

51st Annual Report

Federal Maritime Commission



Fiscal Year 2012

**FEDERAL MARITIME
COMMISSION**

**51st
ANNUAL REPORT**

for

Fiscal Year

2012



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FEDERAL MARITIME COMMISSION

WASHINGTON, D.C. 20573-0001

March 31, 2013

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, as amended, at 46 U.S.C. §306(a), I am pleased to submit the 51st Annual Report of the activities of the Federal Maritime Commission for fiscal year 2012.

Sincerely,

A handwritten signature in black ink, reading "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 Expired 2012



Joseph E. Brennan
Commissioner
Appointed 1999
Term Expired 2008



Rebecca F. Dye
Commissioner
Appointed 2002
Term Expires 2015



Michael A. Khouri
Commissioner
Appointed 2009
Term Expires 2016



Mario Cordero
Commissioner
Appointed 2011
Term Expires 2014

SENIOR COMMISSION OFFICIALS

Chief of Staff.....*Lowry A. Crook*
Counsel to Commissioner Brennan*Steven D. Najarian*
Counsel to Commissioner Dye*Edward L. Lee, Jr.*
Counsel to Commissioner Khouri.....*John A. Moran*
Counsel to Commissioner Cordero.....*Mary T. Hoang*
General Counsel*Rebecca A. Fenneman*
Secretary.....*Karen V. Gregory*
Chief Administrative Law Judge.....*Clay G. Guthridge*
Director, Office of Consumer
Affairs and Dispute Resolution Services.....*Vacant*
Director, Office of
Equal Employment Opportunity*Keith I. Gilmore*
Inspector General*Adam R. Trzeciak*
Managing Director.....*Ronald D. Murphy*
Deputy Managing Director.....*Florence A. Carr*
Director, Strategic Planning
and Regulatory Review*Austin L. Schmitt*
Director, Bureau of Certification
and Licensing*Vern W. Hill*
Director, Bureau of Enforcement*Peter J. King*
Director, Bureau of Trade Analysis.....*Sandra L. Kusumoto*

Mission

To foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.



I

THE COMMISSION

A. FUNCTIONS

The Federal Maritime Commission (FMC) is an independent agency responsible for the regulation of oceanborne transportation in the foreign commerce of the United States for the benefit of U.S. exporters, importers, and the U.S. consumer. The principal statutes administered by the Commission are the Shipping Act of 1984 (1984 Act), the Foreign Shipping Practices Act of 1988 (FSPA), section 19 of the Merchant Marine Act, 1920 (1920 Act), and sections 2 and 3 of Pub. L. No. 89-777, 80 Stat. 1350, 46 U.S.C. 40101-44106.

The Commission's regulatory responsibilities include:

- Reviewing and monitoring 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. Under the 1984 Act, the general antitrust laws do not apply to certain agreements between or among ocean common carriers and marine terminal operators. The Commission conducts preliminary reviews and performs ongoing oversight of such agreements and can take action to address agreement activity that does not meet the requirements of the 1984 Act, or that cause effects prohibited by the 1984 Act.
- Maintaining and reviewing confidentially filed service contracts and NVOCC Service Arrangements between ocean common carriers and shippers to guard against detrimental effects to shipping in the U.S. foreign trades.

- Providing a forum for exporters, importers, and other members of the shipping public to obtain relief from ocean shipping practices or disputes that impede the flow of commerce and otherwise cause economic harm.
- Ensuring common carriers' tariff rates and charges are published in private, automated tariff systems and electronically available to the shipping public.
- Monitoring 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 claims for personal injury or death, and to reimburse passengers in the event of 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 financial responsibility to protect the shipping public from financial loss.
- Protecting the shipping public from economic harm by investigating rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the United States, and acting to stop unjust or unlawful practices that violate the 1984 Act.
- Taking action to address unfavorable conditions arising out of foreign government or business practices in the U.S. foreign shipping trades.

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 regulated entities, the shipping public, and other affected individuals or interest groups.

B. 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); 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 the Managing Director; the Offices of Human Resources, Budget and Finance, Management Services, and Information Technology; the Bureaus of Certification and Licensing, Enforcement, and Trade Analysis; and the Commission's Area Representatives. In fiscal year 2012, the Commission had a total appropriation of \$24,100,000. That appropriation supported the actual employment of 123 full-time equivalent positions during the fiscal year. The majority of the Commission's personnel are located in Washington, D.C., with Area Representatives in Houston, Los Angeles, New Orleans, New York, Seattle, and South Florida.

II

THE YEAR IN REVIEW

As U.S. economic growth slowed during the first three quarters of fiscal year 2012, so too did the demand for ocean transportation. However, capacity adjustments implemented by carriers did not cause the vessel capacity shortages experienced in fiscal year 2010. For much of fiscal year 2012, shippers were able to ship their goods at much lower cost than in 2011. Meanwhile, liner vessel operators reported sharply lower earnings, resulting from lower rates across the board. In the latter part of fiscal year 2012, however, carriers began implementing a series of general rate increases that were able to generate increased revenue. Looming over the industry during the last quarter of fiscal year 2012 was the possibility of a strike by U.S. east coast dockworkers. That possibility led most carriers to publish significant congestion surcharges. As the fiscal year closed, dockworkers and ship owners were engaged in renewed talks to avoid a strike.

The Federal Maritime Commission's mission is to foster a fair, efficient and reliable international ocean transportation system, and to protect the public from unfair and deceptive practices. The highlighted actions under the Commission's Strategic Goals provide an overview of agency activities in pursuit of its mission.

Strategic Goal 1: Maintain an Efficient and Competitive International Ocean Transportation System

The FMC is charged with ensuring competitive and efficient ocean transportation services for the shipping public. Competition in U.S. trades helps to foster competitive rates and encourage diverse service offerings for the benefit of U.S. exporters and importers, and ultimately consumers. The 1984 Act grants ocean carriers and MTOs limited antitrust immunity for activities pursuant to agreements they file with the Commission. The carriers and terminal operators are subject to the FMC's monitoring of their

activities to guard against possible abuse of that limited immunity, to avoid unreasonable increases in transportation costs or decreases in transportation services, and to guard against other activities prohibited by the 1984 Act.

During fiscal year 2012, the Commission concentrated on facilitating U.S. exporters' access to foreign markets via ocean transportation, supporting the economic recovery, protecting American consumers, encouraging a sustainable ocean transportation industry, enhancing safety and security, and monitoring foreign practices to protect American jobs. The Commission continued to closely monitor concerted activities of carriers, particularly in the transpacific trades, to ensure that agreement members did not cause unreasonable increases in rates or unreasonable reductions in service. In addition, the Commission monitored the availability of ocean container chassis as carriers decided to shift the responsibility and cost for securing chassis to shippers.

The Commission's Bureau of Trade Analysis issued its *Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law*. The study collected and analyzed data on the impact of the October 2008 European Union repeal of its block competition law exemption for liner conferences. Data analyzed included information regarding changes in carrier market structures, competition, services, vessel capacity, rates, and surcharges. The study concluded that:

- The repeal of the block exemption did not appear to have caused any negative impact on U.S. liner trades.
- The activities of carrier rate discussion agreements in the U.S. trades do not appear to have increased average rates relative to rates in EU trades, but may have contributed to modestly reduced rate volatility.
- The repeal may have resulted in a modest increase in market concentration, but not such that would present problems.

Supporting U.S. exports and the economic recovery: During fiscal year 2012, exported goods continued to grow, on pace to exceed the National Export Initiative's goal of doubling U.S. exports by 2015. While vessel capacity and container availability met demand, the Commission continued to use recently established Rapid Response Teams to provide prompt solutions for commercial disputes between carriers and their customers.

The Commission also assisted the U.S. Department of Agriculture's Agricultural Marketing Service (AMS) with its exporters' project to give more transparency and visibility to the chronic problem of locating empty containers for exports. AMS' Ocean Shipping Container Availability Report (OSCAR) is published weekly and shows container availability at 18 U.S. port and inland locations, using data provided by nine leading ocean carriers. The report helps U.S. exporters determine weekly container availability, and provides projections two weeks in the future.

Economic Assistance to Small Businesses: In fiscal year 2011, the Commission approved a rule change to conditionally exempt more than 3,300 licensed non-vessel-operating common carriers (NVOCCs) from the costs and burdens of publishing in tariffs the rates they charge for cargo shipments. In fiscal year 2012 more than 3,500 NVOCCs could take advantage of this exemption. Most NVOCCs are small businesses who could see significant savings from the exemption. The Commission followed up in fiscal year 2012 with an inquiry to solicit public comments on suggestions for further improvement to its rules including extending the conditional exemption to foreign-based NVOCCs.

Marine Environmental Committee and Clearinghouse: The FMC has seen environmental issues become increasingly central to the agreements and shipping practices it monitors. The Commission's Marine Environmental Committee reviews filings at the agency for best environmental practices which can be put forward as models for adoption by other ports and companies. The Commission also has created a webpage to serve as an environmental issues clearinghouse for information on maritime environmental issues, news, resources, laws and regulations, and best practices. The

Commission held a public Forum on Port Environmental Initiatives in April 2012 where representatives from the ports of Houston, Long Beach, Los Angeles, New York/New Jersey, Oakland, and Virginia gave presentations on their environmental and sustainability initiatives and engaged in general discussion with Commissioners about the future of port environmental issues.

Container Freight Index-Based Service Contracts: The Commission amended its service contract regulations to give shippers and carriers more flexibility and certainty in their use of long-term service contracts. The new rule permits periodic adjustment to freight rates contained in multi-year contracts using an index reflecting changes in market conditions, so long as the index is readily available to the parties and the Commission.

Cargo Diversion: As a result of requests from two U.S. senators and several members of the House of Representatives, the Commission conducted a study of the impacts and the extent to which the Harbor Maintenance Tax (HMT), other U.S. policies, and other factors may incentivize inbound container cargo to shift from U.S. seaports to competing ports located in Canada and Mexico. Accordingly, the Commission published an inquiry soliciting public views and information concerning the factors that may cause or contribute to such a shift in cargo. The Commission's report was issued in the fourth quarter of fiscal year 2012 with the following conclusions:

- Carriers shipping cargo through Canadian and Mexican ports violate no U.S. law, treaty, agreement, or FMC regulation.
- Numerous factors account for why shippers elect to use ports in Canada or Mexico. They include overall shipment savings, risk mitigation through port diversification, perceived transit time benefits, avoidance of the HMT and rail rate disparities.
- Congress has many options to consider should it decide to revise or replace the current HMT structure.

Strategic Goal 2: Protect the Public from Unlawful, Unfair, and Deceptive Practices and Resolve Shipping Disputes

The FMC has a wide variety of responsibilities to protect the public from financial harm, including assisting in the resolution of disputes related to the shipment of goods or the carriage of passengers, investigating and prosecuting unreasonable or unjust practices, and ruling on formal complaints alleging violation of the 1984 Act. The FMC contributes to the integrity and security of the nation's supply chain and transportation system by identifying unlicensed operations and licensing only those ocean transportation intermediaries with appropriate character and financial responsibility. The FMC also ensures financial coverage of passenger vessels to indemnify passengers in the event of nonperformance. Pursuant to these regulatory responsibilities the Commission undertook a number of significant actions during fiscal year 2012 to address issues affecting American consumers who ship their personal goods overseas or take cruises.

Household Goods Shipments: The Commission undertook several actions as a result of the fiscal year 2011 Fact Finding Officer's report in Fact Finding Investigation No. 27, *Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices Related to the Movement of Household Goods or Personal Property in U.S.-Foreign Oceanborne Trades*. Each year, the FMC receives several hundred complaints from individuals who have experienced problems with their international household goods shipments. To address this continuing issue, in fiscal year 2012 the Commission took the following actions:

- **Consumer Education:** The Commission launched a redesigned and re-structured website that improved both content and delivery of information, including better information and tools to help the public shopping for international shipping options; entered into a formal Memorandum of Understanding with the Federal Motor Carrier Safety Administration (FMCSA) to conduct joint investigative operations against international

and interstate movers with a history of chronic complaints and violations and to engage Commission ombuds support in resolving problems for consumers; developed relationships for enhanced cooperation with trade associations representing household goods movers; developed information for OTIs to distribute to consumers moving household goods; targeted outreach to local communities, particularly certain ethnic communities that regularly ship household goods overseas; and encouraged household goods movers to link their websites to the FMC's website for consumer information.

- **Licensing Issues:** As the Commission reviews its licensing regulations, it will pursue recommendations for adjustments that specifically address issues affecting household goods shipments.

Preventing Fraud and Enhancing Safety and Security: The Commission's Bureau of Enforcement and Area Representatives continued efforts to investigate and prevent practices that are unfair and deceptive. Targeted violations included misdescription of cargo, which also poses a serious safety and security risk because it could prevent vessel operators and port officials from knowing whether dangerous goods are being transported on vessels into the United States. During 2012, the Commission completed 12 cases by collecting \$838,000 in penalties for such violations.

Monitoring Foreign Practices to Protect American Jobs: The Commission also was vigorous in carrying out its charge to monitor and prevent practices by foreign governments or entities that adversely affect American commerce. The Chairman hosted a visit from the Shanghai Shipping Exchange (SSE) to jointly discuss regulatory issues of China and the U.S. and create a climate of cooperation to overcome any barriers to international trade with China. The Commission continues to closely follow developments in China to ensure that no unreasonable conditions exist that would impair U.S. commerce.

Dispute Resolution: During fiscal year 2012, 670 complaints were received that necessitated the opening of cases to provide dispute resolution services. This was a 19 percent increase over the volume of cases in fiscal year 2011

and included 132 passenger complaints about cruise line issues, 274 complaints with respect to household goods shipments, and 264 complaints involving other cargo shipment matters.

Participation of the parties in confidential ADR services can provide a means for immediate, cost-effective resolution through cooperation between parties. Confidentiality is essential to the success of such efforts, especially considering the confidential nature of service contracts. Cargo shipment complaints continued to be of increasing complexity. Problems involving ocean transportation intermediaries with overextended finances and inability to complete the ocean transportation continued to be an issue. In addition, many household goods complaints pertained to initial charges quoted vis á vis the actual charges billed, often due to measurement discrepancies.

Technology and Stewardship of Resources: Strategic management of the FMC's human resources, property management, financial and procurement practices and other vital support activities is essential to meet the agency's regulatory and programmatic goals. The FMC realizes the need to use new information technology (IT) as a means of improving agency business processes and augmenting the accessibility of the public conducting licensing or legal business with the agency. In fiscal year 2012, the Commission explored various means to update and revise its existing IT infrastructure to meet agency needs and government-wide standards, and to improve efficiency of operations. System improvements are critical to the Commission's ability to carry out its mission, especially in an era of increasing demands but declining human resources.

III

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES¹

A. WORLDWIDE

The world's container trade expanded by almost 3 percent in fiscal year 2012 compared to an expansion of approximately 7 percent in 2011. As the fiscal year came to a close, 255 containerships lay idle, representing 3.4 percent of the total fleet capacity measured in TEUs (twenty-foot equivalent container units). In contrast, 156 ships representing 2.2 percent of the containership fleet capacity lay idle at the end of fiscal year 2011.

Container volumes in the U.S. liner trades in fiscal year 2012 expanded 2.4 percent to 29.6 million TEUs, compared to 28.9 million last year. The U.S. share of the world's container trades was 18 percent. U.S. container imports continued to increase, expanding by 3 percent to 17.6 million TEUs, compared to 17.0 million in 2011. This was still well below the record of 19.4 million TEUs reached in fiscal year 2007. U.S. container exports also expanded slightly, increasing by less than 1 percent to 12.0 million TEUs. As a result, the U.S. container imbalance worsened; for every 100 loaded containers exported from the U.S. 147 were imported, compared to 143 imported in fiscal year 2011.

