

## Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

## Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2-1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis checklist is available for inspection and copying and the docket is to be maintained at the address listed in ADDRESSES in the preamble.

## Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of \$100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of \$100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

## Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

### PART 165—[AMENDED]

1. The authority citation for 33 CFR part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. A new section 165.T11-061 is added to read as follows:

#### § 165.T11-061 Safety Zone: Santa Barbara Channel, CA

(a) *Location.* The following area is established as a safety zone: all navigable waters falling within a rectangular box extending 100 feet from the outer limits of all sides of Stearns Wharf, beginning at the seaward end of the wharf and extending back along the wharf 600 feet towards shore. For reference purposes, the seaward end of the wharf is located at 34°24'30"N, longitude: 119°41'10"W.

(b) *Effective Dates.* This safety zone will be in effect from December 9, 1998, 12:00 p.m. (PDT) until March 31, 1999, 12:00 (PDT). If the need for this safety zone terminates before March 31, 1999, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

Dated: December 9, 1998.

**G.F. Wright,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.*

[FR Doc. 99-3768 Filed 2-17-99; 8:45 am]

BILLING CODE 4910-15-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD09-97-002]

RIN 2115-AE84

#### Regulated Navigation Area; Air Clearance Restrictions at the Entrance to Lakeside Yacht Club and the Northeast Approach to Burke Lakefront Airport in the Cleveland Harbor, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard has established a regulated navigation area at the entrance to the Lakeside Yacht Club in Cleveland Harbor, Ohio, underneath the northeast approach to the Burke Lakefront Airport, to avoid conflict with the safety parameters for an instrument-guided aircraft approach slope. This regulation creates a set of restricted areas, some of which prohibit

docking of vessels of certain heights, others require vessels of certain heights to obtain clearance from the airport before entering or leaving the entrance to the yacht club during times when the instrument system is in use. Vessels with masts less than 41 feet above the waterline are not affected by this rule. Vessels with masts between 41 and 45 feet above the waterline are restricted from one location. Vessels with masts between 45 and 95 feet above the waterline are required to obtain a routine clearance by radio or telephone before navigating through the area. Vessels with masts between 53 and 95 feet above the waterline are limited to certain specified areas for docking. Vessels with masts 95 feet or more above the waterline, none of which currently uses the area, are prohibited from any entry into the area.

**DATES:** This final rule is effective March 22, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 441992060, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 216-902-6050.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Lynn Goldhammer, Assistant Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 44199-2060, (216) 902-6050.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

On August 7, 1998, the Coast Guard published a notice of proposed rulemaking entitled Regulated Navigation Area—Air Clearance Restrictions at the Northeast Entrance to Lakeside Yacht Club and Approach to Burke Lakefront Airport in Cleveland Harbor, OH in the **Federal Register** (63 FR 152). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested and none was held.

#### Background and Purpose

Burke Lakefront Airport, located next to Cleveland Harbor in Cleveland, Ohio, has installed an instrument-guided approach system for the northeast approach to the Airport. The new system is important to maintaining safe and commercially viable airport operations. Under Federal Aviation Administration flight standards, this instrument-guided approach, during times when available for use, requires a

