

(S E R V E D)  
( DECEMBER 16, 1991 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PART 550

[DOCKET NO. 91-42]

TARIFF FILING NOTICE REQUIREMENTS;  
DOMESTIC OFFSHORE TRADES

EXEMPTION UNDER SECTION 35  
OF THE SHIPPING ACT, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916, as amended by the Intercoastal Shipping Act, 1933. This amendment of Part 550 partially exempts carriers providing port-to-port service in the domestic offshore trades from the thirty-day notice requirements of 46 U.S.C. app. 844, for any new or amendatory tariff matter that does not increase the shipper's cost of transportation. Carriers may now file such tariff matter on one day's notice. Provisions of the Shipping Act and the Commission's regulations that pertain to any "general decrease in rates" are not affected by this amendment and carriers must continue to comply with those provisions.

DATE: This action is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, requires ocean carriers providing port-to-port service in the domestic offshore trades to file on thirty days' notice any new or amendatory tariff matter, even if it decreases the shipper's cost of transportation. Ocean carriers operating in the foreign commerce of the United States are not subject to this restriction. Section 8 (d) of the Shipping Act of 1984, *id.* 1707, provides that a change in an existing rate that results in a decreased cost to the shipper may become effective upon filing. Moreover, domestic offshore water carriers filing joint-through rates with the Interstate Commerce Commission may file new or reduced rates on one day's notice (49 C.F.R. 112.39(h)(1)).

The Federal Maritime Commission ("FMC" or "Commission") has granted several exemptions to the thirty-day notice requirement to permit carriers serving between the contiguous United States and Puerto Rico, the U.S. Virgin Islands, Alaska and Hawaii to compete with carriers that are not subject to that requirement. Matson

Navigation Co., Inc. - Application for Section 35 Exemption, \_\_\_ F.M.C.\_\_\_\_, 24 S.R.R. 1518 (1989); Tariff Filing Periods -- Exemption, \_\_\_ F.M.C. \_\_\_, 24 S.R.R. 1604 (1989); Application of Sea-Land Service Inc. For Exemption Under Section 35 of the Shipping Act, 1916, \_\_\_ F.M.C. \_\_\_, 25 S.R.R. 660 (1990) and Tropical Shipping & Construction Co. Ltd. - Application for Section 35 Exemption, \_\_\_ F.M.C.\_\_\_\_, 25 S.R.R. 1471 (1991); Application of Trailer Marine Transport Corporation Under Section 35 of the Shipping Act, 1916, \_\_\_ F.M.C. \_\_\_, 25 S.R.R. 1660 (1991); Puget Sound Tug & Barge Co. -- Application for Section 35 Exemption: Hawaii and Alaska Trades, No. 91-55 (F.M.C. Nov. 25, 1991).

The Commission believes that the exemptions referred to above have benefitted both shippers and carriers. Shippers benefit because carriers can respond more rapidly to their needs and desires; carriers benefit because they are able to move quickly to meet changes filed by competitors.

It appeared therefore appropriate to grant a general exemption for all carriers in the domestic offshore trades that would supersede the above exemptions and extend their provisions to all domestic offshore trades. To that end, the Commission by notice of October 9, 1991, 56 FR 50,841, proposed to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a,<sup>1</sup> to partially exempt carriers

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<sup>1</sup> Section 35 provides in pertinent part:

(continued...)

from the thirty-day requirement. The exemption would permit carriers in the FMC-regulated domestic offshore trades to publish on one day's notice any new or amendatory tariff matter, including rates, charges, regulations, rules and notes, that does not result in an increased cost to the shipper.

Three brief comments on the proposed rule were filed by Crowley Maritime Corporation, Matson Navigation Company, Inc., and Tropical Shipping & Construction Co., Ltd. The comments all supported the proposed rule and suggested no changes. The Commission concludes that the proposed rule meets the standards of section 35 of the 1916 Act, in that it will not substantially impair effective regulation, be unjustly discriminatory, or be detrimental to commerce. Accordingly, subject to the limitation described below, the Commission will adopt the exemption as a final rule.

Although the exemption will permit a carrier to make a change to a tariff rule, regulation or note that could affect a large number of rate items, a carrier may not use the exemption to

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<sup>1</sup>(...continued)

The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

institute a general decrease in rates on one day's notice.<sup>2</sup> The exemption does not apply to any of the provisions of the 1933 Act and the Commission's regulations that pertain to a general rate decrease. The 1933 Act includes a requirement that any such decrease be filed on sixty days' notice. Rule 67 of the Commission's Rules of Practice and Procedure requires the carrier to accompany any general decrease in rates with testimony and exhibits of such composition, scope and format that they will serve as the carrier's entire direct case in the event the matter is set down for hearing. This exemption does not relieve carriers from complying with those provisions.

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 rule is not a "major rule" as defined in Executive Order 12291 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

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<sup>2</sup> Section 1 of the 1933 Act, 46 U.S.C. app. 843, defines a "general decrease in rates" as:

. . . any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.

(3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

List of Subjects in 46 CFR Part 550:

Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, Part 550 of Title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 550 continues to read as follows:

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. Section 550.1 paragraph (b) is revised to read as follows:

550.1 Exemptions

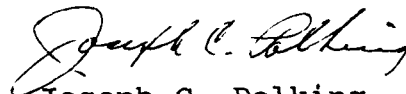
(a) \* \* \*

(b) Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a

Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish on one day's notice any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843.

3. Section 550.1, paragraphs (c), (d), (e) and (f) are removed.

By the Commission.

  
Joseph C. Polking  
Secretary