

**FEDERAL MARITIME
COMMISSION**

**45th
ANNUAL REPORT**

for

Fiscal Year

2006



TABLE OF CONTENTS

LETTER OF TRANSMITTAL	iii
MEMBERS OF COMMISSION	v
SENIOR COMMISSION OFFICIALS.....	vii
VISION	ix
FMC MISSION	ix

I. THE COMMISSION

A. History	1
B. Functions	1
C. Organization	4

II. THE YEAR IN REVIEW

A. Outreach	8
B. Trade Developments	9
C. Restrictive Trade Practices	11
D. Trade Oversight	11
E. Alternative Dispute Resolution	13
F. Enforcement	15

III. DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. North Europe	17
B. Mediterranean	19
C. Indian Subcontinent and the Middle East	20
D. Australia and Oceania	21
E. Central America and the Caribbean	22
F. South America	23
G. Asia	24
H. Africa	25
I. Worldwide	26

IV. THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. In General	29
B. Top Twenty U.S. Liner Cargo	
Trading Partners	30

V.	SIGNIFICANT ACTIVITIES BY ORGANIZATIONAL UNIT	
A.	Office of the Secretary	35
B.	Office of Administrative Law Judges	43
C.	Office of the General Counsel	45
D.	Office of Equal Employment Opportunity	55
E.	Office of the Inspector General	59
F.	Office of Administration	63
G.	Office of Operations	77
H.	Bureau of Certification and Licensing	79
I.	Bureau of Enforcement	85
J.	Bureau of Trade Analysis	89

APPENDICES

A.	Organization Chart	103
B.	Commission Proceedings	104
C.	Agreement Filings and Status	105
D.	Form FMC-1 Tariff Location Addresses - Electronic Service Contract Filings and Special Permission Applications	106
E.	Civil Penalties Collected	107
F.	Statement of Appropriations, Obligations and Receipts	108



FEDERAL MARITIME COMMISSION
WASHINGTON, D.C. 20573-0001

March 31, 2007

To the United States Senate and House of Representatives:

Pursuant to section 103(e) of Reorganization Plan No. 7 of 1961, and section 208 of the Merchant Marine Act, 1936, now codified, as amended, at 46 U.S.C. §306 (a), I am pleased to submit the 45th Annual Report of the activities of the Federal Maritime Commission for fiscal year 2006.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryant L. VanBrakle". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Bryant L. VanBrakle

Secretary

MEMBERS OF THE COMMISSION



*Steven R. Blust
Chairman
Appointed 2002
Term Expired 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 *Clay Guthridge*

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

Inspector General *Adam Trzeciak*

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”) 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 Shipping Act, further signaled a significant shift in shipping regulation.

B. FUNCTIONS

The principal statutes administered by the Commission are the Shipping Act, the Foreign Shipping Practices Act of 1988 (“FSPA”), section 19 of the Merchant Marine Act, 1920 (“1920 Act”), and Pub. L. No. 89-777. Most of these statutes were amended by OSRA.

The Commission's regulatory responsibilities include:

- **Reviewing agreements among ocean common carriers and marine terminal operators (“MTOs”) relating to service in the U.S. foreign oceanborne trades, to ensure that they do not cause substantial ill effects to transportation costs, services or to shipping in the U.S. foreign trades.**
- **Reviewing service contracts between ocean common carriers and shippers to guard against ill effects to shipping in the U.S. foreign trades.**
- **Ensuring that common carriers’ tariff rates and charges are accessible to the shipping public in private, electronically accessible systems.**
- **Regulating rates, charges, and rules of government-owned or -controlled carriers to ensure that they are just and reasonable.**
- **Issuing passenger vessel certificates evidencing financial responsibility of vessel owners or charterers to pay judgments for personal injury, or death or to refund passenger fares for the nonperformance of a voyage or cruise.**
- **Licensing ocean transportation intermediaries (“OTIs”) 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.**
- **Ensuring against harm to the shipping public by investigating rates, charges, classifications, and practices of common carriers, MTOs, and OTIs operating in the foreign commerce of the U.S.**

- **Taking action to address unfavorable conditions arising out of foreign government or business practices in the U.S. foreign shipping trades.**

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

In addition to 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, treat shippers and other members of the shipping public fairly. U.S. law also requires all carriers to make their rates, charges and practices available in automated tariff systems that must be available electronically to the public. Ocean common carriers are permitted to enter into service contracts with their shipper customers. Such contracts are confidentially filed with the FMC in its internet-based system. The Commission does not 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.

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

Pub. L. No. 89-777 requires the operators of passenger vessels with 50 or more berths embarking passengers at U.S. ports to establish financial coverage to indemnify passengers in cases of death, injury, or

nonperformance of transportation. The Commission certifies such operators upon the submission of satisfactory evidence of financial responsibility.

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

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

C. ORGANIZATION

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

The Commission's organizational units consist of: Office of the General Counsel; Office of the Secretary (includes 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 (includes the Offices of Financial Management, Human Resources, Information Technology, and Management Services); and Office of Operations (includes the Bureaus of Certification and Licensing, Enforcement, and Trade Analysis and the Commission's Area Representatives).

In fiscal year 2006, the Commission was authorized a total of 180 full-time equivalent positions and had a total appropriation of \$20,294,010. That appropriation supported the actual employment of 121 full-time equivalent positions during the fiscal year. While the majority of its personnel is located in Washington, D.C., the Commission has Area Representatives in New York, New Orleans, Los Angeles, South Florida and Seattle.

II

THE YEAR IN REVIEW

Growth in the U.S. liner trades favored imports in fiscal year 2006. China accounted for 37 percent of the total U.S. container trade, while over half of it was concentrated in Northeast Asia. The fiscal year also marked the introduction of the world's largest containership, *Emma Maersk*, reputed to hold up to 13,500 TEUs (20-foot equivalent units). Overall, concentration in the liner shipping industry remained relatively stable during fiscal year 2006 after the large scale acquisitions of the preceding period.

The Commission continued to monitor the international liner trade, while advancing initiatives to increase public outreach and to simplify compliance with Commission regulations. For instance, the Commission continued to update and improve access to information through its website. New tools were added which provided for uploading large documents, allowing electronic access to Commission reports that were formerly only available in hard copy. In terms of simplifying compliance, the Commission initiated a review of requirements to support electronic filing of OTI bond information and achieved significant progress in the development of an automated Form FMC-18, *Application for an Ocean Transportation Intermediary License*.

To emphasize the role of the alternative dispute resolution process as a way to resolve shipping disputes, the Commission provided *ombudsman* services to the shipping public by assisting consumers and other complainants, and provided mediation services during the fiscal year.

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

A. OUTREACH

During the fiscal year, the Commission continued to update and improve access to information through its website. New tools were added which provided for uploading large documents, allowing electronic access to Commission reports that were formerly only available in hard copy. In addition, the Frequently Asked Questions (“FAQs”) section was modified to allow links to be added directly to answers, easing access to related information.

The Commission continued to expand the scope of its outreach efforts to the maritime community as well as to the general public. Media and government contact lists were created to help the Commission share information. The Commission increased its visibility to the public by updating and distributing informational and educational materials. Individual staff members engaged in outreach with industry participants through in-person meetings and by phone, while the Commission as a whole continued to foster dialogue by hosting briefings given by various segments of the industry on a variety of industry topics. Finally, Commission policies and procedures regarding public relations were analyzed to determine how the Commission could improve communication with the maritime industry and the shipping public.

During the fiscal year, the Commission also continued to make more information available through its website. Commission decisions issued between 1987 and 1997 were compiled and converted to electronic form. Those issued between 1987 and 1995 were posted on the Commission’s website during the fiscal year, with the balance posted by the end of October 2006. In addition, for selected docketed proceedings the Office of the Secretary made other documents, including briefs, reply briefs, exceptions to Commission decisions and replies to exceptions available through the website. Providing electronic access to this information will make the Commission’s policies and precedents more readily available to the maritime and legal communities.

The Office of the Secretary assessed agency-wide document scanning requirements and determined to replace its document scanning system with a more flexible and robust system. New scanning software

and equipment was installed, and data migration was started during fiscal year 2006. Data migration will be completed and this new system will become fully functional during the next fiscal year. The new system will help support the agency's continuity of operations initiatives by improving the preservation of Commission documents and will also increase Commission staff access to Commission documents. Additionally, these improvements will reduce the time it takes for Commission staff to respond to public inquiries as well as improve public access to electronic files through the Commission's website.

B. TRADE DEVELOPMENTS

In fiscal year 2006, the total volume of import cargo to the U.S. rose by 12 percent, while total U.S. export cargo grew by less than three percent. China accounted for 37 percent of all of the imports and exports in the U.S. container trade. In fact, more than half of all U.S. container trade was with Northeast Asia. Containership capacity on the world market grew by 15 percent, outpacing the growth in demand. In September, A.P. Moller Maersk A/S ("Maersk Line") began service with the world's largest containership, the *Emma Maersk*, reputed to hold up to 13,500 TEUs. In general, concentration in the liner shipping industry remained relatively stable during fiscal year 2006, with the top ten carriers continuing to control 53 percent of the world's containership capacity.

Once again, Asia dominated the U.S. liner trades during the fiscal year, accounting for 70 percent of the total volume of U.S. import cargo, and 48 percent of U.S. export cargo. Compared to other trades, cargo growth between the U.S. and Asia was relatively robust in fiscal year 2006. U.S. export cargo to Asia rose by six percent, and import cargo from Asia to the U.S. grew by 15 percent. This imbalance between import cargo and export cargo persisted; containers of U.S. imports outnumbered containers of U.S. exports by a ratio of three to one.

In the U.S./North Europe trade, the volume of import cargo grew by 6.8 percent during the fiscal year, while export cargo growth was 2.9 percent. Carriers serving the trade restructured their services and operational agreements as a result of the acquisitions of P&O Nedlloyd, Ltd. ("P&O Nedlloyd") and CP Ships, Ltd. ("CP Ships") by Maersk Line

and Hapag-Lloyd, AG (“Hapag-Lloyd”), respectively. Overall, service changes resulted in a substantial increase in vessel capacity in both directions. Excess vessel capacity, combined with weak cargo growth, reduced carriers’ capacity utilization levels and led to a decline in freight rates. With rate levels eroding in the trade, members of the *Trans-Atlantic Conference Agreement* (“TACA”) canceled GRIs that had been planned. In addition, TACA’s market share dropped from 50 to 40 percent with the withdrawal of Hapag-Lloyd. On the regulatory front, the Council of the European Union (“EU”) voted to repeal Council Regulation 4056/86, the block exemption from the application of EU competition laws for liner pricing agreements. The repeal is to become effective in October, 2008. The European Commission (“EC”), on the other hand, renewed the block exemption for non-pricing agreements among liner carriers (“consortia”) until 2010.

In the U.S./Mediterranean trade, U.S. export cargo volumes declined, and import cargo grew by only a fraction. The imbalance of cargo volume between inbound containers and outbound containers reached a ratio of 2.2 to 1. Both Maersk Line and Hapag-Lloyd reconfigured and upgraded their services in the trade with the additional vessel capacity from their carrier acquisitions. Other carriers introduced new service strings, including Mediterranean Shipping Co. (“MSC”) with six vessels deployed between the U.S. Atlantic/Gulf Coasts, Mexico, and the Mediterranean. With additional excess capacity in the trade, utilization levels fell even lower than in the preceding fiscal year, keeping freight rates down. The *U.S. South Europe Conference* was terminated after Hapag-Lloyd withdrew its membership and Maersk Line purchased P&O Nedlloyd.

In the liner trade between the U.S. and Australia/Oceania, U.S. export cargo to the region fell by nine percent during the fiscal year, and import cargo remained essentially unchanged. A series of mergers and acquisitions among carriers left the trade highly concentrated. By the fiscal year’s end, three carriers (Hapag-Lloyd, Maersk Line, and Hamburg-Süd) handled nearly 80 percent of the total liner cargo moved in the trade.

C. RESTRICTIVE TRADE PRACTICES

One of the Commission's significant 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.

The Commission 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 2006 and to review them for any developments in Japanese practices.

The Commission's Permanent Task Force on International Affairs, established in 2000, is chaired by the Deputy General Counsel and made up of personnel from that office and the Bureaus of Enforcement, Trade Analysis, and Certification and Licensing. The Task Force identifies and evaluates 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 common carriers and other regulated entities in the U.S. foreign 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, and by identifying any potentially unfavorable trade practices that could affect U.S. foreign oceanborne commerce.

During the fiscal year, Commission staff addressed a number of issues relating to the activities of ocean common carriers and marine terminal operators in agreements on file at the FMC. One example of such activity was oversight of PierPASS. PierPASS is a program designed to alleviate road and port congestion by allowing terminals to remain operational during off-peak hours and weekends. PierPASS was implemented in July 2005 by 13 MTOs at the ports of Los Angeles and Long Beach under the *West Coast MTO Agreement*. To encourage use of terminals during off-peak hours, PierPASS assesses a fee on each container of cargo transported by motor carrier through the terminals during peak hours.

