

FEDERAL MARITIME COMMISSION

46 CFR PARTS 525 AND 530

[DOCKET NO. 92-29]

**FREE TIME AND DEMURRAGE CHARGES ON IMPORT PROPERTY AT THE PORT OF
NEW YORK; TRUCK DETENTION AT THE PORT OF NEW YORK**

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to remove 46 CFR Part 525, Free Time and Demurrage Charges on Import Property at the Port of New York and 46 CFR Part 530, Truck Detention at the Port of New York. The Commission believes that these regulations may now be outdated and no longer necessary in the face of the significant change in transportation circumstances accompanying the shift to containerized cargo at the Port. The Commission further believes that current conditions at the Port may no longer warrant this unique federal regulation.

DATE: Comments on or before [insert date thirty (30) days after publication in the Federal Register].

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

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

FOR FURTHER INFORMATION CONTACT:

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Bureau of Tariffs, Certification and Licensing
Federal Maritime Commission
Washington, D.C. 20573
(202) 523-5796

SUPPLEMENTARY INFORMATION:**BACKGROUND**

The Federal Maritime Commission ("Commission") has undertaken a comprehensive review of its regulations under the Shipping Act, 1916, 46 U.S.C. app. 801, et seq., and the Shipping Act of 1984, 46 U.S.C. app. 1701, et seq., to identify and eliminate outdated or unnecessary regulatory provisions.

By Notice of Inquiry published in the Federal Register on June 5, 1992 (57 FR 24006) ("Inquiry"), the Commission solicited comment on whether the transportation conditions which originally prompted the promulgation of Parts 525 and 530 may have changed to an extent rendering these regulations unnecessary. These regulations govern free time and demurrage on import property, and truck detention, respectively, at the Port of New York ("Port") and were promulgated to relieve traffic congestion at the Port.

COMMENTS

Forty-six comments in response to the Inquiry were submitted by: an ocean common carrier, conferences of such carriers, trucking

Part 525 defines "adequate" free time for import property at the Port to be five days, and prescribes that free time for such property shall not be less than five days, absent special circumstances. It also prescribes the method of assessing demurrage charges.

Part 530 was promulgated by the Commission to establish a system to ameliorate truck congestion at the Port, with disputes concerning claims for penalties to be settled by an adjudicator selected by the Commission. The regulations set forth appointment/non-appointment procedures to be followed by motor carriers and terminal operators.

companies, a freight forwarder association and a marine terminal operator ("MTO") (see Appendix).

While the majority of commenters support retention of Parts 525 and 530, comments in support by and large did not respond to the invitation in the Notice of Inquiry to address the effect which a shift from general cargo to containerized cargo may have on the continuing justification for this unique regulation. The reasons offered by individual commenters to support these rules included claims that: (1) long delays still occur entering and exiting from terminals; (2) the rule has effectively encouraged some efficiency on the part of the MTOs; (3) elimination of the rule would result in higher costs for motor carriers, perhaps forcing some out of business; (4) the rules should be modified to increase truck detention penalties and resolve certain other problems encountered by motor carriers; (5) a truck detention rule should be promulgated to cover all ports; and (6) new procedures for submitting claims and selecting an adjudicator and arbitration board should be established.

Three commenters believe that Parts 525 and 530 should be eliminated. They assert that: (1) the majority of the cargo moving through the Port is now containerized; (2) congestion and unreasonable delays at the Port no longer exist; (3) there appears to be no current abuse of the rules relating to free time on import cargo; (4) MTOs would continue to publish tariff rules on free time and demurrage, as well as truck detention at the Port even if the regulations are removed; (5) the operations of motor carriers and

the removal of import cargo at the Port are as efficient as most other ports in the United States; (6) there is no continuing need to maintain these rules as a matter of sound and efficient regulation; and (7) New York should not be singled out as the only port subject to these rules.

DISCUSSION

Following a review of the comments, the rules themselves and the changes in transportation circumstances experienced by the Port of New York, the Commission believes that the rules at 46 CFR Parts 525 and 530 may be outdated and no longer necessary. Therefore, the Commission proposes to eliminate 46 CFR Parts 525 and 530 from the Code of Federal Regulations.

The majority of comments submitted by individual trucking companies adhere to the same one-page format. Very few details are given to support general allegations regarding delay in processing and delivery of their equipment. When examples or specific details are offered, the circumstances appear unique to that specific commenter.

By and large, comments do not discuss or provide specific examples regarding either how the present rules have been useful, in a practical as opposed to theoretical sense, in addressing and resolving the general difficulties alluded to or how elimination of the rules would have a direct adverse effect. Indeed, the strongest support appears to come from those commenters who assert only that: "The rule, at present, encourages some efficiency on the part of the terminal operators...." without explaining why. This

claim appears to be offset by other comments in support of the rules which, paradoxically, point to the inadequacy or the ambiguity of the present rules. The comments do not consider whether or why the Commission is better suited than local authorities to address and resolve particular sources of delay. To take two examples, commenters have not stated why they believe the Commission is best suited to regulate procedures for issuing terminal gate passes or the treatment of chassis servicing and repair. Indeed, it could be inferred from comments that the mere presence of the rules may have presented an obstacle to attempts by carrier and port entities to resolve local issues on a local basis. For at least these reasons, the record does not appear to justify an extension of these rules to other ports as a few commenters suggested.

