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FEDERAL MARITIME COMMISSION

46 CFR PARTS 580 AND 581

[DOCKET NO. 89-20]

DEFINITION OF SHIPPER AND AVAILABILITY
OF MIXED COMMODITY RATES

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission proposes to amend its tariff and service contract rules in 46 CFR Parts 580 and 581 to: (1) amend the definition of "shipper" to clarify the scope of the term, and (2) require that mixed commodity rates be made available only to a "shipper," as proposed, and to "shippers' associations" as presently defined in the Commission rules. A shipper using a mixed commodity rate would be required to furnish the ocean common carrier a listing of commodities. If the shipper is a non-vessel-operating common carrier ("NVOCC"), it would also have to indicate its FMC tariff number on the ocean carrier's bill of lading and on any service contracts to which it is a party. The proposed rule is intended to preclude untariffed NVOCC operations and to otherwise ensure that persons acting as shippers pursuant to the 1984 Act qualify to do so.

DATE: Comments due within 45 days after publication in the Federal Register.

ADDRESS: Comments (original and fifteen (15) copies) to:

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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Section 3(23) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702(23), defines "shipper" as "an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made." While the meanings of "owner" and "person to whom delivery is to be made" are generally understood by those involved in ocean transportation, there has been uncertainty as to the meaning of the phrase "person for whose account the ocean transportation of cargo is provided."

In recent years, a variety of entities have emerged as intermediaries or middlemen between the shipper of the goods and the provider of the ocean transportation, i.e., the ocean common carrier. These include NVOCCs,¹ ocean freight forwarders,² shippers' associations,³ transportation or property brokers, and export trading companies.

¹ Section 3(17) of the 1984 Act, 46 U.S.C. app. 1702(17), defines an NVOCC as "a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with the ocean common carrier."

² Section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19), defines an ocean freight forwarder as "a person in the United States that -- (A) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments."

³ Section 3(24) of the 1984 Act, 46 U.S.C. app. 1702(24), defines a shippers' association as "a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts."

The Investigative Officer's Report in Fact Finding Investigation No. 15 - Practices of Various Entities Operating as Intermediaries for the Transportation of Goods in the United States Waterborne Commerce, addressed the extent to which such middlemen were reselling transportation and how carriers are having difficulty determining whether an entity is indeed a shipper. The Report advised that persons were engaging in practices not contemplated by and in contravention of the 1984 Act. For example, persons other than actual shippers were joining shippers' associations and entering into service contracts. Others were acting as NVOCCs without the benefit of a tariff on file with the Commission.

In order to address this situation, the Commission is proposing to amend its rules governing the publishing and filing of tariffs by common carriers in the foreign commerce (46 CFR Part 580) and those governing service contracts (46 CFR Part 581) in two respects. First, the Commission proposes to redefine the term "shipper" to include only the person who is legally responsible for payment of the ocean transportation charges. Second, the proposed rule restricts the availability of an ocean common carrier's mixed commodity rate to those persons meeting the definition of "shipper," by requiring that when a mixed commodity rate is used, the "shipper" must identify its status on such carrier's bill of lading and on service contracts. The shipper would also be required to provide the ocean common

carrier with a house bill of lading, container manifest, or packing list covering the cargo which is to be assessed the mixed commodity rate or rates. In the event the "shipper" is an NVOCC, the NVOCC's FMC tariff number must appear on the ocean common carrier's bill of lading and on any service contracts to which it is a party.

Combined, the rule changes proposed in this proceeding are intended to limit the scope of those that can act as "shippers" vis-a-vis the ocean common carrier, preclude untariffed NVOCC operations and otherwise ensure that the statutory scheme contemplated by the Shipping Act of 1984 is preserved. Comments on the specific aspects of the proposed rule, and suggestions as to alternatives are also welcome.

The Commission is presently conducting a comprehensive review of shippers' associations and their relationship with carriers. Upon completion of this review, appropriate action, including the issuance of proposed regulations governing their activities, if necessary, will be taken. However, it should be noted that to the extent that shippers' associations are currently acting as NVOCCs or ocean freight forwarders, they are subject to the Commission's tariff filing and licensing regulations. Furthermore, membership in shippers' associations will be limited to "shippers" as defined in the proposed rule.

