Agency Council. As the CFO, the Director provides program oversight for the agency's budget and financial management responsibilities, and ensures agency compliance with the Financial Integrity Act, the Antideficiency Act, and the Debt Collection Improvement Act of 1996.

The Deputy Director of Administration is the FMC's Chief Information Officer (CIO). The CIO oversees the Office of Information Technology operations and activities administered under the Clinger-Cohen Act of 1996, as well as other applicable laws which prescribe responsibility for operating the program. As the FMC's Competition Advocate, the Deputy Director challenges barriers to competition, reviews procurement practices, and reports to the CAO as required. The Deputy Director also serves as Records Management Officer.

The Office of the Director had significant program achievements in fiscal year 2009. The Office guided the agency's continuing efforts to enhance its IT program, and received an "unqualified" opinion in its fiscal year 2009 financial statement audit. The Office prepared the Federal Activities Inventory Reform Act report, and the Performance Accountability Report (PAR) (which included the Management's Discussion & Analysis and the Federal Managers Financial Integrity Act report). The Office continued to direct the update of internal Commission issuances and standard operating procedures for a variety of programs and activities, guided Commission efforts to comply with the Government Paperwork Elimination Act and the Federal Information Security Management Act of 2002 (FISMA), and responded to Congressional inquiries. Additionally, the Office guided the development of the FY 2010 baseline documents to OMB and the FY 2010 President's Budget submission, and directed the audit of the Commission's FY 2009 financial statements. The Office also provided primary support for the OMB clearance and records management programs, and guided the further development of the Disaster Recovery Plan for the agency's Continuity of Operations (COOP) Plan.



## **Federal Maritime Commission**

### **Fiscal Year 2009**

OA's key objectives for fiscal year 2010 are to continue to refine and enhance agency administrative programs and operations by: reviewing, developing and/or updating internal Commission Orders and Standard Operating Procedures; assessing agency records disposition requirements in accordance with the National Archives and Records Administration guidelines; monitoring the accomplishment of the agency performance goals, including the full implementation of Pay.gov for acceptance of electronic payments from the industry; initiating further information technology improvements, including the implementation of document/workflow and records management technology, upgrading information system technology (servers, desktop operating systems, laptops, and software), and the implementation of Voice over Internet Protocol (VoIP) and video conferencing; and working with senior managers to ensure effective strategic succession planning. OA will take the lead in ensuring an effective agency-wide computer security program, that the agency's financial management system receives an unqualified opinion in annual financial audits, and that the agency continues to comply fully with government-wide initiatives.

#### **1. Office of Financial Management**

##### **(a) General Office Responsibilities**

The Office of Financial Management (OFM) administers the Commission's financial management program and is responsible for offering guidance on optimal utilization of the Commission's fiscal resources. OFM is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications. The Office also administers internal control systems for agency funds, travel, work years, and cash management. Additionally, OFM manages the Commission's Travel Charge Card Program and administers all budget execution functions.

**Federal Maritime Commission**

**Fiscal Year 2009**

**(b) Achievements**

During fiscal year 2009, OFM:

- **Collected and deposited in the General Fund \$1,124,366 from fines and penalty collections, publications, reproductions, and user fees.**
- **Coordinated and prepared budget justifications and estimates for the fiscal year 2010 Congressional budget and developed fiscal year 2011 budget documents for OMB.**
- **Prepared a variety of external financial reports.**
- **Worked with the Commission's independent auditors regarding the audits of fiscal years' 2008 and 2009 financial statements. The Commission received unqualified opinions for both fiscal years.**
- **Prepared financial materials as requested by the Congressional Subcommittees.**
- **Prepared the Commission's 2008 PAR in concert with the Director's Office, OA.**

**Federal Maritime Commission**

**Fiscal Year 2009**

**(c) Future Plans**

Goals in fiscal year 2010 include: assisting with implementation of Pay.gov to accept electronic payments from the industry and non-governmental customers; continuing to pursue initiatives leading to increased economy and efficiency in budget and financial operations; improving Cash Management Program and updating relevant standard operating procedures; and developing detailed training documents for the Commission's Travel Charge Card Program to improve cardholders' knowledge of appropriate use and responsibilities.

**2. Office of Human Resources**

**(a) General Office Responsibilities**

The Office of Human Resources (OHR) administers a complete human resources management program, including recruitment and placement, position classification and pay administration, occupational safety and health, employee assistance, employee relations, workforce discipline, performance management and incentive awards, employee benefits, career transition, retirement, employee development and training, and personnel security.

**(b) Achievements**

During fiscal year 2009, OHR:

- **Coordinated with senior management to review and evaluate leadership development programs and activities to address succession planning.**
- **Conducted a comprehensive training program in accordance with the agency's budget and strategic and performance plans.**

**Federal Maritime Commission**

**Fiscal Year 2009**

- **Conducted a comprehensive personnel and information security program, including initiating and adjudicating security investigations for new and reinvestigated employees, and collaborating with the CBP to gain access to the ACE/ITDS.**
- **Coordinated with OPM regarding results from the Federal Human Capital Survey, worked with senior management to identify areas needing improvement, and worked with the Partnership for Public Service in connection with *Best Place to Work Awards*.**
- **Implemented provisions of the Federal Workforce Flexibility Act and finalized the agency's Human Capital, Workforce, Accountability, and Succession Management Plans in accordance with OPM's Human Capital Assessment and Accountability Framework.**
- **Continued to work with the Small Agency Human Resources Consortium, OPM and Northrop Grumman Integic officials to complete program activities to implement electronic Official Personnel Folder (eOPF).**
- **Promoted the Preventive Health and Awareness Program and OPM's *Healthier Feds* initiatives, and publicized and hosted wellness seminars sponsored by the Employee Assistance and Federal Occupational Health Programs.**
- **In concert with OPM's hiring reform initiative, developed and revised vacancy announcement template to enhance our recruitment efforts.**
- **Continued implementation of the Enterprise Human Resources Integration project, and administered other E-Gov initiatives such as Recruitment One-Stop, E-payroll, E-clearances, and E-learning.**

**Federal Maritime Commission**

**Fiscal Year 2009**

- **Coordinated with other administrative units and the General Services Administration (GSA) to implement pertinent provisions of HSPD-12 and meet OMB requirements related to issuance of Federal employee credentials.**
- **Worked with contractors to facilitate agency-wide implementation of the automated training data management reporting system required by OPM.**

**(c) Future Plans**

In fiscal year 2010, OHR plans to continue to: advise agency management and staff on all human resources matters and maintain a sound and progressive human resources program; implement pertinent portions of the agency's strategic, training and related performance plans, particularly performance goals related to the management of human resources; explore and implement simplification, flexibility, and accountability of human resources management programs, including investigating automated solutions to address program requirements; partner with agency officials in concert with the President's goal to build a transparent high-performance government specifically with respect to Federal hiring reform and improving employee satisfaction and wellness; continue with e-OPF implementation and conversion of HR records to electronic format to address program requirements and meet agency business needs; explore automated solutions or pilot programs for evaluation of training; monitor the processes and database modernization activities of the National Finance Center in conjunction with the government-wide e-payroll initiative and ensure timely and accurate payroll and personnel services; and assess progress in achieving human capital goals as outlined in the agency's Human Capital, Workforce, Accountability, and Succession Management Plans.

**Federal Maritime Commission**

**Fiscal Year 2009**

**3. Office of Information Technology**

**(a) General Office Responsibilities**

The Office of Information Technology (OIT) provides management support to the program and administrative operations of the Commission with respect to IT, and thus is responsible for ensuring that the Commission's IT program is administered in a manner consistent with applicable rules, regulations, and guidelines. OIT receives programmatic guidance from the agency's CIO.

The OIT Director serves as the Commission's IT Officer, Telecommunications Manager, Help Desk and Database Administration Manager, and oversees the IT security program. The OIT Director plans, coordinates, and facilitates the use of automated information systems.

**(b) Achievements**

During fiscal year 2009, OIT:

- **Completely renovated an outdated FMC Data Center and added redundancy to the Data Center cooling system.**
- **Upgraded the FMC's COOP environment in Germantown, MD.**
- **Selected a new contractor to implement the VoIP Project.**
- **Upgraded the FMC Network Infrastructure to accommodate the upcoming VoIP system.**
- **Successfully accredited two of the agency's IT systems; FISMA documentation and the FISMA Documentation Process were established.**
- **Continued the development and enhancement of FMC systems to automate processes consistent with the E-Government Act.**

## **Federal Maritime Commission**

**Fiscal Year 2009**

- **Continued to update the policies and procedures associated with the technical assistance provided to FMC staff and changes in the IT infrastructure.**

**(c) Future Plans**

Major OIT initiatives for fiscal year 2010 include plans to: maintain compliance with FISMA requirements; complete implementation of VoIP; create an FMC Enterprise Architecture Plan; upgrade the FMC's e-mail system; improve the VPN security infrastructure and ensure it is FIPS compliant; upgrade all agency desktops; and support the Pay.gov and HSPD-12 initiatives.

