

# **FEDERAL MARITIME COMMISSION**



## **ANNUAL PROGRAM PERFORMANCE REPORT FOR FY 2003 February 2004**

## INTRODUCTION

The Federal Maritime Commission has prepared the following Annual Program Performance Report for Fiscal Year 2003, as required by the Government Performance and Results Act ("GPRA"), and in accordance with OMB Circular No. A-11, Part 2. The Commission's actual performance in fiscal year 2003 is compared with the projected levels of performance established in the agency's fiscal year 2003 Annual Performance Plan.

This progress report covers the Commission's efforts in fiscal year 2003 to foster an equitable, secure, and market driven ocean transportation industry. The Commission focused on assisting regulated entities in their efforts to comply voluntarily with the shipping statutes. We paid particular attention to the practices of ocean common carriers under their statutory grant of antitrust immunity, so as to address specific actions or proposals that raised the specter of inequitable trading conditions. We also focused on the process of reviewing and updating the passenger vessel program. In addition, the Commission continues to increase the use of the alternative dispute resolution program to provide the industry with a forum for resolving disagreements in a less costly and less litigious manner. Similarly, we improved our communications with the public by implementing a 24-hour response system for inquiries. And our internal operations were enhanced by increasing our training program and reviewing and updating all internal Commission issuances.

We achieved overall success in reaching our stated goals and objectives -- accomplishing most and exceeding several. We continue to find that the planning and direction required by the GPRA process facilitates our efforts to attain results-driven objectives.

We have forwarded this report to the President, with a copy to the Director, Office of Management and Budget, and relevant Congressional committees. Additionally, we have placed this document on our Internet website to ensure that it is readily accessible to interested parties, and have advised all Commission employees to take the time to review it.

We have striven to be direct and concise in the manner in which we are presenting the relevant information. For organizational purposes, and to facilitate review, this report repeats the mission statement from our 2003 Strategic Plan and briefly summarizes it. We then list the strategic goals we have identified as crucial to accomplish our mission. In order to reflect the linkage between our strategic goals and performance goals, we have organized this report by the five program activities under which we operated in fiscal year 2003. For each of these activities, we state the specific strategic goals that are directly related to the performance goals attendant to that activity. We then state each performance goal, the target level of performance for each, and our actual level of performance regarding that goal. For any performance goal that was not met or not substantially completed, we have provided a specific explanation why the goal was not met, along with the actions and schedule for meeting the goal in the future. Additionally, the last section of this report identifies the performance goals from our fiscal year 2002 Annual Performance Plan which we reported in our fiscal year 2002 Program Performance Report as not having

been accomplished or substantially completed, and explains the actions we subsequently took to satisfy the requirements of each such goal.

### **FMC MISSION**

The Commission established its mission as follows:

*Ensure the Nation's interests are met through an efficient, competitive, market-driven, and nondiscriminatory ocean transportation system that is free of unfair foreign maritime trade practices.*

The Commission acknowledged in its 2003 Strategic Plan that the basic principles of liner shipping were being modified. The shipping industry continued to restructure itself while shippers were placing an increasing importance on rates and services. International trade remained dependent upon an efficient and economic ocean transportation system. Given the extremely significant issues the agency was facing, it identified the actions necessary to ensure that its oversight and legislative initiatives produced a competitive and nondiscriminatory trading environment in the U.S. ocean commerce that was in harmony with and responsive to international shipping practices. The Commission set out to focus its energies and efforts on its mission and to ensure that it was organized and managed in a manner best suited to accomplish its mission with a minimum of government intervention and regulatory costs. It also recognized that its actions must encourage the development of a sound U.S.-flag liner fleet.

