40 CFR Parts 60 and 61

[FRL-3544-6]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On December 6, 1988, the Florida Department of Environmental Regulation (FDER) requested delegation of authority for the implementation and enforcement for various new and/or revised standards in 40 CFR Part 60 (Standards of Performance for New Stationary Sources (NSPS)) and 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP)). On January 20 and March 2, 1989, these standards were delegated to Florida.

DATES: The effective dates of delegation are January 20 and March 2, 1989.

ADDRESS: Copies of the request for delegation of authority and EPA's letters of delegation may be examined during normal business hours at the Agency's regional office, 345 Courtland St., NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to Mr. Steve Smallwood, P.E., Director, Division of Air Resources Management/FDER, Twin Towers Office Bldg., 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: R. Douglas Neeley of the EPA Region IV Air Programs Branch at the above address and telephone number 404-347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS. The state may enforce an NSPS under State law and in state court, not under section 113(b) of the CAA in Federal Court.

On December 6, 1988, the FDER requested delegation of authority of NSPS for the following:

40 CFR Part 60 Subpart	Latest EPA promulgation	FDER rule
D—Fossil Fuel Fired Steam Generators for Which Construction is Commenced after August 17, 1971.	Nov. 26, 1986, 51 FR 42841	17-2.660
Da—Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	Nov. 26, 1986, 51 FR 42842	17-2.660
Db—Industrial-Commercial-Institutional Steam Generating Units.	Nov. 26, 1986, 51 FR 42841	17-2.660
J—Petroleum Refineries	Nov. 26, 1986, 51 FR 42842	17-2.660
K—Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and Prior to May 19, 1978.	Apr. 8, 1987, 52 FR 11429	17-2.660
Ka—Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	Apr. 8, 1987, 52 FR 11429	17-2.600
Kb—Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	Apr. 8, 1987, 52 FR 11429	17-2.660
Na—Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	Jan. 2, 1986, 51 FR 161	17-2.660
HH—Lime Manufacturing Plants.	Feb. 17, 1987, 52 FR 4773	17-2.660
TT—Metal Coil Surface Coating.	Jan. 24, 1986, 51 FR 22938	17-2.660

Section 112(d)(1) of the CAA also authorizes EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 61, NESHAP. The state may enforce a NESHAP under State law and in State Court, not under section 113(b) of the CAA in Federal Court.

On December 6, 1988, the FDER requested delegation of authority for NESHAP for the following:

40 CFR Part 61 Subpart	Latest EPA promulgation	FDER rule
E—Mercury	Mar. 19, 1987, 52 FR 8726	17-2.670
F—Vinyl Chloride	Sept. 30, 1986, 41 FR 34908	17-2.670
N—Inorganic Arsenic Emissions from Glass Manufacturing Plants.	Oct. 3, 1986, 51 FR 35355	17-2.670
O—Inorganic Arsenic Emissions from Primary Copper Smelters.	Aug. 4, 1986, 51 FR 28029	17-2.670
P—Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	Oct. 3, 1986, 51 FR 35355	17-2.670
V—Equipment Leaks (Fugitive Emission Sources).	Sept. 30, 1986, 51 FR 34915	17-2.670

After thorough review of the request, the Regional Administrator determined that such delegation was appropriate with all the conditions set forth in the initial delegation letter of June 10, 1982.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

Authority: Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Date: March 17, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 89-7314 Filed 3-27-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-19

[FPMR Amendment D-88]

Uniform Federal Accessibility Standards

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This document amends the Uniform Federal Accessibility Standards which establish standards for access to publicly owned and leased buildings by physically handicapped people. This document is not a change in policy or interpretation, but a technical amendment concerning signage.

EFFECTIVE DATE: March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Steve McCormick, Office of Real Property Development, Public Buildings Service, General Services Administration, Room 3329, 18th and F Streets NW., Washington, DC 20405, telephone (202) 566–0989. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The General Services Administration published and adopted the Uniform Federal Accessibility Standards on August 7, 1984 (49 FR 31528, 49 FR 31620 and 49 FR 31625). The standards were amended on November 29, 1985 (50 FR 49039 and 50 FR 49045).

The signage section, § 4.30 in the Uniform Federal Accessibility Standards (UFAS) adopted as Appendix A in 24 CFR Part 40 and in 41 CFR 101–19.6, states that all signs required to be accessible by § 4.1 Minimum Requirements shall comply with § 4.30. Section 4.30.4 requires that signs be tactile by either raised or indented characters. It was never the intent of UFAS that all signs be tactile. Neither the ANSI A117.1–1980, on which UFAS was based, nor the new ANSI A117.1–1986, requires that all signs be tactile. It was intended that the UFAS would require all signs to comply with the requirements in § 4.30.2, Character proportion, § 4.30.3, Color contrast, and should also comply with § 4.30.5, Symbols of accessibility, when accessible features are provided.

Section 4.1.1(7) should have included specific scoping provisions for § 4.30, Signage, rather than requiring that all signs comply with § 4.30. This is supported by the way in which § 4.1.2(15) is written, which indicates that the provisions of §§ 4.30.4 and 4.30.6 apply only to certain signs; thus, signs not specifically cited in § 4.1.1(7) or § 4.1.2(15) were not required to be tactile.

Section 4.1.2(15) should have specified scoping provisions for § 4.30, Signage, rather than requiring that all signs comply with § 4.30.

In addition, a conforming change is needed in § 4.30.4 to delete the words "indented" and "incised" where they appear so that § 4.30.4 conforms with the language in §§ 4.10.5 and 4.10.12, which language does not provide for indented or incised letters for elevator hoistway entrance floor designations and car control panels. (The inclusion of the word "indented" in § 4.30.4 was a drafting error in the original UFAS.)

The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–19

Federal buildings and facilities, Government property management, Handicapped.

Accordingly, Title 41 CFR Part 101–19 is amended as set forth below:

1. The authority citation for 41 CFR Part 101–19 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. In 41 CFR Subpart 101–19.6, Appendix A is amended as follows:

1. Section 4.1.1(7) is revised to read as follows:

4.1.1 Accessible Sites and Exterior Facilities:

* * * * *

(7) All signs shall comply with §§ 4.30.1, 4.30.2, and 4.30.3. Elements and spaces of accessible facilities which shall comply with § 4.30.5 and shall be identified by the International Symbol of Accessibility are:

(a) Parking spaces designated as reserved for physically handicapped persons;

(b) passenger loading zones;

(c) accessible entrances;

(d) accessible toilet and bathing facilities.

2. Section 4.1.2(15) is revised to read as follows: The Exception remains unchanged and is not published here.

4.1.2 Accessible Buildings: New Construction.

* * * * *

(15) If signs are provided, they shall comply with §§ 4.30.1, 4.30.2 and 4.30.3. In addition, permanent signage that identifies rooms and spaces shall also comply with §§ 4.30.4 and 4.30.6.

* * * * *

3. Section 4.30.1 is revised to read as follows:

4.30.1 * General. Signage shall comply with § 4.30 as specified in § 4.1.

* * * * *

4. Section 4.30.4 is revised as follows:

4.30.4 * Raised Characters or Symbols. Letters and numbers on signs shall be raised 1/32 in (0.8 mm) minimum and shall be sans serif characters. Raised characters or symbols shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). Symbols or pictographs on signs shall be raised 1/32 in (0.8 mm) minimum.

Dated: October 3, 1988.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89–7351 Filed 3–27–89; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF TRANSPORTATION

46 CFR Parts 30, 98, 151, and 153

[CGD 81–101]

RIN 2115–AA73

Pollution Rules for Ships Carrying Hazardous Liquids

AGENCY: Coast Guard, DOT.

ACTION: Adoption of interim rule.

