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10/9/91

FEDERAL MARITIME COMMISSION

46 CFR PART 550

[DOCKET NO. 91-42 ]

TARIFF FILING NOTICE<sup>1</sup> REQUIREMENTS;  
DOMESTIC OFFSHORE TRADES

EXEMPTION UNDER SECTION 35  
OF THE SHIPPING ACT, 1916

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce. This amendment to Part 550 would exempt carriers providing port-to-port service in the domestic offshore trades from the 30-day notice requirements of section 2 of the Intercoastal Shipping Act, 1933. The proposed exemption would permit such carriers to publish on one day's notice any change in existing tariff matter that does not result in an increased cost to the shipper and any new tariff matter that results in a decreased cost to the shipper. Carriers will still be required to comply with those provisions of the Intercoastal Shipping Act, 1933, and the Commission's regulations that pertain to any "general decrease in rates."

DATE: Comments due [Insert date 30 days after date of publication in the Federal Register].

ADDRESS: Send comments (original and fifteen copies) to:

Joseph C. Polking, Secretary  
Federal Maritime Commission  
1100 L Street, N.W.  
Washington, D.C. 20573-0001  
(202) 523-5725

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 844, requires carriers in the domestic offshore trades to file on thirty days' notice any new or changed tariff matter, even if it decreases the shipper's cost of transportation. Ocean carriers operating in the foreign commerce of the United States are not subject to this restriction. Section 8 (d) of the Shipping Act, 1984, *id.* 1707, provides that a change in an existing rate that results in a decreased cost to the shipper may become effective upon filing. Moreover, water carriers filing joint-through rates with the Interstate Commerce Commission ("ICC") may file new or reduced rates on one day's notice (49 CFR 112.39(h)(1)).

The Federal Maritime Commission ("FMC" or "Commission") has granted several exemptions to the thirty day notice requirement to permit carriers serving between the contiguous United States and Puerto Rico, the U.S. Virgin Islands or Hawaii to compete with carriers that are not subject to that requirement. Matson

Navigation Co., Inc. - Application for Section 35 Exemption, \_\_\_ F.M.C.\_\_\_\_, 24 S.R.R. 1518 (1989); Tariff Filing Periods -- Exemption, \_\_\_ F.M.C. \_\_\_, 24 S.R.R. 1604 (1989); Application of Sea-Land Service Inc. For Exemption Under Section 35 of the Shipping Act, 1916, \_\_\_ F.M.C. \_\_\_, 25 S.R.R. 660 (1990); and Tropical Shipping & Construction Co. Ltd. - Application for Section 35 Exemption, \_\_\_ F.M.C.\_\_\_\_, 25 S.R.R. 1471 (1991). By separate document issued this date, we have also granted the application in Trailer Marine Transport Corporation - Application for Section 35 Exemption, P3-91.

The Commission believes that the exemptions referred to above have benefitted both shippers and carriers. Shippers benefit because carriers can respond more rapidly to their needs and desires; carriers benefit because they are able to move quickly to meet changes filed by competitors.

The Commission is therefore of the opinion that it may be appropriate to grant a single exemption for all carriers in the domestic offshore trades that would supersede the above exemptions and extend their provisions to all domestic offshore trades. As a result, the Commission proposes to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a,<sup>1</sup> to exempt carriers from the 30-day

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<sup>1</sup> Section 35 of the 1916 Act provides in pertinent part:

The Federal Maritime Commission, upon application or on its own motion, may by order  
(continued...)

tariff filing requirement of section 2 of the 1933 Act. The exemption would permit carriers in the FMC-regulated domestic offshore trades to publish on one day's notice any change in existing tariff matter, including<sup>1</sup> rates, charges, regulations, rules and notes, that does not result in an increased cost to the shipper and any new tariff matter that results in a decreased cost to the shipper. Carriers will still be required to comply with those provisions of the 1933 Act and the Commission's regulations that pertain to any "general decrease in rates".

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" as defined in Executive Order 12291 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

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<sup>1</sup>(...continued)

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.

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.

List of Subjects in 46 CFR 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 proposed to be amended as follows:

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. In section 550.1 paragraph (b) is revised to read as follows:

§ 550.1 Exemptions.

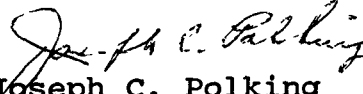
(a) \* \* \*

(b) Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United

States, or between places in the same Territory, District, or possession, may publish on one day's notice any change in existing tariff matter that does not result in an increased cost to the shipper and any new tariff matter that results in a decreased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843.

3. Section 550.1, paragraphs (c), (d) and (e) are removed.

By the Commission.

  
Joseph C. Polking  
Secretary