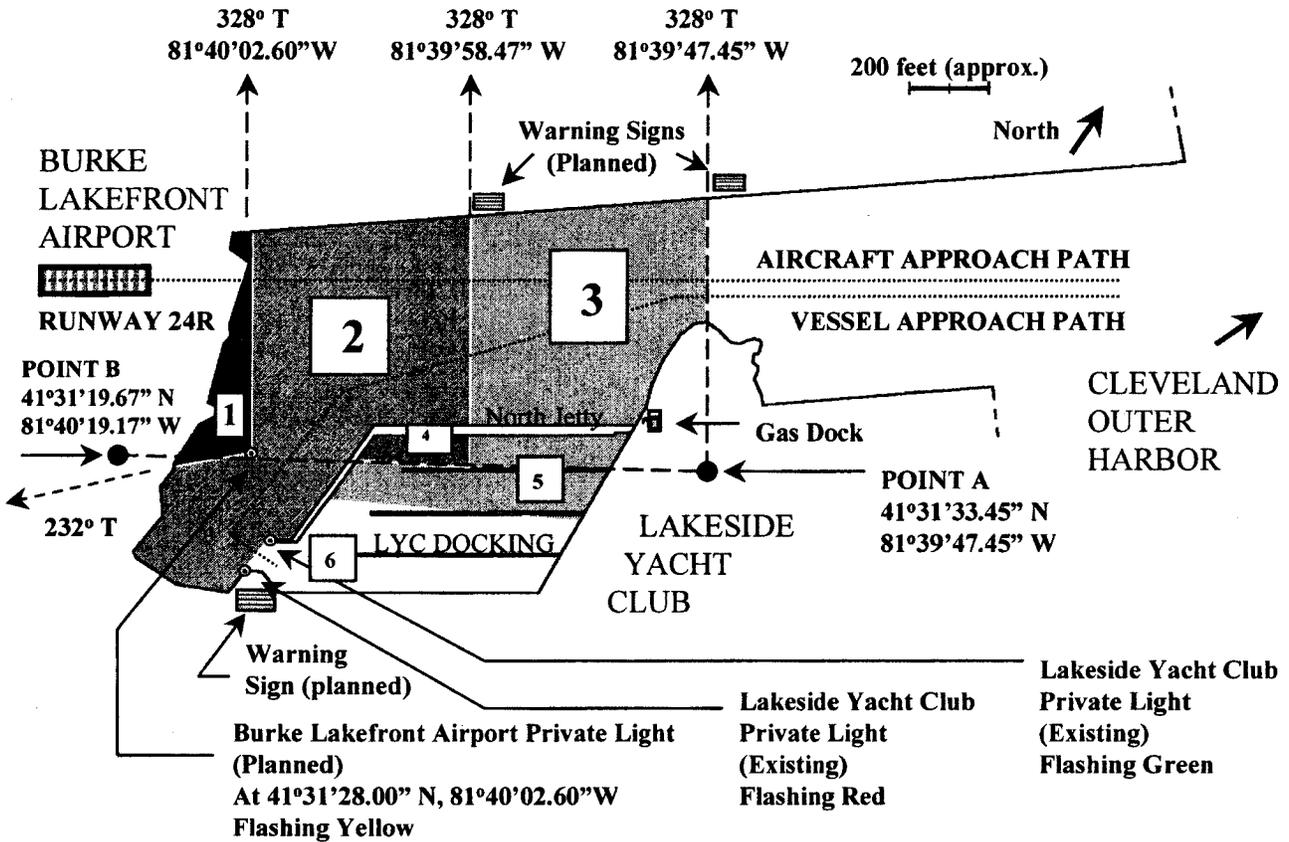
more extensive zone of air clearance than the existing visual approach. The Lakeside Yacht Club is located in Cleveland Outer Harbor near the

northeast end of the runway, and the entrance channel leading into the yacht club docks is immediately adjacent to the end of the runway (Runway 24R).

The configuration of the area between the airport and the yacht club is depicted in Illustration 1 here.

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**Illustration 1. Approach to Lakeside Yacht Club and Minimum Air Clearances for Burke Lakefront Airport Instrument Approach**



**Restricted Areas, Based on an Extreme High Water Level of 577' Mean Sea Level (MSL)**

Area	MSL Air Clearance	Applicable Mast Heights	Restrictions
1	618	41 feet	No entry
2	622	45 feet	No entry unless cleared, during designated times
3	640	63 feet	No entry unless cleared, during designated times
4	630	53 feet	No entry (no dockage)
5	640	63 feet	No entry (no dockage)
6	672	95 feet	No entry (no use of Yacht Club areas)

The shaded areas in the illustration are those areas over water where the safety parameters of the instrument approach system create necessary restrictions on the height of vessel structures, in feet, with clearance levels indicated in both mean sea level (MSL) and height over high water (applicable mast heights) based on an extreme high water level of 577 feet MSL. The actual boundaries of the area are defined by exact geographic coordinates specified in the regulation, based on calculations from the Federal Aviation Administration. Illustration 1 is an approximate guide to how those coordinates and areas fall over the area when those coordinates are mapped on to a nautical chart by the National Oceanic and Atmospheric Administration.