#### **4. Office of Management Services**

**(a) General Office Responsibilities**

The Office of Management Services (OMS) directs and administers a variety of management services that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office serves as the Commission's Contracting Officer.

The Office's support programs include procurement of administrative goods and services, property management, space management, printing and copying management, mail and record services, facilities and equipment maintenance, and transportation. The Office's major functions are to secure and furnish all supplies, equipment and services required in support of the Commission's mission, and to formulate regulations, policies, procedures, and methods governing the use and provision of these support services in compliance with the applicable Federal guidelines.

**Federal Maritime Commission**

**Fiscal Year 2009**

**(b) Achievements**

During fiscal year 2009, OMS:

- **The OMS Director continued to serve as the Agency’s Technical Representative for oversight of the Headquarters (HQ) building physical security contract, and served as Chairman of the tenants’ Building Security Committee and the Government’s Designated Official for the HQ site for emergency preparedness.**
- **Arranged Contracting Officer’s Representative (COR) and/or Technical Representative (COTR) mandatory training for FMC personnel in accordance with the Office of Federal Procurement Policy’s government-wide requirement that appropriate agency officials in all activities be certified in these skills.**
- **Coordinated with OA/OIT and arranged through GSA to have the necessary alterations performed to renovate and upgrade OIT’s Data Center, installed media upgrades in FMC’s Hearing Room and installed media devices in the agency’s executive work areas and select conference rooms.**
- **Conducted site surveys with the agency’s Seattle/Tacoma Area Representative (AR) and GSA Realty Specialist, and arranged for relocating the AR to new office space.**
- **Coordinated with the Department of Homeland Security’s Federal Protective Services (FPS) and participated in their “Operation Shield” event, conducted at the HQ building and in the DC metro area, to ensure proper procedures were being followed by security staff with respect to allowing building access. Collaborated with the FPS COTR and Operation Shield Team on lessons learned from the event.**



**Federal Maritime Commission**

**Fiscal Year 2009**

- **Coordinated with OHR and arranged for the development of new, secure agency credentials, through the Government Printing Office, for issuance to agency executives and appropriate personnel.**
- **Continued to coordinate with OFM and the Bureau of Public Debt (BPD) to review the agency's invoice processing program, and discuss ways to modify and improve the process.**

**(c) Future Plans**

In fiscal year 2010, the Office's objectives include continuing to: work with GSA, FPS, and other tenant agencies at HQ facility and field locations to upgrade and/or improve the building's security measures and emergency preparedness; collaborate with the other OA Directors to improve communication and agency-wide administrative support through regular dialogue and/or information-sharing sessions and by promoting a "customer services and team building" environment throughout the OA; communicated with BPD on ways to improve and streamline the FMC's acquisition and procurement processes; and provide advice and assistance to FMC activities regarding innovative office support and administrative services programs.



**Federal Maritime Commission**

**Fiscal Year 2009**

**G. OFFICE OF OPERATIONS**

**1. Oversight Responsibilities**

The Director of Operations, as a senior staff official, is responsible to the Chairman for the management and coordination of the:

- **Bureau of Certification and Licensing**
- **Bureau of Enforcement**
- **Bureau of Trade Analysis**
- **Area Representatives (AR)**

The Office of Operations (OPs) oversees the development and operation of various programs and recommends new programs and necessary changes in staff objectives.

In FY 2009, the Office led the operational Bureaus through oversight and guidance towards the accomplishment of many programmatic achievements. The Office continued work with staff to review and report to the Commission on emerging industry changes in all sectors. This fiscal year saw a continuing high volume in the number of OTI licenses sought and granted as well as an increase in the number of MTO discussion agreements filed. In FY 2009, the Commission considered agreements including the Los Angeles/Long Beach/Terminal Operator Administration and Implementation Agreement, and the Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement. OPs coordinated and assisted in the Bureaus' recommendations and consideration of these high-profile agreements. The activities of the various Offices are described following this section.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

During FY 2009, OPs continued to lead the Bureaus of Enforcement (BOE) and Certification and Licensing (BCL) in the review and coordination of compliance and enforcement policy. OPs worked with other Commission offices toward the integration and modernization of agency databases and the automation of key agency forms to facilitate ease of access and efficiency of agency processes.

#### **2. Administrative Responsibilities**

The Director of OPs has been designated as the agency's Performance Improvement Officer (PIO). Subject to the direction of the Chairman, the PIO supervises the Commission's performance management activities, including development of the agency's goals, plans and performance reports.

In the PIO capacity, during FY 2009 OPs finalized the agency's strategic plan for 2010-2015, which revises the agency's mission statement and strategic goals. The plan reflects a more streamlined and mission-focused description of the agency, its functions, and direction to achieve these goals. It highlights the Commission's primary program activities and sets performance goals designed to measure the impact of those activities on the shipping public. The Office of Management and Budget reviewed the plan, and after opportunity for public comment in FY 2008, the final plan was adopted by the Commission on December 3, 2008 and submitted to Congress.

The Office of Operations also has responsibility for coordination of budget requests and spending by three bureaus, from the point of submitting budget requests to monitoring spending on travel and training. The Office is responsible for travel planning and final approval for the bureau staff and Area Representatives. As well, in fiscal year 2009, the Office drafted a new and more contemporary Annual Report for Fiscal Year 2009 to reflect the accomplishments of the agency during the fiscal year.

## **Federal Maritime Commission**

**Fiscal Year 2009**

### **3. Area Representatives**

The Commission's ARs act as liaisons with the shipping industry at a local level and as a resource to all Bureaus and Offices of the Commission. The Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York, Houston and Seattle through ARs based in each of those cities. These representatives also serve other major port cities and transportation centers within their respective areas. In addition to monitoring and investigative functions, ARs represent the Commission within their jurisdictions, provide liaison between the Commission and the maritime industry and the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. Liaison activities involve cooperation and coordination with other governmental agencies and departments, providing regulatory information and relaying Commission policy to the shipping industry and the public, and handling informal complaints within each representative's area of responsibility. The ARs also work on Commission outreach through seminars, participation at various conferences and trade shows, presentations, and local community contacts.

In FY 2009, hundreds of informal complaints were handled by the ARs. These complaints often involved unlawful activity that could not be resolved and compliance achieved informally, and in other cases as required, investigations was opened by OPs. If a potential violation remained unresolved, a proceeding was referred to the Bureau of Enforcement for further action as described later in this report.

The ARs were instrumental in broadcasting public service announcements that were published by OPs for each major port area in FY 2009, warning against the use of unlicensed OTIs. The Area Representatives contributed to this effort through selection of appropriate local publications. These warnings facilitated numerous inquiries and reports to the ARs regarding licensed and unlicensed OTI activity and an apparent decrease in complaints about the activities of unlicensed entities in communities in which they were published.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

In FY 2009, the ARs, with the assistance of BCL, made presentations on OTI licensing requirements and compliance for recently licensed companies, current applicants and persons interested in becoming licensed, to audiences in Florida, Oregon, and Texas. Area Representatives also briefed or addressed key officials of the New York City Police Department, New Jersey State Police, Houston Police Department, Association of Ship Brokers and Agents, Steering Committee of Sea Cargo Americas, University of Miami School of Law, International Cargo Committee of the Greater Miami Chamber of Commerce, Columbia River Customs House Brokers and Freight Forwarders, Export-Import Bank Office of Inspector General, National Defense Transportation Association, and U.S. Customs and Border Patrol.

The ARs participated in task forces and initiatives sponsored by local law enforcement agencies, the U.S. Department of Justice, the Department of Homeland Security, through Customs and Border Patrol or Immigration and Customs Enforcement, and the Department of Commerce. This participation facilitates sharing of information on illegal activities.

