

FEDERAL MARITIME  
COMMISSION

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44th  
ANNUAL REPORT  
for  
Fiscal Year  
2005



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FEDERAL MARITIME  
WASHINGTON, D.C. 20573-0001



COMMISSION

March 31, 2006

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, I am pleased to submit the 44<sup>th</sup> Annual Report of the activities of the Federal Maritime Commission for fiscal year 2005.

Sincerely,

Steven R. Blust  
Chairman

## MEMBERS OF COMMISSION



Steven R. Blust  
Chairman  
Appointed 2002  
Term Expires 2006



Harold J. Creel, Jr.  
Commissioner  
Appointed 1994  
Term Expires 2009



Joseph E. Brennan  
Commissioner  
Appointed 1999  
Term Expires 2008



Rebecca F. Dye  
Commissioner  
Appointed 2002  
Term Expires 2010



A. Paul Anderson  
Commissioner  
Appointed 2003  
Term Expires 2007

## SENIOR COMMISSION OFFICIALS

**Counsel to the Chairman . . . . . *Lucille L. Marvin***

**General Counsel . . . . . *Amy W. Larson***

**Secretary . . . . . *Bryant L. VanBrakle***

**Administrative Law Judge . . . . . *Kenneth A. Krantz***

**Director, Office of  
Equal Employment Opportunity *Carmen G. Cantor***

**Acting Inspector General . . . . . *Bridgette S. Hicks***

**Director of Administration . . . *Bruce A. Dombrowski***

**Director of Operations . . . . . *Austin L. Schmitt***

**Director, Bureau of Certification  
and Licensing . . . . . *Sandra L. Kusumoto***

**Director, Bureau of Enforcement . . . . . *Vern W. Hill***

**Director, Bureau of  
Trade Analysis . . . . . *Florence A. Carr***

## ***Vision***

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

## ***FMC Mission***

***The FMC's Mission is to:***

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

# I

## THE COMMISSION

### A. HISTORY

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

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

### B. FUNCTIONS

The principal statutes or statutory provisions administered by the Commission are the Shipping Act, the Foreign Shipping Practices Act of 1988 (“FSPA”), section 19 of the Merchant Marine Act, 1920 (“1920 Act”), and Pub. L. No. 89-777. Most of these statutes were amended and modified by OSRA, which took effect on May 1, 1999.

The Commission’s regulatory responsibilities include:

- **Protecting shippers and carriers engaged in the foreign commerce of the U.S. from restrictive or unfair foreign laws, regulations, or business practices that harm U.S. shipping interests or ocean trade.**
- **Reviewing operational and pricing agreements among ocean common carriers and marine terminal operators (“MTOs”), to ensure that they do not have excessively anticompetitive effects.**



- **Reviewing and maintaining a system containing the confidential pricing arrangements between common carriers and their shipper customers, and using this system to guard against anticompetitive practices and other unfair prohibited acts.**
- **Ensuring that common carriers' rates and charges are accessible to the shipping public in private, electronically accessible systems.**
- **Regulating rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable and are not unfairly undercutting private competitors.**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury or death or to repay fares for the nonperformance of a voyage or cruise.**
- **Licensing ocean transportation intermediaries ("OTIs") to protect the public from unqualified, insolvent, or dishonest companies.**
- **Ensuring that OTIs maintain sufficient financial responsibility to protect the shipping public from financial loss.**
- **Investigating discriminatory rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S.**

The Commission is authorized by the FSPA, section 19 of the 1920 Act, and section 13(b)(6) of the Shipping Act, to take action to ensure that the foreign commerce of the U.S. is not burdened by non-market barriers to ocean shipping. The Commission may take countervailing action to correct unfavorable shipping conditions in U.S. foreign commerce and may impose penalties. The Commission may address actions by carriers or foreign governments that adversely affect shipping in the U.S. foreign oceanborne trades including the intermodal operations of carriers or the operations of OTIs, or that impair access of U.S.-flag vessels to ocean trade between foreign ports.

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

In addition to monitoring relationships among carriers, the Commission is also responsible for ensuring that individual carriers, as well as those permitted by agreement to act in concert, fairly treat shippers and other members of the shipping public, in accordance with the 1984 Act's prohibition against undue discrimination. The 1984 Act also requires all carriers to make their rates, charges and practices available in automated tariff systems that must be available electronically to the public. Non-vessel-operating common carriers ("NVOCCs") may only assess the rates and charges published in their tariffs. Ocean common carriers are permitted to enter into service contracts with their shipper customers. Such contracts are filed electronically with the FMC in our Internet-based system, and are provided confidential treatment by the Commission as required by the Act. The Commission does not have the authority to approve or disapprove general rate increases ("GRIs") or individual commodity rate levels in the U.S. foreign commerce, except with regard to certain foreign government-owned or -controlled carriers.

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths who embark passengers at U.S. ports to establish financial coverage to indemnify passengers in cases of death, injury, or nonperformance of transportation. The Commission certifies such operators upon the submission of satisfactory evidence of financial responsibility. The Commission ensures that all OTIs operating in the foreign commerce of the U.S. have established sufficient financial responsibility to protect shippers from financial loss. Additionally, the Commission licenses all U.S. OTIs.

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

### **C. ORGANIZATION**

The Commission is composed of five Commissioners appointed for five-year terms by the President with the advice and consent of the Senate. No more than three members of the Commission may belong to the same political party. The President designates one of the Commissioners to serve as Chairman. The Chairman is the chief executive and administrative officer of the agency.

The Commission's organizational units consist of: Office of the General Counsel; Office of the Secretary, including the Library and Office of Consumer Affairs and Dispute Resolution Services; Office of Administrative Law Judges; Office of Equal Employment Opportunity; Office of the Inspector General; Office of Administration, including the Offices of Budget and Financial Management, Human Resources, Information Technology, and Management Services; and Office of Operations, including the Bureaus of Certification and Licensing, Enforcement, and Trade Analysis. These offices and bureaus are responsible for the Commission's regulatory programs or provide administrative support.

In fiscal year 2005, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$19,340,032. That appropriation supported the actual employment of 124 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 New York, New Orleans, Los Angeles, South Florida and Seattle.

## II

### THE YEAR IN REVIEW

Fiscal year 2005 was characterized by strong growth in ocean liner export and import cargo in all U.S.-foreign trades, as well as increased concentration within the liner shipping industry due to mergers and acquisitions among major carriers. The Commission continued to monitor the international liner trade, while advancing important initiatives to increase public outreach and simplify compliance with Commission regulations for stakeholders.

The Commission continued with its routine market oversight functions. As part of this effort, the Commission issued a final rule that updated its regulations governing filed agreements of ocean common carriers and MTOs. Regulations on the filing and the content of agreements were modified, as were those that involve recordkeeping and the filing requirements for minutes of meetings between agreement parties. Furthermore, the Commission developed electronic forms to assist agreement parties with the submission of information. More notably, the Commission issued a final rule permitting NVOCCs to offer services through negotiated and confidential NVOCC service arrangements ("NSAs") with shippers as an alternative to providing service under tariff rates and terms.

To emphasize the role of the alternative dispute resolution process as a way to resolve shipping disputes, the Commission provided *ombuds* services to the shipping public by assisting consumers and other complainants. In an effort to enhance relations with the public and media, the Commission redesigned and launched a comprehensive website, as well as developed outreach initiatives on Commission programs and services.

This Annual Report highlights areas of particular interest, and provides an office-by-office synopsis of each unit's activities and accomplishments during the past fiscal year.

#### A. OUTREACH

During the fiscal year, the Commission redesigned and launched a new, more efficient, comprehensive, and citizen-centered FMC website. Commission information was updated and reorganized by areas of interest and by regulated entity to improve transparency and flow of information and provide easier public access to Commission information.

The Commission continued its ongoing effort to expand contact with all segments of the maritime community and the public. During the fiscal year, the Commission examined its outreach strategies and initiatives and began what will be an ongoing effort to enhance relations with the public and media. This effort will not only communicate Commission oversight responsibilities and available services to the public, it also will serve to inform industry participants as to what their regulatory responsibilities are and how the Commission can assist in meeting their regulatory responsibilities. In addition to updating and developing new informational material on Commission programs and services, the Commission is exploring options for partnering with other government agencies for mutual outreach initiatives and sharing of resources.

During the fiscal year, the Commission continued its effort to fill a publication gap of Commission decisions issued between 1987 and 1996. Commission decisions issued during 1987 and 1988 were compiled and converted to electronic form, and posted on the Commission website. The remaining decisions will likewise be compiled and posted on the Commission website. Filling this publication gap will make the Commission's policies and precedents more readily available to the maritime and legal communities.

## **B. TRADE DEVELOPMENTS**

Overall, growth in ocean liner export and import cargo remained strong in fiscal year 2005. Import cargo grew by a higher percentage than export cargo, and inbound containers exceeded outbound containers by a ratio of 2 to 1. All of the U.S.'s top five trading partners are located in Northeast Asia, and accounted for over half of the total liner cargo in the U.S. trades. By fiscal year end, the total amount of containership slot capacity on a global basis had expanded by 11 percent to slightly more than 8 million TEUs (20-foot equivalent unit), and another 4.5 million TEUs of slot capacity were on order. The level of concentration within the liner shipping industry noticeably increased as the result of mergers and acquisitions among major carriers. By fiscal year end, over half of the total containership capacity in the world was controlled by the top ten carriers.

In the U.S./North Europe trade, the volume of ocean liner cargo in both directions grew by a healthy amount compared to the preceding fiscal year. The value of the U.S. dollar fell to an all time low against the euro in December 2004, but rebounded in 2005 as the Federal Reserve tightened the money supply. The expansion of the European Union ("EU") generated more commerce between the U.S. and East European nations, which increased liner cargo growth in both trade directions. The utilization of vessel capacity rose during the fiscal year, especially inbound, as more vessel space was removed from the trade and cargo volume grew. Members of the *Trans-Atlantic Conference Agreement* (No. 011375) implemented a series of tariff GRIs at the start of each quarter over the fiscal year. The level of the rate increases was higher inbound than outbound. Industry analysts believe that tighter market conditions in the trade have caused freight rates to trend upward, especially inbound.

Liner export and import cargo grew moderately in the trade between the U.S. and South Europe nations along the Mediterranean. The economic stability of nations in the Mediterranean region was mixed. Italy's economy slipped into a recession, while Greece and Spain are expected to finish 2005 with above average economic growth for the region. The trade continued to suffer from a wide imbalance in cargo volume, with import cargo far exceeding export cargo. Vessel capacity declined in the outbound direction, but slightly increased in the inbound direction when China Shipping Container Lines Co., Ltd. initiated a new westbound service. The *United States South Europe Conference* ("USSEC") (No. 011587) implemented a series of tariff GRIs in both trade directions throughout the fiscal year. The number and level of rate increases was higher inbound than outbound. USSEC members, however, faced intense competition from independent carriers in the trade as indicated by the erosion of conference market share during the fiscal year. The future of the conference is uncertain because of the conditions the European Commission placed on the acquisitions by Maersk Sealand and Hapag Lloyd.

Between the U.S. and the region of the Indian Subcontinent and the Middle East, liner export and import cargo grew substantially in the fiscal year. Double-digit cargo growth was achieved in both trade directions. A significant portion of this cargo growth was derived from India. Increasingly, India has evolved into a major U.S. trading partner as greater amounts of raw materials from the U.S. move outbound, and low-cost finished goods from India move inbound. During the fiscal year, there were a number of major membership changes in carrier agreements operating in the region.

U.S. liner export volume to the region of Australia and Oceania increased moderately during the fiscal year, whereas liner import volume changed very little. Export cargo in the outbound direction from the U.S. continued to exceed import cargo in the inbound direction. As in other U.S. trades, the acquisitions by Maersk Sealand and Hapag Lloyd created a number of service and agreement membership changes. Overall, by the end of 2005, vessel capacity in the trade is expected to increase by 10 percent from service changes and larger vessel deployments.

In the Central America and Caribbean trades, the volume of liner cargo with the U.S. increased in both the outbound and inbound directions. Export cargo to the Caribbean rose the most, due largely to a surge in the demand for building materials and household items to repair and replace the damages caused from a series of hurricanes. The jump in growth worsened the trade imbalance as the amount of export cargo from the U.S. vastly surpassed import cargo from the Caribbean. Vessel capacity in the Central America trade increased as major carriers introduced new services. On agreement matters, the market share of the *Central America Discussion Agreement* ("CADA") fell substantially when CP Ships and Maersk Sealand withdrew from the agreement during the fiscal year. Nevertheless, the remaining CADA members endeavored to increase their revenues with four GRIs throughout the fiscal year. The members of rate discussion agreements covering the Caribbean trade also sought revenue increases through a number of GRIs in fiscal year 2005.

Liner cargo growth in the trade between the U.S. and South America was strong in both trade directions. U.S. export cargo grew by a higher percentage than import cargo, although the cargo imbalance still favored imports moving inbound from South America. The amount of inbound container units surpassed outbound container units by a ratio of 1.7 to 1. Some decline in the value of the U.S. dollar against South American currencies during the fiscal year encouraged U.S. export growth in the region. In addition, the economies of South American nations have generally rebounded and are now generating stronger rates of growth. Further, cargo growth in the bilateral trade between the U.S. and Chile was enhanced by the Free Trade Agreement signed in 2004, and more such agreements are being proposed with South American nations. As for operational issues affecting the trade, the utilization of vessel capacity inbound was high due to the imbalance in the flow of cargo, while outbound utilization remained relatively low. On agreement matters, Maersk Sealand and P&O Nedlloyd withdrew from rate discussion agreements in the trade, and the *Amazon River Discussion Agreement* (No. 011681) was terminated.

In the largest trade with the U.S., liner cargo to and from the Far East continued to grow at a healthy pace in the fiscal year. Of all Far East nations, China accounted for the highest portion of cargo, especially in the inbound direction, which was driven by the strong U.S. demand for low-cost manufactured imports from China. The wide disparity in the flow of cargo between the U.S. and the Far East, which has characterized the trade for years, showed no improvement in the fiscal year. The volume of export cargo from the U.S. was less than half the volume of import cargo from the Far East. Operationally, the large cargo imbalance created a substantial amount of excess capacity, and consequently lower freight rates, in the outbound direction. On agreement matters, P&O Nedlloyd withdrew from both of the major rate discussion agreements operating in the inbound and outbound directions of the trade. Two major alliance groups in the trade, the *Grand Alliance Agreement II* (No. 011602) and the *New World Alliance* (Nos. 011618 and 011623), formed an agreement to start a new all-water service between the U.S. Atlantic Coast and the Far East via the Panama Canal. All-water services to and from ports on the U.S. Atlantic Coast have increased in the trade as a result of congestion at some ports on the U.S. Pacific Coast. MTOs are using their ability to enter into agreements under the Shipping Act to resolve industry issues such as congestion. For example, MTOs at the Ports of Los Angeles/Long Beach endeavored to alleviate congestion by forming a new agreement to implement a program called PierPASS. The program extends gate hours to allow intermodal motor carriers to operate during off-peak hours and weekends. Since its inception in July 2005, the program appears to be working for diverting cargo to off-peak hours and thereby alleviating road and port congestion in the area. It is reported that over 30 percent of container traffic is being handled during off-peak hours.

## **C. RESTRICTIVE TRADE PRACTICES**

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

In fiscal year 2005, the Commission continued its active approach in this area. In particular, the Commission addressed practices of the People's Republic of China ("PRC") and the Government of Japan.

On December 8, 2003, the Chinese Minister of Communications and the U.S. Secretary of Transportation signed a bilateral Maritime Agreement entered into force on April 21, 2004. The result of many years of difficult negotiations, this Agreement addressed matters raised in the Commission's proceeding concerning vessel operators and NVOCCs. In fiscal year 2005, the Commission determined that the commitments made in the bilateral Maritime Agreement would address concerns it had raised, and terminated the formal proceeding on April 21, 2005.

The Commission also continued to monitor regulations and port practices of the Government of Japan. In fiscal year 2001, the Commission revised its semiannual reporting requirement for U.S. and Japanese carriers. The Commission continued to require these semiannual reports in fiscal year 2005.

Finally, the Permanent Task Force on International Affairs, established in 2000, is chaired by the Deputy General Counsel and made up of key personnel in that office, the Bureaus of Enforcement, Trade Analysis, and Certification and Licensing. The Task Force identifies, evaluates and attempts to anticipate foreign practices which might have adverse impacts on U.S. shipping interests.

## **D. TRADE OVERSIGHT**

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

During the fiscal year, the Commission issued a final rule in Docket No. 03-15, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*. The rule amended the Commission's regulations governing agreements in 46 CFR Part 535. Among the amendments, the regulations on the filing and content of agreements were modified to account for changes that have occurred in the shipping industry since the enactment of OSRA. In addition, the rule modified the Information Form and Monitoring Report regulations and appendices to reflect changes in the amount and type of information needed for the Commission to monitor the activities of parties to agreements filed with the FMC. The rule also modified the regulations on the filing requirements for minutes of meetings between agreement parties. These changes were made to obtain more substantive information of the parties' discussions, clarify the meaning of the term "meeting," and provide the Commission with timely access to the materials used or discussed at meetings. The final rule became effective on January 3, 2005, with certain reporting requirements becoming effective on February 2, 2005. Subsequently, the Commission issued an errata with clarifications and corrections to the regulations in the final rule. As part of the new regulations, the Commission developed electronic forms for the Information Form and Monitoring Report to assist agreement parties with the submission of their required data and information. Further, to ensure that the new regulations were properly implemented, the Commission's staff reviewed the authority and market share of agreements currently in effect at the FMC to determine their reporting obligations, and notified the agreement parties accordingly. The Commission's staff also reviewed and addressed applications for waiver from the new reporting regulations submitted by the agreement parties. On other matters, the Commission's staff met with representatives of the *Transpacific Stabilization Agreement* ("TSA") on two occasions to review the compliance of TSA members with the terms of the settlement pursuant to the Commission's *Fact Finding Investigation No. 25—Practices of the Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*. Since the investigation, the Commission has received no complaints involving the activities of TSA members.