On a worldwide basis, the containership fleet continued to expand, but that expansion was tempered by an increase in the number of vessels being idled or scrapped. This fiscal year, the containership fleet's nominal capacity grew at a rate similar to its growth rate in fiscal year 2011, just under 7 percent. At the end of September 2012, 4,950 containerships, with a fleet capacity of 16.2 million TEUs, were available to serve the world's container

¹ The FY 2011 import data cited in this report may differ slightly from those reported in last year's annual report due to vendor adjustments in previous years' data.

trades. Net of vessels scrapped, only 38 containerships were added to the world fleet, a notable drop from last year's 81. As of September 30, 2012, there were orders worldwide for 514 new containerships with an aggregate capacity of 3.6 million TEUs, which is equivalent to 22 percent of the existing fleet capacity.

The world's container shipping industry remained almost as concentrated during fiscal year 2012 as it was in prior years. At the end of fiscal year 2012, the top five container operators controlled 45 percent of the world's containership fleet capacity, the top ten controlled nearly 63 percent, and the top twenty controlled almost 84 percent compared to 46 percent, 66 percent, and 88 percent, respectively, during the prior year. The carriers comprising the top five operators changed only slightly with Hapag-Lloyd (ranked fifth in fiscal year 2011) being surpassed by Evergreen (ranked sixth in fiscal year 2011).

B. ASIA

In terms of container cargo volume, Asia is our primary trading region. In fiscal year 2012, Asia accounted for 62 percent of all U.S. container cargo. The Ports of Los Angeles and Long Beach handle approximately half of all containers originating from or destined to Asia. Sixty-nine percent of all U.S. container imports originated from Asia, and the region received 52 percent of all U.S. container exports.

The *Transpacific Stabilization Agreement* (TSA) is the major agreement in the transpacific trade. It has fifteen members and is a discussion and policy-setting agreement with voluntary pricing authority covering the inbound container trade from northeast and southeast Asia to all of the United States. TSA's geographic scope also includes parts of the Indian Subcontinent (i.e., Bangladesh, Pakistan and Sri Lanka, but not India). During fiscal year 2012, TSA's share of the U.S. inbound Asia trade was approximately 92 percent, compared to 89 percent the previous fiscal year. This market share increase was due primarily to several non-TSA carriers leaving the trade.

For fiscal year 2012, container imports from Asia grew by just under 2 percent, compared to a 3 percent growth in the prior fiscal year. Northeast Asia accounted for 87 percent of transpacific imports, with most originating in China (PRC). For the fiscal year, the U.S. imported 12.1 million TEUs of Asian goods, compared to 11.9 million TEUs last year.

Prior to renewing their annual service contracts for effect on May 1, 2012, TSA announced a general rate increase (GRI) of \$500 per FEU (forty-foot equivalent container units) to the U.S. West Coast and \$700 per FEU to the U.S. East Coast. TSA also announced a peak season surcharge of \$600 per FEU, effective from June 10, 2012. However, prior to and after the start of the new service contract term, TSA announced a number of rate increases to apply on service contracts for which the minimum quantity commitment had been met or on service contracts that permitted such increases. Press reports indicate that these attempts to increase freight rates were only marginally successful.

The *Westbound Transpacific Stabilization Agreement* (WTSA) is the carrier rate discussion agreement operating in the outbound transpacific trade. WTSA's geographic scope covers all U.S. ports to northeast and southeast Asia and parts of the Indian Subcontinent (i.e., Bangladesh, Pakistan and Sri Lanka, but not India). Like TSA, WTSA is a forum for the exchange of information among its member lines. That exchange enables the lines to propose common rate actions for U.S. exports to Asia. WTSA's market share of that trade was about 62 percent by volume for most of FY 2012. During that period, U.S. export volumes to Asia grew by less than 1 percent.

Rather than proposing a single annual GRI, WTSA member lines typically propose common rate actions targeted to specific commodity groups at different times during the year. This practice is dictated by the seasonality of demand for vessel space by various agricultural products that have different harvest seasons and peak shipping periods. In FY 2012, WTSA members were reportedly largely unsuccessful in achieving the rate increases they proposed.

Due in part to WTSA's inability to successfully implement its rate proposals, two carriers (American President Lines and Nippon Yusen Kaisha) terminated their membership in the Agreement in the final two months of the fiscal year. As a result, WTSA member lines' average combined market share declined from approximately 62 percent to 51 percent, raising questions about WTSA's continued viability as a rate discussion agreement.

Like TSA, WTSA modified its bunker adjustment formula, effective October 1st, in an effort to partially recover additional costs for the purchase of more expensive low-sulfur fuel. The requirement that carriers use low sulfur fuel took effect with the implementation of the 200-mile North American Emissions Control Area on August 1, 2012.

C. AUSTRALIA AND OCEANIA

The Oceania trade includes the nations and territories of Australia, New Zealand, Papua New Guinea, Western Samoa, and other South Pacific Islands. In the outbound direction of the trade, container volume is greater. However, in fiscal year 2012, the growth in U.S. container exports was modest at nearly 2 percent compared to the preceding fiscal year. Nonetheless, the number of container exports exceeded imports by a ratio of 1.75 to 1. The leading export commodities were auto parts, general merchandise, grocery products, paper and tires.

In the inbound direction, container imports from Australia/Oceania rose by 5 percent compared to fiscal year 2011. Container imports of meats and wine were the top two commodities, which accounted for 33 percent of the total import volume in TEUs. Other leading import commodities included paper, beverages, and lumber.

Carriers providing direct service in the trade are linked through a network of agreements. Two main rate discussion agreements cover the trade: seven carriers participate in the *United States/Australia Discussion Agreement* (USADA) in the outbound direction, and five carriers participate in the *Australia and New Zealand-United States Discussion Agreement* (ANZUSDA) in the inbound direction. Further, a number of major carriers serve the trade through transshipment arrangements. All of the carriers that serve the trade directly operate their services collectively through several vessel sharing agreements. In addition, five carriers serving the Pacific Islands participate in the *Pacific Island Discussion Agreement*. Given the extent of cooperation among the carriers through agreements, the Commission closely monitors the carriers' activities in this trade.

During fiscal year 2012, a number of agreement and service changes occurred. In November 2011, Mediterranean Shipping Company (MSC) entered the trade as a direct service provider by purchasing vessel space from other direct service carriers under the *HSDG/ML/MSC Space Charter Agreement* and the *OVSA/MSC Space Charter Agreement*. Then, in June 2012, MSC joined the two rate discussion agreements, USADA and ANZUSDA. In March 2012, Maersk Line withdrew its membership from the inbound rate discussion agreement, ANZUSDA. These membership changes resulted in a market share of approximately 75 percent for each of the discussion agreements. Notably, the largest operator in the trade is Hamburg Süd which, based on cargo volume, achieved a market share of 27 percent and 35 percent in the outbound and inbound directions, respectively.

D. INDIAN SUBCONTINENT AND THE MIDDLE EAST

For fiscal year 2012, the growth rate of U.S. container exports to the Indian Subcontinent was nearly 2 percent, compared to a growth rate of 9 percent for fiscal year 2011. U.S. container exports to the Middle East grew by over 3 percent in fiscal year 2012, compared to a 12 percent increase

in the previous fiscal year. The United States exported approximately 451,000 TEUs to the Indian Subcontinent and 600,000 TEUs to the Middle East.

In this region, WTSA is the only rate discussion agreement covering part of the U.S. outbound container trade. WTSA's geographic scope covers U.S. exports to the Indian Subcontinent countries of Bangladesh, Pakistan, and Sri Lanka, but not to India or to the Middle East.² For the fiscal year, WTSA's market share for U.S. exports to Bangladesh, Pakistan, and Sri Lanka was only 38 percent, up from 32 percent in the previous fiscal year. In September 2012, APL and NYK Line resigned from WTSA. No major rate discussion agreement covers U.S. exports to the Middle East.

With the U.S. recovery from the 2008 global recession plateauing in fiscal year 2012, demand for foreign goods grew at a much slower rate. During fiscal year 2012, U.S. container imports from the Indian Subcontinent increased by 3 percent and by 2 percent from the Middle East. The U.S. imported approximately 668,000 TEUs from the Indian Subcontinent and 166,000 TEUs from the Middle East during the fiscal year.

The TSA is the only rate discussion agreement covering U.S. inbound container movements from the Indian Subcontinent countries of Bangladesh, Pakistan and Sri Lanka.³ For fiscal year 2012, TSA had a 95 percent market share of U.S. imports from the countries of Bangladesh, Pakistan and Sri Lanka. During the fiscal year, Maersk Line, along with its subsidiary Safmarine, and APL moved just over half of all container imports from the three Indian Subcontinent countries to the U.S. No major rate agreement covers Middle East imports to the United States.

² WTSA's geographic scope also includes northeast and southeast Asia.

³ TSA's geographic scope also includes northeast and southeast Asia.

E. NORTH EUROPE

In fiscal year 2012, the flow of container cargo in the trade between the U.S. and North Europe reflected the effects of the troubled Eurozone economies and the depreciation of the euro against the U.S. dollar. In July 2012, the exchange rate of the euro fell to a low of \$1.23, which hurt the purchasing power of European consumers for U.S. exports but boosted the demand for European imports among U.S. consumers. Consequently, U.S. container exports to North Europe decreased by 4 percent compared to the preceding fiscal year. The leading export commodities for the period were paper, automobiles, wood pulp, general merchandise, and auto parts.

U.S. container imports from North Europe increased by 10 percent compared to fiscal year 2011. In addition to the weaker euro, it was reported that import growth could be caused, at least in part, by U.S. retailers stockpiling inventory in case of a threatened strike at U.S. Atlantic and Gulf ports by the members of the International Longshoreman's Association (ILA). Beer and ale remained the top liner import commodity, accounting for 9 percent of the total import volume in TEUs. Other top commodities from North Europe included auto parts, beverages, paper, and furniture. In terms of volume, container imports exceeded exports by a ratio of 1.25 to 1 in this region.

Carriers operating in the trade added about 8 percent more capacity to the market. Among these changes, in February 2012, members of *The New World Alliance Agreement* initiated the America Europe Express service operating five vessels in a weekly loop rotation between the U.S. Atlantic coast, Panama, and North Europe. Also, in May 2012, members of *The Grand Alliance Agreement II* (Grand Alliance) upgraded the size of the four vessels deployed in its weekly Atlantic Express loop service between the U.S. Atlantic coast and North Europe. The Grand Alliance operates the Atlantic Express service in cooperation with Zim Integrated Shipping Services, Ltd. (Zim) and Hamburg Süd under the *Grand Alliance/Zim/HSDG Atlantic Space Charter Agreement*. Also, as of July 2012, the Grand Alliance suspended its weekly Atlantic Express Shuttle running between the ports of

New York/New Jersey, and Antwerp and Hamburg. With these service changes, the average utilization of vessel capacity for the fiscal year was reported to have been 78 percent in the outbound direction and 88 percent in the inbound direction.

The introduction of new services and capacity in the trade reportedly kept freight rates low. Attempts by carriers to implement GRIs throughout the fiscal year were modest and erratic. However, toward the end of the fiscal year, most of the major carriers had announced GRIs ranging from \$150 per TEU to \$320 per TEU starting October 2012.

F. MEDITERRANEAN

The liner trade between the U.S. and South Europe in the Mediterranean was similarly affected by the economic problems in the Eurozone and the weak value of the euro. Compared to the preceding fiscal year, U.S. container exports to the Mediterranean decreased by 7 percent. The leading export commodities were paper, wood pulp, cotton, chemical resins, and lumber, which accounted for about 40 percent of the total export volume in TEUs. Most of the container exports of cotton were shipped to textile manufacturers in Turkey.

U.S. container imports from the Mediterranean increased by 11 percent compared to the preceding fiscal year. Therefore, the trade imbalance between imports and exports increased with imports exceeding exports by a ratio of 1.55 to 1. The leading import commodities were wine, furniture, vegetables, tiles, and beverages. Container imports of wine accounted for 9 percent of total import volume in TEUs.

Service changes made by carriers added more vessel capacity to the market. The amount of capacity deployed in each trade direction rose by approximately 12 percent. Specifically, in February 2012, Hapag-Lloyd upgraded the frequency and capacity of its Med Pacific Express service in partnership with Hamburg Süd under the *HLAG/HSDG USWC-Mediterranean Vessel Sharing Agreement*. The upgraded service operates with 10 vessels in a weekly rotation between ports in the Mediterranean, Panama, and the U.S. Pacific coast. In turn, Hamburg Süd discontinued the transatlantic leg of its weekly pendulum service that it operated with Compania Chilena De Navegacion Interocanica, S.A.

Among other changes, in March 2012, Maersk Line and CMA CGM upgraded the size of the five vessels they deploy in their weekly West Med loop service between the U.S. Atlantic coast and South Europe under the *CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement*. With the added space, Maersk Line exchanged a portion of its allocated space on the West Med service for space on a North Europe service of *The New World Alliance* under the *Maersk Line/New World Alliance Mediterranean Slot Exchange Agreement*. Further, in April 2012, members of the CKYH group entered the trade by connecting two service loops to form its weekly pendulum service between the U.S. Pacific coast, Southeast Asia, and the Mediterranean.

G. AFRICA

Cargo volumes between the U.S. and Africa increased 16 percent in fiscal year 2012. The increase in cargo volumes included a 20 percent increase in U.S. exports to Africa to 320,700 TEUs. Imports from Africa increased about 7 percent from the previous fiscal year to about 95,300 TEUs. The top commodities exported to Africa included automobiles, grocery products, fresh and frozen poultry, and auto parts during fiscal year 2012. The top container commodities imported from Africa consisted of cocoa beans, apparel, and aluminum (wire, bars, and sheets).

The Republic of South Africa dominates the U.S. liner trade with Africa, accounting for about 25 percent of the overall container volume and 45 percent of imported containers from the continent. Nigeria is the United States' second largest trading partner in the region, with 14 percent of container volumes, and Ghana and Morocco are the third and fourth largest partners with about 10 percent and 6 percent, respectively.

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 Agreement*. This service, which sails from the U.S. east coast to Port Elizabeth, Durban and Cape Town, deploys eight vessels of about 2,400 TEUs in size. In the Africa trade, these three carriers are the top carriers and carry approximately 71 percent of the containers traveling between the U.S. and Africa.

H. CENTRAL AMERICA AND THE CARIBBEAN

In fiscal year 2012, U.S. export and import cargo to Central America both increased 5 percent with exports increasing to 596,500 TEUs and imports increasing to 724,000 TEUs. Waste paper accounted for the largest share of U.S. containerized exports at 12.7 percent. The second largest export commodity category was fabrics, yarns, and raw cotton accounting for 11.1 percent. Grocery products and used automobiles accounted for about 5 percent each, and apparel accounted for about 4 percent. On the import side, fresh fruit made up 55 percent of all imports from the region. Almost three quarters of the fresh fruit imported consisted of bananas. The second largest commodity imported from this region was clothing and apparel with nearly 17 percent of the total.

Six of the largest carriers in the U.S./Central America trade participated in the *Central America Discussion Agreement* (CADA). Five of these are regional carriers: Seaboard Marine, Crowley Liner Services, King Ocean, Dole Ocean Cargo Express, and Great White Fleet. The sixth is the global carrier American President Lines (APL) which left the agreement during the last month of the fiscal year. Before APL's departure, the combined market share of CADA members was 75 percent for exports and 71 percent for imports. After APL resigned from CADA in September 2012, the combined market share for the remaining members decreased to 66 percent in both directions.