The Airport proposal raised two questions: (1) What restriction on vessel heights would be required to avoid conflict with the approach slope safety parameters? (2) How can those parameters be protected without undue restriction on vessel navigation and the operation of the yacht club?

#### *Clearance Requirements.*

With the instrument-guided approach installed by Burke Lakefront Airport and the Federal Aviation Administration, the center line of the approach path comes down along the northwest side of the Lakeside Yacht Club entrance channel. This creates the need for an air clearance area which becomes lower as the approach nears the southwest end of the channel. In addition to the main clearance area directly under the main approach path, there is a slanted clearance area to the side of the main approach path which accounts for the skewing of the air clearance areas over the south end of the channel. This air clearance area extends down to as low as 618 feet above mean sea level (MSL) at the south end of the entrance channel. The main part of the channel used by vessels to transit in and out of the Lakeside Yacht Club docks (which normally bear to the east side of the entrance along the south extension of the jetty, where there is the best water depth) is covered by an air clearance area ranging from 622 to 640 feet above MSL. Although there are no measurable tides on the Great Lakes, water levels vary according to yearly climate, season, and weather. Water levels tend to run highest during the summer. In addition, they are subject to short-term increases or sudden oscillations due to wind, storm surges and geologic disturbances. Therefore, safety parameters have been based on the highest recorded levels. The long-term monthly average level (1860 through 1990) for Cleveland is

572.2 feet MSL, but levels have reached a monthly average high of 573.9 feet MSL (July 1996) and an all-time hourly high of 576.3 feet MSL (in February 1997). Rounding up this all-time hourly high, which reflects the variations which can be created by storm conditions, suggested 577 MSL as the safe figure for high water to be subtracted from the mean sea level air clearance. This is the basis for the "applicable structure or equipment heights" assigned to the various restricted areas marked on illustration 1. One of these restricted areas, area no. 1, which applies to vessels with mast heights as low as 41 feet, in fact covers an area of shallow and obstructed water outside of the normal route in and out of the club, and therefore does not actually affect the normal navigation of any sailboats as long as they avoid accidentally wandering into that area. The relevant limit, at which some boats become affected, is therefore the mast height limit of 45 feet within restricted area no. 2.

#### *Yacht Club Operations*

The yacht club currently accommodates a number of sailboats with mast heights ranging from 45 to 65 feet above the water line, including sailboats belonging to members of the Club and others visiting the Club, which would be affected by these restrictions. There is sufficient available room for docking vessels with masts as high as 95 feet in Club facilities located further away from the end of the runway than the entrance channel, without intruding into the glide slope safety parameters. The primary problem, therefore, is to avoid a conflict during the time that sailboats with masts of 45 feet or more are entering or leaving the entrance channel. In discussions held between representatives of the yacht club and the Airport, it was agreed that the interests of both parties could be accommodated by a system for clearing vessels with high masts for transit with the traffic control tower. Vessel operators will be advised of the requirement to obtain clearance by a regulatory notice on the nautical charts, various warning signs to be provided by the Airport, and notice to the members of the yacht club. In addition, the airport has built a permanent fixed marker with a light alongside the entrance channel, marking the outer corner of restricted area no. 1 in order to facilitate the safe passage through the preferred half of the channel. Clearance for transit through areas no. 2 and 3 must be obtained by telephone or radio call to the Burke Lakefront Air Traffic Control Tower, with radio calls being made on marine

band channel 14. This is an area wholly within the protection of Cleveland Harbor, with additional protection from wave action provided by the airport landfill to the north. It therefore should be safe for vessels to temporarily hold up outside the entrance to the yacht club on the rare occasions when clearance is required and cannot be granted. There is also a fueling dock on the outside of the entrance, within area no. 3, providing a location where most vessels requiring clearance can temporarily tie up if necessary. Vessels with masts 63 feet in height and over would need to obtain clearance further in advance before entering area no. 3 and the fueling dock location. Times when a vessel would actually be required to hold up will be rare, because it is not necessary when aircraft make normal visual approaches, and the expected time that a vessel will have to hold up is a maximum of fifteen minutes. In addition, this regulation provides for advance group clearances to be provided for the convenience of the yacht club to accommodate planned events such as regattas on weekends.

