

(S E R V E D)
(March 17, 1989)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PART 550

[DOCKET NO. 89-03]

TARIFF FILING NOTICE PERIODS - EXEMPTION

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. This amendment of Part 550 adds a new exemption for carriers providing port-to-port service in the Hawaiian domestic offshore trade. Such carriers now are permitted to publish on one day's notice reductions in existing individual commodity rates, and rates on new tariff items.

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

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin
General Counsel
Federal Maritime Commission
1100 L Street, N.W.
Washington, D.C. 20573
(202) 523-5740

Robert G. Drew
Director, Bureau of Domestic Regulation
Federal Maritime Commission
1100 L Street, N.W.
Washington, D.C. 20573
(202) 523-5796

SUPPLEMENTARY INFORMATION:

By Order served January 27, 1989, in Petition No. P5-88, Matson Navigation Company, Inc. - Application for Section 35 Exemption, the Federal Maritime Commission ("FMC" or "Commission") granted to Matson Navigation Company

("Matson"), pursuant to section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a, an exemption from certain requirements of the Intercoastal Shipping Act, 1933 ("1933 Act"), id. 843 et seq. Matson is an ocean common carrier providing port-to-port service in the Hawaiian domestic offshore trade ("Trade"). The Commission's Order permitted Matson to put into effect on one day's notice reductions in existing individual commodity rates, and rates on new tariff items. Under the 1933 Act, such tariff actions ordinarily are subject to thirty days' notice. Id. 844.

By notice of proposed rulemaking published in the Federal Register on February 2, 1989, 54 FR 5253, the Commission proposed a rule that would extend the same exemption to all FMC-regulated carriers in the Trade. Comments in support of the proposed rule were filed by Sause Bros. Ocean Towing Co., Inc. ("Sause Bros."), Crowley Maritime Corporation on behalf of Hawaiian Marine Lines, and the U.S. Department of Transportation. No comments in opposition have been received.

DISCUSSION

Section 35 of the 1916 Act authorizes the Commission to grant exemptions from any requirement of the 1933 Act, if "such exemption will not substantially impair effective regulation . . ., be unjustly discriminatory, or be detrimental to commerce." 46 U.S.C. app. 833a. The exemption granted to Matson resulted from the division in

jurisdiction over the domestic offshore ocean trades between the FMC, which regulates all-water, port-to-port services pursuant to the 1933 Act, and the Interstate Commerce Commission ("ICC"), which regulates joint intermodal services originating at or destined to interior mainland points. While the 1933 Act requires thirty days' notice for new or reduced all-water rates, the ICC by regulation permits new or reduced motor/water rates to go into effect on one day's notice. 49 CFR 1312.39(h)(1).¹ Matson's chief competitor for westbound container traffic, Sea-Land Service, Inc. ("Sea-Land"), maintains tariffs only at the ICC. As a result, Sea-Land was able to put its rates into effect more quickly even when Matson had taken the initiative in reducing a particular rate.

In granting the exemption sought by Matson, the Commission observed that Matson merely would be permitted to engage in rate competition with Sea-Land under equal notice requirements, and that shippers would benefit from being able to utilize new or reduced rates more quickly. We found that there was no basis to conclude that allowing new rates and individual rate decreases to go into effect on one day's notice would impair effective regulation or otherwise transgress the standards of section 35. The Commission

¹ In Improvement of TOFC/COFC Regulation, 364 I.C.C. 731 (1981), aff'd in relevant part sub nom. American Trucking Associations, Inc. v. ICC, 656 F.2d 1115 (5th Cir. 1981), rail container-on-flatcar traffic, including joint through rail-water traffic, was deregulated from ICC tariff and rate regulation.

cautioned that section 35 may not be used to essentially deregulate a particular trade or the operations of a particular carrier, but found that these concerns did not apply to Matson's exemption, which did not alter the notice requirements imposed by the 1933 Act on general rate decreases, "across-the-board" decreases, or rate increases of any kind.

Comments in support of Matson's request for an exemption had been filed by Sause Bros., which provides tug-and-barge service in the Trade pursuant to FMC port-to-port tariffs. Sause Bros. claimed that, like Matson, it is competitively disadvantaged as a result of the different notice periods, and asked that the exemption sought by Matson be made applicable to all FMC-regulated carriers in the Trade. However, the question of a trade-wide exemption had not been included in the Federal Register notice of Matson's original application and, consequently, interested parties had had no opportunity to comment on that specific issue. The Commission thus could not properly consider a trade-wide exemption in the context of Matson's application, and instead published the instant proposed rule with opportunity for further comment.

The brief comments filed in support of the proposed rule confirm the Commission's preliminary assessment that application on a trade-wide basis of the exemption already granted to Matson should eliminate the possibility of unjust discrimination against carriers other than Matson, remove

any remaining unnecessary barriers to equitable rate competition, and extend the benefits of accelerated rate decreases to all shippers in the Trade.² Given the absence of adverse comments, there is also no basis to conclude that a trade-wide exemption, limited to new individual rates and rate decreases, will impair effective regulation or be detrimental to commerce within the meaning of section 35.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 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 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.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Federal Maritime Commission certifies that this rule will not have a significant economic impact on a

² In its comments, Crowley Maritime Corporation suggests that the rule also should shorten the notice period for individual rate increases from thirty days to seven days. This is beyond the scope of the proposed rule and will not be adopted. We reiterate, however, that our adoption here of a limited exemption from the requirements of the 1933 Act should not be taken as an indication that we will engage in wide-scale deregulation of the Hawaiian trade as a result of the division in jurisdiction between this agency and the ICC.

substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 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:

In section 550.1, the introductory text is redesignated as paragraph (a), paragraphs (a) through (i) are redesignated as paragraphs (a)(1) through (a)(9) respectively, old paragraphs (c)(1) through (3) are redesignated as new paragraphs (a)(3)(i) through (iii), and a new paragraph (b) is added reading as follows:

550.1 Exemptions

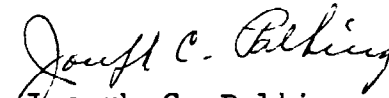
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(b) Carriers providing all-water transportation between the continental United States (including Alaska and the District of Columbia) and Hawaii may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from

the notice requirements of the Act and the rules of this
part.

* * * * *

By the Commission.


Joseph C. Polking
Secretary