In addition, the Commission issued a final rule in Docket No. 04-12, *Non-Vessel-Operating Common Carrier Service Arrangements*. The rule permits NVOCCs to offer services through negotiated and confidential NSAs with shippers as an alternative to providing service under tariff rates and terms. The rule exempts cargo moved under NSAs from the tariff publication requirements of the Shipping Act. NSAs, however, must be filed with the Commission to be effective, and certain essential terms are required to be published. The rule became effective January 19, 2005. By the end of the fiscal year, the Commission had received 121 NSAs and 54 amendments.

Other specific monitoring and research projects undertaken in fiscal year 2005 included: monitoring the implementation of the PierPASS program by an agreement of MTOs at the Ports of Los Angeles/Long Beach; developing statistical methods to quantify the adherence of agreement parties to voluntary service contract guidelines; developing freight rate indices and other such tools; preparing publications with data and information



on the major U.S. liner trades and carrier agreements; participating in the Automated Commercial Environment/International Trade Data System under the Department of Homeland Security's ("DHS") Customs and Border Protection ("CBP"); responding to Congressional and other requests on carrier agreement issues and liner trade information; and meeting with industry representatives to discuss trends and anticipated commercial developments.

## **E. ALTERNATIVE DISPUTE RESOLUTION**

During fiscal year 2005, the Commission continued to emphasize the role of Alternative Dispute Resolution ("ADR") in resolving shipping industry disputes, and to continue encouraging parties to disputes to utilize the program in resolving disputes in lieu of litigation. Under this program, parties to a dispute are encouraged to avail themselves of services provided by the Commission to resolve disputes through conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, or the use of *ombuds* services. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes at all stages. Mediation is the most frequently chosen method of dispute resolution for matters being litigated in formal Commission adjudicatory proceedings. Mediation is also made available to resolve disputes which have yet to reach the litigation stage. During fiscal year 2005, Commission staff mediated nine disputes.

The Commission also provided significant *ombuds* services to the shipping public by assisting consumers and other complaining parties in resolving a number of problems without resorting to litigation. During fiscal year 2005, staff handled a record 943 complaints, continuing the pattern seen over the previous few years. Significantly, the number of complaints from individual shippers of household goods almost tripled. Many of those complaints involved shipments with unlicensed intermediaries. Typically, these complaints involved allegations that the companies were hired to provide ocean transportation for complainant's goods; failed to deliver cargo and refused to return prepaid ocean freight; lost cargo; charged the shipper for marine insurance but never obtained insurance coverage for the shipment; misled the shipper as to the whereabouts of the cargo; charged the shipper a significantly inflated rate after the cargo was tendered and threatened to withhold the shipment unless the increased freight was paid; or failed to pay the common carrier engaged by the company as another intermediary.

Complaints and disputes brought to the Commission's attention covered a wide range of problems and situations. Shippers frequently sought assistance in resolving financial claims of various types, as well as a wide range of service problems. Shipping companies on numerous occasions requested assistance in collecting unpaid freight charges, while freight forwarders sought help in enforcing carriers' compensation obligations. Other matters involve problems arising in foreign ports, and often concerned unanticipated problems with foreign Customs agencies.

While the Commission's efforts were often successful in resolving such disputes, the experience derived from unsuccessful efforts proved to be of great assistance in advising individuals encountering similar problems. During the year, a growing number of individuals contacted the Commission prior to engaging the services of an OTI, in the hope that the advice obtained might prevent problems from occurring. The *ombuds* program has used its consumer affairs contacts to encourage such inquiries.

While some of these disputes fell outside of the Commission's area of responsibility, informal ADR techniques often helped to resolve situations and forestall formal collection actions and possible litigation. The Commission continued to publicize its complaint resolution procedures and to make its offices available to all users of shipping services. Information gathered from the Commission's website directed many aggrieved parties to the available services, while state, local and private consumer agencies, as well as various trade organizations, provided contact information to many other complainants.

## **F. ENFORCEMENT**

The Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York and Seattle through Area Representatives. These representatives serve as a liaison between the Commission and various maritime interests in their respective areas and also investigate activity that may violate the 1984 Act.

During fiscal year 2005, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These included market-distorting activities such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations were resolved informally, some with compromise settlements of civil penalties.

In addition to rate malpractice enforcement activity, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. Further, a formal investigation to examine the lawfulness of exclusive tug service arrangements at marine terminal facilities on the Lower Mississippi was completed and resulted in settlement agreements with the respondent terminals. Also, an investigation continued into an exclusive arrangement at Portland, Maine, which appeared to foreclose competition among passenger/passenger-vehicle carriers in the Portland/Nova Scotia trade. A major enforcement effort was also commenced with respect to a number of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods.

The Commission collected \$654,500 in civil penalties this past fiscal year (see Appendix E). These collections represent a wide range of violations in all of our major trade lanes. Although the Commission continues to undertake enforcement activity, as required by its statutory mandate, its primary objective is to encourage voluntary compliance by the regulated ocean transportation industry.

### III

## DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

### A. NORTH EUROPE

In fiscal year 2005, the volume of liner cargo in the trade between the U.S. and North Europe noticeably increased compared to fiscal year 2004. U.S. liner exports rose by 9 percent. Growth in such export cargo as automobiles, lawn/garden equipment, and plastic products from the U.S. was particularly robust. In the inbound trade direction, imports from North Europe to the U.S. were up by 8 percent. Notable gains were achieved for such goods as paper products, auto parts, and furniture. At the start of the fiscal year, currency values favored European consumers as the U.S. dollar sunk to an all-time low against the euro in December 2004. The weak dollar stimulated the demand for U.S. export goods in the region. Subsequently, throughout 2005 the dollar strengthened against the euro as the U.S. government intervened by tightening the money supply.

The relatively weak economies of major European nations created a tenuous demand for U.S. exports. The 2005 rate of economic growth ("GDP") is expected to be 1.2 percent for the Euro Area as a whole (*i.e.*, those member states of the EU using the euro currency), and 1.9 percent for the United Kingdom. These expected growth rates are down from 2004. However, the expansion of the EU has created greater productivity and economic prosperity among East European nations, which in turn has generated more commercial activity with the U.S. and increased liner cargo growth in both trade directions. Much of the East European cargo is routed through ports in Germany, Belgium and the Netherlands.

Given the increase of both exports and imports in the trade, the imbalance of cargo volume did not change. For every one TEU moved outbound from the U.S., 1.4 TEUs moved inbound from North Europe. By fiscal year end, the level of vessel capacity had fallen by 0.2 percent inbound, and 4 percent outbound. On average, vessel capacity

utilization was 91 percent in the inbound direction, and 73 percent in the outbound direction. A slight reduction in outbound vessel capacity came largely as a result of Maersk Sealand dropping the U.S. from one of its weekly service loops.

Services and vessel capacity in the trade may be impacted over the next fiscal year by greater industry consolidation. Maersk Sealand acquired P&O Nedlloyd, and Hapag-Lloyd acquired CP Ships. Trade reports indicated that P&O Nedlloyd has given notice of its withdrawal from the *Grand Alliance Agreement II* (No. 011602) in February 2006. In the trade between the U.S. and North Europe, the acquisitions could potentially provide Maersk Sealand and Hapag-Lloyd with market shares upwards of 14 percent and 23 percent, respectively, in the outbound direction, and 20 percent and 19 percent, respectively, in the inbound direction.

Members of the *Trans-Atlantic Conference Agreement* ("TACA") (No. 011375) implemented a series of small to moderate tariff GRIs at the start of each calendar quarter. Starting in October 2004 through September 2005, the conference initiated four tariff GRIs in both trade directions. In the outbound direction, where utilization was lower, the rate increases were more modest than in the inbound direction, where utilization was higher. Additional tariff GRIs in both trade directions took effect in October 2005, and the conference announced plans for future tariff GRIs in 2006, commencing at the start of each calendar quarter. During the fiscal year, the average market share for TACA remained around 50 percent in each trade direction.

The European Commission has proposed to repeal Council Regulation 4056/86, *i.e.*, the block exemption for liner shipping conferences. This proposal will be submitted to the EU's Council of Ministers for further action.

## **B. MEDITERRANEAN**

In fiscal year 2005, the volume of liner trade between the U.S. and South Europe nations on the Mediterranean grew moderately in both directions compared to the preceding fiscal year. U.S. liner exports to the region increased by 6.5 percent in fiscal year 2005. The foreign demand for U.S. exports of auto parts and poultry was particularly high, while exports of synthetic rubber and wood pulp were noticeably down. In the inbound direction, liner imports from the Mediterranean increased by 4.5 percent. The U.S. demand for imported grains, paper and wine from the region rose, while furniture imports continued to fall.

The economic strength of major South Europe nations was mixed. The economy of Italy slipped into a recession during the fiscal year, and its 2005 rate of economic growth is expected to be flat. On the other hand, the 2005 rates of economic growth for Greece and Spain are expected to be above average for the Euro Area at 3.2 percent for each nation.

The trade imbalance remained wide with the volume of liner import cargo far exceeding liner export cargo. For every one TEU moved outbound from the U.S., 2.4 TEUs moved inbound from the Mediterranean. Consequently, vessel capacity utilization was higher inbound at an average of 76 percent, while utilization outbound remained low at an average of 59 percent, according to industry analysts. Service changes implemented by carriers during the fiscal year altered the supply of vessel capacity in the trade. Maersk Sealand withdrew capacity in both trade directions by phasing out one of its services. Conversely, China Shipping Container Lines Co., Ltd. added capacity inbound from the Mediterranean when it initiated a new westbound round-the-world service. The overall effect of these service changes created a 5 percent reduction in outbound capacity, and a 1 percent increase in inbound capacity.

During the fiscal year, members of the *United States South Europe Conference* (“USSEC”) (No. 011587) implemented three tariff GRIs in the outbound direction, and four in the inbound direction. USSEC set the rate increases in the outbound direction at about half the level of the inbound rate increases, due to the high amount of outbound excess capacity. Additional tariff GRIs took effect in October 2005, and more are planned for 2006. A decline in the market share of USSEC indicates the existence of effective rate competition. From 30 percent in the preceding fiscal year, USSEC’s market share fell to 24 percent outbound, and 28 percent inbound.

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

In fiscal year 2005, the Indian Subcontinent and Middle East trades both experienced double-digit container growth. This growth was generated by increased U.S. demand for low-cost consumer products, especially from India. In terms of containerized cargo, India was our 13<sup>th</sup> largest export trading partner and our 10<sup>th</sup> largest import trading partner in fiscal year 2005. Although the container trade between the U.S. and the Indian Subcontinent presently represents only 4 percent of all U.S. liner exports and 5 percent of all U.S. liner imports, many experts believe that the potential for enhanced trade with India is substantial. The container trade between the U.S. and the Middle East represents 3 percent of all U.S. liner exports and 1 percent of all U.S. liner imports.

U.S. container exports in fiscal year 2005 grew by 13 percent to the Indian Subcontinent, and by 13 percent to the Middle East. The U.S. exported approximately 235,000 TEUs to the Indian Subcontinent and 284,000 TEUs to the Middle East. Major U.S. exports to the Indian Subcontinent include wastepaper, cotton, apparel, wood pulp and lumber. In terms of container volumes, the U.S. exports far more goods to the Middle East than it imports. Major U.S. exports to the Middle East include wastepaper, automobiles, wood pulp, processed foods, and furniture.

U.S. container imports for fiscal year 2005 grew by 18 percent from the Indian Subcontinent and by 10 percent from the Middle East. The U.S. imported approximately 598,000 TEUs from the Indian Subcontinent and 153,000 TEUs from the Middle East. Major U.S. imports from the Indian Subcontinent include furniture, apparel, linens, fabrics and footwear. Major imports from the Middle East include apparel, plastic products, fabrics, hardware and nails.

Two rate discussion agreements cover the U.S. inbound trade from the Indian Subcontinent, the *Indamex Agreement* ("Indamex") (No. 011692) and the *Indian Subcontinent Discussion Agreement* ("ISDA") (No. 011870). Indamex members carry approximately 25 percent of U.S. imports from the Indian Subcontinent, while ISDA members carry 10 percent. During fiscal year 2005, the Shipping Corporation of India, a state-controlled carrier, suspended service to the U.S. and resigned from Indamex. P&O Nedlloyd withdrew from ISDA after being acquired by Maersk Sealand. No trade-wide rate discussion agreement covers the Middle East to the U.S. inbound trade.

Two major agreements cover the U.S. outbound trade to the Indian Subcontinent and Middle East, the *Middle East Indian Subcontinent Discussion Agreement* ("MIDA") (No. 011654) and the *Westbound Transpacific Stabilization Agreement* ("WTSA") (No. 011325). MIDA's geographic scope covers U.S. exports to the Middle East and the Indian Subcontinent primarily via service from the U.S. Atlantic and Gulf Coasts, and WTSA's scope covers U.S. exports to the Indian Subcontinent primarily via service from the U.S. Pacific Coast. Within these agreements, carrier members can discuss and agree upon, on a non-binding basis, commodity rates and assessorial charges within the geographic scope of their respective agreements.

MIDA's market share is approximately 60 percent, while WTSA's market share is barely 40 percent for the Indian Subcontinent. During fiscal year 2005, China Navigation Company (doing business as Indotrans) and MacAndrews & Company (a wholly-owned subsidiary of CMA-CGM) joined MIDA. In September 2005, P&O Nedlloyd withdrew from WTSA.

Effective June 1, 2005, MIDA announced that its members had agreed, on a voluntary basis, to raise freight rates by \$200 per TEU and \$400 per FEU (40-foot equivalent unit). WTSA, on the other hand, did not announce a GRI in fiscal year 2005. Instead, WTSA established voluntary service contract guidelines for rate increases by commodity type throughout the calendar year.

#### **D. AUSTRALIA, NEW ZEALAND AND THE SOUTH PACIFIC ISLANDS**

This geographic region encompasses Australia, New Zealand, Papua New Guinea, Western Samoa and other South Pacific Islands. Australia is by far our top trading partner in the region, accounting for about two-thirds of the liner cargo in the trade. In fiscal year

2005, the inbound liner trade to the U.S. grew slightly, while U.S. outbound liner cargo grew by 4.2 percent. U.S. container imports from the region totaled 172,000 TEUs in fiscal year 2005. The U.S. outbound trade totaled 218,000 TEUs.

Major U.S. liner exports include paper and paperboard, general cargo, grocery products, automobiles, and auto parts. With the exception of general cargo, all these commodities had significant gains this year. Auto and truck tires experienced a downturn in volume of nearly 20 percent, and are no longer among the top-ranked U.S. export commodities to the region.

Meat, still wines, logs and lumber, paper and paperboard, and non-alcoholic beverages, are the principal U.S. import commodities. This year meat, wine, paper, and non-alcoholic beverages registered considerable volume gains, but logs and lumber volumes remained unchanged.

The imbalance in liner cargo volume remained unchanged this fiscal year. For every 1 TEU imported into the U.S., 1.3 TEUs were exported. Carrier participation in the trade and the structure of services changed markedly during the past year. Moreover, change may continue throughout the coming year, since the full effects of recent mergers and new joint services have yet to be felt.

During the year, several GRIs were implemented by the agreements in the trade with moderate success. Rates in both trade directions have been rising. However, rates in the U.S. outbound trade rose more sharply, possibly because higher demand increased vessel utilization levels.

The agreements covering this region experienced some change in membership and geographic scope during the fiscal year. P&O Nedlloyd resigned as a member of the *New Zealand/United States Container Lines Association* (No. 009831). The *Southern Africa/Oceania Agreement* (No. 011453) eliminated Australia, New Zealand, and surrounding islands from the geographic scope of its agreement. In connection with the refrigerated cargo trade, Lauritzen A/S and NYK Reefers Limited entered into a Memorandum of Understanding creating a new joint venture, which caused the *New Zealand/United States Discussion Agreement* (No. 011268) and the *Australia/United States Discussion Agreement* (No. 011275) to amend their agreements to reflect the new relationship between these two carriers.

## **E. CENTRAL AMERICA AND THE CARIBBEAN**

In fiscal year 2005, the volume of liner cargo in the trade between the U.S. and Central America grew by 3 percent. U.S. outbound liner cargo increased by 4.1 percent over fiscal year 2004. The top exported commodities were fabrics, paper and paperboard,

general cargo, automobiles, grocery products, yarns, apparels, and synthetic resins. While the volume of fabrics, paper and paperboard, and general cargo decreased in fiscal year 2005, the volume of automobiles, grocery products, yarns, apparels, and synthetic resins increased.

U.S. inbound liner cargo increased by 2.2 percent. The top imported commodities from Central America were bananas, underwear and t-shirts, women's and infants' clothing, fruits, menswear, vegetables, pineapples (uncanned), coffee, and furniture.

In the trade between the U.S. and Central America, inbound cargo volume exceeded outbound cargo volume by 25 percent.

The only rate discussion agreement in the Central America trade is the *Central America Discussion Agreement* ("CADA") (No. 011075). CADA carriers implemented GRIs in December 2004, April 2005, June 2005, and September 2005. Separate GRIs were established for Panama and for Guatemala, Honduras, El Salvador and Nicaragua as a group. The parties also introduced a hazardous materials surcharge and an overweight charge during fiscal year 2005. CADA members implemented some inland/intermodal fuel charge increases and bunker surcharge increases during the fiscal year.

