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FEDERAL MARITIME COMMISSION

46 CFR PARTS 560 AND 572

[DOCKET NO. 92-32]

AMENDMENTS TO AGREEMENT RECORDKEEPING REGULATIONS

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Maritime Commission ("Commission") proposes to amend its regulations in Parts 560 and 572 governing the filing of agreements under, respectively, the Shipping Act, 1916 ("1916 Act") and the Shipping Act of 1984 ("1984 Act"). The intent of this proposal is to ease the regulatory burden of recordkeeping and filing of required reports with the Commission.

DATE: Comments due [insert date 30 days after date of publication in the Federal Register]. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the filing date in this proceeding.

ADDRESS: Comments (original and 15 copies) are to be submitted to:

Joseph C. Polking, Secretary  
Federal Maritime Commission  
1100 L Street, N.W.  
Washington, D.C. 20573  
(202) 523-5725

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director  
Bureau of Trade Monitoring and Analysis  
1100 L Street, N.W.  
Washington, D.C. 20573  
(202) 523-5787

SUPPLEMENTARY INFORMATION:

BACKGROUND

46 CFR Part 560 implements those provisions of the 1916 Act that govern agreements between common carriers by water in interstate commerce or other persons subject to that Act. This part also establishes procedures for filing agreement approval requests and supporting statements pursuant to section 15 of the Act, filing comments and protests to such agreements and responses, the disposition of agreement approval requests, and reporting and record retention requirements.

Likewise, 46 CFR Part 572 implements those provisions of the 1984 Act that govern agreements between ocean common carriers, agreements (to the extent they involve ocean transportation in the foreign commerce of the U.S.) between marine terminal operators, and agreements between one or more marine terminal operators and one or more ocean common carriers. This part identifies those classes of agreements that require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission.

## DISCUSSION

The Commission believes that it is possible to revise several of the regulations under 46 CFR Parts 560 and 572 in such a manner as to decrease the costs to the private sector with no apparent impact on efficient and effective regulation. For the most part, these revisions consolidate the filing of shippers' requests and complaints, index of documents and reports on carrier consultation with shippers and shippers' associations into one filing as part of agreement minutes.

Given that shippers' requests and complaints and consultations are discussed at agreement meetings, and documents of potential interest to the Commission are circulated at these meetings, it is appropriate to require such reports to be filed with the agreement minutes rather than separately at different intervals, as is currently required in 46 CFR Parts 560 and 572. These proposed revisions should reduce the paperwork burden and associated costs on a conference, since shippers' requests and complaints would be included with minutes filings instead of their own separate annual report. Nor should there be a diminution in the information received by the Commission, since information in the minutes would be identical to that currently provided in the annual shippers' request and complaints report.

The Commission also proposes to reduce the number of filings required by certain other regulations in 46 CFR Parts 560 and 572. Again, such revisions should produce cost savings without impairing effective regulation.

## A. Revisions to Part 560

Specifically, under Subpart G of Part 560, Reporting and Record Retention Requirements, the Commission proposes to delete that portion of section 560.702 requiring each conference to file with the Commission annual reports covering shippers' requests and complaints. The remaining portion of section 560.702 requiring conference tariffs to contain full instructions as to where and by what method shippers may file their requests and complaints would be moved to section 560.703. However, under the Proposed Rule such shippers' requests and complaints and conference action relative to those requests and complaints would now be required to be reported as part of each conference's minutes of meetings filed with the Commission. This proposed reporting change also requires an appropriate revision of the minutes requirements under section 560.703.

In addition, the Proposed Rule:

1. Amends section 560.307 (e) (1) to reduce to 10 from 15 the number of copies of an original marine terminal agreement that must accompany an original agreement filed with the Commission.
2. Amends section 560.401 (a) to reduce to 10 from 15 the number of copies of an original agreement and original supporting information that must accompany an original agreement and original supporting information filed with the Commission.
3. Deletes section 560.404 (c) which requires that a notice of cancellation of an approved agreement be filed not less than 60 days prior to the effective date of cancellation. This regulation is in conflict with section 560.302 (b), which

requires only a 30-day notice. Upon the termination date of section 560.404 (c), the 30-day requirement of section 560.302 (b) would apply for the cancellation of agreements.