### **FMC STRATEGIC GOALS**

In recognition of its stated mission, and in conformity with the Shipping Act of 1984 ("Shipping Act"), the FMC established the following four strategic goals:

1. *Efficient Regulatory Process:* Provide a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.
2. *Balanced Enforcement:* Foster economic efficiencies and reliance on marketplace factors by administering U.S. shipping statutes in a balanced and equitable manner that redresses excessive anti-competitive actions and restrictive practices of foreign governments.
3. *Compliance:* Promote the development of U.S. exports and the efficiency of ocean shipping by monitoring and assisting stakeholders in achieving compliance with shipping statutes administered by the FMC.
4. *Internal Capabilities:* Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its industry assistance, enforcement and educational responsibilities.

These strategic goals addressed all important FMC statutory, programmatic, and management responsibilities. They were developed with a specific focus on accomplishing the basic thrusts of our mission. The Commission determined that achieving its mission-driven goals would enable it to address effectively the external factors it faced, while assuring an equitable and efficient administration of the shipping statutes under its jurisdiction.

## **PROGRESS IN ACHIEVING PERFORMANCE GOALS**

The performance goals of the Commission's FY 2003 Annual Performance Plan were linked directly to the Commission's strategic goals; they were identified as the appropriate means for accomplishing our mission. This section of the report assesses our actual performance in addressing these goals.

### **Budget Program Activity: Formal Proceedings**

#### **Related Strategic Goals**

1. *Efficient Regulatory Process*: Provide a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.

4. *Internal Capabilities*: Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its industry assistance, enforcement, and educational responsibilities.

#### **Performance Goal 1:**

*Increase by 50% over FY 2002 the number of formal proceedings in which the Commission's ADR services are actively utilized towards informally resolving the involved dispute.*

**Progress:** The Commission exceeded this goal in fiscal year 2003. The Commission's ADR services were particularly instrumental in helping resolve complaint proceedings. In fiscal year 2003, the number of formal proceedings in which the Commission's ADR services were actively involved increased from three to five, a 67% increase. In addition to formal proceedings, the Commission provided mediation services that ultimately led to settlement of an informal docketed proceeding in fiscal year 2003.

#### **Performance Goal 2:**

*By 3/30/03, requests for public information received by the Office of the Secretary are referred for response on the date received, and initial contact is made within one business day.*

**Progress:** The Commission accomplished this goal during the fiscal year by implementing a process that provides an immediate acknowledgment to all requests for information received through the two public information e-mail boxes maintained by the Office of the Secretary. During the business day, all requests received in the public information e-mail boxes are continuously referred to the appropriate Bureau or Office for response. Requests received during non-duty hours are referred at the beginning of the next duty day. All public information requests that are received by regular mail are referred upon receipt. During fiscal year 2003, the Office of the Secretary received approximately 400 public information requests.

### **Performance Goal 3**

*Provide assistance and technical advice to Congress regarding issues identified in the Commission's OSRA Impact Study as areas for possible legislative consideration.*

**Progress:** In its report on the impact of the Ocean Shipping Reform Act of 1998 ("OSRA"), the Commission identified several provisions in the statute which could be viewed as ambiguous or which could be revised to more clearly reflect Congress' intent. Some of these provisions are purely technical, while others are of a more substantive nature. In large part, however, as a result of the significant changes in the ocean transportation industry since OSRA, many of the issues identified no longer warrant legislative action, or could be addressed in a different manner. For example, the Commission promulgated a new rule, after notice to and comment from the industry, to amend the definition of "ocean common carrier." The rule clarifies that ocean common carriers will include only those carriers who actually operate a vessel in at least one United States trade. This is significant because only ocean common carriers are permitted to enter into service contracts and agreements under the Shipping Act. With respect to the issues relating to controlled carriers, the Commission conducted an internal study on how best to monitor the pricing practices and activities of controlled carriers. Finally, the issues relating to service contract and bill of lading inconsistencies are being examined in an international scope with the efforts to revise the cargo liability laws. Therefore, we consider this goal substantially completed.

## **Budget Program Activity: Operational and Administrative**

### **Related Strategic Goals**

1. *Efficient Regulatory Process:* Provide a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.

4. *Internal Capabilities:* Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its industry assistance, enforcement and educational responsibilities.

