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FEDERAL MARITIME COMMISSION

46 CFR PARTS 515, 560, AND 572

[DOCKET NO. 92 -33]

**MARINE TERMINAL FACILITIES AGREEMENTS - EXEMPTION**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Proposed Rule.

**SUMMARY:** The Federal Maritime Commission ("Commission") proposes to amend 46 CFR Parts 515, 560 and 572 to exempt marine terminal facilities agreements among marine terminal operators and between marine terminal operators and common carriers by water from the agreement filing requirements of the Shipping Act, 1916, the Shipping Act of 1984, and the Commission's regulations, on condition that certain agreement information be filed in marine terminal operators' tariffs and that terminal operators make copies of such agreements available to requesting parties.

**DATE:** Comments due [30 days after 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 date of filing 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  
Federal Maritime Commission  
1100 L St., N.W.  
Washington, D.C. 20573  
(202) 523-5787

**SUPPLEMENTARY INFORMATION:**

46 CFR Part 515, Filing of Tariffs by Marine Terminal Operators, sets forth regulations covering the filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

46 CFR Part 560, Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916, implements those provisions of the Shipping Act, 1916 ("1916 Act"), 46 App. U.S.C. 801 *et seq.*, that govern agreements between common carriers by water in interstate commerce or other persons subject to the 1916 Act. Part 560 establishes procedures for filing agreements and supporting statements pursuant to section 15 of the 1916 Act, 46 App. U.S.C. 814, filing comments and protests to such agreements, the disposition of agreements, and agreement reporting and record retention requirements.

46 CFR Part 572, Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984, implements those provisions of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.*, that govern agreements between ocean

common carriers, agreements (to the extent they involve ocean transportation in the foreign commerce of the United States) between marine terminal operators, and agreements between one or more marine terminal operators and one or more ocean common carriers. Part 572, *inter alia*, identifies those classes of agreements that are exempt from filing or information requirements.

The Commission proposes to discontinue the requirement contained in 46 CFR Parts 560 and 572 that marine terminal facilities agreements be filed with the Commission. This proposed exemption is conditioned on marine terminal operators listing their marine terminal facilities agreements (e.g., leases, sub-leases, licenses, permits, assignments), and amendments thereto, in the individual tariffs they file with the Commission pursuant to 46 CFR Part 515 (and in Part 514, which, when finalized, will implement the Automated Tariff Filing and Information System ("ATFI") -- see sections 514.1(b) and 514.1(c)(3) of Part 514 as proposed in Docket No. 90-23 on September 9, 1991 (56 FR 46055)). Such listings would identify: (1) the names of the parties involved, (2) the facilities covered by the agreement, and (3) the date on which the facilities agreement becomes effective.

This proposed exemption would relieve the industry of the administrative burden and associated costs of filing marine terminal facilities agreements with the Commission. Additionally, the Commission would realize cost savings resulting from termination of the current process of reviewing, processing, and maintaining maritime facilities agreements, noticing them in the *Federal Register*, and retrieving, copying, and providing copies of them to requesting parties (who appear to be almost exclusively other marine terminal operators).

Although interested parties no longer would be able to obtain copies of marine terminal facilities agreements from the Commission under the proposed exemption, the Commission proposes to require marine terminal operators to make their current marine terminal facilities agreements available to any and all interested parties. A nominal copying fee for this service will be permissible. Thus, any benefits associated with the public availability of marine terminal facilities agreements should be preserved.

Finally, the proposed exemption applies only to the filing requirement and does not absolve the parties to marine terminal facilities agreements from other requirements of the 1916 and 1984 Acts.

Section 35 of the 1916 Act, 46 App. U.S.C. 833a, and section 16 of the 1984 Act, 46 U.S.C. app. 1715, provide that the Commission may by order or rule exempt for the future any specified activity of persons subject to the 1916 Act or the 1984 Act from any requirement of the 1916 Act, the 1984 Act, or Intercoastal Shipping Act, 1933, 46 App. U.S.C. 843 *et seq.*, where the Commission finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition (1984 Act only), or be detrimental to commerce. It appears that the proposed exemption would meet these criteria.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nevertheless has reviewed the rule in terms of that Order and has determined that the 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 United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The Federal Maritime Commission also 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 the proposed 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 average 45 minutes per response for Part 560 and 45 minutes per response for Part 572, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the review and collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent 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 515:

Freight; Harbors; Reporting and recordkeeping requirements; Tariffs; Warehouses.

Therefore, pursuant to 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 841a, 1709, 1714 and 1716, Part 515 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for part 515 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 833a, 841a, 1709, 1714, 715, and 1716.

2. Section 515.2 is amended by revising the first sentence to read as follows:

**§ 515.2 Purpose.**

The purpose of this part is to enable the Commission to discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of current terminal facilities agreements, practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices. \* \* \*

3. Section 515.4 is amended by redesignating the language of the existing section as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 515.4 Filing of tariffs and tariff changes.**

(a) \* \* \*

(b) Every tariff shall identify all marine terminal facilities agreements currently in effect to which the terminal operator is a party as prescribed in §§ 560.309 and 572.311 of this chapter.

List of subjects in 46 CFR Part 560:

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

Therefore, pursuant to 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841(a), 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. Part 560 is amended by adding section 560.309 to Subpart C to read as follows:

**§ 560.309 Marine terminal facilities agreement -- exemption.**

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more common carriers by water in interstate commerce, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 560.309(a) are exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, and Part 560 of this chapter, on the condition that copies of the marine terminal facilities agreement be made available to any requesting party, and that information identifying facilities agreements currently in effect appear in the marine terminal tariff filed with the Commission as required by Part 515 of this chapter. A nominal copying fee may be charged

for providing copies of agreements. The identifying information shall include:

(1) The names and mailing addresses of all parties to all marine terminal facilities agreements, and subsequent amendments thereto, currently in effect to which the terminal operator is a party;

(2) identification of the terminal facilities covered by the agreement and amendments thereto; and

(3) the effective date for each marine terminal agreement, and amendments thereto, currently in effect.

List of subjects in 46 CFR Part 572:

Administrative practice and procedure; Agreements; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; 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. Part 572 is amended by adding section 572.311 to Subpart C to read as follows:

**§ 572.311 Marine terminal facilities agreement -- exemption.**

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, which conveys to any of the involved parties any rights



to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.


(b) All marine terminal facilities agreements as defined in § 572.311(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Act of 1984 and Part 572 of this chapter, on the condition that copies of the marine terminal facilities agreement be made available to any requesting party, and that information identifying facilities agreements currently in effect appear in the marine terminal tariff filed with the Commission as required by Part 515 of this chapter. A nominal copying fee may be charged for providing copies of agreements. The identifying information shall include:

(1) The names and mailing addresses of all parties to all marine terminal facilities agreements, and subsequent amendments thereto, currently in effect to which the terminal operator is a party;

(2) identification of the terminal facilities covered by the agreement and amendments thereto; and

(3) the effective date for each marine terminal agreement, and amendments thereto, currently in effect.

By the Commission

  
Ronald D. Murphy  
Assistant Secretary