SUMMARY: The Coast Guard is making some changes to its regulations that implement Annex II of the 1978 Protocol to the International Convention for the Prevention of Pollution of Ships, 1973 (MARPOL 73/78). An interim rule was published on August 1, 1988 to correct some errors and discrepancies between the regulations and Annex II of MARPOL 73/78. This document adopts without change the interim rule.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas J. Felleisen, Office of Marine Safety, Security, and Environmental Protection, Telephone (202) 267–1217 from 8:30 a.m. to 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: An interim rule with request for comments was published in the **Federal Register** (53 FR 28970), with an effective date of August 31, 1988. The interim rule invited comments for 45 days. The comment period ended on September 15, 1988. Two comments were received from industry organizations which are addressed below.

Drafting Information

The principal persons involved in drafting this document are Mr. Thomas J. Felleisen, Office of Marine Safety, Security, and Environmental Protection, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion of Comments

The Coast Guard received two comments. The first was from an offshore operators association. The second was from a liquid terminal operators association.

1. One comment requested that low toxicity drilling muds and potassium or sodium chloride drilling brines be listed as not being noxious liquid substances (NLS's) in accordance with International

Maritime Organization guidelines. However, the scope of the interim rule did not include making additions to the substances listed in the tables which it amended. This change has been considered and is proposed in a Notice of Proposed Rulemaking (CGD 88–100) published in the December 5, 1988 **Federal Register** (53 FR 49018).

2. The other comment expressed concern about how the Coast Guard intends to list noxious liquid substances covered by Annex II of MARPOL 73/78. It recommended that the Coast Guard continue to list Annex II substances in Table 1 of Part 153, and requested that it not be combined with Table 30.25–1. Table 1 will continue to list Annex II substances subject to 46 CFR Part 153. It will not be combined with Table 30.25–1. As amended, Table 30.25–1 identifies whether cargoes listed are oils and, if subject to Annex II, the pollution category. The changes to Table 30.25–1 are informational and make the regulations easier to use.

Final Regulatory Evaluation

These regulations are not considered to be major under Executive Order 12291 nor significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). Since this document adopts the interim rule without change, and that document did not affect the arguments and conclusions in the Regulatory Evaluation for the final rule published in the March 12, 1987 **Federal Register** (52 CFR 7765), no further Regulatory Evaluation had to be made.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the adoption of the interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 USC 601), a Regulatory Flexibility Analysis which discusses the impact of the rule on small entities was contained in the Final Regulatory Analysis for the final rule. The corrections and changes in the interim rule do not materially affect that Regulatory Flexibility Analysis. The Coast Guard certifies that this adoption of the interim rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This adoption of the interim rule contains no new information collection or recordkeeping requirements.

Environmental Impact

The Coast Guard considered the environmental impact of these amendments for the interim rule and concluded that preparation of an impact statement was not necessary since the corrections and changes did not affect the environmental consequences of the final rule. Because no further changes are made by this adoption, that conclusion did not need to be reevaluated.

RIN Number

A regulatory information number is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous Materials Transportation, Penalties, Reporting and recordkeeping, Seamen.

46 CFR Part 98

Cargo vessels, Hazardous Materials Transportation, Marine Safety.

46 CFR Part 151

Cargo vessels, Hazardous Materials Transportation, Marine Safety, Reporting and recordkeeping requirements.

46 CFR Part 153

Cargo vessels, Hazardous Materials Transportation, Marine Safety, Reporting and recordkeeping requirements.

Affirmation of Interim Final Rule

In consideration of the preceding, the interim rule published in the **Federal Register** at 53 FR 28970–28976 on August 1, 1988 amending 46 CFR Parts 30, 98, 151, and 153 is hereby adopted as final without change.

Date: March 23, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–7367 Filed 3–27–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87–6]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission issues a Final Rule in Docket No. 87–6 finding unfavorable conditions to exist in the United States/Peru trade which arise from certain laws and decrees of the Government of Peru. Further, in order to meet or adjust the unfavorable conditions found, the Commission assesses fees for each voyage made by certain Peruvian-flag carriers after the effective date of the Final Rule. However, because of economic and political conditions present in Peru, the Commission has elected to suspend application of the rule's sanctions at this time.

EFFECTIVE DATE: March 28, 1989. Sections 586.2 and 586.3 are suspended March 28, 1989.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876(1)(b), as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission" or "FMC") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are set forth at 46 CFR 585.3. Among these are conditions which: (1) Preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national-flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in

the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors, 46 CFR 585.3 (a), (b) and (d).

Background

In March 1986, the Commission received communications from shippers and shipper organizations expressing concern over the impact of Supreme Decree No. 009–86–TCl [1] (Decree 009–86), which became effective on February 28, 1986, and which reserved 100 percent of all imported and exported ocean freight generated by Peru's foreign trade for Peruvian-flag carriers. The FMC began its inquiry into this matter by publishing a Notice in the **Federal Register** on April 22, 1986 (51 FR 15069) ("April 1986 Notice"), wherein the Commission requested interested persons to submit views, arguments or data relating to the impact of the Government of Peru's ("GOP") enactment, implementation and enforcement of Decree 009–86 on the United States/Peru oceanborne trade ("Trade"), to determine whether action pursuant to section 19 was warranted.

The amount of cargo reserved by Decree 009–86 for Peruvian-flag carriers could be reduced as follows: (1) On the basis of strict reciprocity; [2] (2) pursuant to government or commercial agreement [3] among non-Peruvian and Peruvian/flag carriers, preferably including Compania Peruana de Vapores ("CPV"), the Peruvian state shipping line; or (3) when the Peruvian Director General of Maritime Transportation or Peruvian Consuls grant non-Peruvian-flag or non-associate carriers authorization to carry Peruvian export or import cargoes. Authorization for the use of non-Peruvian-flag or non-associate carriers may be granted in the form of a waiver or cargo manifest certification when Peruvian-flag or associate carriers are not available and in position within 12 days [4] following the proposed date of shipment of non-perishable products, or within 4 days in the case of perishable products, or when no Peruvian-flag carrier serves the relevant port.

Prior to the closing date for comments to the April 1986 Notice, the Commission received through the Department of State, a diplomatic note from the GOP requesting a six-month extension of the period allowed for submitting comments, along with guarantees from the GOP that there would be no interruption of services or disruption in the Trade and the procedures for better services would be expedited. Before acting on the GOP's request for a six-month extension the Commission sought clarification from the GOP regarding the status of U.S. and third-flag operations in the Trade, and the effect on those carriers of the guarantees referred to by the GOP. In August 1986, the Department of State transmitted a communique from the GOP in which it provided certain assurances regarding implementation of Decree 009–86 and clarified points made in its diplomatic note.

In its communique, the GOP assured that its regulations would allow third-flag carriers to operate in the Trade in accordance with established rules, and that over the six-month period it would not levy any fines on third-flag carriers operating in the Trade for noncompliance with Decree 009–86. Further, the GOP informed the Commission that the Government of Chile had on August 7, 1986, implemented Resolution No. 2 which excluded Peruvian-flag carriers from operating in certain Chile/third-country trades including the Chile/United States trade.[5]

On August 27, 1986, the Commission issued a Notice in the **Federal Register** (51 FR 30543) ("August 1986 Notice"), stating the following:

> By removing the threat of penalties for noncompliance with the waiver and cargo manifest certification requirements, the communique from the Government of Peru is taken by the Commission to mean, in effect, that shippers will be allowed to select the carrier of their choice and all carriers, including U.S. and third-flag, will have free and open access to the U.S./Peru trade. Based on this understanding, the Commission is hereby serving notice that it will defer any action pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, with respect to the implementation of the February Decree, for a period of six months from the date of publication of this Notice in the Federal Register provided the assurances given in the Peruvian communique transmitted to the Commission on August 19, 1986, are observed.

