

FEDERAL MARITIME COMMISSION

ANNUAL PROGRAM PERFORMANCE REPORT

FOR FY 1999

March 2000

INTRODUCTION

This document comprises the Federal Maritime Commission's Annual Program Performance Report for Fiscal Year 1999, as required by the Government Performance and Results Act ("GPRA"). It has been prepared in accordance with OMB Circular No. A-11, Part 2.

This progress report describes the Commission's actual performance in FY 1999 compared with the projected levels of performance we established in our FY 1999 Annual Performance Plan. It reflects the degree of success we achieved in pursuit of our FY 1999 performance goals, and briefly evaluates the effect of that performance on our current Annual Performance Plan (i.e., our FY 2000 Plan).

This is the Commission's initial progress report under GPRA. Fiscal year 1999 was both a momentous and busy year for the Commission. A new shipping statute was signed into law by the President in October 1998, and became effective on May 1, 1999. This legislation dramatically changed the manner in which business will be conducted in the ocean shipping industry, and similarly altered the Commission's oversight role and responsibilities. During FY 1999, the Commission was required to prepare appropriate regulations to implement this new statute. We also had to transition our operations and philosophical approach to our oversight responsibilities, in order to comport with the Ocean Shipping Reform Act of 1998 ("OSRA"). In addition to that, the Commission in FY 1999 again was faced with severe budgetary constraints which had a significant impact on our day-to-day operations.

Notwithstanding these events, we are pleased to report overall success in achieving our stated goals and objectives. We believe that both our strategic goals and our performance goals helped us to remain focused during this period, and enabled us to more readily adapt to our changed role in this new regulatory environment. With the continuing efforts and professionalism of our dedicated staff, we were able to accomplish all of our goals and significantly exceed several. We have found that the planning and direction required by the GPRA process has facilitated our efforts to perform as we had envisioned. While our

processes remain appropriate, and our productivity high, we were successful in also achieving the results-driven objectives of GPRA. Despite specific obstacles and an extensive workload, we are pleased with our accomplishments. Under the guidelines and framework of our GPRA planning process, we look for more of the same in the future.

This report has been forwarded to the President, with a copy to the Director, Office of Management and Budget. We also have furnished copies to all those in Congress required to receive the report, who are the same individuals who previously have received copies of our Strategic Plans and Annual Performance Plans. Additionally, we have furnished copies of this report to all Commission employees, and have placed it on our Internet website to ensure that it is readily accessible to interested parties.

We have taken pains to compile a report that is easy to read and understand, but appropriately communicates the results of our programs and activities. We have attempted to be direct and concise in the manner in which we have conveyed the information. For organizational purposes, and to facilitate review, we have repeated the mission statement from our Strategic Plan and briefly summarized it. We then have listed the strategic goals we identified as necessary to accomplish our mission. In order to demonstrate the linkage between our strategic goals and performance goals, we have organized this report by our six program activities. For each of these activities, we begin by stating the specific strategic goals that are directly related to the performance goals attendant to that activity. We then state each performance goal with the target level of performance for each, and then describe our actual level of performance regarding that goal. At the end of each of these descriptions, we assess the effect of our actual performance on our estimated levels of performance for the current fiscal year (i.e., FY 2000).

FMC MISSION

The Commission established its mission as follows:

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

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

of government intervention and regulatory costs. It also recognized that its actions must encourage the development of a sound U.S.-flag liner fleet.

FMC STRATEGIC GOALS

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

1. *Compliance*: Promote the development of U.S. exports and the efficiency of ocean shipping by ensuring compliance with shipping statutes administered by the FMC.

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

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

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

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

PROGRESS IN ACHIEVING PERFORMANCE GOALS

The Commission recognized the importance of accomplishing its strategic goals and the outcome goals related to them. Accordingly, specific means were identified to enable the FMC to achieve its goals in the most cost-efficient and least disruptive manner possible. The performance goals of the Commission's FY 1999 Annual Performance Plan were directly linked to the Commission's strategic goals. They were identified as the appropriate means for accomplishing our mission.

This section of the report assesses our actual performance in FY 1999. As aforementioned, we have organized this report according to our six program activities. The specific strategic goals related to these activities are cited. The three performance goals under each activity

then are succinctly described, followed by a description of our performance under each goal, along with its effect on performance under our current annual performance plan.

