FDIC, 550 17th Street, N.W., Room H–11048, Washington, D.C. 20429. Telephone: (202) 736–0168.

SUPPLEMENTARY INFORMATION:

Financial Institution in Receivership Determined to Have Insufficient Assets to Satisfy All Claims

Whitney Bank & Trust—4342 Hamden, Connecticut

Dated: January 14, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–1345 Filed 1–20–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 98–N–2]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled ''Personal Certification and Disclosure Forms'' to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on January 31, 1998.

DATES: Interested persons may submit comments on or before February 20, 1998.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, D.C. 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, 202/408–2837, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, Compliance Assistance Division, Office of Policy, 202/408–2872, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 7 of the Federal Home Loan Bank Act (Bank Act) and part 932 of the Finance Board's regulations establish eligibility and reporting requirements and the procedures for electing and appointing Federal Home Loan Bank (FHLBank) directors. *See* 12 U.S.C. 1427; 12 CFR part 932. The information collection contained in the elective and appointive FHLBank director personal certification and disclosure forms and §§ 932.18 and 932.21 of the Finance Board's regulations, is necessary to enable the Finance Board to determine whether prospective and incumbent elective and appointive FHLBank directors satisfy the statutory and regulatory eligibility and reporting requirements. *See* Finance Board forms E–1, E–2, A–1, and A–2; 12 CFR 932.18 (appointive directors), 932.21 (elective directors). Accordingly, Finance Board staff uses the information collection to determine whether respondents meet the statutory and regulatory eligibility requirements. The information collection requires each respondent to complete and submit to the Finance Board for review a personal certification and disclosure form prior to election or appointment and, once elected or appointed, annually during the term of service. Incumbent directors also have a continuing obligation promptly to notify the Finance Board of any known or suspected ineligibility. *See* 12 CFR 932.18(f)(2); 932.21(g)(2).

The OMB number for the information collection is 3069–0002. The OMB clearance for the information collection expires on January 31, 1998.

B. Burden Estimate

The Finance Board estimates the total annual average number of respondents at 286, with one response per respondent. The estimate for the average hours per response is 1.3 hours. The estimate for the total annual hour burden is 376 hours (286 respondents × 1 response/respondent × approximately 1.3 hours). The estimated annualized cost to respondents of the information collection is $35,175.00.

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on November 6, 1997. *See* 62 FR 60093 (Nov. 6, 1997). The 60-day comment period closed on January 5, 1998. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Finance Board, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: January 12, 1998.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–1315 Filed 1–20–98; 8:45 am]

BILLING CODE 6725–01–U

FEDERAL MARITIME COMMISSION

[Docket No. 97–18]

APL/MOL/OOCL/HMM Reciprocal Slot Exchange Agreement (Agreement No. 203/011588) and APL/MOL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011596; Order to Show Cause and Motion To Dismiss Denied

Introduction

The APL/MOL/OOCL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011588 (''the Four Party Agreement'') is an agreement for the reciprocal chartering of space aboard vessels operated in the U.S. foreign trades by agreement members.[1] The Four Party Agreement became effective on October 17, 1997. Agreement No. 203–011596, the APL/MOL/HMM Reciprocal Slot Exchange Agreement (''the New Agreement''), is a space charter agreement which is intended to replace the Four Party Agreement.[2]

Under section 10(c)(6) of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. 1709(c)(6), it is unlawful for any conference or group of two or more common carriers to:

[1] The Agreement members are Hyundai Merchant Marine, Ltd. (''Hyundai'' or ''HMM''), American President Lines, Ltd. (''APL''), Mitsui O.S.K. Line, Ltd. (''MOL''), and Orient Overseas Container Line, Inc. (''OOCL'').

[2] The members of the agreement are Hyundai, APL and MOL. Although the New Agreement is intended to replace the Four Party Agreement, the latter will remain in effect until canceled by the parties according to its terms, to permit an orderly transition in the parties' operations.

Allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as otherwise required by the law of the United States or the importing or exporting country * * *.

The New Agreement contains terms, also present in the Four Party Agreement, by which carriage of cargo subject to U.S. cargo preference laws is restricted to the U.S.-flag carrier participant, APL. In its Order to Show Cause served on October 17, 1997, Docket No. 97–18, 62 FR 55260 (October 23, 1997), 27 S.R.R. 1304 (1997) (''Show Cause Order''), the Commission stated that the Four Party Agreement appeared on its face to present a violation of section 10(c)(6). For reasons similar to those stated in the Show Cause Order, it appears that the New Agreement on its face also presents a violation of section 10(c)(6). Therefore, pursuant to section 11 of the 1984 Act, the parties to the New Agreement are ordered to show cause why the New Agreement should not be found to be in violation of the 1984 Act and should not be disapproved, canceled or modified accordingly.