Section 560.602 is also amended to delete from the comments and protests procedures the reference to Director, Bureau of Domestic Regulation, since agreements are no longer filed in that Bureau's successor, the Bureau of Tariffs, Certification and Licensing.

#### B. Revisions to Part 572

In the analogous sections of Part 572 -- Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, specifically at Subpart G, Reporting and Record Retention Requirements, the Commission proposes to amend section 572.703 to include section 572.702(a), "Shippers' requests and complaints," and section 572.702(b), "Consultations," thereby eliminating the requirement that each conference file with the Commission annual reports covering all shippers' requests and complaints and shippers' consultations, but requiring the filing of such information as part of agreement minutes.

Similarly, the Commission proposes the deletion of section 572.704, which would eliminate the requirement that each conference file with the Commission quarterly reports indexing documents prepared for discussion at conference meetings. In its place, the Proposed Rule requires that a list of any reports, circulars, notices, statistics, analytical studies or other documents (not otherwise filed with the Commission) that are distributed and used by the members be included as part of the minutes of meetings filed. This

proposed reporting change will also necessitate an appropriate revision of the minutes of meetings requirements under section 572.703.

The Proposed Rule also:

1. Amends section 572.309 (a) (2) (i) to exempt filed membership changes to voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority) from the Information Form, notice, and waiting period requirements of the 1984 Act, provided that such modifications are filed for informational purposes in the proper format.
2. Amends section 572.401 (a) (1) to reduce to 10 from 15 the number of copies of an original agreement that must accompany an original agreement that must be filed with the Commission for review and disposition pursuant to section 6 of the 1984 Act.
3. Amends section 572.402 (d) to delete the requirement that each appendix to a filed agreement be accompanied by a separate signature page, since the appendix is an integral part of a filed agreement which requires a signature page.
4. Amends section 572.603 (a) to reduce to 10 from 15 the number of copies of written comments regarding a filed agreement.

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 the 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.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511), as amended. Public reporting burden for this amendment is estimated to result in an average reduction of 7 1/2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

List of subjects in 46 CFR Part 560:

Administrative practice and procedure; Antitrust; Freight; Maritime carriers; Penalties; Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 15, 18a, 21, 22, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a, Part 560 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for part 560 continues to read as follows:

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. Section 560.307 (e) (1) is revised to read as follows:

§ 560.307 Marine terminal agreements -- exemption.

\* \* \* \* \*

(e) \* \* \*

(1) A true copy and 10 additional copies of the filed agreement;

\* \* \* \* \*

3. The second sentence in section 560.401 (a) is revised to read as follows:

§ 560.401 Filing of agreements.

(a) \* \* \*. Such requests shall consist of a true copy and 10 additional copies of the agreement and all supporting information. \* \* \*

4. Section 560.404 (c) is removed.

5. The first sentence in section 560.602 (e) is revised to read as follows:

§ 560.602 Comments and protests.

\* \* \* \* \*



(e) Except as provided in this section and § 560.403, or except, in the case of an unprotested agreement, as the Director, Bureau of Trade Monitoring and Analysis may in his/her discretion initiate, or unless specifically requested in writing by the Commission, with copies to the proponents and persons which have filed protests or comments, no other written or oral communication concerning a pending agreement shall be permitted. \* \* \*

6. Sections 560.702 and 560.703 are amended by revising the title to section 560.702, removing section 560.702 (a), redesignating section 560.702 (b) as section 560.702 (c), adding a new section 560.702 (b), redesignating section 560.703 (a), (b) and (c) as section 560.702 (a), (d), and (e) respectively, and reserving section 560.703 to read as follows:

§ 560.702 Filing of minutes -- including shippers' requests and complaints.

(a) \* \* \*

(b) Each report subject to paragraph (a) of this section shall provide the following information for all shippers' requests and complaints received since the previous such report filed with the Commission:

- (1) Date request or complaint was received;
- (2) Identity of the person or firm submitting the request or complaint;
- (3) Nature of request or complaint, i.e., rate reduction, rate establishment, classification, overcharge, undercharge, measurement, etc.;
- (4) If final action was taken, date and nature thereof;
- (5) If final action was not taken, an identification of the request or complaint as *pending*;

(6) If denied, the reason.