Between the U.S. and the Caribbean, total liner cargo grew by 6.9 percent in fiscal year 2005. U.S. outbound liner cargo increased by 8.3 percent over fiscal year 2004. The top exported commodities were grocery products, general cargo, fabrics, household goods, automobiles, building materials, and furniture.

U.S. inbound liner cargo increased by 2.3 percent over fiscal year 2004. The top imported commodities were menswear, underwear and t-shirts, medical equipment and supplies, women's and infants' clothing, apparels, and automobiles. For the inbound trade, the overall increase in volume came from increases in the volume of underwear and t-shirts, medical equipment and supplies, apparels, and automobiles.

In the Caribbean trade, the ratio between U.S. outbound and U.S. inbound cargo volumes was 3.5 to 1. The outbound portion of the trade is much stronger because many Caribbean countries depend on imports of food, consumer goods, and manufactured goods to sustain their residents and the tourism industry. As could be expected, during fiscal year 2005 outbound capacity utilization was generally high, and inbound capacity utilization was fairly low.

Carriers operating in the Caribbean participate in five rate discussion agreements. During the fiscal year, the parties to the *Caribbean Shipowners Association* (No. 010979) implemented a trade-wide two-stage GRI in January and July 2005 and additional GRIs for specific countries and commodities, mostly for U.S. outbound cargo. The parties to the *Hispaniola Discussion Agreement* (No. 010977) implemented a GRI, a hazardous cargo surcharge increase, and an x-ray placement charge (in the Dominican Republic) during the fiscal year. The *Florida-Bahamas Shipowners and Operators Association* (No. 010982)



implemented GRIs in February 2005, April 2005, and July 2005. Parties to the *ABC Discussion Agreement* (No. 011550) implemented a GRI in February 2005. The parties to the *Bermuda Discussion Agreement* (No. 011418) implemented a GRI in April 2005. All of the agreements implemented inland/intermodal fuel charge increases and bunker surcharge increases during the fiscal year due to the rising price of oil.

## F. SOUTH AMERICA

In fiscal year 2005, the volume of liner cargo in the trade between the U.S. and South America increased significantly. Import cargo from South America increased by 7.1 percent, and U.S. export cargo to South America increased by 8.9 percent. During the fiscal year, the dollar remained weak against the currencies of many South American countries, enhancing U.S. exports. The composition of U.S. exports generally remained unchanged. The major U.S. exports were computers and other information technology products, agricultural and construction equipment, autos and auto parts, medical equipment, and paper products. Imports from South America consisted of agricultural products, such as vegetables and fruits, and other foodstuffs, such as coffee and shellfish.

South America experienced strong economic growth in fiscal year 2005. The rate of GDP growth is expected to be 4.2 percent in 2005. Argentina is expected to lead all other South American countries with a 7.5 percent increase in GDP.

The region's historical imbalance in trade continued in fiscal year 2005. Lower cargo volumes moved outbound from the U.S. than inbound from South America. For every 1.7 TEUs moved inbound from South America, 1 TEU was moved outbound from the U.S.

This year Pacific International Line entered the trade with three ships to participate in an eleven-ship service with Mitsui O.S.K. Lines. Maersk Sealand is expected to undertake some rationalization of services following its acquisition of P&O Nedlloyd. However, no radical reduction in service is expected. Capacity utilization in the East Coast South America trade is reported to be generally between 40 and 45 percent in the U.S. outbound direction, and generally between 85 and 90 percent inbound.

In the West Coast South America trade, vessel capacity and service patterns may change in the coming year because of recent merger and acquisition activities. The acquisition of P&O Nedlloyd by A.P. Moller-Maersk may necessitate some rationalization due to overlapping services. Both carriers have withdrawn from the *West Coast of South America Discussion Agreement* ("WCSADA") (No. 011426). Other major carriers serving the trade are planning service changes. Capacity utilization in the U.S. outbound direction is reported to be generally between 60 and 70 percent, and generally between 80 and 90 percent inbound from the West Coast of South America.

During the fiscal year, the *Amazon River Discussion Agreement* (No. 011681) was dissolved. Its geographic scope covered trade between the U.S. Atlantic and Gulf Coasts and ports along the Amazon River. WCSADA implemented three GRIs on cargo moving to or from the U.S. Atlantic and Gulf Coasts. Other measures to recover costs, such as increasing drayage charges, Panama Canal surcharge, and emergency fuel adjustment factors, were also implemented.

The *Venezuela Discussion Agreement* (“VDA”) (No. 011383) is the only rate discussion agreement operating in the trade between the U.S. and the East Coast of South America. The VDA imposed a GRI on all commodities moving inbound to the U.S. and outbound to Venezuela effective February 2005. Another GRI was implemented on all containers moving between Venezuela and the ports of Savannah, Ferdinanda Beach, Port Everglades and Jacksonville.

## **G. FAR EAST**

The transpacific trade experienced another year of strong container growth, although not quite at the level of last fiscal year. This ongoing growth is mainly due to the continued expansion of demand for low-cost consumer products from China. The container trade between the U.S. and the Far East is our nation’s largest, accounting for 67 percent of all U.S. liner imports and 50 percent of all U.S. liner exports.

Just three shipping alliances and one carrier supply nearly 70 percent of the total capacity in the transpacific trade with the *CHKY Alliance* (No. 011794) providing 25 percent, the *Grand Alliance Agreement II* (No. 011602) 17 percent, the *New World Alliance* (Nos. 011618 and 011623) 15 percent, and Maersk Sealand 12 percent. Recently, the Grand Alliance and the New World Alliance filed an agreement with the Commission, the *TNWA/GA Cooperative Working Agreement* (No. 011922), to start a new jointly-operated, all-water U.S. East Coast service via the Panama Canal. Over the past several years, U.S. East Coast ports have experienced a significant increase of container traffic from the Far East via the Panama Canal and, more recently, via the Suez Canal.

U.S. container imports from the Far East grew by 11 percent in fiscal year 2005, down from 14 percent in fiscal year 2004. The U.S. imported from the Far East over 11 million TEUs of cargo in fiscal year 2005. Northeast Asia accounts for 87 percent of all transpacific container imports, with most of them originating from China. Compared to fiscal year 2004, container imports from Northeast Asia grew by 12 percent, and 7 percent from Southeast Asia. Major imports from the Far East include furniture, toys, automobile parts and plastic products.

Although container volumes continued to grow, congestion was not a significant problem at the Ports of Los Angeles and Long Beach as it was during fiscal year 2004. Some shippers elected to divert cargo to other ports in order to avoid potential delays.

Also, MTOs handling container cargo at the Ports of Los Angeles and Long Beach formed the *West Coast MTO Discussion Agreement* (No. 201143) which implemented a program, PierPass, to extend gate hours, thereby allowing intermodal motor carriers to operate during off-peak hours and weekends. Under PierPass, marine terminals charge shippers a fee for containers moved by truck during peak hours. Implemented in July 2005, PierPass appears to have been successful in diverting a substantial volume of containers to off-peak times, thereby alleviating road and port congestion.

One of the major agreements in the inbound transpacific trade is the *Transpacific Stabilization Agreement* ("TSA") (No. 011223). TSA is a discussion and policy-setting agreement with voluntary pricing authority covering the inbound container trade from Northeast and Southeast Asia to the U.S. Until September 2005, TSA consisted of 13 carrier members with a collective market share of around 70 percent. However, Maersk Sealand, a non-TSA line, acquired P&O Nedlloyd this year, and in August P&O Nedlloyd announced its withdrawal from TSA. P&O Nedlloyd's market share within the geographic scope of TSA was approximately 5 percent. Maersk Sealand was formerly a member of TSA, but resigned from the agreement one year earlier.

For the annual service contract season that began on May 1, 2005, TSA announced that its members, on a voluntary, non-binding basis, agreed to raise freight rates by \$285 per FEU for cargo destined to U.S. Pacific Coast ports, and \$430 per FEU for cargo destined to U.S. Atlantic Coast ports. As was the case in the prior service contract season, the trade press reported that TSA members were not successful in obtaining the full amount of these planned rate increases during their individual service contract negotiations with shippers.

Pursuant to the Commission's settlement agreement reached in September 2003 with TSA, Commission staff and representatives of TSA met to review TSA activities and to ensure compliance with the settlement agreement. Since implementing the settlement agreement, the Commission has not received any complaints involving the activities of TSA.

U.S. container exports to the Far East grew by 9 percent in fiscal year 2005, compared to 11 percent in fiscal year 2004, and reached a level of 4.2 million TEUs. Major U.S. exports to the Far East include wastepaper, metal scrap, hay, lumber, and raw cotton. Northeast Asia received 85 percent of all U.S. container exports in the transpacific trade. China and Japan were the primary destinations. U.S. container exports to Northeast Asia grew 7 percent, while U.S. container exports to Southeast Asia grew 20 percent. The weaker dollar helped the strong growth in U.S. exports to Southeast Asia.

The major agreement in the outbound transpacific trade is the WTSA (No. 011325). Like TSA, WTSA operates as a forum for the exchange of information between its members and allows them to discuss and agree, on a voluntary basis, upon rates for cargo exported from the U.S. to Asia. WTSA's geographic scope covers Northeast and Southeast Asia as well as the Indian Subcontinent.

WTSA experienced membership attrition in fiscal year 2005. In June Mitsui O.S.K. Line resigned from WTSA, stating that its interests and those of its customers would be better served by operating outside of the agreement. Also, P&O Nedlloyd withdrew from WTSA after being acquired by Maersk Sealand. The latter carrier already operates outside of the agreement. WTSA presently has 11 members with a market share of approximately 65 percent.

## **H. WORLDWIDE**

Growth in the world's container trades remained strong in fiscal year 2005. World container traffic reached around 110 million TEUs, a 10 percent increase over the level reached at the end of fiscal year 2004. During the year, the total number of containers imported into or exported from the U.S. was 25.2 million TEUs, amounting to about 23 percent of the world total. U.S. container imports increased by 11.1 percent in fiscal year 2005 to reach 16.8 million TEUs, while container exports increased by 7.3 percent to reach 8.4 million TEUs. Thus, for every two loaded containers imported into the U.S., one was exported.

Container imports through Pacific Northwest ports, such as Seattle, Tacoma and Portland, expanded 36.8 percent to reach almost 1.7 million TEUs, raising the region's share of U.S. container imports to 10.1 percent. In contrast, the Pacific Southwest region, which includes the ports of Oakland, Los Angeles and Long Beach, saw its share of container imports fall 2 percentage points to 46.1 percent. Ports along the U.S. Atlantic and Gulf Coasts handled 43.8 percent of all U.S. container imports.

During this fiscal year, no significant shift occurred between coastal regions in their shares of U.S. export containers. Just over 58 percent of all export containers were handled by U.S. Atlantic and Gulf Coast ports, 31 percent by Pacific Southwest ports, and about 11 percent by ports in the Pacific Northwest.

The U.S.'s top five liner cargo trade partners are all located in Northeast Asia. They are China, Japan, Hong Kong, South Korea and Taiwan. Collectively they accounted for 55 percent of the total U.S. container trade in fiscal year 2005, up almost 2 percentage points over last year. This year trade with China accounted for 35 percent of the total U.S. container trade, compared to 31 percent in fiscal year 2004.

Containership capacity kept pace with container demand on a worldwide basis. By the third quarter of fiscal year 2005, containership fleet capacity had grown by over 11 percent compared to the same quarter a year earlier. Today, almost 3,600 containerships with a fleet capacity of slightly more than 8 million TEUs are deployed in the world's container trades. On the basis of capacity, half the containership fleet is chartered from

non-operating owners. At the end of October 2005, there were orders for almost 1,250 new containerships, with an aggregate capacity of 4.5 million TEUs or 56 percent of the existing fleet capacity.

Concentration in the container industry significantly increased during fiscal year 2005. Maersk Sealand, the world's largest containership operator, acquired the world's fourth-ranked container carrier, P&O Nedlloyd. In September, CMA-CGM completed the acquisition of a smaller rival, Delmas, making the former operator the world's third largest container carrier. Hapag Lloyd, previously ranked 13<sup>th</sup> among the world's container carriers, jumped to 5<sup>th</sup> place by acquiring CP Ships, which was ranked 16<sup>th</sup>. By the end of fiscal year 2005, the top-10 container lines controlled 56.8 percent of the world's containership fleet capacity, compared to 46.1 percent a year earlier. After its merger with P&O Nedlloyd, Maersk Sealand was over twice as big as its nearest rival, the Mediterranean Shipping Company ("MSC"); a year earlier Maersk Sealand was just 50 percent larger. Maersk Sealand has a fleet capacity of 1.6 million TEUs, but new ships on order will augment this total by 722,000 TEUs. The line's planned new capacity is larger even than MSC's existing fleet capacity of 719,000 TEUs.

## **IV**

# **THE FOREIGN SHIPPING PRACTICES ACT OF 1988**

## **A. GENERAL**

The Foreign Shipping Practices Act of 1988 ("FSPA") became effective on August 23, 1988.

The FSPA directs the Commission to investigate and address adverse conditions affecting U.S. carriers in U.S. oceanborne trades, which conditions do not exist for foreign carriers in the U.S., either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

In fiscal year 2005, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. However, no FSPA action was taken in 2005.

In fiscal year 2005, the Commission's Permanent Task Force on International Affairs continued to meet. The Task Force, chaired by the Deputy General Counsel, is a network of representatives from a number of Commission bureaus and offices, and meets to

exchange information regarding new or continuing areas of concern relating to restrictive foreign shipping practices possibly necessitating action under one of the Commission's statutory authorities in this area.

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

Section 10002(g)(1) of the Omnibus Trade and Competitiveness Act of 1988 requires the FMC to include in its annual report to Congress "a list of the twenty foreign countries that generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States."

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

The most recent complete calendar year for which data are available is 2004. The table on the next page lists the twenty foreign countries that generated the largest volume of oceanborne liner cargo in bilateral trade with the U.S. in 2004. The figures in the table represent each country's total U.S. liner imports and exports in thousands of TEUs.

## Top Twenty U.S. Liner Cargo Trading Partners (2004)

<u>Rank</u>	<u>Country</u>	<u>TEUs (000s)</u>
1	China (PRC) .....	7,521
2	Japan .....	1,644
3	Hong Kong <sup>1</sup> .....	1,483
4	South Korea .....	985
5	Taiwan .....	943
6	Germany .....	671
7	Brazil .....	643
8	Italy .....	607
9	Thailand .....	544
10	India .....	448
11	Indonesia .....	443
12	Belgium & Luxembourg .....	439
13	United Kingdom (Incl. N. Ireland) .....	438
14	Netherlands .....	410
15	Malaysia .....	338
16	Honduras .....	302
17	Guatemala .....	277
18	France .....	276
19	Australia .....	261
20	Spain .....	247

The Top Twenty list for 2004 is similar to the list for 2003. While a handful of countries occupy the same relative positions as last year, most moved up or down one place. Australia climbed into the Top Twenty list, and Costa Rica dropped out. U.S. liner trade with China increased 29 percent in 2004 compared to 2003, further enhancing that country's dominant position in U.S. liner trade. Japan regained 2<sup>nd</sup> place from Hong Kong. The latter's liner trade with the U.S. fell 11 percent in volume compared to 2003. South Korea rose to 4<sup>th</sup> position, switching places with Taiwan. Excepting the U.S.-China liner trade, the U.S. liner trade with Brazil expanded by the largest absolute amount, lifting Brazil into 7<sup>th</sup> place. The U.K. dropped three places, more than any other U.S. liner trading partner.

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<sup>1</sup> On July 1, 1997, Hong Kong reverted to Chinese control as a special administrative region. However, PIERs continues to report data separately for Hong Kong because of its status as a major transshipment center.

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

**V**

**SIGNIFICANT  
OPERATING  
ACTIVITIES**

**BY**

**ORGANIZATIONAL UNIT**



## A. OFFICE OF THE SECRETARY

### 1. General

The Office of the Secretary serves as the focal point for matters submitted to and emanating from the members of the Commission and as such, 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 applications to correct clerical or administrative errors in service contracts or NVOCC service arrangements; all communications, petitions, notices, pleadings, briefs, or other legal instruments in administrative proceedings; and subpoenas served on the FMC, its members or employees. The Office is responsible for preparing and submitting regular and notation agenda matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these matters; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings and Commission regulations; issuing publications; and authenticating instruments and documents of the Commission. The Office also responds to information requests from Commission staff, the maritime industry, and the public; administers the Freedom of Information, Government in the Sunshine, and Privacy Acts; compiles historical Commission decisions; maintains a public reference/law Library and a Docket Activity Library; manages the Commission's Internet website; and participates in the development and coordination of agency-wide public relation/outreach strategies and initiatives. The Office of the Secretary also oversees the Office of Consumer Affairs and Dispute Resolution Services.

The Secretary's Office participates in the development of rules designed to reduce the length and complexity of formal proceedings, and participates in the implementation of legislative changes to the shipping statutes. During fiscal year 2005:

- **The Commission issued orders finalizing ten formal proceedings. One initial decision of an administrative law judge became administratively final without Commission review. The Commission issued orders finalizing ten informal dockets. During the same period, the Commission issued final rules in five rulemaking proceedings.**

Two rulemaking proceedings were pending at the end of the year. The Commission issued orders finalizing eleven petitions during the fiscal year.

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

The Office also is involved in the Commission's ongoing effort to expand contact with all segments of the maritime community and the public. During the fiscal year, the Commission examined its outreach strategies and initiatives and began what will be an ongoing effort to enhance relations with the public and media in an effort to better communicate Commission oversight responsibilities and available services, and how the Commission can be of assistance to industry participants in meeting their regulatory responsibilities. In addition to updating and developing new informational material on Commission programs and services, the Commission is exploring options for partnering with other government agencies for mutual outreach initiatives and sharing resources.