APL filed a Motion to Dismiss Docket No. 97–18, on the grounds, *inter alia*, that ''changed circumstances'' have mooted this proceeding, and requested, in the event that the Commission determined not to dismiss the proceeding, that the time for filing Respondents' opening submissions, then due on December 2, 1997, be extended to 30 days after the Court of Appeals takes final action in *Sea-Land Service, Inc.* v. *FMC*, D.C. Circuit No. 97–1083.[3] Motion of APL to Dismiss the Proceeding (''Motion'') at 1.[4] The Commission's Bureau of Enforcement (''BOE'') filed a reply to the Motion. OOCL filed a Response to the Order to Show Cause. We address both the New Agreement and the Motion and Response in this Order.

Background

This proceeding was instituted pursuant to sections 10(c)(6) and 11, 46 U.S.C. app. 1710, to determine whether the Four Party Agreement should be found to be in violation of the 1984 Act, and be disapproved, canceled or modified accordingly. Citing the Commission's holding in *MSC*, the Commission ordered the parties to the Four Party Agreement to show cause why the Agreement should not be found to violate section 10(c)(6) inasmuch as Article 5.1 of the Four Party Agreement appears to effectively allocate U.S. government shippers of cargo via agreement members, subject to U.S. cargo preference laws, to APL, the sole U.S. carrier member of the Agreement.[5]

A. The New Agreement

The New Agreement was filed with the Commission on November 18, 1997, pursuant to section 5 of the 1984 Act, 46 U.S.C. app. section 1704,[6] and became effective on January 2, 1998.[7] The New Agreement authorizes the parties to charter space on each other's vessels on a reciprocal basis in the trades between ports and points in the U.S. served via U.S. Pacific Coast ports and ports and points in the Far East. The Agreement provides for the reciprocal sale, exchange or use of up to an annualized average of 6,000 TEUs of space per week by Hyundai on vessels operated by APL and MOL, and for use by APL and MOL of 7,000 TEUs of space per week on Hyundai vessels operating in the trade. The parties may also agree on feeder operations, sailing schedules, service frequency, port calls, addition or withdrawal of capacity, and the number, type and size of vessels they will use in the trade. No party may charter or sub-charter space aboard another party's vessel to a third-party carrier without the consent of the party operating the vessel.

Article 5.1 of the New Agreement, ''Limited Grant,'' provides:

Nor shall anything in this Agreement be construed as granting a right on the part of any party to carry aboard the vessel of any other party any cargoes subject to cargo preference laws of the country of registry of such other party's vessel or the country of citizenship of its owner.[8]

Article 5.1 further provides:

If the (preceding) sentence * * * shall be determined to violate U.S. law with respect to U.S. preference cargoes by a court or agency of competent jurisdiction and any stay upon the order of such court or agency giving effect to such determination arising by reason of an appeal of such order shall have ceased to be effective, then the [preceding] sentence * * * shall be deemed severed with respect to U.S. preference cargoes,* * *.[9]

B. APL's Motion to Dismiss Docket No. 97–18

1. The Motion

APL repeatedly points out that the Show Cause Order ''focused'' on the second sentence of Article 5.1 of the Four Party Agreement, *i.e.*, the language quoted above at note 6. Motion at 2, 4. APL describes various ''intervening events'' which purportedly render the Order to Show Cause moot. APL states that, with respect to APL's participation, the Four Party Agreement has never been implemented and will never be implemented because APL intends to withdraw from that Agreement upon effectiveness of the New Agreement. APL also indicates that, in connection with the acquisition of APL by Neptune Orient Lines and the transfer of APL's ODS Agreements and Maritime Security Program (''MSP'') contracts with MarAd to an independent vessel-operating company bareboat chartering the vessels, MarAd withdrew the letter of March 11, 1997 from the MarAd Secretary to APL Vice President Michael Murphy, granting APL a waiver under section 804(b) of the Merchant Marine Act, 1936 (''1936 Act''), 46 U.S.C. app. 1222(b), for APL's use of foreign-flag capacity.[10] Motion at 4–5. In addition,

[3] That case is consolidated with *Military Sealift Command and United States* v. *FMC*, No. 97–1084 and *American President Lines* v. *FMC*, No. 97–1085 which are, like No. 97–1083, petitions for review of the Commission's order in *Military Sealift Command* v. *Sea-Land Service, Inc.*, F.M.C. , *27* S.R.R. 874 (1996) (''*MSC*'').