Further, the Commission's August 1986 Notice advised that it did not see a need for extending the comment period, as requested by the GOP, but noted that it would expect interested parties to advise the Commission promptly if they believe that conditions in the Trade warrant further Commission action.

Subsequent to the issuance of the August 1986 Notice, as well as after the six-month period had expired in February 1987, the Commission received communications from the Department of State, GOP, shippers, shipper organizations, freight forwarders and carriers. A number of the comments indicated that the GOP waiver system under Decree 009–86 did not allow shippers to select their preferred carriers and that the six-month deferral period failed to reopen the Trade to all non-Peruvian-flag carriers.

On the basis of all the information received the Commission published a Notice of Proposed Rulemaking in the **Federal Register** on April 13, 1987 ("Proposed Rule") (52 FR 11832), to address apparent conditions unfavorable to shipping in the Trade pursuant to Section 19. The Proposed Rule, which initiated this docketed proceeding, recognized the appearance of unfavorable conditions in the Trade, and proposed the suspension of tariffs of Peruvian-flag carriers unless such carriers within 25 days of the issuance of a final rule obtained authorized status by filing with the Commission a certificate from the GOP stating unequivocally that no law, regulation or practice precludes any non-Peruvian-flag vessel from competing in the Trade on the same basis as any other vessel. Comments on the Proposed Rule were requested.

Subsequent to issuance of the Proposed Rule, regulations ("Regulations") [6] were issued by the GOP pursuant to a Memorandum of Understanding ("MOU") signed by the United States Government ("USG") and the GOP on May 1, 1987. These Regulations set forth new requirements and procedures that shipping lines operating third-flag vessels must observe in order to obtain authorizations from the GOP Ministry of Transportation and Communications to participate in the Trade. The GOP advised through the Department of State, that the "authorization" system

[1] Decree 009–86 amended Supreme Decree No. 036–82–TC ("Decree 036–82"), effective September 1982. Decree 036–82 reserves Peruvian import and export cargoes for Peruvian-flag vessels and sets out waiver and cargo manifest certification requirements for non-Peruvian-flag carriers. The exact percentage of cargo reserved for Peruvian-flag carriers is not specified in Decree 036–82. Another decree states that 50 percent of Peruvian import and export cargo is reserved for Peruvian-flag carriers.

[2] E.g., U.S. carriers' access to Peruvian cargoes would be proportional to Peruvian carriers' access to U.S. cargoes.

[3] Non-Peruvian-flag carriers which become parties to such commercial agreements may be granted associate status upon approval by the GOP. Associate carriers are generally excepted from cargo manifest certification and waiver requirements under Decree Nos. 009–86 and 036–82.

[4] Supreme Decree No. 033–86–TC of June 11, 1986, modified Decree 009–86 by reducing the number of days a shipment must wait for a Peruvian-flag or associate carrier from 15 days to 12 days.

[5] On September 26, 1986, it was reported by the Department of State that the Government of Chile had implemented Resolution No. 2 because of the GOP's decision to apply Decree 009–86 to Chilean carriers. The Department further explained that on September 15, 1986, the GOP issued Ministerial Resolution No. 044–86–TC/AC ("Resolution 044–86"), which excluded Chilean-flag vessels from transporting cargo in certain Peru/third-country trades because of the Government of Chile's refusal to lift Resolution No. 2.

[6] These Regulations were contained in Ministerial Resolution No. 027–87–TC/AC ("Resolution").

under the Regulations totally replaced the existing "waiver" system for granting third-flag carriers access to the Trade.

Based on all the information received the Commission issued a Final Rule on December 7, 1987 ("December 1987 Final Rule") (52 FR 46356). In issuing its Final Rule the Commission explained that while it recognized the good faith efforts made by the USG and GOP to address the situation in the Trade through diplomatic means, the resultant Regulations which implement the MOU did not satisfactorily resolve that situation. The Commission stated that, in fact, the Regulations, in effect, would continue in place the very types of restrictions and impediments which prompted this proceeding in the first instance. Although third-flag carriers were no longer required to obtain "waivers" for individual shipments, they were to obtain "authorizations" to participate in the Trade. The Commission found this authorization process as inconsistent with free access to the Trade as was the waiver system it replaced. In this regard, the Commission also added that it was unknown whether Chilean-flag carriers would be granted authorizations and allowed to operate in the Trade, particularly in light of the existence of Peruvian Resolution 044–86 which excluded Chilean-flag carriers from certain Peru/third-country trades.

Finally, the Commission advised that it could not accept as a satisfactory resolution of this matter an accommodation which would permit the GOP to deny authorization to a third-flag operator in the Trade if the country of nationality of that operator bars participation to Peruvian flag carriers in any of its third-country trades. The Commission explained that to accept the proposition that the GOP can settle disputes with foreign nations by imposing burdens on U.S. commerce, in effect would allow the GOP to hold the U.S.-Peru trade hostage to obtaining concessions elsewhere.

Thus, the December 1987 Final Rule suspended the tariffs of the Peruvian-flag carriers operating in the Trade, with the exception of Naviera Amazonica Peruana, S.A. ("NAPSA"),[7] unless such carriers obtain authorized status from the Commission.[8] The suspension of these tariffs was to become effective March 7, 1988.

On February 4, 1988, the "Peruvian carriers", *i.e.*, CPV, Naviera Neptuno, S.A. ("Neptuno") and Empresa Naviera Santa ("Santa"), filed a Petition for Reconsideration ("Petition") requesting that the FMC reconsider its December 1987 Final Rule or stay its effective date on grounds that it was basically directed at Decree 009–86 of February 28, 1986, which had been rescinded by GOP Supreme Decree No. 004–88–TC ("Decree 004–88") of January 22, 1988.[9] They submitted that the Regulations which implemented the MOU also had been rescinded.[10] Further, the Peruvian carriers advised that while Decree 009–86 reserved 100 percent of all Peruvian import and export cargoes, Decree 004–88 reestablishes legislation in existence between 1970 and 1986 which reserves 50 percent of Peruvian cargoes to Peruvian-flag or associate carriers.[11]

Subsequently, the Commission issued its Notice of Reconsideration of Final Rule on March 8, 1988 (53 FR 7361) ("March 1988 Notice"). In that Notice the Commission discussed the GOP initiatives, noting that some action was necessary to recognize the changed status of the issues brought about by the GOP's action and, as a technical legal matter, because the rescission of Decree 009–86 and Resolution 044–86 appeared to have undermined the basis cited in the December 1987 Final Rule for the Commission's findings of conditions unfavorable to shipping in the Trade. The Commission withdrew the December 1987 Final Rule for reconsideration and again invited interested parties to comment. However, the Commission also pointed out that rescission alone may not resolve the unfavorable conditions which the December 1987 Final Rule addressed, and the Commission stated that, if the system remains discriminatory in the absence of Decree 009–86, it would be prepared to act to reinstate the December 1987 Final Rule on the basis of new findings that conditions unfavorable to shipping continue to exist.

Subsequent to the issuance of the Commission's March 1988 Notice, three agreements were filed with the Commission between Peruvian- and Chilean-flag carriers.[12] Pursuant to these agreements, the Chilean-flag carriers were granted associate status by the GOP and thereby given access to the Trade.

Based on comments received in response to its March 1988 Notice, the Commission announced on June 7, 1988 (53 FR 20847), that this proceeding would be held in abeyance and invited further comments and information from interested parties by August 31, 1988. The Commission, noting that all but one party had suggested that the Commission either terminate the proceeding or hold it in abeyance, elected then to give the parties time to assess the impact of certain actions taken by the GOP and the then recently-filed agreements entered into by Chilean- and Peruvian-flag carriers.