Although PierPASS is generally viewed as effective, some U.S.-based shippers of export cargo alleged that the fee was unreasonable relative to the profit margins earned on their products overseas. Commission staff met with a number of U.S.-based shippers, executives of PierPASS, and Los Angeles city officials to gain firsthand knowledge of the relevant issues. In addition to its standard reporting requirements, the Commission has also imposed special quarterly reporting requirements on the PierPASS program, and maintains close scrutiny of the Agreement to continually assess the reasonableness of the MTO members' activities.

On other agreement matters, Commission staff conducted an in-depth economic analysis of the revenue pooling arrangement between carrier members that share vessel space under the *Southern Africa/Oceania Agreement*. In March 2005, parties to that Agreement filed a modification capping the disbursement of revenues they receive from their U.S. Atlantic Coast-South Africa service. After the modification took effect, the staff continued to monitor the competitive impact of the revenue cap and will report its findings to the Commission.

This year the staff also met with representatives of the *Transpacific Stabilization Agreement* ("TSA") on two occasions in accordance with the terms of a 2003 settlement agreement following a Commission fact-finding involving TSA members' service contracting practices, *FMC Fact-Finding Investigation No. 25 – Practices of Transpacific Stabilization Agreement Members Covering the 2002-2003 Service Contract Season*. Since the time of the settlement, the Commission has

received no complaints about the contracting practices of TSA member lines.

Other specific monitoring and research projects begun or completed in fiscal year 2006 include: an analysis of the activities of parties to the *Bermuda Discussion Agreement* and conditions affecting the U.S./Bermuda trade; an evaluation of the regulations governing passenger vessel operators (“PVO”) and recommendations on approaches for regulatory modifications in connection with FMC Docket No. 02-15 – *Passenger Vessel Financial Responsibility*; a study of service contract terms and conditions based on a statistical random sample of contracts taken from the FMC’s Service Contract Filing System (“SERVCON”) database; ongoing staff participation in the development of the Automated Commercial Environment/International Trade Data System (“ACE/ITDS”) of the U.S. Customs and Border Protection; the development and implementation of a database and intranet interface to contain and access commercial trade data such as that in the Port Import Export Reporting Service (“PIERS”); various economic analyses of filed agreements and agreement modifications; the preparation of responses to congressional and other requests regarding agreement issues and for trade information; and participation in various meetings with industry representatives on agreement and trade matters.

ALTERNATIVE DISPUTE RESOLUTION

During fiscal year 2006, the Commission continued to emphasize the role of Alternative Dispute Resolution (“ADR”) in resolving shipping industry disputes and encouraged parties to disputes to utilize the program in lieu of litigation. Under this program, parties 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 ombudsman 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 and is also utilized to resolve pre-litigation disputes.

During fiscal year 2006, Commission staff mediated six disputes. Of significance, Commission mediators resolved a dispute involving a major port and two marine terminal operators. This matter involved allegations by one operator that the port's actions would drive it out of business. Through the mediation process, the parties reached agreement on all issues, enabling all parties' needs to be met and avoiding litigation that was likely to be protracted.

Another example of successful dispute resolution facilitated by Commission staff involved a significant dispute concerning detention charges. In this matter, an NVOCC had collected substantial charges from a consignee in anticipation of potential equipment detention charges which, in fact, had not been charged by the ocean common carrier. A resolution was reached among the consignee, NVOCC, and ocean carrier with Commission staff mediation.

The Office of Consumer Affairs and Dispute Resolution Services ("CADRS") also provided substantial *ombudsman* 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 2006, approximately 3,632 complaints and information requests were processed. Of those, 632 complaints required *ombudsman* dispute resolution services. These included 221 complaints about cruise issues, 178 household goods matters, and 233 other matters affecting cargo shipments. 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 to the increased awareness of Commission assistance available through electronic and other means of communication.

Conversely, fewer complaints were received from individuals concerning household goods shipments relative to fiscal year 2005. The decrease is primarily attributable to improved outreach and the Commission's formal investigation of several problem movers. In addition to opening the proceeding, injunctions were obtained against several companies and individuals to prohibit their continued operation. As a result, several entities ceased operations, thereby substantially reducing the numbers of complaints against those entities. Despite the

decrease in the number of household goods complaints from the previous fiscal year, cases were relatively more complex and required more time to resolve.

During the year, the failure of one small cruise operator generated a number of complaints, with a number of passengers requiring assistance to obtain refunds for cruises that were canceled. In addition, a number of passengers were affected by certain vessels being taken out of service in order to provide berthing accommodations in the wake of Hurricane Katrina.

F. ENFORCEMENT

During fiscal year 2006, the Commission's Bureau of Enforcement investigated and prosecuted malpractices in many trade lanes, including the transpacific, North Atlantic, Central and South American, North and West Africa, Oceania, and Caribbean. These included market-distorting activities such as various forms of rebates and absorptions, misdescription of commodities and misdeclaration of measurements, illegal equipment substitution, and unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs. Most of these 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, an investigation into an exclusive arrangement at Portland, Maine was completed and the arrangement, which appeared to foreclose competition among passenger/passenger-vehicle carriers in the Portland/Nova Scotia trade, was terminated. A major enforcement effort also continued with respect to a number of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, and was expanded to include the vessel operating common carriers ("VOCCs") and licensed NVOCCs providing service to such unlicensed and unbonded operators.

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. The Commission collected \$1,042,000 in civil penalties in fiscal year 2006 (see Appendix E). These collections represent a wide range of violations in all major U.S. trade lanes.

III

DEVELOPMENTS IN MAJOR U.S. FOREIGN TRADES

A. NORTH EUROPE

In fiscal year 2006, U.S. export cargo to North Europe grew by only 2.9 percent, compared to 8.1 percent in fiscal year 2005. Liner import cargo from North Europe grew by 6.8 percent, up from 4.7 percent in fiscal year 2005. The imbalance in cargo volume essentially remained unchanged. For every one TEU that moved outbound from the U.S., 1.4 TEUs moved inbound from North Europe. On average for the fiscal year, the quarterly utilization of vessel capacity was 66.3 percent outbound and 86.8 percent inbound.

Numerous carriers serving the trade restructured their services during the fiscal year, which in turn affected their operational agreements and respective partnerships. These changes were largely brought about by the acquisitions in the preceding fiscal year of P&O Nedlloyd and CP Ships by Maersk Line and Hapag-Lloyd, respectively. For example, in April 2006, P&O Nedlloyd and Contship Containerlines (formerly owned by CP Ships) formally terminated their round-the-world service that included the trade between the U.S. Atlantic Coast and North Europe. The service operated through a series of five vessel sharing agreements in partnership with CMA-CGM, S.A. (“CMA-CGM”) Compagnie Maritime Marfret (“Marfret”), Hamburg-Süd, and Hapag-Lloyd. In its place, Maersk Line and Hamburg-Süd initiated two separate pendulum services operating between the U.S. Atlantic Coast, North Europe, and Australia/Oceania, while the remaining carriers jointly formed a similar pendulum service under the *CMA-CGM/HLAG/Marfret Vessel Sharing Agreement*.

Collectively, all of the service changes that occurred in the U.S./North Europe trade during the fiscal year resulted in an increase of about 25 percent in annualized vessel capacity deployed in each trade direction. The substantial increase in vessel capacity, combined with weak cargo growth, reduced average vessel capacity utilization. As a consequence freight rates also fell. Some industry analysts speculated that by the end of calendar year 2006, freight rates in the trade would fall by 15 to 25 percent below the levels at the start of the year.

As a condition for the purchase of CP Ships, the European Commission required Hapag-Lloyd to withdraw from the *Trans-Atlantic Conference Agreement*. In addition, with its membership in TACA absorbed into Maersk Line, P&O Nedlloyd formally resigned from the conference in February 2006. These changes reduced the market share of TACA members from approximately 50 percent to 40 percent in both directions. The weakened market position of TACA, coupled with excess capacity in the trade, thwarted the conference's rate initiatives. TACA implemented three moderate general rate increases in both trade directions at the start of the first three quarters of the fiscal year. Further, the conference announced plans to phase in additional 2006 general rate increases ("GRIs") on the first of July and October. As freight rates eroded in the trade, the conference's general rate increases ("GRIs") were largely ineffective, and TACA canceled its plans for further GRIs for the immediate future.

In September 2006, the Council of the European Union voted to repeal the block exemption for liner shipping conferences (Council Regulation 4056/86). The repeal is scheduled to take effect in October 2008. Thereafter, liner carriers operating on routes serving EU nations must comply with the EC Treaty competition rules, which prohibit, among other things, price-fixing and capacity regulation. To assist the industry in this transition, the EC plans to issue guidelines on the application of the competition rules to maritime transport prior to October 2008. Notably, the EU renewed the block exemption that allows ocean carriers to form certain operational agreements that do not include price fixing and are subject to certain market share restrictions until 2010 (EC Regulation 611/2005).

B. MEDITERRANEAN

During fiscal year 2006, liner cargo volumes were weak in both directions of the U.S./Mediterranean trade. U.S. export volumes to the Mediterranean contracted by 1.45 percent, as compared to a 4.7 percent increase in fiscal year 2005. Import cargo from the region to the U.S. grew by only 0.3 percent, down from a 0.7 percent increase in the preceding fiscal year. Ultimately, the imbalance of cargo volume remained high. For every TEU that moved outbound from the U.S., 2.2 TEUs moved inbound from the Mediterranean.

As in the other trades, consolidation among major carriers through acquisitions led to a restructuring of operational arrangements and services in the Mediterranean, and also ushered in additional vessel capacity. For example, both loop services operated by P&O Nedlloyd through its vessel sharing agreements with Hapag-Lloyd and Zim Integrated Shipping Services, Ltd (“Zim”) were terminated in April 2006. However, Maersk Line absorbed and reconfigured the capacity of P&O Nedlloyd into two new loops serving the Western and Eastern sectors of the Mediterranean trade. In addition, Hapag-Lloyd took over and upgraded the service loops of CP Ships, and entered into a space sharing arrangement with Zim under the *Hapag-Lloyd/Zim Mediterranean Slot Exchange Agreement*.

Overall, as a result of the service changes by the end of the fiscal year, annualized vessel capacity increased by 12 percent in each direction of the trade. Utilization of vessel capacity was relatively weak, and carriers competed to fill excess space, keeping freight rates at low levels. On average, the quarterly utilization of vessel capacity over the fiscal year was 38.1 percent outbound and 74.8 percent inbound, representing a decline in each trade direction from the preceding fiscal year.

The *U.S. South Europe Conference* was effectively eliminated by the withdrawal of Hapag-Lloyd and the purchase of P&O Nedlloyd by Maersk Line. The conference agreement was terminated in February 2006.

C. INDIAN SUBCONTINENT AND THE MIDDLE EAST

Two major agreements cover the U.S. outbound trade to the Indian Subcontinent and Middle East: the *Middle East Indian Subcontinent Discussion Agreement* (“MIDA”) and the *Westbound Transpacific Stabilization Agreement* (“WTSA”). U.S. container exports in fiscal year 2006 declined by five percent to the Indian Subcontinent and by two percent to the Middle East. During the fiscal year, the U.S. exported approximately 220,000 TEUs to the Indian Subcontinent¹ and 280,000 TEUs to the Middle East.

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 has a 50 percent share of that market. During the fiscal year, American President Lines resigned from MIDA, causing the market share of the Agreement to drop by approximately ten percent.

WTSA’s geographic scope covers U.S. exports to the Indian Subcontinent primarily via service from the U.S. Pacific coast, and maintains a 35 percent share of the market for the Indian Subcontinent. WTSA had no changes in carrier membership.

Only one rate discussion agreement covers the U.S. inbound trade from the Indian Subcontinent, the *Indian Subcontinent Discussion Agreement* (“ISDA”). It has a market share of approximately 35 percent. U.S. container imports for fiscal year 2006 grew by 16 percent from the Indian Subcontinent and by three percent from the Middle East. The U.S. imported approximately 660,000 TEUs from the Indian Subcontinent¹ and 160,000 TEUs from the Middle East.

During the summer, CMA-CGM, Zim, Shipping Corporation of India, Emirates Shipping Line, and MacAndrews & Co., Limited (“MacAndrews”) joined ISDA. However, the two major carriers active in this trade lane, Maersk Line and American President Lines, whose

¹ Since the Annual Report for fiscal year 2005 was published, the geographic definition of the Indian Subcontinent has been revised. The volume figures for this year, therefore, are not directly comparable with those published last year.

combined market share of the trade is around 30 percent, are not members.