[4] The procedural schedule in Docket No. 97–18 was postponed by the Secretary on December 1, 1997 until further Commission notice or action on the Motion.

[5] In *MSC*, the Commission determined that a provision whose effect appears to be identical to that of Article 5.1 of the Four Party Agreement and Article 5.1 of the New Agreement constituted an allocation of shippers prohibited under section 10(c)(6). Upon complaint filed by the Military Sealift Command, Department of the Navy (''MSC''), a shipper of U.S. preference cargo, the Commission determined that the provision constituted an allocation of shippers prohibited by the first clause of section 10(c)(6). However, the Commission further determined that the provision was not unlawful because it was required by an order of the Maritime Administration, Department of Transportation (''MarAd'') which constituted ''law of the United States'' within the meaning of the ''except'' clause of section 10(c)(6).

[6] Section 5 provides, in relevant part, that ''(a) true copy of every agreement (with respect to activities subject to the Act as described in section 4) * * * shall be filed with the Commission * * *.'' Notice of the filing of the Agreement was published in the **Federal Register** on December 2, 1997, 62 FR 63716 (December 2, 1997).

[7] Section 6(c), 46 U.S.C. app. section 1705, provides, *inter alia*, that ''(u)nless rejected by the Commission * * *, agreements . . . shall become effective * * * on the 45th day after filing, or on the 30th day after notice of the filing is published in the Federal Register, whichever day is later * * *.''

[8] The language quoted above is also used in Article 5.1 of the Four Party Agreement, ''Limited Grant,'' but it is preceded there by the provision that: (n)othing in this Agreement shall be construed as granting a right on the part of any other party to carry aboard the vessels of American President Lines, Ltd. cargoes shipped from or to the U.S. Department of Defense or Agriculture, or any subsidiary agencies thereof, or any other agency of the U.S. Government whose shipments are subject to cargo preference laws of the United States to the extent requiring and reserved for transportation aboard U.S.-flag vessels.

[9] The similar provision for severance of the cargo preference provision upon a final finding of unlawfulness in the Four Party Agreement is more limited.

[10] MarAd's waiver, for the remaining term of APL's ODS contract through December 1997 and for

APL suggests that, as a consequence of the joint Department of Defense (''DOD'')-MarAd Voluntary Intermodal Sealift Agreement (''VISA'') program, ''DOD *itself* now reserves its peacetime cargoes to U.S.-flag vessel operators that are participants in VISA, thus by regulation mandating the same result as the reservation provisions in the commercial agreements * * *.'' Motion at 5. Finally, APL submits that it would be appropriate to await the possibly ''definitive guidance'' of the D.C. Circuit on the issues raised in *MSC*, which ''are relevant to the Show Cause order.'' *Id.* at 6.

APL's request that the proceeding be dismissed focuss on the parties' intention, stated by APL, that the agreement which was the subject of the Show Cause Order will be supplanted by the New Agreement and the narrow scope of the Commission's focus in that order, *i.e.*, the second sentence of Article 5.1, ''which will then have no possible future significance.'' *Id.* at 7. APL recognizes, however, that the New Agreement retains the more general cargo reservation language, but contends that this provision was not identified as a basis of potential violation of section 10(c)(6) in the Show Cause Order. Thus, says APL,

> *if* the Commission should consider this provision to raise section 10(c)(6) issues that require Commission consideration, the appropriate context in which to evaluate those issues—which are necessarily broader than and different from those identified in the Commission's October 22, 1997 Order—would be with respect to an agreement in which that provision has continued effect.

Id. In the event the Commission elects not to dismiss the proceeding, or to institute a new proceeding relating to the New Agreements, APL requests that the time for filing of Respondents' opening submissions be extended to a date 30 days after final court action in *MSC*.

2. BOE's Reply to the Motion

BOE opposes the Motion on the ground that the issues in Docket No. 97–18 are not moot, and the proceeding should not be dismissed, until APL actually withdraws from the Four Party Agreement. BOE does not, however, oppose APL's request that the time for Respondents' initial filing be extended until 30 days after final action by the D.C. Circuit in *MSC*. Although BOE noted that the New Agreement was being considered by the staff, it did not further comment on the validity of the substantive representations of fact or law in the Motion.

