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FEDERAL MARITIME COMMISSION

46 CFR PART 585

[DOCKET NO. 93-20]

REGULATIONS TO ADJUST OR MEET CONDITIONS
UNFAVORABLE TO SHIPPING IN THE FOREIGN
TRADE OF THE UNITED STATES

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules at 46 CFR Part 585, "Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States." The proposed rule would update the Commission's existing regulations and would reflect amendments to section 19 of the Merchant Marine Act, 1920, which clarified certain Commission authorities, granted the Commission certain information-gathering powers, and extended the range of sanctions available to the Commission in proceedings under that statute.

DATE: Comments due on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESS: Send comments (original and 15 copies) to:

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FOR FURTHER INFORMATION:

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SUPPLEMENTARY INFORMATION:

I. BACKGROUND

Section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 ("Section 19"), authorizes the Federal Maritime Commission ("Commission" or "FMC") to take regulatory action to correct unfavorable shipping conditions in U.S. foreign oceanborne commerce. Specifically, paragraph (1)(b) of Section 19 directs the Commission . . .

. . . [t]o make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations and other activities and services integral to transportation systems, 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.

Id. app. 876(1)(b).

The Commission's regulations governing Section 19 proceedings are set forth at 46 CFR Part 585 - Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States. The regulations describe, among other things, who may file petitions for relief under Section 19, 46 CFR 585.4, how such petitions are filed, id. 585.5, the prescribed contents of petitions, id. 585.6, how petitions may be amended or dismissed, id. 585.7, and the types of conditions that are generally presumed to be actionable under Section 19, id. 585.3. These regulations were last amended or otherwise updated in 1989 to reflect the

addition of authority to impose specific forms of sanctions made applicable by section 1002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a ("FSPA").

Since then, however, Section 19 has been amended by section 103 of Pub. L. No. 101-595, 104 Stat. 2979 ("Section 19 Amendments"), to clarify and expand the powers of the Commission to address unfavorable shipping conditions, particularly those which affect intermodal, shoreside and other ocean transportation activities. The other principle features of the Section 19 Amendments are: clear recognition of the right of any person to request Section 19 relief; the addition of certain information-gathering authorities; the availability of discovery tools in proceedings; and incorporation of the expanded range of available remedies first made applicable by the FSPA.

The Commission proposes to amend and update its rules in order to reflect the Section 19 Amendments. The proposed rule substantially incorporates and continues the fourteen sections contained in existing Part 585. However, some editorial and conforming changes have been made in the current rules. In addition, a number of new sections are added in order to implement new statutory authorities, and the rules are restructured to make for a more logical presentation. The following table provides a comparison of each section of the proposed rule with the corresponding section of existing Part 585.

Proposed Rule Section	Existing Rule Section
§ 585.101 Purpose	§ 585.1 Purpose
§ 585.102 Scope	§ 585.2 Scope

§ 585.103	Definitions	[None]	
§ 585.104	Confidentiality	[None]	
§ 585.105	Consultation	§ 585.8	Initial action to meet apparent conditions unfavorable - Resolution through diplomatic channels
§ 585.201	Information orders	[None]	
§ 585.202	Type of information	§ 585.11	Production of information
§ 585.203	Failure to provide information	§ 585.12	Production of information - Failure to produce
§ 585.301	Findings	§ 585.3	Findings - Conditions unfavorable to shipping in the foreign trade of the United States
§ 585.401	Who may file	§ 585.4	Petition for section 19 relief-General-Who may file
§ 585.402	Filing of petitions	§ 585.5	Petitions - How filed
§ 585.403	Contents of petitions	§ 585.6	Petitions - Contents
§ 585.404	Amendment or dismissal of petitions	§ 585.7	Petitions - Amendment or dismissal of
§ 585.501	Participation of interested persons	§ 585.10	Participation of interested persons
§ 585.502	Discovery	[None]	
§ 585.503	Subpoenas	[None]	
§ 585.504	Witness fees	[None]	
§ 585.505	Failure to supply information	[None]	
§ 585.506	Enforcement of orders	[None]	
§ 585.507	Postponement, discontinuance or suspension of action	§ 585.13	Postponement, discontinuance or suspension of action
§ 585.508	Publication, contents and effective date of regulation	§ 585.14	Content and effective date of regulation
§ 585.601	Actions to correct unfavorable conditions	§ 585.9	Actions to meet conditions unfavorable to shipping in the foreign trade of the United States
§ 585.602	Penalty	[None]	

The following section-by-section discussion identifies the particular changes in the existing rules as well as the new provisions of Part 585.