Given the agreement between the two relevant parties, the airport's commitment to provide lighted warning signs, a lighted channel marker, and clearance procedures, and the limited number of larger sailboats which may be affected by the clearance requirement, the Coast Guard views this rule as a reasonable and safe solution as long as both parties maintain their existing commitment to cooperate in making the clearance system work. In order to assure the Federal Aviation Administration that conflict will be avoided, and to insure the safety of both vessels and aircraft, the Coast Guard has promulgated this vessel clearance requirement as a regulated navigation area.

#### **Discussion of Comments and Changes**

During the 90 days since the Notice of Proposed Rulemaking was published discussing the air clearance restrictions at the entrance to the Lakeside Yacht Club, the Coast Guard has received no comments and has made no changes to the original proposed rule.

#### *Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

#### Federalism

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

#### Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation, and has so certified in the docket file.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Waterways.

#### Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-6, and 160.5; and 49 CFR 1.46.

2. Add § 165.906 to read as follows:

#### § 165.906 Lakeside Yacht Club in Cleveland Harbor, Cleveland, OH—regulated navigation areas.

(a) *Restricted Areas.* The following are areas inside Cleveland Harbor which are subject to navigational restrictions based on the height of vessel masts as specified in paragraph (b) of this section. For the purpose of this section, the term “mast” will be used to include masts, antennae or any other portion of the vessel extending above the waterline. All of these areas are inside the “Lakeside Yacht Club entrance channel,” defined as the water area between the Lakeside Yacht Club jetties

and the Burke Lakefront Airport landfill, or inside the “Lakeside Yacht Club docks,” defined as the docking area inside the Lakeside Yacht Club jetties and immediately adjacent to Lakeside Yacht Club.

(1) *Restricted area no. 1.* Restricted area no. 1 is the water area on the southwest end of the Lakeside Yacht Club entrance channel which is southwest of a line running 328° T and northwest of a line running 232° T from a point at 41°31'28.00" N, 81°40'02.60" W, which point is marked by a fixed flashing yellow light.

(2) *Restricted area no. 2.* Restricted area no. 2 is the water area of the Lakeside Yacht Club entrance channel which is outside restricted area no. 1 and the entrance to the Yacht Club docking area, and southwest of a line running 328° T from the intersection of 81°39'58.47" W and reference line running between point A at 41°31'33.45" N, 81°39'47.45" W and point B at 41°31'19.67" N, 81°40'19.17" W.

(3) *Restricted area no. 3.* Restricted area no. 3 is the water area of the Lakeside Yacht Club entrance channel which is outside restricted area no. 1, and southwest of a line running 328° T from point A at 41°31'33.45" N, 81°39'47.45" W.

(4) *Restricted area no. 4.* Restricted area no. 4 is the area inside the Lakeside Yacht Club docks which is southwest of a line running 328° T from the intersection of 81°39'58.47" W and a reference line running between point A at 41°31'33.45" N, 81°39'47.45" W and point B at 41°31'19.67" N, 81°40'19.17" W, and northwest of the same reference line.

(5) *Restricted area no. 5.* Restricted area no. 5 is the area inside the Lakeside Yacht Club docks which is outside restricted area 4 and northwest of a line 183 feet southeast and parallel to a reference line running between point A at 41°31'33.45" N, 81°39'47.45" W and point B at 41°31'19.67" N, 81°40'19.17" W.

(6) *Restricted area no. 6.* Restricted area no. 6 is the area inside the Lakeside Yacht Club docks which is outside restricted areas 4 and 5.