C. OOCL's Response to Order to Show Cause

OOCL filed a Response to the Order to Show Cause, stating that it has given notice on December 1, 1997 of its intention to withdraw from the APAC Agreement and ''hence will no longer be a party to (the Four Party) Agreement * * *.'' Response To Order To Show Cause (''Response'') at 1. In its Response, OOCL moves that it be dismissed as a party to this proceeding. In the alternative, OOCL adopts the position of APL that the proceeding should be dismissed, or, in the alternative, if the proceeding is directed to a new agreement, that the time for Respondents' opening submissions be extended to 30 days after issuance of the D.C. Circuit's mandate in *MSC*.

OOCL suggests that the Commission take administrative notice of the filing of a successor agreement to the Four Party Agreement, of which OOCL is not a member. OOCL also joins in APL's representations that subsequent events have rendered the current proceeding moot.

D. The Maritime Administrator's Letter

It is not the FMC's role to decide on the validity of a MarAd order. *MSC*, 27 S.R.R. at 888. In initiating this proceeding, we noted that the Commission did not undertake to review the actions of the Maritime Administrator under his statutory authority, but to determine whether an agreement filed pursuant to the 1984 Act required action by MarAd under a statute which authorizes that agency to command carrier obedience to orders cognizable as ''law of the United States,'' and whether it had so required the action specifically taken by the parties in this instance. We also directed the Commission's Secretary to invite the Acting Administrator to participate *amicus curiae* in this proceeding, which the Secretary did by letter of October 24, 1997.

The Acting Administrator advised the Commission on December 16, 1997, that APL ceased to be a party to an ODS contract as of November 12, 1997, and therefore is no longer subject to section 804 or the waiver and conditions imposed in MarAd's March 11, 1997 letter. The Acting Administrator further advised the Commission that, notwithstanding APL's request that MarAd impose a similar condition on APL's new charter arrangements, MarAd

> Did not * * * consider whether such a condition should be imposed under the various statutes MarAd administers as a result of an October 19, 1993 opinion by the Office of Legal Counsel (OLC) of the Department of Justice. That opinion * * * concluded that even though conditions contained in charter orders approved by MarAd impose legal obligations on the chartering parties, those obligations are not ''otherwise required by law'' for purposes of the second prong of section 10(c)(6), and that MarAd lacks authority to impose such conditions since, in OLC's view, they would violate the first prong of section 10(c)(6). The OLC opinion remains the unified position of the United States. Given this, MarAd does not believe that it should participate at this time as an *amicus* in the pending FMC proceeding.

Finally, the Acting Administrator, noting the filing of the New Agreement and APL's announced intention to withdraw from the Four Party Agreement, suggested that questions relating to the lawfulness of the Four Party Agreement are now moot and that, in the event the FMC decides nevertheless to continue the proceeding, the matter should be held in abeyance pending the decision of the D.C. Circuit on review of *MSC*.

Discussion

A. The New Agreement

The language of Article 5.1 of the New Agreement does not contain the language in the Four Party Agreement which was specifically cited by the Commission in its Show Cause Order. However, it does contain the following more general language which is also in the Four Party Agreement:

> Nor shall anything in this Agreement be construed as granting a right on the part of any party to carry aboard the vessel of any other party any cargoes subject to cargo preference laws of the country of registry of such other party's vessel or the country of citizenship of its owner.

While this language does not refer specifically to U.S.-government agency shippers, its general reference to ''cargo preference laws'' would certainly include those U.S. cargo preference laws which by their terms effectively allocate the Department of Defense, the Department of Agriculture, and other U.S. government departments and agencies to U.S.-flag vessels for all or a major portion of their shipments. Thus it would have the same effect as the more specific language of the Four Party

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the full term of each of APL's nine operating agreements under the Maritime Security Program (''MSP''), included as ''condition D'' that:

> No space on APL's U.S.-flag vessels that are subject to space sharing agreements with any foreign operator shall be utilized for the carriage of cargo reserved for U.S.-flag vessels under any statute, resolution or regulation unless such cargo is carried pursuant to bills of lading or contracts of carriage issued to, or entered into with, the shipper of such cargo by or for a citizen of the United States.

Thus, MarAd was alleged to have required the provision of the Agreement allocating U.S. preference cargo to APL.

Agreement: U.S. government entities which ship cargo via agreement members are allocated to APL.