The Commission has determined that this Proposed Rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, 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 or export markets.

The Commission also finds that the rule proposed in this proceeding is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601. Section 601(2) of that Act excepts from its purview any "rule of particular applicability to rates or practices relating to such rates" As the proposed rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). Comments on the information collection aspects of the rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

List of subjects in 46 CFR 580 and 581: Maritime carriers; Rates and fares; Service contracts; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 8, 9, 10 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1708, 1709 and 1716, the Federal Maritime Commission proposes to amend Parts 580 and 581 of the Code of Federal Regulations as follows:

PART 580 - [AMENDED]

1. The authority citation for Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702-1705, 1707, 1709, 1712, 1714-1716 and 1718.

2. It is proposed to amend section 580.2 by revising paragraph (t) to read:

§ 580.2 Definitions.

* * * * *

(t) "Shipper" means the person who is legally responsible to pay the ocean common carrier for the transportation. Depending on the transportation arrangement, the term may include the owner of the cargo, a consignor, a consignee, or a tariffed non-vessel-operating common carrier ("NVOCC"). The term does not include an agent of the shipper, an ocean freight forwarder, a broker, or a person acting as an NVOCC without a tariff on file with the Commission.

3. It is proposed to amend section 580.5 by adding a new paragraph (d)(22) to read:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(22) Mixed commodity rates. Mixed commodity rates such as, but not limited to, freight-all-kinds, household goods, and general department store merchandise, may be made available only to a "shipper," as defined by section 580.2(t), of this part or a "shippers' association" as defined by section 581.1(r) of this chapter. The shipper's status, e.g. owner of the cargo, a consignor, a consignee, NVOCC, shippers' association, must be stated on the ocean carrier's bill of lading in the shipper identification box. If the shipper is an NVOCC, the NVOCC's FMC tariff number under which service is being provided must also be shown in the shipper identification box. The shipper must also provide the ocean common carrier with either its house bill of lading, container manifest, or packing list covering all cargo listed on the ocean common carrier's bill of lading which is to be assessed the mixed commodity rate or rates.

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PART 581 - [AMENDED]

4. The authority citation for Part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714-1716 and 1718.

5. It is proposed to amend section 581.1 by revising paragraph (q) to read:

§ 581.1 Definitions.

* * * * *

(q) "Shipper" means the person who is legally responsible to pay the ocean common carrier for the transportation. Depending on the transportation arrangement, the term may include the owner of the cargo, a consignor, a consignee, or a tariffed non-vessel-operating common carrier ("NVOCC"). The term does not include an agent of the shipper, an ocean freight forwarder, a broker, or a person acting as an NVOCC without a tariff on file with the Commission.

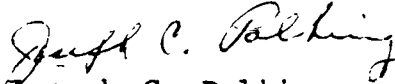
6. It is proposed to amend paragraph (a)(1)(v) of section 581.4 by replacing the semicolon with a period and adding the following prior to the word "and":

"If one of the contract parties is an NVOCC, the NVOCC's FMC tariff number under which service is being provided must also be stated;"

7. It is proposed to amend paragraph (a)(3)(iii) of section 581.5 by replacing the semicolon with a period and adding the following:

"Mixed commodity rates such as, but not limited to, freight-all-kinds, household goods, and general department store merchandise, may be made available only to a "shipper," as defined by section 581.1(q), or a "shippers' association" as defined by section 581.1(r). The shipper's status, e.g. owner of the cargo, a consignor, a consignee, NVOCC, shippers' association, must be stated on the ocean carrier's bill of lading in the shipper identification box. If the shipper is an NVOCC, the NVOCC's FMC tariff number

under which service is being provided must also be shown in the shipper identification box. The shipper must also provide the ocean common carrier with either its house bill of lading, container manifest, or packing list covering all cargo listed on the ocean common carrier's bill of lading which is to be assessed the mixed commodity rate or rates." By the Commission.


Joseph C. Polking
Secretary