In the liner trade between the U.S. and the Caribbean, U.S. exports, mainly of food, consumer goods, and manufactured products increased 4 percent to 541,000 TEUs. Imports to the U.S. increased by 24 percent to 212,500 TEUs.

Carriers in the U.S./Caribbean trade participated in four rate discussion agreements covering discrete trades: (1) the *Caribbean Shipowners Association*, (2) the *Florida-Bahamas Shipowners and Operators Association*, (3) the *Aruba Bonaire and Curacao Discussion Agreement*, and (4) the *Bermuda Discussion Agreement*. In February 2012, the *Florida-Bahamas Shipowners and Operators Association Agreement* was not renewed and ceased to operate.

I. SOUTH AMERICA

In fiscal year 2012, U.S. containerized exports to South America decreased to 1,009,000 TEUs, a slight decrease from the previous year. U.S. import cargo from South America increased 2.1 percent to 831,000 TEUs.

The South America region is generally divided between the west coast and east coast of the continent. Just over 50 percent of the region's cargo moved between the U.S. and the west coast of South America in fiscal year 2012. U.S. export cargo to that coast grew 6 percent to 458,300 TEUs, and imports from the region grew just over 2 percent to 462,000 TEUs. The three largest U.S. exports to this region included waste paper, synthetic resins, and general merchandise cargo. On the U.S. import side, fresh fruit, still wines, and fresh vegetables were the top commodities moving in the trade.

In fiscal year 2012, annualized vessel capacity in the U.S./west coast of South America trade decreased 1 percent from the year before in both the southbound and northbound trades to 1,187,000 and 1,136,000 TEUs, respectively.

Most of the carriers providing direct service to the west coast of South America are members of the *West Coast of South America Discussion Agreement* (WCSADA). During the fiscal year, the only membership change occurred when APL resigned from the agreement in September 2012. At the time APL left, its market share was 3 percent and 9 percent for exports and imports, respectively. Because of APL's departure, the combined market share for WCSADA members decreased from 57 percent to 55 percent for the outbound direction and from 61 percent to 52 percent for the inbound direction. The U.S. inbound trade includes four carriers that are members of WCSADA (i.e., Dole Ocean Cargo Express, Great White Fleet, Network Shipping and Banacol Colombia) that mainly transport proprietary cargo, consisting of fresh fruits and vegetables. The agreement also faces competition from global carriers, such as NYK, Maersk Line, Evergreen, MOL, Hapag-Lloyd, and Zim. Only NYK provides a direct service to the U.S. Pacific Coast. The latter five carriers serve the trade via transshipment hubs in Panama, Mexico, and countries in the Caribbean. Several regional carriers compete with WCSADA, including Tropical Shipping, Antillean Lines, Isabella Shipping, Industrial Maritime Carriers, and West Coast Industrial Express.

The trade between the U.S. and the east coast of South America accounted for slightly less than 50 percent of the liner cargo in this region. As in past years, no active rate discussion agreements operated in this trade. U.S. exports to the east coast of South America decreased 5 percent to 550,600 TEUs during fiscal year 2012. The top export commodities included auto parts and waste paper. Imports from the region increased 1 percent to 369,000 TEUs during the same period and top commodities included logs and lumber, granite, and coffee.



IV

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. IN GENERAL

The Foreign Shipping Practices Act of 1988, 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 United States under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the United States.

In fiscal year 2012, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no direct FSPA action was necessary.



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

Pursuant to the FSPA, 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. The most recent complete calendar year for which data are available is 2011. 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 United States in 2011. The figures in Table 1 represent each country’s total U.S. liner imports and exports combined in thousands of TEUs.

Table 1: Top Twenty U.S. Liner Cargo Trading Partners (2011)

Rank	Country	TEUs (000s)
1	China (PRC)	10,572
2	Japan	1,452
3	South Korea	1,355
4	Taiwan (ROC)	1,142
5	Hong Kong ⁴	942
6	Germany	783
7	India	743
8	Vietnam	681
9	Brazil	604
10	Belgium and Luxembourg	563
11	Indonesia	517
12	Italy	499
13	Thailand	479
14	Netherlands	429
15	United Kingdom	403
16	Guatemala	352
17	Honduras	339
18	Malaysia	338
19	Australia	307
20	Chile	304

⁴Although Hong Kong reverted to Chinese control in July 1997, PIERS continues to report data separately for Hong Kong because of its status as a major transshipment center.

There was a 4 percent year-to-year increase in liner volumes in the United States' bilateral trade with its top twenty trade partners. The membership of the top twenty list has remained the same, and the top eight countries have remained identical, since 2009. Allowing for some shifts in their individual rank order, the top six countries have topped the list for more than ten years. Three of the top twenty posted year-to-year volume increases of 10 percent or greater – Guatemala, Honduras and Chile. Bilateral liner trade with China had the least positive change in volume from the previous year. Three countries had a negative growth rate– Indonesia, Thailand and Hong Kong.



V

SIGNIFICANT ACTIVITIES

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. In General

The Office of the Secretary (OS) serves as the focal point for matters submitted to and emanating from the Commission. It is the public's main contact point with 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 statutes and other applicable laws; special docket applications and requests to correct clerical or administrative errors in service contracts or NVOCC Service Arrangements (NSAs); 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 organizing Commission Sunshine Act meetings, oral arguments, and public hearings; preparing and submitting regular and notation agenda matters for consideration by the Commission, and preparing and maintaining the minutes of actions taken on these agenda and notation matters; and issuing orders and notices of actions of the Commission. The office processes requests and ensures compliance with the Freedom of Information, Government in the Sunshine, and Privacy Acts; responds to information requests from the maritime industry and the public; issues publications; authenticates instruments and documents of the Commission; publishes Commission historical decisions; and maintains and promulgates the Commission's regulations. The Office maintains a public reference/law library and a docket activity library; oversees the maintenance, organization, and content of the Commission's website; develops and implements the agency's Plain Writing Plan; manages the agency's document scanning program; and participates in the development and coordination of agency-wide public relations/outreach strategies and initiatives.

During fiscal year 2012, the OS continued to administratively process and direct all filings addressed to the Commission and its component offices, including agreements filed under section 5 of the 1984 Act. The Office also issued 70 orders and notices in docketed proceedings on behalf of the Commission.

The Office serves as the Commission's public information/press office. Accordingly, it 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 staff.

The Office is significantly involved with the Commission's ongoing objective to enhance public awareness of the agency, its programs, and services. The Office promotes transparency and accountability on behalf of the Commission by evaluating, developing, and implementing improvements to the Commission's website.

In 2012, the Office completed work and launched a redesigned Commission website. The new design significantly improved quality, clarity, and accessibility of information and content organization to render a more citizen-centered website, enhanced navigation, added more social networking/communications capabilities, and further improved search engine optimization to better assist the public in locating Commission services. This upgrade supports the goals of the agency's Plain Writing Act of 2010 Plan and President Obama's directive that government should be transparent, participatory, and collaborative.

Also during FY 2012, the Office completed compilation and website posting of 28 bound volumes of historical Commission decisions issued between 1919 and 1987. These historical decisions are no longer in publication in bound volume form, however with the completion of this project, the entire body of historical Commission decisions is now available on the FMC's website in "electronic volumes." 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.

During this fiscal year, the Office also generally increased the amount of information available on specific topics and issues related to the agency's activities and important to stakeholders and the media. For example, the Office worked with other Commission components to publish alerts warning about consumer complaints against certain household goods movers, advice on proper documentation needed when boarding an international cruise, etc. These informative online resources provide easy public access to useful information and resources, increase public awareness of how the FMC is involved with daily events, and help to underscore our mission to oversee oceanborne transportation in the foreign commerce of the U.S.

The process of electronically scanning/imaging Commission records is an ongoing function of the Office. The Office electronically converts all official Commission files (both current and historical); and is responsible for planning, scheduling, and systematically scanning documents for other agency components. This Document Management Program supports the agency's initiatives for Continuity of Operations (COOP) and disaster recovery 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. The program also supports the Office's continued effort to make key documents filed in formal proceedings available through its website.

The Office is also responsible for the Commission's Freedom of Information Act (FOIA) Program. During the fiscal year, the office instituted a multi-track processing system to reduce the agency FOIA backlog. As a result, all FOIAs processed under the simple track were completed within statutory deadlines or ahead of schedule. These processing improvements also helped the office close the agency's 10 oldest FOIA requests during the fiscal year.

In support of the Commission's strategic goal to protect the public from unlawful, unfair, and deceptive ocean transportation practices and resolve shipping disputes, during fiscal year 2012 the Office led an agency-wide team to continue the process of reviewing the Commission's Rules of

Practice and Procedure. Emphasis is on evaluating the Commission's procedures against current Federal Rules of Civil Procedure and updating Commission procedures where appropriate. Revision to 46 C.F.R. Subparts E & L concerning proceedings, pleadings and discovery were proposed and finalized in FY 2012.

2. Library

The OS also oversees the Commission's Library. The Library serves the needs of both the Commission and the public for research and information. It is a specialized repository of current and basic materials primarily covering the shipping industry, the history of shipping, and regulations covering all phases of shipping in the U.S. foreign trade. It contains a variety of books, directories, encyclopedias, journals, magazines, reports, microforms, and videos. The Library 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, legislative materials, and selected titles of the National Reporter system. The Library's holdings consist of approximately 8,700 volumes and numerous microfiches, CD-ROMs, and online services.

B. OFFICE OF THE ADMINISTRATIVE LAW JUDGES

1. In General

Under the direction and management of the Chief Administrative Law Judge, the Office of Administrative Law Judges (OALJ) holds hearings and renders initial or recommended decisions in formal rulemaking and adjudicatory proceedings as provided in the 1984 Act, and other applicable laws and other matters assigned by the Commission, in accordance with the Administrative Procedure Act (APA) and the Commission's Rules of Practice and Procedure.

OALJ 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 APA.

At the beginning of fiscal year 2012, sixteen formal proceedings were pending (on hand) before OALJ (07-01, 08-03, 09-01, 10-05, 10-06, 10-08, 10-11, 11-06, 11-07, 11-08, 11-11, 11-12, 11-13, 11-14, 11-15, and 1923(F)). During the year, six new formal proceedings were added (11-18, 11-21, 12-01, 12-02, 12-03, and 12-06) and four formal proceeding were remanded by the Commission (06-06, 06-09, 07-02, and 09-08).

OALJ issued fourteen initial decisions or orders subject to review by the Commission in twelve proceedings: Initial decisions resolving five contested proceedings (10-06, 10-08, 11-08, 11-13, and 11-14); initial decisions on default in two proceedings (10-11 and 11-14); issued orders of voluntary dismissal in two proceedings (11-08 and 1923(F)); and initial decisions approving settlements in five proceedings (10-05, 11-06, 11-15, 11-18, and 11-21).

2. Final Action by the Office of Administrative Law Judges on Initial Decisions and Orders Subject to Review

American Stevedoring, Inc. v. The Port Authority of New York and New Jersey [Docket No. 10-05]

On May 25, 2010, American Stevedoring, Inc. filed a complaint against the Port Authority of New York and New Jersey asserting that the Port Authority violated the 1984 Act, 46 U.S.C. §§ 421106(2) and 41106(3), which prohibit a marine terminal operator from giving any undue or unreasonable preference or advantage or imposing any undue or unreasonable prejudice or disadvantage with respect to any person and which prohibit unreasonably refusing to deal or negotiate. On October 14, 2011, the parties filed a joint motion seeking approval of a confidential settlement agreement and dismissal with prejudice. On October 27, 2011, the administrative law judge approved the confidential settlement agreement and dismissed the proceeding with prejudice. On December 2, 2011, the Commission served a notice not to review.

Yakov Kobel and Victor Berkovich v. Hapag-Lloyd A.G., Hapag-Lloyd America, Inc., Limco Logistics, Inc., and International TLC, Inc. [Docket No. 10-06]

On July 14, 2010, the complaint was served alleging that respondents violated the 1984 Act. An Order on Dispositive Motions, issued May 24, 2011, granted in part and denied in part respondent Hapag-Lloyd's motion to dismiss and/or for summary judgment and dismissed Complainants'

claim for double damages. A hearing was held in Portland, Oregon, from August 8-11, 2011. Eleven witnesses testified, including one by video conference from the Ukraine and one by telephone from Poland. Two interpreters took turns translating the testimony for the complainants and other Russian speaking witnesses and another interpreter appeared by telephone for the witness who testified from Poland. Post trial briefing was completed on November 9, 2011. On February 14, 2012, the administrative law judge issued an initial decision ordering that the claim be dismissed with prejudice and that the proceeding be discontinued. On March 7, 2012, the complainants filed exceptions. The proceeding is currently pending before the Commission.

Bimsha International v. Chief Cargo Services, Inc., and Kaiser Apparel, Inc. [Docket No. 10-08]

On July 28, 2010, Bimsha filed a complaint alleging that Chief Cargo Services and Kaiser Apparel violated section 10(d)(1) of the 1984 Act on three separate shipments by releasing containers to the consignee without requiring presentation of an original bill of lading. On December 14, 2011, the administrative law judge issued an initial decision finding that Chief Cargo, a licensed NVOCC, violated the 1984 Act as alleged by Bimsha and issued a cease and desist order. Bimsha's claim for reparations was denied for failure of proof. The complaint against Kaiser Apparel was dismissed because the evidence did not establish that it had operated as an ocean transportation intermediary on the shipments. On January 5, 2012, Bimsha and Chief Cargo each filed exceptions to the Initial Decision.

Smart Garments v. Worldlink Logix Services Inc. [Docket No. 10-11]

On November 30, 2010, the complaint filed by Smart Garments, a manufacturer and exporter of garments, was served alleging that respondent Worldlink Logix, an ocean transportation intermediary, violated sections 10(d)(1), 10(d)(4), and 10(b)(13) of the 1984 Act, 46 U.S.C. §§ 41102(c),

41106(2), and 41103(a), by releasing goods without the original bills of lading, showing unreasonable preference to the buyer, and disclosing information about the shipment without the consent of the shipper. On October 31, 2011, the administrative law judge issued a decision on default against Worldlink Logix. On November 18, 2011, the Commission served a notice to review. The proceeding is currently pending before the Commission.

Indigo Logistics, LLC; Liliya Ivanenko; and Leonid Ivanenko – Possible Violations of Section 19 of the Shipping Act of 1984 and the Commission’s Regulations at 46 C.F.R. Part 515 [Docket No. 11-06]

By Order of Investigation and Hearing dated April 7, 2011, the Commission commenced this proceeding to determine: 1) whether respondents violated section 19 of the 1984 Act, 46 U.S.C. §§ 40901, 40902, and the Commission’s regulations at 46 C.F.R. Part 515, by acting as an ocean transportation intermediary without a license or evidence of financial responsibility; 2) whether, in the event violations of the Shipping Act are found, civil penalties should be assessed against respondents and, if so, the amount of penalties to be assessed; and 3) whether, in the event violations are found, appropriate cease and desist orders should be issued. On October 14, 2011, the Bureau of Enforcement and respondents Indigo Logistics, LLC, Liliya Ivanenko, and Leonid Ivanenko filed a Proposed Settlement Agreement and a Joint Memorandum in Support of Proposed Settlement requesting approval of the Agreement. On October 20, 2011, the administrative law judge approved the proposed settlement and dismissed the proceeding with prejudice. On December 2, 2011, the Commission served a notice not to review.