As we noted in our Show Cause Order concerning the Four Party Agreement, the New Agreement presents issues similar to those decided by the Commission in *MSC.*[11] The VSAs involved in *MSC* required the approval of the Secretary of Transportation for the charter or transfer of a U.S.-flag vessel to a non-citizen under section 9 of the Shipping Act, 1916 (''1916 Act''), 46 U.S.C. app. 808, subject to the broad power to prescribe conditions—violations of which are crimes punishable by fines, imprisonment and vessel forfeiture—given the Secretary in section 41.[12] MarAd's approval of the charters of the U.S.-flag vessels and vessel space to foreign-flag carrier members of the VSAs were conditioned on the exclusion of the foreign-flag participants from use of the vessels to carry U.S. preference cargo.[13] The Commission specifically found that the conditional charter orders issued by MarAd pursuant to sections 9 and 41 of the 1916 Act had the force and effect of law because they were compulsory and the statute provided criminal penalties for noncompliance. *MSC,* 27 S.R.R. at 889.

The Commission's inquiry in *MSC* included the threshold conclusion that MarAd action under the 1916 Act was a prerequisite for the existence of the agreement at issue: the U.S.-flag vessels could not be chartered to the foreign carrier agreement parties without approval. *Id.* at 876. Here, as we noted in the Show Cause Order with respect to the Four Party Agreement, no similar nexus between the New Agreement and the statutory authority of the Maritime Administrator is evident. This case apparently does not involve the 1916 Act authority exercised by MarAd with respect to the space charter agreements at issue in MSC.

Until the November 12, 1997 consummation of its acquisition by Neptune Orient Line (''NOL''), APL operated U.S.-flag vessels under operating-differential subsidy contracts with MarAd pursuant to Title VI and sections 801 and 804 of the 1936 Act, 46 U.S.C. app. 1171 *et seq.* and 1211 and 1222.[14] MarAd's March 11, 1997 letter granted APL's request for a waiver under section 804(b) of 1936 Act for APL to own, operate or charter up to 18 foreign-flag vessels in line haul service between U.S. and foreign ports for the remaining term of APL's Operating Differential Subsidy Agreement (''ODSA''), Contract MA/MSB–417, through December 31, 1997 and for the full term of each of APL's nine operating agreements under the MSP, Contract Nos. MA/MSP–1 through MA/MSP–9, subject to the conditions imposed.[15] During FMC review of the Four Party Agreement, APL suggested that the March 11, 1997 MarAd letter should be considered ''law of the United States'' within the meaning of the ''except clause'' of section 10(c)(6). This argument was dealt with a length in the Show Cause Order. 62 FR 55262–55263, 27 S.R.R. 1306–1308.[16]

Moreover, as MarAd noted in promulgating its final regulations for the MSP, ''[u]nlike the operating differential subsidy * * * program, the MSP has few restrictions on vessels operating in the U.S.-foreign commerce * * *.'' 62 FR 37733 (July 15, 1997). Under the provisions of the 1936 Act, as amended by the Maritime Security Act of 1996, no recourse to the Maritime Administration appears to be required for APL's participation in the Four Party Agreement or the New Agreement.[17]

MarAd's withdrawal of the March 11, 1997 section 804 waiver, which occurred after issuance of our Show Cause Order, would suggest that this argument no longer may be said to apply to APL's operations under the Four Party Agreement or the New Agreement. No colorable argument that the effective allocation of U.S. government shippers of cargo subject to the U.S. cargo preference laws by

[11] The vessel sharing agreements (''VSAs'') involved in *MSC* provided for the use of twelve U.S.-flag vessels owned by a U.S. carrier to be operated on behalf of all of the parties to the agreements, and to replace all U.S.-flag and foreign-flag vessels previously operated by the parties in the covered trade. By chartering space on a U.S.-flag vessel, the foreign carriers gained eligibility to submit bids for military and other government preference cargoes reserved to U.S.-flag vessels. However, the foreign carriers agreed that they would not use any vessels or space chartered from the U.S. carrier for carriage of government preference cargo.

[12] Section 9(c) provides that, with certain exceptions not relevant here, ''a person may not, without the approval of the Secretary of Transportation—

(1) sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel * * * owned by a citizen of the United States * * *.''

46 U.S.C. app. 808(c). The Secretary has delegated to the Maritime Administrator authority to carry out sections 9 and 41 of the 1916 Act. 49 CFR 166(a).

[13] MarAd acted under section 9 on each individual charter of a U.S.-flag vessel and incorporated conditions requiring restriction of U.S. preference cargo to the U.S.-flag carrier member of the agreements in each of the ''charter orders'' approving the arrangement, as required by section 41. MarAd has apparently dispensed with individualized approvals of charters of U.S.-flag vessels like those at issue in *MSC. See* 46 CFR 221.13(a)(1) (except as limited by provisions not relevant here, MarAd ''hereby grants the approval required by [section 9(c) of the 1916 Act] for the * * * Charter * * * to a Noncitizen of an interest in or control of a Documented Vessel owned by a Citizen of the United States * * *.'').