Budget Program Activity: Formal Proceedings

Related Strategic Goals

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

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

Performance Goal 1:

By end of FY99, Commission decisions on average are issued 16 months from date case begins, so the public is provided with more timely determinations on contested matters.

Progress: The Commission exceeded its goal of reaching a final decision in formal proceedings 16 months on average from the date the case begins. Over the course of the last two fiscal years, the Commission has reduced by nearly half the time it takes to issue a final decision. Our goal for fiscal year 1999 was to issue a final decision within 16 months, which would represent a one-month reduction from the 17-month average in fiscal year 1997. In fiscal year 1998, the average completion period for a formal proceeding was approximately 15 months. In fiscal year 1999, the average completion date was approximately 9.5 months. Barring a significant increase in volume or complexity in FY 2000, the efficiencies achieved should allow the Commission to continue to produce timely, fair decisions within a reasonable time.

Performance Goal 2:

By mid-FY99, assess 84 Act, PL 89-777 & Reform Act proposals & identify changes to benefit US commerce, to facilitate FMC oversight, and to provide further needed protection for the cruising public, and appropriately advise Congress.

Progress: Given the progress of reform legislation, the intention of this goal was to furnish ongoing assistance to Congressional committees, and to identify relevant issues/concerns. The Commission did so, providing substantive ongoing assistance to Congress during OSRA's enactment, which resulted in widely endorsed legislation. We also provided ongoing assistance to interested members of Congress regarding the scope of the FMC's

P.L. 89-777 authority to protect the cruising public. We also used the Internet, public appearances, and other informal means to apprise and educate the public and our stakeholders of the new regulatory requirements and opportunities under OSRA. These actions affect our current year estimated performance in that we will conduct a two-year assessment of the new Act, with an interim status on that report to be issued in FY 2000. We also will pursue our efforts to achieve compliance with all new statutory requirements.

Performance Goal 3:

Develop & utilize process for rapid response to clear cases of fraud & passenger vessel operators' financial failures with result, e.g., 25% increase in FY99 in number of unscrupulous intermediaries forced to cease and desist in actions harming unsuspecting shippers.

Progress: Under this goal, the Commission planned to develop an appropriate approach to address the issue by March 31, 1999. This was accomplished by establishment of an inter-office task force to exchange information and pursue specific strategies. The Commission worked with Congress to include in OSRA clearer protections for injured consumers via more stringent and expansive bond coverage for intermediaries and claim procedures for surety companies. The Commission prioritized the resolution of cases dealing with unscrupulous intermediaries who are the subject of multiple complaints. We increased assistance to individual members of Congress in addressing PVO complaints, certain of which did not fall squarely within our area of responsibility. Additionally, we promulgated rules carrying out and clarifying OSRA's new bonding and surety requirements, which are aimed at providing additional levels of protection for consumers. These actions affect our FY 2000 targets in that our new Bureau of Consumers Complaints and Licensing will be more proactive in this regard, and will coordinate with our task force to identify and focus resources on fraud matters. Additionally, we will monitor new procedures under OSRA for claims against sureties, and will monitor new bond amounts to determine whether they meet OSRA's objectives of protecting consumers.

Budget Program Activity: Operational and Administrative

Related Strategic Goals

1. *Compliance:* Promote the development of U.S. exports and the efficiency of ocean shipping by ensuring compliance with shipping statutes administered by the FMC.
4. *Internal Capabilities:* Ensure the FMC has the organizational ability and the managerial leadership necessary to meet its regulatory, enforcement and educational responsibilities.

Performance Goal 1:

Develop & implement enforcement/compliance initiatives to address evolving violative malpractices resulting in self-policing groups reporting decrease of 10% malpractice or non-compliance activities by end of FY99.

Progress: Under this goal, the Commission determined to have the planned initiatives fully operational by 1/1/99, and then to dedicate the necessary resources to identify probable violators. We achieved this goal. We developed an audit program for ocean transportation intermediaries ("OTIs") and vessel-operating common carriers, which has encouraged compliance and seen the number of non-compliance occurrences decrease. Malpractice initiatives also were begun, especially in the North/South trades. Based on our informed industry sources and self-policing bodies, malpractices did decrease and our enforcement and compliance actions have encouraged compliance and self-policing. As indications, from FY 1998 to FY 1999, the number of informal settlements increased from 28 to 30, the dollar value of settlements increased from \$3.9 million to \$5.4 million, and shipper complaints to the agency ombudsmen decreased by 19 percent.