II. SECTION-BY-SECTION DISCUSSION

The proposed rule restructures Part 585 into six subparts in order to accommodate the new sections of the rules and to make for a more orderly and logical presentation of the rules' provisions. General provisions that apply to the entire Part 585 appear in Subpart A. Subpart B implements information-gathering authorities. Subpart C enumerates those conditions that will be found to be unfavorable to shipping. Subpart D contains provisions governing the filing of Section 19 petitions. Subpart E sets forth the provisions that govern proceedings initiated by the Commission under Section 19. Subpart F describes the corrective actions that may be taken as well as penalties that may be imposed.

Subpart A - General Provisions

This subpart contains provisions that apply generally to the rules throughout Part 585. It has new sections on definitions, confidentiality and consultation.

Section 585.101 Purpose

This section incorporates without change the statement of purpose that appears at § 585.1 of the current regulations.

Section 585.102 Scope

This section incorporates without change the statement of scope found at § 585.2 of the current regulations.

Section 585.103 Definitions

This section is new. It includes new definitions of terms used in the statute and these rules.

Section 585.103(a) Act

The term "Act" refers to the Merchant Marine Act, 1920, as amended by Pub. L. No. 101-595.

Section 585.103(b) Person

This definition is based in part on section 19(5) of the Act, which indicates that any person may file a petition for relief and provides examples of entities included within the meaning of "person." It also derives in part from current § 585.4 which describes those "persons" who may file a petition for relief. The definition is intended to be expansive and the enumeration of particular persons is not intended to limit the definition.

Section 585.103(c) Voyage

This definition is identical to the definition of voyage that appears at 46 CFR 588.2(g) governing actions under the FSPA. The definition would provide a basis for calculating the per-voyage fee provided for by the FSPA and the Section 19 Amendments.

Section 585.104 Confidentiality

This section is new. It is based upon section 19(8) of the Act and follows the language of the statute. Its placement in Subpart A, General Provisions, reflects the fact that the Act makes it applicable to information provided "under the terms of this section" (i.e., Section 19). It would thus apply to both rulemaking proceedings and information-gathering activities.

Section 585.105 Consultation

This section incorporates both the provisions of existing § 585.8 and new authority.

Section 585.105(a) Consultation with other agencies

This section is new. It is based upon section 19(12) of the Act and follows the language of the statute. Its placement in Subpart A, General Provisions, reflects the fact that section 19(12) is applicable to any action taken under Section 19, whether rulemaking or information-gathering.

Section 585.105(b) Request for resolution
through diplomatic channels

This section substantially incorporates the language of current § 585.8 regarding requests to the Secretary of State for diplomatic assistance. A stylistic improvement has been made in the first sentence, substituting the words "that the Secretary" for the words "he or she" and in the second sentence substituting the word "such" for the words "his or her."

Subpart B - Production of Information

This subpart implements section 19(6) of the Act, which grants the Commission authority to gather information in order to further the purposes of section 19(1)(b). This authority is distinct from the subpoena and discovery authorities granted under section 19(7) in connection with rulemaking proceedings.

Section 585.201 Information orders

This section is new. It is based upon the authority and utilizes the language of sections 19(6)(a), (b) and (c) of the Act.

Section 585.202 Type of information

This section serves the purpose of illustrating the type of information that may be required. However, it does not limit in

any way the kind of information that may be required by a Commission information order.

Paragraph (a) of this section incorporates the description appearing at § 585.11 of the current regulations of the type of information that may be required from owners, operators or charterers of vessels. A reference to passengers has been added to reflect Section 19's coverage of ocean transportation of passengers as well as cargo. See Petition for Investigation of, and for Section 19 Relief from, Italian Subsidies for Carnival Cruise Lines Passenger Vessels, ___ F.M.C. ___, 26 S.R.R. 990, 1001 n.18 (1993); American Association of Cruise Passengers, Inc. v. Carnival Cruise Lines, Inc., 911 F.2d 786 (D.C. Cir. 1990).

