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FEDERAL MARITIME COMMISSION

46 CFR PART 502

[DOCKET 92-03]

RULES OF PRACTICE AND PROCEDURE; SPECIAL DOCKET APPLICATIONS

AGENCY: Federal Maritime Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Commission is amending its rules regarding the processing of special docket applications to authorize the Secretary of the Commission to assign such applications to Special Docket Officers for review and initial decision. The Secretary will retain discretion to assign particular applications to the Office of Administrative Law Judges as appropriate. This change will relieve much of the current workload burden experienced by the Office of Administrative Law Judges and allow the Commission to better utilize its limited resources.

DATE: Interim rule effective upon publication in the Federal Register; comments must be received on or before February 26, 1992.

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., 20573-0001

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Secretary  
Federal Maritime Commission  
(202) 523-5725

SUPPLEMENTARY INFORMATION:

Rule 92 (46 CFR 502.92) of the Commission's Rules of Practice and Procedure contains regulations outlining the procedures for the filing and processing of special docket applications. Such applications may be filed by a common carrier or shipper for permission to refund or waive collection of a portion of freight charges where it appears that there is an error in the carrier's tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff. Under current Commission practice all such applications are referred by the Secretary of the Commission to the Commission's Office of Administrative Law Judges ("OALJ") for review and for issuance of an initial decision.

The number of special docket applications filed with the Commission has increased dramatically over the last year. This increase has occurred at a time when the number of formal docket proceedings assigned to OALJ also has increased significantly. These increases have created a significant workload burden for OALJ. In an effort to reduce this workload burden and to better utilize staff resources the Commission has determined to transfer the principal responsibility for review of special dockets to the Office of the Secretary of the Commission. Under this procedure the Secretary will have the authority to assign special docket applications to Special Dockets Officers, who will review each application and issue an initial determination, as the ALJs do currently. The process for filing of exceptions and/or review of

initial determinations by the Commission will continue. The Secretary also will be given the discretion to continue to refer particular applications to OALJ for disposition when deemed appropriate. Such discretion might be exercised, for example, when the application involves unique or complex legal issues.

Special Docket Officers to whom applications are assigned will be experienced Commission personnel, including at the outset the Commission's Assistant Secretary and the Director of the Office of Informal Inquiries, Complaints and Informal Dockets. Other personnel also will be utilized for this function. Transfer of the special docket function in this fashion will place this activity in a posture similar to the processing of service contract correction applications under 46 CFR 581.7, the responsibility for which has recently been delegated to the Director, Bureau of Tariffs, Certification and Licensing. This reassignment will not result in any change in the quality and carefulness of review of special docket applications.

A related change regarding the number of copies of special docket applications required to be filed is included in this document. The number is reduced from an original and three to an original and one.

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) 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 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.

The proposed rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501, et seq., as implemented by regulations prescribed within 5 CFR Part 1320. Accordingly, OMB approval of the proposed rule is not required.

Inasmuch as the implementation of this transfer of functions involves a change in agency organization, procedure and practice and addresses a current workload problem it is being implemented without either prior notice and opportunity for comment or delayed effective date, pursuant to the exceptions in 5 U.S.C. 553 (b) and (d). Although the rule is being effectuated immediately, it is published as an interim rule with opportunity for comment by interested persons.

List of Subjects in 46 CFR Part 502:

Administrative practice and procedure.

PART 502--[AMENDED]

Part 502 of title 46, Code of Federal Regulations is amended as follows:

1. The authority citation for part 502 continues to read as follows:

AUTHORITY: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707-1711, 1713-1716; and E.O. 11222 of May 8, 1965 (30FR 6469).

2. In section 502.92 paragraph (c) is revised to read as follows:

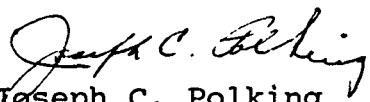
§502.92 Special docket applications and fee.

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(c) Applications under paragraphs (a) and (b) of this section shall be submitted in an original and one (1) copy to the Office of the Secretary, Federal Maritime Commission, Washington, DC 20573-0001. Each application shall be acknowledged with a reference to the assigned docket number and referred for decision, either to a Special Dockets Officer or to the Office of Administrative Law Judges, at the discretion of the Secretary. The deciding official may, in his or her discretion, require the submission of additional information. Formal proceedings as described in other rules of this part need not be conducted. The deciding official shall issue an initial determination to which the provisions of §502.227 shall be applicable. If the application is granted, the initial determination or, as may otherwise be

applicable, the final decision of the Commission shall describe the content of the appropriate notice if required to be published, and shall designate the tariff in which it is to appear, or other steps that are required to be taken which give notice of the rate on which such refund or waiver is to be based. [Rule 92].

By the Commission.

  
Joseph C. Polking  
Secretary