Ndahendekire Barbara v. African Shipping; Njoroge Muhia; Alco Logistics, LLC; Brenda Alexander; and Air 7 Seas Transport Logistics, Inc. [Docket No. 11-08]

On May 10, 2011, the Federal Maritime Commission issued a notice of filing of complaint and assignment indicating that complainant Ndahendekire Barbara filed a claim alleging that respondents African Shipping;

Njoroge Muhia; Alco Logistics, LLC; Brenda Alexander; and Air 7 Seas Transport Logistics, Inc. violated section 10(d)(1) of the 1984 Act, now codified at 46 U.S.C. § 41102(c). On February 16, 2012, respondent Air 7 Seas was voluntarily dismissed with prejudice and on March 19, 2012, the Commission issued a notice not to review. On April 19, 2012, the administrative law judge issued an initial decision ordering that the claim against Alco Logistics and Brenda Alexander be dismissed without prejudice, that the claim against Njoroge Muhia and African Shipping be dismissed with prejudice, and that the proceeding be discontinued. On May 23, 2012, the Commission served a notice not to review.

Atlantic Shipping Company, Inc. v. Di Nos Shipping, Inc. [Docket No. 11-13]

On August 8, 2011, Atlantic Shipping filed a complaint alleging that Di Nos Shipping violated the 1984 Act by operating as an ocean transportation intermediary without a Commission license and without a bond, proof of insurance, or other surety and requested issuance of an order requiring Di Nos to cease and desist operating. Atlantic Shipping did not seek a reparation award. On April 17, 2012, the administrative law judge issued an initial decision holding that Di Nos operated as an NVOCC without a license and without a bond, proof of insurance, or other surety and ordered Di Nos to cease and desist. On May 18, 2012, the Commission served a notice not to review.

Petra Pet, Inc. (a/k/a Petrapport) v. Panda Logistics Limited; Panda Logistics Co., Ltd. (f/k/a Panda Int’l Transportation Co., Ltd.); and RDM Solutions, Inc. [Docket No. 11-14]

By complaint served on August 26, 2011, complainant Petra Pet, Inc. alleged that respondent RDM Solutions, an ocean transportation intermediary, violated the 1984 Act, 46 U.S.C. § 41102(c), by failing to establish, observe, and enforce reasonable regulations and practices relating to or

connected with receiving, handling, storing, and delivering complainant's shipments from China to the United States. On April 20, 2012, the administrative law judge issued an initial decision on default against respondent RDM Solutions. On May 24, 2012, the Commission served a notice not to review. The case against the remaining respondents continued. On August 14, 2012, an Initial Decision was issued granting the claim and assessing damages against Panda Logistics Limited and Panda Logistics Co., Ltd. On August 20, 2012, the Commission served a notice to review.

Citgo Refining & Chemicals Company L.P. v. Port of Corpus Christi Authority of Nueces County, Texas [Docket No. 11-15]

On September 2, 2011, the Federal Maritime Commission issued a notice of filing of complaint and assignment indicating that complainant Citgo filed a claim asserting that the Port violated and continues to violate the 1984 Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c). Citgo alleged that the Port subjected Citgo to an undue or unreasonable prejudice or disadvantage; granted an undue preference or advantage with respect to certain users of its facilities; and failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. On July 11, 2012, the administrative law judge approved a settlement between the parties and dismissed the proceeding. On August 13, 2012, the Commission served a notice not to review.

Valero Refining-Texas, L.P. v. Port of Corpus Christi Authority of Nueces County, Texas [Docket No. 11-18]

On October 28, 2011, the Federal Maritime Commission issued a notice of filing of complaint and assignment indicating that complainant Valero filed a claim asserting that the Port violated and continues to violate the 1984 Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c). Valero alleged that the Port subjected Valero to an undue or unreasonable prejudice or

disadvantage; granted an undue preference or advantage with respect to certain users of its facilities; and failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. On July 11, 2012, the administrative law judge approved a settlement between the parties and dismissed the proceeding. On August 13, 2012, the Commission served a notice not to review.

Minto Explorations, Ltd. v. Pacific and Arctic Railway and Navigation Company [Docket No. 11-21]

In a complaint served on November 25, 2011, Minto alleged that by charging a higher dockage fee per foot for ore vessels than for passenger vessels, respondent Pacific and Arctic Railway and Navigation Company (PARN), a marine terminal operator, violated 46 U.S.C. § 41102(c) of the 1984 Act, which requires marine terminal operators to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property, and 46 U.S.C. § 41106(2), which prohibits marine terminal operators from imposing any undue or unreasonable prejudice and disadvantage on Minto or granting any undue or unreasonable preference or advantage to another person. PARN filed an answer denying it had violated the 1984 Act. On September 6, 2012, the parties filed a joint motion seeking approval of a settlement agreement and dismissal with prejudice. On September 7, 2012, the administrative law judge approved the settlement agreement and dismissed the proceeding with prejudice.

The Eagles Wings Foundation v. Chatelain Cargo Services [Docket No. 1923(F)]

On June 1, 2011, Eagles Wings Foundation filed a small claims complaint alleging that Chatelain Cargo Services violated the 1984 Act. Chatelain objected to proceeding as a small claims case and on August 5, 2011,

the proceeding was assigned to OALJ. The evidence submitted with the complaint suggested that the Commission did not have subject matter jurisdiction over Eagles Wings' complaint because the loss about which Eagles Wings complained occurred during transportation between two points in Haiti that was not part of transportation on a multimodal through bill of lading. Eagles Wings responded to an order to show cause why the complaint should not be dismissed for lack of subject matter jurisdiction by filing a notice of voluntary dismissal. On October 3, 2011, the administrative law judge dismissed the complaint without prejudice. On November 3, 2011, the Commission served a notice not to review.

3. Pending Proceedings

At the end of fiscal year 2012, fourteen formal proceedings were counted as pending before the OALJ (06-06, 06-09, 07-01, 07-02, 08-03, 09-01, 09-08, 11-07, 11-11, 11-12, 12-01, 12-02, 12-03, and 12-06).

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 OGC:

Rulemakings by the Commission

NVOCC Negotiated Rate Arrangements [Docket 11-22], 32 S.R.R. 350 (December 20, 2011)

On March 2, 2011, the Commission issued a final rule, promulgating 46 C.F.R. Part 532, regulations which govern the exemption of licensed NVOCCs from their tariff rate publication obligations when entering into a "negotiated rate arrangement" (NRA). Commission Docket No. 10-03, 76 Fed. Reg. 11351, effective April 18, 2011. The regulation allows licensed NVOCCs to enter into NRAs with their shipper customers. An NRA is defined as "a written and binding arrangement between a shipper and an eligible NVOCC to provide particular transportation service for a particular shipment at a particular rate prior to the receipt of the cargo by the common carrier or its agent (including originating carriers in the case of rates for through transportation)." The regulation exempts licensed NVOCCs who

enter into NRAs from the following requirements of the Shipping Act: the requirement in Section 8(a), codified at 46 U.S.C. §§ 40501(a)-(c) that each common carrier keep open to public inspection in an automated tariff system tariffs showing all its rates; Section 8(b), codified at 46 U.S.C. § 40501(d) (time volume rates); Section 8(d), codified at 46 U.S.C. § 40501(e) (tariff rate increase may not be effective on less than 30 days' notice but decrease effective immediately); Section 8(e), codified at 46 U.S.C. § 40503 (carrier application to grant refunds); and Section 10(b)(2)(A)'s requirement of adhering to the published tariff rate, codified at 46 U.S.C. § 41104(2)(A). Licensed NVOCCs entering into NRAs must still comply with the prohibitions contained in Section 10(b)(4) of the Shipping Act, codified at 46 U.S.C. § 41104(4) (prohibiting common carriers from unfair or unjustly discriminatory practices in service pursuant to a tariff), and Section 10(b)(8), codified at 46 U.S.C. § 41104(8) (prohibiting common carriers from undue or unreasonable preference or advantage or undue or unreasonable prejudice or disadvantage for tariff service). The Commission determined not to extend the ability to enter into NRAs to foreign-based NVOCCs who are unlicensed but bonded pursuant to 46 C.F.R. § 515.21(a)(3).

On December 20, 2011, the Commission issued a Notice of Inquiry (NOI), Commission Docket No. 11-22, seeking comments on ways to make NRAs more useful, including the possible extension of the ability to offer NRAs to foreign-based NVOCCs not licensed by the Commission. December 27, 2011 at 76 Fed. Reg. 80866. The comments were due by March 26, 2012. The Commission received 23 comments. An additional comment, that was not adverse, was received after the deadline. The Commission determined to issue a direct final rule revising 46 C.F.R. Part 532 and adopting many of the suggestions of the commenters, but not expanding the exemption to foreign-based NVOCCs who are unlicensed but bonded.

Decisions by the Commission

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], 32 S.R.R. 578 (FMC 2012)

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 1984 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 ocean transportation intermediary that did not have a tariff and bond as required by sections 8 and 19 of the Act. With regard to EuroUSA, the Administrative Law Judge (ALJ) approved a Settlement Agreement between EuroUSA and the Bureau of Enforcement (BOE) on October 9, 2009. With regard to Tober Group (Tober), the ALJ issued an Initial Decision (ID) in which he concluded that BOE did not prove that the unlicensed intermediaries with whom Tober did business operated as non-vessel-operating common carriers, and therefore Tober did not violate section 10(b)(11) of the Shipping Act. The ALJ also concluded that Tober violated section 10(b)(2)(A) of the Act by providing service in the liner trade that was not in accordance with the rates and charges in its published tariff, but did not assess a penalty for these violations. BOE filed exceptions to the ALJ's ID. Finally, with regard to Container Innovations, the ALJ concluded that it violated section 10(b)(11) and should be subject to a civil penalty of \$390,000 for 13 knowing and willful violations of the Shipping Act. The ALJ's decision regarding Container Innovations became administratively final on January 7, 2010.

On April 12, 2012, a majority of the Commission vacated the ALJ's ID in part, reversed in part, and remanded the proceedings. The Commission vacated conclusions in the ID that Tober did not violate section 10(b)(11) of the 1984 Act, and remanded to the ALJ for reconsideration consistent with the Commission's decision in Docket No. 06-01, *Worldwide Relocations, Inc. – Possible Violations of the Shipping Act*, 32 S.R.R. 495 (FMC 2012). The Commission also reversed the ALJ's denial of civil penalties and

remanded for reconsideration consistent with the Commission's order. Finally, the Commission granted a Motion to Withdraw as Counsel. The ALJ's Initial Decision on Remand is due by December 31, 2012, and the Commission's final decision is due by June 28, 2013.

Parks International Shipping Inc., Cargo Express International Shipping Inc., et al. – Possible Violations of Sections 8(a) of the Shipping Act and the Commission's Regulations at 46 C.F.R., Parts 515 and 520 [Docket No. 06-09], 31 S.R.R. 1166 (February 5, 2010)

This proceeding was instituted by Order of Investigation and Hearing served September 19, 2006, to determine whether respondents violated sections 8(a) and 19 of the 1984 Act and the Commission's regulations at 46 C.F.R. Part 520 and 46 C.F.R. Part 515. On February 5, 2010, the Administrative Law Judge issued an Initial Decision finding that on twelve shipments, Parks International Shipping, Inc. violated section 8(a) by operating as a common carrier without publishing tariffs showing all of its active rates and charges, and violated section 19 by operating as an ocean transportation intermediary without obtaining a license from the Commission and without providing proof of financial responsibility. The ALJ also found that on fourteen shipments, Cargo Express International Shipping, Inc. violated section 8(a) by operating as a common carrier without publishing tariffs showing all of its active rates and charges and violated section 19 by operating as an ocean transportation intermediary without obtaining a license and without providing proof of financial responsibility. The ALJ imposed civil penalties on both of these parties, and ordered them to cease and desist from violating the 1984 Act. The ALJ dismissed Bronx Barrels & Shipping Supplies Shipping Center, Inc. and Ainsley Lewis a.k.a. Jim Parks from the proceeding. On March 4, 2010, the Commission filed a Notice indicating its intention to review the ALJ's Initial Decision.

On April 26, 2012, the Commission vacated the Initial and Supplemental Decisions and remanded the matter to the ALJ for further proceedings consistent with the Commission's holding in *Worldwide Relocations, Inc., et al. – Possible Violations of the Shipping Act*, FMC Docket No. 06-01, 32 S.R.R. 495.

The ALJ's deadline for an Initial Decision on Remand is December 31, 2012. The Commission's deadline for a final decision is extended from October 29, 2012 until June 28, 2013.

Anderson International Transport and Owen Anderson – Possible Violations of Sections 8(a) and 19 of the Shipping Act [Docket No. 07-02], 31 S.R.R. 1232 (February 23, 2010)

This proceeding was instituted by Order of Investigation and Hearing served March 22, 2007, to investigate whether respondents violated sections 8, 19(a), and 19(b) of the 1984 Act and the Commission's regulations at 46 C.F.R. Part 515 and Part 520. On August 28, 2009, the ALJ issued an Initial Decision finding that respondents violated section 19(a) of the Shipping Act by operating as an ocean transportation intermediary without obtaining a license, and also violated section 19(b) by operating as an ocean transportation intermediary without providing proof of financial responsibility. The ALJ ordered respondents to cease and desist from violating the 1984 Act. The ALJ did not impose a penalty, finding that the Bureau of Enforcement failed to introduce evidence regarding respondents' ability to pay a civil penalty. On December 8, 2009, the Bureau of Enforcement filed a petition to reopen the proceeding for the purpose of taking further evidence regarding respondents' ability to pay. The Commission granted this request and remanded the case to the ALJ for further consideration. On February 23, 2010, the ALJ issued an order on remand imposing a penalty on respondents. On March 9, 2010, the Commission filed a notice to review the ALJ's decision, and on March 15, 2010, the Bureau of Enforcement filed exceptions to the ALJ's decision.

On April 26, 2012, the Commission vacated the Initial and Supplemental Decisions, and remanded the matter to the ALJ for further proceedings consistent with the its holding in Docket No. 06-01, *Worldwide Relocations, Inc. – Possible Violations of the Shipping Act*, 32 S.R.R. 495. The ALJ's Initial Decision on Remand is due by December 31, 2012, and the Commission's final decision is due by June 28, 2013.

Notice of Inquiry-- Non-Vessel-Operating Common Carrier Service Arrangements, [Docket No. 12-05], (April 12, 2012)

On April 12, 2012, the Commission issued a Notice of Inquiry (NOI), Commission Docket No. 12-05, 77 Fed. Reg. 23202, seeking public comment on ways to make non-vessel-operating common carrier service arrangements (NSAs) less burdensome and more effective and specifically requesting comments on extending the exemption to allow two or more unaffiliated NVOCCs to jointly offer NSAs. Comments were due by June 18, 2012. This matter is under review by the Commission.

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:

City of Oakland v. Federal Maritime Commission, United States Court of Appeals for the District of Columbia Circuit, Case No. 12-1080

On February 9, 2012, the City of Oakland filed a petition for review of the Commission's Order in FMC Docket No. 09-08, *SSA Terminals, LLC, et al. v. The City of Oakland*, upholding the ALJ's denial of its motion to dismiss on the ground of Eleventh Amendment sovereign immunity. On March 26, 2012, the FMC filed the certified index to the record. The court granted SSA Terminals' Motion to Intervene on March 29, 2012. The Commission filed its brief July 5, 2012, and the Intervenor filed its brief July 18, 2012. The Commission filed its Final Brief on August 24, 2012. No oral argument date has been scheduled.

Federal Maritime Commission v. All-In-One Shipping, Inc., et al., U.S. District Court for the Southern District of Florida, Case No. 06-60054

On January 12, 2006, the Commission filed a Complaint for Injunctive Relief with the U.S. District Court for the Southern District of Florida to enjoin four household goods moving companies and three individuals from operating as NVOCCs in violation of the 1984 Act by accepting cargo for transportation, and for advertising for or soliciting cargo while operating as an ocean transportation intermediary without a valid license, bond or other security on file with the Commission. The District Court issued the requested preliminary injunction by order dated January 17, 2006. Specifically, the companies and individuals that are named and subject to the injunction are: All-In-One Shipping, Inc.; Around The World Shipping, Inc.; Boston Logistics Corp.; Global Direct Shipping; Daniel Cuadrado; Elizabeth F. Hudson; Joshua Morales. Injunctive relief remains in force pending conclusion of agency enforcement proceedings in FMC Docket No. 06-01.

