• Use of performance measures, e.g., quality of transplant outcomes and annual number of transplants performed, in determining the eligibility of transplant centers to receive donor livers.

2. Donation of Organs for Transplantation

The medical need for livers and other human organs for transplantation continues to exceed the number of donor organs by a considerable margin. No organ allocation policies, no matter how well crafted or effectively implemented, can be expected to compensate for serious short-falls in the supply of organs relative to the demand.

a. What are the major impediments to organ donation?

b. How can the Department, organ procurement organizations, hospitals, and other entities improve current efforts to promote organ donation?

c. Where and to what extent are further initiatives necessary to ensure that members of racial and ethnic minority groups are appropriately apprised regarding such matters as the role of organ transplantation within the health-care system, the unique health benefits that can ensue from successful transplantation, the limitations associated with transplant procedures, and the challenges involved in recruiting organ donors?

Dated: November 6, 1996.

Ciro V. Sumaya,

Administrator.

Approved: November 7, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–29145 Filed 11–8–96; 10:52 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1600, 1820, 1840, 1850, 1860, 1880, 2090, 2200, 2300, 2520, 2540, 2560, 2620, 2720, 2800, 2810, 2880, 2910, 2920, 3000, 3100, 3120, 3150, 3160, 3180, 3200, 3240, 3250, 3260, 3280, 3410, 3420, 3430, 3450, 3470, 3480, 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3590, 3710, 3730, 3740, 3800, 3810, 3830, 3870, 4200, 4300, 4700, 5000, 5470, 5510, 8370, 9180 and 9230

[WO–130–1820–00 24 1A]

RIN 1004–AC99

Appeals Procedures; Hearings Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed regulations, extension of comment period.

SUMMARY: On October 17, 1996, the Bureau of Land Management (BLM) published a document in the Federal Register announcing a proposed rule to revise and consolidate existing procedures for hearings and appeals into a single, streamlined administrative review process covering most of BLM's decisions (61 FR 54120). The 30-day comment period for the proposed rule expires on November 18, 1996. BLM has received several requests from the public for additional time to comment and is extending the comment period for an additional 60 days.

DATES: Submit comments by January 17, 1997.

ADDRESSES: If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240; or

(c) Send comments through the Internet to WOComment@wo.blm.gov. Please include ''attn: AC99'', and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact us directly at (202)452–5030.

You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, N.W., Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren 202–452–7779, or Bernie Hyde 202–452–5057.

Dated: November 6, 1996.

Annetta Cheek,

Regulatory Affairs Group Manager.

[FR Doc. 96–29028 Filed 11–12–96; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Japan, proposes the imposition of fees on liner vessels operated by Japanese carriers calling at United States ports. The effect of the rule will be to adjust or meet unfavorable conditions caused by Japanese port restrictions and requirements by imposing countervailing burdens on Japanese carriers.

DATES: Comments due on or before January 13, 1997.

ADDRESSES: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

Information Demand Orders

On September 12, 1995, the Federal Maritime Commission (''Commission'' or ''FMC'') issued information demand orders to carriers in the U.S./Japan trade,[1] inquiring about certain restrictions and requirements for the use

[1] NYK Line (North America) Inc.; Mitsui O.S.K. Lines (America), Inc.; K Line America Inc.; Sea-Land Service, Inc.; American President Line; Westwood Shipping Lines; Evergreen Line; Hanjin Shipping Co. Ltd.; Maersk Inc.; China Ocean Shipping Co.; Hyundai Merchant Marine; Orient Overseas Container Line (''OOCL''); Yangming Marine Line; Neptune Orient Lines; Senator Linie (USA) Inc.; Mexican Line (TMM); Hapag-Lloyd (America) Inc.; Zim Container; and Cho Yang Line.

of port and terminal facilities in Japan. Four issues of concern were addressed by the information demand orders: (1) The ''prior consultation'' system, a process of mandatory discussions and operational approvals involving port and terminal management, unions, and ocean carriers serving Japan; (2) restrictions on the operation of Japanese ports on Sunday; (3) the requirement that all containerized cargo exported from Japan be weighed and measured by harbor workers, regardless of commercial necessity; and (4) the disposition of the Japanese Harbor Management Fund, which was the subject of Docket No. 91–19, *Actions to Address Conditions Affecting U.S. Carriers Which do not Exist for Foreign Carriers in the U.S./Japan Trade.* The Commission observed that these practices may result in conditions unfavorable to shipping in the United States/Japan trade, and may constitute adverse conditions affecting U.S. carriers that do not exist for Japanese carriers in the United States.

