

(S E R V E D)
(June 16, 1989)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 88-26]

AGREEMENTS BY OCEAN COMMON CARRIERS
AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

AGENCY: Federal Maritime Commission.

ACTION: Withdrawal of proposed rule

SUMMARY: The Proposed Rule in this proceeding would amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in the Federal Maritime Commission's rules governing the filing of agreements under the Shipping Act of 1984. After further consideration of the issues underlying the definition of these terms, the Federal Maritime Commission has determined to withdraw the Proposed Rule and to discontinue this proceeding, without prejudice to instituting a further proceeding to address these issues at a later date.

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

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Federal Maritime Commission ("Commission") initiated this proceeding by notice published in the Federal Register of December 6, 1988 (53 FR 49210) ("Proposed Rule"). The Proposed Rule would amend the definitions of "Conference agreement" and "Joint service/consortium agreement" in 46 CFR Part 572, the Commission's rules governing the filing of agreements under the Shipping Act of 1984 ("1984 Act" or "Act"), 46 U.S.C. app. 1701, et seq.

The proposed revised definition of "Conference agreement" was intended to codify the Commission's policy concerning what constitutes a conference agreement requiring the mandatory provisions prescribed for ocean common carrier conference agreements under section 5(b) of the Act, 46 U.S.C. app. 1704(b).^{1/} In addition, the Proposed Rule would make other

^{1/} Section 5(b) in its entirety requires each conference agreement to:

- (1) state its purpose;
- (2) provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;
- (3) permit any member to withdraw from conference membership upon reasonable notice without penalty;
- (4) at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;
- (5) prohibit the conference from engaging in conduct prohibited by section 10(c)(1) or (3) of the Act;
- (6) provide for a consultation process designed to promote--
 - (A) commercial resolution of disputes, and
 - (B) cooperation with shippers in preventing and eliminating malpractices;

(Footnote Cont'd on Page 3)

clarifying revisions to the "Conference agreement" definition, and revise the definition of "Joint service/consortium agreement" in 46 CFR 572.104(n) (Joint service and consortium agreements are statutorily excluded from the definition of "conference" in section 3(7) of the Act).

Comments on the Proposed Rule were filed by (1) the Florida-Bahamas Shipowners and Operators Association Agreement; (2) the Asia North America Eastbound Rate Agreement, the South Europe/U.S.A. Freight Conference and the U.S. Atlantic and Gulf/Australia-New Zealand Conference; and (3) the U.S. Atlantic-North Europe Conference, the North Europe-U.S. Atlantic Conference, the North Europe-U.S. Gulf Freight Association, and the Gulf-European Freight Association.^{2/}

As noted in the Proposed Rule's Supplementary Information, in interpreting and applying the definitions of "conference" in

(Footnote Cont'd)

(7) establish procedures for promptly and fairly considering shippers' requests and complaints; and

(8) provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

^{2/} Because the discontinuance of this proceeding renders moot the comments filed on the Proposed Rule, they will not be further addressed here.

section 3(7) of the 1984 Act^{3/} and "Conference agreement" in 46 CFR 572.104(f),^{4/} the Commission's policy has been not to require mandatory provisions in the case of strictly voluntary arrangements. This policy has been based on the 1984 Act's legislative history and the purposes of the mandatory provisions requirements of section 5(b) of the 1984 Act. However, further examination of this matter has led the Commission to the conclusion that the proposed rule may be inadequate to codify this policy in a manner that encompasses all instances properly subject to the Act's mandatory provisions, and that a different approach would require further review and analysis of the underlying issues. Therefore, the Commission has determined to

^{3/} Section 3(7) of the Act, 46 U.S.C. app. 1702(7), defines a "conference" as:

"an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement."

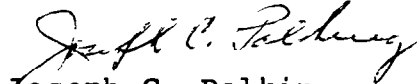
^{4/} The Commission's rules at 46 CFR 572.104(f) currently define "Conference agreement" as:

"an agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or in the event of multiple tariffs, each member must participate in at least one such tariff. The term does not include consortium, joint service, pooling, sailing or transshipment agreements."

withdraw the Proposed Rule and discontinue this proceeding at this time. This action is being taken without prejudice to instituting a further rulemaking proceeding to address these definitions at a later date. In the meantime, the Commission intends to continue to apply its existing policy of not requiring mandatory provisions for strictly voluntary agreements.

THEREFORE, IT IS ORDERED, that the Proposed Rule is withdrawn and this proceeding is discontinued.

By the Commission


Joseph C. Polking
Secretary