Paragraphs (b) and (c) are new. They describe the type of information that may be required from other persons, including shippers, shippers' associations, non-vessel-operating common carriers, ocean freight forwarders and marine terminal operators.

Section 585.203 Failure to provide information

This section establishes sanctions for failure to provide required information. Paragraph (a) is new and provides for a civil penalty of up to \$5,000 per day for failure to provide information. It is based upon and utilizes the statutory language of section 19(6)(d) of the Act.

Paragraph (b) provides for the making of adverse findings where there has been a failure to provide information. It incorporates, with one change, the provision that appears at § 585.12 of the current regulations. The change clarifies that the

Commission will make inferences based on failure to provide information, rather than deem such a failure an "admission" (which implies fault) that conditions unfavorable to shipping exist.

Subpart C - Conditions Unfavorable to Shipping

This subpart contains provisions specifying those conditions that may be found unfavorable to shipping. As discussed below, paragraph (e) dealing with intermodal operations is new.

Section 585.301 Findings

This section incorporates without change the statement of those conditions which may be found to be unfavorable to shipping that appears at § 585.3 of the current regulations. In addition, this section adds a new paragraph (d) (§ 585.301(d)), which states that restrictions or burdens upon intermodal operations and other activities integral to ocean transportation may be found to be a condition unfavorable to shipping. The language of new paragraph (d) derives from the changes made in section 19(1)(b) by the Section 19 Amendments. The Section 19 Amendments added a reference to ". . . intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems" 46 U.S.C. app. 876(1)(b).

It is thus clear that Congress intended to make Section 19 applicable to activities that are integral to ocean shipping and that practices or policies that hinder those activities can

constitute an unfavorable condition. This is further clarified by the legislative history of the Section 19 Amendments. For example, the Committee Report states that . . .

. . . the bill amends current law to clarify that the Federal Maritime Commission's rulemaking and investigatory powers extend to intermodal movements, terminal operations, and other activities integral to shipping.

H.R. Rep. No. 501, 100th Cong., 2d Sess. 6 (1988).

Similarly, the Report of the Senate Commerce Committee states that a purpose of the legislation was to clarify the Commission's authority to address intermodal and other shipping-related activities. The Report states:

The bill, as reported, specifically includes intermodal movements and certain land-based activities within the scope of section 19 of the Merchant Marine Act, 1920
. . . .

S. Rep. No. 420, 101st Cong., 2d Sess. 2 (1990); id. at 7. See also H.R. Rep. No. 440, 101st Cong., 2d Sess. 4, 8 (1990). Paragraph (d) would thus codify the Congressional determination (reflected in both the language and legislative history of the Section 19 Amendments) that practices which adversely affect intermodal transportation may be found to be a condition unfavorable to shipping.

This codification in paragraph (e) is also supported by Commission precedents holding that practices and policies which adversely affect intermodal operations may amount to an unfavorable shipping condition. See, e.g., Inquiry into Laws, Regulations and Policies of Korea Affecting Shipping in the United States/Korean Trade, ___ F.M.C. ___, 24 S.R.R. 112 (1987), 24 S.R.R. 895

(1988); Actions to Adjust Or Meet Conditions Unfavorable to Shipping in the United States/Taiwan Trade, ____ F.M.C. ____, 24 S.R.R. 866 (1988).

Subpart D - Petitions for Relief

This subpart sets forth provisions that apply to petitions filed pursuant to Section 19. For the most part, it carries forward existing sections with only a few technical changes.

Section 585.401 Who may file

This section is based upon § 585.4 of the current regulations. The only change to the existing section is the deletion of the elaboration of the term "person." Such elaboration is unnecessary in light of the definition of person at proposed § 585.103(b). As indicated in the discussion of the definition of person, the Act expressly recognizes certain entities who are among those likely to request action under Section 19. However, as noted above, the enumeration of certain entities is not exhaustive of the term.

Section 585.402 Filing of petitions

This section incorporates without change the statement regarding filing of petitions which appears at § 585.5 of the current regulations.