## **Performance Goal 1:**

*Ensure that an effective agency-wide security program that complies with the Government Information Security Reform Act ("GISRA") is in place by 6/30/03. The program must provide for: appropriate management controls and risk management; all necessary contingency planning; the physical security of all equipment; security awareness training for agency employees; and appropriate documentation of all procedures and system operations.*

**Progress:** While the Commission has made progress towards achieving a more effective agency-wide security program, budgetary considerations and staffing issues precluded us from developing all aspects of this program to the extent envisioned by the Federal Information Security Management Act of 2002 ("FISMA," the successor legislation to GISRA). Under GISRA/FISMA, the Commission established a Plan of Action and Milestones ("POA&M") for deficiencies in its security system identified either by the agency or by the agency's Inspector General ("IG"). The Commission used the POA&Ms as a road map for improving its security program. A number of targeted improvements were made, but some, particularly those calling for documentation and planning, were not completed. Initially the Commission had planned to retain contractor assistance to address the latter POA&Ms, however, in part due to funding issues, this plan was re-evaluated. After reconsideration of an IG audit of information technology ("IT") functions, the Commission set as a top priority the establishment of a full-time Chief Information Officer ("CIO") position to oversee implementation of IT security improvements. Recruitment was completed and the new CIO hired late in fiscal year 2003. The CIO spent the remainder of FY 2003 evaluating the Commission's security infrastructure and was tasked to address these matters. We hope to be in a position in FY 2004 to establish a viable course of action to address the remaining IT security issues.

## **Performance Goal 2:**

*Develop and implement a comprehensive training plan that focuses on enhancing staff analytical and communications skills, acclimating new hires to the maritime industry and agency operations, and enabling staff to fully utilize emerging developments in the IT area.*

**Progress:** The Commission was successful in accomplishing this goal. The training plan was developed by first conducting a needs assessment survey regarding employee skills. These needs were analyzed and suitable training was recommended to enhance staff proficiency and correct skill imbalances. In addition, the Commission determined and dedicated mandatory budgets to guarantee the availability of training funds for crucial program areas. Further funds were allocated to meet mandatory training requirements. The Commission also ensured that training plans for employees in developmental programs (Presidential Management Fellows ("PMF'S"), Senior Executive Service Candidate Development Program ("SESCDP"), new hires) focused on meaningful training and developmental opportunities. The training program is consistently monitored with respect to needs and funds, and monthly reports document all training completed and scheduled.

### **Performance Goal 3:**

*Review all internal Commission issuances for continued applicability, accuracy, clarity, and potentially unnecessary procedures/processes, and then develop a plan for implementing all appropriate modifications.*

**Progress:** The Commission was very successful in achieving this important performance goal. All Commission issuances were reviewed, and a plan was developed, with appropriate deadlines, for implementing all necessary modifications. An initial review of Commission Orders had been undertaken in fiscal year 2002, resulting in 13 Orders being revised. This fiscal year, 18 of the 58 existing Commission Orders were identified as needing revision; one Commission Order had become obsolete because of new Office of Personnel Management regulations, and was revoked. Thirteen of these Commission Orders were revised and issued by the end of this fiscal year, and four were issued early in fiscal year 2004. The remaining Order, involving Emergency Preparedness, was intentionally held in abeyance pending finalization of various aspects of our emergency preparedness planning effort. As each Commission Order was issued, it was posted to the agency's Intranet to ensure instant availability to all employees. Additionally, we have targeted six Commission Orders for change after the realignment of the agency's IT operations is completed; we anticipate accomplishing these changes in fiscal year 2004.

Completion of this performance goal eliminates unnecessary procedures, burdens, and requirements that could result in unwise use of employee time. It also ensures that employees have access to complete and accurate information in areas such as a drug-free workplace, upward mobility, official travel, time and attendance, and performance appraisal. The Commission plans to review and update issuances as necessary to ensure that our internal operating procedures remain current, are clearly conveyed, and enhance efficiency.