Performance Goal 2:

Maximize use of Information Technology ("IT") by fulfilling all goal-related objectives of IT 5-year plan by 3/30/99, to increase staff efficiency.

Progress: Our actual performance under this met projections, with minimal lapses of certain deadlines. We procured both better Internet access to maximize staff efficiency and firewall protection to strengthen security; developed an electronic service contract filing system designed to meet the needs of the industry, thereby reducing filing burdens and increasing the ease of compliance; and made agency documents (speeches, application forms, etc.) more readily available via our website. Reduced agency funding continued to affect full performance on all technology objectives, but necessary actions in our 5-year IT plan were accomplished. These actions affected our FY 2000 targets in that we were positioned to upgrade all network servers and virtually all computers, and procure better virus protection and network security. Obtaining additional funding for Y2K compliance provided a significant boost in this area.

Performance Goal 3:

By 3/30/99, conduct an audit to verify that all employees' actual performance comports with the thrust of strategic plan & annual performance plan.

Progress: The performance plans of all senior executives and agency managers include several elements that are tied directly to achieving the results set forth in the agency's Strategic Plan and overall Annual Performance Plan. Additionally, all employees have specific performance elements geared towards accomplishing agency strategic and

performance goals. These elements are assessed, and modified if necessary, at mid-year progress reviews (or at other times of the appraisal year if necessary). Additionally, all executives and managers consistently are reminded of the importance of working toward achieving the agency's stated goals and objectives. Through these efforts, we were able to substantiate that our staff's daily efforts and ongoing performance comported with our overall goals and policy objectives. Performance under this goal has positioned us to efficiently assess our FY 2000 target of ensuring that our appraisal process properly considers the new responsibilities and activities flowing from OSRA.

Budget Program Activity: Economics and Agreement Analysis

Related Strategic Goals

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

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

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

Performance Goal 1:

Assess information form reporting requirements & reduce number of information form reports by at least 20%.

Progress: The Commission met the requirements and self-established deadlines of this goal. In order to reduce the burden on carriers submitting information forms and monitoring reports, the Commission aimed to remove the requirement for any unnecessary information and increase the effectiveness of staff analysis of data submissions. The number of information form reports was reduced by close to 20 percent. As a first step, waivers and the renewal of past waivers of certain information form and monitoring report requirements were granted to ocean carriers, which has reduced the amount of data required from numerous agreements. The reduction in reports was achieved through consolidation of trade lane, commodity and revenue reports which reflect actual pricing strategies of the agreements. A review and audit of the reporting requirements was completed and should enable the Commission to further reduce reports in FY 2000, particularly given changes brought about under OSRA.

Performance Goal 2:

Apply economic analysis component of 6(g) process to evolving industry & issue two 6(g) analyses under refined process.

Progress: The targets assigned to this goal were achieved. In order to eliminate any existing and prospective concerted carrier activity of carrier agreements that could be detrimental to shippers, and to provide an ocean shipping environment that encourages the free flow of commerce, 6(g) analyses were issued on one major agreement in the transpacific and one agreement in the North Atlantic trades. As a result of the analyses of information submitted by the agreements and obtained from shippers, one potentially highly anti-competitive agreement was withdrawn, while the other's activities continue to be closely monitored to ensure a competitive environment in that trade. As to performance levels under our FY 2000 Plan, the information developed from the completed analyses, the results attained through this process, along with the new regulatory environment under OSRA, will enhance the Commission's ability to apply its modified 6(g) approach under OSRA ensuring efficient and competitive trade conditions.

Performance Goal 3:

Refine teamwork approach to monitoring carrier concerted activity & capture informally in two instances or issue two §15 orders in FY99 aimed at eliminating significantly anticompetitive concerted carrier activity.

Progress: The refined teamwork approach between the economist and transportation specialists in monitoring concerted carrier activity has resulted in the Commission issuing a section 15 order to members of the Asian Shipowners Forum and a request for additional information from members of a major transpacific agreement, to obtain critical information aimed at eliminating significantly anticompetitive concerted carrier activity. As a result, the Asian Shipowners Forum has filed an agreement with the Commission that will provide minutes of their meetings enabling monitoring of concerted activities. Further, the information obtained through the request for additional information has made monitoring a major transpacific agreement more effective, thereby reducing the likelihood of significantly anticompetitive behavior. In assessing our FY 2000 performance plan, it is clear that completion of this performance goal provides the necessary background for assessment of actions proposed, and enhances our ability to obtain information, formally or informally, aimed at eliminating significantly anticompetitive concerted carrier activity.