Prior Consultation

Many of the questions in the information demand orders centered on the prior consultation system and how it is administered by the Japan Harbor Transportation Association (''JHTA''). JHTA is an association of companies providing harbor transportation services, including terminal operators, stevedores, and sworn measurers. Under this system, carriers serving Japan must consult with JHTA about operational matters involving Japanese ports or harbor labor. After JHTA consults with a carrier, it may conduct consultations with labor interests, then approve or deny the line's request.

The responses to the Commission's orders indicated that virtually all operational plans and changes made by carriers serving Japan must be submitted for prior consultation. These include: any changes in berth, route, or port calls; inauguration of new services or new vessels; the addition of extra port calls (either permanently or temporarily), or calls by non-container ships at container berths; jumboization of vessels or changes in vessel technology which affect stevedoring or terminal operations; temporary assignment of vessels as substitutes (even if only for one voyage) or the renaming of vessels; rationalization agreements between carriers involving vessel sharing or berthing changes; the assignment of a stevedoring contractor or terminal operator to a carrier and any subsequent change in assignment; requests for Sunday work; changes in mandatory weighing and measuring arrangements; or any other changes which affect stevedoring or terminal operations.

The comments shed light on the complex and opaque procedural aspects of the prior consultation system. According to several respondents, if a carrier wants to take one of the above-described actions, it first submits a draft written request for prior consultation outlining its proposal to JHTA. If the matter is deemed to be important, a meeting is then scheduled for a carrier representative to explain its request to JHTA chairman Shiroo Takashima. Often, the carrier executive is accompanied by an official of the stevedoring company used by that line. At this stage, the JHTA chairman may refuse to accept the request, or require changes or impose conditions for acceptance.

According to several respondents, if the carriers' request is acceptable to the JHTA chairman, it is taken up at a formal ''pre-prior consultation'' meeting. These meetings, generally held monthly, are attended by the JHTA chairman, vice-chairman, secretary, prior consultation administrator, a representative from the carrier, and often a representative of its affected stevedore or terminal operator. If the request is accepted at this stage, the matter is deliberated at formal prior consultation meetings between JHTA and union officials, both in Tokyo and at the local level. Carrier representatives do not attend the JHTA-union meetings.

A number of respondents suggested that the final prior consultation meetings are simply formalities. It appears that if a carrier's request is unacceptable to JHTA, this is conveyed early in the process, often in the carrier's initial meeting with the JHTA chairman. If JHTA takes an unfavorable view of a request, there is no formal rejection; instead, it simply is not accepted for consideration at the formal prior consultation meetings. In contrast, if a request has been accepted by the JHTA chairman, it is almost assured to be approved at the formal meetings.

Beyond the above-described procedures, JHTA's decision-making process in prior consultation appears to be characterized by a total lack of transparency. The respondents indicated that there are almost no written rules, either substantive or procedural, nor are there written reasons for decisions or an appeal process; JHTA appears to have absolute discretion over the terms and conditions imposed in the prior consultation process.

Many respondents suggested that JHTA uses prior consultation to prevent competition and maintain an agreed-upon allocation of work among the JHTA member companies. Several carriers recounted instances where prior consultation requests were held up until the carriers agreed to take on additional, unnecessary stevedoring companies or contractors. A number of carriers observed that JHTA may require that, when carriers consolidate terminal operations, the benefitting stevedore must reach an agreement with the losing one to take on some of the latter's workers, thereby insuring that there is still income passing to the losing stevedoring company. These practices, according to a number of commenters, prevent any real competition and undermine attempts to increase the efficiency of port operations, with the result that Japan has port costs that far exceed those of its Asian neighbors and other major trading nations.

Much of JHTA's ability to compel participation in prior consultation appears to stem from its relationship with, and support of, organized labor. Some respondents explained that, if they did not participate in prior consultation or comply with JHTA's requests, they would be subject to retaliation, such as work stoppages or labor disruptions. Some respondents recounted an instance in 1985 when JHTA, in response to an investigation by the Japanese Fair Trade Commission (''FTC''), announced that it was abandoning the carrier-JHTA component of the prior consultation system. When the now-defunct Yamashita Shiminon Kaisha Line attempted to go ahead with changes in its operations, two of its vessels reportedly were boycotted by the unions, on the grounds that there had been no prior consultation. In order to prevent any further disruptions, respondents stated, carriers had no choice but to request that JHTA reestablish its prior consultation system.