On October 6, 1988, the Commission issued a Notice of Further Proceedings (53 FR 39317) and invited interested parties to file replies to comments received on August 31, 1988, from Nedlloyd Lines ("Nedlloyd") alleging the continued existence of conditions unfavorable to shipping in the Trade affecting shippers as well as carriers. In particular, the Commission invited comments in reply to Nedlloyd's contentions that the Trade continues to be burdened by requirements that are discriminatory, result in uneconomic commercial circumvention, or adversely affect shippers' choice of carriers, as well as comments on the alternative remedial rule proposed by Nedlloyd.[13]

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[7] Under the Final Rule, NAPSA's tariff, FMC No. 3, covering the U.S./Iquitos, Peru trade, would not be suspended because the Commission found this subtrade distinguishable from the Trade generally, and, therefore, entitled to different treatment. The Final Rule noted that the Commission did not receive any complaints regarding this subtrade Further, it stated that there is no alternative to NAPSA s service in this subtrade. (*See* Docket No. 87–6, 52 FR 46362, December 7, 1987).

[8] The Final Rule states that authorized status shall be conferred upon a Peruvian-flag carrier upon that carrier's submitting to the Commission a certificate from the GOP stating unequivocally that no law, regulation or policy of the GOP will:

(i) Preclude any non-Peruvian-flag carrier from competing in the Trade on the same basis as any other carrier;

(ii) Result in less than meaningful and competitive access by any non-Peruvian-flag carrier, to cargo designated as reserved under Supreme Decree No. 009–86–TC; and

(iii) Impose any administrative burden, including but not limited to, the necessity to secure an authorization based on the national status of the carrier, or otherwise discriminate against any non-Peruvian-flag carrier in the Trade.

[9] Decree 004–88 was published in the Peruvian Official Gazette, "El Peruano," on January 25, 1988.

[10] In addition, Resolution No. 044–86 which excluded Chilean-flag carriers from certain Peru/third-country trades had been rescinded.

[11] The pre-1986 legal regime is based primarily on Decree 036–82.

[12] These agreements are: Agreement No. 212–011180 between Neptuno and CSAV, filed March 16, 1988, effective April 30, 1988; Agreement No. 212–011186, as amended by Agreement No. 212–011186.001, between Santa and Empresa Maritima de Estado, filed March 29, 1988, effective May 13, 1988; and Agreement No. 212–011189 between CPV and Compania Chilena de Navegacion Interoceanica, S.A., filed April 12, 1988, effective May 27, 1988.

[13] Nedlloyd's alternative proposed rule included sanctions which would require Peruvian-flag carriers to obtain waivers from the FMC for the carriage of cargo in the Trade, and to file periodic reports with the Commission.

Comments have now been received from the Executive Agencies; [14] Nedlloyd; Shippers for Competitive Ocean Transportation ("SCOT"); CPV, Neptuno, and Santa—jointly ("Peruvian carriers"); Compania Sud Americana de Vapores ("CSAV"); Lykes Bros. Steamship Co. ("Lykes"); American Chamber of Commerce of Peru ("Chamber"); and Georgetown Steel Corporation ("GSC"). These comments are summarized below.

Summary of Comments

A. Executive Agencies

The Executive Agencies state that although GOP maritime policies differ sharply from those of the United States, significant progress has been made in removing barriers to participation in the Trade by third-flag non-associate carriers. They, therefore, recommend that the Commission not impose sanctions on Peruvian-flag carriers.

The recommendation made by the Executive Agencies is based on responses from the GOP to questions posed by the Executive Agencies regarding access of foreign-flag non-associate carriers to the Trade. The Executive Agencies report that the following information was obtained from the GOP:

(1) The GOP waiver requirement for use of a foreign-flag non-associate carrier only applies to the 50 percent of the cargo that is reserved;

(2) Non-associate third-flag vessels may transport cargoes of exporters/importers which have already shipped 50 percent of their cargoes on Peruvian or associate-flag carriers, with the stipulation that these cases be accredited by the Transportation Ministry's Office of Water Transport ("Ministry");

(3) According to Ministerial Resolution No. 054–82–TC/AC ("Resolution 054–82"), a shipper must report quarterly to the Ministry on its maritime transport of cargoes;

(4) Once an exporter/importer has shipped 50 percent of its projected quarterly cargo on Peruvian or associate-flag vessels, it may submit sworn information to this effect to the Ministry and is then accredited by the Ministry to use any carrier it wishes with no further authorization;

(5) The Ministry issues an accreditation by telex saying that the exporter/importer is free to ship on any carrier it desires for the remainder of that calendar quarter with no further authorization from the Ministry;

(6) Information regarding the waiver process has been disseminated to users; and

(7) No rate quotations from potential providers of maritime services are necessary for obtaining waivers.

B. Nedlloyd

Nedlloyd contends that unfavorable conditions to shipping continue to exist in the Trade. It reports that its extensive efforts to resolve the question of its access to the Trade have been inconclusive. Nedlloyd believes that only the threat of sanctions by the FMC will have any impact on reducing impediments to access in the Trade.

Nedlloyd alleges that with the exception of foreign-flag carriers with associate status, non-Peruvian-flag carriers cannot carry any Peruvian cargo absent some action by the GOP. The GOP actions mentioned by Nedlloyd include GOP authorizations, waivers, certifications or accreditations. Nedlloyd asserts that given these requirements, it is "rank sophistry" to argue that there is no reason for concern because only 50 percent of the cargo in the Trade is reserved. Further, there is allegedly no direct mechanism for a *carrier* to gain access to the "free" 50 percent of the cargoes; *shippers* can gain access only by obtaining a GOP accreditation.

Nedlloyd contends that the only factual inquiry concerns the mechanics of how a shipper is granted permission by the GOP to employ non-Peruvian-flag carriers. Nedlloyd maintains that no matter how "onerous or perfunctory" the mechanics may be, it has not found a shipper that is willing to confront these mechanics. The GOP is said to control access to 100 percent of the Trade and that as a result, Nedlloyd is totally excluded from the Trade. Further, Nedlloyd believes that the current GOP reservation system is more onerous than the regulations drafted pursuant to the U.S./GOP Memorandum of Understanding that the Commission previously rejected.

Nedlloyd describes its operational experience in the Trade since August 31, 1988. It reports that it has not obtained any cargo in the Trade. This situation is contrasted with that of a previous new entrant, Santa, a Peruvian-flag carrier, which shortly after entering the Trade allegedly acquired a 25 percent market share. Nedlloyd explains that its lack of cargo is due to the laws which favor use of Peruvian-flag carriers.

While allegedly difficult to document, Nedlloyd finds credible reports of potential customers indicating that the GOP waiver and authorization requirements make it impossible for them to do business with Nedlloyd in the Trade. Further, Nedlloyd states that there are indications that the Peruvian cargo reservation laws are having an adverse impact on its ability to carry cargo in the United States/Chile trade.[15]

Nedlloyd reports that in October 1988, during its third mission to Peru, representatives met with affected Peruvian carriers to discuss barriers to entry.[16] Nedlloyd recounts that during that meeting it expressed willingness to enter into an agreement with the Peruvian carriers in order to obtain associate status as long as such agreement does not require it to set rates collectively and share revenues. It reports that the reaction of the Peruvian carriers was that Nedlloyd and other third-flag carriers would present a considerable competitive threat to them and that third-flag carrier access either should not be granted under any circumstances, or that Nedlloyd should be permitted access only if it compensated or contributed to the Peruvian carriers for the economic harm that its participation might cause. The Commission is further advised that after Nedlloyd discussed the adverse impact of the GOP waiver system, the Peruvian carriers stated that the waiver system was the method by which third-flag carrier access can be limited and that the waiver system should not be reviewed by the GOP unless Nedlloyd withdraws from the FMC proceeding. Nedlloyd expressed concern that should it withdraw from the proceeding, parties may no longer have incentive to negotiate. Nedlloyd concludes that the meeting did not resolve its access problem and notes that it has not received any further communication from the GOP or Peruvian carriers.

