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FEDERAL MARITIME COMMISSION

46 CFR PARTS 520, 550 AND 580

[DOCKET NO. 92-26]

FILING OF TARIFFS BY TERMINAL BARGE OPERATORS IN PACIFIC SLOPE
STATES -- NOTICE OF PROPOSED RULEMAKING

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to remove 46 CFR Part 520 -- Filing of Tariffs by Terminal Barge Operators in Pacific Slope States and to amend 46 CFR Parts 550 and 580 to exempt certain marine terminal barge operators from the tariff filing requirements of the Shipping Act, 1916, and the Shipping Act of 1984. This action is being proposed because there no longer appears to be a regulatory need for Part 520.

DATE: Comments on or before [insert date thirty (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:

Bryant L. VanBrakle, Director
Bureau of Tariffs, Certification and Licensing
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(202) 523-5796

SUPPLEMENTARY INFORMATION:**BACKGROUND**

The Federal Maritime Commission ("Commission") administers, inter alia, section 3 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 804 ("Section 3"). Section 3 requires the filing of tariffs by terminal barge operators who meet several very specific criteria.¹ Section 3 was added to the 1916 Act to clarify the jurisdictional roles of the Commission and the Interstate Commerce Commission concerning barge movements on one particular inland waterway.

The Commission's regulations implementing Section 3 are at 46 CFR Part 520. In general terms, Section 3 and these regulations require tariffs to be filed by terminal barge operators in Pacific

¹ Section 3 provides, in pertinent part:

Notwithstanding part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 et seq.), or any other provision of law, rates and charges for the barging and affreighting of containers and containerized cargo by barge between points in the United States, shall be filed solely with the Federal Maritime Commission in accordance with rules and regulations promulgated by the Commission where (a) the cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States, (b) the transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading, (c) such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of the date of enactment hereof, and (d) such terminal operator is in compliance with the rules and regulations of the Federal Maritime Commission for the operation of such barge service. The terminal operator providing such services shall be subject to the provisions of the Shipping Act, 1916.

Slope States moving containers or containerized cargo by barge between points in the United States, on the one hand, and points in foreign countries or non-contiguous political jurisdictions of the United States, on the other.²

The Commission now proposes to remove 46 CFR Part 520 and to amend 46 CFR Parts 550 and 580 to exempt terminal barge operators in Pacific Slope States from filing tariffs for the services provided under the conditions set forth in Section 3.³

Title 46 CFR Part 520 has been in effect since 1975. There is, however, no record of any recent filing of tariffs pursuant to these regulations. The Commission believes, therefore, that it would be appropriate to remove Part 520 and to provide an exemption under Parts 550 and 580 with regard to the requirement to file tariffs with the Commission.

Section 35 of the 1916 Act, 46 U.S.C. app. 833a, and section 16 of the Shipping Act of 1984 ("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

² The Commission's regulations for the filing of tariffs in the domestic offshore commerce of the United States are at 46 CFR 550, while the regulations for tariffs in the foreign commerce are at 46 CFR 580.

³Should this proposed exemption become a Final Rule, it will be incorporated into new Part 514, which, when finalized, will provide for the Automated Tariff Filing and Information system. See §§ 514.1(c)(3)(ii) and 514.3(a)(7) of the Proposed Rule of September 9, 1991, 56 FR 46055 and 46061.

or the 1984 Act from any requirement of the 1916 Act, the 1984 Act, or Intercoastal Shipping Act, 1933, 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 exemptions would meet these criteria.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" 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 effect 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 Proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small entities,

including small businesses, small organizational units, and small governmental organizations.

This proposed rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects:

46 CFR Part 520:

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 550:

Maritime carriers; Reporting and recordkeeping requirements.

46 CFR Part 580:

Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers, Rates; Reporting and recordkeeping requirements; Surety bonds; Water carriers; Water transportation.

Therefore, pursuant to 5 U.S.C. 553; sections 3, 18(a) and 43 of the Shipping Act, 1916, 46 U.S.C. app. 804, 817(a) and 841a; section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844; and sections 8, 10, 11, 12, 13, 17 and 23 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1709, 1710, 1711, 1712, 1716 and 1722; Parts 520, 550 and 580 of Title 46 of the Code of Federal Regulations are proposed to be amended as follows:

Part 520 -- [Removed]

Part 520 is removed.

Part 550 -- [Amended]

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, 854a, 845b, and 847.

2. Section 550.1(a)(10) is added to read as follows:

§550.1 Exemptions.

(a) * * *

(10) Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States where:

(i) the cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

(ii) the transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

Part 580 -- [Amended]

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

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1702-1705, 1707, 1709, 1710-1712, 1714-1716, 1718, and 1722.

2. Section 580.1(c)(9) is added to read as follows:

§ 580.1 Exemptions and exclusions.

* * * * *

(c) * * *

(9) Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States where:

(i) the cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

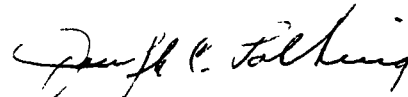
(ii) the transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) such terminal operator is a Pacific Slope State, municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one

furnishing the particular circumscribed barge service in question
as of January 2, 1975.

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By the Commission


Joseph C. Polking
Secretary