[14] Section 603, 46 U.S.C. app. 1173(a), provides that, upon approval of an application for ODS under section 601, the Secretary of Transportation may enter into a contract with the applicant ''subject to such reasonable terms and conditions * * * as the Secretary * * * shall require to effectuate the purposes and policy * * *'' of the Act. Section 804(a) provides that it is ''unlawful for any contractor receiving an operating-differential subsidy under title VI * * * to own, charter, * * * or operate any foreign-flag vessel which competes with any American-flag service'' on a route deemed essential by the Secretary, except as provided in section 804(b). Section 804(b), 46 U.S.C. app. 1222(b), authorizes the Secretary to waive the prohibition for a specific period of time ''(u)nder special circumstances and for good cause shown * * *.'' The March 11, 1997 MarAd letter states that the Administrator has found ''special circumstances'' and ''good cause'' for granting the waiver and that the waiver granted ''is subject to the * * * conditions and will terminate in the event any of the conditions are not fulfilled * * *.''

[15] The Agreement parties do not represent that APL sought MarAd approval pursuant to section 9 for use of its U.S.-flag vessels in operations under the Agreement. The March 11, 1997 MarAd letter grants authority to APL only under section 804(b) of the 1936 Act, and does not refer to sections 9 and 41 of the 1916 Act of MarAd authority under those provisions.

[16] In any event, as we noted in the Show Cause Order, the Military Security Act of 1996, Pub. L. 104–239, 110 Stat. 3118, substantially amended the 1936 Act, creating the Military Security Fleet Program, 46 U.S.C. app. 1187, *et seq.* It is a condition for including any vessel in the Fleet that the owner or operator of the vessel enter into an operating agreement governed by the section's provisions with the Secretary of Transportation, which will be one-year, renewable contracts. Subsection (c) provides that ''[a] contractor of a vessel included in an operating agreement under this part may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under'' certain sections of the 1936 Act dealing with record keeping, equitable distribution of contracts among U.S. ports, and discrimination. 46 U.S.C. app. 1187a(c). Section 804 was substantially amended as well: a new subsection 804(f) provides that nothing in section 804(a) will preclude a contractor receiving ODS or MSP assistance from ''entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels * * *.'' 46 U.S.C. app. 1221(f)(5). The new section 804(f) was made effective as to carriers with existing ODS contracts on the date on which such a contractor entered into an MSP contract with MarAd. 46 U.S.C.A. app. 1222, Historical and Statutory Notes. APL entered into operating agreements with MarAd for nine vessels for January 21, 1997.

[17] It thus does not appear to be necessary for a U.S.-flag carrier with an MSP operating agreement to seek a waiver under section 804(b) in order to participate in a space charter or vessel sharing agreement. Nevertheless, on January 17, 1997, APL filed a request with MarAd for a waiver under section 804(b) of the 1936 Act for operation of up to 18 foreign-flag vessels. Notice of its filing was published January 29, 1997. 62 FR 4377 (January 29, 1997). The March 11, 1997 MarAd letter granted APL's request. The waiver provides that APL may ''own, operate or charter'' up to 18 foreign-flag vessels.

Article 5.1 of the New Agreement is ''required by the law of the United States'' as a result of the March 11, 1997 MarAd letter or other MarAd action under the 1936 Act appears to exist.

In discussion with the staff concerning Article 5.1 of the New Agreement, and in its Motion, however, APL advanced the view that the allocation issue was essentially moot as a result of various actions of MarAd and DOD, including significant policy changes by DOD relating particularly to the VISA program. Thus, in the Motion and in discussions concerning the New Agreement, APL has argued that the effect of the VISA program is to authorize or require the allocation provision of the New Agreement. As it noted in *MSC*, the Commission must, ''[u]nder ordinary circumstances, * * * consider the text and any relevant analyses of the proffered law [said to create an exception to the prohibition of section 10(c)(6)], and render a conclusion as to whether the law commanded the actions that otherwise might fall within section 10(c)(6)'s prohibition clause.'' *MSC*, 27 S.R.R. at 888.