**Federal Maritime Commission**

**Fiscal Year 2009**

**H. BUREAU OF CERTIFICATION AND LICENSING**

**1. In General**

The Bureau of Certification and Licensing has responsibility for the Commission's ocean transportation intermediary (OTI) licensing program and passenger vessel certification program. The Bureau:

- **Licenses and regulates OTIs, including ocean freight forwarders and non-vessel-operating common carriers (NVOCCs).**
- **Issues certificates to owners and operators of passenger vessels that have evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages or for death or injury to passengers and other persons.**
- **Manages programs assuring financial responsibility of OTIs and passenger vessel operators, by developing policies and guidelines, and analyzing financial instruments and financial statements.**
- **Develops and maintains information systems that support the Bureau's programs and those of other Commission entities.**

The Bureau is organized into two offices: the Office of Transportation Intermediaries and the Office of Passenger Vessels and Information Processing. The former reviews and approves applications for OTI licenses, and maintains and updates records about licensees. The latter reviews applications for certificates of financial responsibility with respect to passenger vessels, manages all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and develops and maintains all Bureau databases and records of OTI applicants and licensees.

**Federal Maritime Commission**

**Fiscal Year 2009**

**2. Licensing of Ocean Transportation Intermediaries**

OTIs are transportation middlemen for oceanborne cargo moving in the U.S.-foreign trades. There are two types: NVOCCs and ocean freight forwarders. NVOCCs are common carriers who do not operate the vessels by which transportation is provided. Ocean freight forwarders in the U.S. arrange for the transportation of cargo with a common carrier on behalf of shippers and process documents related to those shipments. Both NVOCCs and ocean freight forwarders must be licensed by the Commission if they are located in the U.S. NVOCCs doing business in the U.S. foreign trades but located outside the U.S. (foreign NVOCCs) may choose to become licensed, but are not required to do so. Whether licensed or not, foreign NVOCCs must establish financial responsibility. All NVOCCs must publish electronic tariffs which contain the NVOCC's rates, charges, rules and practices.

To become licensed by the Commission, an OTI must establish that it, through its Qualifying Individual (QI), has a minimum of three years of experience in ocean transportation intermediary activities in the U.S. and the necessary character to render OTI services as well as establish its financial responsibility by means of a bond, insurance, or other instrument. An investigation of the applicant's qualifications address such issues as accuracy of information provided in the application; integrity and financial responsibility of the applicant; character of the applicant and its QI; and length and nature of the QI's experience handling OTI duties. Licensed ocean freight forwarders must establish financial responsibility in the amount of \$50,000, and licensed NVOCCs, \$75,000. An additional \$10,000 of coverage is required for each unincorporated U.S. branch office in the United States other than the one used to establish a presence. If an OTI is a licensed NVOCC, it must file a Form FMC-1 and publish a tariff. Furthermore, non-U.S.-based NVOCCs that do not wish to be licensed must provide the Commission with proof of financial responsibility in the amount of \$150,000, file a Form FMC-1, and ensure a tariff is published at the site listed on the Form FMC-1. A non-U.S.-based NVOCC must list in its tariff an agent for service of process in the United States, and it must use a licensed OTI for any



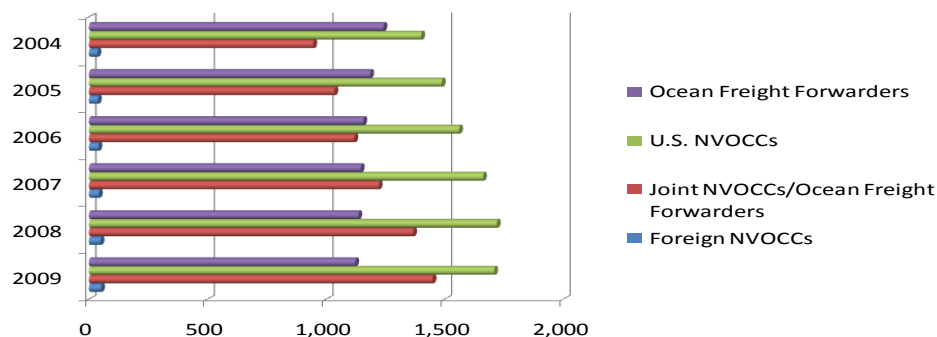
## Federal Maritime Commission

### Fiscal Year 2009

OTI services performed on its behalf in the United States. The financial instrument must be available to pay claims against the OTI arising from its transportation-related activities, any order of reparation assessed under the Shipping Act, and any judgments for damages against an OTI arising from its transportation-related activities under the Shipping Act.

During fiscal year 2009, the Commission received 482 new OTI applications and 277 amended applications, issued 401 OTI licenses, revoked 264 licenses, and reissued 2 licenses. At the end of the fiscal year, 1,123 ocean freight forwarders, 1,709 U.S. NVOCCs, 1,449 joint NVOCC/ocean freight forwarders, and 51 foreign NVOCCs held active OTI licenses. An additional 1,068 foreign NVOCCs maintained proof of financial responsibility on file with the Commission, but chose not to be licensed. Overall, there has been a gain of 96 licensed and/or bonded OTIs, representing approximately a 2% increase from 5,304 OTIs in fiscal year 2008 to 5,400 in fiscal year 2009. U.S. NVOCCs may file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government. The Commission received 56 riders providing optional proof of financial responsibility for NVOCCs serving the U.S.-China trade. Figure 2 shows the number of freight forwarders and NVOCCs that held active OTI licenses over the past five fiscal years from 2004 through 2009.

**Figure 2: Ocean Freight Forwarders, NVOCCs That Held Active OTI Licenses 2004-2009**

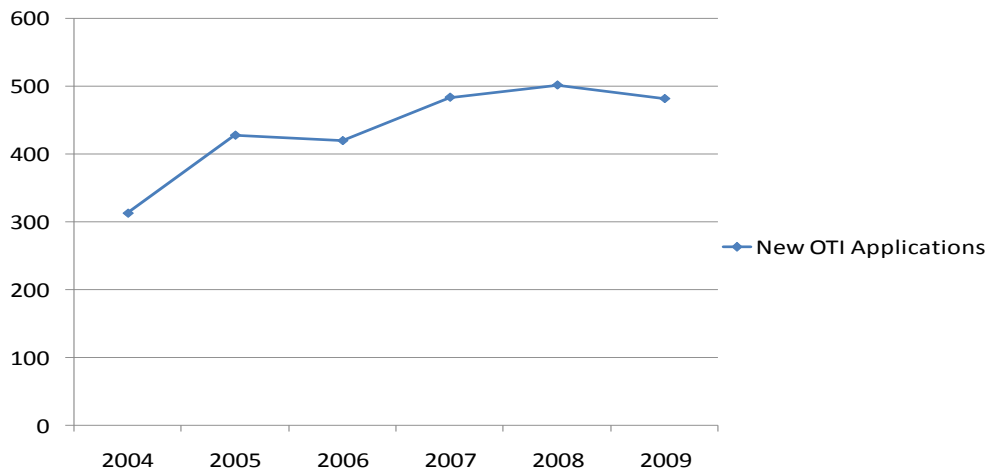


**Federal Maritime Commission**

**Fiscal Year 2009**

In fiscal year 2009, the Bureau reviewed updates to the electronic filing of an automated Form FMC-18, Application for an Ocean Transportation Intermediary license, permitting filers to complete an OTI application on-line, scan and attach required documents, and submit the application electronically. The filing system incorporates significant security features for the purpose of protecting applicant data, and detecting and preventing unauthorized system intrusion. At the present time, approximately 90 percent of all incoming OTI applications received are from the electronic system. Figure 3 shows the number of new applications processed by FMC over each of the last five fiscal years, 2004 through 2009.

**Figure 3: New Ocean Transportation Intermediaries Applications Received 2004-2009**



**Federal Maritime Commission**

**Fiscal Year 2009**

**3. Passenger Vessel Certification**

The Commission administers 46 U.S.C. §§ 44102-44103, which requires evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The program now encompasses 202 vessels and 43 operators, which have aggregate evidence of financial responsibility coverage in excess of \$319 million for nonperformance and over \$637 million for casualty. Certificates of performance cover financial responsibility for the indemnification of passengers for nonperformance of transportation. This requirement also helps prevent unscrupulous or financially weak operators from operating from U.S. ports. The required levels of coverage for nonperformance are determined by Commission regulation, which do not currently require coverage exceeding \$15 million per entity. Even after an operator has ceased operations and dissolved its corporate existence, the evidence of financial responsibility is still valid and available to claimants against the guarantor.

Certificates of casualty are required to meet liability that may occur for death or injury to passengers or other persons on voyages to or from U.S. ports in the amounts established by the statute. The law provides for \$20,000 coverage per person for the first 500 passengers, and the scale decreases to \$5,000 per person for passengers in excess of 1,500.