D. AUSTRALIA AND OCEANIA

This region encompasses Australia, New Zealand, Papua New Guinea, Western Samoa, and other South Pacific Islands. U.S. container imports from the region totaled 182,000 TEUs in fiscal year 2006, while the U.S. outbound liner trade totaled 210,000 TEUs. Australia is the largest U.S. trading partner in the region, accounting for almost two-thirds of the liner cargo in the trade. Compared to last fiscal year, U.S. exports to the region fell nine percent, and U.S. imports remained virtually unchanged.

Substantial changes in the trade's competitive landscape occurred during fiscal year 2006. For example, Maersk Line and Hapag-Lloyd completed their consolidations of P&O Nedlloyd and CP Ships, respectively. Hamburg-Süd purchased certain assets of FESCO Ocean Management Limited, a subsidiary of the Far Eastern Shipping Company. Additionally, NYK Reefer, a subsidiary of NYK Lines, and LauritzenCool merged their specialized reefer activities through the joint venture NYKLauritzenCool AB. As a result of these developments, market concentration substantially increased. By the end of the fiscal year, just three carriers, Hapag-Lloyd, Maersk Line, and Hamburg-Süd, accounted for nearly 80 percent of the container volume in this trade.

Following the spate of consolidations, several "new" services emerged from the reconfiguration of some pre-merger services. For example, Maersk Line inaugurated a new weekly "Oceania Pendulum" service between Australia, New Zealand, and Europe via the U.S. Atlantic coast, on which Hapag-Lloyd is chartering slots. CMA-CGM, Marfret, and Hapag-Lloyd also initiated a new joint "North Atlantic/South Pacific Pendulum" service. U.S. Lines, a newcomer to the trade, inaugurated its "ANZL Service" from the U.S. Pacific Coast operating between Los Angeles and Tauranga, Melbourne, Sydney, and Brisbane.

One major rate discussion agreement covers the U.S. outbound trade, and two cover the U.S. inbound trade from the region. Just six direct container services operate in the trade, five of which are provided

by members of the rate discussion agreements: two direct services to the U.S. Pacific Coast and three direct services to the U.S. Atlantic Coast. U.S. Lines is the only independent carrier that offers a direct service in the trade. Other independent carriers serve the trade indirectly using relay services that involve transshipment through Northeast and Southeast Asia.

E. CENTRAL AMERICA AND THE CARIBBEAN

In fiscal year 2006, the volume of cargo transported between the U.S. and Central America remained relatively unchanged compared to the preceding period. U.S. export cargo declined by a fraction, while import cargo from Central America grew slightly by two percent. Export cargo exceeded import cargo in the trade. For every one TEU that moved inbound from Central America, 1.4 TEUs moved outbound from the United States. The ratification of the *Dominican Republic-Central America Free Trade Agreement* (“DR-CAFTA”) promises to promote future cargo growth in the trade. It is anticipated that DR-CAFTA will boost U.S. exports by reducing and eliminating tariffs on many U.S. consumer and industrial goods. Additional ratifications by signatories may broaden the effect of the DR-CAFTA in fiscal year 2007.

In the trade between the U.S. and the Caribbean, the volume of cargo declined by about 2.5 percent in both trade directions compared to the preceding fiscal year. In TEUs, containers of U.S. exports exceeded containers of Caribbean imports by a ratio of 3.4 to 1. The outbound leg of the trade is greater because many Caribbean nations rely on U.S. exports of food, consumer, and manufactured products to sustain their local economies and tourist industry.

Carriers in the U.S./Central American trade participate in the *Central America Discussion Agreement*. Carriers in the U.S./Caribbean trade participate in four rate discussion agreements covering discrete trades: (1) the *Hispaniola Discussion Agreement*, (2) the *Caribbean Ship-owners Association*, (3) the *Florida-Bahamas Ship-owners and Operators Association*, and (4) the *ABC Discussion Agreement*. There were no significant changes in the provisions or memberships of these agreements during fiscal year 2006.

F. SOUTH AMERICA

As a whole, between the U.S. and South America, the volume of cargo grew by about two percent in each trade direction. By the end of the fiscal year, U.S. export cargo to South America stood at 633,769 TEUs, while import cargo from South America to the U.S. was just over one million TEUs. The South America region is generally divided into the trades between the U.S. and the East and West Coasts of South America.

Around 40 percent of all of the U.S./South America cargo moved in the trade is between the U.S. and the West Coast of South America, with about 650,000 TEUs of annualized vessel capacity deployed in each trade direction by the end of the fiscal year. Most of the carriers that provide direct service in the trade are also members of the *West Coast of South America Discussion Agreement* (“WCSADA”). The combined market share of WCSADA members was about 70 percent in the outbound direction and 60 percent in the inbound direction. Many carriers also serve the trade indirectly via relay and feeder services based at ports in Mexico, Panama, and the Caribbean.

During the year, WCSADA was amended to add a third section to the geographic scope of the agreement to cover the trade between the U.S. Pacific Coast and the West Coast of South America. The other two sections of WCSADA’s geographic scope cover the trades between the U.S. Atlantic/Gulf Coasts and: (1) the West Coast of South America, and (2) the Caribbean Coast of Colombia. Membership in WCSADA also changed during the year. Maruba S.C.A. joined the agreement, while CMA-CGM resigned, and Hapag-Lloyd replaced CP Ships.

Liner cargo in the trade between the U.S. and the East Coast of South America accounted for about 60 percent of all of the U.S./South America liner cargo. By the end of the fiscal year, the amount of annualized vessel capacity had grown to over 1.1 million TEUs in each direction of the East Coast of South America trade. Unlike the West Coast of South America, carriers serving the East Coast of South America have not actively engaged in broad-based rate discussions spanning the entire geographic scope of the trade since the demise of the *East Coast of South America Discussion Agreement* in April 2004. However, in smaller

sectors of the trade, a number of carriers participate in the *Venezuela Discussion Agreement*, which authorizes voluntary rate discussions among its members between the geographic scope of the U.S. and Venezuela.

G. ASIA

Asia dominates the U.S. container trades, accounting for 63 percent of all U.S. container traffic in fiscal year 2006. Seventy percent of all U.S. container imports originate in Asia, and the region takes 48 percent of all U.S. container exports.

The major agreement in the inbound transpacific trade, the *Transpacific Stabilization Agreement*, 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. TSA has a market share of approximately 60 percent. At the beginning of calendar year 2006, CMA-CGM withdrew from TSA, causing the market share of the agreement to drop by four percentage points. During the fiscal year, no new carriers joined TSA.

In fiscal year 2006, the U.S. imported over 13.5 million TEUs of cargo from Asia. This is a 15 percent increase from the previous fiscal year. Northeast Asia accounts for 87 percent of all transpacific container imports with most originating in China. Compared to fiscal year 2005, container imports from Northeast Asia grew by 16 percent and by ten percent from Southeast Asia.

For the annual service contract season that began on May 1, 2006, TSA announced that its members, on a voluntary, non-binding basis, had agreed to raise freight rates by \$150 per FEU (forty-foot equivalent units) for cargo destined to U.S. Pacific Coast ports and \$400 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 generally were not successful in obtaining the full amount of these planned rate increases in their individual service contract negotiations with shippers.

The major agreement in the outbound transpacific trade is the *Westbound Transpacific Stabilization Agreement* (“WTSA”). Like TSA,

WTSA operates as a forum for the exchange of information between its members and allows them to discuss and agree, on a non-binding basis, upon rate levels 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 has a market share of approximately 60 percent for the complete scope of the agreement. During the 2006 fiscal year, WTSA experienced no change in its membership.

U.S. container exports to Asia grew by six percent to reach nearly 4.5 million TEUs in fiscal year 2006. Most of this increase was attributable to Northeast Asia. U.S. exports to Northeast Asia grew by nine percent, but declined by nine percent to Southeast Asia. The former, however, received 87 percent of all U.S. container exports in the transpacific trade, with China and Japan being the primary destinations.

Unlike TSA, WTSA does not have a distinct service contract season in which most shippers finalize their annual service contracts prior to the start of the new season. Instead, WTSA's practice is to establish voluntary service contract guidelines for rate increases by commodity type throughout the calendar year. This practice primarily reflects the varying seasonality of most major U.S. export commodities.

H. AFRICA

Trade with the Republic of South Africa accounted for almost half of the total volume of cargo in the U.S./Africa trade for fiscal year 2006, making it the continent's largest U.S. trading partner. Nations along the Coast of West Africa accounted for another quarter of the cargo volume. Imports from Africa totaled 104,000 TEUs in fiscal year 2006, and U.S. exports totaled almost 151,000 TEUs. Compared to the preceding fiscal year, U.S. export cargo grew by six percent, and import cargo from Africa fell by nine percent.

A number of acquisitions occurred among carriers serving the trade. CMA-CGM expanded its interest in the trade by acquiring several regional shipping lines, including Delmas, OT Africa Line, and Südcargos. In addition, Maersk Line and Hapag-Lloyd integrated their operations in the trade with P&O Nedlloyd and CP Ships, respectively.

In the fiscal year, carriers serving the Africa trade expanded their operations and added some new services. For example, Delmas, now a part of CMA-CGM, began a relay service connecting the U.S. Atlantic/Gulf Coast, West Africa, and Europe through the port of Le Havre, France. Grimaldi Lines inaugurated a new service between the U.S. Atlantic Coast and West Africa for container and roll-on/roll-off cargo. Hapag-Lloyd also initiated a new liner service between the U.S. Atlantic Coast and South Africa with calls at ports along the Coast of West Africa on the outbound leg from the United States. In addition, Safmarine Container Lines N.V. (“Safmarine”), a subsidiary of Maersk Line, started a new service between the U.S. Atlantic Coast and West Africa.

Agreement changes were comparatively few this year. In the preceding fiscal year, the *U.S./Southern Africa Conference* and the *U.S.A.-Southern and Eastern Africa Discussion Agreement* had been terminated, while members of the *Southern Africa/Oceania Agreement* had revised the disbursement of earnings under their revenue pooling provisions and had increased the number of vessels deployed in their America Express service.

I. WORLDWIDE

The world’s container trades continued their strong expansion in fiscal year 2006. World container traffic volumes reached around 125 million TEUs, more than 13 percent greater than the level reached at the end of fiscal year 2005. Expansion of the U.S. container trades, however, was more subdued. During the year, the total number of containers imported to and exported from the U.S. reached almost 29 million TEUs, or just under nine percent more than in fiscal year 2005. The U.S. container trades represent about 23 percent of the total volume of cargo shipped worldwide. U.S. container imports increased almost 12 percent in fiscal year 2006 to reach 19.5 million TEUs, but U.S. container exports expanded by less than three percent to reach just over nine million TEUs. For every loaded container exported from the U.S., more than two were imported.

Container imports through Pacific Northwest ports, such as Seattle, Tacoma and Portland, expanded by more than 40 percent to reach about 2.4 million TEUs. That region's share of U.S. container imports rose to 12.4 percent from 10.1 percent last year. The share of U.S. containers imports through the Pacific Southwest ports, including Los Angeles, Long Beach, and Oakland remained at 46.1 percent. Ports along the U.S. Atlantic and Gulf Coasts handled around 41.5 percent of all U.S. container imports, compared to 43.8 percent last year.

During this fiscal year, some minor shifting occurred among coastal regions in their shares of U.S. export containers. About 60 percent of all export containers were handled by U.S. Atlantic and Gulf Coast ports, 30 percent by Pacific Southwest ports, and about ten percent by ports in the Pacific Northwest. Percentage shares in fiscal year 2005 were 58, 31, and 11 percent, respectively.

The U.S.'s top five liner cargo trade partners remained unchanged: China, Japan, Hong Kong, South Korea and Taiwan. Notably, these partners are all located in Northeast Asia, and collectively accounted for 55 percent of the total U.S. container trade in fiscal year 2006. This year, trade with China accounted for 37 percent of the total U.S. container trade, up from 35 percent in fiscal year 2005.

Containership capacity growth nudged ahead of the growth in container demand on a worldwide basis. By July 2006, the containership fleet's nominal capacity had grown by over 15 percent compared to the same month a year earlier. During this time, the world container fleet expanded by a net addition of just under 300 ships. Today, about 3,800 containerships with a fleet capacity of almost nine million TEUs are deployed in the world's container trades. During the last quarter of the fiscal year, Maersk Line took delivery of the world's biggest containership, the *Emma Maersk*, rated by the carrier at 11,000 TEUs. At the end of July 2006 there were orders worldwide for 1,224 new containerships with an aggregate capacity of 4.3 million TEUs. The capacity on order amounted to approximately 50 percent of the existing fleet capacity.

Concentration in the container shipping industry did not appreciably increase during fiscal year 2006. By year's end, the top five container operators were still Maersk Line, MSC, CMA-CGM, Evergreen and Hapag Lloyd, respectively. Two Chinese carriers, COSCO Container Line and China Shipping, rose up the ranking to occupy the sixth and seventh places, respectively. The top five container operators reportedly controlled 36 percent of the world's containership fleet capacity, the top 10 controlled 53 percent, and the top twenty controlled 73 percent. A recent estimate by *IMB Global Business Services* suggested that the top 10 carriers may control 80 percent of the world containership fleet by 2015 through further consolidation of the industry.