Japanese Government Oversight

Respondents confirmed that the agency with direct authority over harbor services is the Ministry of Transport (''MOT''). Persons wishing to perform harbor transportation services must obtain a license from MOT, in accordance with the Port Transportation Business Law. Also, under the Law Establishing the Ministry of Transportation, MOT is invested with authority over, inter alia, the development, improvement and coordination of the harbor transportation business. MOT reportedly can give oversight or guidance relating to the conduct of the Prior Consultation System if a national

policy (i.e., the development, improvement and coordination of the harbor transport business) is sought to be furthered. Respondents also indicated that administrative guidance, or gyoseishido, is practiced by governmental bodies in Japan, to secure cooperation of affected parties to further an administrative purpose.[2]

MOT appears to have given guidance or otherwise become involved with prior consultation on at least a few occasions. In 1986, MOT signed, as a witness, the Letter of Confirmation on New Prior Consultation, an agreement between JHTA and carriers establishing the current version of the system. More recently, in 1992, MOT reportedly issued a ministerial view to JHTA and the Japanese Shipowners Ports Council setting forth basic principles for prior consultation regarding container terminal disputes.[3] In that document (a translation of which was provided by respondents), MOT directed that, if carriers make changes to their operations, these changes must be submitted for prior consultation. It was also stated in the Ministerial View that if a shipping company changes the consortium with which it is affiliated, or reorganizes its service, it will give explanations to JHTA and obtain its understanding as early as possible. While the Ministerial View was addressed specifically to the Japanese shipowners, it appears that its principles are applied uniformly to all shipping companies.

JHTA's operations also fall within the jurisdiction of the Japanese Fair Trade Commission (''FTC''). The Japanese respondents explained that Article 8 of the Law Relating to the Prohibition of Private Monopoly and Methods of Preserving Fair Trade of Japan (''Antimonopoly Law'') prohibits trade associations from engaging in certain activities, including restricting competition, limiting the number of entrepreneurs, restricting unduly the activities of constituent entrepreneurs, and causing entrepreneurs to engage in unfair business practices. As the agency responsible for administering the Antimonopoly Law, the FTC has the authority to investigate JHTA and its activities.

This FTC authority has been invoked on occasion. In June, 1985, a complaint was filed with the Fair Trade Commission against JHTA, reportedly alleging that JHTA was restricting the activities of carriers and the competition among terminal operators. However, respondents stated that the complaint was later withdrawn and the FTC suspended its investigation.

Another FTC complaint was filed late last year. Apparently, a dispute erupted between JHTA and one of its members, Sankyu, Inc. Sankyu filed a complaint with the FTC, alleging that JHTA was violating Japanese antitrust laws, allocating work among operators. In response, according to published reports, JHTA began exerting considerable pressure on one of Sankyu's clients, OOCL. JHTA reportedly refused to permit prior consultation and approve the carrier's space sharing and terminal reorganization plans. In February, according to press reports and other sources, Sankyu acquiesced to JHTA pressure and withdrew its FTC complaint. While the FTC has not formally dismissed or terminated its investigation, it does not appear to have taken any further action in this area since Sankyu's withdrawal.

Mandatory Weighing and Measuring

The respondents uniformly confirmed that mandatory weight and measure data for all cargo is not required for any administrative functions or documentary procedures in Japan, nor do carriers require measurement of export box load cargo. Some carriers stated that they have attempted unsuccessfully to refuse sworn measurement services and charges; however, JHTA and union representatives threatened work delays, stoppages, and other retaliation if these efforts continued. The majority of carriers have not attempted unilaterally to stop weighing and measuring. Estimates of per-container weighing and measuring costs ranged from $41 to $85 per TEU, with the majority of responses in the $60–$68 range.

In December, 1995, and January, 1996, agreements were reached involving JHTA, the sworn measurement companies, and JSPC and JFSA (the Japanese and foreign carrier groups), to phase out mandatory weighing and measuring over the course of five years. Reportedly, under the plan agreed to by the parties, carriers will be required to make a lump-sum payment to the sworn measurers each year from 1996 to 2000. The payments will be based on the amount paid for weighing and measuring in 1994. The lump sum payments for the five years will be 83.3%, 66.6%, 49.9%, 33.2%, and 16.5% of the 1994 total.