Based on its allegations regarding conditions in the Trade, Nedlloyd comments on the appropriateness of the Final Rule with modifications. Nedlloyd asserts that given the extensive comment period that the Commission has provided, it sees no procedural bar to immediate implementation of the Final Rule or related modifications based on subsequent events. It would not, however, disfavor reasonable modifications of sanctions to achieve more precise symmetry of conditions in the Trade than might be achieved under

[14] The U.S. Department of Transportation submitted comments on behalf of the Executive Agencies.

[15] This assertion is elaborated on in the affidavit attached to Nedlloyd's comments.

[16] Nedlloyd attaches to its comments a summary of the views expressed at this meeting. The attached affidavit also recounts the content of the meeting.¶

its August 31, 1988 proposed modifications. Further, Nedlloyd states that it would not object to SCOT's proposal that sanctions once promulgated, be delayed in order to permit the GOP or Peruvian carriers to remcve restrictions in the Trade.

Nedlloyd also addresses the November 9, 1988 comments filed by the Executive Agencies. It believes that the optimistic view of the Executive Agencies that sanctions are unnecessary due to the fact that significant progress has been made in liberalizing the Trade, destroys any hope for GOP actions to remove restrictions or for Nedlloyd to reach a commercial settlement. Nedlloyd asserts that the answers provided by the GOP to the Executive Agencies do not reasonably lead to the conclusion drawn by the Executive Agencies. Allegedly, the "off-book" nature of the GOP requirements creates the "chilling effect" previously found to exist by the Commission. Nedlloyd maintains that in contrast with the Executive Agencies' conclusion and recommendation, shippers are intimidated by the waiver system and 100 percent of all U.S. maritime cargo in the Trade requires some GOP action before there can be free carrier selection.

C. SCOT

SCOT takes the position that conditions in the Trade will remain unfavorab1e as long as the GOP requires a waiver/visa for every U.S. shipment on a non-associate third-flag vessel. The rescission of Decree 009–86 allegedly did not resolve the basic issues. SCOT states that there is evidence that the waiver/visa system is being imposed on shipments from all United States coasts to Peru. It asserts that implementation of this system has more than a "chilling" effect on the use of non-associate third-flag vessels. SCOT maintains that in the complex scheduling environment within which shippers must operate, it is very difficult for a shipper to gamble on a carrier which may be denied the right to lift cargo at any moment. The ultimate effect of imposition of the waiver/visa system is said to deny third-flag carrier access to all cargo in the Trade except for an occasional spot movement. Further, SCOT maintains that it is not practical for a shipper and a non-associate carrier to enter into a service contract since the carrier may be denied the right to carry cargo in the Trade by the GOP. It, therefore, concludes that conditions are unfavorable to U.S. shipper interests represented by SCOT.

SCOT explains that in its August 31, 1988 comments to the Commission, it intended to convey that, to its knowledge, the commerce of the United States is not immediately suffering, and if good faith negotiations between the United States and GOP show promise of a real resolution of the problems, a short delay in Commission action could be tolerated by U.S. shippers. SCOT notes, however, that third-flag carriers may not be able to tolerate such a delay.

SCOT believes that Nedlloyd has presented convincing evidence that it is being denied access to the Trade unless it enters into an agreement with Peruvian-flag carriers which would enable it to obtain associate status under terms dictated by the GOP. Commenting on Nedlloyd's proposed, modified final rule, SCOT states that it does not support the approach suggested by Nedlloyd because of the absence of details on how the rule would be implemented, the Commission's ability to implement it, and the apparent increase in the role of government to enforce such a rule.

SCOT states that it sees no evidence that conditions unfavorable to shipping in the Trade have been removed and supports action necessary to remove such conditions. SCOT submits that it does not object to imposition of an FMC final rule if such action appears essential. It suggests that another approach between immediate implementation of a final rule and an indefinite delay would be for the Commission to issue a final rule which describes sanctions which will be imposed at a specified time unless the unfavorable conditions to shipping are removed.

D. Peruvian Carriers

The Peruvian carriers take the position that there is no evidence of unfavorable conditions in the Trade. They contend that the GOP's cargo reservation system is "a justified and reasonable accommodation of the interests of shippers and carriers in the Trade and the national interest of Peru in maintaining its merchant fleet."

In justifying the GOP's reservation policies, the Peruvian carriers argue that small trades such as Peru's require control and rationalization of service to ensure the survival of small carriers and maintain stable, competitive service. They maintain that the GOP exercises a reasonable amount of control in the Trade. They contend, however, that even with such control, there is excess capacity in the Trade and the level of trade is declining.

Further, the Peruvian carriers contend that the GOP's 50 percent cargo reservation is less restrictive than the United Nations Code of Conduct for Liner Conferences' ("Code") 40–40–20 cargo sharing formula. They maintain that, while the U.S. has not accepted the Code, GOP laws are in accordance with generally accepted international practice. The Commission's Section 19 rules at 46 CFR 585.3(d), are said to recognize that discriminatory treatment of carriers is justified under generally accepted international agreements or practices. Comparisons are also drawn between GOP and U.S. cargo reservation laws.

The Peruvian carriers insist that the purpose of the Merchant Marine Act, 1920 "is to promote U.S. shipping interests, primarily the U.S. merchant fleet" and submit that Section 19 authorizes the Commission to take remedial action only when foreign laws or practices adversely affect U.S. shipping interests.

The Peruvian carriers provide a summary of the GOP's cargo reservation laws. They argue that Decree 036–82 does not "effectively" reserve 100 percent of import and export cargoes for Peruvian-flag vessels, as Nedlloyd contends, but rather reserves only 50 percent of the cargo leaving the remaining 50 percent free to be carried on any vessel. The Peruvian carriers state that Decree 036–82 in conjunction with Resolution 054–82 establish a system by which non-Peruvian or non-associate third-flag vessels could be used to carry reserved cargo. They explain that Resolution 05482 makes it clear that waivers or visas are required for shipments of reserved cargoes on non-associate-flag vessels and are not required for shipments of unreserved cargoes. The Peruvian carriers describe the system by which a shipper, once having shipped 50 percent of its cargo during a quarter of a year on Peruvian or associate-flag vessels, may use non-associate-flag vessels.[17]

The Peruvian carriers state that Nedlloyd's assertions are based on a misunderstanding of the GOP laws and are unsupported by the facts. The fact that Nedlloyd did not obtain Peruvian cargo on its first two voyages allegedly does not lead to the conclusion that the GOP laws are the reason. The Peruvian carriers argue that Nedlloyd's failure to obtain cargo was a result of start-up problems, "ineffective marketing or the chilling effect of its own marketing."[18]

[17] The system described by the Peruvian carriers tracks the description set forth in the Executive Agencies' comments.

[18] The Peruvian carriers advise that Nedlloyd's advertisements state that its service in the Trade is subject to GOP cargo reservation laws. Nedlloyd's failure to explain these restrictions in its advertisements allegedly could deter shippers from using Nedlloyd's services.

They believe that if Nedlloyd's marketing efforts included informing shippers of the procedure for employing it for the transportation of unreserved cargo, Nedlloyd could be more successful in obtaining cargo in the Trade.