IV

THE FOREIGN SHIPPING PRACTICES ACT OF 1988

A. IN 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, when such conditions do not exist for foreign carriers in the U.S. under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S.

In fiscal year 2006, the Commission monitored potentially unfavorable or discriminatory shipping practices by a number of foreign governments. No FSPA action was taken in 2006.

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

Pursuant to the Foreign Shipping Practices Act, the FMC must include in its annual report to Congress “a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States.” 46 U.S.C. App. §1710 (g)(1)(2004), now codified at 46 U.S.C. §306 (b)(1).

The Journal of Commerce’s 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 U.S. Customs and Border Protection 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 additional procedures to increase data accuracy.

The most recent complete calendar year for which data are available is 2005. 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 2005. 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 (2005)

<u>Rank</u>	<u>Country</u>	<u>TEUs (000s)</u>
1	China (PRC).....	9,387
2	Japan	1,699
3	Hong Kong ²	1,192
4	South Korea	1,032
5	Taiwan.....	1,000
6	Germany	728
7	Brazil	660
8	Italy	596
9	Thailand	570
10	India	510
11	Indonesia	483
12	Belgium and Luxembourg	458
13	Netherlands	447
14	United Kingdom (incl. N. Ireland).....	446
15	Malaysia	377
16	Honduras	305
17	Vietnam	292
18	Guatemala	272
19	France	258
20	Spain	257

² 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.

With only a few exceptions, the 2005 top twenty trading partners closely mirror those for 2004. Almost across the board, the top twenty trading partners saw gains in volume. Growing by 25 percent, China has further widened the gap between itself and Japan, the number two trading partner. India and Malaysia experienced 14 and 12 percent increases in volume, respectively. Again this year Hong Kong's volume declined, this time by 20 percent. Vietnam, surpassing Guatemala, France, and Spain, appears on the list for the first time.

V

SIGNIFICANT ACTIVITIES

BY

ORGANIZATIONAL UNIT

A. OFFICE OF THE SECRETARY

1. In General

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

The Office is responsible for preparing and submitting regular and notation agenda matters for consideration by the Commission and preparing and maintaining the minutes of actions taken by the Commission on these matters; issuing orders and notices of actions of the Commission; maintaining official files and records of all formal proceedings and Commission regulations; issuing publications; and authenticating instruments and documents of the Commission. During fiscal year 2006, the Commission issued orders finalizing seven formal proceedings and three informal dockets. Two rulemaking proceedings were pending at the end of the year.

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

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 remained involved in the Commission's effort to increase contact with all segments of the maritime community and the general public. During the fiscal year, several steps were taken to improve industry outreach. New lists of government and media contacts were compiled and used to disseminate Commission information. Educational and informational materials were updated. Commission staff expanded the scope of its outreach effort by meeting with the industry through telephone calls and personal visits. In addition, the Commission continued to host briefings given by various segments of the industry. Finally, the Office collected and analyzed the Commission's public relations policies to identify those that best foster open communication with the maritime industry and the shipping public.

The Office of the Secretary also manages the Commission's website. During the fiscal year, the Office continued to make improvements to increase user-friendliness and information availability. A number of programming enhancements were made to the administrative tool used to manage the website's organization and content. A new feature was added to the tool that allows uploading of large documents to the site, giving users fast electronic access to reports formerly only available in hard copy and by visiting the Commission in person. Programming enhancements also were made to the FAQs section of the tool that now permits adding links directly within this section, facilitating access to additional information and resources. The Office continues to evaluate the overall usefulness of the website and works with other Commission offices and bureaus to improve its content and user-friendliness.

In addition, the Office of the Secretary assessed agency-wide document scanning requirements and selected a more robust, flexible document scanning system to replace its current one. New scanning software and equipment was installed and data migration was started

during fiscal year 2006. Data migration will be completed and this system will become fully functional during the next fiscal year. This system will help support the agency's continuity of operations initiatives by improving preservation of, and Commission staff access to, Commission documents. Additionally, the new system will reduce the time it takes Commission staff to respond to public inquires, as well as improve public access to electronic files through the Commission's website.

During the fiscal year, the Office of the Secretary continued its initiative to fill a publication gap for Commission decisions and to make more information available electronically. Commission decisions issued between 1987 and 1997 were compiled and converted to electronic form. Those issued between 1987 and 1995 were posted on the Commission's website during the fiscal year, with the balance posted by the end of October 2006. In addition, the Office made *opening/reply briefs*, *exceptions*, and *replies* in selected docketed proceedings available through its website. Throughout fiscal year 2007, the Commission will continue to increase the number of documents available through its website.

2. Office of Consumer Affairs and Dispute Resolution Services

The Office of Consumer Affairs and Dispute Resolution reports to the Office of the Secretary. CADRS is responsible for developing and implementing the Commission's ADR program. Through this program, the Commission provides services to assist parties in resolving commercial disputes in U.S. ocean shipping. A broad range of services is designed to avoid the expense and delay inherent in litigation and to facilitate the flow of U.S. ocean commerce.

The Office encourages parties to disputes to avail themselves of mediation or other ADR processes such as conciliation, facilitation, fact-finding, mini-trials, or arbitration, as a means to resolve disputes. The Commission makes trained neutrals available to facilitate the resolution of shipping disputes, whether prior to or after commencement of the litigation process. If parties prefer outside neutrals, the Office will assist them in locating acceptable neutrals with appropriate expertise.

During fiscal year 2006, Commission mediators provided mediation services in six dispute resolution proceedings, attempting to assist parties in avoiding significant litigation costs and risks. An example of such proceedings was the dispute between a major port authority and two marine terminal operators about rights to certain facilities and concerns by one operator that port actions would make it impossible for it to continue to stay in business. Through the mediation process, the parties reached agreement on all issues, enabling all parties' needs to be met. The resolution avoided protracted litigation. Another example involved a significant dispute as to the amount of detention charges. In this matter, an NVOCC had collected substantial charges from a consignee in anticipation of potential equipment detention charges which, in fact, had not been charged by the ocean common carrier. Office staff mediated a resolution among the consignee, NVOCC, and ocean common carrier.

The Office also provided *ombudsman* services to participants in ocean shipping transactions. Typical complaints included situations where an NVOCC or ocean carrier had placed a lien on cargo in its possession, often for sums owed under a different contract of carriage, and cases in which an NVOCC had received cargo from its customer, had taken payment for the transportation of the cargo, but had failed to deliver it. Tracking the whereabouts of a shipment can be difficult, and often additional charges have accrued, necessitating payment of additional funds to obtain release of the shipment.

During fiscal year 2006, approximately 3,632 complaints and information requests were processed. Of those, 632 complaints required *ombudsman* dispute resolution services. These included 221 complaints about cruise issues, 178 household goods matters, and 233 other matters affecting cargo shipments.

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 Commission assistance available through electronic and other means of communication.

Conversely, fewer complaints were received from individuals concerning household goods shipments. The decrease is primarily

attributable to improved outreach and the Commission's institution of a formal investigation of several problem movers. In addition to opening the proceeding, injunctions were obtained against several companies and individuals to prohibit their continued operation. As a result, several entities ceased operations, thereby substantially reducing the number of complaints against those entities.

Information about the Commission's services has been disseminated by consumers through websites for those experiencing moving problems. In addition, the Commission's website was expanded to provide consumer advice and to caution consumers to deal only with properly licensed OTIs. As a result, we received more inquiries from consumers searching for a valid OTI and correspondingly fewer post-shipment complaints.

Consumers increasingly are using the internet in order to find a means of shipping their personal effects internationally. While there are many efficiencies with internet usage, some entities find it particularly effective to prey on unsuspecting consumers by offering services through very sophisticated websites. These entities usually are unlicensed and often operate only through a website that does not identify a correct address or name of the entity. Such entities tend to offer very low prices to entice customers. Once payments have been received and goods have been picked up from the consumer's household, significant delays often are encountered, and additional payments demanded to continue with the shipment. Some customers have experienced lost cargo or delivery delay of up to one year, and have had to pay twice for the same ocean transportation services. A great deal of staff time was devoted to simply assisting customers in locating their household goods, and once located, working with respondents, licensed OTIs, and others to enable customers to retrieve their goods.

In one case, for example, intervention by Office staff resulted in the release of household goods being held at a German warehouse for nonpayment by a rogue mover. The consumer had been able to locate his property, but the warehouse had refused to release it, as the mover owed the warehouse for other shipments. As a result of staff intervention, the consumer was able to eventually obtain his goods. In another matter, a container loaded with seven shippers' household goods was on the verge

of being returned to the United States. Office staff worked with the ocean carrier, a foreign, unlicensed NVOCC, a United Kingdom destination agent, and the British government to effect British Customs clearance, the unloading of the container, and the onward delivery of the household goods to the shippers' various European destinations.

With respect to passenger matters, the failure of a small cruise operator generated a number of complaints, and assistance was provided to a number of passengers in obtaining refunds for cruises that were cancelled. In addition, a number of passengers were affected by certain vessels being taken out of service in order to provide berthing accommodations in the wake of Hurricane Katrina.

Another function of the Office is adjudication of small claims through informal proceedings. Office personnel serve as Settlement Officers in such cases, which involve complaints seeking reparations up to \$50,000 for violations of the shipping statutes. Those claims generally involve alleged prohibited acts in connection with the international transportation of goods, or the failure to establish, observe, and enforce just and reasonable regulations and practices. CADRS staff also evaluates and adjudicates applications for permission to apply other than tariff rates, and to waive or refund freight charges arising from various errors in tariff publications, and inadvertent failure to publish and intended rate, or a misquotation of a rate.

During fiscal year 2006, the office developed and implemented a database that is enabling better tracking and monitoring of *ombudsman* complaint cases. The new database has resulted in better information and improved efficiency in the management of such cases. This will satisfy a critical need as the complexity and volume of such complaints continue to grow.

In fiscal year 2007, the Office intends to expand awareness of the ADR program through education and training and other outreach efforts. A brochure/pamphlet will be developed to advise consumers in avoiding difficulty with moving internationally. Further efforts will be made to increase shipping industry awareness of less adversarial, more cost-effective means of resolving disputes in a manner that enables the parties

to control the outcome. Use of mediation, in particular, will be promoted to assist in resolving formal proceedings and other significant disputes.

The Office also will continue to make consumer protection information available and will expand its outreach through various websites and media sources. While these efforts may be expected to generate additional complaints, their real value will be the number of consumers that are forewarned and thereby avoid problems. Through this means, assistance may be provided to many more consumers than could be possible through post-shipment problem resolution.

3. Library

The Office of the Secretary also administers the Commission's Library. The Library serves the Commission's research and information needs, and is a specialized repository of current and basic materials primarily covering the shipping industry, the history of shipping, and regulations covering all phases of shipping in the U.S. foreign trade. It contains a large variety of books, directories, encyclopedias, journals, magazines, reports, microforms, and videos. The Library also contains material on several related fields such as engineering, economics, political science, and 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 4,500 volumes and numerous microfiches, CD-ROMs, and on-line services.

B. OFFICE OF THE ADMINISTRATIVE LAW JUDGES

1. In General

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

The Office of ALJs has the authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken 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 2006, ten formal proceedings and two informal proceedings were pending before the Office of ALJs. During the year, eight formal cases and one informal case were added. The Office of ALJs issued initial decisions in three formal and three informal proceedings, and six formal proceedings were dismissed.

2. Commission Action

In fiscal year 2006, the Commission determined not to review four formal proceedings that were dismissed by the Office of ALJs, as well as the initial decisions in three informal proceedings.

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

American Warehousing of New York, Inc. v. The Port Authority of New York and New Jersey [Docket Nos. 04-09 and 05-03].

These two separately-filed cases involving the same parties were consolidated for hearing and decision. Complainant American Warehousing of New York, Inc. (“American”) filed Docket 04-09 on August 5, 2004, alleging that the respondent, the Port Authority of New York and New Jersey, had violated the Shipping Act with regard to the leasing arrangements of a pier that American occupies. While that action was pending, American filed Docket 05-03 on June 15, 2005, alleging new violations of the Shipping Act that had occurred after Docket 04-09 had been filed. Both the complainant and respondent are marine terminal operators subject to the jurisdiction of the Commission. The parties were also in litigation in the Civil Court of the City of New York, Kings County, on the Port Authority’s attempt to evict American as a tenant. On July 24, 2006, the Office of ALJ issued an Initial Decision finding that the Port Authority did not violate section 10 of the Shipping Act by declining to enter into a long-term lease and taking the other actions about which American complained.

4. Pending Proceedings

At the close of fiscal year 2006, there were nine formal proceedings pending before the Office of ALJs.