MarAd administers the VISA program under authority of section 708 of the Defense Production Act of 1950, as amended, 50 U.S.C. app. 2158. The VISA program provides for agreements entered into between MarAd and the operators of U.S.-flag vessels and establishes a ''prioritized order for utilization of commercial sealift capacity to meet DOD peacetime and contingency requirements * * *.'' 62 FR 6840 (February 13, 1997). The program emphasizes use of U.S.-flag vessel capacity operated by VISA participants or available to VISA participants under VSAs for the carriage of DOD peacetime cargo and assures the availability of U.S.-flag capacity for DOD contingency use. Although the program establishes priorities under which DOD will call upon the operators of U.S-flag vessels to provide capacity, by awarding contracts and booking cargo, neither the MarAd rules for the VISA program itself nor any DOD policy or contract provision thus far called to our attention appears to reserve aggregate DOD peacetime cargo to VISA participants. No prohibition against the use of the vessel capacity of a VISA participant made available to a non-U.S. carrier member of a VSA for carriage of DOD cargo is contained in the regulations promulgated by MarAd. Moreover, those regulations and the VISA program itself relate only to cargo shipped by DOD. Other U.S. government departments and agencies, which are also subject to the U.S. cargo preference laws, are unaffected by the VISA program. These shippers would be allocated to APL by the terms of Article 5.1 of the New Agreement. No requirement for the exclusion of agreement parties other than APL from bidding on DOD or other government-shipped cargo arises from the VISA regulations or other U.S. law, or the DOD contracts under VISA.

The parties apparently recognize that the allocation issues raised by the New Agreement would most appropriately be addressed in a formal proceeding: both APL's Motion and OOCL's Response suggest such a course of action. In view of the possibility that Agreement No. 203–011596 may be merely an interim measure to see the parties through the restructuring of their various alliances, and may be replaced by yet another version of the parties' space sharing arrangement, we find it most appropriate to address these issues in the context of the existing proceeding, Docket No. 97–18, rather than to initiate a new proceeding.

Therefore, the parties to the New Agreement are ordered to show cause why it does not violate section 10(c)(6) for the same reasons which prompted us to institute a proceeding against the Four Party Agreement: A *prima facie* case appears to exist that the provision is unlawful and is not otherwise required by the law of the United States. The parties to the New Agreement are ordered to show cause why Article 5.1 of the New Agreement should not be disapproved, canceled or modified, as part of this proceeding.

B. The Motion and Response

We agree with BOE that dismissal of the Show Cause proceeding with respect to the Four Party Agreement is premature. Termination of this proceeding with respect to the Four Party Agreement may be proper when and if the Four Party Agreement itself is terminated. However, it does not appear at this time that either APL's or OOCL's cessation of operations under the Four Party Agreement will occur simultaneously with the effectiveness of the New Agreement. We may act to modify the proceeding at any time it appears appropriate, with or without further request of the parties.

APL's further suggestion that the Commission delay action on this issue until 30 days after the D.C. Circuit has acted in *MSC* is without merit. This would effectively stay the Commission's determination that the allocation of preference cargo in an agreement permitting the charter of space on U.S.-flag vessels by foreign lines constitutes a violation of section 10(c)(6). The Commission's determination of this legal issue remains in effect, no stay having been entered by the Commission or any court of competent jurisdiction.[18] As we noted in *MSC*, an order by an administrative agency is presumed to be valid until such time as it is overturned by a court of competent jurisdiction. *See, e.g., Citizens to Preserve Overton Park, Inc.* versus *Volpe*, 401 U.S. 402, 415–16 (1971); *Motor Vehicle Manufacturers Association of the United States, Inc.* versus *Ruckelshaus*, 719 F.2d 1159, 1164 (D.C. Cir. 1983).

Accordingly, the appeal of the *MSC* decision provides no basis to permit the effectiveness, without investigation, of allocation language based on U.S. cargo preference laws having the same or similar effects to that found in *MSC* to constitute a violation of section 10(c)(6). Therefore, the Motion is denied with respect to delay of the filing of initial submissions until 30 days after issuance of the decision in *MSC* by the D.C. Circuit. A new procedural schedule for the conduct of this proceeding is established below.

As a result of MarAd's withdrawal of the March 11, 1997 section 804 waiver, no question remains as to whether that letter constitutes ''law of the United States,'' within the meaning of section 10(c)(6), requiring the cargo preference reservation in either of the Agreements. It would therefore appear that no basis exists as a matter of law or of fact at this time for dismissal of the existing proceeding with respect to the Four Party Agreement.