The Office of the Secretary also manages the Commission's website. During the fiscal year, the Office oversaw the redesign and launch of a new, more efficient, comprehensive, and citizen-centered FMC website. Working with each Commission office and operating bureau, Commission information was updated and reorganized by areas of interest and by regulated entity to improve transparency and flow of information, thus providing easier public access to Commission information.

During the fiscal year, the Office of the Secretary continued its initiative to fill a publication gap for Commission decisions issued between 1987 and 1996. Commission decisions issued during 1987 and 1988 were compiled and converted to electronic form, and posted on the Commission website during the fiscal year. The remaining decisions will likewise be compiled and posted on the Commission's website. Filling this publication gap will make the Commission's policies and precedents more readily available to the maritime and legal communities. In fiscal year 2006, the Office of the Secretary also will continue to make certain other documents filed in formal proceedings available in an electronic format through its website.

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

Fiscal year 2005 was the first full year under the new realignment of the Commission's organization, and of the newly established Office of Consumer Affairs and Dispute Resolution ("CADRS") within the Office of the Secretary. CADRS has responsibility for developing and implementing the Commission's Alternative Dispute Resolution ("ADR") program. Through this program, the Commission provides services to assist parties in resolving disputes and shipping problems in U.S. ocean shipping. These include a broad range of services designed to avoid the expense and delays inherent in litigation, and to facilitate the flow of U.S. ocean commerce.

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

During fiscal year 2005, Commission mediators provided mediation services in nine dispute resolution proceedings, attempting to assist parties in resolving matters prior to or during litigation.

The Office also provides *ombuds* services to participants in ocean shipping transactions. During fiscal year 2005, more than 3,000 complaints and information requests were processed. Of those, 943 complaints required resolution of disputes, attempting to resolve difficulties with shipments or cruise matters. This represents an increase of 18 percent over the 802 such complaints received in fiscal year 2004. Complaints involving the transportation or handling of cargo continued to increase, partly due to the Commission's revitalized focus on informal and non-adjudicatory means of complaint resolution, and the increased awareness of the availability of assistance through electronic and other means of communication. The most significant increase occurred with respect to complaints from individuals regarding household goods shipments, primarily outbound from U.S. to foreign countries. In fiscal year 2005, 397 complaints were received from individual shippers about the transportation or handling of cargo, almost all of which involved household goods shipments, up from 143 in fiscal year 2004, or a 178 percent increase. There also were 208 other complaints involving cargo shipments during fiscal year 2005. Complaints against cruise operators, on the other hand, decreased from 466 to 338 from the prior fiscal year. This can be attributed to a period during which no cruise operators ceased operations.

Of special note is the volume and nature of household goods complaints. While the volume of such complaints nearly tripled over the previous fiscal year, the nature of complaints made resolution much more difficult. Most complaints involved unscrupulous activities by unlicensed OTIs whom the consumer had contracted with via the Internet. Practices included substantially increasing the initial ocean freight quote based on inflated and inaccurate cubic measurements; charging the customer for marine insurance but never obtaining insurance coverage for the shipment; neglecting or refusing to pay other OTIs engaged to ship the cargo; and threatening to withhold delivery of cargo because the customer contacted the Commission or other consumer protection agencies. This conduct resulted in lost cargo, delivery delays of up to one year, and consumers having to pay twice for the same ocean transportation services. A great deal of staff time was devoted to simply assisting consumers in locating their household goods, and once located, working with respondents, licensed OTIs, and others to enable the consumer to retrieve them.

Other functions of the ADR program include the adjudication of small claims, currently those seeking reparations up to \$50,000, for violations of the shipping statutes. Those complaints generally involve alleged prohibited acts in connection with the international transportation of cargo, including household goods, or the failure to establish, observe, and enforce just and reasonable regulations and practices. Twelve of these complaints were filed in fiscal year 2005. Many of these difficulties involved shipments arranged and contracted via online intermediaries.

ADR staff also evaluate and adjudicate applications for permission to apply other than tariff rates, and to waive or refund freight charges arising from various errors in tariff publications, an inadvertent failure to publish an intended rate, or a misquotation of a rate.

In fiscal year 2006, the Commission anticipates a growing number of complaints. In addition, it intends to continue development of its ADR program, encouraging the use of mediation services to assist in resolving formal proceedings or other significant disputes in a more informal and effective manner. Outreach programs will be expanded to make the shipping industry aware of these less adversarial, more cost-effective means of resolving disputes in a manner that enables the parties to control the outcome. Also, conflict resolution training will be encouraged for other Commission managers, to better equip all Commission programs with the skills and knowledge to be more flexible in seeking outcomes that are responsive to industry needs. As the ocean shipping community becomes more aware of the agency's ADR services, we anticipate more inquiries and increased use of mediation to resolve disputes.

### **3. Library**

The FMC public reference/law library contains a large variety of books, directories, encyclopedias, journals, magazines, reports, microforms, and videos. Its holdings consist of specialized material, primarily covering the various segments of the international shipping industry, as well as historical and current regulatory materials covering all phases of shipping in the U.S. foreign trades. It also contains material on several related fields such as engineering, economics, political science and an extensive collection of legal publications. The Library collection includes law encyclopedias, engineering textbooks, legal treatises, Comptroller General Decisions, and selected titles of the National Reporter system. The Library's holdings consist of approximately 4,000 volumes and numerous microfiches, CD-ROMs, and on-line services.

The Library is an information source for Commission staff, government agencies, private organizations, and the public.

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

### **1. General**

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

ALJs have 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 whenever the ends of justice would be served thereby; regulate the course of the hearing; hold conferences for the settlement or simplification of the issues by consent of the parties; dispose of procedural requests or similar matters; make decisions or recommend decisions; and take any other action authorized by agency rule consistent with the Administrative Procedure Act.

At the beginning of fiscal year 2005, twelve formal proceedings and one informal proceeding were pending before the ALJs. During the year, three formal cases and eleven informal cases were added. The ALJs formally settled four formal proceedings and one informal proceeding, and issued initial decisions in one formal proceeding and seven informal proceedings. Additionally, one informal proceeding was dismissed, and a summary judgment granted in another.

### **2. Commission Action**

The Commission adopted four orders of approval of settlement and one summary judgment of the ALJs.

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

#### ***Sea-Land Service, Inc. - Possible Violations of Sections 10(b)(1), 10(b)(4) and 19(d) of the Shipping Act of 1984 [Docket No. 98-06].***

In this major investigation ordered by the Commission, the Commission found that respondent Sea-Land Service, Inc., the then-largest American carrier, had violated various sections of the 1984 Act by charging shippers inapplicable rates under its tariff, paying ocean freight forwarders compensation for which they had not performed requisite services, and paying compensation to other forwarders who were not entitled to it. On remand to the

presiding ALJ, he assessed civil penalties amounting to \$4,082,500, but assessed no penalties in regard to certain freight forwarder issues because he believed the Commission regulation was unclear and respondent had not had fair notice of its duties under the regulation.

#### **4. Pending Proceedings**

At the close of fiscal year 2005, there were ten formal complaint proceedings and two informal proceedings pending before the ALJs. These were instituted by the filing of complaints by common carriers by water, shippers, conferences, port authorities or districts, terminal operators, trade associations, and stevedores.

### **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 ratification. In addition, the Office of the General Counsel 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 the courts and Congress and administers the Commission's international affairs program.

#### **1. Rulemakings and Decisions**

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

##### **(a) Rulemakings**

***Non-Vessel-Operating Common Carrier Service Arrangements*** [Docket No. 04-12], 30 S.R.R. 592 (February 8, 2005); ***Non-Vessel-Operating Common Carrier Service Arrangements*** [Docket No. 05-05], \_\_\_\_\_ S.R.R. \_\_\_\_\_ (September 23, 2005); ***Non-Vessel-Operating Common Carrier Service Arrangements (Notice of Inquiry)*** [Docket No. 05-06], \_\_\_\_\_ S.R.R. \_\_\_\_\_ (August 30, 2005).

Unlike vessel-operating common carriers ("VOCCs"), NVOCCs are limited by the Shipping Act to offering common carrier services for the carriage of international

oceanborne cargo to the shipping public under the terms of a published tariff. In view of the eight petitions noted below (Petition Nos. P3-03, P5-03, P7-03, P8-03, P9-03, P1-04, P2-04, P4-04), as well as the August 2, 2004, Joint Proposal submitted to the Commission by the National Industrial Transportation League, United Parcel Service, BAX Global, Inc., FEDEX Trade Networks Transport & Brokerage, Inc., the Transportation Intermediaries Association, and C.H. Robinson Worldwide, Inc., the Commission initiated this proceeding with the issuance of a notice of proposed rulemaking (“NPR”) on October 28, 2004. The NPR was issued to solicit public comment on specific proposed language for an exemption to the tariff publication requirements of section 8(a) of the Shipping Act, 46 U.S.C. app. ' 1707(a), for cargo moved by NVOCCs for their shipper customers on a contractual basis. Commenters were given until November 19, 2004, to submit comments on the NPR, although this period was later extended to November 30, 2004.

The Commission voted to issue a Final Rule on December 15, 2004, at a public meeting. The Final Rule became effective on January 19, 2005.

The Final Rule exempts NVOCCs offering “NVOCC Service Arrangements” (“NSAs”) from the publication requirements of the Shipping Act, subject to certain conditions. The Final Rule defines an NSA as “a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC or two or more affiliated NVOCCs, in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party.”

The Final Rule’s exemption is conditioned on the electronic filing by the NVOCC of the NSA with the Commission, through its web-based electronic filing system (“SERVCON”), in the same manner VOCCs file service contracts defined by section 8(c) of the Shipping Act, 46 U.S.C. app. ' 1707(c). Analogous to the Shipping Act’s requirements for service contracts offered by VOCCs, the exemption also requires that the essential terms of all NSAs be published in the NVOCC’s tariff publication.

Due to prior judicial interpretations of the extent of the antitrust immunity granted by the Shipping Act, the Commission declined several commenters’ requests to extend the exemption to encompass arrangements between two or more NVOCCs, including shippers’ associations whose members are NVOCCs. The Commission found that such an exemption could confer antitrust immunity on arrangements between and among NVOCCs, and that this could result in substantial reduction in competition, contrary to the Shipping Act’s exemption standards.

Subsequently, after issuance of an opinion by the U.S. Court of Appeals for the Fourth Circuit which clarified that NVOCCs are not entitled to antitrust immunity under the Shipping Act, on September 23, 2005, the Commission issued a final rule extending the exemption to allow NVOCCs to offer NSAs to other NVOCCs as well as shippers’ associations with NVOCC members. This Final Rule became effective on October 28,

2005. The Commission also determined that it would further consider the expansion of the exemption to enable two or more unaffiliated NVOCCs to jointly offer NSAs. On August 30, 2005, the Commission issued a Notice of Inquiry, seeking comments on such joint NSA authority. 70 Fed. Reg. 52345 (September 2, 2005). The responses to that inquiry are currently under review by the Commission.

***The Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 [Docket No. 03-15], 30 S.R.R. 457 (October 28, 2004).***

The Commission issued an NPR to seek comments from interested parties regarding possible changes to the Commission's rules governing the content of ocean common carrier and MTO agreements that are filed with the Commission in accordance with the Shipping Act. The proceeding was initiated in response to comments received in the rulemaking proceeding in Docket No. 99-13, a Notice of Inquiry published in the *Federal Register* on August 3, 1999. Comments were received from carriers, shippers, and other interested parties. A Commission meeting was held on November 19, 2003, and an NPR was published in the *Federal Register* on December 1, 2003. Comments were due January 30, 2004. The Commission issued a Final Rule on October 28, 2004, effective on January 3, 2005. In response to the regulated industry's concerns about confusion over the meaning and requirements of many aspects of the former regulations, the Final Rule clarifies many terms and requirements. The Final Rule reduces the burden on the regulated industry by exempting "low market share" agreements from the waiting period requirements of the Shipping Act and by eliminating and reducing many of the former rules' monitoring and reporting requirements on filed agreements. Also, the Final Rule revises the definitions of "capacity rationalization" and "transshipment." Although the Final Rule was generally effective on January 3, 2005, entities regulated by this rule were given an additional 60 days to comply with the monitoring requirements of the Final Rule.

**(b) Decisions**

***The Government of the Territory of Guam v. Sea-Land Service, Inc. and American President Lines, Ltd. [Docket No. 89-26], 30 S.R.R. 703 (July 11, 2005).***

This proceeding was initiated in 1989 by a complaint filed with the Commission by the Government of the Territory of Guam ("GovGuam") against American President Lines, Ltd. ("APL") and Sea-Land Service, Inc. ("Sea-Land"), and was bifurcated into liability and reparations phases, Phase I and Phase II. In 1996, the ALJ issued an Initial Decision in Phase I, finding APL's and Sea-Land's trade-wide rates were not unreasonable. In 1998 the Commission issued its order on liability in Phase I, finding respondents' trade-wide rates were excessive for the years 1988-1990, and remanded the proceeding to the ALJ for determination of reparations.



The ALJ granted separate motions to dismiss filed by APL and Sea-Land, resulting in dismissal of 774 shipments from the proceeding and leaving 42 shipments at issue. The ALJ found GovGuam had no standing to collect reparations on some of the dismissed shipments and did not provide proof it paid the transportation charges on others. GovGuam filed no exceptions to the dismissal orders, resulting in their administrative finality on May 22, 2002. On August, 29, 2003, the ALJ issued his Initial Decision on the reparations phase of the proceeding, finding GovGuam failed to demonstrate what the “just and reasonable rate” would have been for each of the shipments at issue, and denying GovGuam’s request for an award of reparations.

The Commission dismissed this proceeding by order dated July 11, 2005. In that order the Commission also denied reparations to GovGuam and denied GovGuam’s exceptions to the ALJ’s 2002 order dismissing 774 shipments and its exceptions to the ALJ’s 2003 Initial Decision. The Commission found that GovGuam failed to prove the actual harm it suffered on each of its shipments in the proceeding by using the percentage derived from the Commission’s earlier finding that, on a trade-wide basis, respondents APL and Sea-Land collected excessive revenues.

***Exclusive Tug Franchises - Marine Terminal Operators Serving the Lower Mississippi [Docket No. 01-06], 30 S.R.R. 651 (March 29, 2005).***

On June 11, 2001, the Commission issued an Order to Show Cause directing 12 MTOs on the lower Mississippi River to show cause why they have not violated sections 10(d)(1) and 10(d)(4) of the Shipping Act, 46 U.S.C. app. §§ 1709(d)(1) and (d)(4), by entering into exclusive tug assist service arrangements resulting in unreasonable practices and/or undue or unreasonable preference or advantage or unreasonable prejudice or disadvantage, respectively. In October 2001, the Commission referred the entire case to the Office of Administrative Law Judges to handle all aspects of the proceeding because of its complexity and factual nature. The ALJ consequently ordered that the parties enter ADR procedures. Eventually, all respondents reached settlement agreements with the Commission. The ALJ approved those remaining settlements on December 2, 2004. However, a non-party filed a petition to submit an amicus curiae brief regarding the proposed settlements and, as a result, the Commission determined to review the proposed settlement agreements to allow time to consider the petition. The Commission found that because petitioner had originally intervened in the proceeding and voluntarily withdrew, it was not entitled to now participate. The Commission determined that the amicus curiae rule is designed to allow entities to provide helpful discussion regarding certain legal and policy issues that it could not foresee at the outset of a proceeding. Therefore, on March 29, 2005, the Commission denied the petition to submit an amicus curiae brief and dismissed the proceeding, thus allowing the settlement agreements to become administratively final.

***Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts [Petition No. P3-03]; Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984 [Petition No. P5-03]; Petition of Ocean World Lines, Inc., for a Rulemaking to Amend and Expand the Definition and Scope of “Special Contracts” to Include All Ocean Transportation Intermediaries [Petition No. P7-03]; Petition of BAX Global Inc. for Rulemaking [Petition No. P8-03]; Petition of C.H. Robinson Worldwide, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Confidential Service Contracts [Petition No. P9-03]; Petition of Danzas Corporation d/b/a Danmar Lines Ltd., Danzas AEI Ocean Services, and DHL Danzas Air and Ocean for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as Amended [Petition No. P1-04]; Petition of BDP International, Inc. for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as amended [Petition No. P2-04]; Petition of FEDEX Trade Networks Transport & Brokerage, Inc. for Exemption from the Tariff Publishing Requirements of Sections 8 and 10 of the Shipping Act of 1984, as Amended [Petition No. P4-04], 30 S.R.R. 349 (September 2, 2004).***

The Commission received petitions from seven NVOCCs and one national trade association representing NVOCCs seeking relief from the Shipping Act’s restriction on NVOCCs from offering service contracts in their capacity as carriers with their shipper customers and the requirement that NVOCCs adhere to the rates published in their tariffs. 46 U.S.C. app. §§ 1702(19) and 1709(b). The basis for the petitions is that after the passage of OSRA, ocean common carriers (*i.e.*, VOCCs) were allowed for the first time to provide service to their shipper customers pursuant to the rates and terms of service specified in confidential service contracts, as opposed to publicly available service contracts or tariffs. NVOCCs may enter into a service contract with an ocean common carrier as a shipper customer of the ocean common carrier; however, OSRA did not extend to NVOCCs the ability to offer service contracts as carriers to their shipper customers. Instead, NVOCCs must provide service pursuant to its tariffs, which are open for public inspection. United Parcel Service (“UPS”), C.H. Robinson Worldwide, Inc., Danzas Corporation, BDP International, Inc. and FEDEX Trade Networks Transport & Brokerage, Inc. each requested individual exemptions from the Shipping Act. They argued that changes in the ocean freight industry since the passage of OSRA, the growth of integrated logistics services, the promotion of greater competition in the marketplace, and the ability

to provide lower cost and more efficient service for shippers warranted the Commission granting their requests to provide confidential service contracts as carriers to their shipper customers. The National Customs Brokers and Forwarders Association of America, Inc. (“NCBFAA”), a national trade association representing the interests of freight forwarders, NVOCCs and customs brokers in the shipping industry, sought an exemption from the tariff publication requirements for all NVOCCs. NCBFAA presented arguments similar to UPS and C.H. Robinson, but also asserted that the tariff system is outdated and impractical. As such, NCBFAA requested that the Commission exempt NVOCCs from certain provisions of sections 8 and 10 of the Shipping Act, which require NVOCCs to establish, publish, maintain and enforce tariffs setting forth ocean freight rates, thereby relieving NVOCCs from the administrative burden and cost of tariff publication, and enabling them to negotiate rates specific to shippers’ requirements. In the alternative, if the Commission found that it does not have the authority to issue the requested exemption, NCBFAA sought a more limited exemption from section 8 and a rulemaking modifying Part 520 of the Commission’s regulations that would allow NVOCCs to establish and maintain “range rates” in lieu of specific rates covering their rates and charges. Ocean World Lines, Inc. requested a rulemaking to expand the definition and scope of the term “special contracts” in the Commission’s regulations to include NVOCCs if UPS and/or NCBFAA’s petitions were not granted. Finally, BAX Global Inc. sought a rulemaking to permit BAX and other similarly situated entities (a determination to be based on assets, corporate format, and regulatory history) to enter confidential service contracts as “ocean common carriers” with their shipper customers. The Commission sought comment on the petitions from interested persons.