C. OFFICE OF THE GENERAL COUNSEL

The General Counsel provides legal counsel to the Commission. This includes reviewing staff recommendations for Commission action for legal sufficiency, drafting proposed rules to implement Commission policies, and preparing final decisions, orders, and regulations for Commission review. In addition, the Office of the General Counsel (“OGC”) provides written and oral legal opinions to the Commission, its staff, and the general public in appropriate cases. As described in more detail below, the General Counsel also represents the Commission before 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], 30 S.R.R. 763 (September 23, 2005); *Non-Vessel-Operating Common Carrier Service Arrangements (Notice of Inquiry)*, [Docket No. 05-06], ____ S.R.R. ____ (August 30, 2005).

Unlike 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. 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 the Shipping Act for cargo moved by NVOCCs for their shipper customers on a contractual

basis. Commenters initially were given until November 19, 2004, to submit comments on the NPR; this period was later extended to November 30, 2004.

The Commission voted to issue a Final Rule on December 15, 2004. The Final Rule, which became effective on January 19, 2005, 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 non-performance 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 SERVCON service contracts provided for in the Shipping Act. 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 include NVOCCs. The Commission found that such an exemption could confer antitrust immunity on arrangements between and among NVOCCs, and that this could result in a 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 OGC.

(b) Decisions

***Anchor Shipping Co. v. Alianca Navegacao E Logistica Ltda.*, [Docket No. 02-04], 30 S.R.R. 991 (May 10, 2006).**

This proceeding was initiated by a complaint filed by Anchor Shipping Co. (“Anchor”) against Alianca Navegacao E Logistica Ltda. (“Alianca”). Anchor, an NVOCC, alleged that Alianca, an ocean common carrier, violated numerous sections of the Shipping Act during the course of its service contract with Anchor. Anchor sought \$1,000,000 in reparations.

Prior to filing its complaint with the Commission, Anchor and Alianca participated in binding arbitration. After reviewing the evidence, the arbitrator issued a decision in which Anchor was awarded over \$381,000, which Alianca paid. Following the issuance of the arbitrator’s decision, Anchor filed its complaint with the Commission. In response, Alianca filed a motion to dismiss.

The ALJ issued an Order dismissing Anchor’s complaint. The ALJ determined that it would be unfair and unjust to allow Anchor to litigate a claim that had been previously settled in arbitration. Anchor appealed the ALJ’s ruling to the Commission.

The Commission issued an Order vacating the ALJ’s dismissal order and remanding the proceeding to an ALJ for further adjudication. The Commission held that precluding Anchor from filing its complaint merely because it had previously participated in private arbitration would be inconsistent with the agency’s statutory mandate. The Commission further explained that arbitration would be appropriate to resolve breach of contract claims, but it cannot prohibit the Commission from exercising its statutory obligations. Specifically, when a complaint contains allegations specific to the Shipping Act such as unfair or unjustly discriminatory

practices, undue or unreasonable preferences, and undue or unreasonable prejudice or disadvantage, such complaints are appropriately before 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], 30 S.R.R. 872 (February 8, 2006).

The Commission issued an Order of Investigation and Hearing on April 24, 1998, to determine whether Sea-Land Service, Inc. (“Sea-Land”), a VOCC, violated the Shipping Act by substituting larger containers for smaller ones for certain NVOCCs and charging those NVOCCs rates lower than it lawfully should have charged based on the amount of cargo actually loaded into the larger containers. The Order also alleged that Sea-Land paid forwarder compensation to certain freight forwarders who did not perform forwarding services.

By Order dated February 8, 2006, the Commission affirmed the ALJ’s rulings that Sea-Land violated sections 10(b)(1) by failing to collect the rates contained in its applicable tariff and 10(b)(4) by failing to collect the applicable rate through an unjust device or means. The Commission vacated the \$4,082,500 penalty assessed by the ALJ and imposed instead a penalty of \$820,000 for the violations.

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 sought 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 United Parcel Service, Inc. The Court also granted permission to the Fashion Accessories Shippers Association ("FASA") to participate as an *amicus curiae*. Following amendments made by the Commission to the NSA rule, petitioners moved for voluntary dismissal of the petitions. *Amicus curiae*, FASA, moved to convert its status to intervenor, in order to continue the case. On January 12, 2006, the court issued a *per curiam* Order granting petitioners' motions for voluntary dismissal of these consolidated proceedings. The Court also denied FASA's motion to intervene.

American President Lines v. Federal Maritime Commission, D.C. Circuit, Case No. 05-1288; Horizon Lines, LLC v. Federal Maritime Commission, D.C. Circuit, Case No. 05-1289; Government of the Territory of Guam v. Federal Maritime Commission, D.C. Circuit, Case No. 05-1360.

These proceedings involved appeals of the Commission's orders in Docket No. 89-26, *The Government of Guam, et. al. v. Sea-Land Service, Inc. and American President Lines, Ltd.*, served June 1, 1998, and *The*

Government of the Territory of Guam v. Sea-Land Service, Inc. and American President Lines, Ltd., served July 11, 2005. Horizon Lines, LLC (the successor company to Sea-Land) and American President Lines, Ltd., appealed the Commission's June 1, 1998 Order, which found them to have collected excess revenues in violation of the Shipping Act, 1916. The Government of Guam appealed both Orders. The Commission, in the July 11, 2005 Order, found that the Government of Guam did not prove damages and denied reparations and dismissed the proceeding. The appeals of the June 1, 1998 Order were made at this time because that Order did not become final for purposes of court appeal until the Commission completed the final phase of the proceeding with the issuance of its July 11, 2005 Order. The Court consolidated the three proceedings. On April 5, 2006, the Court granted a motion by the Government of Guam to withdraw its appeal, thereby terminating its role in the appeal of the Commission's Orders. Shortly after the Court's dismissal of the Government of Guam's appeal, APL and Horizon Lines filed motions to withdraw their separate appeals. The Court granted APL's and Horizon's motions and dismissed the remaining consolidated proceedings by order dated June 12, 2006. As a result of the dismissals of all appeals, the litigation which began 17 years ago with the filing of the Government of Guam's complaint with the Commission has concluded.

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

On January 11, 2006, the Commission commenced Docket No. 06-01 by issuing an Order of Investigation and Hearing to determine whether nine household goods moving companies and their owners and/or primary corporate officers (14 individuals) were operating in violation of sections 8, 10, and 19 of the Shipping Act by operating as NVOCCs without obtaining a license, without providing proof of financial responsibility, without publishing an electronic tariff, and by failing to establish, observe, and enforce just and reasonable regulations and practices related to receiving, handling, storing, or delivering property.

The U.S. District Court for the Southern District of Florida issued a preliminary injunction by Order dated January 17, 2006, at the request of the Commission. The injunction enjoins four of the household goods

moving companies and three of the individuals named in the Commission's Order from operating as NVOCCs in violation of the Shipping Act by accepting cargo for transportation, and for advertising for or soliciting cargo while operating as an OTI without a valid license, bond or other security on file with the Commission. In addition to each of the companies and individuals named in the injunction, the named companies' and individuals' agents, servants, employees, and attorneys, and those in active concert or participation, are also enjoined.

The Court found that the Commission met the requirements for issuance of the injunction by showing a substantial likelihood of success on the merits, that irreparable injury would be suffered unless the injunction were issued, the threatened injury to the moving party (the Commission) outweighed whatever damage the injunction might cause those enjoined, and that the injunction would not be adverse to the public interest.

The Court injunction and the Commission's formal investigation are based on more than 250 consumer complaints. Those complaints included: (1) failure to deliver cargo and refusal to return the pre-paid ocean freight; (2) losing the shipper's cargo; (3) charging the shipper for marine insurance which was never obtained; (4) misleading the shipper as to the whereabouts of the cargo; (5) after initially quoting a rate to the shipper, withholding the cargo until a subsequent higher rate was paid by the shipper; and, (6) the shipper having to pay another carrier or warehouse to obtain release of cargo after having already paid a respondent for that transportation or warehousing. The injunction will remain in effect until ten days after the Commission issues an order disposing of the issues under investigation.

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 OMB requests regarding proposed bills and testimony.

During fiscal year 2006, 120 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 2007 budget authorization hearing before the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation. In addition, the Office assisted in the written testimony for the agency's fiscal year 2007 budget requests submitted to the U.S. Senate Committee on Appropriations, Subcommittee on Transportation, Treasury, the Judiciary, HUD, and Related Agencies. The Office also consulted with Congressional staff on the continuing efforts to revise, codify, and enact certain maritime laws as part of Title 46, U.S. Code, Shipping.

In fiscal years 2007 and 2008, 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. Additionally, the Office will continue to serve as liaison with other federal agencies with respect to port and 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 Foreign Shipping Practices Act ("FSPA"). Section 19 empowers the Commission to make rules and regulations governing shipping in the foreign trade to adjust or meet conditions unfavorable to shipping. The FSPA directs the Commission to address adverse conditions that affect

U.S. carriers in foreign trade and that do not exist for foreign carriers in the U.S.

The OGC represented the Commission at the 27th meeting of the Asia-Pacific Economic Cooperation (“APEC”) Transportation Working Group, a group composed of staff-level experts in various modes of transportation from the relevant government agencies of each member economy. The Deputy General Counsel made a formal presentation on perspectives on the United States’ experience with shipping deregulation under OSRA and provided information on U.S. legislation and regulation to the APEC Transportation Working Group. The Office also represented the Commission at the 28th APEC Transportation Working Group meeting.

The OGC also pursued informally several matters that involved potentially restrictive foreign practices including new legislation, new interpretations of existing legislation and new regulations of non-domestic carriers’ terminal handling charges.

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 and 2005. The Commission continued to receive and evaluate semi-annual reports from its proceeding in Docket No. 96-20, *Port Restrictions and Requirements in the United States/Japan Trade*.

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.

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 Shipping Act, and their rates are subject to Commission review. The Office investigates and makes 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 years 2007 and 2008, the OGC will continue to take the lead in accomplishing the agency's performance goals relating to eliminating restrictions that unjustly disadvantage U.S. interests. Through the Permanent Task Force on International Affairs, the OGC will monitor 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 administratively 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 offers day-to-day 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 model 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 Chairman of the FMC, who is responsible for ensuring equal opportunity in the Commission, has delegated this authority to the Director of Equal Employment Opportunity. However, operational responsibility for compliance with EEO policies and programs lies with the Commission’s managers and supervisors.

The Office of EEO advises and assists the Chairman, the Commissioners, and other principal officers of the Commission in carrying out their responsibilities relative to Titles VI and VII of the Civil Rights Act of 1964, other laws, executive orders, and regulatory guidelines. The Office of EEO is responsible for establishing and maintaining a continuing affirmative program designed to promote equal opportunity in every aspect of the Commission’s personnel policies and practices.

The major functions of the Office of EEO are Affirmative Employment Programs/Diversity Outreach and Complaints Management. Significant accomplishments in fiscal year 2006 include the following:

- **Maintained an effective discrimination complaint process that resolves issues informally and expeditiously.**
- **Continued non-discrimination policy and programs.**

- **Facilitated early resolution of employment-related problems.**
- **Expanded outreach and recruitment initiatives.**
- **Provided adequate career counseling.**
- **Developed program plans and progress reports.**
- **Provided briefings to FMC senior staff and met regularly with senior management.**
- **Provided counseling assistance and No FEAR Act training to FMC managers, supervisors and employees, and updated and posted No FEAR statistics to FMC website (<http://www.fmc.gov/home/NoFEARAct.asp>).**
- **Reviewed and assessed management and personnel human resource activity and actions.**
- **Provided support and assistance to managers and supervisors in maintaining and effectively managing a diverse workforce.**
- **Held special commemorative programs for FMC employees (Disability Employment Awareness, American Indian, Black History, Women's History, Asian Pacific, Gay and Lesbian, and Hispanic Heritage months programs).**
- **Managed the FMC's Advisory Council on Women's Issues.**

- **Prepared all required affirmative employment program accomplishment reports and plans with OHR.**
- **Created and administered a survey on career development, equal employment, and workforce issues.**
- **Attended EEO related training and conferences.**

During fiscal year 2007, 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, career development, and retention.

E. OFFICE OF THE INSPECTOR GENERAL

The Inspector General (“IG”) Act of 1978, as amended, creates independent audit and investigative units called Offices of Inspector General (“OIGs”) at 61 federal agencies, including the Federal Maritime Commission. The mission of the OIGs, as spelled out in the IG Act, is to:

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

To ensure objectivity, the IG Act empowers IGs with:

- **Independence to determine what reviews to perform.**
- **Access to all information for the reviews.**
- **Authority to publish findings and recommendations based on the reviews.**

During fiscal year 2006, the OIG issued the following audit reports and evaluations:

- A05-03** *Audit of FY 2005 Financial Statements*
- A05-03A** *FY 2005 Management Letter to the FY 2005 Financial Statements*
- A05-04** *Review of Agency Implementation of the Federal Information Security Management Act for FY 2005*
- A05-05** *IG Assessment of Management Challenges Facing the Federal Maritime Commission*
- A06-01** *Data Accuracy of the Bureau of Enforcement's Tracking Systems*
- A06-02** *Audit of Payroll Processing Transactions*
- OR06-01** *Operational Review: Control of Privacy Data on Leave Request Forms*
- A06-04** *Review of Agency Implementation of the Federal Information Security Management Act for FY 2006*

In addition to these completed audits, the OIG initiated its annual financial statement audit and opened three investigations into alleged misconduct, closing two by the end of the fiscal year.