Budget Program Activity: Tariffs, Certification & Licensing

Related Goals

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

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

Performance Goal 1:

Maximize the use of available IT to develop by 3/30/99 a cost-justified proposal for the automated filing of service contracts.

Progress: The passage of OSRA essentially compelled the Commission to significantly exceed its goal of proposing an automated filing system for service contracts by 5/30/99. Using the latest IT technology, we designed, proposed, and implemented an Internet-based system for filing service contracts by 5/1/99. Use of transmission Internet protocols realized considerable developmental cost savings over conventional IT approaches to high-volume, confidential document filings. Additionally, the Commission significantly simplified time and cost filing burdens on the industry by enabling the use of low-cost, easily accessible, and readily usable off-the-shelf software. The agency significantly exceeded this goal because it accelerated its efforts in response to the industry's expressed interest in being able to use a low-cost, user-friendly system upon the May 1 effectiveness of OSRA. As to FY 2000 performance targets, the new system developed under this goal eliminated certain paper-management burdens for the agency, and freed analysts to spend more time reviewing substantive service contract provisions.

Performance Goal 2:

By 3/30/99, freight forwarder license applications processed completely within 30 days, absent applicant delay.

Progress: The Commission accomplished this goal by completely processing new freight forwarder license applications within 30 days, absent applicant delays. Considerable efforts were made to streamline application processing through training, tracking, and modification of our procedures for submitting *Federal Register* notices. Also, this area was monitored on a weekly basis to confirm that timely processing continued or improved further for the remainder of the fiscal year. Moreover, during this period significant effort was made to process the tremendous influx of OTI applications "grandfathered" under OSRA. As to FY

2000 performance targets, our streamlined processing made additional time available for other staff responsibilities and projects, and permitted freight forwarders to begin offering their services to the public with less delay.

Performance Goal 3:

By 3/30/99, develop a guide regarding information and guidance of bureau activities available on the FMC homepage.

Progress: For FY 1999, the Commission aimed to increase the amount of information on our website and reduce the number of hard copies necessary for various guidance and forms. Our homepage information provided guidance on a wide scope of Bureau of Tariffs, Certification and Licensing activities, including tariff publication, OTIs, service contracts, and marine terminal operators. In an effort to provide the industry with as much information and guidance as possible regarding the statutory and regulatory changes occasioned by OSRA, the Commission also posted all of the implementing regulations on its homepage and added a "Frequently Asked Questions" section. Further, we provided the industry with up-to-date information on reform regulations and issues that could be reviewed through Internet technology, while avoiding the possibility of unintentionally disseminating conflicting information. These accomplishments will carry forward to FY 2000 by hopefully reducing calls and inquiries to Commission offices, while facilitating industry access to commonly-sought information and newly revised regulations.

Budget Program Activity: Enforcement

Related Strategic Goals

1. *Compliance:* Promote the development of U.S. exports and the efficiency of ocean shipping by ensuring compliance with shipping statutes administered by the FMC.
3. *Efficient Regulatory Process:* Promote a timely, efficient and decisive regulatory process, to enable all segments of the industry to plan and conduct their operations more effectively and with minimal regulatory costs.

Performance Goal 1:

Report to Congress under SBREFA for FY99 indicates increase of 15% in number of small businesses provided with regulatory compliance.

Progress: The Commission exceeded this goal, particularly in its efforts to implement OSRA. In adopting new OSRA regulations, all Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") requirements were fulfilled, and extensive guidance was

provided to small businesses to comply with the new legislation. Most OTIs are identified as small business entities, and all SBREFA requirements were considered when dealing with OTIs on compliance issues. All reports to Congress were timely provided, and SBREFA guidelines have been adopted by the agency and noticed to the public in the *Federal Register*. As to FY 2000 performance, actions in FY 1999 will foster enhanced compliance by small businesses with revised Commission requirements.