(b) *Restrictions applicable to vessels of certain heights.* Vessels with masts of certain heights are subject to the following restrictions with reference to the restricted areas detailed in paragraph (a) of this section. The height of a vessel is the height above the water line of masts, antennas, navigational equipment, or any other structure.

(1) *Less than 41 feet.* Vessels less than 41 feet in height are not subject to any restrictions under this section.

(2) *41 to 45 feet.* Vessels at least 41 feet in height yet less than 45 feet in height may not enter restricted area 1.

(3) *45 to 53 feet.* Vessels at least 45 feet in height yet less than 53 feet in height may not enter restricted area 1 and must comply with the clearance procedures prescribed in paragraph (c) when navigating through restricted area 2.

(4) *53 to 63 feet.* Vessels at least 53 feet in height yet less than 63 feet in height may not enter restricted area 1, must comply with the clearance procedures prescribed in paragraph (c) of this section when navigating through restricted area 2, and may not dock in or enter restricted area 4 at any time.

(5) *63 to 95 feet.* Vessels at least 63 feet in height yet less than 95 feet in height may not enter restricted area 1, must comply with the clearance procedures prescribed in paragraph (c) of this section when navigating through restricted areas 2 or 3, and may not dock in or enter restricted areas 4 or 5 at any time.

(6) *95 feet or more.* Vessel 95 feet or more in height may not enter any restricted area, 1 through 6, at any time.

(c) *Clearance procedures.* Except during the times specified in paragraph (d), operators of vessels subject to these procedures must do the following:

(1) Obtain clearance from the Burke Lakefront Air Traffic Control Tower before navigating through the restricted area(s);

(2) Navigate promptly through the area(s) at a safe and practical speed. Navigation at a safe and practical speed includes brief stops at the fueling dock inside restricted area 3 by vessels with masts between 63 and 95 feet in height; and

(3) Promptly inform the Burke Lakefront Air Traffic Control Tower after clearing the restricted area(s), or of any difficulty preventing prompt clearance. The Burke Lakefront Air Traffic Control Tower may be contacted on marine radio channel 14, or by telephone at (216) 781-6411 except as noted during the suspended hours listed in paragraph (d) of this section. The radio and telephone will be manned when the instrument guided approach system is being utilized.

(4) Clearance may also be obtained for longer periods or for groups of vessels when arranged in advance with Burke Lakefront Airport by any appropriate means of communication, including a prior written agreement.

(d) *Enforcement of clearance requirements.* The clearance procedures specified in paragraph (c) of this section will not be enforced during the following times:

(1) 11:00 p.m. on Fridays to 7:00 a.m. on Saturdays.

(2) 11:00 p.m. on Saturdays to 8:00 a.m. on Sundays.

(3) 12:00 midnight Sunday nights to 7:00 a.m. on Mondays.

(e) *Enforcement.* This section will not be enforced during any period in which the Federal Aviation Administration withdraws approval for operation of an instrument-only approach to runway 24 on the northeast end of Burke Lakefront Airport.

Dated: January 29, 1999.

**J.F. McGowan,**

*Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.*

[FR Doc. 99-3940 Filed 2-17-99; 8:45 am]

BILLING CODE 4910-15-M

## FEDERAL MARITIME COMMISSION

**46 CFR Parts 550, 551, 555, 560, 565, 585, 586, 587, and 588**

[Docket No. 98-25]

### Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission is revising and redesignating its regulations relating to section 19 of the Merchant Marine Act, 1920, section 13(b)(5) of the Shipping Act of 1984, and the Foreign Shipping Practices Act of 1988, and adding new regulations relating to section 9 of the Shipping Act of 1984, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

**DATES:** This rule is effective May 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street N.W., Washington, D.C. 20573-0001, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:** On December 4, 1998, the Federal Maritime Commission ("Commission") published a proposed rule to revise its regulations on restrictive foreign shipping practices and controlled carriers. 63 FR 67030. The proposed rule implemented changes made by the Ocean Shipping Reform Act of 1998, Pub. L. 105-258, 112 Stat. 1902 ("OSRA"), and also clarified existing regulations. Interested parties were given the opportunity to

submit comments on the proposed rule. The Commission received four comments from industry groups and regulated entities.