On August 16, 2010, the ALJ issued an Initial Decision in Docket No. 06-01 finding violations of the 1984 Act and imposing civil penalties on the corporate and individual parties. No parties filed exceptions to the Initial Decision. The Commission determined to review the Initial Decision, and the Final Decision issued March 15, 2012, affirming the ALJ in part, reversing in part, and modifying in part. The Commission notified the District Court of the Final Decision on March 23, 2012, and the Court dissolved the preliminary injunction and terminated the case April 5, 2012.

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 requests for views on proposed bills and testimony.

During fiscal year 2012, 115 bills, proposals, and congressional inquiries were referred to the OGC for review or comment. OGC prepared and coordinated testimony for the agency's fiscal year 2013 budget authorization hearing held before the U.S. House of Representatives' Committee on Transportation and Infrastructure's Subcommittee on Coast Guard and Maritime Transportation. In addition, OGC helped prepare three Presidential nominees for confirmation hearings before the Senate Committee on Commerce, Science and Transportation. On November 11, 2011, the Senate confirmed one of those nominees.

4. 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 FSPA. 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.

In fiscal year 2012, the OGC 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 a requested change by the Ministry of Transport of the People's Republic of China to revise the FMC's rules implementing a US-PRC bilateral understanding addressing the ability of U.S. NVOCCs to do business in China. The Commission's General Counsel served as a technical advisor to the U.S. delegation regarding Chinese requirements for rate-filing and related issues at the 5th U.S. - People's Republic of China Consultations on the Maritime Bilateral Agreement held in St. Louis, Missouri, in January 2012.

Another responsibility of the OGC is the classification of controlled carriers subject to section 9 of the 1984 Act. Common carriers that are owned or controlled by foreign governments are required to adhere to certain requirements under the 1984 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. The OGC republished the list of Controlled Carriers on August 22, 2012. 77 Fed. Reg. 51801 (August 22, 2012).

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.

5. Designated Agency Ethics Official

The Ethics Official is designated by the Chairman and located in the OGC. The position is performed as a collateral duty by the attorney designated as Ethics Official.

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 employees. 5 C.F.R. Part 2635.

D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

The Federal Maritime Commission Office of Equal Employment Opportunity Program (EEO) follows Federal EEO and personnel management laws, concepts, procedures and regulations to develop, implement and manage a comprehensive program of equal employment opportunity. The program is statutorily mandated with required activities in complaints processing, adjudication, affirmative employment program planning, workforce diversity management, special emphasis programs, community outreach, monitoring and evaluation.

The Chairman of the Federal Maritime Commission is responsible for ensuring equal opportunity in the Commission. The Chairman has delegated this authority to the Director of Equal Employment Opportunity. Operational responsibility for compliance with EEO policies and programs lies with the Commission's front line managers. The Director of EEO (DEEO) 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. The DEEO arranges for EEO counseling or ADR 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. In addition, the DEEO represents the agency on several intergovernmental committees, coordinates all affirmative program planning efforts, 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.

The Office works closely with senior management and with the Commission's Office of Human Resources (OHR) to: (1) monitor affirmative employment programs; (2) expand outreach and recruitment initiatives; (3) improve the representation, career development and retention of women, minorities and persons with disabilities; (4) provide adequate career counseling; (5) facilitate early resolution of employment-related problems; and (6) develop program plans and progress reports.

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 1980s to increase the number of agencies with statutory inspector generals (IG), culminating in 1988 with the establishment of Office of the Inspector General (OIG) in smaller, independent agencies, including the Federal Maritime Commission. Currently, there are 73 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; to access all information deemed by the IG to be relevant to the reviews; and to publish findings and recommendations based on the reviews.

During fiscal year 2012, the OIG issued the following audit reports and evaluations:

Audit Report Number	Subject of Audit
A12-01	Audit of FMC's FY 2011 Financial Statements
A12-01A	Management Letter to the FY 2011 Financial Statements
A12-02	Evaluation of FMC Implementation of the Federal Information Security Management Act for FY 2011
OR12-01	Review of the Compliance Audit Program in the Bureau of Enforcement
OR12-02	FMC Controls over the Procurement, Lease and Use of the Agency Vehicle

In addition to these completed audits and reviews, the OIG performed fieldwork on the FY 2012 financial statement audit and the Federal Information Security Management Act evaluation, which includes privacy and data protection. The OIG also began a review of the agency's transit subsidy program.

The OIG investigations unit received 12 complaints in fiscal year 2012. The OIG responded to 5 of the complaints and forwarded 7 complaints to the appropriate FMC program area for disposition. The OIG opened 1 new investigation and referred one matter to prosecutorial authorities during this period.

In addition to these audit and investigative activities and outcomes, OIG staff held information-sharing sessions with agency staff to identify and clarify the various OIG activities that assist in accomplishing the OIG's mission to prevent and eliminate waste, fraud, abuse and mismanagement, and to promote efficiency and effectiveness. OIG staff also visited FMC area representatives in South Florida to enhance understanding of the functions and activities performed by FMC area representatives and, while there, gave a presentation to several members of the Miami business community and local government leaders about the role of Federal inspector general.

We continued to respond to consumers who were victimized as part of an internet scam operation using FMC indicia and worked with the agency's Office of the General Counsel to issue Commission regulations pertaining to IG reporting requirements as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203).

In addition to these audit and investigative activities and outcomes, the OIG responded to two congressional inquiries for information and responded to three Freedom of Information Act requests from the public.

OIG staff participated in several activities associated with the Council of the Inspectors General on Integrity and Efficiency (CIGIE), including actively serving on the (1) Legislation Committee where OIG staff reviewed and commented on several legislative initiatives affecting the OIG community; and (2) Integrity Committee, where staff reviewed allegations of administrative (non-criminal) misconduct against inspectors general and designated senior staff members of the OIG.

F. 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 shipping disputes. The Office provides a range of services designed to avoid the expense and delay inherent in litigation, and to facilitate the flow of U.S. commerce. With respect to matters already in litigation, or moving toward litigation, parties to a dispute are encouraged to avail themselves of mediation or other ADR processes to resolve their disputes. The Commission makes trained neutrals available to facilitate resolution at all stages. Outside neutrals also may be employed as needed. During fiscal year 2012, Commission mediators provided services in a number of matters, especially assisting parties in overcoming obstacles to delivery of transported goods.

CADRS also provides ombuds services to participants in ocean shipping transactions. Typical complaints include situations in which an NVOCC or VOCC has placed a hold on cargo in its possession, often for sums owed under a different contract of carriage. Other cases occur when an NVOCC has received cargo from its customer and taken payment for the transportation of the cargo, but failed to deliver the cargo. Urgent resolution may facilitate delivery of shipments to avoid additional demurrage/detention/storage charges. Household goods shippers often use unlicensed entities that demand additional payment and/or abandon the goods and refuse to communicate with the consumer. Tracking the location of a shipment can be difficult, and often additional charges accrue, necessitating payment of additional funds to obtain release of the shipment. CADRS also receives a significant number of complaints involving issues with cruise lines. Common examples of complaints include, but are not limited to, cruise cancellations, changes of itinerary, and difficulties encountered with connecting transportation (e.g. flight cancellations).

Another function of CADRS includes the adjudication of small claims through informal proceedings under the Commission's Rules of

Practice and Procedure at 46 C.F.R. Part 502, Subpart S. Office personnel serve as Settlement Officers in such cases, which involve complainants 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.

During fiscal year 2012, 670 complaints were received that necessitated the opening of cases. These included 132 passenger complaints about cruise line issues, 274 complaints with respect to household goods shipments, and 264 complaints involving other cargo shipment matters. Cargo shipment complaints continued to be increasingly complex. Problems involving ocean transportation intermediaries with overextended finances and inability to complete the ocean transportation continued to be an issue. In addition, many household goods complaints pertained to initial charges quoted vis á vis the actual charges billed, often due to measurement discrepancies.

In fiscal year 2012, CADRS continued its "Rapid Response Team" activities established under Fact Finding Investigation No. 26 to ensure timely resolution of commercial shipping disputes. CADRS also continued to expand the use of its services through public outreach and educational sessions with shippers, ocean transportation intermediaries, and vessel operators. Such sessions encouraged parties to incorporate language in service contracts to use CADRS-provided ADR to address contractual, commercial, and regulatory disputes. Such public outreach efforts included developing brochures, making ADR presentations and participating in industry/shipper meetings and issue-solving activities, and attending ADR conferences and meetings with government ADR groups.

CADRS also worked to implement several recommendations that were adopted by the Commission in Fact Finding No. 27 involving the review of potentially unlawful, unfair, or deceitful practices in the international shipment of household goods by water. As part of this effort, CADRS staff participated in the negotiation, execution, and implementation of a MOU with the Federal Motor Carrier Safety Administration (FMCSA). Under

the MOU both agencies agree to conduct joint outreach and educational activities, share information via access to the FMCSA's consumer complaint database, undertake joint enforcement activities, and refer disputes involving international household goods shipments to CADRS for the provision of ADR services. Pursuant to the Commission's commitments under the MOU, CADRS staff provided training to FMCSA headquarters and field staff regarding the regulatory role of the FMC in international shipping and the role of CADRS in resolving commercial and regulatory disputes. CADRS staff also provided several educational webinars to FMCSA's household goods partnership comprised of federal and state government agencies and industry participants. Further, CADRS participated in regular meetings with FMCSA's partners and staff regarding various issues impacting the household goods industry and participated in FMCSA's moving fraud task force. As a result of its efforts, CADRS received and addressed several inquiries and ADR referrals from FMCSA and its partners. One such example involved complaints involving two companies that were licensed both with the FMC and FMCSA that had gone out of business leaving consumers' shipments stranded both domestically and abroad. In that matter CADRS staff worked with consumers to locate and ensure delivery of their household goods and personal effects.

In addition to the Commission's formal partnership with FMCSA, CADRS furthered the Commission's Fact Finding No. 27 recommendations through enhanced relations with moving industry trade associations. As part of this effort CADRS staff attended various meetings with trade associations' leadership and provided training to associations' members regarding regulatory requirements that impact the international moving industry and the use of ADR to resolve international household goods disputes. These efforts resulted in the referral of several matters to CADRS for ADR services.

While working with trade associations and other governmental agencies to address household goods matters CADRS staff undertook additional measures to implement the Commission's Fact Finding No. 27 recommendations. First, CADRS coordinated with other Commission staff to

develop and implement a consumer resource webpage that provides information and resources to assist consumers contemplating an international move. Secondly, as part of the effort to assist consumers, CADRS issued several consumer alerts to inform the shipping public of trends and problems impacting international household goods shipments.

G. OFFICE OF THE MANAGING DIRECTOR

The Managing Director (MD) serves as the Commission's senior executive responsible for the management and coordination of the Commission's operating bureaus, exercising administrative direction or guidance over all units of the Commission. In addition to the major operating bureaus, the Managing Director oversees the Commission's Area Representatives and all administrative offices.

The MD is the Commission's Chief Operating Officer and is responsible to the Chairman for the management and coordination of the following:

- **Bureau of Certification and Licensing**
- **Bureau of Enforcement**
- **Bureau of Trade Analysis**
- **Area Representatives**
- **Office of Budget and Finance**
- **Office of Human Resources**
- **Office of Information Technology**
- **Office of Management Services**

The MD thus is responsible for implementing the regulatory policies of the Commission, as well as the administrative policies and directives of the Chairman.

In addition, the MD provides administrative guidance to the:

- **Office of the Secretary**
- **Office of the General Counsel**
- **Office of Consumer Affairs and Dispute Resolution Services**
- **Office of Administrative Law Judges**

and administrative assistance to the:

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

The MD's responsibilities include serving as the FMC's Chief Acquisition Officer (CAO), and Chief Financial Officer, among myriad other administrative responsibilities. The Deputy Managing Director serves as the Managing Director's Deputy with respect to all operational and administrative programs, as well as having primary responsibility for many efforts, including serving as the Commission's Competition Advocate. The Director of Strategic Planning and Regulatory Review within OMD coordinates development of the Commission's strategic plan.

The Director of Field Investigations (DFI) is located within the Office of Managing Director (OMD). The OMD oversees activities of the ARs and the DFI provides oversight, coordination, direction and monitoring of Commission investigative activities, including those of ARs. The DFI's responsibility includes extensive coordination among ARs and the Bureau of Enforcement, determining investigative priorities and goals and directly supervising all investigative cases.

In managing the day-to-day operations of the Commission, the OMD provides direction and coordination among Commission administrative and program components to assure synergism and cohesive efforts to achieve the Commission's strategic goals. The OMD initiates recommendations for long-range plans, new or revised policies and standards, and rules and regulations, while issuing internal directives to Commission staff.

During fiscal year 2012, OMD staff continued to coordinate plans to implement the recommendations of Fact Finding Investigation No. 27. The office was instrumental in pursuing and signing an MOU with FMCSA agreeing to cooperate in providing enhanced protection and assistance for consumers who move their household goods.

OMD also initiated cooperation with other agencies to leverage existing government assets. The MD signed MOUs with the Surface Transportation Board and the Census Bureau to share trade data. In addition, OMD oversaw coordination with Department of Defense agencies and U.S. Agency for International Development regarding issues affecting their ocean transportation costs.

The OMD coordinated efforts to study the diversion of U.S. cargo through Canadian and Mexican ports, pursuant to a congressional request. This involved extensive collection of information and input from various industry and government sources, and assessment by Commission staff.

During FY 2012, the MD initiated an effort to develop a long-range strategic plan for information technology (IT). The focus of the plan is to improve internal efficiencies, while providing improved data to support Commission programs. The Director of Strategic Planning and Regulatory Review was tasked with coordinating program office needs with OIT and the Chief Information Officer (CIO). An assessment of the agency's IT program was initiated and a study made of Disaster Recovery options. The assessment has demonstrated the need for significant upgrades of existing systems. As funds become available, plans are being developed to make those needed upgrades.

1. Area Representatives

The Commission's ARs represent the FMC in their respective areas. The Commission maintains a presence in Southern California, South Florida, New Orleans, New York, Houston and Seattle through ARs based in each of those locales. These representatives serve major ports and transportation centers within their respective areas and beyond. In representing the Commission, ARs act as a conduit for information to and from the maritime industry and the shipping public, resolve complaints and disputes between parties involved in international oceanborne shipping (often coordinating with CADRS), investigate alleged violations of the shipping statutes, and function as an intelligence resource to Commission headquarters. They provide advice and guidance to the shipping public, collect and analyze information of regulatory significance, and assess industry conditions. The ARs frequently cooperate and coordinate with other governmental agencies and departments, including Federal, state and local, providing shipping expertise and information and relaying Commission policy. The ARs inform the public about Commission requirements and services through activities such as seminars, participating in various conferences and trade shows, making presentations, and through various local community contacts.

In fiscal year 2012, hundreds of informal complaints were handled by the ARs. These complaints often involved unlawful activity. Where possible, compliance with statutory and regulatory requirements was achieved informally. In other instances, investigative cases were opened and the ARs conducted thorough investigations to determine the extent of unlawful activity. The ARs conducted investigations in 2012 of unlawful shipping practices, including unlicensed OTI activities, misdescription of commodities by shippers, and improper service contract rate application by ocean carriers. The investigative actions by the ARs led to the development of several enforcement cases that were referred to the Bureau of Enforcement for pursuit of civil penalties. Investigative activity by the ARs assists the FMC in ensuring fair competition by all participants in the trades to and from the United States.