The certificates issued pursuant to this program are necessary for U.S. Customs and Border Protection's clearance of thousands of passenger vessel sailings annually. During fiscal year 2009, the Commission approved and issued 14 casualty certificates and 18 performance certificates.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

In conjunction with CADRS, the Bureau offers information and guidance to the cruising public throughout the year on passenger rights and obligations regarding monies paid to cruise lines that fail to perform voyages. Over the past few years, a number of cruise operators discontinued operations or filed for bankruptcy. When cruise lines fail to perform because of bankruptcies or other failures, the Commission works with the cruise line and the financial responsibility provider to facilitate the refund process. The public is kept informed through press releases posted on the Commission's website, and advice is given to passengers who contact the FMC staff. During fiscal year 2009, three cruise operators under the Commission's PVO program ceased operation and none filed for bankruptcy. Staff continued its efforts to assist passenger vessel operators and financial responsibility providers to resolve passenger claims for several cancelled cruises.

The Bureau continues to monitor PVO activities and operations by performing oversight of current industry events and reviews of cruise line's financial records. PVO analysts perform oversight of cruise line operator's operations and activities to ensure compliance with applicable statute and Commission regulations. One component of the Bureau's PVO monitoring program is to perform on-site reviews to evaluate PVOs' financial responsibility with respect to oversight of cruise lines participating in the Commission's PVO program. The purpose of the on-site review is to confirm the passenger vessel operator's compliance with the Commission's reporting requirements relating to unearned passenger revenue and the appropriate amount of coverage required to ensure adequate financial responsibility. The Commission also wants to determine if a PVO is in compliance with the Commission's reporting requirements relating to unearned passenger revenue and the appropriate amount of coverage required to ensure financial responsibility. During fiscal year 2009, BCL staff completed updates to the April 15, 2004 memorandum, Docket No. 02-15, Passenger Vessel Financial Responsibility. Staff completed two on-site reviews. One on-site review was of a PVO who established its financial responsibility with a guaranty and the second was one that established its financial responsibility with a surety bond.

## **Federal Maritime Commission**

**Fiscal Year 2009**

### **4. Automated Database Systems**

During fiscal year 2009, BCL continued to modernize and expand the Regulated Person Index (RPI), a Commission database containing up-to-date records of licensed OTIs, ocean common carriers and other entities. Among other data uses, the RPI is used to post on the Commission's website a list of OTIs which are compliant with OTI requirements so that carriers and others can ascertain whether an OTI is properly licensed and bonded, and, if required, has posted the location of its automated tariff. Also, in conjunction with the agency's OIT, BCL continues to work towards automating the PVO Application Form FMC-131, *Application for Certificate of Financial Responsibility*, and to gather requirement analysis to facilitate the filing of PVO applications.

### **5. Future Plans**

In fiscal year 2010, the Bureau will:

- Continue efforts to maintain additional developments to the current electronic Form FMC-18 System. In conjunction with the Agency's Enterprise Content Management Project, the Bureau will focus its automation efforts to explore an automated business process for processing the OTI Applications that are submitted through the electronic FMC-18 System.
- Continue to develop the OTI and PVO outreach programs and promote awareness of requirements envisioned to increase compliance by VOCCs, OTIs, and PVOs with the Shipping Act.
- Review rules and regulations regarding OTI licensing requirements to ensure continued protection of the shipping public in light of changed industry circumstances.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

- Continue to re-examine issues that were raised in Docket No. 02-15 and continue to present new options, if available, to the Commission for consideration to ensure that PVOs' financial responsibility requirements for nonperformance are providing appropriate protection for the public. BCL will continue research into the various means of ensuring adequate coverage and prepare additional mechanisms to seek input from the general public on the adequacy of current regulations.
- Perform an on-site review of a cruise line's unearned passenger revenue each year; and conduct quarterly reviews of the PVO monitoring files to ensure cruise line operators provide timely and accurate information with respect to the submission of reports and records.

**Federal Maritime Commission**

**Fiscal Year 2009**

**I. BUREAU OF ENFORCEMENT**

The Bureau of Enforcement is the primary prosecutorial arm of the Commission. Attorneys of the Bureau serve as trial attorneys in formal proceedings instituted under section 11 of the Shipping Act, and in investigations instituted under the FSPA. Bureau attorneys serve as legal advisors to the Office of Operations and other Commission bureaus, and also may be designated investigative officers in nonadjudicatory fact-finding proceedings. The Bureau monitors all other formal proceedings, including relevant court proceedings, in order to identify major regulatory issues and advise the Director of Operations and the other bureaus. The Bureau also participates in the development of Commission rules and regulations and serves on inter-bureau task forces and special committees. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court or other agency litigation to which the Commission is a party.

Through investigative personnel, and most often as the result of information provided by the industry and other government entities, the Bureau monitors and investigates the activities of ocean common carriers, OTIs, shippers, ports and terminals, and other persons to ensure compliance with the statutes and regulations administered by the Commission. Monitoring activities include: (1) service contract and NVOCC service arrangement (NSA) reviews to determine compliance with applicable statutes and regulations; (2) reviews and audits of ocean common carrier, NVOCC and ocean freight forwarder operations, including compliance with licensing, tariff, and bonding requirements; (3) audits of passenger vessel operators to ensure the financial protection of cruise passengers; (4) monitoring of agreements among ocean carriers and MTOs; and (5) various studies and analyses to support Commission programs. Investigations involve alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal or unfiled agreements; abuses of antitrust immunity; unlicensed OTI activity, including servicing of noncompliant OTIs by VOCCs and licensed NVOCCs; illegal rebating; misdescriptions or misdeclarations of cargo; untariffed cargo carriage; unbonded OTI

## **Federal Maritime Commission**

### **Fiscal Year 2009**

and passenger vessel operations; and various types of consumer abuses, including failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers. The Bureau adheres to the agency's objectives of obtaining statutory compliance and ensuring equitable trading conditions.

The Bureau prepares and serves notices of violations of the shipping statutes and Commission regulations and may compromise and settle civil penalty demands arising out of those violations. Other Bureau investigations may be resolved through compliance measures. If settlement is not reached, Bureau attorneys act as prosecutors in formal Commission proceedings that may result in settlement or in the assessment of civil penalties. The Bureau also participates, in conjunction with other Commission units, in special enforcement initiatives, fact-finding investigations and rulemaking efforts.

During fiscal year 2009, the Bureau of Enforcement investigated and prosecuted possible illegal practices in many trade lanes, including the Transpacific, Oceania, North Atlantic, Mediterranean, West Africa, Central and South American and Caribbean trades. These market-distorting activities included various forms of rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, and unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these investigations were resolved informally, some with compromise settlements and civil penalties. The following Figure 4 shows civil penalties collected by FMC over the last five fiscal years.

In addition, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers and marine terminal operators. A major investigative effort, completed late in fiscal year 2009, into the respective Clean Truck Programs of Los Angeles and Long



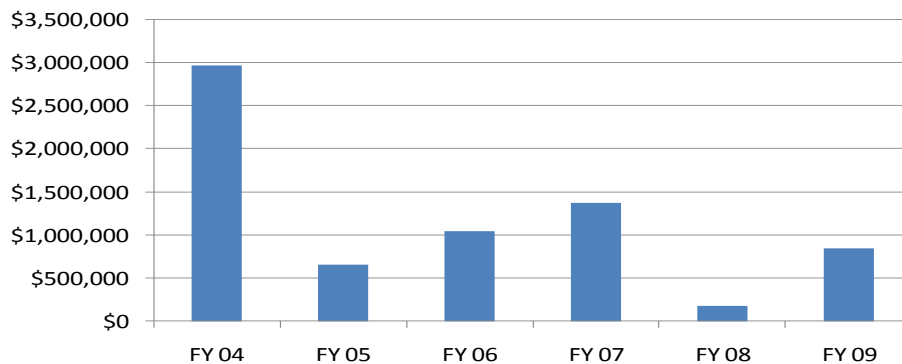
**Federal Maritime Commission**

**Fiscal Year 2009**

Beach, CA, concerned the impact on the Ports' users and the compatibility of the respective programs with the Ports' responsibilities under the 1984 Act. Enforcement efforts also continued into the operations of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, including licensed OTIs providing service to the unlicensed.

Interaction between the Bureau, the Commission's Area Representatives, and the CBP with respect to the exchange of investigative information continues to be beneficial to all parties. Cooperation with CBP included staff interactions and joint field operations to investigate entities suspected of violating both agencies' statutes or regulations. Such cooperation also has included local police and other government entities, including the U.S. Attorney's Office and the Federal Bureau of Investigation, when necessary.

**Figure 4: Civil Penalties Collected  
FY 2004 - 2009**



## **Federal Maritime Commission**

### **Fiscal Year 2009**

In fiscal year 2009, the compliance audit program continued. This program, conducted from headquarters primarily by mail, reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also includes review of entities holding themselves out as VOCCs with no indication of vessel operations. At the beginning of fiscal year 2009, six audits were pending. During the fiscal year, 98 audits were commenced, 99 audits were completed, and 5 were pending in the Bureau on September 30, 2009.