OIG staff was also involved in other OIG mission-related activities during the period. For example, the IG co-lead a symposium on IG information security reviews under the Federal Information Security Management Act of 2002 ("FISMA") attended by representatives of the Chief Information Officers ("CIO") Council and small agency IGs. The purpose of this symposium was to assist both groups to perform more meaningful and helpful evaluations of their respective information security programs. In addition, the OIG redesigned its web page to make it more

useful and easier for the public and FMC staff to navigate. The Office also began preparations for a peer review, by a sister OIG, of the FMC OIG's quality control program.

In April, 2006, a new inspector general was appointed to replace the FMC's first inspector general, who retired in 2005.

In fiscal year 2007, the OIG will continue to place high priority on audits and reviews with the objective of improving agency programs and operations. The OIG will complete statutorily-required reviews to include an audit of the agency's fiscal year 2006 financial statements and an evaluation of the agency's information security program and privacy assurance controls as required by FISMA.

F. OFFICE OF ADMINISTRATION

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

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

The Director of OA provides administrative guidance to the:

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

and administrative assistance to the:

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

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

The Office of Administration had significant programmatic achievements in fiscal year 2006. The Office guided the agency's continuing efforts to enhance its IT program; during the fiscal year the agency mitigated two material weaknesses and addressed the final outstanding recommendations made by the IG through a contractor assessment of agency IT operations. The agency received an unqualified opinion in its fiscal year 2006 financial statement audit. 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 the Management's Discussion and Analysis), the Federal Managers Financial Integrity Act report, and transmittal letters for the IG's semiannual reports to Congress. Also, the Office coordinated completion of the agency's 44th *Annual Report*, and prepared the agency Regulatory Plan and Semiannual Unified Agendas. Additionally 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 and FISMA. Additionally, the Office guided the development of the fiscal year 2008 budget request to the Office of Management and Budget (“OMB”) and the fiscal year 2007 President’s Budget submission, and directed all efforts involving the audit of the Commission’s fiscal year 2006 financial statements. During the year, the Office provided primary support for the OMB clearance and records management programs, and guided the continuing development of the agency’s Continuity of Operations Plan. The Office also directed the effort to update and refine the agency’s performance evaluation system, and coordinated the agency’s development of a pilot Individual Development Plan program and a series of in-house functional briefings.

OA’s key objectives for fiscal year 2007 consist of implementing 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 and implementation of Pay.gov; initiating further IT improvements, including the replacement, integration or update of agency database systems and the upgrading of network and desktop operating systems; and working with senior managers to ensure effective strategic succession planning, including providing key support for the agency’s new Emerging Leaders Program. The Office also will take the lead in assuring that the agency-wide computer security program is effective, that the agency’s financial management system receives an unqualified opinion in annual financial audits, and that the agency complies with the Homeland Security Presidential Directive (“HSPD”)-12 initiative.

1. Office of Financial Management

(a) General Office Responsibilities

The Office of Financial Management (“OFM”) administers the Commission’s financial management program and is responsible for offering guidance on optimal utilization of the Commission’s fiscal resources. OFM is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications 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 2006, OFM:

- **Collected and deposited \$1,595,530 from user fees, fines, and penalty collections, and ocean freight forwarder, OTI application, and passenger vessel certification fees.**
- **Coordinated and prepared budget justifications and estimates for the fiscal year 2007 Congressional budget and fiscal year 2008 budget to OMB.**
- **Prepared a variety of external reports, including: the Annual Leave Year Report and the Report on Workyears and Personnel Costs for 2005 (Office of Personnel Management - “OPM”); the Report on International Travel for FY 2005 (OMB); the Report on First-Class Airline Accommodations for fiscal year 2005 (General Services Administration - “GSA”); and the quarterly Continuation of Pay Reports (Department of Labor).**

- Prepared monthly status reports on workyears, funding, travel and receivables, and monthly allocation reports to provide management with meaningful, timely expense data by program.
- Completed a process for the individual offices/bureaus to forecast annual goals in accordance with the Commission's strategic goals.
- Worked with Bureau of Public Debt ("BPD") staff and auditors regarding the audits of the fiscal years' 2005 and 2006 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 2005 Management's Discussion and Analysis and prepare the Commission's 2005 Performance and Accountability Report.

(c) Future Plans

Financial management goals in fiscal year 2007 include: continued development of a fully integrated financial management system; 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; reviewing and updating, as necessary, procedures and controls for current business processes; and 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 2006, OHR:

- **Monitored the activities of the agency’s payroll/personnel service provider, National Finance Center (“NFC”), and worked with OFM on conversion to a web-based time-and-attendance reporting system.**
- **Worked with senior management to recruit and staff employee development programs and activities to address succession planning.**
- **Conducted a comprehensive training program, including drafting agency policy on training and employee development, providing executive training for SES candidates, continuing the college tuition reimbursement program, ensuring training for new employees on the No FEAR Act was accomplished, and participating in the SAC Training Program.**
- **Conducted a comprehensive personnel security program, including completing work necessary for reporting and updating data in the Clearance Verification System pursuant to the E-clearance**

initiative, and collaborating with the U.S. Customs and Border Protection (“CBP”) to gain access to the CBP Automated Commercial Environment/International Trade Data System.

- **Conducted a comprehensive performance management and incentive awards program, and continued working with senior management to assess the performance appraisal system, making recommendations changes to simplify and streamline the program.**
- **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 by hosting wellness seminars and issuing notices focusing on health issues, and conducted employee benefit and charitable contribution programs and Open Seasons.**
- **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-clearances, E-learning and the Fast-Track implementation of E-OPF.**

- **Conducted a proactive retirement program including counseling, computing benefits, providing retirement seminars and related training, and processing all retirements.**
- **Coordinated with other administrative units and GSA to implement HSPD-12.**
- **Conducted HR staff assessment and finalized contracted assistance in the areas of personal suitability adjudication and classification/position management.**

(c) Future Plans

In fiscal year 2007, OHR plans to continue to: advise agency management and staff on all human resources matters and ensure the maintenance of a sound and progressive human resources program; implement pertinent portions of the agency’s strategic, training and related performance plans, particularly performance goals related to the management of human resources; explore and implement simplification, flexibility, and accountability of human resources management programs, including investigating automated solutions to address program requirements; in conjunction with administrative components and the GSA, continue to implement pertinent provisions of HSPD-12; and monitor 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 2006, OIT:

- **Implemented the new SERVCON system; initiated development of an automated filing system for Form FMC-18; merged a legacy system with the new BOE index card system; and completed the implementation of the upgraded CADRS database.**
- **Improved the data and wireless telecommunications services and support, and implemented wireless network access.**
- **Completed the requirements analysis and inventory to meet the internet Protocol version 6 ("IPv6") government-wide initiative.**
- **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.**
- **Conducted an analysis of the agency's telecommunications services and began the transition to assume management of those services.**
- **Further developed the disaster recovery/continuity of operations plans for the agency.**

- **Continued enhancements to the OIT Test Lab and User Support Center for testing hardware and software and to provide user assistance.**
- **Updated the FMC Enterprise Architecture Plan and System Development Lifecycle Plan.**
- **Initiated improvements to the virtual private network portion of 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.**
- **Continued the development and enhancement of FMC systems to automate processes consistent with the E-Government Act.**
- **Continued to update the policies and procedures associated with the technical assistance provided to FMC staff and changes in the IT infrastructure.**

(c) Future Plans

Major OIT initiatives for fiscal year 2007 include plans to: ensure compliance with government programs such as FISMA and the President's Management Agenda; implement electronic filing of a new automated Form FMC-18; update the FMC Enterprise Architecture Plan; continue to develop plans to stabilize all critical systems and recommend enhancements to the existing IT infrastructure; begin development of a new Regulated Persons Index and automated Form FMC-1; implement a new PIERS system; facilitate the Commission's ability to take advantage of e-commerce; complete the IPv6 upgrade and upgrade existing applications for interoperability with IPv6; continue to investigate options to partner with other agencies' initiatives to better serve the public in the dissemination and collection of information; begin the analysis for upgrading the existing desktop operating system, software, applications, and equipment; continue to improve the VPN piece of the network

security infrastructure; continue to improve data and wireless telecommunications services and support; continue to improve the capital planning and investment control process; continue to provide assistance, as needed, in the updating of the Commission's website to provide information to the public; support the Pay.gov initiative; and 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 provisions of these support services in compliance with the applicable Federal guidelines.

(b) Achievements

During fiscal year 2006, OMS:

- **Coordinated and oversaw the construction alterations at the agency's Headquarters facility required to accommodate the reorganization of August 2004.**
- **In coordination with the Office of Operations, reestablished appropriate program oversight of the**

Area Representatives' support services requirements, to include: office space leasing; local, long-distance, and wireless communications needs; GSA motor pool and fleet management provisions; supply and property inventory actions; consolidation of the use of the Government Purchase Card within the activity.

- **Implemented full-service procurement cross-servicing support through BPD's Administrative Resources Center.**
- **Administered the agency's transit subsidy benefits and the Headquarters Metro Check usage programs.**
- **Expanded the agency's printing and copy management program to include the Government Printing Office's Express Program for using FedEx Kinko facilities nationwide.**
- **Continued coordination through the Headquarters Building Security Committee to enhance the physical security and emergency preparedness programs, and complete the implementation of assessment recommendations made by the Federal Protective Service.**
- **In coordination with the Federal Protective Service, joined the newly established Committee of Emergency Managers within the Union Station Area of Washington, D.C., for more effective coordination of emergency preparedness-related events and activities.**
- **Established a transition plan with OIT and initiated actions to transfer the voice telecommunication functions and activities to its control.**

(c) Future Plans

In fiscal year 2007, the Office's objectives include: completing the transition of the voice telecommunication functions to OIT; working with GSA, Department of Homeland Security, and other tenant agencies at Headquarters facilities and field locations to upgrade and/or improve the buildings' security measures and emergency preparedness; continued participation in the Emergency Managers Committee to enhance the coordination of emergency preparedness-related activities and events; and providing advice and assistance to FMC activities regarding innovative support services.

G. OFFICE OF OPERATIONS

The Director of Operations, as a 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**
- **Bureau of Trade Analysis**

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

The Office also oversees the Commission's Area Representatives. The Commission maintains offices in Los Angeles, South Florida, New Orleans, New York and Seattle through Area Representatives, who also 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 information 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; and handling informal complaints.

In fiscal year 2006, the Office of Operations worked with other agency units to review Commission rules and regulations regarding business practices in the OTI sector. The Office also worked with BCL to keep the Commission abreast of OTI industry changes and proposed initiatives in that area. Additionally, the Office led the Bureaus and other agency units in reviewing and coordinating compliance and enforcement policy, including taking action against the illegal conduct of household goods movers.

The Office was also heavily involved in developing an agency outreach strategy. Within the Office of Operations, the current outreach effort was augmented in fiscal year 2006. For instance, the Area Representatives continued to focus on bringing unlicensed OTIs into compliance and increased their focus on outreach, particularly in South Florida, where FMC staff addressed several groups, from large conferences to groups of small OTIs. On the West Coast, Area Representatives focused on service contract regulation compliance and equipment substitution problems. On the West Coast, and in New York and Miami, Area Representatives coordinated the publication of print public service announcements aimed at small shippers warning against the use of unlicensed OTIs. During fiscal year 2006, the public service announcement project was expanded in South Florida and in New York to include publications aimed at shippers in the Brazilian and Dominican communities, respectively. These efforts have resulted in both an increase in inquiries on OTI status and a decrease in complaint activity in certain areas.

The Office of Operation's key objectives for fiscal year 2007 include increasing agency outreach and raising public awareness of agency regulations and services. In particular, the Office will focus on reviewing agency policies and regulations to ensure alignment between the FMC and the industry, automating certain processes, and refining integration of the three agency bureaus it oversees.

H. BUREAU OF CERTIFICATION AND LICENSING

1. In 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 and the Office of Passenger Vessels and Information Processing. The former reviews and approves applications for OTI licenses, and maintains and updates records about licensees. The latter reviews applications for certificates of financial responsibility with respect to passenger vessels, manages all activities with respect to evidence of financial responsibility for OTIs and passenger vessel

owner/operators, and develops and maintains all Bureau databases and records of OTI applicants and licensees.