The ARs were instrumental in the publication of public service announcements (PSAs) for each major port area in fiscal year 2012, warning consumers against the use of unlicensed OTIs. The ARs identified appropriate local publications, particularly those that would reach various ethnic communities that have been particularly vulnerable to fraudulent activity by unlicensed entities. The PSAs resulted in numerous inquiries and reports to the ARs regarding improper activity by both licensed and unlicensed OTIs, and appear to have helped educate consumers to be more alert to unlawful operators, saving many from potential losses.

During fiscal year 2012, the ARs made a number of presentations to interested industry audiences in their areas, explaining OTI licensing requirements and compliance with the new NRA Tariff Rate Exemption. ARs also worked closely with a number of law enforcement agencies, including local jurisdictions such as the New York City Police Department, New Jersey State Police, and Houston Police Department, as well as Federal agencies, including the Federal Bureau of Investigation (FBI). In addition, the South Florida ARs continued to provide valuable expertise and assistance to the Export-Import Bank of the United States (Ex-Im Bank) to facilitate the investigation by Ex-Im Bank's IG Office of several cases of fraud against the U.S. government.

The ARs also participated in task forces and initiatives sponsored by local law enforcement agencies, the U.S. Department of Justice, the Department of Homeland Security including Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE), the Department of Commerce (DOC) and the Federal Motor Carrier Safety Administration (FMCSA). This assistance and sharing of information contributed to the investigation of a wide range of unlawful activities.

ARs continued to provide valuable assistance in implementing recommendations of Commission Fact Finding Investigation No. 27. The ARs have been actively involved in reaching out to the public, consumer groups, trade associations, and other government agencies in efforts to achieve regulatory compliance and protection for the shippers of household goods and personal effects.

Under the MOU with FMCSA, the ARs joined with CADRS in providing a seminar to FMCSA staff on the Commission's investigatory processes and dispute resolution program. In addition, the ARs coordinated with FMCSA in investigating certain "rogue movers."

2. Office of Budget and Finance

(a) General Office Responsibilities

The Office of Budget and Finance (OBF) administers the Commission's financial management program and is responsible for offering guidance on optimal use of the Commission's fiscal resources. OBF 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, OBF manages the Commission's Travel Charge Card Program and administers all budget execution functions.

(b) Achievements

During fiscal year 2012, OBF:

- Collected and deposited \$1,006,298 to the U.S. Treasury from fines and penalty collections, publications, reproductions, and user fees and pursued delinquent debts as required by the Debt Collection Act.
- Worked with Bureau of Public Debt (BPD) staff and the Commission's independent auditors regarding the audits of fiscal years' 2011 and 2012 financial statements. The Commission received unqualified opinions for both fiscal years.

- Prepared monthly internal status reports on workyears, funding, travel, receivables, and budget allocation report to provide management with meaningful and timely expenses data by program.
- Processed all of the Commission's accounts payable documents in accordance with the Prompt Payment Act and worked with BPD to implement Treasury's Internet Payment Platform (IPP) to process the payment of invoices received from commercial vendors.
- Prepared and processed official travel documents in an E-travel system in accordance with applicable Federal Travel Regulations and agency policy.
- Prepared a variety of reports/responses to OMB and other external entities.
- Completed migration from Treasury's Paper Check Conversion (PCC) system of depositing remittances received from FMC customers to the new over the Counter Channel Application (OTCnet) and Transaction Reporting System (TRS).
- Identified a new procedure for calculating user fees and recalculated the fees based upon fiscal year 2011 costs.

3. 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 and information security.

(b) Achievements

During fiscal year 2012, OHR:

- Monitored activities of the agency's payroll/personnel service provider, the National Finance Center (NFC), and worked with Administrative staff to ensure security, continuity and accuracy of payroll and personnel services.
- Addressed talent/leadership management and succession planning and continued to provide technical oversight of the SES Candidate Development Program and guidance to participants and mentors concerning developmental activities, special projects, and training, as well as monitor participants' progress towards meeting program requirements and coordinate submission of requests to OPM for QRB certification, following program completion.

- Conducted a comprehensive training program in accordance with the agency's budget and strategic and performance plans, promoting e-learning and on-line training opportunities, continued the college tuition reimbursement program, ensured training for new employees on the *No Fear Act*, participated in the Small Agency Council Training Program, and introduced more agency mission-critical training (e.g., Conflict Resolution and COR training), and conducted Hiring Reform training for managers.
- Promoted programs for Retirement-Readiness, Personal Financial Literacy Education, and Volunteer/Community Service Awareness and issued newsletters highlighting appropriate information and activities.
- Conducted a comprehensive personnel and information security program, including initiating and adjudicating security investigations for new and reinvestigated employees and incorporating new security regulations into agency policy.
- Revamped and updated the agency Human Capital, Workforce, Solutions Implementation, and Succession Management Plans to ensure consistency with revisions to the agency Strategic Plan's goals and objectives.
- Coordinated with OPM, OMB, and the Small Agency Human Resources Council on human capital and related initiatives including, e.g., Hiring Reform, Voluntary Early Retirement Authority, employee satisfaction and wellness, potential sequestration and Presidential transition matters.

- Conducted a comprehensive performance management and incentive awards program, including ensuring successful implementation of the revised performance appraisal system for non-SES employees through the agency Performance Appraisal System Taskforce (PAST), establishing a special working group devoted to evaluating and revising policy on the agency's incentive and performance awards programs, and developing a system standard, agency policy, and appraisal documents necessary to seek approval to adopt OPM's basic, "model" SES performance appraisal system.
- Continued work with respect to closing competency gaps identified last fiscal year through the online Federal Competency Assessment Tool for managers and HR staff to update FMC's skill gap analysis, identify gaps in leadership competencies, support mission accomplishment, and guide planning for training and development.
- Conducted comprehensive classification and position management programs, including coordinating assignments and evaluating contractor performance.
- Managed and conducted employee benefits and charitable contributions programs and Open Seasons, such as the Combined Federal Campaign, Long-Term Care Insurance Program, Flexible Spending Accounts, the annual Benefits Open Season and FMC Health Fair.
- Conducted a proactive retirement program that included computing benefits, providing access to retirement seminars, related training and one-on-one counseling, and timely processing all retirements, as well as informing the workforce regarding Voluntary Early Retirement Authority.
- Coordinated with other administrative units and the General Services Administration's Managed Service Office on matters pertaining to Homeland Security Presidential Directive 12 (HSPD-12) and the issuance of Federal employee credentials, including activities to implement physical and logical access provisions.

- Coordinated with OPM in the administration of the Federal Employee Viewpoint Survey (FEVS), analyzed results, prepared interpretation and trend analysis, worked with senior management to identify and reinforce successful activities and develop strategies to address areas of improvement, and worked with the Partnership for Public Service in connection with metrics and utilizing results of the *Best Places to Work* rankings.
- Continued to administer E-gov initiatives and implementation of the Enterprise Human Resources Integration Project and worked with the Small Agency Human Resources Consortium, OPM and Northrop Grumman Integic officials to complete program activities to implement the electronic Official Personnel Folder (eOPF).
- Enhanced workplace flexibilities and provided recommendations to OPM regarding the agency's work/life program and best practices.
- Promoted the Preventive Health and Awareness Program and OPM's Healthier Feds initiatives, publicized and hosted wellness seminars sponsored by the Employee Assistance and Federal Occupational Health Programs and coordinated with other administrative units on matters pertaining to the Automatic External Defibrillator (AED) program and Health Unit (clinical) services.
- In concert with the President's hiring reform initiative, conducted a comprehensive recruitment program, including continuing activities through the agency SWAT team to simplify the Federal application process and reduce the time-to-hire, as well as develop occupational assessment instruments and establish an interagency agreement with OPM to provide staffing services in the new recruitment environment.
- Maintained the partnership for acquisition of assistive devices through the Department of Defense's Computer/Electronic Accommodations Program and continued to work with information technology personnel to ensure timely transmittal of training data to OPM through the automated training data management reporting system.

4. Office of Information Technologies

(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 information technology (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.

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 2012, OIT:

- Contracted with a third-party vendor to move the FMC to a cloud-based, high-availability enterprise email and office automation system. Google Apps for Government will provide FMC with reliable, high-availability email and office automation (word processing, presentation, and spreadsheet) capabilities in the cloud ensuring survivability and accessible data.
- Completed installation of HSPD-12 hardware continuing toward full compliance with HSPD-12 guidance.
- Contracted with third-party vendors to establish an enterprise data and content management platform. Requirements analysis is in progress with analysis and recommendations due to FMC in second quarter FY 2013.
- Awarded Pay.gov contract and began prototyping and implementation.

5. Office of Management Services

(a) General Office Responsibilities

The Office of Management Services (OMS) directs and administers a variety of management services functions 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.

(b) Achievements

During fiscal year 2012, OMS:

- Negotiated with BPD to reduce the agency's fiscal year 2012 Interagency Agency Agreement for cross services administrative support.
- Established new Contracting Officer's Representative (COR) training and certification program, in conjunction with the Small Agency Council, for agency personnel serving as program office leads on agency contracts, including a COR Roundtable that met bimonthly to share information and gain additional knowledge in the procurement and financial management arenas.

- In coordination with GSA, surveyed the northern New Jersey area for relocation of the Commission's New York area field office to a less expensive and better agency mission-oriented locale.
- Arranged for the design and printing of BTA's *Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law*, as well as reformatting to an assistive technology compliant document for website posting.
- Expanded the FMC's in-house procurement and acquisition program to include major award contracts for financial audit services, enterprise content management platform services, global business information services, court reporting and transcription services, Google cloud services and GeoSearch IT services.

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 reports.
- 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.

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 United States 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 United States (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.

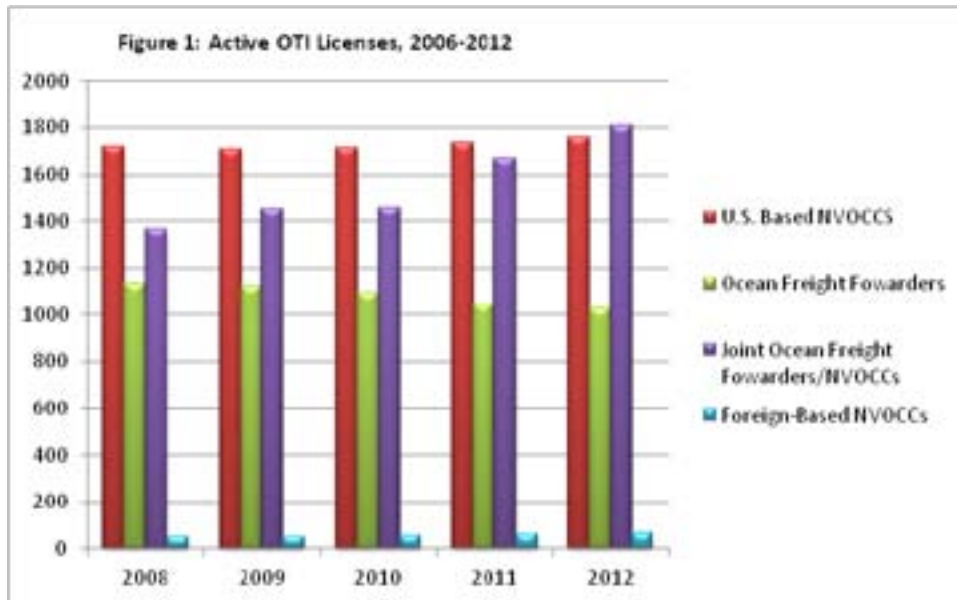
To become licensed by the Commission, an OTI must establish that it has the necessary character to render OTI services as well as establish its financial responsibility by means of a bond, insurance, or other instrument and through its Qualifying Individual (QI), has a minimum of three years of experience in ocean transportation intermediary activities in the U.S. An investigation of the applicant's qualifications addresses 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 branch office in the United States other than one used to establish a U. S. presence, for a foreign licensed NVOCC.

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

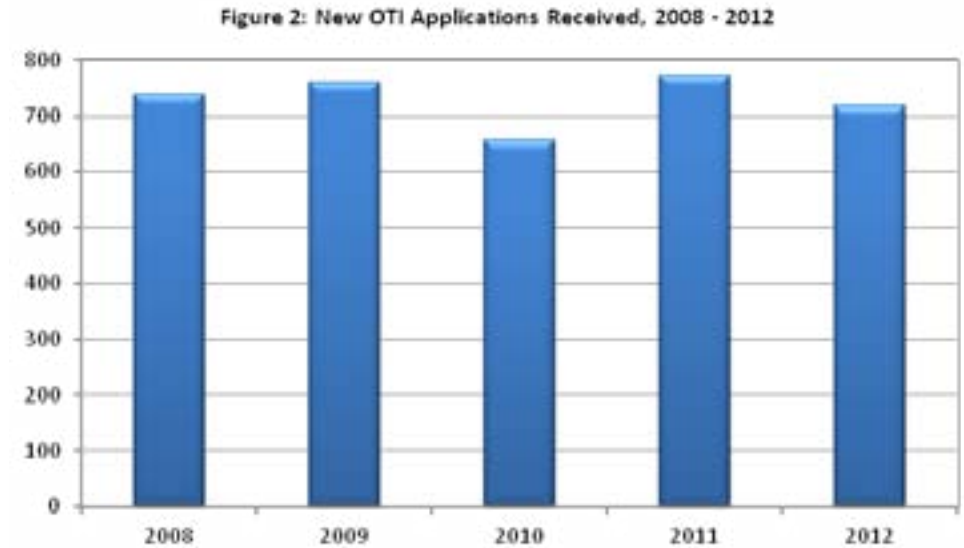
it must use a licensed OTI for any OTI services performed on its behalf in the United States. The financial instrument must be available to pay claims against the OTI arising from its transportation-related activities, any order of reparation assessed under the Shipping Act, and any judgments for damages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

During fiscal year 2012, the Commission received 441 new OTI applications and 278 amended applications, issued 363 new OTI licenses, and revoked 261 licenses. At the end of the fiscal year, 1,030 OFFs, 1,759 U.S. NVOCCs, 1,807 joint NVOCC/OFFs, and 70 foreign NVOCCs held active OTI licenses. An additional 1,233 foreign NVOCCs maintain proof of financial responsibility on file with the Commission, but choose not to be licensed. Overall, there are 200 more licensed and/or bonded OTIs, representing approximately a 3.5 percent increase from 5,699 OTIs in fiscal year 2011 to 5,899 in fiscal year 2012. U.S. NVOCCs may file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government. The Commission received 154 riders providing optional proof of financial responsibility for NVOCCs serving the U.S.-China trade last year; 23 riders were terminated. As part of its continuing outreach effort, the Bureau in FY 2012 handled over 5,300 inquiries regarding licensing and related OTI issues. Figure 1 shows the number of freight forwarders and NVOCCs that held active OTI licenses over the past five fiscal years from 2008 through 2012.

The Bureau worked diligently during the fiscal year to streamline the OTI licensing process and reduce the time needed to reach a licensing decision. The Commission's goal was to complete 70% of all OTI license applications within 60 calendar days during fiscal year 2012. The Bureau exceeded its goal by 20%, completing over 90% of all OTI applications within 60 business days.



The automated Form FMC-18, *Application for an OTI License*, permits 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. The Bureau seeks additional efficiencies in its OTI licensing program through improvements to the automated Form FMC-18 system. In FY 2012, 95 percent of all incoming OTI applications received were through the electronic system. Figure 2 shows the number of new applications processed over each of the last five fiscal years, 2008 through 2012.