Performance Goal 2:

Formal legal opinions & informal staff advice in FY99 provided 25% more quickly in 75% of cases, so industry can proceed with business activities on more timely basis.

Progress: The Commission was quite successful under this goal. An improved IT system for monitoring involved activities was instituted, with a resultant increase in the timeliness in completion of assignments. Most public inquiries were responded to immediately. Our Area Representatives performed valuable public information services to respective local industry to encourage and enable industry compliance. Additionally, the Commission has provided assistance to various entities to comply with its new regulations, and has increased the emphasis on voluntary compliance before enforcement actions when appropriate. Performance under this goal should improve compliance in FY 2000, and permit numerous parties in the industry to conduct their operations with more certainty regarding applicable requirements.

Performance Goal 3:

Shipper complaints to agency ombudsman decline by 20% by end of FY99.

Progress: During FY 1999, the Commission experienced an overall decrease in its complaint activity. The decrease in shipper complaints was 19 percent, just less than the 20 percent goal that we established for the fiscal year. This deviation does not appear to be critical; nonetheless, for FY 2000, the goal was adjusted to provide a range rather than a specific percentage target. During FY 2000, the Commission recognized that the number of complaints lodged with the agency should not be the sole barometer to assess industry compliance and the impact the agency is having on promoting efficient U.S. ocean commerce. Accordingly, our FY 2001 Annual Performance Plan appropriately modifies this goal. Additionally, our ombudsman role has been expanded to include an increased emphasis on alternate dispute resolution. In addition to ADR, our informal complaint service has received wider attention through information distributed on our homepage, and increased use of e-mail, the website, and other improvements in communications. As a result, certain complaint activity actually may increase in coming years.

Budget Program Activity: Administration

Related Strategic Goals

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

Performance Goal 1:

By 3/30/99, develop instrument/document & process for ensuring regular exchange of information between agency units & provider of administrative support services to improve level of service.

Progress: This goal was intended to improve internal agency operations. The Commission updated various administrative support-related Commission Orders to incorporate new legislation and implementing rules/guidance. We also updated Standard Operating Procedures for administrative activities, such as the Government purchase card, which facilitated timeliness of purchases, and reviewed and documented invoice/payment procedures to improve timeliness of payments. An automated, networked procurement system was implemented, which improved our acquisition process. And, through budget, senior policy and ad hoc meetings, regular discussions took place concerning the requirements of program bureaus to ensure appropriate and timely procurement. As to FY 2000 performance targets, up-to-date Commission Orders and operating procedures should provide necessary policy guidance to employees to facilitate administrative operations. Improving communication between administrative support activities and program units will lead to a better understanding of relevant operational requirements.

Performance Goal 2:

Develop appropriate plan in first quarter FY99 to meet agency training needs, so employees have the skills to more effectively accomplish regulatory responsibilities.

Progress: The agency met this goal, which was rendered more difficult by budgetary constraints. Nonetheless, all staff were surveyed to ascertain continuing education requirements. Mandatory training was a primary focus, although a good deal of no-cost training was obtained from other government agencies. Additionally, we promoted Small Agency Council courses, becoming among the top ten users, and we requested other small agencies to accept our staff for surplus seats in their courses. We also surveyed distance learning by the Internet, in conjunction with IRM-tested networkable training software, and acquired training software accessible by staff from their desks. In all, we increased the number of FMC employees trained in a wide variety of issues. In FY 2000, as FMC technology capability increases, the Training Officer will be able to be more flexible in

meeting employees' training requirements and at a lower cost. Increased flexibility on delivery of training will facilitate employee training to develop skills to more effectively carry out agency regulatory responsibilities.

Performance Goal 3:

By 12/31/98, through an appropriate certification process, ensure that all employees' individual performance plans have been revised to comport with thrust of strategic plan & annual performance plan.

Progress: Prior to the end of calendar year 1998, the Commission confirmed that the performance plans of all executives, managers and employees contained specific performance elements geared towards accomplishing agency strategic and performance goals. Certain plans were further along than others, but all employees were specifically accountable for performing in accordance with the agency's established goals and objectives. Additionally, all executives and managers consistently were reminded of the importance of reviewing employee performance plans and modifying them, if necessary, to ensure that they continued to comport with the agency's stated goals and objectives. As to FY 2000 targets, accomplishing this goal in FY 1999 enhances accountability and the organization's ability to achieve desired results.