At the beginning of fiscal year 2009, 25 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 9 formal proceedings, and there were 93 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 14 new enforcement actions were commenced; 19 were compromised and settled, administratively closed, or referred for formal proceedings; and 20 enforcement cases were pending resolution at fiscal year's end. Also, 4 formal proceedings were initiated; 5 formal proceedings were completed, and 8 were pending at the end of the fiscal year. Additionally, 47 matters involving monitoring or legal advice were received during the fiscal year, 67 such matters were completed, and 73 were pending in the Bureau on September 30, 2009.

In fiscal year 2010, the Bureau will continue to investigate market-distorting, fraudulent and anticompetitive practices not in compliance with the statutes and regulations administered by the Commission, including the operations of licensed and unlicensed OTIs and possible non-compliance by the parties with the regulatory requirements for service contracts and NSAs.

**Federal Maritime Commission**

**Fiscal Year 2009**

**J. BUREAU OF TRADE  
ANALYSIS**

**1. In General**

The primary function of the Bureau is the oversight of concerted activity by ocean common carriers and marine terminal operators under the standards of the Shipping Act. Further, the Bureau administers the Commission's agreements, service contract, NSA programs, and monitors the accessibility and accuracy of all published tariffs. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. foreign trade, and to advise the Commission and its staff on current trade conditions, trends, and regulatory concerns affecting oceanborne liner transportation.**
- **Conducting systematic surveillance of carrier activity in areas relevant to the Commission's administration of statutory standards.**
- **Developing economic studies and analyses in support of the Commission's regulatory responsibilities.**
- **Providing expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices.**
- **Processing and analyzing ocean common carrier and MTO agreements.**
- **Reviewing and processing service contracts, NSAs, and amendments filed by ocean common carriers, conferences of such carriers, and NVOCCs, including service contract and NSA statements of essential terms published by such entities.**

Federal Maritime Commission

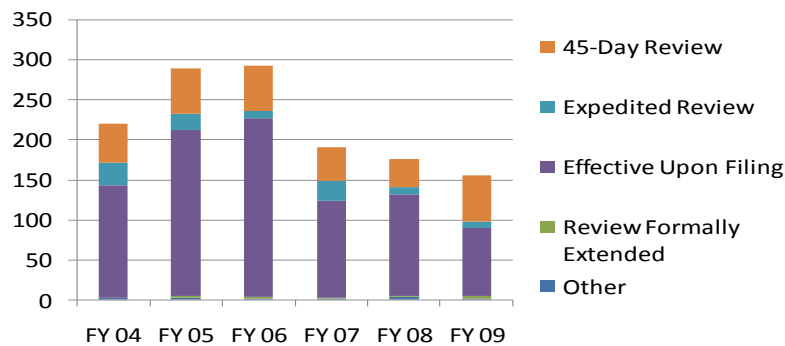
Fiscal Year 2009

- **Reviewing tariff publications in automated systems of carriers and conferences and ensuring that tariffs under OSRA are accessible to the public and accurate.**

**2. Agreement Filings and Review**

Under sections 4 and 5 of the Shipping Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo or revenue, allot ports or regulate sailings, limit or regulate the volume or character of cargo or passengers to be carried, control or prevent competition, or engage in exclusive or preferential arrangements, are required to be filed with the Commission. Except for certain exempted categories, agreements among MTOs and among one or more MTOs and one or more VOCCs also are required to be filed with the Commission. Generally, an agreement becomes effective 45 days after filing, unless the Commission has requested additional information. These agreements are reviewed pursuant to the standard set forth in section 6(g) of the Shipping Act. Effective agreements are exempt from the antitrust laws.

**Figure 5: Agreement Filings and Status  
Agreement Processing Categories  
FY 2004 - 2009**



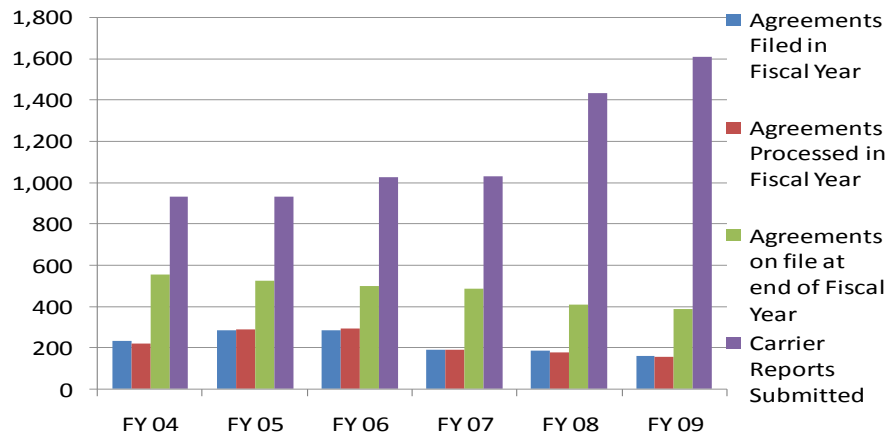
Note: Other agreement processing includes rejection of filings, withdrawals, and filings not subject to Shipping Act.

## Federal Maritime Commission

### Fiscal Year 2009

In fiscal year 2009, the Bureau received 158 agreement filings, a decrease of 25, or fourteen percent, from the previous year. The Bureau analyzed and processed 156 agreement filings during the year. Statistics on agreement filings for fiscal year 2009 are contained in Appendix C. Figure 5 shown previously and the following Figure 6 shows agreement filings and status at FMC from fiscal years 2004 through 2009.

**Figure 6: Agreement Filings and Status  
FY 2004 - 2009**



## **Federal Maritime Commission**

**Fiscal Year 2009**

### **(a) Ocean Common Carrier Agreements**

There are two broad categories of ocean common carrier agreements filed with the Commission: (1) pricing agreements, where the main focus is on rates, and (2) operational agreements, where the focus can range from the sharing of vessel space to the management of an internet portal. Descriptions follow of the two categories of agreements.

#### **(1) Pricing Agreements**

There are two types of pricing agreements: conference agreements and rate discussion agreements. Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Conferences publish a common rate tariff in which all the member lines participate. Rate discussion agreements (RDAs) also focus on rate matters, but unlike conferences, any consensus reached under RDAs is non-binding on the parties. RDAs do not have common rate tariffs as each party publishes its own tariff. At the end of the year, conference agreements accounted for 2 percent of all carrier agreements on file, RDAs 12 percent.

While in years past conference agreements were the dominant pricing forum in many U.S. trades, their commercial significance has effectively disappeared in recent years. Since FY 2000 the number of conferences has declined by 78 percent from 23 to 5 agreements. No new carrier conference agreement has been filed with the Commission since FY 2000. Two inactive conferences in the Australia and New Zealand trades were officially terminated last year. Of the remaining five conferences, three cover only government cargoes, one focuses solely on joint service contracting between its two parties, and one deals exclusively with U.S. inland charges. Conference filing activities last year consisted of only three membership changes, representing about 2 percent of all filings received. Given their historical trend and taking into account what is still in effect, the Bureau believes that the relevance of carrier conferences has almost evaporated.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

With the conferences' demise, RDAs have become the primary pricing discussion forum in the major U.S. trade lanes. As with conferences, the trend since FY 2000 for RDAs also reflects a decline from 36 to 26 agreements, a 28 percent reduction. During fiscal year 2009, pricing agreements represented 18 percent of all agreement filings, for the most part adding or removing members. There was one new RDA filed last year, a joint operating agreement between two car carriers. Two RDAs were cancelled, notably the Middle East Indian Subcontinent Rate Discussion Agreement and an arrangement between two refrigerated cargo carriers.

#### **(2) Operational Agreements**

Operational agreements include vessel-sharing agreements, joint service agreements, cooperative working agreements, and non-rate discussion agreements. At the end of the fiscal year, operational agreements accounted for 86 percent of all effective carrier agreements.

Vessel-sharing agreements (VSAs) typically authorize some level of service cooperation with the goal of reducing individual operating costs. VSAs range from alliance agreements, which involve considerable operational cooperation among the parties, to slot charter agreements, which require only minimal commitments. VSAs account for the vast majority of effective carrier agreements, 71 percent at the end of the fiscal year. They also accounted for 37 percent of carrier agreement filings received last year. Twenty-six new VSAs were filed last year, representing 90 percent of all new carrier agreements filed. Twenty-six VSAs either were terminated or expired last year. Since FY 2000, the number of VSAs has increased by 7 percent from 148 to 159, although the total number has remained the same over the last three years.