On August 2, 2004, the National Industrial Transportation League, UPS, BAX, FEDEX, Transportation Intermediaries Association, C.H. Robinson Worldwide, Inc., and BDP International, Inc. filed a Motion for Leave pursuant to Rule 73 of the Commission’s Rules of Practice and Procedure, 46 CFR 502.73, to file Joint Supplemental Comments Requesting Expedited Adoption of a Conditional Exemption from Tariff Publication. The moving parties sought acceptance of their Supplemental Comments into the record, as the comments reflected an updated, unified version of the various forms of relief requested in the original individual petitions. The moving parties requested that the Commission use its authority under section 16 of the Shipping Act to exempt certain NVOCC agreements with shippers from the tariff publication requirements in the Shipping Act and the Commission’s Regulations, as well as the tariff-related prohibited acts found in the Shipping Act. The proposed exemption would apply to any written agreements between an NVOCC and shipper (excluding bills of lading, receipts or other transport documents), where the shipper pledged to provide a specific volume/portion of cargo over a fixed time period while the NVOCC committed to a defined rate and service level. According to the movants, the proposed exemption would be subject to the following conditions: (1) the agreements and their essential terms must be filed confidentially with the Commission; (2) the NVOCC must publish a tariff that includes the origin and destination port ranges, commodity involved, minimum volume/portion, and duration of the agreement; and (3) the Commission would retain jurisdiction to the same extent as it does over service contracts under the Shipping Act. The Commission granted the Motion for Leave and reopened the comment period

until September 30, 2004. The Commission met on October 27, 2004, and the next day issued an NPR in Docket No. 04-12, *Non-Vessel-Operating Common Carrier Service Arrangements*. The proposed rule was developed in response to the numerous petitions and the Joint Proposal. The Commission met again on December 15, 2004, and voted to issue a Final Rule exempting NVOCCs from the publication requirement of the Shipping Act, subject to certain conditions. The Final Rule became effective on January 19, 2005.

## **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:

***American Institute of Shipper's Associations v. Federal Maritime Commission, D.C. Circuit, Case No. 05-1036 - International Shippers' Association v. Federal Maritime Commission, D.C. Circuit, Case No. 05-1037.***

This proceeding is an appeal of the FMC's final rule, and its order denying rehearing, in Docket No. 04-12, *Non-Vessel-Operating Common Carrier Service Arrangements*. In order to ensure that competition would not be harmed, that rule forbade NVOCCs and shippers associations with NVOCC members from acting as shippers in NSAs. The petitioners seek to convince the Court of Appeals either that the Commission's rule is discriminatory against shippers associations with NVOCC members, or that the rule is entirely beyond the scope of the agency's authority. The Court, on its own motion, consolidated Case Nos. 05-1036 and 05-1037. On May 11, 2005, the following entities were granted leave to intervene in support of the FMC's rule: BAX Global Inc., FEDEX Trade Networks Transport & Brokerage, Inc., National Industrial Transportation League, Transportation Intermediaries Association, and UPS. The court also granted permission to the Fashion Accessories Shippers Association ("FASA") to participate as an amicus curiae. The Office of the General Counsel filed a Certified Index of the Record on May 2, 2005. The court issued an Order to Show Cause on July 22, 2005, directing petitioners to show why they should not file a joint brief. The Office of the General Counsel filed a response supporting the proposed briefing schedule on August 8, 2005. Amicus curiae FASA filed a motion to become an intervenor on August 24, 2005. Petitioners filed their opposition to FASA's motion on August 31, 2005.

### **3. Legislative Activities**

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

During fiscal year 2005, 130 bills, proposals and Congressional inquiries were referred to the Office of the General Counsel for comment. The Office prepared and coordinated testimony for the agency's fiscal year 2006 budget authorization hearing before the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation. The Office also submitted comments to Congressional staff on the continuing efforts to revise, codify and enact certain maritime laws as part of Title 46, U.S. Code, *Shipping*. In November 2004, the Office prepared a report to Congress on the sharing of ocean shipping information for the purpose of assisting law enforcement or anti-terrorism efforts.

In fiscal year 2006, the Office will continue to take the lead in providing assistance and technical advice to Congress regarding issues for possible legislative consideration, with particular emphasis on port and maritime security initiatives. The Office will recommend legislative and regulatory amendments as necessary to ensure uniformity with other Federal initiatives to allow for the efficient and secure flow of ocean transportation. The Office will continue to serve as liaison with other federal agencies with respect to port and maritime security, promoting information sharing and a coordinated approach to maritime security.

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

The General Counsel is responsible for the administration of the Commission's international affairs program. The General Counsel 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 affecting U.S. carriers in foreign trade, which conditions do not exist for foreign carriers in the U.S.

In fiscal year 2005, the Commission continued to monitor potentially restrictive shipping practices of the Governments of Japan and the PRC.

The Commission continued to monitor developments relating to restrictive practices in Japanese ports, including the effects of amendments to the Port Transportation Business Law enacted in 2000. The Commission continued to receive and evaluate semiannual reports from its ongoing proceeding in Docket No. 96-20, *Port Restrictions and Requirements in the United States/Japan Trade*.

The Commission also continued to follow restrictive practices in China through Docket No. 98-14, *Shipping Restrictions, Requirements and Practices of the People's Republic of China*. On August 12, 1998, the Commission issued Information Demand Orders to VOCCs of the U.S. and the PRC for information on Chinese policies and practices regarding port access, the licensing of multimodal transport operations, and the establishment of representative and branch offices. The Commission stated in June 1999 that the responses to the FMC's inquiries indicated that Chinese laws and regulations discriminate against and disadvantage U.S. carriers and other non-Chinese shipping lines with regard to a variety of maritime-related services.

However, a number of subsequent developments made it desirable for the Commission to further review these matters and supplement the record: the entry into the U.S. trades of a new Chinese controlled carrier, China Shipping Container Lines; resumed bilateral maritime talks between the U.S. and China; acquisition of the U.S.-flag carrier, Sea-Land Service, Inc., by the parent of Maersk Line; a new Chinese Regulation on International Maritime Transport, effective January 1, 2002; and *Implementing Rules for the Regulations of the PRC on International Maritime Transportation*, issued by the Chinese Ministry of Communications.

A bilateral U.S.-China Maritime Agreement was signed by Secretary of Transportation Norman Y. Mineta and his Chinese counterpart on December 8, 2003. On March 31, 2004, the Commission met to review developments in this docket and on April 1, 2004, determined to reopen the comment period in this docket, soliciting comments particularly on the impact and effects of the recently-signed bilateral Maritime Agreement. Comments were due June 1, 2004. Diplomatic notes bringing the Agreement into effect were exchanged on April 21, 2004. On April 21, 2005, the Commission discontinued the proceeding, finding that the conditions that had originally merited its attention had appeared to be alleviated by the implementation of the bilateral Maritime Agreement.

The Commission's Permanent Task Force on International Affairs, chaired by the Deputy General Counsel, is a network of representatives from a number of Commission bureaus and offices. The Task Force meets to exchange information regarding new or continuing areas of concern relating to restrictive foreign shipping practices possibly necessitating action under one of the Commission's statutory authorities in this area. The regular meetings and activity reports of the Task Force also aid the Commission in developing efficient methods to address conditions as they arise.

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

In fiscal year 2006, the Office will continue to take the lead in accomplishing the agency's performance goals related to eliminating restrictions that unjustly disadvantage U.S. interests, by monitoring, through the Permanent Task Force on International Affairs, foreign laws and practices to determine whether there are any unjust non-market barriers to trade. The Office will recommend appropriate action to the Commission as warranted.

## **5. Designated Agency Ethics Official**

The Ethics Official is structurally located within the Office of the Chairman, but the position is performed as a collateral duty by the Deputy General Counsel.

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 the day-to-day dispensing of advice and guidance to ensure compliance with the standards of ethical conduct that apply to Executive Branch officials.

## **D. OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY**

The Office of Equal Employment Opportunity ("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 EEO 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 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 and affirmative 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 employment 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 the Commission's Office of Human Resources ("OHR"), managers and supervisors to:

- **Expand outreach and recruitment initiatives.**
- **Improve the representation, career development and retention of women, minorities and persons with disabilities.**
- **Provide adequate career counseling.**
- **Facilitate early resolution of employment-related problems.**
- **Develop program plans and progress reports.**

Significant accomplishments in fiscal year 2005 included the following:

1. **Provided briefings to FMC senior staff.**
2. **Provided counseling assistance and No FEAR Act training to FMC managers, supervisors and employees, and updated/posted No FEAR Act statistics to FMC website (<http://www.fmc.gov/home/NoFEARAct.asp>).**
3. **Reviewed and assessed management and personnel human resource activity and actions.**
4. **Maintained an effective discrimination complaint process that attempted to resolve issues informally, expeditiously, and at the lowest possible level.**
5. **Continued providing support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce.**
6. **Held special commemorative programs for FMC employees, including multicultural, Black History and Hispanic Heritage months programs.**
7. **Improved FMC's image and identity among Federal agencies and the community by developing cooperative programs in the special emphasis areas.**



8. **Reorganized the Advisory Council on Women's Issues.**
9. **Provided information to employees about Women's Equality Day and Internet sites with diversity-related information.**
10. **Made arrangements for a presentation to agency managers on Individual Development Plans.**
11. **Prepared all required affirmative employment program accomplishment reports and plans with OHR.**
12. **Coordinated with OHR to initiate/resurvey employees' Race and National Origin to ensure accuracy of statistical data.**
13. **Attended EEO refresher training, and coordinated and made arrangements for ten FMC female employees to attend a Women's Conference.**
14. **Continued non-discrimination policy and programs.**

During fiscal year 2006, the Office will continue all existing programs and initiate additional activities designed to increase an understanding of EEO concepts and principles, including workforce diversity, outreach, retention and career development.

## **E. OFFICE OF THE INSPECTOR GENERAL**

The Office of Inspector General ("OIG") at the Commission was established pursuant to the Inspector General Act of 1978, which was amended in 1988 to provide for additional statutory inspectors general at designated Federal entities, including the Commission.

It is the duty and responsibility of the OIG to:

- **Provide policy direction for and conduct, supervise, and coordinate audits and investigations relating to the Commission's programs and operations.**
- **Review existing and proposed legislation and regulations relating to the Commission's programs and operations and to make recommendations concerning the impact of such legislation or regulations on the**

economy and efficiency in, and the prevention and detection of fraud and abuse in, the administration of the Commission's programs and operations.

- **Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Commission's programs and operations.**
- **Recommend policies for, and conduct, supervise, or coordinate relationships between the Commission and other Federal agencies, state and local governmental agencies, and nongovernmental agencies with respect to all matters relating to: the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; and the identification and prosecution of participants in any fraud or abuse.**
- **Keep the Chairman and the Congress fully and currently informed by means of semiannual and other reports concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Commission; recommend corrective action concerning such problems, abuses, and deficiencies; and report on the progress made in implementing such corrective action.**

During fiscal year 2005, the Office issued the following audits in final:

- A04-04      *Financial Statement Audit - Fiscal Year 04***
- A04-06      *Audit of Agreement Filings***
- A05-01      *Audit of Controls over Agency Property***
- A05-02      *Audit of Procurement of Vendor Training Services***

In addition to these completed audits, the OIG initiated a survey of the Bureau of Enforcement functions, and a review of the Commission's statutory reporting requirements of the fiscal year 2005 financial statements and the Federal Information Security Management Act ("FISMA").

During the year, various Hotline complaints were received; investigations, both informal and formal, were opened and pursued. At the end of the fiscal year, there were no formal investigations pending.

In fiscal year 2006, the OIG plans to conduct two statutorily required audits – one in the information technology area pursuant to FISMA, and the other in the financial area relating to the required audit of the agency’s financial statements for fiscal year 2006. The Office will continue to perform evaluations of agency programs and operations as it carries out the OIG’s statutory mandate to combat waste, fraud and abuse in agency programs. These audits are tied to both the agency’s and the OIG’s strategic plans. The Office also will initiate investigations, both formal and informal, as warranted.

During this period, FMC’s previous Inspector General (“IG”) retired from Federal service after being the IG at the Commission for nearly 16 years. The Commission’s auditor currently is acting in this capacity.

The Acting IG is an active member of the Executive Council on Integrity and Efficiency, as well as the Federal Audit Executive Council, and will continue working with those groups on joint projects which affect the IG community.

## **F. OFFICE OF ADMINISTRATION**

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

- **Office of Budget and Financial Management,**
- **Office of Human Resources,**
- **Office of Information Technology, and**
- **Office of Management Services.**

The Director, OA, provides administrative guidance to the:

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

and administrative assistance to the:

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

The Director, OA, is the FMC's Chief Acquisition Officer, Audit Followup and Management (Internal) Controls Official, and Forms Control Officer. The Director also serves as the FMC's representative, as Principal Management Official, to the Small Agency Council ("SAC"). As the Chief Financial Officer, the Director provides program oversight for the agency's budget and financial management responsibilities, and ensures agency compliance with the Financial Integrity Act, the Antideficiency Act, and the Debt Collection Improvement Act of 1996. The Director also serves as the agency's lead executive for strategic planning and implementation of the Government Performance and Results Act of 1993 ("GPRA").

The Deputy Director of Administration is the FMC's Chief Information Officer ("CIO"). He also serves as the FMC's Competition Advocate and Records Management Officer. Additionally, a staffer is the point of contact for the Small Business Administration's e-forms initiative.

The Office of the Director had significant programmatic achievements in the administrative arena during fiscal year 2005. The agency received an unqualified opinion in its fiscal year 2005 financial statement audit. Also, the Office guided the agency's continuing efforts to enhance its IT program and address recommendations made by the IG through a contractor assessment of agency IT operations. The Office again directed preparation of the Annual Performance Plan and the Annual Program Performance Report, as required by GPRA. The Office also prepared the Federal Activities Inventory Reform Act report, the Performance and Accountability Report, which included our Management's Discussion and Analysis and the Federal Managers Financial Integrity Act report, and transmittal letters for the Inspector General's semiannual reports to Congress. Also, the Office prepared the agency Regulatory Plan and Semiannual Unified Agendas, the Small Business Paperwork Reduction Act Implementation Plan, and the Final Regulatory Enforcement Act Report for fiscal year 2004 to Congress. The Office also coordinated completion of the agency's *43<sup>rd</sup> Annual Report*. Additionally, the Office led the effort to revise user fees as part of a biennial review of such fees. Also during the fiscal year, the Office directed the update of the internal Commission issuances that specify procedures for a variety of programs and activities, and guided Commission efforts to comply with the Government Paperwork Elimination Act ("GPEA") and FISMA. Additionally, the Office

guided the development of the fiscal year 2007 budget request to OMB and the fiscal year 2006 President's Budget submission, and directed all efforts involving the audit of the Commission's fiscal year 2005 financial statements. Also during the year, the Office provided primary support for the OMB information collection clearance process and records management programs. Further, the Office guided the continued development of the agency's Continuity of Operations ("COOP") Plan, including securing alternate sites for activities in the event of a disaster. Also, the Office directed the effort to update and refine the agency's performance evaluation system. In addition, the Office enhanced administrative operations by implementing guidelines for providing the highest quality service to all customers, improving communications between offices and with stakeholders, and developing a more effective team relationship among administrative offices.

OA's key objectives for fiscal year 2006 are continuing to implement the Chairman's policy directions aimed at refining and enhancing agency administrative programs and operations; monitoring the accomplishment of agency performance goals, particularly those related to the agency's performance management system; initiating further IT improvements, including facilitating the enhancement of the SERVCON system and the automation, replacement, integration or update of other systems; implementing appropriate actions in response to the agency's SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis; and working with senior managers to ensure effective strategic succession planning. The Office also will take the lead in assuring an effective agency-wide computer security program, and that the agency's financial management system receives an unqualified opinion in annual financial audits.

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

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

The Office of Budget and Financial Management ("OBFM") administers the Commission's financial management program and is responsible for offering guidance on optimal utilization of the Commission's fiscal resources. OBFM is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the Congress and OMB. The Office also administers internal control systems for agency funds, travel, and cash management.