Section 585.403 Contents of petitions

This section incorporates the statement regarding the contents of petitions which appears at § 585.6 of the current regulations, with changes that reflect the scope of Section 19 protections

recognized in the Section 19 Amendments, including land-based maritime functions.

Section 585.404 Amendment or dismissal of petitions

This section incorporates the requirements regarding amendment or dismissal of petitions which appear at § 585.7 of the current regulations, but has been amended to reflect the Commission's flexibility to deal with petitions that may not fully meet the requirements of proposed § 585.403. Thus, the rule states that the Commission "may" rather than "will" dismiss a petition for failure to timely cure any deficiency. This provision comports with past Commission practice. It is, however, also to be noted that petitions that fail to set forth the information called for in § 585.403 may not provide a sufficient basis for Commission action, either to make findings that conditions unfavorable to shipping exist or to fashion appropriate sanctions to meet or adjust such conditions.

Subpart E - Proceedings

This subpart contains provisions that relate to the commencement, prosecution and conclusion of proceedings under Section 19. It implements significant provisions of the Section 19 Amendments which allow for discovery and enforcement of discovery. It also incorporates sections of the existing regulations.

Section 585.501 Participation of interested persons

This section incorporates without change the provision for participation of interested persons that appears at § 585.10 of the current regulations.

Section 585.502 Discovery

This section is new. It is based upon the authority and utilizes the statutory language of section 19(7)(a) of the Act.

Section 585.503 Subpoenas

This section is new. It is based upon the authority and utilizes the statutory language of section 19(7)(b) of the Act.

Section 585.504 Witness fees

This section is new. It is based upon the authority and utilizes the statutory language of section 19(7)(c) of the Act.

Section 585.505 Failure to supply information

This section is new. It is based upon the authority and utilizes the statutory language of section 19(7)(d) of the Act. It should be noted that the penalties specified are for failure to provide information in Section 19 rulemaking proceedings. Separate statutory penalties are established in section 19(6)(d) of the Act for failure to provide information required to be produced in response to information-gathering orders issued under section 19(6).

Section 585.506 Enforcement of orders

This section is new. It provides for enforcement of Commission information orders in federal district court. It is

based upon the authority and utilizes the statutory language of section 19(7)(e) of the Act.

Section 585.507 Postponement, discontinuance,
or suspension of action

This section incorporates the provisions for postponement, discontinuance, or suspension of action which appear at § 585.13 of the current regulations. A technical change is made in the second sentence to continue the parallelism of the first sentence by adding the words "or suspend."

Section 585.508 Publication, contents and
effective date of regulation

This section incorporates without change the provisions for publication, contents and effective date which appear at § 585.14 of the current regulations.

Subpart F - Corrective Actions

This subpart specifies the actions that may be taken to correct unfavorable shipping conditions, and implements new statutory authorities.

Section 585.601 Actions to correct unfavorable conditions

This section is substantially the same as § 585.9 of the current regulations, which has now been essentially codified by sections 19(9) and 19(10) of the Act. Paragraphs (b), (c), (d) and (e) make certain changes to the existing regulation to more closely reflect the language of the statute and to make other minor restructuring and editorial changes.

In addition, paragraph (d) is revised to reflect the Commission's action in Docket No. 92-33, Marine Terminal Facilities Agreements - Exemption, exempting certain marine terminal facilities agreements from filing under section 5 of the Shipping Act of 1984, 46 U.S.C. app. 1704. In exempting such agreements from the 1984 Act's filing requirements, the Commission acted merely to alleviate the administrative burden such filings entailed for both the marine terminal industry and the agency. However, as the Commission noted in the explanatory text accompanying the final rule, the exemption carried with it "no diminution of the Commission's present degree of regulatory oversight [T]he exemption applies only to filing and notice requirements, and does not relieve the parties to marine terminal facilities agreements from other requirements of the 1916 and 1984 Acts." 58 FR 5627, 5630 (Jan. 22, 1993). It is equally true that the filing exemption does not affect the applicability of substantive provisions of other statutes, including sanctions authorized by section 19(c) of the 1920 Act.