Now therefore, it is ordered, that pursuant to section 11 of the Shipping Act of 1984, American President Lines, Ltd., Mitsui O.S.K. Line, Ltd., and Hyundai Merchant Marine, Ltd. show cause why they should not be found to have violated section 10(c)(6) of the Shipping Act of 1984 by prohibiting specific carriers that are parties to the APL/MOL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011596, from soliciting cargo from a particular shipper or shippers;

It is further ordered, that American President Lines, Ltd., Mitsui O.S.K. Line, Ltd., and Hyundai Merchant Marine, Ltd. show cause why an order should not be issued disapproving, canceling or modifying the APL/MOL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011596;

It is further ordered, that the Motion to Dismiss Docket No. 97–18 of American President Lines, Ltd. is denied;

[18] No stay was requested or suggested as necessary by any party in the context of the *MSC* proceeding.

It is further ordered, that the Motion of Orient Overseas Container Lines, Inc. to be dismissed as a party to Docket No. 97–18 is denied;

It is further ordered, that any person having an interest and desiring to intervene in this proceeding in connection with the APL/MOL/HMM Reciprocal Slot Exchange Agreement, Agreement No. 203–011596, shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below;

It is further ordered, that affidavits of fact and memoranda of law addressing issues with respect to both the Four Party Agreement and the New Agreement shall be filed by Respondents and any intervenors in support of Respondents no later than February 20, 1998;

It is further ordered, that reply affidavits and memoranda of law addressing issues with respect to both the Four Party Agreement and the New Agreement shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondent no later than March 20, 1998;

It is further ordered, that rebuttal affidavits and memoranda of law addressing issues with respect to both the Four Party Agreement and the New Agreement shall be filed by Respondents and intervenors in support no later than April 3, 1998;

It is further ordered, that, should any party believe that an oral argument is required, that party must submit a request specifying the reasons therefore and why argument by memorandum is inadequate to present the party's case. Any request for oral argument shall be filed no later than April 3, 1998;

It is further ordered, that notice of this Order to Show Cause be published in the **Federal Register**, and that a copy thereof be served upon Respondents;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's rules of practice and procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

Finally, it is ordered, that pursuant to the terms of Rule 61 of the Commission's rules of practice and procedure, 46 CFR 502.61, the Order to Show Cause served October 17, 1997 in this proceeding is amended to require that the final decision of the Commission in this proceeding shall be issued by July 3, 1998.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–1291 Filed 1–20–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. McLaughlin--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

1. Report title: Government Securities Dealers Reports
Agency form number: FR 2004A, FR 2004B, FR 2004C, FR 2004SI, FR 2004WI
OMB Control number: 7100-0003
Frequency: weekly and on occasion
Reporters: primary dealers in U.S. government securities
Annual reporting hours: 11,817
Estimated average hours per response: 1.0 (FR 2004A, B, C, SI); 0.25 (FR 2004WI)
Number of respondents: 39
Small businesses are not affected.

General description of report: This information collection is voluntary (12. U.S.C. 248(a)(2), 353-359, and 461) and is given confidential treatment (5 U.S.C. 552 (b)(4)).

Abstract: This group of reports is used to collect data on positions, transactions, and financing activity in the government securities market from primary dealers in U.S. government securities. The Federal Reserve uses the data to monitor the condition of the U.S. government securities market in its surveillance of the market and to assist the U.S. Department of the Treasury.

The revisions are effective beginning with the January 28, 1998, report date. On the FR 2004A and FR 2004B a line has been added to report position and transaction volumes with respect to Treasury Inflation-Index Securities. On the FR 2004A and FR 2004B four lines have been added to provide greater detail regarding the dealers' federal agency securities positions and transaction volumes. On the FR 2004C, two columns of matched-book financing transactions have been deleted. The revisions, on a net basis, have no effect on the current annual reporting burden.

The Board of Governors received one comment, from The Bond Market Association, which strongly endorsed the revisions.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Domestic Branch Notification
Agency form number: FR 4001
OMB control number: 7100-0097
Frequency: on occasion
Reporters: state member banks
Annual reporting hours: 201
Estimated average hours per response: 30 minutes for expedited notifications; 1 hour for nonexpedited notifications
Number of respondents: 316 expedited, 43 nonexpedited
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to establish a domestic branch. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to obtain public comment on such proposals before acting on them, and to otherwise supervise state member banks.

2. Report title: Investment in Bank Premises Notification
Agency form number: FR 4014
OMB control number: 7100-0139
Frequency: on occasion
Reporters: state member banks
Annual reporting hours: 8
Estimated average hours per response: 30 minutes