### **(b) Achievements**

During fiscal year 2005, OBFM:

- **Collected and deposited \$1,195,964 from user fees, fines and penalty collections, and ocean freight forwarder and OTI application and passenger vessel certification fees.**

- Coordinated and prepared budget justifications and estimates for the fiscal year 2006 Congressional budget and fiscal year 2007 budget to OMB.
- Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Costs for 2004 (Office of Personnel Management - "OPM"); the Report on International Travel for FY 2004 (OMB); the Report on First-Class Airline Accommodations for fiscal year 2004 (General Services Administration - "GSA"); and the quarterly Continuation of Pay Reports (Department of Labor).
- Prepared monthly status reports on workyears, funding, travel and receivables.
- Managed the Commission's travel and cash management programs, and managed the transit benefits program through June 2005.
- Updated Commission orders and internal office procedures which deal with a variety of financial management issues.
- Completed a process for the individual offices/bureaus to forecast annual goals in accordance with the Commission's strategic goals.
- Prepared monthly allocation reports to provide management with meaningful, timely expense data by program.
- Worked with Bureau of Public Debt ("BPD") staff and auditors regarding the audit of the fiscal years' 2004 and 2005 financial statements.
- Pursued all delinquent receivables and referred applicable debts to the Department of Treasury for collection.
- Complied with e-travel initiatives by migrating to a new electronic travel application.
- Worked with the Director of Administration to finalize the Commission's 2004 Management's Discussion and Analysis and prepare the Commission's 2005 Performance and Accountability Report.

### **(c) Future Plans**

Financial management goals in fiscal year 2006 include: (1) continued development of a fully integrated financial management system; (2) in conjunction with the Office of Management Services, continued implementation of electronic commerce to automate the processing of purchase orders, obligations, receipts and invoice processing; (3) reviewing and updating, as necessary, procedures and controls for current business processes; and (4) pursuing initiatives leading to economy and efficiency in budget and financial operations goals.

## **2. Office of Human Resources**

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

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

### **(b) Achievements**

During fiscal year 2005, OHR:

- **Monitored activities of the agency’s payroll/personnel service provider, National Finance Center (“NFC”), worked with OBFM on security issues for conversion to a web-based time-and-attendance reporting system, and responded to internal and external financial audits and related inquiries.**
- **Served as advisor for certain employee development programs and activities to address executive succession, for example, the Senior Executive Service (“SES”) Candidate Development Program and Emerging Leaders Program.**
- **Conducted a comprehensive training program in accordance with the agency’s budget and strategic and annual performance plans, issuing a training procedural guide, providing executive training for SES candidates, promoting e-learning and on-line training opportunities, implementing the college tuition reimbursement program, coordinating**

with the IT Security Officer to ensure the conduct of computer security awareness training, coordinating with the EEO Director to ensure conduct of No FEAR Act training, and participating in the SAC Training Program.

- Conducted a comprehensive personnel security program, including initiating and adjudicating security investigations for new and reinvestigated employees, completing work necessary for reporting and updating data in the Clearance Verification System pursuant to the e-clearance initiative, revising the internal National Security Classification Information Guide, and collaborating with CBP to coordinate a special investigations process to provide access to automated industry information.
- Conducted a comprehensive performance management and incentive awards program, including working with senior management to assess the performance appraisal system and recommend changes to simplify and streamline the process.
- Conducted a comprehensive recruitment program utilizing flexibilities and recruitment alternatives to staff critical positions.
- Coordinated with OPM, OMB and pertinent partners on a variety of human capital initiatives related to accomplishment of action items pursuant to the President's Management Agenda.
- Maintained the partnership for acquisition of assistive devices through the Department of Defense's Computer/Electronic Accommodations Program.
- Promoted the Preventive Health and Awareness Program and issued newsletters and e-mail notices focusing on monthly preventive health themes and related health issues, e.g., Employee Assistance and Federal Occupational Health Programs.
- Oversaw preparation for implementation of the Enterprise Human Resources Integration project, and administered other e-Gov initiatives such as Recruitment One-Stop, e-payroll, e-OPF and e-learning.
- Conducted a proactive retirement program including counseling, computing benefits, providing an onsite retirement seminar, and processing all retirements.



- **Managed and conducted numerous employee benefit and charitable contribution programs and open seasons, such as the Combined Federal Campaign.**
- **Coordinated with other administrative units and the Department of Interior with respect to implementing Homeland Security Presidential Directive (“HSPD”) 12, related to common identification standards for Federal employees.**
- **Conducted a cyclical position management review program to maintain balanced organizational structures, ensure positions remained current and accurately classified, and to effect realignment of organizational programs and functions.**

**(c) Future Plans**

In fiscal year 2006, OHR plans to continue to: (1) advise agency management and staff on all human resources matters and ensure the maintenance of a sound and progressive human resources program; (2) implement pertinent portions of the agency’s strategic, training and related performance plans, particularly performance goals related to the management of human resources; (3) explore and implement simplification, flexibility, and accountability of human resources management programs; (4) in conjunction with administrative components and the Department of Interior, implement pertinent provisions of HSPD 12, related to common identification standards for Federal employees; and (5) monitor processes and database modernization activities of the NFC in conjunction with the government-wide e-payroll initiative to ensure timely and accurate payroll and personnel services.

**3. Office of Information Technology**

**(a) General Office Responsibilities**

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

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

**(b) Achievements**

During fiscal year 2005, OIT:

- **Completed the upgrade of the Commission's network infrastructure to include increased network bandwidth.**
- **Improved the policies and procedures associated with the technical assistance provided to FMC staff and changes in the IT infrastructure.**
- **Maintained and enhanced the FMC website, and provided advice and technical support to all bureaus and offices in developing Internet and database applications.**
- **Initiated and administered contracts to provide IT support and other services to further the Commission's mission.**
- **Continued to lead the Asset Management Committee, the Technical Users Group, and the IT Change Control Process.**
- **Implemented enhancements to the OIT Test Lab and User Support Center for testing hardware and software and to provide user assistance.**
- **Developed an FMC Enterprise Architecture Plan and a System Development Lifecycle Plan.**
- **Completed the rewrite of the FMC's SERVCON system.**
- **Upgraded the network security infrastructure.**
- **Improved IT compliance with FISMA and the President's Management Agenda by reviewing FMC systems, conducting Security Assessments and completing Certification and Accreditation packages.**
- **Initiated the development and enhancement of FMC systems to automate processes consistent with the E-Government Act.**
- **Improved service-level agreements by implementing 24x7 infrastructure support services.**

### **(c) Future Plans**

Major OIT initiatives for fiscal year 2006 include plans to: (1) ensure compliance with government programs such as FISMA and the President's Management Agenda; (2) implement the new Internet-based SERVCON System; (3) update the FMC Enterprise Architecture Plan; (4) continue to develop plans to stabilize all critical systems and recommend enhancements to the existing IT infrastructure; (5) continue maintenance for and assist as needed in the updating of the Commission's website to provide information to the public; (6) facilitate the Commission's ability to take advantage of e-commerce; (7) continue with the implementation of the GPEA Execution Plan; (8) continue to investigate options to partner with other agencies' initiatives to better serve the public in the dissemination and collection of information; (9) begin the requirements analysis to meet the Internet Protocol version 6 government-wide initiative; (10) improve the virtual private network piece of the network security infrastructure; (11) improve data and wireless telecommunications services and support; (12) continue to improve the capital planning and investment control process; and (13) continue to research new technology through the IT Test Lab and User Support Center.

## **4. 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 telecommunications, procurement of administrative goods and services, property management, space management, printing and copying management, mail and records 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 2005, OMS:

- **Coordinated through the Building Security Committee and arranged for building-wide emergency preparedness training for Emergency Response Team members and staff employees on how to respond to security threats.**

- Coordinated with the CIO and OIT to enhance the agency's COOP planning, including completing arrangements for establishment of alternate sites for disaster recovery efforts.
- Coordinated through the Building Security Committee and established a true tenant entrance, and implemented a new building-wide Visitor's Pass ID System to control building access by visitors for agencies that share our Headquarters office building.
- In coordination with the Office of the Secretary and OIT, awarded a contract to enhance and host the agency's website.
- In coordination with the CIO and OIT, arranged for the acquisition of database administration and programming support services to address critical needs within the agency.
- In accordance with the Chairman's realignment plan, arranged for the relocation and consolidation of the OA and Office of Operations organizational components onto one building floor.
- Began administering the agency's transit benefits program in July 2005.
- In coordination with BPD, as our cross-services provider for accounting, travel, and procurement platform support, arranged for the enhancement of our procurement support to include full-service acquisition support.
- In coordination with GSA, reestablished and implemented an agency- and building-wide recycling program to include glass, plastic, aluminum, and paper.

**(c) Future Plans**

In fiscal year 2006, the objectives of OMS include: (1) renovating the 9th and 10<sup>th</sup> floors of our Headquarters space to better accommodate the consolidation of OA and Office of Operations components and complete the construction alterations required by the agency's realignment of August 2004; (2) continuing to work with GSA, DHS, and other tenant agencies at our Headquarters facilities and field locations to enhance and/or improve physical security measures at our work sites; (3) continuing to work with the CIO and OIT to enhance our COOP and emergency preparedness at all agency sites; and (4) continuing to provide advice and assistance to FMC activities regarding innovative support service approaches.

## G. OFFICE OF OPERATIONS

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

- **Bureau of Certification and Licensing,**
- **Bureau of Enforcement, and**
- **Bureau of Trade Analysis.**

The Office of Operations oversees the development and operations of various Commission programs and recommends new programs and necessary changes in staff objectives.

In addition, the Office of Operations oversees the Area Representatives. The Commission maintains a presence in Los Angeles, South Florida, New Orleans, New York and Seattle through Area Representatives, who serve other major port cities and transportation centers within their respective areas. In addition to monitoring and investigative functions, Area Representatives represent the FMC within their jurisdictions, provide liaison between the FMC and the maritime industry and the shipping public, collect and analyze intelligence of regulatory significance, and assess industry conditions. The Area Representatives support the functions of each bureau under the Office of Operations. Liaison activities include cooperation and coordination with other government agencies and departments, providing regulatory information and relaying FMC policy to the shipping industry and the public, as well as handling informal complaints with each representative's area of responsibility.

In fiscal year 2005, the Office of Operations focused on coordination of the three operating bureaus generally and on several specific projects. The Office worked with OA and the operating bureaus to further data integration across bureaus and automation of Commission forms and processes. The outcome of these improvements will be to increase efficiency of various internal processes, while increasing ease of use for regulated entities. The Office concentrated on evaluating other internal processes and work flow between bureaus to increase efficiency and productivity. An agency-wide review of the Commission's OTI program was coordinated by the Director of Operations in fiscal year 2005, with the participation of many offices within the Commission. The Office, the Area Representatives, and the Bureau of Enforcement worked closely with CADRS to help resolve and address the growing problems seen in the household goods sector of the OTI industry. These problems are described comprehensively by the Office of the Secretary in Part V, Section A.

In fiscal year 2005, all of the Area Representatives continued to focus on bringing unlicensed OTIs into compliance. The Area Representatives increased their focus on outreach, particularly in South Florida, where several groups were addressed, from large

conferences to groups of small OTIs. On the West Coast, Area Representatives focused on carrier compliance with service contract regulations and equipment substitution problems. Also on the West Coast, and in New York and Miami, the Area Representatives coordinated publication of public service announcements aimed at small shippers warning against the use of unlicensed OTIs. These have resulted both in increasing inquiries on OTI status and a decrease in complaint activity in certain areas. In August 2005, the New Orleans Area Representative was displaced from his office space because of Hurricane Katrina. The Area Representative was able to keep the office functioning remotely through the end of the fiscal year. The Area Representatives conducted and supported many investigations as described by the Bureau of Enforcement in Part V, Section I.

The Office of Operation's key objectives for fiscal year 2006 include instituting the Chairman's policy directions aimed at refining and enhancing agency programs and operations, as well as monitoring the accomplishment of agency performance goals. In particular, the Office will oversee the implementation of possible refinement of the OTI licensing and compliance processes. The Office will coordinate operational bureaus in their efforts to further automate various Commission forms and processes. In addition, the Office will work with the other components of the agency to coordinate various outreach programs in both the public and private sectors.

## **H. BUREAU OF CERTIFICATION AND LICENSING**

### **1. General**

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

- **Licenses and regulates OTIs, including ocean freight forwarders and NVOCCs.**
- **Issues certificates to owners and operators of passenger vessels that have evidenced financial responsibility to satisfy liability incurred for nonperformance of voyages or for death or injury to passengers and other persons.**
- **Manages programs assuring financial responsibility of OTIs and passenger vessel operators, by developing policies and guidelines, and analyzing financial instruments and financial statements.**

- **Develops and maintains information systems that support the Bureau's programs and those of other Commission entities.**

In carrying out these functions, the Bureau provides information and referrals in response to a wide array of informal inquiries, and provides guidance with respect to licensing and bonding.

The Bureau is organized into two offices. The Office of Transportation Intermediaries has responsibility for reviewing and approving applications for OTI licenses, and maintaining and updating records about licensees. The Office of Passenger Vessels and Information Processing has responsibility for reviewing applications for certificates of financial responsibility with respect to passenger vessels, for managing all activities with respect to evidence of financial responsibility for OTIs and passenger vessel owner/operators, and for developing and maintaining all Bureau databases and records of OTI applicants and licensees.

## **2. Licensing of Ocean Transportation Intermediaries**

OTIs are transportation middlemen. There are two different types of such transportation middlemen, NVOCCs and ocean freight forwarders. Both NVOCCs and ocean freight forwarders must be licensed if located in the U.S. Foreign NVOCCs may choose to become licensed, but do not require a license. Whether licensed or not, foreign NVOCCs must establish financial responsibility. In addition, all NVOCCs must publish electronic tariffs.

To be licensed, an OTI must establish that it is qualified in terms of experience and character, as well as establish its financial responsibility by means of a bond, insurance or other instrument. Licensed ocean freight forwarders must establish financial responsibility in the amount of \$50,000, and licensed NVOCCs, \$75,000. An additional \$10,000 coverage is required for each unincorporated U.S. branch office of a licensee. In addition, unlicensed foreign NVOCCs must maintain \$150,000 in coverage. The financial instrument must be available to pay any order of reparation assessed under the 1984 Act, claims against the OTI arising from its transportation-related activities, and any judgments for damages against an OTI arising from its transportation-related activities under the 1984 Act.

During fiscal year 2005, the Commission received 428 new OTI applications and 212 amended applications, issued 406 OTI licenses, revoked 235 licenses, and reissued approximately 47 licenses. At the end of the fiscal year, 1,186 freight forwarders, 1,488 U.S. NVOCCs, 1,035 joint NVOCC/ocean freight forwarders, and 38 foreign NVOCCs held active OTI licenses. An additional 825 foreign NVOCCs maintained proof of financial responsibility on file with the Commission but chose not to be licensed. During fiscal year 2005, the Commission received 19 riders providing optional proof of financial responsibility for carriers serving in the U.S./China trade. Docket No. 04-02, *Optional Rider for Proof of*

*Additional NVOCC Financial Responsibility*, implemented rules that permit U.S. NVOCCs to file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government.

The Bureau continues to post on the FMC website a list of licensed and bonded OTIs, which assists carriers in complying with their statutory mandate to do business only with those licensed by the Commission. The list is updated weekly.

### **3. Passenger Vessel Certification**

The Commission administers sections 2 and 3 of Pub. L. No. 89-777 (46 U.S.C. app. §§ 817d and 817e), which require evidence of financial responsibility for vessels which have berth or stateroom accommodations for 50 or more passengers and embark passengers at U.S. ports and territories. The program now encompasses 187 vessels and 46 operators, which have evidence of financial responsibility coverage in excess of \$343 million for nonperformance and over \$656 million for casualty. The certificates issued pursuant to this program are necessary for CBP's clearance of thousands of passenger vessel sailings annually. During fiscal year 2005, the Commission received applications for 21 certificates (casualty and performance), while 13 casualty certificates and 16 performance certificates were approved and issued.

In conjunction with CADRs, the Bureau offers information and guidance to the cruising public throughout the year on their rights and obligations regarding monies paid to cruise lines who experience financial difficulties and nonperformance problems.

The cruise industry continues to be the fastest-growing segment of the vacation business. During calendar year 2004, the North American cruise industry generated more than \$30 billion to the U.S. economy, with an average annual percentage growth of 8.1 percent per annum. This has been the strongest year in passenger and revenue growth since the events of September 11, 2001, increasing in both areas at double-digit rates. The cruise industry carried 10.85 million passengers worldwide, 8.3 million or 77 percent of whom were U.S. residents. Over the next four years, the cruise industry will add 19 new vessels with a total of 54,446 passenger berths. As the cruise industry continues to grow, the smaller cruise operators are still at an economic disadvantage in terms of access to working capital to fund operations. This was evidenced during this fiscal year through the discontinued operation of Scotia Prince Cruiselines and the bankruptcy filing of Glacier Bay Cruise Line. The Commission continues to work closely with cruise lines that discontinue operations by assisting financial responsibility providers in facilitating passenger refunds. The public is kept informed through the issuance of press releases posted on the Commission's website, and dispensing advice when the passenger public contacts the staff.



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

A significant function of the Bureau is to support all Commission programs by providing information about all regulated entities and those doing business with the Commission. In addition, a database is maintained that provides information about financial coverage for all OTIs, as well as the status of license applications.

The Bureau maintains a list of licensed and bonded OTIs on the Commission's website, thus assisting carriers in complying with their statutory mandate to do business only with those licensed by the Commission. This is especially helpful as carriers may incur liability for doing business with an unlicensed OTI. An up-to-date list is a safeguard to the shipping public, and also protects licensees from losing business because of an inaccurate determination by a carrier as to whether the OTI is licensed.