A new paragraph (g) is added to reflect the authority added by section 19(10)(a) of the Act, requiring the collectors of customs, upon request by the Commission, to collect any per-voyage fees imposed by the Commission under section 19(9)(d). The remaining paragraphs are renumbered accordingly.

Section 585.602 Penalty

This section is new. It is based upon and follows the language of section 19(11) of the Act.

III. PROPOSED RULE

The proposed rule is intended to establish a clearer framework for proceedings and actions under Section 19 and to update the Section 19 Rules to reflect the statutory authorities and language contained in Pub. L. No. 101-595. Interested persons are invited to submit written comments to the Secretary, Federal Maritime Commission, on this proposed rule.

The Chairman of the Federal Maritime Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3504) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 46 CFR Part 585

Administrative practice and procedure, Maritime carriers

THEREFORE, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553), section 1002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 10002), and section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876), the Federal Maritime Commission hereby proposes to revise Part 585 of Title 46, Code of Federal Regulations, to read as follows:

Part 585 Regulations To Adjust or Meet Conditions Unfavorable To Shipping in the Foreign Trade of the United States

Subpart A - General Provisions

Sec.

585.101 Purpose
585.102 Scope
585.103 Definitions
585.104 Confidentiality
585.105 Consultation

Subpart B - Production of Information

585.201 Information orders
585.202 Type of information
505.203 Failure to provide information

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585.501 Participation of interested persons
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- 585.507 Postponement, discontinuance or suspension of action
- 585.508 Publication, contents and effective date of regulation

Subpart F - Corrective Actions

- 585.601 Actions to correct unfavorable conditions
- 585.602 Penalty

AUTHORITY: 5 U.S.C. 553; sec. 19(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), (5), (6), (7), (8), (9), (10), (11) and (12); Reorganization Plan No. 7 of 1961, 75 Stat. 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

Subpart A - General Provisions

§ 585.101 Purpose.

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§ 585.102 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has

promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§ 585.103 Definitions.

When used in this part:

(a) Act means the Merchant Marine Act, 1920, as amended by Pub. L. No. 101-595.

(b) Person means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States.

(c) Voyage means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 585.104 Confidentiality.

Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this part.

§ 585.105 Consultation.

(a) Consultation with other agencies. The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies prior to taking any action under this part.

(b) Request for resolution through diplomatic channels. Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission may notify the Secretary of State that such conditions apparently exist, and may request that the Secretary seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts at a specified time.

Subpart B - Production of Information

§ 585.201 Information orders.

In furtherance of the purposes of this part -

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator,

shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or an officer, receiver, trustee, licensee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(b) The Commission may require a report or answers to questions to be made under oath;

(c) The Commission may prescribe the form and the time for response to a report or answers to questions.

§ 585.202 Type of information.

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exist, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any:

(a) owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(1) Statistics for a representative period showing passengers or cargo carried to and from the United States in the affected trade on vessels owned, operated or chartered by it, by type, source, value, and direction;

(2) Information for a representative period on the activities of vessels owned, operated, or chartered, which shall

include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities;

(3) Information for a specified future period on the prospective activities of vessels which it owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to be received from foreign authorities; and

(4) Such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(b) Shipper, shippers' association, ocean freight forwarder, or non-vessel-operating common carrier in the affected trade to furnish any or all of the following information:

(1) Information for a representative period showing shipments made, type of cargo, commodity, carrier and vessel on which shipment was made, including furnishing copies of bills of lading and other shipping documents;

(2) information relating to the application for, grant of, or securing of waivers or other exemption from requirements imposed by foreign governments that cargo move on national-flag, conference, or non-conference vessels;

(3) amount of brokerage, freight forwarder compensation or other charges collected or paid in connection with shipments in the affected trade; and

(4) such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) Any marine terminal operator to furnish any or all of the following information:

(1) marine terminal facilities agreements, whether or not on file with the Commission, into which it has entered with any ocean carrier in the affected trade;

(2) information for a representative period showing the difference between the rates agreed to for use of its facilities by any ocean carrier serving the affected trade pursuant to an agreement authorizing preferential treatment or lease terms and those rates which would otherwise have applied to such services or leases.

§ 585.203 Failure to provide information.