## **Budget Program Activity: Consumer Complaints and Licensing**

### **Related Strategic Goals**

1. *Efficient Regulatory Process:* Provide a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.
3. *Compliance:* Promote the development of U.S. exports and the efficiency of ocean shipping by monitoring and assisting stakeholders in achieving compliance with shipping statutes administered by the FMC.
4. *Internal Capabilities:* Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its industry assistance, enforcement and educational responsibilities.

### **Performance Goal 1:**

*Evaluate passenger vessel operator ("PVO") program and suggest changes, if necessary, to assure that it meets contemporary needs of cruising public.*

**Progress:** The Commission substantially completed this goal. Early in fiscal year 2003, the Commission issued a Notice of Proposed Rulemaking in Docket 02-15, *Passenger Vessel Financial Responsibility*, in regard to circumstances of non-performance in the industry. Significant, extensive comments were received to the proposals, with many commenters evincing strong opposition to several aspects of the proposals. In addition to written comments, the Commission held oral hearings to receive input from affected parties. The comments and information provided in response to the proposed rule were analyzed by staff, and at the end of 2003 a recommendation was being drafted for Commission review. The recommendation will be reviewed by the Commission in fiscal year 2004.

### **Performance Goal 2:**

*Develop an effective program for updating ocean transportation intermediary ("OTI") licensee data.*

**Progress:** The Commission reviewed several approaches for updating OTI licensee data. Staff performed an extensive audit of contact information for every OTI, including address, telephone and facsimile numbers, name of qualifying individual, and financial responsibility information. Data was cross-checked with another internal database and each OTI was contacted if a match of key data fields was not found. In all written and oral communications with OTIs, including the FAQs on our homepage, we stressed the importance of keeping the Commission informed of such changes. The seminars presented by the agency's Area Representatives also reminded OTIs of their obligations. The actions ensured that we achieved the objectives of this performance goal, and will facilitate our ongoing efforts to maintain accurate license data. We consider this performance goal achieved.

### **Performance Goal 3:**

*Enhance informal complaint database to include more specific details on type of complaints against cruise operators.*

**Progress:** While discussions took place on the information to be captured, modifications to the structure of the complaint database and additional query/report programming changes were not effected. Resources necessarily had to be devoted to several major complex and time-consuming passenger vessel program matters. Several PVOs experienced worsening financial conditions which required much attention by the involved Bureau, staff responded to depositions in an arbitration matter, and a good deal of time was dedicated to reviewing comments to the PVO proposed rulemaking. In addition, the involved Bureau's workload regarding OTIs increased, heightening RPI database management responsibilities. The agency's Office of Information Technology will provide



IT support to assist in the endeavor to enhance the complaints database, and we plan to have this goal completed in fiscal year 2004.

## **Budget Program Activity: Trade Analysis**

### **Related Strategic Goals**

1. *Efficient Regulatory Process*: Provide a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.

2. *Balanced Enforcement*: Foster economic efficiencies and reliance on marketplace factors by administering U.S. shipping statutes in a balanced and equitable manner that redresses excessive anti-competitive actions and restrictive practices of foreign governments.

#### **Performance Goal 1:**

*By 12/31/02, further develop and apply updated ocean carrier constructive costs benchmark to be taken into account in analyses of controlled carrier rate activity under section 9 of the 1984 Act, as amended by OSRA.*

**Progress:** This performance goal has been partially completed. To date, the staff has contacted carriers and maritime consulting firms to ascertain what major cost components are relevant to a carrier's total cost to carry cargo, the method by which the Commission could obtain this data, and in what level of detail. In addition, the staff has sought publicly available vessel cost data from a variety of sources, including other federal agencies, to use in developing the constructive cost of a controlled carrier. Although some cost information is available from other federal agencies, the data does not cover a carrier's entire cost of carrying cargo. The staff is preparing a memorandum proposing a revised controlled carrier monitoring program which will include suggested methodologies and proxies for deriving and validating the constructive cost of a controlled carrier. The proposal will require further research into the criteria necessary to arrive at an appropriate controlled carrier program, including recognition of the recent bilateral trade agreement with China since several major controlled carriers are Chinese. We contemplate initiating a new program in fiscal year 2004.

