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FEDERAL MARITIME COMMISSION

46 CFR PARTS 550, 552, 553, AND 555

[DOCKET NO. 92-34]

DOMESTIC OFFSHORE FINANCIAL FILING REGULATIONS

Exemption Under Section 35 of The Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations pertaining to financial filing requirements for carriers in the domestic offshore trades. It is the intent of this proposal to eliminate Part 553, which pertains to financial exhibits and schedules of non-vessel-operating common carriers ("NVOs") in the domestic offshore trades, and Part 555, which specifies auditing procedures in the domestic offshore trades. A confidentiality provision in Part 555 would be incorporated in Part 552, which concerns financial reports of vessel-operating common carriers ("VOCCs"). Parts 553 and 555 no longer appear to serve a continuing regulatory purpose. Given the elimination of Part 553, Part 550 would be amended by adding an exemption for NVOs from the requirements of section 3 of the Intercoastal Shipping Act, 1933. Section 3, among other things, deals with Commission investigations and suspension of domestic offshore rate changes. The amendments would reduce recordkeeping and other regulatory requirements.

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:

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SUPPLEMENTARY INFORMATION:

46 CFR Part 553 prescribes the form and content of certain financial exhibits and schedules of NVOs in the domestic offshore trades and establishes the methodology that the Federal Maritime Commission ("Commission") would follow in evaluating proposed rate changes submitted by such NVOs subject to the provisions of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843 *et seq.* ("1933 Act"). This part also provides for the retention and orderly acquisition of the data required for the methodology so established.

The regulations specify that the Commission will employ the operating ratio methodology when evaluating proposed rate changes by NVOs. Specifically, section 553.4 requires each NVO to maintain its records in such a manner as to permit the timely preparation of the exhibits and schedules that are to be filed in the event that

the Commission institutes an investigation and hearing with respect to proposed rate changes. The Commission has not had reason to institute an investigation and hearing with respect to an NVO's proposed rate change in the 14 years since the rule was promulgated. Therefore, 46 CFR Part 553 would not appear to be necessary given the costs associated with the requirements of section 553.4. In sum, 46 CFR Part 553 imposes a burden on NVOs that appears to outweigh any identifiable benefits. Accordingly, the Commission proposes to relieve NVOs from these recordkeeping requirements by terminating Part 553.

As a corollary to removal of these recordkeeping requirements, the Commission also proposes to exempt NVOs from the provisions of section 3 of the 1933 Act, 46 U.S.C. app. 845 and implementing regulations in Title 46 CFR. Section 3 authorizes the Commission to suspend and investigate new and amended tariff matter filed by carriers, including NVOs, in the domestic offshore trades. Strict time limits are placed upon proceedings conducted under this section, and the carrier is required to refund any unsuspended portion of a general increase in rates found unjust and unreasonable.

Section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a, provides exemption authority as follows:

The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

Having found no cause to institute an investigation of NVO rates during the past 14 years, the Commission does not believe that exempting NVOs from the requirements of section 3 of the 1933 Act will substantially impair effective regulation, be unjustly discriminatory, or be detrimental to commerce.

Moreover, section 18 of the Shipping Act, 1916, 46 U.S.C. app. 817, provides a continuing basis for investigating the reasonableness of NVO rates in the domestic offshore trades, without the strict time constraints (and consequent recordkeeping requirements) imposed by section 3 of the 1933 Act. A proceeding under section 18 could be instituted by complaint or on the Commission's own motion and the NVO respondent in such a proceeding could be required to produce financial data in support of its rates. In addition, Section 4 of the 1933 Act, 46 U.S.C. app. 845a, would continue to provide a right of reparation to complainants for rates found unjust or unreasonable under section 18.

46 CFR Part 555 pertains to audits and auditing procedures in the domestic offshore trades and to those carriers who are required to file periodic reports with the Commission pursuant to 46 CFR Part 552.* Part 555 establishes rules governing audits by Commission auditors of the books and records of carriers engaged in the domestic offshore trades of the United States and who are required to file periodic reports with the Commission pursuant to Part 552 of this chapter. Section 555.5 provides for the confidentiality of the information obtained by the Commission.

No audits have been conducted under Part 555 during the past 15 years. Moreover, the critical regulation under this part, section 555.2, contains essentially

* Part 552 contains the requirements for financial reports of VOCCs in the domestic offshore trades.

the same audit and access to records language already contained in 46 CFR 552.4. These sections provide the Commission with access to all financial documents, records and working papers used by a carrier in preparation of the financial reports and exhibits submitted to the Commission under 46 CFR Part 552. However, 46 CFR Part 552 does not provide for confidentiality as does 46 CFR Part 555. Considering the foregoing, the Commission proposes to terminate 46 CFR Part 555, while incorporating its confidentiality provisions into 46 CFR 552.4.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has 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.

This proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts.

46 CFR Part 553

Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements, Uniform system of accounts. -

46 CFR Part 555

Confidential business information, Maritime carriers, Uniform system of accounts.

Therefore, pursuant to 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847, Parts 550, 552, 553 and 555 of Title 46, Code of Federal Regulations, are proposed to be amended as follows:

PART 550 - PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

- 1. The authority citation for part 550 continues to read as follows:**

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

- 2. Section 550.1 is amended by adding a new paragraph 550.1(c) to read as follows:**

Section 550.1 Exemptions.

*** * * * ***

(c) Non-vessel-operating common carriers ("NVOs") providing transportation in domestic offshore commerce are exempt from the provisions of section 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845 and, thus, from the provisions of §550.13 of this part. The reasonableness of NVO rates in domestic offshore commerce may be determined under the provisions of section 18 of the Shipping Act, 1916, 46 U.S.C. app. 817.

PART 552 - FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

1. The authority citation for part 552 continues to read as follows:

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

2. Section 552.4 is amended by adding a new paragraph 552.4(c) to read as follows:

Section 552.4 Access to and audits of records.

* * * * *

(c) All information obtained by the Commission or its duly accredited special agents or auditors as a result of an audit carried out pursuant to the provisions of this part shall be withheld from public disclosure and shall be treated as *confidential information* in the files of the Commission; except that any confidential information derived from an audit may be utilized by the Commission as the basis for a formal proceeding instituted pursuant to section 22 of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933, and may also be utilized in such a proceeding.

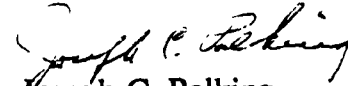
**PART 553 - FINANCIAL EXHIBITS AND SCHEDULES OF NON-VESSEL-
OPERATING COMMON CARRIERS IN THE DOMESTIC OFFSHORE
TRADES**

1. Part 553 is removed.

**PART 555 - AUDITS AND AUDITING PROCEDURES IN THE DOMESTIC
OFFSHORE TRADES**

1. Part 555 is removed.

By the Commission


Joseph C. Polking
Secretary