\* \* \* \* \*

§ 560.703 [Reserved].

List of subjects in 46 CFR Part 572:

Administrative practice and procedure; Antitrust; Maritime carriers; Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 18 of the Shipping Act of 1984, 46 U.S.C. app. 1701-1707, 1709-1710, 1712, and 1714-1717, Part 572 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for part 572 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 553; 46 U.S.C. app. 1701-1707, 1709-1710, 1712, and 1714-1717.

2. Section 572.309 (a) (2) (i) is revised to read as follows:

§ 572.309 Miscellaneous modifications to agreements -- exemptions.

(a) \* \* \*

(2) \* \* \*

(i) *Article 3* -- Parties to the agreement (limited to conference agreements, voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority), and discussion agreements among passenger vessel operating common carriers which are open to all ocean common carriers operating passenger vessels

of a class defined in the agreements, which do not contain ratemaking, pooling, joint service, sailing or space chartering authority).

3. Section 572.401 (a) (1) is revised to read as follows:

§ 572.401 Filing of agreements.

(a) \* \* \*

(1) A true copy and 10 additional copies of the filed agreement;

\* \* \* \* \*

4. Section 572.402 (d) is revised to read as follows:

§ 572.402 Form of agreements.

\* \* \* \* \*

(d) Each agreement and/or modification filed will be accompanied by a separate signature page, appended as the last page of the item, which is signed in the original by each of the parties personally or by an authorized representative, indicating immediately below each signature, the typewritten full name of the signing party and his or her position, including organizational affiliation.

\* \* \* \* \*

5. The second sentence in section 572.603 (a) is revised to read as follows:

§ 572.603 Comment.

(a) \* \* \*. Such comments will be submitted in an original and ten (10) copies and are not subject to any limitations except the time limits provided in the FEDERAL REGISTER notice.

\* \* \* \* \*

6. Section 572.702 is removed.

7. Section 572.703 is redesignated as 572.702 and is amended by revising the title, amending the reference to "paragraph (c)" in the first sentence of paragraph (b) to read "paragraph (f)", redesignating paragraph (c) as paragraph (f), and adding new paragraphs (c), (d), and (e) to read as follows:

§ 572.702 Filing of minutes -- including shippers' requests and complaints, consultations, and other documents.

\* \* \* \* \*

(b) \* \* \*. Except as provided in paragraph (f) of this section, \* \* \*

(c) *Shippers' requests and complaints.* (1) Each report subject to paragraph (b) of this section shall provide the following information for all shippers' requests and complaints received since the previous such report filed with the Commission: (i) The total number of shippers' and shippers' associations' requests and complaints received; (ii) the total number which were fully granted; (iii) the total number which were partially granted; and (iv) the total number which were denied.

(2) Each report shall also show the total number of requests or complaints which were pending disposition at the start and at the end of the report period.

(3) Each of the totals which are reported to the Commission shall be divided into three categories: (i) those involving rates or charges; (ii) those involving transportation services; and (iii) those involving other matters.

(d) *Consultations.* Each report subject to paragraph (b) of this section shall provide the following information for all shippers' and shippers' associations' requests for consultations received since the previous such report filed with the Commission: (1) the total number of

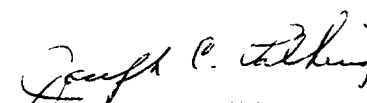
shipper and shippers' association requests for consultations; and (2) the total number of such consultations. Each of the totals which are reported to the Commission shall be divided into two categories: (1) consultations involving commercial disputes; and (2) consultations involving cooperation with shippers in preventing and eliminating malpractices.

(e) *Other documents.* Each agreement required to file minutes pursuant to paragraph (b) of this section shall publish in its minutes a list of all reports, circulars, notices, statistics, analytical studies, or other documents, not otherwise filed with the Commission pursuant to this subpart, which have been distributed to the member lines since the previous such report filed with the Commission, and which are used to reach a final decision on any of the following matters:

\* \* \* \* \*

8. Section 572.704 is removed.
9. Section 572.705 is redesignated as section 572.703.

By the Commission.

  
Joseph C. Polking  
Secretary