#### **Performance Goal 2:**

*By 3/31/03, refine the ongoing program to evaluate the level of adherence in individual carrier service contracts to agreement voluntary service contract guidelines in major trade lanes.*

**Progress:** This performance goal has been met. The program has been refined so that the Commission is able to measure adherence to agreement voluntary service contract guidelines in a more efficient and expeditious manner. Examination of adherence to service contract guidelines is being conducted more frequently and in trade areas deemed to be

of principal concern due to competitive trade conditions. The staff examines confidentially filed service contracts filed in SERVCON, the Commission's Internet based service contract filing system. In order for adherence to be measured more accurately a new, more powerful search engine along with other enhanced features integrated with SERVCON in late August 2002 were employed, enabling the Bureau staff to focus searches more easily and obtain service contracts independently for review and analysis in fiscal year 2003.

The staff examined individual carrier service contracts to evaluate adherence to voluntary service contract guidelines in major trade lanes as envisioned by this performance goal. The staff focused on specific guidelines most reflective of overall trade conditions, when evaluating adherence in individual carrier service contracts. Additionally, complaints filed against three agreements in major trade lanes, namely the Transpacific Stabilization Agreement ("TSA"), Westbound Transpacific Stabilization Agreement ("WTSA"), and the Caribbean Shipowners Association ("CSA"), contributed to establishing criteria for a thorough analysis of the various voluntary service contract guidelines. The Bureau intends to continue to review the voluntary service contract guidelines of agreements that are considered substantially anti-competitive as part of its overall monitoring program on a regular schedule.

### **Performance Goal 3:**

*By 3/31/03, implement an internal training program directed at improving staff writing skills necessary for the proper analysis and presentation of issues arising from the monitoring of industry activity pursuant to underlying statutes.*

**Progress:** The objectives under this performance goal were accomplished in fiscal year 2003. Approximately 20 staffers attended a three-day Critical Thinking Workshop conducted on-site. The outcome anticipated under this performance goal was to improve the ability of staff to write various memoranda and studies that the audience could easily understand, and to improve clarity in writing and presentation to make it easier for senior level officials and the Commission to understand the staff's memoranda/studies. The exercises in the workshop focused on topics such as mind-mapping, reverse outlines, thinking in and out of the box, common reasoning errors, problem-solving strategies, ways to develop ideas, preconditioned thinking, assumptions, comprehension skills, and establishing relationships between ideas. Further, the class exercises focused on a dozen or more skills for clear thinking and effective writing such as: analyzing information, evaluating options, drawing conclusions, organizing ideas, and seeing the big picture. The staff has since prepared various memoranda and reports/studies to the Commission using the skills taught in class exercises in the workshop. The topics covered in the workshop challenged all staff members to become better critical thinkers, to ask more questions, and to answer them clearly. We also have observed improvement in the crafting of general e-mail messages and other interoffice memoranda generated by the staff.

## **Budget Program Activity: Enforcement**

### **Related Strategic Goals**

1. *Efficient Regulatory Process:* Provide a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.
2. *Balanced Enforcement:* Foster economic efficiencies and reliance on marketplace factors by administering U.S. shipping statutes in a balanced and equitable manner that redresses excessive anti-competitive actions and restrictive practices of foreign governments.
3. *Compliance:* Promote the development of U.S. exports and the efficiency of ocean shipping by monitoring and assisting stakeholders in achieving compliance with shipping statutes administered by the FMC.