The Peruvian carriers contend that conditions in the Trade are favorable and that Nedlloyd does not present any evidence to the contrary. Shippers in the Trade are said to have a wide range of service options at competitive rates and, therefore, there is allegedly no basis for the Commission to find that shippers' choices are unreasonably restricted merely because those choices do not include Nedlloyd or other third-flag carriers in every instance.[19] The Peruvian carriers submit that the complaints that originally formed the basis for these proceedings have been satisfied and, as a result, conclude that issuance of a rule imposing restrictions against Peruvian-flag carriers would be arbitrary and capricious and might result in severe disruption in the Trade.

The Peruvian carriers believe that Nedlloyd's alternate rule is not a mirror image of the GOP's cargo reservation laws and would create unfavorable conditions where none previously existed. They submit that the GOP cargo reservation laws limit access of third-flag carriers and not U.S.-flag carriers to the Trade. Further, they note that Nedlloyd's rule would shut Peruvian-flag carriers out of the total Trade unless a waiver is granted. This, it is argued, contrasts with the GOP action which restricts only 50 percent of the Trade.

E. CSAV

CSAV, a Chilean-flag carrier, asserts that Nedlloyd's suggested rule would be harmful to the shipping public and to third-flag carriers now serving the Trade. It explains that the suggested rule would harm third-flag carriers that are only able to serve the Trade through commercial agreements that they have entered into with Peruvian-flag carriers. In particular, CSAV points to that portion of the suggested rule which would prohibit cargo carriage by or impose penalties on other third-flag carriers for operating under their agreements with Peruvian-flag carriers.

[19] The Peruvian carriers state that it is their understanding that Great Lakes Transcaribbean Lines ("GLTL"), a third-flag carrier in the Trade, has been granted associated status by the GOP. GLTL, generally a commenter in these proceedings, did not submit comments to the Commission's Notice of Further Proceedings.

CSAV contends that the effective result of this provision would be to require CSAV either "(1) to cease serving the Trade because it could not lawfully load cargo under its agreement with Neptuno; (2) to violate its agreement to Neptuno by declining to carry cargo for Neptuno; or (3) to violate the Commission Rule if it complies with its agreement with Neptuno." CSAV, therefore, concludes that Nedlloyd is requesting the FMC to impose the burden and cost of its entry into the Trade on innocent third-flag carriers.

CSAV asserts that it would be particularly unjust for it to be prevented from operating under commercial agreements filed at the behest of the Executive Agencies. It, therefore, requests that the Commission not issue any rule that would force CSAV to suspend its operation under the Neptuno-CSAV Agreement.

F. Lykes

Lykes advises that conditions in the Trade have not adversely affected its services. It contends that service available in the Trade clearly provides substantial, if not excessive, shipping opportunities. Lykes states that based on its experience, it is not aware of any conditions unfavorable to shipping in the Trade.

With regard to Nedlloyd's suggested alternative rule, Lykes states that it does not believe that the rule would adversely affect its operations in the Trade. However, Lykes fears that any sanctions imposed by the Commission would result in retaliatory actions by the GOP which would be detrimental to both U.S.-flag carriers and the Trade in general. It maintains that Commission action which detrimentally affects U.S.-flag carriers would appear inconsistent with the intent and purpose of Section 19 and the Merchant Marine Act, 1920.

Lykes believes that the instant proceeding should be dismissed given the fact that the situation in the Trade has changed and those parties previously complaining are no longer doing so. It suggests that, if Nedlloyd desires, a new proceeding based on the issues raised by Nedlloyd could be instituted.

G. Chamber

The Chamber states that despite Nedlloyd's comments, its members continue to indicate that available services are satisfactory and that the GOP continues to apply its waiver system in as flexible a manner as possible in the Trade. It notes that Nedlloyd's August 31, 1988 comments do not state whether Nedlloyd had been able to obtain a waiver from the GOP for any particular shipment. The Chamber states that, based on its understanding, the GOP had not received waiver applications from shippers or users on behalf of Nedlloyd.

The Chamber concludes that it sees no justification for Commission action based on a situation that is satisfactory to its members and the progress already made as a result of the FMC proceeding. It, therefore, recommends that the proceeding be terminated.

H. GSC

GSC transmitted a letter to the Commission Chairman along with a copy of a letter to the Honorable Robin Tallon of the U.S. House of Representatives. GSC states that the GOP has told it that it can use foreign-flag vessels in 1989 with no problems. GSC further reports that the GOP has granted waivers to it whenever necessary. As an example, GSC notes that it used an Ecuadorian-flag vessel in 1988 to ship cargo from Peru to the U.S.

GSC concludes that it sees no justification for imposing restrictions against Peruvian-flag carriers and that any differences of opinions should be worked out between the parties concerned.

Discussion

Nedlloyd's contentions that the Trade continues to be burdened by requirements that are discriminatory, result in uneconomic commercial circumvention, and adversely affect shippers' choice of carriers, as well as its suggested alternative remedial rule, brought comments in reply from many of the parties who have previously participated in this proceeding. While most of these comments were simply consistent with the views earlier expressed in this proceeding by those same parties, a few shed additional light on the present conditions.

The Peruvian carriers once again argue that no evidence of conditions unfavorable to shipping has been presented, and that the GOP cargo reservation system is necessary and rational for the protection of GOP interests in the Trade. Lykes too argues that its service has not been adversely affected, and that no conditions unfavorable to shipping have been shown to exist in the Trade. Other parties similarly urging the Commission to conclude the proceeding without further action, stating that their interests in the Trade are being adequately

served, include the Chamber and GSC. The only Chilean-flag carrier to file comments in this round, CSAV, does not describe conditions in the Trade or their effects on its present service, but directs its concern to the sanctions proposed by Nedlloyd, urging the Commission not to take action against Peruvian-flag carriers which would affect its own status and service.

The Executive Agencies, based on information provided by the GOP regarding carrier access to the Trade, indicate that the present system appears to include significant progress in removing barriers to third-flag participation. While the rescission of Decree 009–86 and the re-entry of the Chilean-flag carriers as associate carriers in the Trade give the appearance at least of such progress, the continued reservation of a substantial proportion of both U.S. and Peruvian-origin cargo, and the implementation of the cargo reservation system belie that progress.

The means by which carriers and shippers may determine when and if they may deal together, as described by the GOP to the Executive Agencies, leave us greatly troubled. Thus, for at least some substantial part of each calendar quarter, a third-flag, non-associate carrier wishing to participate in the Trade must rely upon cargo from shippers willing and able to obtain waivers from the GOP for specific shipments, until shippers desiring to use its service have shipped half their cargo for the quarter on Peruvian-flag or associate carriers *and* have submitted documentation and obtained GOP accreditation of that fact. Only then can such a carrier and willing shipper freely do business together. These flag-based procedures do not appear to us to differ greatly in kind or burdensomeness from the original waiver system, or the short-lived authorization system, which formed the basis for the concerns we have expressed repeatedly in this proceeding.

The latest comments of affected shippers and carriers indicate not only that the direct effects of the GOP decrees are still being felt, but that the more subtle, indirect effects—the "chilling effect" described by Nedlloyd and SCOT—are taking their toll. Thus, as SCOT points out, the requirement that a shipper fulfill its obligation to ship half its cargo for each calendar quarter on Peruvian-flag or associate carriers prior to being able to obtain from the GOP documentary confirmation that it is free to use any carrier for its remaining cargo for the calendar quarter, effectively precludes shippers from seeking service contracts with non-associate carriers. The fact that service contracts are viable only with Peruvian-flag and associate carriers reinforces the reluctance of shippers to undertake the additional risks and procedures that accompany third-flag, non-associate service. These flag-based burdens make for uneconomic decision-making on the part of shippers which distorts the Trade.