(a) A person who fails to file a report, answer, documentary material, or other information required under this subpart shall be liable to the United States Government for a civil penalty of not more than \$5,000 for each day that the information is not provided.

(b) The Commission may, when there is a failure to produce any information ordered produced under § 585.201, make appropriate

findings of fact and inferences, including the inference that conditions unfavorable to shipping in the foreign trade of the United States do exist.

Subpart C - Conditions Unfavorable To Shipping

§ 585.301 Findings.

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

(a) Impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) 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;

(c) Are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States;

(d) Restrict or burden carriers' intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; forwarding and agency services; non-vessel-operating common carrier operations; or other activities and services integral to transportation systems; or

(e) Are otherwise unfavorable to shipping in the foreign trade of the United States.

Subpart D - Petitions for Section 19 Relief

§ 585.401 Who may file.

Any person who has been harmed by, or who can reasonably expect harm from, existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for relief under the provisions of this part.

§ 585.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573.

§ 585.403 Contents of petitions.

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) A concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(c) Any other evidence of the existence of such practice or competitive method;

(d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) Statistics for the representative period showing the type and amount of revenue loss or operating cost increase suffered or projected, such as a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures which permit comparison or computation of the proportional effect of the harm alleged. For example, when the harm alleged is loss of cargo, supporting evidence shall include the total cargo carried or projected in the trade for the period;

(2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo or other non-vessel interest if injury is claimed on that basis; and

(3) A statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will, in the view of the petitioner, adjust or meet the alleged

conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.404 Amendment or dismissal of petitions.

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition may result in its dismissal. For good cause shown additional time for amendment may be granted.

Subpart E - Proceedings

§ 585.501 Participation of interested persons.

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the Federal Register and interested persons will then be allowed to participate in this proceeding by the submission of written data, views or arguments, with or without opportunity to present same orally.

§ 585.502 Discovery.

The Commission may authorize a party to a proceeding to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States.

§ 585.503 Subpoenas.

In proceedings under this part, the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

§ 585.504 Witness fees.

In proceedings under this subpart, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States, subject to funds being provided by appropriations Acts.

§ 585.505 Failure to supply information.

For failure to supply information ordered to be produced or compelled by subpoena in proceedings under this part, the Commission may -

(a) after notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member; or

(b) assess a civil penalty of not more than \$5,000 for each day that the information is not provided.

§ 585.506 Enforcement of orders.

In proceedings under this part, when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties.

§ 585.507 Postponement, discontinuance, or suspension of action.

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone, discontinue or suspend any or all such actions if the President informs the Commission that postponement, discontinuance or suspension is required for reasons of foreign policy or national security.

§ 585.508 Publication, content and effective date of regulation.

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose. Regulations shall be published in the Federal Register. Except where conditions warrant and for good cause, regulations promulgated under the rules of this part shall not become effective until at least 30 days after the date of publication.

Subpart F - Corrective Actions

§ 585.601 Actions to correct unfavorable conditions.

Upon submission of a petition filed under the rules of this part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exist, and may, without further proceedings, issue regulations which may:

- (a) Impose equalizing fees or charges;

(b) Limit sailings to and from United States ports or the amount or type of cargo carried;

(c) Suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies;

(d) Suspend, in whole or in part, an ocean common carrier's right to operate under an agreement, including any agreement authorizing preferential treatment at terminals or preferential terminal leases, whether filed with the Commission or not filed with the Commission pursuant to the exemptions granted in 46 CFR Part 572; or any agreement filed with the Commission authorizing space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Impose a fee, not to exceed \$1,000,000 per voyage;

(f) Request the collector of customs at the port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to a vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart C;

(g) Request the collector of customs at the port or place of destination in the United States to collect any fees imposed by the Commission under paragraph (e) of this section;

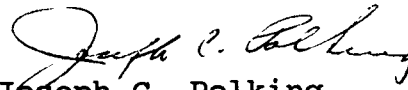
(h) Request the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in subpart B, to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; or

(i) Take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

§ 585.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under § 585.505 or § 585.601 of this Part, or after its right to use another tariff has been suspended under those sections, is subject to a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended tariff.

By the Commission.


Joseph C. Polking
Secretary