## **Federal Maritime Commission**

### **Fiscal Year 2009**

Under joint service agreements (JSAs), two or more carriers operate a combined service under a single name in a specified trading area. The joint service issues its own bills of lading, sets its own rates, and acts as an individual ocean common carrier. At the end of the year there were seven JSAs on file. This was three percent of the total number of effective carrier agreements. No new JSAs and only two amendments to existing agreements were received during this fiscal year. Since FY 2000, the number of effective JSAs has fallen by 50 percent, from 14 to 7. This reflects carriers' growing preference[s] for more flexible arrangements such as VSAs.

Cooperative working agreements (CWAs) are non-pricing agreements that tend to deal with unique operational considerations relating to acquisitions, joint service contracting, sharing of administrative services, or internet portal management. Other agreements filed with the Commission in very small numbers include agency, sailing, transshipment, and equipment interchange (including chassis pooling) agreements. At the end of the year, there were 18 CWAs and other agreements on file, representing 8 percent of all carrier agreements. One new CWA regarding the joint procurement of terminal services, and nine amendments to existing CWAs were filed last year. This number represented 6 percent of the filings received. Since FY 2000, the number of CWAs and other agreements has decreased by 1, from 19 to 18.

Non-rate discussion agreements (NRDAs) provide ocean common carriers a vehicle for discussing matters of mutual interest other than rates. Typically, these agreements focus on macro-economic, regulatory, safety, and security issues. At the end of the year, there were nine such agreements on file, four percent of the total. The Bureau received one new NRDA during the year, an agreement among heavy-lift cargo operators, and ten amendments to existing agreements. These accounted for 7 percent of filings received last year. Since FY 2000, the number of active NRDAs has declined slightly from 11 to 9.



**Federal Maritime Commission**

**Fiscal Year 2009**

**(b) Marine Terminal Operator Agreements**

Marine terminals, operated by both public and private entities, provide facilities, services, and labor for the interchange of cargo and passengers between land and ocean carriers, and for the receipt and delivery of cargo from shippers and consignees. The Bureau is responsible for reviewing and processing agreements between and among MTOs.

During fiscal year 2009, the Bureau received 25 MTO agreement filings, including two terminations and two withdrawals. This represents a 50 percent decrease from last year. MTO agreements accounted for 16 percent of all agreement filings during the fiscal year. At the end of the fiscal year, there were 164 marine terminal agreements on file, down from 182 the previous year, a 10 percent drop. This decline resulted from the identification of a number of terminal facilities (leases) and services agreements that had expired without notice to the Bureau. Terminal leases account for 48 percent of all MTO agreements on file, followed by discussion and service agreements at 12 percent each, and joint ventures at 11 percent. Like carrier conferences, MTO conferences are not a dominant force in the competitive landscape of terminal operations; they account for 6 percent of the effective agreements. Two significant trends are the increases in the number of terminal discussion and joint venture agreements. Since FY 2004, the number of discussion agreements has risen from 7 to 19, a 171 percent jump and joint ventures from 13 to 18, a 39 percent increase. All other classes of MTO agreements saw their numbers decline over the last five years with leases and services agreements falling over 60 percent. The decreases in leases and services agreements is explained by the filing exemption these agreements are afforded under the Commission's regulations and unreported terminations.

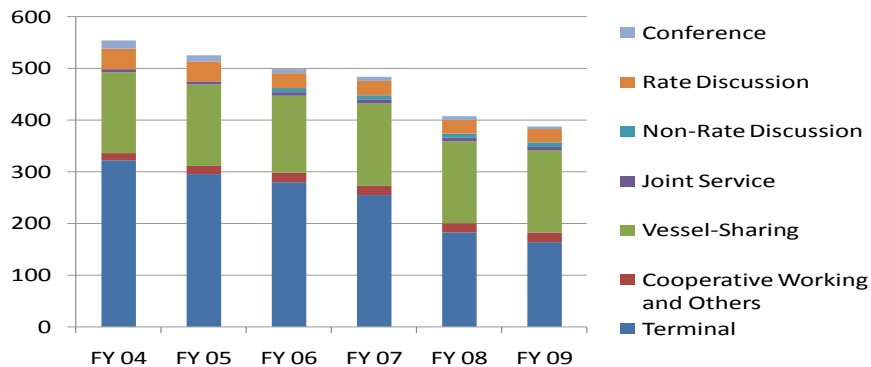
## Federal Maritime Commission

### Fiscal Year 2009

As identified last year, environmental issues remain a focal point for marine terminal operators. Port authorities and marine terminal operators continue to look closely at the environmental impact of their port operations, and are taking steps to try to minimize the environmental consequences resulting from these activities. These coordinated efforts can include the use of certain types of fuel in container handling equipment, incentives for the use of cleaner fuel in vessels while in port, and the banning of environmentally non-compliant drayage trucks serving a given port area.

In larger port areas, MTOs are finding it most effective to meet, discuss, and agree on measures to be taken to reduce negative environmental effects with other MTOs. As a result, we have seen an increasing number of these kinds of discussion agreements filed over the past two years, and we expect that trend to continue. In FY 2009 the Bureau received such discussion agreements covering terminal operations in Hampton Roads, Houston, Seattle, and Oakland. Figure 7 below shows the types of agreement filings at the end of fiscal years 2004 through 2009.

**Figure 7: Agreements on File at End of Fiscal Year (2004-2009)**



## Federal Maritime Commission

Fiscal Year 2009

### 3. Monitoring and Economic Analysis

The systematic monitoring of common carrier activities and commercial conditions in the U.S. foreign trades is an integral part of the Commission's responsibilities under the Shipping Act. The activities of certain types of agreements among marine terminal operators are monitored in a similar fashion. Such monitoring helps ensure that carriers and marine terminal operators comply with the statutory standards of the Shipping Act and the requirements of relevant Commission regulations. To that end, the Bureau administers monitoring programs and researches current trade conditions, contemporary issues adversely affecting the industry, emerging commercial trends, and carrier pricing and service.

The Commission's monitoring program examines carrier competition within individual U.S. trade lanes, including market share, concentration, barriers to market entry, and coordination between carriers or groups of carriers. The program also examines the availability of alternative services and alternative supply sources for imports, as well as cargo volume trends, congestion bottlenecks, commercial pricing practices, operational cost pressures, service offerings, vessel capacity utilization, capacity management programs, service contracting activity, and shipper complaints.

Major projects begun or completed by the Bureau in fiscal year 2009 included: (1) preparing a competitive impact assessment (in conjunction with other Offices and Bureaus) of the Clean Trucks Program that was devised as part of the Clean Air Action Plan under the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*; (2) preparing expert testimony in support of the Commission's challenge in U.S. District Court of the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*; (3) collecting and analyzing specific pricing, financial and operational data from carriers serving

## Federal Maritime Commission

### Fiscal Year 2009

the trade between the U.S. and Australia/New Zealand following the issuance of an order under section 15 of the Shipping Act to address concerns about competitive conditions in the trade that may affect prices and services to an unreasonable extent; (4) preparing formal requests for additional information for the Commission following the filing of an amendment by the *Transpacific Stabilization Agreement* that would have allowed the agreement parties to discuss the development of a plan to jointly rationalize capacity in the nation's largest inbound liner trade, and the filing of an amendment by the Australia and New Zealand-United States Discussion Agreement that would add CMA CGM to its membership, thereby raising the Agreement's share of the trade to almost 90 percent; (5) defining the parameters of a study that will examine the impact of eliminating antitrust immunity in the U.S.-Europe trades as a result of the repeal by the European Union (EU) of the block exemption [Council Regulation (ECC) No. 4056/86] for liner shipping conferences in the EU trades, with the study design allowing input from the shipping industry and others; (6) monitoring of controlled carriers to ensure that U.S. trades remain substantially free of unfair trading practices of foreign governments; (7) updating financial figures for the recommendation in FMC Docket No. 02-15, *Passenger Vessel Financial Responsibility*, in order to provide estimates of the weighted average cost of capital for two large cruise lines using the latest publicly available financial data for 2008; (8) meetings with industry representatives on agreement and trade matters, including with representatives of the *Transpacific Stabilization Agreement* to review semi-annually TSA activities and developments in connection with a settlement the Commission reached with the TSA and its members in September 2003; and (9) expanding the use, on a voluntary basis, of a web-based system for filing meeting minutes, monitoring reports and voluntary service contract guidelines under a pilot program begun in fiscal year 2008.

