

(S E R V E D)
(June 14, 1991)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PARTS 580 AND 581

[DOCKET NO. 90-25]

PUBLICATION AND FILING OF PAYMENTS MADE
BY COMMON CARRIERS TO
FOREIGN FREIGHT FORWARDERS AND OCEAN FREIGHT BROKERS
IN TARIFFS AND SERVICE CONTRACTS

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Federal Maritime Commission ("Commission") is discontinuing this rulemaking proceeding, which would have amended its foreign tariff and service contract filing regulations to require common carriers and conferences to state in their tariffs and service contracts the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders or ocean freight brokers. The Proposed Rule also would have defined foreign freight forwarders, foreign freight forwarding services and ocean freight brokers. The Commission has decided that no regulatory purpose would be served by pursuing the Rule at this time.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Commission initiated this proceeding by publishing in the FEDERAL REGISTER (55 FR 39181) a Proposed Rule ("Proposed Rule") to amend its tariff and service contract rules in 46 CFR Parts 580 and 581. The Proposed Rule would have addressed the issue of payments made by carriers to intermediaries. Neither the Shipping Act of 1984 ("1984 Act") 46 U.S.C. app. §§ 1701-1720, nor the Commission's regulations, define such intermediaries with respect to operations in inbound trades, nor do they explicitly require that payments made by carriers to such intermediaries be listed in the carriers' tariffs or service contracts.

The Commission received 17 comments from conferences, carriers, trade associations, a foreign freight forwarder and the Department of Justice. One commenter supported the Proposed Rule as published, noting its advantages for the freight forwarding community. Seven other commenters supported the Proposed Rule in part, while suggesting changes or additions ranging from clarification of a single item to the expansion of the scope of the Rule beyond that of the instant proceeding.

Nine commenters opposed the Proposed Rule. Some claimed that the Commission lacks authority to promulgate a final rule in this proceeding. These parties contended that neither the language of the statute nor its legislative history showed that Congress intended the Commission to have jurisdiction over third party entities which operate in the inbound trades. However, the Proposed Rule would not have regulated foreign freight forwarders or ocean freight brokers. Rather, it would have directed carriers to publish specific information regarding their practices and relationships with foreign freight forwarders and ocean freight brokers. The Commission, therefore, rejects the argument that it lacks the statutory authority to implement the Proposed Rule.

Other objections to the Rule were that it was unnecessary and unduly burdensome. Some complained that the Proposed Rule would require a carrier to update information each time it used the services of a new forwarder or broker, or entered into new arrangements with an existing forwarder or broker. Some also contended that the Proposed Rule would inhibit service competition that results through the use of foreign freight forwarders and ocean freight brokers. By requiring conference carriers to adhere to the fixed terms of arrangements in collective tariffs, the Proposed Rule, according to one commenter, would deny individual conference carriers the flexibility which the 1984 Act preserved for them to respond to competition from their conference rivals.

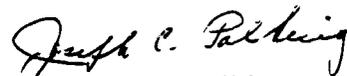
The Commission takes cognizance of the commenters' concerns and is persuaded as to the merits of some of these. Moreover, the Non-Vessel-Operating Common Carrier Amendments of 1990 (Section 710 of Pub. Law No. 101-595) ("NVOCC Amendments"),¹ and the Commission's Interim Rule issued to implement them, may eliminate some of the problems which the Proposed Rule sought to resolve. NVOCCs are now required to post a \$50,000 bond to evidence their financial responsibility, and to designate an agent for service of process if foreign-domiciled. Many persons thought to be operating as intermediaries as defined in the Proposed Rule are subject to the tariff filing and bonding requirements of the Interim Rule. Consequently, the impact of the instant rulemaking on the industry, as well as its utility for the Commission, may be reduced. The Proposed Rule

¹ The NVOCC Amendments were enacted during the Proposed Rule's comment period. The effective date of the initial Interim Rule was stayed from February 14, 1991, to April 15, 1991. (Docket No. 91-01 *Bonding of Non-Vessel-Operating Common Carriers* and Petition P1-91 *Non-Vessel-Operating Common Carriers Bonding Requirements, Petition for Temporary Exemption.*)

may therefore be unnecessary. For all the above reasons, it appears that no regulatory purpose would be served by pursuing the Proposed Rule at this time.

Thus, upon consideration of the comments and intervening legislation, the Commission has decided against issuing a final rule, and is discontinuing this proceeding without prejudice to any subsequent determination by the Commission that further action is warranted. The Commission, however, will continue its enforcement efforts under the 1984 Act by pursuing possible malpractices involving shipper intermediaries on a case-by-case basis.

By the Commission.


Joseph C. Polking
Secretary