We therefore conclude that the conditions unfavorable to shipping which the Commission found in the December 1987 Final Rule continue to exist. Although the specific GOP enactments which brought into being the unfavorable conditions the Commission sought to deal with in the December 1987 Final Rule have been repealed, they have been replaced by, or have reinstated by default, a cargo reservation system which continues to have an onerous and detrimental impact on shipping in the Trade. The fundamental basis for the December 1987 Final Rule and the final rule herein-issued is the same: the injurious effects on carriers, shippers and the Trade generally which result from laws, decrees and regulations of the GOP that impose burdens on non-Peruvian-flag carriers which are not experienced by Peruvian-flag carriers. These burdens are among the conditions described as unfavorable to shipping in the Commission's Section 19 rules at 46 CFR 585.3. We are convinced that Trade access by non-Peruvian-flag carriers and the concomitant ability of shippers to freely exercise their best commercial judgment in choosing a carrier in the Trade have not materially improved, despite the numerous changes in the amount of cargo putatively affected and the form of the burdens imposed, *e.g.*, waivers, authorizations, certifications.

The Commission's March 1987 Proposed Rule and its December 1987 Final Rule would have suspended the tariffs of the Peruvian-flag carriers. Almost all of the parties who subsequently commented in this proceeding, including Nedlloyd, expressed a desire to avoid disruption of the Trade.

In its comments filed in August 1988, Nedlloyd proposed alternative sanctions which would have required Peruvian-flag carriers to obtain waivers from the FMC for the carriage of cargo, and to file periodic reports with the Commission. Nedlloyd's purpose in proposing these sanctions was to construct a "mirror image" of the burdens imposed by the GOP decrees and to avoid the disruption of service in the Trade which would follow if the Commission suspended the tariffs of certain Peruvian-flag carriers, as earlier prescribed.

Comments filed in response to Nedlloyd's proposal pointed out that the alternative sanctions would burden not only the Peruvian-flag carriers but shippers and the FMC as well. While the Commission has in the past, whenever possible, sought to meet conditions unfavorable to shipping in the U.S. trades by mirroring the burdens imposed, we must agree with these commenters. The sanctions proposed by Nedlloyd, moreover, would require resources exceeding those available to the Commission.

Section 10002 of the Foreign Shipping Practices Act of 1988 ("1988 Act"), 102 Stat. 1570, Pub. L. 100–418, authorizes the Commission to assess fees of up to $1 million per voyage in proceedings conducted under section 19.[20] Based on the evident agreement among commenters that tariff suspension would unduly disrupt the Trade, and the impracticability of the alternative suggested by Nedlloyd, the Commission has elected to substitute a system of per voyage fees in the final rule as a means of meeting or countervailing the effects of the GOP cargo reservation system presently in effect under Decree 036–82.

The Commission notes the concern expressed by CSAV that the Chilean-flag carriers—the erstwhile victims of GOP cargo reservation under Decree 009–86—now operating in the Trade as associate carriers pursuant to agreements with Peruvian-flag carriers, not be victimized by the imposition of sanctions on the Peruvian-flag carriers. In order to avoid this possible result, the Commission has directed in the Final Rule that the fees assessed shall be paid by Peruvian-flag carriers from their own revenues, without affecting the revenue shares of non-Peruvian-flag carriers participating in joint operations

[20] The Foreign Shipping Practices Act, § 10002(e)(1) authorizes the Commission to take "such action as it considers necessary and appropriate" against a foreign carrier who has been found, or whose government has been found, to have created conditions which adversely affect the operations of United States carriers and do not exist for such foreign carriers in their operations in the United States, and states that such actions may include, among others enumerated, "a fee, not to exceed $1,000,000 per voyage". Section 10002(h) of the 1988 Act provides that the actions against foreign carriers authorized in subsection (e) may be used in the administration and enforcement of Section 19. Thus, the 1988 Act sets forth examples of actions which the Commission may take in proceedings under that Act or under Section 19, but neither limits the Commission to the actions enumerated or establishes standards for Commission determination of what constitutes "necessary and appropriate" action. These matters continue to be left to the Commission's discretion.

pursuant to agreements on file with the Commission.

We believe the level of the fees assessed herein would provide a means of adjusting the unfavorable conditions found but would also avoid serious disruption to the Trade generally. Therefore, in order to redress the detrimental competitive effects of the decrees and regulations of the GOP, the Commission herein assesses fees to be paid by the Peruvian-flag carriers—the chief beneficiaries of the GOP decrees—in connection with each voyage made by or on behalf of such a carrier in the Trade.

Although the Commission believes this action is justified under section 19 to meet or adjust the conditions described above, particularly given the passage of more than three years since these conditions were first brought to our attention, we also recognize that this Commission does not operate in a vacuum. As our general rules make clear, proceedings under section 19 necessarily touch upon, and are not themselves immune to, the concerns of U.S. foreign policy assigned by statute to other government entities. *See e.g.*, 46 CFR 585.8 and 585.13.

News articles recently appearing in a number of publications have made us aware that the shipping and foreign oceanborne trade with which we are concerned may also be affected by other events in Peru. Therefore, at the Commission's request, the Office of Andean Affairs of the Department of State ("Department" or "DOS") provided a briefing on current economic and political conditions in Peru. The briefing touched on the economic policies of the GOP, including its policies concerning foreign debt, and the effects of inflation; the role of the Peruvian military, particularly with respect to control of the guerilla insurgency; the outlook for Presidential elections which will next occur in May, 1990; and U.S. foreign policy with respect to Peru.

The Department brought to the Commission's attention economic and political concerns affecting U.S. foreign policy as well as, in the DOS' view, being likely to affect the Commission's assessment of the efficacy of measures to meet or adjust the conditions unfavorable to shipping found to exist in the U.S./Peru trade. The information provided did not address the merits of the issues directly before the Commission in this proceeding. The DOS did not present views on the existence of conditions unfavorable to shipping or whether particular types of Commission action would be appropriate to meet or adjust such conditions.

Notwithstanding the Commission's conclusion that action pursuant to section 19 is warranted in this proceeding, and its formulation of sanctions to meet or adjust the conditions found, the Commission is not putting those sanctions into effect at least at this time, because of the political and economic environment existing in Peru. As described to us in the DOS briefing, and as appears generally from reports we read in the press, economic and other conditions exist in Peru which threaten the stability of Peruvian institutions and the democratically elected government itself. We are concerned that our action might have undesirable side effects on foreign policy matters, outside of our own statutory focus on shipping, which affect national interests generally that are legitimately of concern to the U.S. Department of State. The detrimental effects of the GOP's cargo reservation decrees presently being experienced by U.S. shipping interests, as described to us by SCOT for example, arise from their exclusionary impact on a non-U.S.-flag and non-U.S.-owned carrier. In addition, these U.S. shippers, whose concerns led to the initiation of this proceeding, are not now advocating the immediate imposition of sanctions in the Trade. Therefore, it appears particularly prudent for us, in balancing the myriad of commercial and national considerations here, to take into account more general U.S. interests in determining the appropriate timing of our action in this proceeding.

Moreover, because of the unsettled internal situation in Peru, the desired financial impact of the Commission's Final Rule might well be lost among the other economic dislocations presently being experienced in that country by Peruvian-flag carriers and the GOP itself. As a result, it is likely that effecting such action at this time would, in any event, not bring about the desired easing of barriers to an open trade.

For reasons set forth above, the Commission is therefore deferring the effectiveness of the sanctions imposed in this proceeding until further notice. The Commission will continue to monitor these matters and will, when appropriate, issue a further order establishing an effective date for the final rule or taking such other action as appears advisable at the time. We will expect the parties who have previously commented in this proceeding, including Nedlloyd and SCOT, as well as the Department of State (whether through its Office of Andean Affairs or its participation in the comments of the Executive Agencies) to assist us by keeping us informed as to the changing state of affairs in Peru. The Commission will consider the request for action of any person but will determine, in its discretion, a propitious time to effectuate the final rule. In the interim we would, of course, continue to encourage the GOP to take whatever action is necessary to remove the unfavorable conditions herein found to exist in order to obviate any need for the Commission to put into effect countervailing remedies.