The Bureau also provides economic expertise for Commission initiatives, including rulemaking proceedings. Bureau economists prepare testimony in fact-finding investigations and cases of unfair shipping practices under section 19 of

## Federal Maritime Commission

### Fiscal Year 2009

the 1920 Act and FSPA. The Bureau also provides briefings and supporting materials for senior agency officials on agreements and trade conditions for the Commission's hearings before Congress and the official speaking engagements of FMC Commissioners, and conducts outreach on behalf of the Commission to industry and the public.

#### 4. Tariffs

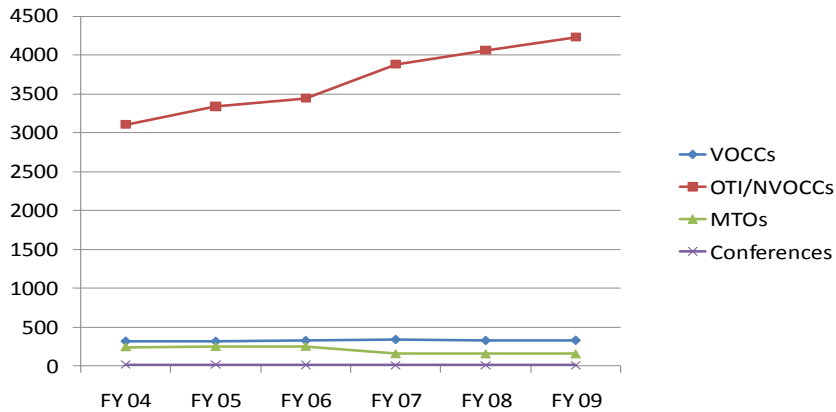
The Shipping Act requires common carriers and conferences to publish their tariffs electronically, in private systems. These electronic tariffs contain rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau monitors the public accessibility of these private tariff systems and reviews published tariff material for compliance with the requirements of the Shipping Act. The Bureau also determines whether to grant applications for special permission to deviate from tariff publishing rules and regulations. During fiscal year 2009, the Bureau received and processed two special permission applications.

Further, the Bureau is responsible for processing the electronic Form FMC-1, *Tariff Registration Form*, required to be filed with the Commission by common carriers, conferences, and MTOs. The data on this form identifies the location of common carrier tariffs, including common carrier and conference service contract essential terms publications or any MTO schedules. At the end of fiscal year 2009, 4,709 tariff location addresses were posted on the Commission's website. Of that number, 4,225 tariff addresses were for NVOCCs. The Bureau also collaborates with other Commission bureaus and offices to verify that VOCCs and NVOCCs comply with the Commission's licensing, bonding and tariff publication requirements. The following Figure 8 shows a comparison of FMC-1 filings in different categories in the last five fiscal years from 2004 through 2009.

## Federal Maritime Commission

Fiscal Year 2009

Figure 8: Form FMC-1 Filings  
FY 2004 - 2009



### 5. Service Contracts

Service contracts are an alternative to transportation of cargo under tariff rates. Service contracts enable the parties to tailor transportation services to their commercial and operational needs and to keep these arrangements confidential.

During fiscal year 2009, the Commission received 45,328 new service contracts, compared to 44,438 in fiscal year 2008, and 412,570 contract amendments, compared to 294,880 in fiscal year 2008. During the fiscal year, the number of original contracts increased by 2 percent from the previous fiscal year whereas amendment filings increased by nearly 40 percent. The global recession played a large part in the increased number of amendment filings. As rates plummeted this necessitated frequent amendments by adjusting the rates downward.

Federal Maritime Commission

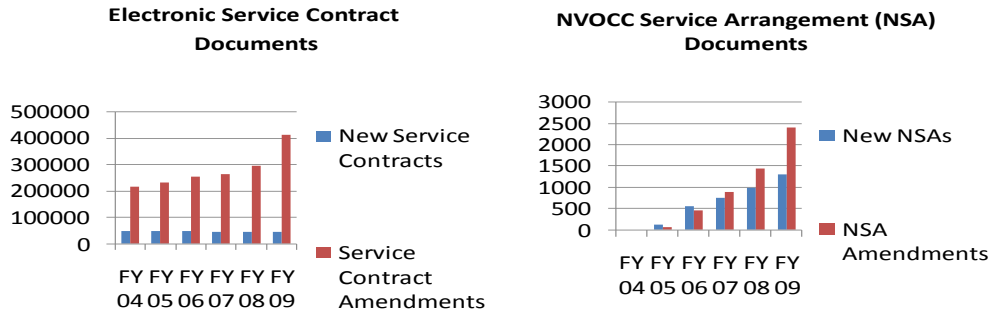
Fiscal Year 2009

As losses mounted, carriers sought rate recovery through various pricing adjustments in addition to rising bunker costs. This resulted in additional amendment filings for bunker adjustments and later on in the year for rate increases. Original service contract or NSA filings that contain clerical errors can be corrected within two business days by filing a “corrected transmission” copy into SERVCON. During the fiscal year, 3,981 records involving corrected transmission copies were filed into SERVCON. The following Figure 9 show the number of electronic service contracts and NVOCC service arrangement documents received by the FMC over the last five fiscal years (2004 through 2009).

6. NVOCC Service Arrangements

Commission rules allow NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers (NSAs) rather than under a published tariff. The Commission’s rules implementing NSAs, 46 CFR Part 531, *NVOCC Service Arrangements*, became effective on January 19, 2005.

Figure 9: Electronic Service Contract and NSA Filings  
FY 2004 - 2009



## **Federal Maritime Commission**

### **Fiscal Year 2009**

At the end of fiscal year 2009, there were 796 NVOCCs registered with the Commission to file NSAs. During fiscal year 2009, approximately 1,289 NSAs and 2,389 amendments were filed by 62 NVOCCs. Since January 2005, when the practice was established, there have been 3,700 NSAs and 5,212 amendments filed by 128 NVOCCs.

#### **7. Controlled Carriers**

A controlled carrier is an ocean common carrier that is, or whose operating assets are, owned or controlled directly or indirectly by a government. The Shipping Act provides that no controlled carrier may maintain rates or charges in its tariffs or service contracts that are below a level that is just and reasonable, nor may any such carrier establish, maintain, or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts. In addition, tariff rates, charges, classifications, rules, or regulations of a controlled carrier may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication.

The Commission's staff monitors U.S. and foreign trade press and other data to identify controlled carriers and any unjust or unreasonable controlled carrier activity that might require Commission action. There are currently eight controlled carriers operating in the U.S. trades:

- (1) American President Lines, Ltd and APL Co., Pte. (RPI No. 000240)  
– Republic of Singapore;
- (2) Ceylon Shipping Corporation (RPI No. 016589) – Democratic-Socialist Republic of Sri Lanka;
- (3) COSCO Container Lines Company, Limited (RPI No. 015614) -  
People's Republic of China;



**Federal Maritime Commission**

**Fiscal Year 2009**

- (4) China Shipping Container Lines Co., Ltd. (RPI No. 016435) - People's Republic of China;
- (5) China Shipping Container Lines (Hong Kong) Company, Ltd. (RPI No. 019269) - People's Republic of China;
- (6) Compagnie Nationale Algerienne de Navigation (RPI No. 000787) - People's Democratic Republic of Algeria;
- (7) Sinotrans Container Lines Co., Ltd. (d/b/a Sinolines) (RPI No. 017703) – People's Republic of China; and
- (8) Shipping Corporation of India Ltd., The (RPI No. 001141) – Republic of India.

**8. Marine Terminal Activities**

Pursuant to the Ocean Shipping Reform Act (OSRA) an MTO may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions. Pursuant to the Commission's regulations governing MTO schedules, any terminal schedule that is made available to the public must be available during normal business hours and in electronic form. Each MTO must notify the Bureau of the electronic location of its terminal schedule by submitting Form FMC-1 before commencing operations. A total of 261 MTOs have filed Form FMC-1. At the close of fiscal year 2009, 152 of these MTOs had published their terminal schedules. The internet addresses for these MTO terminal schedules are posted on the Commission's website.

## **Federal Maritime Commission**

**Fiscal Year 2009**

### **9. Automated Database Systems**

The Bureau currently maintains and uses the following automated databases and filing systems: (1) Form FMC-1 System; (2) SERVCON, the system for filing service contracts and NSAs (as well as internal database systems related to SERVCON registration forms); and (3) the Agreement Profile Database.

At the end of fiscal year 2009, the Form FMC-1 System reflected the tariff location addresses of 326 VOCCs, 4,225 NVOCCs, 6 conferences, and 152 MTOs. The FMC-1 System also allows the Commission to track the status of any Form FMC-1 submitted.