#### **Performance Goal 1:**

*Review and monitor activities of non-traditional transportation intermediaries and logistics service providers to determine applicability of, and compliance with, OTI regulations.*

**Progress:** This goal was achieved by conducting a review of industry periodicals and advertisements and inquiries from the public and competitors which identified non-traditional transportation intermediaries and logistics service providers appearing to offer OTI services. Early investigative efforts and contacts were instituted with a number of these entities to assure equitable competition by and among these entities. The most prominent logistics service providers determined not to offer OTI services directly, or to obtain the necessary tariff, bond and license prior to providing services as an OTI. Where entities continued to offer OTI services without compliance with the regulations, despite Commission efforts to obtain voluntary compliance, their status and activities have been addressed in enforcement actions. Eight such cases were concluded in fiscal year 2003.

#### **Performance Goal 2:**

*Effectively automate the general indices of the Bureau of Enforcement's system of records used in OTI application review.*

**Progress:** In conjunction with the Bureau, the agency's Office of Information Technology successfully designed, tested and made operational an automated system of records to replace the index-card based system used by the Bureau for over 30 years. The new system provides entry and search capabilities previously unavailable providing for an expedited review and response to information requests relative to its licensing programs. In addition, planning was concluded for an automated system which will access BOE's historic index card archives and allow those records to be integrated into the new automated records system, thereby creating a single database for all investigative needs.

### **Performance Goal 3:**

*By 12/15/02, refine and update the program for review and monitoring of activities of controlled carriers, to determine excessive anti-competitive actions or Controlled Carrier Act violations. Initiate appropriate enforcement action as necessary to address any such activities or practices.*

**Progress:** The program for review and monitoring of the activities was refined and updated during fiscal year 2003. The Commission reviewed, revised and republished the agency's controlled carrier list on June 3, 2003. Nine carriers were removed and one added to the listing. A vessel operating common carrier audit program was utilized in identifying certain carriers no longer operating. The issue of controlled carriers also was reviewed regularly in the agency's Task Force on International Affairs, the tariff activities of controlled carriers appropriately monitored, and responses were provided to inquiries of the U.S. Department of State with respect to possible activities of controlled carriers. In addition to the program review and update, enforcement activities or formal Commission inquiries were conducted with respect to the operations and activities of certain controlled carriers and affiliated entities. Pending matters included Commission action on petitions by certain controlled carriers for relief from provisions of the Controlled Carrier Act.

## **FY 2002 PERFORMANCE GOALS NOT ACHIEVED**

This section reflects the goal from our FY 2002 Annual Performance Plan which we reflected in our FY 2002 Progress Report as not achieved or not substantially completed. We explain in this section the actions we have taken to address this goal.

### **Performance Goal 1 (Operational and Administrative Program Activity):**

*By 9/30/02, utilize developments in technology to find a reasonable, cost-effective software system to procure, then develop and implement the capability for electronic filing for all major business transactions with the Commission, consistent with the Government Paperwork Elimination Act and the Electronic Signatures in National and Global Commerce Act.*

While the Commission made progress towards providing an electronic process for major business transactions, the agency again had to delay accomplishment of this goal. In fiscal year 2001, the Commission had been able to contract with a private sector source to evaluate the Commission's capabilities and recommend alternatives. Based on the cost of specific software and processes recommended, in 2002 the Commission reconsidered the option of developing systems in house without procuring the specialized software. Subsequently, several systems to collect information via the Internet were developed ad hoc and introduced, such as the FMC-1 and the Service Contract Filing System. While

progress moved slowly toward accomplishing this performance goal, we identified technical and skills issues that needed to be addressed prior to full completion. During this period, the Chairman asked the agency's Inspector General (" IG") to evaluate the entire IT program. The results of this audit provided a blueprint for redefining our IT program and its focus.

In fiscal year 2003, the Commission concentrated on implementing the IG's recommendations and determining where GPEA implementation fit into the scope of overall IT plans. As part of this plan, a full-time Chief Information Officer was recruited, who has been providing senior management with options for IT program solutions to facilitate the agency's strategic plan.

Currently, the CIO is developing a plan to achieve complete compliance with GPEA. The plan will be completed in fiscal year 04. Planning will also continue on integrating electronic filing into the agency's overall enterprise resource programming.