

(S E R V E D)
(October 12, 1990)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PARTS 502 AND 510

[DOCKET NO. 90-27]

**IMPLEMENTATION OF 21 U.S.C. 853a -
DENIAL OF FEDERAL BENEFITS TO DRUG
TRAFFICKERS AND POSSESSORS**

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: 21 U.S.C. 853a, enacted as part of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690), states that Federal benefits shall be withheld in certain circumstances from individuals who have been convicted of drug distribution or possession in Federal or State courts. In this proceeding, the Commission adopts a certification process to implement the requirements of 21 U.S.C. 853a. Because this matter involves agency practice and procedure, it is being issued as a final rule under 5 U.S.C. 553(b)(3)(A).

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Federal agencies must implement and enforce the requirements of 21 U.S.C. 853a, which provides that Federal benefits are not to be granted to certain individuals who are convicted in Federal or State courts of either distribution or possession of controlled substances, after September 1, 1989. A "Federal benefit" is defined in 21 U.S.C. 853a(d) as "the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States." Licenses issued by the Federal Maritime Commission ("Commission" or "FMC") to operate as ocean freight forwarders under section 19 of the Shipping Act of 1984, 46 U.S.C. app. 1718, are "Federal benefits" as defined in 21 U.S.C. 853a(d). A grant of a non-attorney admissions to practice under 46 CFR 502.27 is also such a "Federal benefit."

To ensure that authority is not issued to individuals who have been convicted after September 1, 1989, of drug trafficking or possession and who are subject to the Federal benefits ban of 21 U.S.C. 853a, the Commission is establishing a procedure requiring applicants for FMC authority to certify that they are not ineligible to receive authority because of drug convictions. Because the statute only applies to individuals, this certification requirement will only affect an individual applicant who applies for authority in his or her own name. Corporations, joint owners or partnerships will not be required to complete the certification. The certification will be required for all individual applications that involve requests for licenses as ocean freight forwarders and for all non-attorney applicants for admission to practice before the Commission. The certification will be incorporated in the FMC's application form (FMC-18 Rev.) and the application for admission to practice form (FMC-12) which are currently under revision.

The Federal Maritime Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, 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 Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The Commission has determined to issue this rule as a final rule, without prior notice or opportunity to comment. If an individual is banned by 21 U.S.C. 853a from receiving Federal benefits, the Commission has no discretion in the matter. The rules adopted herein merely establish a practice and procedure for implementing the ban and are thereby exempt from notice and comment requirements pursuant to 5 U.S.C. 553(b)(3)(A). The Commission similarly finds good cause for making the rules effective upon publication pursuant to 5 U.S.C. 553(d)(3).

List of Subjects in 46 CFR Part 502:

Administrative Practice and Procedure

List of Subjects in 46 CFR Part 510

Freight forwarders

For the reasons set forth above, Parts 502 and 510 of 46 CFR are amended as follows.

Part 502 Rules of Practice and Procedure

1. The authority citation of Part 502 is revised to read as follows.

AUTHORITY: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707-1711, 1713-1716; E.O. 11222 of May 8, 1965 (30 FR 6469); and 21 U.S.C. 853a

2. Section 502.27 is amended by redesignating current paragraph (a) as (a)(1) and by adding a new subparagraph (2) reading as follows.

§502.27 Persons not attorneys at law.

(a)(1) * * *

(2) All applicants must complete the following certification:

I, _____(Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

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Part 510 Licensing of Ocean Freight Forwarders

1. The authority citation for Part 510 is revised to read as follows.

AUTHORITY: 5 U.S.C. 553, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 853a

2. Section 510.12 is amended by redesignating current paragraph (a) as (a)(1) and by adding a new subparagraph (2) reading as follows.

§510.12 Application for license.

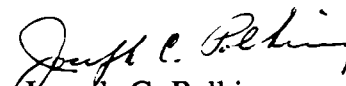
(a)(1) * * *

(2) An individual who is applying for a license in his or her own name must complete the following certification.

I, _____(Name) _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

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By the Commission.


Joseph C. Polking
Secretary