

(S E R V E D)
(September 6, 1991)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PARTS 560 AND 572

[DOCKET NO. 91-02]

ELECTRONIC FILING OF AGREEMENT REPORTS AND MINUTES

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") amends its rules regarding filing of reports and minutes by agreement parties to permit direct electronic transmission. This amendment is an accommodation to the continuing growth of electronic data interchange and should benefit filers and the Commission.

EFFECTIVE

DATE: Effective [Insert date 30 days from publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Commission's rules regarding agreement filings (Parts 560 and 572 of Title 46 CFR) contain requirements for filing of various reports including minutes, shipper

requests and complaints and indices of documents. The current rules contemplate such filings being made in hard paper copy.

Given the general proliferation of the use of electronic data interchange both at the Commission and in the industry, the Commission in this proceeding has proposed¹ to permit, but not mandate, the filing of such agreement reports and minutes through direct electronic transmission to Commission headquarters. As stated in the proposed rulemaking, the proposal contemplates modem to modem transfer of ASCII text. The Commission would use an AT class personal computer, 2400 baud modem and FMC-developed communication software which would be compatible with any communications software used by filers. Transmission would be limited to certain hours of Commission business days; viz. after 2:00 p.m. Eastern time, but would be allowed during non-business hours of the Commission. This arrangement is designed to accommodate filing parties located in different time zones and to avoid the need for the Commission to dedicate a terminal full time for this purpose.

The Commission's rules currently provide that certain agreement report filings are to be certified by an agreement official. This requires inclusion of the signature of the certifying official. Accordingly, the Proposed Rule provided for the issuance of a Personal Identification Number ("PIN") to satisfy the signature requirement. Parties seeking to use the electronic filing system would submit a statement in advance agreeing that inclusion of the PIN in the transmission constitutes the signature of the certifying official. The Proposed Rule also contemplates use of passwords to prevent unauthorized filings. The password would be unique to each electronic filer.

¹ 56 FR 1966; January 18, 1991.

Finally, the Proposed Rule clarifies requirements in 46 CFR Part 572 for hard copy filings to reflect the current division of responsibility at the Commission *viz.*, that terminal agreement filings are to be lodged with the Bureau of Domestic Regulation and other agreement filings are to be lodged with the Bureau of Trade Monitoring.²

Comments to the Notice of Proposed Rulemaking were submitted by several major ocean common carrier conferences.³ These commenters all generally support the basic thrust of the rule, but urge either clarification or revision in part.

Commenters generally questioned the provision of the Proposed Rule which would limit the issuance of a PIN to one for each agreement, especially if that provision is intended to be restricted to cover only a single designated person. Commenters point out that typically conference agreement submissions might be prepared and signed by any of several different persons representing different committees or rate groups or different levels of agreement officials. Commenters request that provision be made for multiple duly designated persons per agreement to be covered by PINs.

We agree that the proposed restriction of one PIN per agreement should not be interpreted to limit the use of the agreement's PIN to a single designated person. Accordingly, the Final Rule will expressly indicate that, where a filing party has more than one official authorized to file, each additional official must submit a statement to the Commission agreeing that inclusion of the PIN constitutes the signature of that filing

² Subsequent to the Proposed Rule this division of responsibility was eliminated so that all such filings now are to be lodged with the newly designated Bureau of Trade Monitoring and Analysis. These changes are reflected in this Final Rule.

³ Commenters are the North Europe-USA Rate Agreement and USA-North Europe Rate Agreement; the Asia North America Eastbound Rate Agreement and South Europe USA Freight Conference; the Trans-Pacific Freight Conference of Japan and the Japan Atlantic and Gulf Freight Conference; and the Transpacific Westbound Rate Agreement.

official. As an added security measure we are adopting the suggestion of a commenter that such statements be countersigned by the principal official of the filing party.

Commenters also suggested that for security and other reasons there should be a procedure to cancel or change PIN numbers when an agreement official is no longer authorized to make filings. We concur and have adopted the further suggestion that a PIN and designation of authorized filing officials can be cancelled or changed upon request of the principal official of the filing party.

One other concern about security was expressed, viz., guarding against improper access to filed data by outsiders. Use of modem will be limited to the function of electronic filing and will not result in ability to remotely access or retrieve filed information. The FMC's database will not be internally networked so that control over access to such data will be no different than under the current paper system.

One commenter suggested that industry input should be permitted in developing the technical aspects of electronic filing which, as the Commission stated in the Proposed Rule, are to be published in a users manual. In this regard, a procedure for electronic confirmation of receipt of filings is requested. The electronic filing system contemplated by this rule is uncomplicated and straightforward. The user manual already has been prepared and is available at the Commission's Office of Information Resources Management ("OIRM"). It will include a provision for electronic confirmation of receipt of filings. Suggestions regarding the manual, including specific proposals for improvement, can be made by users at any time by contacting OIRM.

Finally, we have adopted a suggestion to clarify that filings may be made at any time except between the hours of 8:30 a.m. and 2:00 p.m. Eastern time on Commission business days.

Although the Commission as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this Final Rule is not a "major rule" because it will not result in:

- (1) an annual effect on the economy of \$100 million or more;
- (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Final Rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.) as implemented by regulations prescribed within 5 CFR Part 1320. Accordingly, OMB approval of the proposed rule is not required.

List of Subjects in 46 C.F.R. Part 560:

Administrative practice and procedure, Antitrust, Maritime carriers, Reporting and recordkeeping requirements.

List of Subjects in 46 C.F.R. Part 572:

Administrative practice and procedure, Antitrust, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, the Federal Maritime Commission amends Parts 560 and 572 of Title 46 of the Code of Federal Regulations as follows:

1. The authority citation for part 560 continues to read as follows:

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a

2. Section 560.701 is amended by adding a new paragraph (c) reading as follows:

§560.701 General requirements.

(a) * * *

(b) * * *

(c) Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Monitoring and Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by an official of the filing party by submitting a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any time except between the hours of 8:30 a.m. and 2:00 p.m. Eastern time on Commission business days.

3. The authority citation for Part 572 continues to read:

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 1701-1707, 1709-1710, 1712 and 1714-1717.

4. In section 572.701, paragraph (a) is revised to read as follows:

§572.701 General requirements.

(a)(1) Address. Reports required by this subpart should be addressed to the Commission as follows:


Director, Bureau of Trade Monitoring and Analysis
Federal Maritime Commission
Washington, D.C. 20573-0001

The lower, left-hand corner of the envelope in which each report is forwarded should indicate the subject of the report and the related agreement number. For example: "Minutes, Agreement 5000."

(2) Electronic filing. Reports and minutes required to be filed by this subpart may be filed by direct electronic transmission in lieu of hard copy. Detailed information on electronic transmission is available from the Commission's Bureau of Trade Monitoring and Analysis. Certification and signature requirements of this subpart can be met on electronic transmissions through use of a pre-assigned Personal Identification Number (PIN) obtained from the Commission. PINs can be obtained by submission by an official of the filing party of a statement to the Commission agreeing that inclusion of the PIN in the transmission constitutes the signature of the official. Only one PIN will be issued for each agreement. Where a filing party has more than one official authorized to file minutes or reports, each additional official must submit such a statement countersigned by the principal official of the filing party. Each filing official will be issued a unique password. A PIN or designation of authorized filing officials may be canceled or changed at any time upon the written request of the principal official of the filing party. Direct electronic transmission filings may be made at any

time except between the hours of 8:30 a.m. and 2:00 p.m. Eastern time on Commission business days.

By the Commission.


Ronald D. Murphy
Assistant Secretary