Final Rule

For the reasons stated above the Commission finds it necessary and appropriate to issue a rule, pursuant to section 19, to adjust or meet conditions described above which it finds unfavorable to shipping in the Trade ("Final Rule"). However, notwithstanding the issuance of the Final Rule at this time, the Commission for reasons also explained above, is deferring its effective date until further notice.

The Final Rule will require the Peruvian-flag carriers operating in the Trade, with the exception of NAPSA which operates only a U.S./Iquitos, Peru service, to pay a fee for each voyage completed in the Trade as a means of countervailing the detrimental conditions imposed on U.S. trade by the practices of the Government of Peru. NAPSA service in the U.S./Iquitos trade is not being subjected to these fees because the Commission has found this subtrade distinguishable from the Trade generally, and therefore entitled to different treatment. The considerations which underlay this determination in connection with the December 1987 Final Rule continue to apply to NAPSA's service in this subtrade.

The Final Rule will require that Peruvian-flag carriers pay to the Commission a fee of $50,000 for each voyage on which cargo is carried on a vessel owned or operated by or on behalf of a Peruvian-flag carrier, or under a Peruvian-flag carrier's bill of lading for service performed by another carrier pursuant to an agreement on file with the Commission. Such fees shall be paid to the Commission within 7 days of the completion of each voyage subject to this Rule. Each Peruvian-flag carrier shall, in addition, file a report with the Commission within 15 days of the end of each calendar quarter certifying that all penalties due have been paid and setting forth the dates of voyages made, amounts of cargo carried, and amounts of fees paid, for the calendar quarter. If

a Peruvian-flag carrier fails to pay the required fees, or to submit the required report and certification, within the prescribed time period, its tariffs on file with the Commission will be suspended 30 days subsequent to the end of the calendar quarter in which the fees or report were due.

List of Subjects in 46 CFR Part 586

Cargo vessels, Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); Section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714; Section 10002 of the Foreign Shipping Practices Act of 1988, Pub. L. No. 100–418; Reorganization Plan No. 7 of 1961, 75 Stat. 840; and 46 CFR Part 585; Part 586 to Title 46 of the Code of Federal Regulations is added to read as follows and §§ 586.2 and 586.3 are suspended.

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES PERU TRADE ("TRADE")

Sec.

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 1714; § 10002 of the Foreign Shipping Practices Act of 1988, Pub. L. No. 100–418; 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

§ 586.1 Conditions unfavorable to shipping in the Trade.

(a) The Federal Maritime Commission has determined that the Government of Peru ("GOP") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(b) GOP law provides that non-Peruvian-flag carriers must become associate carriers or obtain cargo from shippers who have secured waivers for individual shipments or certification of cargo shipped, to operate in the Trade. The enforcement of this system discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

§ 586.2 Peruvian-flag carriers—assessment of fees.

(a) "Voyage" means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this part, the transportation of cargo by water aboard a single vessel inbound or outbound between ports in Peru and ports in the United States under one or more bills of lading issued by or on behalf of the Peruvian-flag carriers named in paragraph (b) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to Agreements on file with the Federal Maritime Commission, under any of the tariffs enumerated in paragraph (d) of this section, shall be deemed to constitute a voyage.

(b) For each voyage completed after the effective date of this part, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $50,000:

Compania Peruana de Vapores ("CPV"); Empresa Naviera Santa, S.A. ("Santa"); Naviera Neptuno, S.A. ("Neptuno"); and Naviera Universal, S.A. ("Uniline").

The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(c) Each Peruvian-flag carrier named in paragraph (b) of this section shall file with the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b) of this section during the preceding calendar quarter. Each such report shall include a certification that all applicable fees assessed pursuant to paragraph (b) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(d) If any Peruvian-flag carrier shall fail to pay any fee assessed by paragraph (b) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (c) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

(1)(i) Compania Peruana de Vapores (CPV)

FMC No. 14—Applicable BETWEEN United States Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.

FMC No. 15—Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.

FMC No. 16—Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

(ii) Empresa Naviera Santa, S.A.

FMC No. 3—Applicable FROM Rail Container Terminals at United States Pacific Coast Ports TO Ports in South America.

FMC No. 5—Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.

FMC No. 7—Applicable BETWEEN United States Atlantic and Gulf Ports and Ports in Peru. -

(iii) Naviera Neptuno, S.A.

FMC No. 5—Applicable BETWEEN United States Pacific Ports AND Peru and Pacific Coast Ports in Chile, Colombia and Ecuador.

(iv) Naviera Universal, S.A. (Uniline)

FMC No. 2—Applicable BETWEEN United States Ports and Points AND Ports and Points in Central America, South America, Mexico, and the Caribbean.

(2) The following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points:

Atlantic & Gulf/West Coast of South America Conference

FMC No. 2—Applicable FROM United States Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

FMC No. 3—Applicable FROM Points in the United States TO Points and Ports in Chile, Peru, and Bolivia moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the United States, moving through United States Atlantic and Gulf Ports of Interchange.

FMC No. 6—Applicable FROM Chilean and Peruvian Ports of Call via the Panama Canal TO Ports of Call on the Atlantic and Gulf Coasts of the United States.

(3) Any other tariff which may be filed by or on beha1f of the carriers listed in paragraph (b) of this section.

(4) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject applicable remedies and penalties provided by law.

§ 586.3 Source of fees.

Any fees assessed by § 586.2 against Peruvian flag carriers operating pursuant to any Agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Peruvian-flag carriers without affecting the revenue shares or amount of revenue earned by non-Peruvian flag carriers operating pursuant to such Agreements.

§ 586.4 Effective Date.

Section 586.1 is effective on March 28, 1989. The date upon which §§ 586.2 and 586.3 shall become effective shall be determined by further order of the Commission amending this Part.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-6989 Filed 3-27-89; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) specified for pollock in the combined Central and Western Regulatory Areas of the Gulf of Alaska will be reached on March 23, 1989. The Secretary of Commerce (Secretary) is prohibiting further retention of pollock in these combined areas from 12:00 noon, Alaska Standard Time (AST), on March 23, 1989 through December 31, 1989.

DATES: This notice is effective from 12:00 noon on March 23, 1989, AST, until midnight, AST, December 31, 1989.

ADDRESS: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-560-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Paragraph 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. TACs for each target groundfish species and species group are specified annually. For 1989, TACs were established for each of the target groundfish species and species groups and apportioned among the regulatory areas and districts.

An overall TAC for pollock equal to 60,000 mt has been specified for the Central and Western Regulatory Areas combined. For purposes of managing pollock, the Secretary adjusted the TAC under authority of § 672.22 of the regulations (see 54 FR 6524, February 13, 1989) such that no more than 6,250 mt of pollock could be harvested in an area called Shelikof Strait. This amount was reached on March 21, 1989, therefore, further retention of pollock was prohibited on that date in the Shelikof Strait area. The balance of the 60,000-mt TAC specified for the combined Central and Western Regulatory Areas is 53,750 mt. This amount will be achieved at 12:00 noon on March 23, 1989. Therefore, pursuant to § 672.20(c)(2), the Secretary is prohibiting further retention of pollock in the Central and Western Regulatory Areas effective 12:00 noon, AST, March 23, 1989. Any catches after that date must be treated as prohibited species and discarded at sea.

Classification: This action is taken under 50 CFR § 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-7346 Filed 3-23-89; 4:05 pm]

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