Moreover, the comments do not dispute the basis for the Commission's earlier determination, repeated in the Inquiry, that Part 525 does not apply to containerized cargo. Nor do they dispute that such cargo now comprises the majority of liner cargo movements into the Port. In that regard, the historical perspective to be given Part 525 may be apparent from the conclusion presented in Section 525.1(a) itself that five days free time "is adequate ... under present conditions." The underlying conditions having fundamentally changed, the Rules may not withstand an attempt at re-justification. The Commission believes that identical considerations apply to re-justification of Part 530.

Because the rules at issue apply only to the Port of New York, only entities serving or operating there submitted comments. It is thus noteworthy that no argument was made that the Port of New York continues to suffer from unique circumstances which, from a regulatory perspective, would distinguish it from other large ports. No specific reasons are given why the Commission should regulate free time and demurrage and truck detention at only one port or otherwise target the Port for special regulation. To the contrary, it appears that the congested port conditions which existed at the Port of New York 30 years ago have eased in the face of more efficient container handling operations.

To the extent that commenters face transportation-related obstacles to efficient operation at the Port, they are not without meaningful recourse in another, more appropriate, forum. As one of the commenters recognized, the Federal Highway Administration ("FHWA") has initiated an advance notice of proposed rulemaking in Docket No. 92-14, Management Systems. Comment is requested in that proceeding concerning implementation of Section 1034 of the Intermodal Surface Transportation Efficiency Act ("ISTEA"). ISTEA requires the Secretary of Transportation to issue regulations for State implementation of intermodal transportation systems. The Commission encourages interested persons to raise problems involving transportation bottlenecks in the FHWA proceeding.

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 this Order and has

determined that this rule is not a "major rule" 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 Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations. "The criteria contained in this section requires the agency head to examine both the degree of impact as well as the dispersion of that impact." S.Rep. No. 878, 96th Cong., 2d Sess. 14 (1980) reprinted at 1980 U.S. Code Cong. and Admin. News, p.2788 at 2801. The Commission does not believe that the removal of Parts 525 and 530 under the circumstances described above will result in either significant impact or impact upon a substantial number of small entities.

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 525:

Freight, Harbors, Maritime carriers, Motor carriers, Penalties, Reporting and Recordkeeping requirements.

46 CFR Part 530:

Freight, Harbors, Maritime carriers, Motor carriers, Penalties, Reporting and Recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; sections 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 841(a)); sections 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1709, 1716); Parts 525 and 530 of Title 46 of the Code of Federal Regulations are proposed to be amended as follows:

Part 525 -- [Removed]

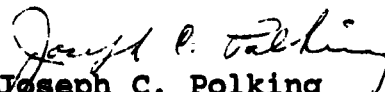
Part 525 is removed

Part 530 -- [Removed]

Part 530 is removed

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By the Commission


Joseph C. Polking
Secretary

APPENDIX -- LIST OF COMMENTERS

1. International Motor Freight, Inc. *
2. Richmond Express Company *
3. Inter-Metro Freight, Inc. *
4. Sea Trux, Inc. *
5. David P. McCarthy, Inc. *
6. Clenery Inc. *
7. American Logistical Express, Inc. *
8. Rail Head Services, Inc. *
9. New Jersey Motor Truck Association *
10. Linden Motor Freight Co., Inc. *
11. Nationwide Transport & Warehouse, Inc. *
12. J&S Trucking Service, Inc. *
13. BC Transportation, Inc. *
14. JMT Jon-Mar Trucking Co., Inc. *
15. Sea Lane Express, Inc. *
16. New Jersey Motor Truck Association on behalf of Bi-State Harbor Carriers Conference *
17. Coviello Transportation Co., Inc. *
18. Veeco Services, Inc. *
19. Export Transport Co., Inc. *
20. Dray-Con Transport, Inc. *
21. Jackson & Johnson, Inc. *
22. Clinton Cartage, Inc. *
23. Transways Motor Express Co., Inc. *
24. Coty Enterprises, Ltd. *
25. MTI, Inc. *
26. CASCO Services, Inc. *
27. Courier Systems *
28. Commercial Transportation, Inc. *
29. The N.Y. Foreign Freight Forwarders and Brokers Ass'n. **
30. Aqua-Gulf Corporation *
31. Port East Transfer, Inc. *
32. Inter-American Freight Conference ***
33. Sea-Land Service, Inc. ***
34. The Transpacific Westbound Rate Agreement ***
35. Container Port Group *
36. Atlantic Coast Express *
37. Jay-Dee Fast Delivery *
38. Engels Trucking Corp. *
39. A&D Express, Inc. *
40. Universal Maritime Service Corp. ***
41. Glendale Carriers Corp. ***
42. American Trucking Associations ***
43. The North Europe-USA Rate Agreement ***
44. Fedway Associates, Inc. **
45. Federation Warehouse Corp. *
46. Lomma Trucking and Rigging, Inc. *

* Commented on Part 530 only

** Commented on Part 525 only

*** Commented on both Parts 525 and 530