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. At the end of FY 2012, the program encompassed 205 vessels and 40 operators, which had aggregate evidence of financial responsibility coverage in excess of \$323 million for nonperformance and over \$678 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 not to exceed \$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. Certificates of

casualty are required to cover liability that may occur for death or injury to passengers or other persons on voyages to or from U.S. ports. 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. U.S. Customs and Border Protection are directed to refuse clearance to any vessel which does not comply with the FMC's evidence of financial responsibility requirements for casualty and performance. During FY 2012, the Commission approved and issued 13 casualty certificates and 15 performance certificates.

In conjunction with CADRS, the Bureau offers information and guidance to the cruising public 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 closely with the cruise line and the financial responsibility provider, if necessary, to facilitate the refund process. The public is kept informed through press releases posted on the Commission's website and advice given to passengers who contact staff. During FY 2012, no cruise operator ceased operation with unperformed cruises.

The Bureau reviewed passenger vessel operator activities and operations by monitoring current industry events and examining cruise lines' unearned passenger revenue (UPR) information. Oversight of cruise line operations and activities ensures compliance with applicable statutes and Commission regulations. No on-site review was conducted this fiscal year. A rulemaking, as approved by Commission vote on July 14, 2011, was initiated to strengthen protections for cruise line customer deposits and prepayments and to reduce financial responsibility requirements for small cruise lines. This Notice of Proposed Rulemaking (NPRM) was issued on September 13, 2011, providing for public comment by November 21, 2011. The NPRM proposed to double the maximum coverage requirement for larger cruise

lines from \$15 million to \$30 million, with a two year phase-in period; adjust the maximum coverage requirement automatically to account for inflations, give relief to smaller vessel operators by reducing their coverage requirements to account for alternative forms of financial protections available to their customers, revise the application form, and add an expiration date to the Certificate (Performance); and make some technical adjustments to the regulations. Analysis of the comments to the NPRM and options for Commission action were presented to the Commission for consideration.

4. Automated Database Systems

During FY 2012, the agency contracted with a vendor to develop an enterprise solution to improve the agency's database applications and to eliminate the need for duplicate data entry. BCL currently hosts two active databases, the Regulated Persons Index (RPI) and the FMC-18 for OTI applications. The RPI is a database containing up-to-date records of licensed OTIs, ocean common carriers, and other entities. A key function of the RPI is to display, on the Commission's website, a list of compliant OTIs so that carriers and the public can ascertain whether an OTI is properly licensed, bonded, and if required, has posted the location of its automated tariff. The OTI list also indicates whether an NVOCC has filed an optional rider for additional proof of NVOCC financial responsibility for China activity. In FY 2012, this list was enhanced to allow for geo-searching based on an OTI's location (e.g. city, state or zip code).

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 1984 Act, and in investigations instituted under the FSPA. Bureau attorneys 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 Managing Director 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 the agency's investigative personnel, and information provided by the industry and other government entities, the Bureau monitors and provides liaison and legal advice in investigations of 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 PVOs 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

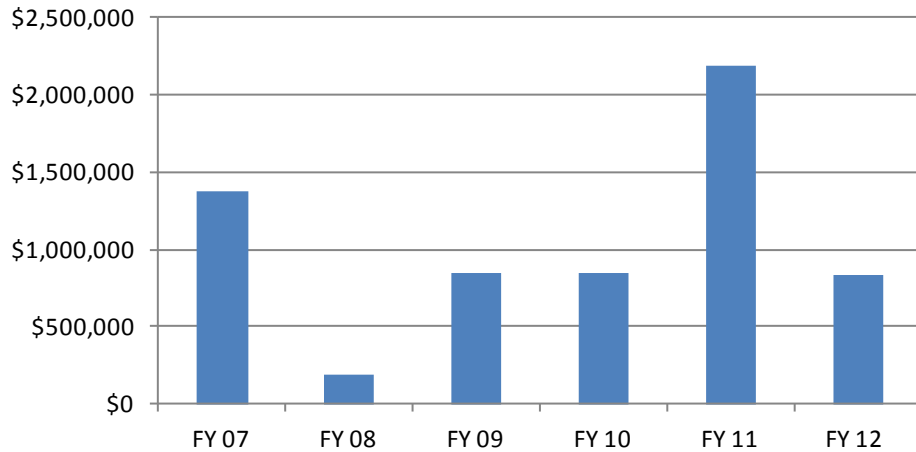
carriage; unbonded OTI and passenger vessel operations; and various types of consumer abuses, including failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers. The Bureau adheres to the agency's objectives of obtaining 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 2012, the Bureau of Enforcement investigated and prosecuted possible illegal practices in many trade lanes, including the Transpacific, Oceania, North Atlantic, 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, 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 3 shows civil penalties collected by the FMC over the last five fiscal years.

Major investigations completed during fiscal year 2012 addressed investigations of household goods movers allegedly operating as unlicensed OTIs, including those VOCCs and licensed NVOCCs that provided service to unlicensed movers. Docket No. 11-06 (Indigo Logistics LLC, et al) was discontinued upon approval of a formal settlement agreement, payment of substantial civil penalties by the unlicensed, unbonded operator and its principals, and issuance of a cease and desist order barring the company

**Figure 3: Civil Penalties Collected
FY 2007 - 2012**



and individual respondents from operating as an OTI or OTI agent for a period of 5 years. The Commission also pursued a formal investigation of OMJ International, OC International and Mr. Omar Collado in Docket No. 12-01, to determine whether respondents violated section 10(a)(1) of the 1984 Act by providing service to an unlicensed, unbonded NVOCC, and whether respondents should still qualify to be licensed as an OTI. The Bureau completed the formal discovery process in June, and filed its prehearing statement in August, 2012. In Docket No. 12-04, the Bureau submitted a memorandum of law and supporting affidavits seeking revocation of the OTI license of respondent Trans World Logistics Corp., for failure to report the resignation of the licensee's Qualifying Individual and failure to respond to lawful inquiries of the agency. The Commission issued an Order in July 2012, directing Trans World to cease and desist from operating as an OTI.

In Docket No. 11-20 (Publication of Inaccurate or Inactive VOCC Tariffs), BOE activities included formal proceedings instituted against numerous VOCCs to show cause why their published tariffs should not be cancelled. In March 2012, the Commission issued an order to 41 defaulting

respondents, directing them to cease and desist all carrier activities and cancelling their tariffs. An additional 5 carriers were dismissed from the proceeding. BOE also submitted briefs on remand in three additional unlicensed OTI cases, Docket Nos. 06-06, 06-09 and 07-02 respectively, addressing evidentiary and civil penalty issues raised in the Commission's Orders vacating the initial decisions of the Administrative Law Judge and remanding for further proceedings therein.

Interaction between the Bureau, the Commission's Area Representatives, and the U.S. Customs and Border Patrol (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.

During FY 2012, BOE successfully pursued a formal MOU with the Census Bureau, U.S. Department of Commerce, providing the FMC with access to the Census' Automated Export System (AES) database. Such data may be used only for FMC law enforcement purposes.

In fiscal year 2012, the compliance audit program continued. This program, conducted by BOE staff primarily by mail, reviews the operations of licensed OTIs to assist them in complying with the FMC statutory regulatory requirements. The audit program also includes review of entities holding themselves out as VOCCs where there is no indication of current vessel operations. During the fiscal year, 96 audits were commenced, 94 audits were completed (including audits carried over from FY2011), and 10 remained pending on September 30, 2012. During 2012, the Bureau's compliance audit program was extensively reviewed by the agency's Inspector General (Report OR12-01, issued March 2012), which reported that BOE's

audit program works well, meets program objectives, and produces results towards ensuring compliance with the Commission's OTI regulations.

At the beginning of fiscal year 2012, 13 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 8 formal proceedings, and there were 12 matters pending that the Bureau was monitoring or providing legal advice. During the fiscal year, 8 new cases were referred for enforcement action or informal compromise; 12 were compromised and settled, administratively closed, or referred for formal proceedings; and 9 enforcement cases were pending resolution at fiscal year's end. Also, 3 formal proceedings were initiated; 5 formal proceedings were completed, and 6 were pending at the end of the fiscal year. Additionally, the Bureau opened 7 matters involving monitoring or legal advice during the fiscal year, completed or closed 6 such matters, and 13 were pending on September 30, 2012.

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 1984 Act. The Bureau administers the Commission's agreements, service contract, NSA, and NRA 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 the major U.S. foreign trades, 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.
- Reviewing tariff publications in automated systems of carriers and conferences and ensuring that tariffs are accessible to the public and accurate, and overseeing application of the NRA regulations.

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 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 ocean common carriers 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 1984. Effective agreements are exempt from U.S. antitrust laws, and instead subject to 1984 Act restrictions and Commission oversight.

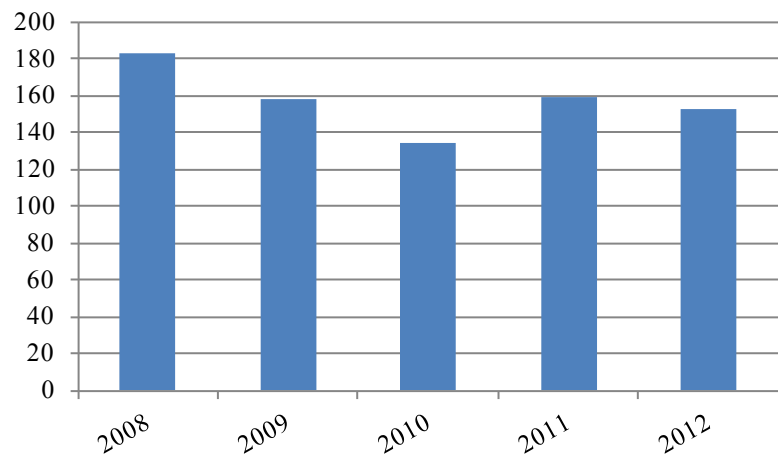
In fiscal year 2012, the Bureau received 153 agreement filings, a decrease of 4 percent, from the previous year. The Bureau analyzed and processed 143 agreement filings during the year. Statistics on agreement filings for fiscal year 2012 are contained in Appendix C. The following Figure 4 graph illustrates the trend in agreement filings since FY 2008.

While the annual number of filings changes year-to-year, the number of effective carrier agreements (Figure 5) on file with the Commission has remained relatively constant, averaging about 230 over the last five years, with a marked increase in FY 2012 due to an increase in vessel sharing agreement filings.

(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 of the two categories of agreements follow:

**Figure 4: Agreement Filings
FY 2008 - FY 2012**

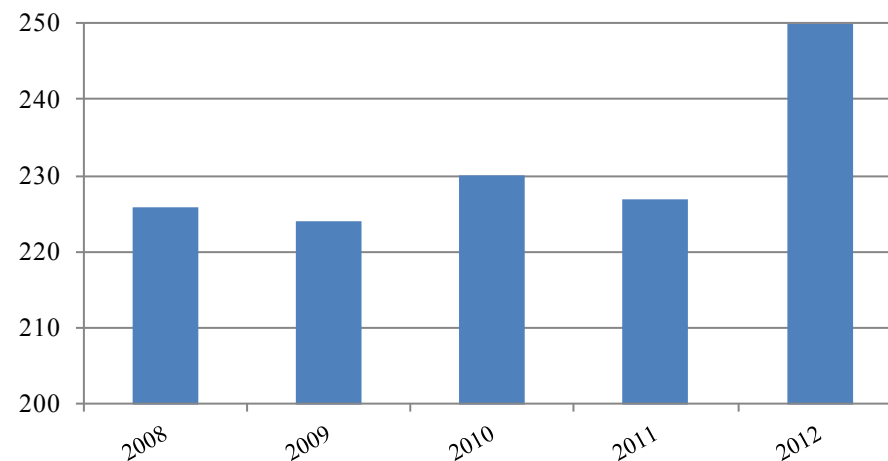


(1) Pricing Agreements

There are two types of pricing agreements: conference agreements and rate discussion agreements (RDAs). Conference agreements provide for the collective discussion, agreement, and establishment of common ocean freight rates and practices by groups of ocean common carriers. Conferences publish a common rate tariff in which all the member lines participate. RDAs also focus on rate matters, but unlike conferences, any consensus on rates reached under RDAs is non-binding on the parties. RDA member lines each publish their own tariff. At the end of the fiscal year 2012, there were three effective conference agreements, and 22 RDAs on file.

Conference agreements have become largely irrelevant to U.S. liner shipping. No new carrier conference agreement has been filed with the Commission since fiscal year 2000. The remaining three conferences cover only government cargoes.

**Figure 5: Effective Carrier Agreements
FY 2008 - FY 2012**



Today, RDAs are the primary pricing forum in U.S. trade lanes. Since fiscal year 2000, the number of RDAs on file have declined from 36 to 22 agreements. During fiscal year 2012, RDA filings for the most part involved adding or removing members. No new RDAs were filed last year.

(2) Operational Agreements

Operational agreements include vessel-sharing agreements (VSAs), joint service agreements, cooperative working agreements, and non-rate discussion agreements without rate authority. At the end of the fiscal year, operational agreements accounted for 90 percent of all carrier agreements on file.

VSAs typically authorize some level of service cooperation with the goal of reducing individual line's operating costs. VSAs range from alliance agreements, which involve close operational cooperation across multiple trade lanes, to slot charter agreements, which require only minimal commitments. VSAs account for the vast majority of filed carrier agreements, 78 percent at the end of the fiscal year. They also accounted for 65 percent of carrier agreement filings received last year. Sixty-four new VSAs were filed in fiscal year 2012, and 15 VSAs either were terminated or expired. Last fiscal year, the total number of VSAs on file increased by 25 to 195 agreements.

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. No new JSAs or amendments to existing JSAs were received last fiscal year. At the end of the year, there remain six JSAs on file with the Commission.

Many cooperative working agreements (CWAs) are non-pricing agreements that tend to deal with unique operational considerations relating to acquisitions, sharing of administrative services, or internet portal management. Other CWAs filed with the Commission include agency, sailing, trans-shipment, and equipment interchange (including chassis pooling) agreements. At the end of the year, there were 17 CWAs; no new CWAs were filed last fiscal year.

Discussion agreements without rate authority provide ocean common carriers a vehicle for discussing matters of mutual interest other than rates. Typically, these agreements focus on macro-economic, regulatory, safety, or security issues. At the end of the fiscal year, there were eight such agreements on file.

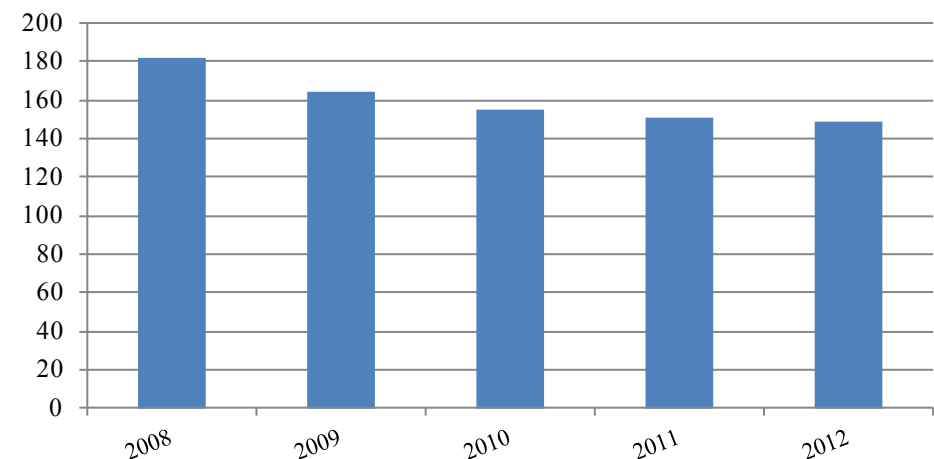
(b) Marine Terminal Operator Agreements

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.

