

(S E R V E D)
(March 17, 1992)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PART 502

[DOCKET 92-03]

RULES OF PRACTICE AND PROCEDURE; SPECIAL DOCKET APPLICATIONS

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission adopts as a final rule an Interim Rule regarding the processing of special docket applications. This amendment to Part 502 authorizes the Secretary of the Commission to assign such applications to Special Docket Officers for review and initial decision. The Secretary will retain discretion to assign particular applications to the Office of Administrative Law Judges as appropriate.

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

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Rule 92 of the Commission's Rules of Practice and Procedure, 46 CFR 502.92, contains regulations outlining the procedures for the filing and processing of special docket applications. Such applications may be filed by a common carrier or shipper for permission to refund or waive collection of a portion of freight charges, where it appears that there is an error in the carrier's

tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff. Under past Commission practice, all such applications were referred by the Secretary of the Commission to the Commission's Office of Administrative Law Judges ("OALJ") for review and for issuance of an initial decision.

The number of special docket applications filed with the Commission has increased dramatically over the last year. This increase occurred at a time when the number of formal docket proceedings assigned to OALJ also increased significantly. These increases created a significant workload burden for OALJ. To reduce this workload burden and to better utilize staff resources, the Commission, by notice of January 27, 1992, 57 FR 3,026, published an Interim Rule amending its special docket procedures and solicited comments. Under the Rule, principal responsibility for review of special dockets is transferred to the Office of the Secretary of the Commission. The Secretary has the authority to assign special docket applications to Special Dockets Officers, who will review each application and issue an initial decision. The process for filing of exceptions and/or review of initial decisions by the Commission will continue. The Secretary also has discretion to continue to refer particular applications to OALJ for disposition when deemed appropriate. Such discretion might be exercised, for example, when the application involves unique or complex legal issues.

Special Docket Officers to whom applications are assigned will be experienced Commission personnel, including at the outset the Commission's Assistant Secretary and the Director of the Office of Informal Inquiries, Complaints and Informal Dockets. Other personnel also will be utilized for this function. Transfer of the special docket function in this fashion places this activity in a posture similar to the processing of service contract correction applications under 46 CFR 581.7, the responsibility for which has been delegated to the Director, Bureau of Tariffs, Certification and Licensing. This reassignment will not result in any change in the quality and carefulness of review of special docket applications.

A related change regarding the number of copies of special docket applications required to be filed was included in the Interim Rule. The number is reduced from an original and three to an original and one.

Brief comments on the Interim Rule were filed by Sea-Land Service, Inc., Contship Containerlines, Inc., Wilhelmsen Lines AS, V.A.G. Transport GmbH & Co. OHGT, the Transpacific Westbound Rate Agreement and, filing collectively, the Asia North America Eastbound Rate Agreement, the Israel Trade Conference, the South Europe/U.S.A. Freight Conference, the United States Atlantic Gulf Ports/Eastern Mediterranean and North African Freight Conference and the U.S. Atlantic & Gulf/Australia-New Zealand Conference. The comments all supported the Interim Rule and suggested no changes.

The Commission therefore will adopt the changed special docket procedure as a final rule.

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 that 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) 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 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 502:

Administrative practice and procedure.

Therefore, pursuant to 5 U.S.C. 553 and sections 8 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707 and 1716, Part 502 of Title 46, Code of Federal Regulations, is amended as follows:

1. The interim rule amending 46 CFR Part 502 which was published at 57 FR 3,026 on January 27, 1992, is adopted as a final rule without change.

By the Commission.

Joseph C. Polking
Joseph C. Polking
Secretary