During fiscal year 2005, the Bureau developed additional reports to aid in monitoring the cruise lines. During this fiscal year significant progress was made toward automating the OTI application database and revising and updating the database of regulated entities.

#### **5. Future Plans**

During fiscal year 2006, the Bureau will (1) continue its efforts to design electronic forms, especially Form FMC-18, *Application for a License as an Ocean Transportation Intermediary*, and further explore integration of FMC databases and the feasibility of electronic payments, e-signature and e-bond capability; (2) continue its work to achieve the target of 30 days from receipt to completion of license applications; (3) continue its efforts to directly inform active OTIs of licensing requirements and to assist small businesses in meeting the application and licensing requirements; (4) continue working on the rulemaking to ensure that the Passenger Vessel Program provides adequate consumer protection without being unduly burdensome on the industry; and (5) work closely with the passenger vessel operators to implement any new rules and financial responsibility requirements on a timely basis.

### **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 serve as legal advisors to the Office of Operations and other bureaus, and also may be designated Investigative Officers in nonadjudicatory fact finding proceedings. The Bureau monitors all other formal proceedings in order to identify major regulatory issues and advise the Director of Operations and the other bureaus. The Bureau also participates

in the development of Commission rules and regulations. On occasion, under the direction of the General Counsel, attorneys from the Bureau may participate in matters of court or other agency litigation to which the Commission is a party.

Through investigative personnel, and most often as the result of information provided by the industry and other government entities, the Bureau monitors and participates in investigations into 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 reviews to determine compliance with applicable statutes and regulations; (2) reviews and audits of ocean common carrier and OTI operations, including compliance with licensing, tariff, and bonding requirements; (3) audits of passenger vessel operators to ensure the financial protection of cruise passengers; and (4) 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; illegal rebating; misdescriptions or misdeclarations of cargo; untariffed cargo carriage; unbonded OTI and passenger vessel operations; and various types of consumer abuses, such as 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 and focusing enforcement efforts on activities which have market-distorting effects.

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. 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 bureaus, in special enforcement initiatives, fact-finding investigations and rulemaking efforts.

During fiscal year 2005, the Bureau of Enforcement investigated and prosecuted malpractices in many trades lanes, including the transpacific, North Atlantic, Central and South American and Caribbean trades. These malpractices included market-distorting activities such as various forms of secret rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these malpractice investigations were resolved informally, some with compromise settlements of civil penalties.

In addition to rate malpractice activity, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. Further, a formal investigation to examine the lawfulness of exclusive tug service arrangements at marine terminal facilities on the Lower Mississippi was completed and resulted in settlement agreements with the respondent terminals. Also, an investigation continued into an exclusive arrangement at Portland, Maine, which appeared to foreclose

competition among passenger/passenger vehicle carriers in the Portland/Nova Scotia trade. A major enforcement effort was also commenced with respect to a number of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods.

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

In fiscal year 2005, the compliance audit program continued. This program, conducted from Headquarters primarily by mail, reviews the operations of licensed OTIs to assist them in complying with the statutory requirements and the Commission's rules and regulations. The audit program also includes review of entities holding themselves out as VOCCs with no indication of vessel operations. At the beginning of fiscal year 2005, 6 audits were pending. During the fiscal year, 29 audits were commenced, 26 audits were completed, and 9 were pending in the Bureau on September 30, 2005.

At the beginning of fiscal year 2005, 39 enforcement cases were pending final resolution by the Bureau, the Bureau was party to 7 formal proceedings, and there were 56 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 14 new enforcement actions were commenced; 26 were compromised and settled, administratively closed, or referred for formal proceedings; and 27 enforcement cases were pending resolution at fiscal year's end. Also, 3 formal proceedings were completed, and 4 were pending at the end of the fiscal year. Additionally, 69 matters involving monitoring or legal advice were received during the fiscal year, 54 such matters were completed, and 71 were pending in the Bureau on September 30, 2005.

In fiscal year 2006, the Bureau will continue to pursue market-distorting, fraudulent and anticompetitive practices and will continue to monitor U.S. trades and the implementation of the changes and regulations resulting from OSRA. It will pursue initiatives aimed at entities not in compliance with the Commission's regulations for OTI participation in transportation, its definition of VOCC, as well as instances of noncompliance with regulatory requirements for service contracts and NSAs.

# **J. BUREAU OF TRADE ANALYSIS**

## **1. General**

The primary function of the Bureau is to plan, develop, and administer programs related to the oversight of concerted activity of common carriers by water under the standards of the 1984 Act as amended by OSRA. Further, the Bureau is responsible for administering the Commission's agreements, service contract, and NSA programs, and monitoring the accessibility and accuracy of all tariffs published by common carriers, conferences of such carriers, and MTOs. The Bureau's major program activities include:

- **Administering comprehensive trade monitoring programs to identify and track relevant competitive, commercial, and economic activity in each major U.S. trade, and to advise the Commission and its staff on current trade conditions, emerging trends, and regulatory needs affecting waterborne 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 private automated systems of carriers and conferences and ensuring that tariffs under OSRA are accessible and accurate.**

## **2. Monitoring**

The systematic monitoring of carrier activities and commercial conditions in the U.S. liner trades is an integral part of the Commission's responsibilities under the 1984 Act, as amended by OSRA. Such monitoring helps ensure that carriers operating in the U.S. trades comply with the statutory standards of the 1984 Act and the requirements of relevant Commission regulations. To that end, the Commission administers a variety of monitoring programs and other research activities designed to keep it informed of current trade conditions, emerging commercial trends, and carrier pricing and service activities.

The importance the Commission attaches to its ongoing monitoring activities is a direct consequence of the removal, under the 1984 Act, of the Commission's previous broad discretion to disapprove agreements. The 1984 Act provides that, unless rejected under relevant statutory authority, agreements filed with the Commission shall become effective on the 45<sup>th</sup> day after filing or the 30<sup>th</sup> day after notice in the *Federal Register*, whichever is later. Agreements can be rejected for technical reasons or for failure to include statutory provisions in the agreement language. Also, the Commission may extend the original 45-day period when additional information from filing parties is deemed necessary and is requested. Finally, if the Commission determines that an agreement, by virtue of a reduction in competition, is likely to unreasonably increase transportation costs or decrease transportation service, it may seek injunctive relief in the U.S. District Court for the District of Columbia.

As a consequence of the Commission's limited authority to block agreements from taking effect, the need for adequate and timely evaluation of post-implementation agreement activity has increased considerably. The Commission's monitoring program provides such an evaluation through its examination of carrier competition, including market share, concentration, entry conditions, general rate and service conditions, as well as pricing trends, vessel utilization, service contracting activity, and shipper complaints.

## **3. General Economic Analysis**

In addition to research and economic analysis pertaining to its monitoring programs, the Bureau provides economic expertise for a variety of Commission initiatives, including rulemaking proceedings. Bureau economists prepare testimony in fact-finding investigations and cases of unfair shipping practices under section 19 of the 1920 Act and FSPA. They also contribute to speeches and provide briefings for senior agency officials.

Key projects begun or completed by the Bureau in fiscal year 2005 under this heading included: (1) exploring the use of various statistical techniques to obtain quantitative assessments of agreement members' adherence to voluntary service contract guidelines; (2) analyzing the activities and pricing behavior of controlled carriers in the U.S. liner trades; (3) exploring the potential use of SERVCON data for developing freight rate indices and other rate monitoring tools; (4) monitoring the *West Coast Marine Terminal*

*Operators' Discussion Agreement's* implementation of PierPass at the Ports of Los Angeles and Long Beach; (5) meeting with filing counsels to respond to questions, preparing electronic forms for the new Information Form and Monitoring Report requirements, and preparing an errata with clarifications and corrections, all in connection with Docket 03-15, *Ocean Common Carrier and Marine Terminal Agreements Subject to the Shipping Act of 1984*, which became effective on January 3, 2005, with certain reporting requirements becoming effective on February 2, 2005; (6) evaluating agreements to determine their reporting status under the new monitoring report and meeting minutes requirements and notifying agreements of their reporting requirements under the new regulations; (7) assessing waiver requests submitted by agreements under the new regulations; (8) reviewing quarterly monitoring report data and minutes submitted in accordance with the regulations on agreement's reporting requirements; (9) preparing publications, including *Trade Profile*, that spotlights trade conditions encountered by major agreements, and *Trade Outlook*, that provides in-depth analysis of competitive conditions in various U.S. liner trades; (10) working to modify SERVCON to accommodate the filing of NSAs; (11) preparing for and conducting semiannual meetings with representatives of the *Transpacific Stabilization Agreement* as a result of the settlement of Fact Finding Investigation No. 25, *Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*; (12) responding to informal requests and inquiries for industry data or information; (13) participating in meetings involving the Automated Commercial Environment/International Trade Data System; (14) analyzing the economic impact of newly filed agreements and amendments under the section 6(g) standard of the 1984 Act; (15) responding to complaints and requests from shippers on various matters, including the imposition of rate increases and/or surcharges by certain major agreements; (16) responding to Congressional requests for trade analyses and data; and (17) meeting with industry representatives to discuss trends and anticipated commercial developments.

#### **4. Agreement Analysis**

Under sections 4 and 5 of the 1984 Act, all agreements by or among ocean common carriers to fix rates or conditions of service, pool cargo or revenue, allot ports or regulate sailings, limit or regulate the volume or character of cargo or passengers to be carried, control or prevent competition, or engage in exclusive or preferential arrangements are required to be filed with the Commission. Except for certain exempted categories, agreements among MTOs and among one or more MTOs and one or more ocean common carriers also are required to be filed with the Commission.

Generally, an agreement becomes effective 45 days after filing unless it qualifies for an exemption from the 45-day waiting period, is rejected by the Commission, made the subject of a formal Commission request for additional information, or is enjoined by a U.S. district court under section 6(h) of the 1984 Act when it can be demonstrated that the agreement will unreasonably increase transportation costs or unreasonably decrease service. An agreement already in effect can also be enjoined on a similar showing by the Commission. The 1984 Act empowers the Commission to investigate and order the

disapproval, cancellation, or modification of any effective agreement it finds to be in violation of the Act. In an investigation, the Commission may seek to enjoin, in U.S. district court, conduct that violates the Act. Under the Commission's regulations, certain nonsubstantive agreements such as husbanding arrangements and non-exclusive transshipment agreements are exempted from the filing requirements of the Shipping Act.

In January 2005, the Commission implemented rule changes that updated, clarified, and simplified the requirements for agreements. The key areas of change were a lessening of the burden on the industry in filing periodic reports, clarifying certain exempted activities that do not require the filing of an amendment, and providing an exemption from the 45-day waiting period for low market-share agreements that do not involve pricing or capacity rationalization.

There are two broad categories of agreements filed with the Commission. The first category is pricing agreements, where the main focus is the discussion and fixing of rates. Types of pricing agreements include conferences and rate discussion agreements. The other category is non-pricing agreements, where the focus can range from the sharing of vessel space to the management of an Internet portal. Types of non-pricing agreements include non-rate discussion agreements, vessel-sharing agreements, and cooperative working agreements. Brief descriptions follow of the various agreement types.

#### **(a) Conference Agreements**

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Although conference carriers are allowed to act independently, the expectation is that they will adhere to rates and terms and conditions of service adopted by the group. These agreements publish a common rate tariff in which all the parties participate. The role of conferences as the primary pricing forum has diminished, especially in the major east-west trade lanes, since the enactment of OSRA in 1999. This role has been taken over by voluntary rate discussion agreements. There have been no new conference agreements filed since 2000.

The Bureau received 13 modifications to existing conference agreements and analyzed 14 modifications in fiscal year 2005. These filings consisted of name changes, reductions in geographic scopes, insertion of liability provisions, and continuing suspensions for one conference agreement. Three conferences were terminated during the fiscal year: the *U.S.A./Oceania Agreement*, the *U.S./Southern Africa Conference*, and the *India, Pakistan, Bangladesh, Ceylon and Burma Outward Freight Conference*. At the end of the fiscal year, there were 12 conference agreements on file; however, activities under one conference remain suspended.

## **(b) Discussion Agreements**

Discussion agreements fall under two types: rate and non-rate agreements. Like conference agreements, rate discussion agreements focus on the fixing of rates; but unlike conferences, any consensus reached under rate discussion agreements is non-binding on the parties. Rate discussion agreements do not have common rate tariffs; each party publishes its own tariff.

Non-rate discussion agreements provide a forum for discussing matters of mutual interest other than rates; in some instances, they operate much like a trade association, for example the Box Club, a group of containership operators, meets once or twice a year to discuss general policy and legislative issues that affect their industry.

During the fiscal year, the Bureau received two new discussion agreements and 67 modifications to currently effective agreements; the modifications were mostly membership and name changes and insertions of liability provisions. In fiscal year 2005, the Bureau analyzed and processed 68 filings. At the end of the fiscal year, there were 30 rate discussion agreements and nine non-rate discussion agreements on file. Two rate discussion agreements, the *Amazon River Discussion Agreement* and the *USA Southern and Eastern Africa Discussion Agreement*, were terminated during the fiscal year.

The two new rate discussion agreements, the *Maersk Sealand/P&O Nedlloyd Agreement* and the *Hapag Lloyd/CP Ships Agreement*, filed with the Commission during the fiscal year were intended to facilitate pending acquisitions. Maersk Sealand's parent company has acquired a majority share in P&O Nedlloyd, and Hapag-Lloyd's parent company has acquired a majority share in CP Ships. Until the respective parent companies acquire 100 percent of P&O Nedlloyd and CP Ships, the filed agreements will permit the parties to discuss and agree on a variety of matters.

## **(c) Vessel-Sharing Agreements**

Vessel-sharing agreements ("VSAs") make up the largest group of agreements on file with the Commission. There are several different varieties of these agreements, ranging from agreements that involve a high degree of operational cooperation with respect to space and services, down to the simple swap of container slots. The high end of these agreements are so-called alliances, while the low end are routine space charters. Most VSAs authorize some level of service cooperation. The objective of these agreements is to provide a high-quality service, while reducing individual operating costs.

During fiscal year 2005, the Bureau received 28 new VSAs, representing 90 percent of all new agreement filings during the year, and 88 modifications to existing VSAs. Over half of the new VSA filings qualified for the low market-share exemption and were effective on filing. The Bureau processed 122 VSA filings during the fiscal year. Twenty VSAs were terminated, two were withdrawn before becoming effective, and five expired by their own terms. At the end of the fiscal year, there were 158 VSAs on file.



**(d) Joint Service Agreements**

Parties to joint service agreements operate a joint venture under a single name in a specified trading area. The joint venture issues its own bills of lading, sets its own rates, and acts as an individual ocean common carrier.

One new joint service agreement and three modifications to existing agreements were filed during fiscal year 2005. One joint service agreement was terminated during the year. The Bureau processed all filings received during the year. At the conclusion of the fiscal year, there were only six joint service agreements on file.

**(e) Cooperative Working & Other Agreements**

Cooperative working agreements (“CWAs”) do not fit under any of the foregoing agreement types. Generally, they deal with Internet portal cooperation, unique operational considerations relating to acquisitions, joint service contracting, and sharing administrative services. Other Agreements include agency, sailing, transshipment, and equipment interchange (including chassis pooling) agreements.

The Bureau received and processed eight filings under these categories of agreements in fiscal year 2005. One new chassis pool was filed last year. No new CWAs were received. The only significant amendment involved an expansion of authority in an Internet portal agreement to include a functionality for NSAs. At the end of the fiscal year there were ten CWAs and five Other Agreements on file. One VSA was reclassified as a sailing agreement during the year.

**(f) Marine Terminal Agreements**

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

Certain terminal agreements become effective upon filing under Commission rules that exempt particular classes of marine terminal agreements from the waiting period requirements of the 1984 Act. Terminal agreements not entitled to an exemption are processed under applicable statutory requirements. Further, the Commission has exempted particular classes of marine terminal agreements from the filing requirements of the Shipping Act. Terminal leases and terminal service agreements, the latter being between an MTO and an ocean common carrier, are exempt from filing.

During fiscal year 2005, the Bureau received 17 and analyzed 18 agreement filings relating to port and marine terminal services and facilities. At the end of the fiscal year, there were 296 terminal agreements on file with the Commission.

A noteworthy occurrence last year was the Port of Oakland's and the Port of Long Beach's decisions to take advantage of the filing exemption for leases and withdraw a number of active leases they had on file with the Commission. Oakland withdrew 10 leases, and Long Beach withdrew 17.

The number of marine terminal agreement filings generally has been declining since 1992 as a consequence of the Commission's exempting terminal leases and services agreements from filing. Prior to 1992, the Commission was receiving approximately 340 terminal agreements a year.

## **5. Summary of Agreement Filings**

In fiscal year 2005, the Bureau received 283 agreement filings, an increase of over 23 percent from the previous year. The Bureau analyzed and processed 289 agreement filings during the year. Almost 10 percent of filings received last year qualified for a low market-share exemption and were effective on filing. At the end of the fiscal year, there were 230 carrier agreements and 296 terminal agreements on file. Appendix C contains a breakdown of receipts and processing categories for fiscal year 2005.

## **6. Tariffs**

Since May 1, 1999, section 8 of the 1984 Act, as amended by OSRA, requires common carriers and conferences to publish tariffs in private automated systems. These electronic tariffs contain rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau reviews and monitors the accessibility of the private systems, and reviews published tariff material for compliance with the requirements of the Shipping Act. The Bureau also determines whether to grant applications for special permission to deviate from tariff publishing rules and regulations and recommends Commission action on tariff publishing activities and regulations.