2. Licensing of Ocean Transportation Intermediaries

OTIs are transportation middlemen for oceanborne cargo moving in the U.S.-foreign trades. There are two types: NVOCCs and ocean freight forwarders. Both NVOCCs and ocean freight forwarders must be licensed by the Commission if they are located in the U.S. NVOCCs doing business in the U.S. foreign trades but located outside the U.S. (“foreign NVOCCs”) may choose to become licensed, but are not required to do so. Whether licensed or not, foreign NVOCCs must establish financial responsibility. All NVOCCs must publish electronic tariffs.

To become licensed by the Commission, 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 of coverage is required for each unincorporated U.S. branch office of a licensee. Furthermore, unlicensed foreign NVOCCs must maintain \$150,000 in coverage. The financial instrument must be available to pay claims against the OTI arising from its transportation-related activities, any order of reparation assessed under the Shipping Act and any judgments for damages against an OTI arising from its transportation-related activities under the Shipping Act.

During fiscal year 2006, the Commission received 420 new OTI applications and 227 amended applications, issued 512 OTI licenses, revoked 278 licenses, and reissued approximately 65 licenses. At the end of the fiscal year, 1,157 ocean freight forwarders, 1,561 U.S. NVOCCs, 1,119 joint NVOCC/ocean freight forwarders, and 40 foreign NVOCCs held active OTI licenses. An additional 888 foreign NVOCCs maintained proof of financial responsibility on file with the Commission, but chose not to be licensed. U.S. NVOCCs may file riders to their existing NVOCC bonds to meet financial responsibility requirements imposed by the Chinese government. The Commission received 11 riders providing optional proof of financial responsibility for carriers serving in the

U.S./China trade.

During fiscal year 2006, Bureau staff continued to work with other Commission components to examine the Commission's rules, policies, and procedures regarding OTIs. Areas of focus included: review of the requirements for OTI license applicants; streamlining the application process; posting timely and easier-to-locate information about OTIs on the Commission's website; and initiating a review of requirements to support electronic filing of OTI bond information. During this period, the Bureau also made significant progress in the development of an automated Form FMC-18, *Application for an Ocean Transportation Intermediary License*. Testing of an automated FMC-18 filing system is being conducted internally by BCL prior to release.

3. Passenger Vessel Certification

The Commission administers 46 U.S.C. §§ 44102-44103, 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 197 vessels and 47 operators, which have evidence of financial responsibility coverage in excess of \$339 million for nonperformance and over \$666 million for casualty. The certificates issued pursuant to this program are necessary for U.S. Customs and Border Protection's clearance of thousands of passenger vessel sailings annually. During fiscal year 2006, the Commission received applications for 50 certificates (casualty and performance), while 24 casualty and 29 performance certificates were approved and issued.

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

The cruise industry continues to grow and is becoming characterized by innovative, feature-full ships, international ports-of-call and convenient departures from embarkation cities. The volume of cruise passengers reached an all-time high of nearly 11 million passengers during

fiscal year 2006. New cruise operators continue to enter the industry, and existing cruise lines continue to build and purchase additional vessels. The annual delivery of new vessels has also decreased due to their dramatically increased size. Additionally, the acquisition of niche-market cruise lines changes the industry's environment.

Cruise lines are developing new and creative ways of establishing their required financial responsibility. 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. During fiscal year 2006, Glacier Bay Cruise Lines, CQ Rivers Cruises LLC d/b/a Great American Journeys, and Delphin Cruises ceased operation or left the U.S. trade. Also, the Ambassadors Cruise Group acquired the vessels of American West Steamboat Co. and Delta Queen Steamboat Company and subsequently formed the Majestic American River Line.

During fiscal year 2006, the Bureau commenced an On-Site Monitoring Program that evaluates PVO financial responsibility under 46 U.S.C. § 44103. This program is responsive to congressional concern for the practices of PVOs generally with respect to protecting passengers' advance deposits for transportation. The Bureau's PVO monitoring program ensures that operators provide accurate and timely information required to be submitted, and that evidence of adequate financial coverage has been provided.

4. Automated Database Systems

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

In conjunction with the OIT, BCL has initiated a new project to modernize the Regulated Persons Index. A primary function of the Bureau is the maintenance of up-to-date records of licensed OTIs. The Bureau continues to post on the Commission's website a list of OTIs which are licensed, bonded and have provided their tariff location, if

required, so that the public can ascertain whether an OTI has met FMC requirements. The OTI list, which is updated weekly, also indicates whether an NVOCC has filed an optional rider for additional proof of NVOCC financial responsibility for the Chinese trade.

5. Future Plans

In fiscal year 2007, the Bureau will: initiate a rulemaking to release its automated FMC-18 filing system for public use; continue its efforts to improve the electronic FMC-18 system to expedite licensing; to further explore integration of FMC databases; to develop the functionality for electronic payments and E-signature capability; and to support electronic filing of bond information. In addition, it will seek to improve compliance by VOCCs and OTIs with the Shipping Act and to reduce the number of transportation users currently impacted by action of unlawful operators by enhancing the OTI outreach program and promoting awareness of OTI requirements. The Bureau will continue its efforts to assure that the Commission's PVO programs meet the current needs of the cruising public by further review of the PVO monitoring procedures and appropriate and timely adjustment of staff procedures and monitoring schedules. Finally, it will continue work on a PVO financial responsibility rulemaking.

I. BUREAU OF ENFORCEMENT

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

Through investigative personnel, and most often as the result of information provided by the industry and other government entities, the Bureau monitors and participates in investigations into the activities of Commission-regulated entities, such as VOCCs, OTIs, shippers, ports and terminals, and other persons, to ensure compliance with the statutes and regulations administered by the Commission. Monitoring activities include: service contract and NSA reviews to determine compliance with applicable statutes and regulations; reviews and audits of ocean common carriers, NVOCC and ocean freight forwarder operations, including compliance with licensing, tariff, and bonding requirements; audits of passenger vessel operators to ensure the financial protection of cruise passengers; and various studies and analyses to support Commission programs. Investigations involve alleged violations of the full range of statutes and regulations administered by the Commission, including: illegal or unfiled agreements; abuses of antitrust immunity; unlicensed OTI activity, including servicing of noncompliant OTIs by VOCCs and licensed NVOCCs; illegal rebating; misdescriptions or misdeclarations of cargo; untariffed cargo carriage; unbonded OTI and PVOs, and various types of consumer abuses, including failure of carriers or intermediaries to carry out transportation obligations, resulting in cargo delays or financial losses for shippers. The Bureau adheres to the agency's objectives of

obtaining statutory compliance, ensuring equitable trading conditions, and focusing enforcement efforts on activities having 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. Other Bureau investigations may be resolved through compliance measures. Bureau attorneys represent the Commission in formal Commission proceedings that may result 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 2006, the Bureau of Enforcement investigated and prosecuted possible violations in many trade lanes, including the transpacific, North Atlantic, North and West African, Central and South American and Caribbean. The Bureau also initiated actions to address market-distorting activities such as rebates and absorptions, misdescriptions of commodities and misdeclarations of measurements, illegal equipment substitution, unlawful use of service contracts, as well as carriage of cargo by and for untariffed and unbonded NVOCCs and joint carrier activities outside the authority of agreements or pursuant to unfiled agreements. Emphasis was placed on industry service contracting activities to ensure fair trading conditions and protection of the public. Most of these investigations resulted in compromise settlements of civil penalties or were treated as compliance matters and closed without action. However, certain investigations of NVOCCs and ocean common carriers have required the institution of formal adjudicatory proceedings in order to pursue remedies under the Shipping Act.

In addition to malpractice activity, several matters arose with respect to activities pursuant to filed and unfiled agreements between and among ocean common carriers. A major enforcement action was continued into the operations of unlicensed and unbonded NVOCCs specializing in the carriage of used household goods, and was expanded to include licensed OTIs providing service to the unlicensed. Also, an investigation into an exclusive arrangement among passenger/passenger vehicle carriers in the Portland/Nova Scotia trade was completed with termination of the agreement.

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

In fiscal year 2006, 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 2006, nine audits were pending. During the fiscal year, 53 audits were commenced, 60 audits were completed, and two were pending in the Bureau on September 30, 2006.

At the beginning of fiscal year 2006, 27 enforcement cases were pending final resolution by the Bureau, the Bureau was party to four formal proceedings, and there were 71 matters pending which the Bureau was monitoring or for which it was providing legal advice. During the fiscal year, 21 new enforcement actions were commenced; 14 were compromised and settled, administratively closed, or referred for formal proceedings, while 34 enforcement cases were pending resolution at fiscal year's end. Also, three formal proceedings were completed, and five were pending at the end of the fiscal year. Additionally, 53 matters involving monitoring or legal advice were received during the fiscal year, 57 such matters were completed, and 67 were pending in the Bureau on September 30, 2006.

In fiscal year 2007, the Bureau will continue to pursue market-distorting, fraudulent, and anticompetitive practices not in compliance with the statutes and regulations administered by the Commission, including the operations of licensed and unlicensed OTIs and possible non-compliance by the parties with the regulatory requirements for service contracts and NSAs.

J. BUREAU OF TRADE ANALYSIS

1. In General

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

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

published by such entities.

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

2. Agreement Filings and Review

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

In fiscal year 2006, the Bureau received 284 agreement filings, an increase of one from the previous year. The Bureau analyzed and processed 292 agreement filings during the year. Statistics on agreement filings for fiscal year 2006 are contained in Appendix C.

(a) Ocean Common Carrier Agreements

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

(1) Pricing Agreements

Conference agreements provide for the collective discussion, agreement, and establishment of ocean freight rates and practices by groups of ocean common carriers. Conferences publish a common rate tariff in which all the member lines participate. No new conference agreements have been filed since 2000. During fiscal year 2006, the Bureau received 17 modifications to existing conference agreements and analyzed 18. The majority of the modifications were membership changes.

Three conferences were terminated during the fiscal year: the *Asia North America Eastbound Rate Agreement*, the *United States South Europe Conference*, and the *New Caribbean Service Rate Agreement*. In addition, a fourth conference, the *Turkey/United States Rate Agreement* expired by its own terms.

Rate discussion agreements (“RDAs”) also focus on rate matters, but unlike conferences, any consensus reached under RDAs is non-binding on the parties. RDAs do not have common rate tariffs; each party publishes its own tariff. These agreements have become the primary pricing forum in most U.S. trade lanes. During fiscal year 2006, the Bureau received and processed one new RDA and 42 modifications to existing RDAs.

Two rate discussion agreements were terminated during the fiscal year: the *Maersk Sealand/P&O Nedlloyd Agreement* and the *Indamex Agreement*.

(2) Non-pricing Agreements

Non-rate discussion agreements (“NRDAs”) provide ocean common carriers with a forum for discussing matters of mutual interest other than rates. During the fiscal year, the Bureau received and processed one new NRDA and seven modifications to existing NRDAs. The new NRDA authorizes its participants to exchange information related to credit.

Under joint service agreements (“JSAs”), two or more carriers operate a joint venture under a single name in a specified trading area. The JSA issues its own bills of lading, sets its own rates, and acts as an individual ocean common carrier. One JSA and two modifications to existing JSAs were received and processed during the fiscal year. One JSA, the *Star West Joint Service Agreement*, was terminated during the fiscal year.

Vessel-sharing agreements (“VSAs”) make up the largest group of agreements on file with the Commission. Most VSAs authorize some level of service cooperation while limiting individual operating costs. VSAs range from alliance agreements, which involve considerable operational cooperation, to slot charter agreements, which require only minimal cooperation. During fiscal year 2006, the Bureau received 45 new VSAs, representing 86 percent of all new carrier agreements filed during the year, and 79 modifications to existing VSAs. Forty VSAs were terminated, and 15 expired by their own terms.

Cooperative working agreement (“CWA”) is the designation applied to non-pricing agreements that tend to deal with unique operational considerations relating to acquisitions, joint service contracting, sharing of administrative services, or internet portal management. Other agreements filed with the Commission in small numbers include agency, sailing, transshipment, and equipment interchange (including chassis pooling) agreements. During fiscal year 2006, the Bureau received and processed two new CWAs, a new chassis pool agreement, and a new sailing agreement. Seven modifications to existing CWAs were also filed in fiscal year 2006.

(b) Marine Terminal Operator Agreements

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

During fiscal year 2006, the Bureau received 21 MTO agreement filings. Four new MTO discussion agreements, a new MTO lease, and a new MTO CWA were also filed. One MTO lease agreement was determined to be not subject to the Commission's jurisdiction and was withdrawn. The other 14 filings were modifications to existing MTO agreements. Three MTO lease agreements were terminated or withdrawn, two MTO conferences were terminated, and two MTO CWAs were terminated during the fiscal year.

One example of new filings is the *Bi-State Public Marine Terminal Discussion Agreement*, filed in December 2005 by the Georgia Ports Authority and the South Carolina State Ports Authority. This MTO agreement authorizes the parties to discuss terminal rates, charges, rules, conditions of service, terminal congestion, and methods for relieving terminal congestion. Another example is the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*, filed in June 2006, which permits the Port of Los Angeles and the Port of Long Beach to discuss, consult, and agree on the establishment and implementation of programs and strategies to improve port-related transportation infrastructure and to decrease port-related air pollution emissions.