Sunday Work

Because the earthquake that struck the Kobe region in January, 1995, disabled most of that port's facilities, the volume of cargo moving through other Japanese ports increased substantially. According to several of the respondents, harbor workers immediately began operating on Sundays on an emergency basis to accommodate the additional capacity. In May, 1995, a one-year agreement reportedly was reached between JHTA and the unions to keep Sunday work in place in Japan's six major ports (Tokyo, Yokohama, Nagoya, Osaka, Kobe, and Kanmon).

The one-year agreement (the text of which was provided by several respondents) has several requirements and restrictions for Sunday work. For example, Sunday work is limited to the moving of containers between vessels and the carriers container yards. Therefore, cargo cannot arrive at the gate on Sunday for loading that day, and cargo discharged on Sunday cannot be released the same day to the consignee. Also, the agreement provides that receipt of cargo on Saturdays should be minimized as much as possible, as Saturday is a day off for most harbor workers. Vessels may be loaded and unloaded on Sundays only between 8:30 a.m. and 4:30 p.m.

According to the text of the agreement, a shipping company wishing to work on Sunday must apply by the preceding Friday. An additional charge is imposed for Sunday work. Sunday work is limited to shipping companies that ''have fully implemented the MOT approved rates and charges.'' Sunday work is also limited to carriers that ''have observed the harbor industrial labor/management agreement'' concerning numbers of hours and days that union laborers may work and amount of overtime available.

The current restrictions on Sunday work apparently have had a number of negative effects on the respondent carriers. Some pointed out that restrictions on moving cargo into or out of the container yard causes inefficiency and leads to gate congestion on

[2] The Commission in its information demand orders described further authority that MOT apparently maintains under the Port Transportation Business Law. For example, MOT reviews rates based on whether they are reasonable and non-discriminatory. Art. 9. MOT must approve operators' ''terms and conditions on port transportation,'' to determine that ''there is no fear that the terms and conditions may impede the benefits of users,'' and also approve any changes in operators' business plans. Art. 11 & 17. If MOT determines that the port transportation businesses ''impede benefits of users'' it may order changes in business plans, terms and conditions, or rates. Art. 21.

[3] The Japanese Shipowners Ports Council (''JSPC'') is the component of the Japanese Shipowners' Association that deals directly with harbor service-related matters. JSPC often served as the voice of the Japanese lines in prior consultation and other dealings with JHTA. There is a similar association for non-Japanese shipowners operating in Japan, the Japan Foreign Steamship Association (''JFSA'').

Saturday and Monday. Several noted that Sunday work surcharges result in extra costs. Also, respondents noted that the requirement that lines apply in advance for Sunday work, and the shortened working hours, can be a burden and pose planning problems.

It appears that the uncertainty surrounding the one-year agreement has also discouraged carriers from taking full advantage of Sunday work. While more than half of the respondents indicated that they have used Sunday work on occasion, virtually all of this use has been to accommodate vessel delays or other exigencies. No respondent indicated that it changed sailing schedules to use Sunday work on a regular basis. Apparently, since a permanent shift in vessel schedules would be complex and costly for an individual carrier, its alliance partners, and its feeder services, carriers cannot switch to regular Sunday calls without guarantees that Sunday work will continue to be available.

While it appears that Sunday work will continue to be provided for the near term, there has been no discernable progress in reaching a stable and permanent resolution of the Sunday work issue. The previous one-year agreement for Sunday work expired in June 1996, and was extended for one-month intervals for July and August. It has been reported recently that JHTA and waterfront unions have reached an agreement by which Sunday work would be continued for six months, through March 10, 1997. However, beyond the March 10 deadline, the fate of Sunday work appears uncertain.

Discussion

JHTA Dominance Through the Prior Consultation System

Of all the issues raised in the Commission's information demand order, it is apparent that prior consultation is the most serious. The prior consultation system is central to JHTA's dominance of the harbor services market in Japan, as it is the mechanism by which JHTA exercises control over the activities of individual carriers and stevedoring companies. Other JHTA restrictions, such as those affecting Sunday work and mandatory weighing and measuring, are also of serious concern to the Commission; however, it appears that these matters are symptoms rather than root causes of JHTA's dominant position.

By serving as intermediary in all negotiations and requiring, on threat of labor disruption, that carriers submit virtually all planned operational changes for approval, JHTA is able to assign and allocate work among its member companies. This process is used to eliminate competition among terminal operators and stevedores, obviating the need for them to operate more efficiently, reorganize, downsize, or otherwise cut costs to gain market share. It also puts JHTA in a position to block any carrier initiatives to reduce terminal costs, such as plans by various carrier alliances to share terminals and reduce the number of stevedoring companies used, until plans are made to protect the harbor workers' competitive status quo.