The first comment received by the Commission is from the Council of European and Japanese National Shipowners' Associations ("CENSA"), which has three specific comments to the proposed rule. CENSA first addresses §§ 550.102 and 550.301, which explicate the regulatory action that may be taken by the Commission in the event it finds foreign shipping practices to create conditions unfavorable to shipping. The proposed regulations indicate that the Commission may take action when it finds that "competitive methods, pricing practices or other practices" have created conditions unfavorable to shipping. This language tracks verbatim OSRA's changes to section 19(a)(2) (formerly section 19(1)(b)) of the Merchant Marine Act, 1920. CENSA fears that this provision expands the Commission's power over privately-operated shipping companies with respect to their commercial pricing practices. CENSA states that Organisation for Economic Cooperation and Development ("OECD") member nations have agreed to reach a uniform consensus as to the appropriate measures to be taken to address unfair or non-commercial practices. CENSA believes that such issues must be taken up in inter-governmental fora rather than by the Commission. CENSA requests that the Commission state that it will not pursue any matter under section 19 of the Merchant Marine Act, 1920 regarding the pricing practices of owners or operators of vessels of a foreign country unless those practices have been shown to be otherwise in violation of the Shipping Act of 1984 ("1984 Act").

CENSA's comment would have the Commission affirmatively abdicate its statutory responsibility to combat conditions unfavorable to shipping vested in it by Congress for the purpose of permitting other bodies, like the OECD, to establish uniform rules. By including in OSRA references to "pricing practices," Congress has bestowed upon the Commission the specific responsibility to review and retaliate against such practices where they create conditions unfavorable to shipping in the U.S. foreign trade. The Commission cannot disregard this duty; should Congress determine through legislation to defer to the OECD or some other such forum, then the Commission would change its approach accordingly. We note, moreover, that the addition of "pricing practices" to the statute is a

clarification of existing law and authority, rather than an expansion of such. The Commission has long interpreted "pricing practices" to be included within the meaning of "practices" generally, and has on numerous occasions acted accordingly. The Commission has therefore determined not to incorporate CENSA's comment into the final rule.

CENSA then addresses § 560.2(c), in which the Commission proposed to eliminate the term "fighting ships" from its regulation, and substitute in its place language forbidding "below market pricing designed to exclude competition." CENSA states that the Commission's determination to eliminate the term "fighting ships" must be taken in concert with what CENSA views as the survival of the fighting ship concept, though not the term, in OSRA. CENSA argues that Congress did not intend to eliminate the concept of fighting ships, but instead meant to recognize current conditions in which predatory practices would often be undertaken by multiple ship combinations rather than by a single "fighting ship." CENSA points to section 10(b)(6) of the 1984 Act as amended by OSRA as evidence of the survival of the fighting ship concept. That section indicates that "(n)o common carrier, either alone or in conjunction with any other person, directly or indirectly, may use a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition, by driving another ocean common carrier out of that trade." Prior to the enactment of OSRA, the section (previously designated as section 10(b)(7)) indicated that "(n)o common carrier, either alone or in conjunction with any other person, directly or indirectly, may employ a fighting ship." CENSA argues that the replacement of the term "fighting ship" reflects a refinement of the concept. CENSA fears that the proposed regulation proffered by the Commission is too vague and could lead to an overly broad interpretation to the detriment of competitive pricing mechanisms. For this reason, CENSA proposes that the Commission include the language from section 10(b)(6) in place of the term "fighting ship" in 46 CFR 560.2(c).

The deletion of the term "fighting ship" from § 560.2(c) was undertaken to reflect the deletion of that term from the 1984 Act. However, the definition of "predatory practices" in § 560.2(c), as CENSA has made clear, should continue to include the concept of a reduction in competition through the use of pricing mechanisms designed to push a common carrier out of a particular trade.