3. Monitoring and Economic Analysis

The systematic monitoring of common carrier activities and commercial conditions in the U.S. foreign trades is an integral part of the Commission's responsibilities under the Shipping Act. Such monitoring helps ensure that such carriers comply with the statutory standards of the Shipping Act and the requirements of relevant Commission regulations. To that end, the Bureau 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 monitoring activities is a direct consequence of the removal, under the Shipping Act, of the Commission's previous discretion to disapprove agreements, as well as the exhortations of OSRA's drafters that the Commission thoroughly

scrutinize the competitive impacts of filed agreements. The Shipping Act provides that, unless rejected under relevant statutory authority, agreements filed with the Commission shall become effective on the 45th day after filing or the 30th 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 activity under agreements has increased considerably. The Commission's monitoring program examines 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.

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.

Major projects begun or completed by the Bureau in fiscal year 2006 included: a review of the *West Coast Marine Terminal Operators Agreement* ("WCMTOA") PierPASS program at the ports of Los Angeles and Long Beach; an econometric assessment of the competitive impact of a recently imposed cap on disbursements from an agreement's revenue sharing pool; an analysis of conditions in the U.S./Bermuda trade and the competitive impact of the *Bermuda Discussion Agreement*; an economic evaluation of approaches to providing financial protection for American cruise passengers; an analysis of the pricing activities of controlled carriers in the import trade from Northeast Asia to the U.S. using selected

major commodities moving between key port pairs; a descriptive study of service contracting activity and contract terms and conditions using a random sample of service contracts covering the period of July 1, 2005 through June 20, 2006; an exploration of how the SERVCON and ACE/ITDS systems, when used in combination, may be integrated into the Commission's monitoring of carrier activities and commercial conditions in U.S. liner markets; and the design and successful implementation of a user-friendly interface that provides staff access to the Commission's extensive PIERS dataset in order to more effectively analyze the economic impact of filed agreements, monitor trade conditions or agreement activities, and respond to shipper complaints and congressional requests for trade analyses and data.

4. Tariffs

The Shipping Act requires common carriers and conferences to publish their tariffs electronically. These electronic tariffs contain rates, charges, rules, and practices of common carriers operating in the U.S. foreign commerce. The Bureau monitors the public accessibility of the private tariff systems and reviews published tariff material for compliance with the requirements of the Shipping Act. The Bureau also determines whether to grant applications for special permission to deviate from tariff publishing rules and regulations. During fiscal year 2006, the Bureau received and processed 13 special permission applications.

The Bureau also collaborates with other Commission bureaus and offices 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 common carriers, conferences and MTOs. The data on this form identifies the location of common carrier tariffs, including common carrier and conference service contract essential terms publications or any MTO schedules. At the end of fiscal year 2006, a total of 3,942 tariff location addresses were posted on the Commission's website. Of that number, 3,438 tariff addresses were for NVOCCs.

5. Service Contracts

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

During fiscal year 2006, the Commission received 46,682 new service contracts, compared to 47,648 in fiscal year 2005, and 252,566 amendments, compared to 231,508 in fiscal year 2005. The number of new service contract filings decreased nearly two percent, and amendment filings increased nearly nine percent over fiscal year 2005. During the fiscal year, 2,162 records involving corrected transmission copies were filed into SERVCON. Original service contract or NSA filings that contained errors due to clerical errors can be corrected within two business days by filing a “corrected transmission” copy into SERVCON.

6. NVOCC Service Arrangements

In fiscal year 2005, the Commission issued a Final Rule to exempt NVOCCs from the tariff publication requirements of the Shipping Act, subject to certain conditions. Commission rules now allow NVOCCs to offer transportation services pursuant to an individually negotiated, confidential service arrangement rather than under a published tariff. The Commission’s rules implementing NSAs, 46 CFR Part 531, *NVOCC Service Arrangements*, became effective on January 19, 2005.

At the end of fiscal year 2006, there were 424 NVOCCs registered with the Commission to file NSAs, of which 403 designated a tariff publishing agent to file NSAs on their behalf and 21 named a person or persons within their company to file. During fiscal year 2006, approximately 557 NSAs and 448 amendments were filed by 59 NVOCCs. Since January 2005, there have been 678 NSAs and 502 amendments filed by 71 NVOCCs.

7. Controlled Carriers

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

On May 5, 2005, the Commission published its most recently updated list of controlled carriers in the *Federal Register* to supersede the list published on June 9, 2003. The Commission's staff monitors U.S. and foreign trade press to ensure accurate identification of controlled carriers, and to detect early indications of any unjust or unreasonable controlled carrier activity that might require Commission action.

8. Marine Terminal Activities

Pursuant to OSRA, an MTO may make available to the public, subject to section 10(d) of the Shipping 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 251 MTOs have filed Form FMC-1. At the close of fiscal year 2006, of these, 171 have published their terminal schedules. The internet addresses for these MTO terminal schedules were posted on the Commission's website.

9. Automated Database Systems

The Bureau currently maintains and uses the following automated databases and filing systems: (1) Form FMC-1 System; (2) Tariff Profile System; (3) SERVCON, the system for filing service contracts (as well as internal databases related to Form FMC-83 System for registration to file service contracts and Form FMC-78 to file NSAs); and (4) the Agreement Profile Database. The Agreement Profile Database contains information on all effective agreements on file with the Commission.

During fiscal year 2006, the Form FMC-1 System reflected the tariff location addresses of 323 VOCCs, 3,438 NVOCCs, ten conferences, and 171 MTOs. The FMC-1 System also allows the Commission to quickly track the status of any Form FMC-1 submitted.

Information in the Tariff Profile System is used to review and analyze carrier tariffs and service contract and NSA essential terms publications to ensure compliance with Commission rules and regulations.

SERVCON contains service contract and NSA data, most of which is only available to the Commission's staff due to 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 SERVCON system was upgraded in fiscal year 2006 to include major performance enhancements for faster retrieval and greater reliability of service contract and NSA data.

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 and the Bureau's monitoring efforts. Through specially tailored reports, certain database information is also available to the general public.

10. Future Plans

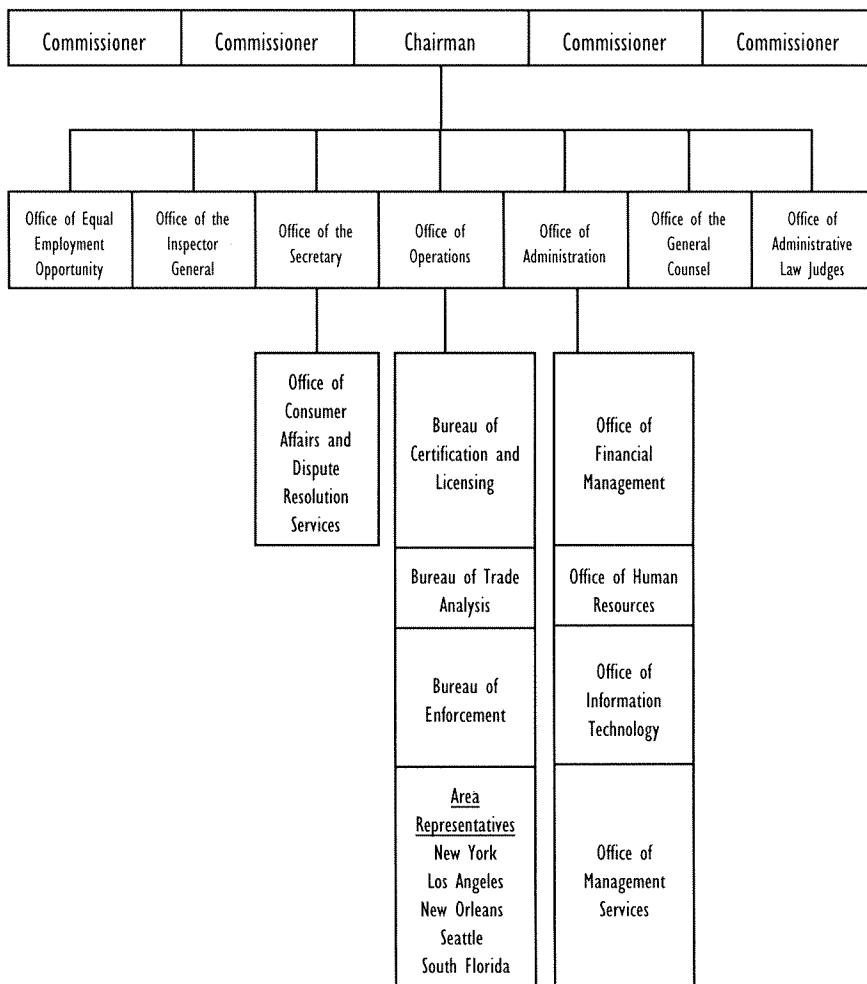
During fiscal year 2007, the Bureau intends to research the activities of some of the newer MTO and VOCC agreements, such as PierPASS, the *Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement*, and various chassis pool agreements, to determine their impact and effectiveness and to identify any concerns of affected parties. The Bureau will also strive for initial or upgraded automation of several of its data collection processes, including SERVCON filings, NSA and service contract registration forms, carrier and MTO agreements, agreement minutes and required reports.

The Bureau will review service contract and NSA filings; assess compliance with tariff publication requirements; monitor the activities of common carrier and MTO agreements; assist other bureaus by providing relevant information and analysis; and implement a variety of industry research projects covering issues likely to affect the commercial and regulatory environment for liner shipping in U.S. foreign trades, including in-depth inquiries into carrier behavior in specific trade lanes.

APPENDICES

APPENDIX A

FEDERAL MARITIME COMMISSION ORGANIZATION CHART Fiscal Year 2006



APPENDIX B

COMMISSION PROCEEDINGS

Fiscal Year 2006

Formal Proceedings

Discontinuances, Dismissals and Settlements 7

Informal Dockets 3

APPENDIX C

AGREEMENT FILINGS AND STATUS Fiscal Year 2006

Agreements Filed in FY 2006 (including modifications)

Carrier	263
Terminal	21
Total	284

Agreement Processing Categories in FY 2006

Forty-Five Day Review	56
Shortened Review	10
Exempt-Effective Upon Filing	223
Rejection of Filing	0
Formal Extension of Review Period	2
Not Subject	1
Withdrawals	0
Total	292

Carrier Reports Submitted for Commission Review

Minutes of Meetings	886
Ad Hoc Reports	24
Monitoring Reports	117
Total	1,027

Agreements on File as of September 30, 2006

Conference	8
Rate Discussion	29
Non-Rate Discussion.	8
Joint Service	7
Vessel-Sharing	148
Cooperative Working and Other	19
Terminal	280
Total	499

APPENDIX D

FORM FMC-1 TARIFF LOCATION ADDRESSES - ELECTRONIC SERVICE CONTRACT AND NSA FILINGS AND SPECIAL PERMISSION APPLICATIONS Fiscal Year 2006

Form FMC-1 Filings

VOCCs	323
OTI/NVOCCs	3,438
MTOs	251
Conferences	10

Electronic Service Contract Documents

New Service Contracts	46,682
Service Contract Amendments	252,566

NVOCC Service Arrangement (“NSA”) Documents

New NSAs	557
NSA Amendments	448

Special Permission Applications

Granted	10
Denied	2
Withdrawn	1

APPENDIX E

CIVIL PENALTIES COLLECTED Fiscal Year 2006

American First International	\$25,000.00
Interglobo Morra, NA	110,000.00
Norton Line, Inc.	25,000.00
Sea-Land Service, Inc.	820,000.00
Sobe Enterprise, Inc.	20,000.00
Star Freight Solutions, Inc.....	22,000.00
Willy Express Shipping, Inc.	<u>20,000.00</u>
Total Civil Penalties Collected	\$1,042,000.00

APPENDIX F

STATEMENT OF APPROPRIATIONS, OBLIGATIONS AND RECEIPTS FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2006

APPROPRIATIONS:

Public Law 109-115, 109th 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, \$20,499,000: Provided, that not to exceed \$2,000 shall be available for official reception and representation expenses.

\$20,499,000

Public Law 109-148, 109th Congress
Government Wide Rescissions, 2006

- 204,990

Revised Appropriation

\$20,294,010

OBLIGATIONS AND UNOBLIGATED BALANCE:

Net obligations for salaries and expenses for the fiscal year ended September 30, 2006.

\$20,289,373

STATEMENT OF RECEIPTS: Deposited with the General Fund of the Treasury for the Fiscal Year Ended September 30, 2006:

Publications and reproductions,
Fees and Vessel Certification,
and Freight Forwarder Applications

\$ 553,530

Fines and penalties

\$1,042,000

Total general fund receipts

\$1,595,530