JHTA has pushed prior consultation far beyond its purported use as a labor relations device. As numerous respondents pointed out, virtually every operational change by a carrier, even those with no apparent labor impact, must be submitted to JHTA. This all-encompassing scope of prior consultation has given JHTA broad leverage to implement programs that benefit its constituents. It can, for example, extract unwarranted payments from carriers, such as the Harbor Maintenance Fund and the mandatory weighing and measuring fees. JHTA also appears to have unchecked authority to punish its detractors.

JHTA has shown little regard for public accountability in its administration of prior consultation. There are virtually no written rules and no public records, decisions, or appeals. This lack of transparency makes it almost impossible for government, industry, or media critics to scrutinize the workings of the system.

The Role of the Government of Japan

Prior consultation and JHTA dominance do not, however, appear to be an entirely private sector problem. Prior consultation and JHTA enjoy a substantial amount of support from Japanese authorities. Under the Port Transportation Business Law and the Law Establishing the Ministry of Transportation, MOT has broad authority to oversee and regulate the activities and business practices of JHTA and its members. In exercising this authority, however, MOT officials have chosen to permit JHTA to wield unchecked authority through the prior consultation process, rather than requiring JHTA to be less anticompetitive, less arbitrary, and more transparent.[4]

Further Government of Japan support for prior consultation was evinced clearly by the 1992 Ministerial View issued to carriers by MOT. This document, on its face, mandates that carriers submit changes in their business plans to JHTA for prior consultation. This would appear to be an unequivocal validation and endorsement of JHTA's prior consultation activities.

However, the most significant example of government support for JHTA is the MOT licensing of harbor service companies. The Japanese Port Transportation Business Law directs that, if a person seeks to begin performing harbor services, MOT shall evaluate, inter alia, whether the business in question ''has an appropriate plan to perform the business,'' and whether it would ''cause port transportation supply to be excessively over transportation demand.'' Art. 5 & 6. It appears that MOT uses this authority to restrict entry and to shield JHTA and its members from foreign competition. U.S. carriers have stated that they have been shut out of the market entirely, and advised by Japanese authorities that they should not even bother to apply because such certificates would not be granted.

It appears that, by preventing foreign lines from providing terminal services for themselves and by blocking new entrants from the market, the Government of Japan virtually guarantees that JHTA's monopoly over harbor operations will continue unabated. The licensing requirement ensures that JHTA is insulated from pressure to reform, either from outside competitors or new members. Carriers remain captive in an increasingly unworkable port system, and their customers are forced to absorb the resultant costs, which are among the highest in the world. Moreover, the Government of Japan's licensing practices appear blatantly discriminatory against U.S. carriers. There are no legal restrictions on the ownership of terminal operations by Japanese companies in the United States.

It is our conclusion that the Government of Japan's support for the prior consultation system, through its discriminatory and restrictive licensing requirements for persons wishing to perform harbor services, appears to constitute conditions unfavorable to shipping in the U.S./Japan trade. Accordingly, we are proposing the imposition of countervailing sanctions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) (''Section 19''). To avert the imposition of these sanctions, we would urge the Government of Japan to

[4] We would also note that the FTC has repeatedly discontinued investigations into JHTA's activities without taking measures to curb the anticompetitive effects of JHTA's actions.

afford U.S. carriers relief by making available to them all necessary licenses, permissions, or certificates to perform, for themselves and third parties, stevedoring and terminal operating services, or to establish subsidiaries or related ventures to do so, as Japanese carriers are permitted to do in the United States.

In addition, we remain concerned about the long term resolution of the Sunday work issue. We are encouraged, however, that some progress appears to have been made in this area, as well as with regard to weighing and measuring. Therefore, we are not proposing sanctions in these areas at this time. However, the Commission will continue to monitor progress on these issues, and on the disposition of the yet undisposed balances in the Harbor Management Fund, and will take further remedial action if appropriate.

Section 19 authorizes and directs the Federal Maritime Commission to

> 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 solicitations, 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 * * *.

The measures authorized under Section 19 include limitation of sailings, suspension of carriers' tariffs or rights to use conference tariffs, suspension of carriers' rights to operate under FMC-filed terminal and other agreements, fees of up to $1,000,000 per voyage, or any other action deemed necessary and appropriate to adjust or meet the unfavorable condition. 46 U.S.C. app. 876(9).