Two Circular Letters, No. 00-1, *Public Access to Tariffs and Tariff Systems under the Ocean Shipping Reform Act of 1998*, and No. 00-2, *Charges Assessed for Access to Tariffs and Tariff Systems*, have been issued by the Commission to address the carriers' automated tariff systems ("CATS"). The circulars were issued because the Commission was concerned that the public's ability to access some tariff systems appeared to be limited. In fiscal year 2005, the Commission's staff continued to contact carriers, conferences and tariff publishers to assist in the resolution of problems in certain CATS. Further, the staff reviewed electronically published tariffs to ensure that the provisions of the tariffs were in compliance with the Commission's tariff content rule. The Bureau continues to monitor electronically published tariffs to ensure that appropriate public access is provided and tariff content provisions are compliant.

The Bureau also collaborates with other components of the Commission to verify that NVOCCs comply with the Commission's licensing, bonding and tariff publication requirements. Further, the Bureau is directly involved in processing the electronic Form FMC-1, *Tariff Registration Form*, required to be filed with the Commission by carriers, conferences and MTOs. The data on this form identifies the location of carrier tariffs, including carrier and conference service contract essential terms publications or any MTO schedules. At the end of fiscal year 2005, a total of 3,828 tariff location addresses were posted on the Commission's website. Of the 3,828 tariff locations, 11 involve single carriers with multiple locations where their tariffs can be viewed.

During fiscal year 2005, the Bureau received and processed nine special permission applications to deviate from the statutory provisions of the 1984 Act and/or the Commission's tariff publishing regulations.

## **7. Service Contracts**

Service contracts offer an alternative to transportation under tariff terms. Their flexibility enables contract parties to tailor transportation services to accommodate specific commercial and operational needs.

In fiscal year 2003, the Commission added a new rule to its service contract regulations (Docket No. 03-03, *Amendment to Service Contract Regulations*) to permit VOCCs to correct an original filing that is defective due to an electronic transmission clerical error. The time to correct such filing errors is limited to two business days after the initial, defective, electronic transmission. The rule became effective September 8, 2003. During fiscal year 2005, 1,780 records were filed into SERVCON, the Commission's Internet-based service contract system, involving electronic corrected transmission copies of service contract filings.

During fiscal year 2005, the Commission received 47,648 new service contracts (compared to 46,025 in fiscal year 2004), and 231,508 amendments (compared to 216,526 in fiscal year 2004). The number of new service contract receipts increased nearly 4 percent, and amendments by 8 percent over fiscal year 2004.

## **8. Non-Vessel-Operating Common Carriers**

NVOCCs are required to publish tariffs and provide the Commission with their tariff location addresses by filing this information on the FMC Form-1. The Bureau reviews the accessibility requirements of NVOCC tariff publications in private automated systems. At the end of fiscal year 2005, a total of 3,335 tariff location addresses for NVOCCs had been posted on the Commission's website.

In fiscal year 2005, after considering various petitions filed on behalf of NVOCCs, the Commission issued a Final Rule to exempt NVOCCs from the tariff publication requirements of the 1984 Act, subject to certain conditions. The Commission established a rule allowing NVOCCs to offer services pursuant to negotiated, confidential NSAs with their customers as an alternative to providing their services under published tariff rate terms and conditions. The Commission's rules implementing NSAs, 46 CFR Part 531, *NVOCC Service Arrangements*, were published (69 Fed. Reg. 75850, December 20, 2004) and became effective on January 19, 2005.

Cargo moved under NSAs is exempt from the tariff publication requirements of the Shipping Act. The Commission's rules regarding NSAs for NVOCCs are very similar to those related to service contracts offered by ocean common carriers. To become effective, all NSAs must be filed with the Commission in its electronic SERVCON filing system. In addition to filing NSAs with the Commission, NVOCCs are required to publish the NSA's essential terms (origin/destination port ranges; commodity or commodities involved; minimum volume or portions; and the duration of the NSA) in the NVOCC's automated tariff at the time each NSA is filed with the Commission.

During fiscal year 2005, 321 NVOCCs registered with the Commission to file NSAs, of which 286 designated a tariff publishing agent to file NSAs on their behalf and 35 named a person or persons within their company to file. Approximately 121 NSAs and 54 amendments were filed by 36 NVOCCs during the fiscal year.

## **9. Controlled Carriers**

A controlled carrier is an ocean common carrier that is, or whose operating assets are, owned or controlled directly or indirectly by a government. Section 9 of 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.

On September 23, 2004, American President Lines, Ltd., and APL Co. Pte., Ltd. ("APL"), the ocean common carrier subsidiaries of Neptune Orient Lines ("NOL"), notified the Commission that Temasek Holdings (Private) Ltd., a holding company of the Government of Singapore, had acquired an ownership interest in NOL that exceeded 50 percent. Consequently, APL was classified as a controlled carrier effective September 27, 2004.

In anticipation of being so classified, APL on September 20, 2004, had filed a petition for the same limited exemption from the 30-day tariff notice period as had been granted to three Chinese controlled carriers on April 1, 2004. (Petition No. 5-04, *Petition*

of American President Lines, Ltd., and APL Co. Pte. Ltd., for a Full Exemption from the First Sentence of Section 9(c) of the Shipping Act of 1984 as Amended). This petition was granted on October 27, 2004.

On May 5, 2005, the Commission published an updated list of controlled carriers in the *Federal Register* to supersede the list published on June 9, 2003. Two carriers were added to the list: the aforementioned APL that had been classified as controlled on September 27, 2004, and China Shipping Container Lines (Hong Kong) Co., Limited (“CSHK”), classified as controlled on November 29, 2004. CSHK is controlled by the Government of the PRC and is a separately incorporated affiliate of the already classified China Shipping Container Lines Co., Ltd.

## **10. Marine Terminal Activities**

Pursuant to OSRA, an MTO may make available to the public, subject to section 10(d) of the 1984 Act, 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 247 MTOs have filed Form FMC-1. At the close of fiscal year 2005, of these 247 MTOs, 168 published their terminal schedules. The electronic location addresses for these MTO terminal schedules were posted on the Commission’s website.

## **11. Automated Database Systems**

The Bureau currently maintains and uses the following automated databases and filing systems: (1) Form FMC-1 System; (2) Tariff Profile System; (3) SERVCON, the system for filing service contracts, and related Form FMC-83 System for registration to file service contracts, and Form FMC-78 to file NSAs; (4) Microfiche System; (5) historical Automated Tariff Filing and Information (“ATFI”) database system; (6) the tariff and service contract portions of the FMC Imaging System; and (7) the Agreement Profile System.

During fiscal year 2005, the Form FMC-1 System reflected the tariff location addresses of 313 VOCCs, 3,335 NVOCCs, 12 conferences, and 168 MTOs. The FMC-1 System also allows the Commission to quickly track the current status of any Form FMC-1 submitted. Information in the Tariff Profile System is used to review and analyze carrier tariffs and service contract essential terms publications to ensure compliance with Commission rules and regulations under OSRA, particularly the accessibility of carrier tariffs. SERVCON contains service contract data, most of which is only available to the

Commission's staff due to OSRA's confidentiality requirements. Registration to file service contracts into the system is authorized through the submission of Form FMC-83, and to file NSAs through submission of Form FMC-78. The historical ATFI database contains all tariff and service contract essential terms publication data filed electronically with the Commission between February 22, 1993, and April 30, 1999. The Microfiche System provides a means of locating canceled tariffs and amendments that have been microfiched. The FMC Imaging System, among other things, provides for document storage and retrieval of canceled tariffs and service contracts. The Agreement Profile System contains information about the status of carrier and terminal agreements, as well as related monitoring reports.

These databases and systems provide support for many of the Commission's programs. Certain information contained in the databases also is available to the public.

## **12. Future Plans**

During the next fiscal year, the Bureau intends to review and assess all aspects of its initial VOCC and MTO agreement review process and the on-going VOCC agreement monitoring process with the ultimate goals of: (1) automating the filing of agreements, information forms, agreement meeting minutes, and quarterly monitoring reports; (2) completing automation of the MTO agreement library and making it available via the agency website; (3) streamlining the section 6(g)-based economic analysis of VOCC agreements and voluntary service contract guidelines; (4) evaluating all agreements' compliance with the new regulations for agreement minutes and quarterly monitoring reports; (5) finding ways to reduce filing requirement burdens related to, and increase the utility of data submitted in, quarterly monitoring reports; (6) developing ways to enhance the use of SERVCON for agreement monitoring and industry research; and (7) establishing an applicable "constructive costs" methodology suitable to the section 9(b) "fully compensatory" rate standard for controlled carriers.

The Bureau will continue to review tariffs, service contracts, and the newly authorized NSAs to ensure regulatory compliance, and, in addition, will assess the current commercial uses and limitations of NSAs.

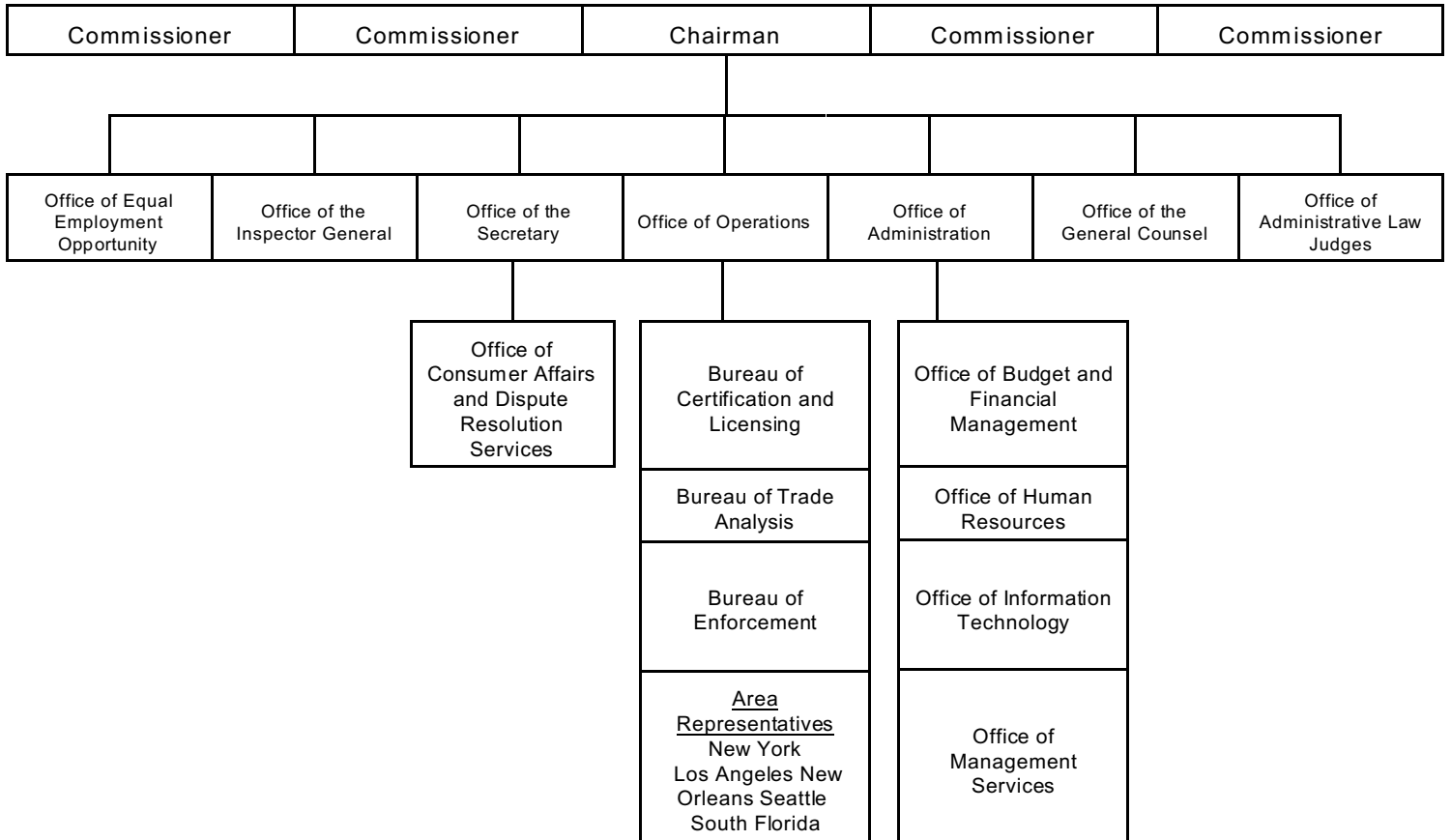
The Bureau also expects to develop and implement a series of industry research projects that identify and examine key issues likely to significantly affect the commercial and regulatory environment for liner shipping in the U.S. trades.

The Bureau will continue to furnish appropriate support to the Commission and its various bureaus, including: (1) providing analyses and recommendations concerning rulemakings, petitions, information demand orders, etc.; (2) preparing economic testimony for Commission proceedings; and (3) participating in and/or assisting inter-bureau task forces and working groups.

## **APPENDIXES**

# APPENDIX A

## FEDERAL MARITIME COMMISSION ORGANIZATION CHART Fiscal Year 2005





# APPENDIX B

## COMMISSION PROCEEDINGS Fiscal Year 2005

### **Formal Proceedings**

<i>Discontinuances, Dismissals &amp; Settlements . . .</i>	<i>10</i>
<i>Initial Decisions Not Reviewed . . . . .</i>	<i>1</i>
<i>Rulemakings - Final Rules . . . . .</i>	<i>5</i>

**Total . . . . . 16**

**Special Dockets . . . . . 0**

**Informal Dockets . . . . . 10**

# APPENDIX C

## AGREEMENT FILINGS AND STATUS Fiscal Year 2005

### Agreements Filed in FY 2005 (including modifications)

Carrier . . . . .	266
Terminal . . . . .	17
Total . . . . .	283

### Agreement Processing Categories in FY 2005

Forty-Five Day Review . . . . .	57
Shortened Review . . . . .	20
Exempt-Effective Upon Filing . . . . .	208
Rejection of Filing . . . . .	0
Formal Extension of Review Period . . . . .	2
Not Subject . . . . .	0
Withdrawals . . . . .	2
Total . . . . .	289

### Carrier Reports Submitted for Commission Review

Minutes of Meetings and Ad Hoc Reports . . . . .	661
Monitoring Reports . . . . .	272
Total . . . . .	933

### Agreements on File as of September 30, 2005

Conference . . . . .	12
Discussion . . . . .	39
Joint Service . . . . .	6
Vessel-Sharing . . . . .	158
Cooperative Working & Other . . . . .	15
Terminal . . . . .	296
Total . . . . .	526

# APPENDIX D

## FORM FMC-1 TARIFF LOCATION ADDRESSES - ELECTRONIC SERVICE CONTRACT AND NSA FILINGS AND SPECIAL PERMISSION APPLICATIONS Fiscal Year 2005

### Form FMC-1 Filings

VOCC .....	313
OTI/NVOCC .....	3,335
MTO .....	247
Conferences .....	12

### Electronic Service Contract Documents

New Service Contracts .....	47,648
Service Contract Amendments ..	231,508

### *NVOCC Service Arrangement ("NSA") Documents*

New NSAs .....	121
NSA Amendments .....	54

### Special Permission Applications

Granted .....	4
Denied .....	2
Withdrawn .....	3

## APPENDIX E

### CIVIL PENALTIES COLLECTED Fiscal Year 2005

<b>Aces Ltd.</b> . . . . .	<b>\$55,000.00</b>
Air Parcel Express . . . . .	25,000.00
<b>Almar USA Corporation.</b> . . . . .	<b>20,000.00</b>
Asia Pacific Express Company Ltd . . . . .	22,000.00
<b>Carga Tica International</b> . . . . .	<b>15,000.00</b>
Cibao Cargo Inc.. . . . .	15,000.00
<b>City Ocean International Inc.</b> . . . . .	<b>60,000.00</b>
Cosa Freight Inc.. . . . .	60,000.00
<b>Elite Shipping Inc..</b> . . . . .	<b>20,000.00</b>
Francisco Rodriguez/Dominicana Shipping. . . . .	15,000.00
<b>Frontier Liner Services Inc..</b> . . . . .	<b>55,000.00</b>
InterWorld Industrial Inc... . . . .	17,500.00
<b>Montero Shipping Corporation</b> . . . . .	<b>20,000.00</b>
Monumental Shipping & Moving Corp. . . . .	20,000.00
<b>Nations Express, Inc..</b> . . . . .	<b>25,000.00</b>
Nick International Shipping Inc... . . . .	25,000.00
<b>Topocean Consolidation Service Inc..</b> . . . .	<b>140,000.00</b>
Transport Medrano Inc.. . . . .	25,000.00
<b>Williams Caribbean Shipping &amp; Delivery.</b> . . . .	<b><u>20,000.00</u></b>
<b>Total Civil Penalties Collected . . . . .</b>	<b>\$654,500.00</b>

## APPENDIX F

### STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2005

#### **APPROPRIATIONS:**

Public Law 108-447, 108<sup>th</sup> Congress: For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act of 1936, as amended (46 App. U.S.C. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles authorized by 31 U.S.C. 1343 (b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901-5902, \$19,496,000: Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

Public Law 108-447, 108 <sup>th</sup> Congress	\$19,496,000
Government Wide Rescissions, 2005	- <u>155,968</u>
<b>Revised Appropriation</b>	<b>\$19,340,032</b>

#### **OBLIGATIONS AND UNOBLIGATED BALANCE:**

Net obligations for salaries and expenses for the fiscal year ended September 30, 2005.	<b>\$19,338,730</b>
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**STATEMENT OF RECEIPTS:** Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2005:

Publications and reproductions, Fees and Vessel Certification, and Freight Forwarder Applications	\$ 541,464
Fines and penalties	<u>\$ 654,500</u>
<b>Total general fund receipts</b>	<b>\$1,195,964</b>