During fiscal year 2012, the Bureau received 14 MTO agreement filings, including one termination. At the end of the fiscal year, there were 149 marine terminal agreements on file, down from 151 the previous year. The Figure 6 graph below shows the trend of MTO agreements on file over the last five years.

Terminal leases accounted for most of the MTO agreements on file, followed by MTO discussion agreements, MTO joint ventures, and service agreements. Over the last five years, leases and services agreements experienced the deepest declines, due largely to the filing exemption afforded under the Commission's regulations and notifications of previously unreported

**Figure 6: MTO Agreements on File
FY 2008 - FY 2012**



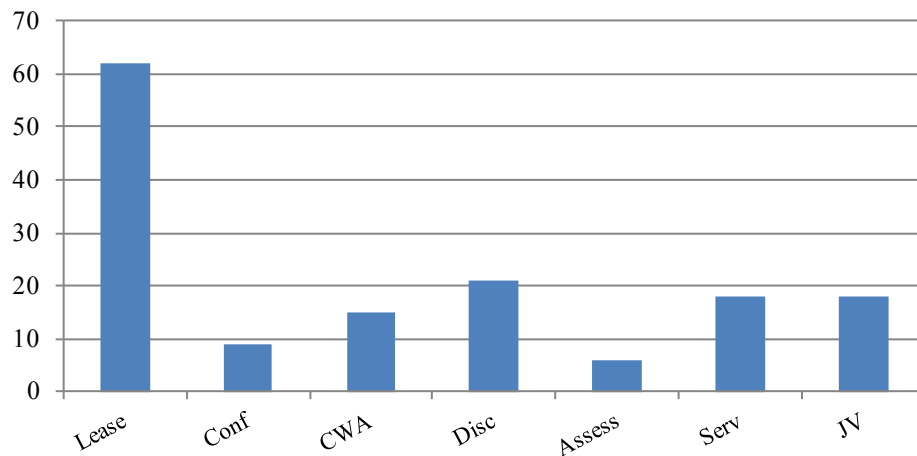
terminations. MTO discussion agreements experienced the largest increase in numbers over the last five years, going from 11 agreements in 2008 to 21 agreements at the end of 2012. This increase is due mainly to the MTOs' need to discuss environmental, infrastructure, security, and congestion issues that the ports are facing today.

The following Figure 7 graph, charts the types of MTO agreements on file at the end of fiscal year.

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 1984 Act. The activities of certain types

**Figure 7: MTO Agreements
as of Sept 30, 2012**



of MTO agreements are monitored in a similar fashion. Monitoring helps ensure that carriers and MTOs comply with the statutory standards of the 1984 Act and the requirements of relevant Commission regulations. The Bureau administers monitoring programs, and conducts research into current trade conditions, emerging commercial trends, carrier pricing and service activities, and other issues that may affect U.S. liner shipping.

The Commission's monitoring program examines carrier competition in individual U.S. trade lanes, including market share, concentration, barriers to market entry, and coordination among carriers. The program also examines alternative service options and supply sources, cargo volume trends, congestion bottlenecks, commercial pricing practices, operational cost pressures, service offerings, vessel capacity utilization, service contracting activity, and shipper complaints.

In fiscal year 2012, the Bureau's economists administered their agreement oversight responsibilities regarding ocean common carriers and MTOs and prepared various reports and analyses. These included: (1) completing the Bureau's study of the impact of the repeal of the EU's block exemption, *Study of the 2008 Repeal of the Liner Conference Exemption from European Union Competition Law*; (2) developing data sources for and researching economic factors relevant to Docket No. 11-19, *U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports*, including signing an agreement with the Surface Transportation Board to access and analyze the carload waybill sample files for 1998 through 2010; (3) compiling data for, conducting economic research relevant to, and preparing a feasibility analysis concerning the possible creation and maintenance of a set of freight rate indices for a group of U.S. agricultural exports using service contract data filed with the Commission; and subsequently preparing a Notice of Inquiry (NOI) to invite public comments on the likely utility and appropriateness of the proposed undertaking; (4) analyzing and making recommendations concerning the need for continuing or revising the Commission's requirement that the TSA and the WTSA file transcripts of meetings rather

than meeting minutes with the FMC for agreement monitoring purposes; (5) preparing a memorandum to the Commission on proposed reporting requirements for an amendment to the Consolidated Chassis Management Pool Agreement; (6) providing research assistance to the Bureau of Certification and Licensing with respect to possible adjustments in PVO financial responsibility coverage requirements, and providing economic analysis of the impact on small businesses of the resultant proposed rulemaking; (7) providing regular written reports and oral presentations to the Commission on international and national economic conditions and liner industry activities that are likely to affect U.S. liner trades in the near- and mid-term; (8) updating and expanding the BTA intranet website with trade and agreement profiles and other relevant information; (9) assisting with the computer programming of the SERVCON operating system to index and search service contracts; (10) participating in the Automated Commercial Environment (ACE) under the U.S. CBP; (11) providing data and information on liner trade conditions and agreement matters in response to requests from within and outside the Commission; (12) meeting separately with representatives of the TSA and WTSA pursuant to previous Commission investigations; and (13) preparing a quarterly economic and trade briefing paper for the Commission.

The Bureau also provides economic expertise for Commission initiatives, including rulemaking proceedings. Bureau economists may prepare testimony in investigations and cases of unfair shipping practices under section 19 of the 1920 Act and the 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 shipping public.

4. Tariffs

The 1984 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 1984 Act. The Bureau also determines whether to grant applications for special permission to deviate from tariff publishing rules and regulations. During fiscal year 2012, the Bureau received and processed 14 special permission applications and 2 service contract correction applications.

The Bureau also 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 2012, 5,210 tariff location addresses were posted on the Commission's website. Of that number, 4,807 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.

Last fiscal year the Commission provided regulatory relief, allowing licensed NVOCCs to "opt out" of the requirement to file rate tariffs provided they use NRAs exclusively. NVOCCs are required to keep NRAs which must be memorialized in writing for a period of five years. Additionally, NVOCCs are required to maintain rules tariffs which must be made available free of charge. It is expected that NVOCCs will continue to take advantage of this opportunity, thereby significantly reducing the number of rate tariffs the Bureau must check to ensure compliance with all applicable regulations. At the end of fiscal year 2012, 465 NVOCCs had filed prominent notices or a rule in their respective tariff indicating that they had invoked the exemption.

5. Service Contracts

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

During fiscal year 2012, the Commission received 47,664 new service contracts, compared to 50,068 in fiscal year 2011, and 498,727 contract amendments, compared to 466,493 in fiscal year 2011. The number of original contracts in fiscal year 2012 decreased by 2,404 whereas amendments increased by 32,234. The number of original contracts decreased as shippers projected slower growth, while contract amendments increased as trans-pacific carriers attempted to implement a series of general rate increases from January 1 through September 30, 2012.

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, 5,761 records involving corrected transmission copies were filed into SERVCON.

6. Service Arrangements

Commission rules allow NVOCCs to offer transportation services pursuant to individually negotiated, confidential service arrangements with customers known as NVOCC Service Arrangements (NSAs) rather than under a published tariff.

Since January 2005, when NSA filing began, 7,896 NSAs and 14,410 amendments have been filed with the Commission. In fiscal year 2012, 1,435 NSAs and 2,114 amendments to NSAs were filed by a total of 75 NVOCCs. Of the 1,244 NVOCCs that are registered with the Commission to file NSAs, only 184 (about 15 percent) have done so.

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 foreign government. The 1984 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 monitors U.S. and foreign trade press and other information sources to identify controlled carriers and any unjust or unreasonable controlled carrier activity that might require Commission action. In fiscal year 2012, four controlled carriers operated in the U.S. trades:

- (1) American President Lines, Ltd. and APL Co., Pte. (RPI No. 000240) – Republic of Singapore;
- (2) COSCO Container Lines Company, Limited (RPI No. 015614) - People’s Republic of China;
- (3) China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Company, Ltd. (RPI No. 019270) - People’s Republic of China; and
- (4) Hainan P.O. Shipping Co., Ltd. (RPI No. 022860) – People’s Republic of China.

8. Marine Terminal Schedules

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 276 MTOs have filed Form FMC-1, with only 159 electing to voluntarily publish their terminal schedules by the close of fiscal year 2012. The internet addresses for these MTO terminal schedules are posted on the Commission's website.

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.

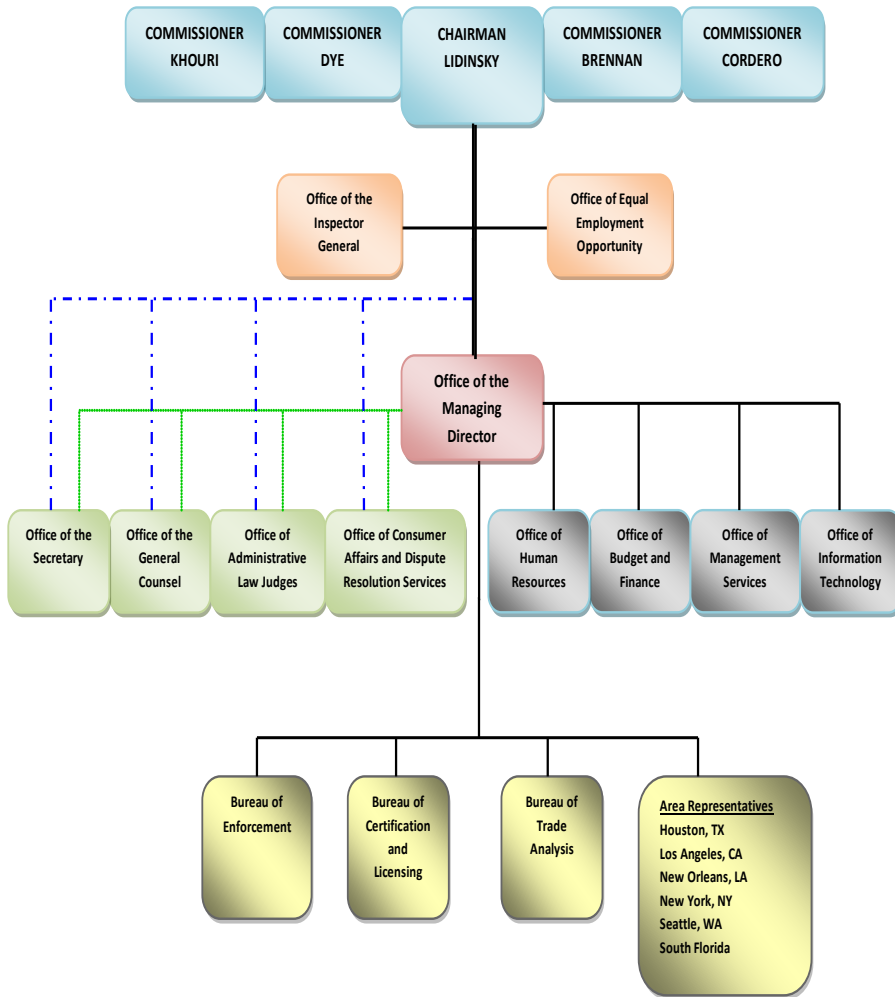
At the end of fiscal year 2012, the Form FMC-1 System reflected the tariff location addresses of 239 VOCCs, 4,807 NVOCCs, 5 conferences, and 159 MTOs. The FMC-1 System also allows the Commission to track the status of any Form FMC-1 submitted. The OSCT staff conducted extensive research in validating whether VOCCs were actively providing common carriage service in the waterborne commerce of the U.S. As a result of these efforts, the number of active VOCCs was significantly reduced.

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.

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, the Commission makes certain database information 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.

APPENDICES

**FEDERAL MARITIME COMMISSION
ORGANIZATION CHART**
as of
SEPTEMBER 30, 2011



— Administrative Direction
- - - - - Technical Direction

**APPENDIX B
COMMISSION PROCEEDINGS
Fiscal Year 2012**

Formal Proceedings

Orders of Investigation Initiated	0
Formal Complaints Filed	7
ALJ Initial Decisions Issued*	5
Initial Decisions Reviewed	1
Exceptions Filed to Initial Decisions	1

Fact Finding Orders Issued (Final Report) 0

Rulemakings

Proposed Rules	5
Final Rules	5

Informal Dockets

Informal Complaints Filed	7
Settlement Officer Decisions Issued	12
Settlement Officer Decisions Reviewed	3

Notice of Inquiries Issued 5

Hearings Held (Public Forum) 1

*Initial Decisions includes four settlements approved and one dismissal.

**APPENDIX C
AGREEMENT FILINGS AND STATUS
Fiscal Year 2012**

Agreements Filed

(including modifications and terminations)

Carrier	139
Terminal.....	14
Total.....	153

Agreement Processing Categories

Forty-Five Day Review.....	60
Expedited Review.....	10
Exempt-Effective Upon Filing.....	73
Rejection of Filing.....	0
Formal Extension of Review Period.....	0
Withdrawals.....	0
6(g) Injunction.....	0
Total.....	143

Carrier Reports Submitted for Commission Review

Minutes of Meetings.....	921
Voluntary Service Contract Guidelines.....	115
Monitoring Reports.....	452
Total.....	1,488

Agreements on File as of September 30, 2012

Conference.....	3
Rate Discussion.....	21
Non-Rate Discussion.....	8
Joint Service.....	6
Vessel-Sharing.....	195
Cooperative Working & Other.....	17
Terminal.....	149
Total.....	399

**APPENDIX D
FORM FMC-1
TARIFF LOCATION ADDRESSES - SERVICE CONTRACT AND
NSA FILINGS AND SPECIAL PERMISSION APPLICATIONS
Fiscal Year 2012**

Form FMC-1 Filings

VOCCs.....	239
OTI/NVOCCs.....	4,807
MTOs.....	159
Conferences.....	5

Electronic Service Contract Documents

New Service Contracts.....	47,664
Service Contract Amendments.....	498,727

NVOCC Service Arrangement (NSA) Documents

New NSAs.....	1,435
NSA Amendments.....	2,114

Special Permission Applications

Granted.....	14
Denied.....	0
Pending.....	0
Withdrawn.....	2

**APPENDIX E
CIVIL PENALTIES COLLECTED
Fiscal Year 2012**

Orient Express Container Co., et al.....	\$ 235,000.00
Pan-Link International Corp., et al.	75,000.00
Wanda Shipping Co. Inc. and Heng Shen USA Inc.....	35,000.00
Solex Logistics Inc.....	105,000.00
Indigo Logistics LLC.....	50,000.00
JIF Logistics Inc.....	40,000.00
Proshipping Group Corp.	60,000.00
King Shipping Co.....	100,000.00
Icon Logistics Services LLC.....	20,000.00
U.S. Pacific Transport Inc.....	50,000.00
Greating Shipping Co.....	68,000.00
Total Civil Penalties Collected.....	\$838,000.00

**APPENDIX F
STATEMENT OF APPROPRIATIONS,
OBLIGATIONS AND RECEIPTS FOR
THE FISCAL YEAR ENDED
SEPTEMBER 30, 2012**

APPROPRIATIONS:

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 307), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902, \$24,100,000: Provided, That not to exceed \$2,000 shall be available for official reception and representation expenses.

Public Law 112-55	\$24,100,000
Reimbursable Authority	54,660

Total Budgetary Resources	\$24,154,660
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OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2012.

\$24,013,348

STATEMENT OF RECEIPTS:

Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2012:

Publications and reproductions, fees and vessel certification, and freight forwarder applications	\$ 236,298
Fines and penalties	\$ 770,000

Total general fund receipts	\$ 1,006,298
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