After giving consideration to all available countervailing sanctions, including limitations of sailings and suspension of carrier tariffs or terminal or other agreements, the Commission has determined to propose a primary remedy of a $100,000 fee, assessed on Japanese carriers when their liner vessels enter U.S. ports. However, the Commission specifically solicits comment on the feasibility of additional or alternative sanctions. The Commission reserves the right to adjust the level of the fee or add additional or alternative sanctions at any time if the subject adverse conditions are not remedied. In the event that the presently prescribed fees are not paid, the Proposed Rule provides for the denial of clearance or entry to or detention at U.S. ports.

In order to provide proper notice and a fair opportunity to respond to the proposed action, the Commission is giving all interested parties sixty days to file comments. Factual submissions, where relevant, should include evidence or statistics showing commercial loss and to the extent possible be supported by sworn documents and affidavits.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tariffs.

For the reasons set forth in the preamble, the FMC proposes to amend 46 CFR Part 586 as follows:

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, it is proposed to amend Part 586 of Title 46 of the Code of Federal Regulations as follows:

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

1. The authority citation for Part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. Section 586.2 is added to read as follows:

§ 586.2 Conditions unfavorable to shipping in the United States/ Japan trade.

(a) *Conditions unfavorable to shipping in the trade.* (1) The Federal Maritime Commission (''Commission'') has determined that the Government of Japan has created conditions unfavorable to shipping in the U.S.–Japan trade, by discriminatorily restricting the licensing of persons wishing to offer harbor and terminal services in Japan.

(2) Through its discriminatory and restrictive licensing practices, the Government of Japan has protected the dominant position of the Japan Harbor Transportation Association (''JHTA''), an association of Japanese waterfront employers. Benefitting from this protection and from a lack of oversight by the Government of Japan, JHTA has virtually eliminated competition in the Japanese harbor services market. JHTA effectively controls competition through the use of the prior consultation system, by which carriers are required to submit virtually all operational plans and requests for JHTA review.

(3) JHTA has used the leverage afforded by the prior consultation system to force carriers, inter alia, to change terminal and stevedoring arrangements, to take on unnecessary stevedoring companies or contractors, and to make unwarranted payments to JHTA and its members. This has resulted in detrimental excess costs for carriers and shippers engaged U.S.–Japan oceanborne trade.

(4) The Government of Japan has discriminated against U.S. carriers by refusing to make licenses to perform port services available to them. This has left U.S. carriers with no choice but to submit their shoreside planning and operations to JHTA control. In contrast, there are no legal restrictions on the ownership of terminal operations by Japanese carriers in the United States.

(b) *Definitions.* (1) *Japanese carrier* means Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd, and Nippon Yusen Kaisha.

(2) *Designated vessel* means any container-carrying liner vessel owned or operated by a Japanese carrier (or any subsidiary, related company, or parent company thereof).

(c) *Assessment of fees.* A fee of one hundred thousand dollars shall be assessed each time a designated vessel is entered in any port of the United States from any foreign port or place.

(d) *Report and payment.* Each Japanese carrier, on the fifteenth day of each month, shall file with the Secretary of the Federal Maritime Commission a report listing each vessel for which fees were assessed under paragraph (c) of this section during the preceding calendar month, and the date of each vessel's entry. Each report shall be accompanied by a cashiers check or certified check, payable to the Federal Maritime Commission, for the full amount of the fees owed for the month covered by the report. Each report shall be sworn to be true and complete, under oath, by the carrier official responsible for its execution.

(e) *Refusal of clearance by the collector of customs.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any quarterly report required by paragraph (d) of this section within the prescribed period, the Commission may request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at U.S. ports to refuse the clearance required by 46 U.S.C. app. section 91 to any designated vessel owned or operated by that carrier.

(f) *Denial of entry to or detention at United States ports by the Secretary of Transportation.* If any Japanese carrier subject to this section shall fail to pay any fee or to file any quarterly report required by paragraph (d) of this section within the prescribed period, the Commission may request the Secretary of Transportation to direct the Coast Guard to:

(1) Deny entry for purpose of oceanborne trade, of any designated vessel owned or operated by that carrier to any port or place in the United States or the navigable waters of the United States; or

(2) Detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States. By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–28943 Filed 11–12–96; 8:45 am]

BILLING CODE 6730–01–W