SERVCON contains service contract and NSA data, most of which is available only to the Commission's staff due to confidentiality requirements. Carriers must register to file service contracts by submitting Form FMC-83, and NVOCCs must submit Form FMC-78 to file NSAs. During fiscal year 2010, the Bureau intends to implement an electronic registration procedure for carriers/OTIs filing service contracts and NSAs.

The Agreement Profile Database contains information about the status of carrier and terminal agreements, as well as related monitoring reports. These databases and filing systems provide support for many of the Commission's programs and the Bureau's monitoring efforts. Through specially tailored reports, certain database information is available to the general public. The Bureau also maintains an electronic library of effective carrier and MTO agreements. This library is accessible through the Commission's website.

### **10. Future Plans**

During fiscal year 2010, in addition to its regular review of new ocean carrier and marine terminal operator agreements and on-going monitoring of existing agreements, the Bureau will conduct an in-depth study of the effects, if any, of the European Union's decision to repeal its liner shipping competition

**Federal Maritime Commission**

**Fiscal Year 2009**

law exemption. The study will include formal and informal opportunities for the agency's various stakeholder communities to provide information, views, and suggestions useful to assessing any significant direct or indirect consequences of the EU repeal.

In addition, the Bureau will continue its on-going evaluation of competitive conditions in the US/Australia-New Zealand trade, and assess the current operations of the US/South Africa trade revenue pool.

The Bureau will continue to assist other bureaus with analytical support, participate in the Commission's strategic planning efforts, oversee the filing of service contracts and the publication of liner tariffs, and engage and conduct compliance studies on other research projects concerning liner shipping, maritime terminal operations, and inter-modal transportation in US trades.



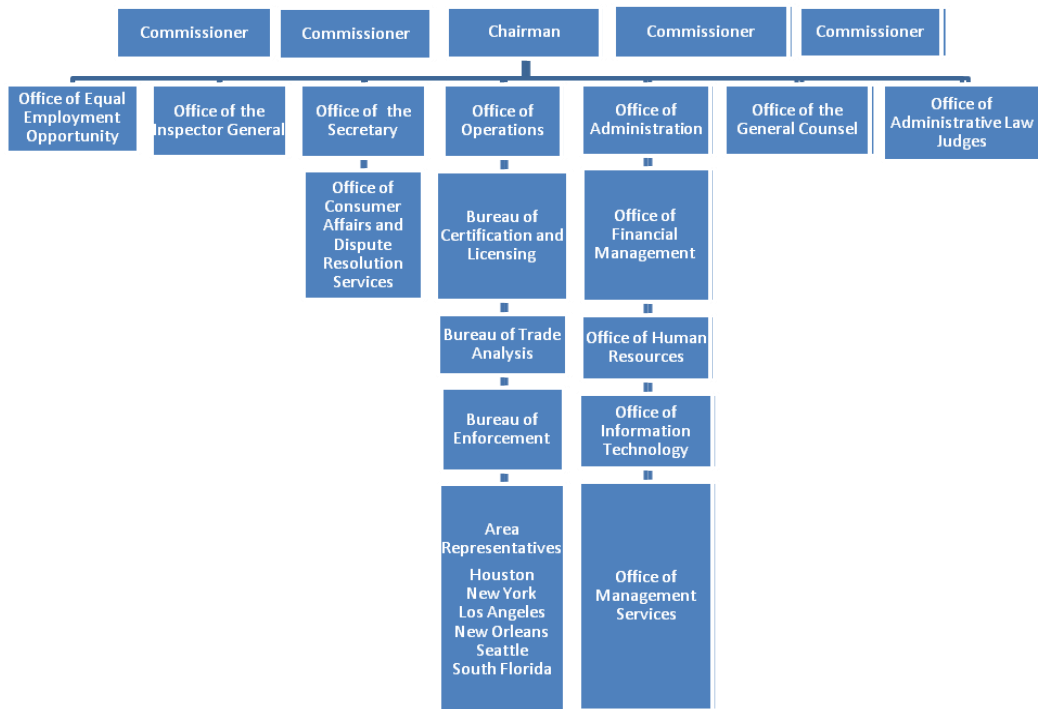
## **APPENDICES**



**Federal Maritime Commission**

**Fiscal Year 2009**

**APPENDIX A**  
**FEDERAL MARITIME COMMISSION**  
**ORGANIZATION CHART**  
**Fiscal Year 2009**



Federal Maritime Commission

Fiscal Year 2009

**APPENDIX B**

**COMMISSION PROCEEDINGS**

**Fiscal Year 2009**

*Formal Proceedings*

*Initial Decisions Not Reviewed*..... 8

*Dismissals* ..... 3

*Order Denying Petition*..... 1

*Order on License Revocation*..... 1

*Informal Docket Order* ..... 1

*Settlement Approval*..... 2

*Rulemakings - Final Rules*..... 2

***Total***..... **18**

***Informal Dockets***..... **3**



Federal Maritime Commission

Fiscal Year 2009

**APPENDIX C**  
**AGREEMENT FILINGS AND STATUS**  
**Fiscal Year 2009**

**Agreements Filed in FY 2009**

**(including modifications and terminations)**

Carrier .....	133
Terminal.....	25
Total.....	158

**Agreement Processing Categories in FY 2008**

Forty-Five Day Review.....	58
Expedited Review.....	8
Exempt-Effective Upon Filing.....	84
Rejection of Filing.....	0
Formal Extension of Review Period.....	4
Withdrawals.....	1
Not Subject.....	0
Total.....	156

**Carrier Reports Submitted for Commission Review**

Minutes of Meetings.....	1,050
Ad Hoc Reports.....	191
Monitoring Reports.....	368
Total.....	1,609

**Agreements on File as of September 30, 2008**

Conference.....	5
Rate Discussion.....	26
Non-Rate Discussion.....	9
Joint Service.....	7
Vessel-Sharing.....	159
Cooperative Working & Other.....	18
Terminal.....	164
Total.....	388

Federal Maritime Commission

Fiscal Year 2009

**APPENDIX D**

**FORM FMC-1**

**TARIFF LOCATION ADDRESSES - ELECTRONIC  
SERVICE CONTRACT AND NSA FILINGS AND  
SPECIAL PERMISSION APPLICATIONS**

**Fiscal Year 2009**

**Form FMC-1 Filings**

VOCCs.....	326
OTI/NVOCCs.....	4,225
MTOs.....	152
Conferences.....	6

**Electronic Service Contract Documents**

New Service Contracts.....	45,328
Service Contract Amendments.....	412,570

**NVOCC Service Arrangement (“NSA”) Documents**

New NSAs.....	1,289
NSA Amendments.....	2,389

**Special Permission Applications**

Granted.....	2
Denied.....	0
Pending.....	0
Withdrawn.....	0

Federal Maritime Commission

Fiscal Year 2009

**APPENDIX E**  
**CIVIL PENALTIES COLLECTED**  
**Fiscal Year 2009**

<b>M Star Logistics Corporation.....</b>	<b>\$ 60,000.00</b>
AME Logistics LLC .....	20,000.00
<b>Abco International Freight USA Inc.....</b>	<b>40,000.00</b>
Cargo, Cargo Logistic, Inc.....	40,000.00
<b>Pacific Transit Services Inc.....</b>	<b>40,000.00</b>
China United Transport, Inc.....	30,000.00
<b>Grandwin Logistics, LLC.....</b>	<b>35,000.00</b>
Hanjin Shipping Company, Ltd.....	440,000.00
<b>U&amp;S Shipping Inc.....</b>	<b>103,000.00</b>
Cosa Freight, Inc. ....	<u>35,000.00</u>
<b>Total Civil Penalties Collected.....</b>	<b>\$843,000.00</b>

Federal Maritime Commission

Fiscal Year 2009

**APPENDIX F**

**STATEMENT OF APPROPRIATIONS,  
OBLIGATIONS AND RECEIPTS FOR  
THE FISCAL YEAR ENDED  
SEPTEMBER 30, 2009**

***APPROPRIATIONS:***

Public Law 111-8, 111<sup>th</sup> Congress: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902, \$22,800,000: Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

**\$22,800,000**

***OBLIGATIONS AND UNOBLIGATED BALANCE:***

Net obligations for salaries and expenses for the fiscal year ended September 30, 2009.

**\$22,733,716**

***STATEMENT OF RECEIPTS:*** Deposited with the General

Fund of the Treasury for the Fiscal Year Ended September 30, 2009:

Publications and reproductions,  
Fees and Vessel Certification,  
and Freight Forwarder Applications **\$ 281,366**

Fines and penalties **\$ 843,000**

**Total general fund receipts **\$1,124,366****



