

(S E R V E D)
(May 5, 1989)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 88-19]

RULE ON EFFECTIVE DATE OF TARIFF CHANGES

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission is adopting a Final Rule that requires common carriers to publish in their tariffs a rule specifying that the rates, rules and charges applicable to a given shipment must be those published and in effect on the date the cargo is received by the carrier or its agent, including a connecting carrier in the case of an intermodal through movement. The Final Rule will foreclose an avenue for retroactive ratemaking and avoid the discriminatory and detrimental effects of such rates and practices both as to shippers and carriers.

DATE: Effective 60 days after publication in the Federal Register.

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SUPPLEMENTARY INFORMATION:

By notice published in the Federal Register on August 30, 1988 ("Proposed Rule"), the Commission proposed to amend its foreign tariff filing regulations at 46 CFR Part 580, to require common carriers to publish in their tariffs a rule on the effective date of rate and other tariff changes, 53 Fed. Reg. 33153. The rule proposed would require that all carrier and conference tariffs provide that: "...the tariff rates, rules and charges applicable to a given shipment be those published and in effect when the cargo is received by the ocean carrier or its agent (including originating carriers in the case of rates for through transportation)." The Proposed Rule sought to foreclose the use of so-called "pocket rates" by prescribing an effective date for rating purposes which is uniform and consistent with the date on which the carrier assumes its contractual and regulatory obligations with regard to the shipment.¹ Interested persons were asked to comment on the Proposed Rule.

COMMENTS

Twenty-six comments were received by the Commission to the Proposed Rule. The two comments received from shipper organizations,² and the four comments filed by the non-vessel

¹Pocket rates are described by one commenter as a tariff practice whereby the carrier negotiates a rate, receives the cargo from the shipper, but only publishes the agreed rate in its tariff after the transportation has begun.

²These shipper groups are identified in Appendix A.

operating common carrier ("NVOCC") industry³ argue that the Proposed Rule is unnecessary and anticompetitive, in that it would impair carrier "flexibility" to respond to shippers or changing market conditions. These shipper and NVOCC interests oppose any change in the tariff regulations in 46 CFR 580.5(d). One shipper group, Chemical Manufacturers Association, suggests that should an effective date rule be required, the "bill of lading date" be established as the relevant date for rating purposes under the carriers' tariffs. The bill of lading date is said to be commercially significant, easily accessible to both shipper and carrier, and easily verifiable.

Seven comments were filed on behalf of individual vessel operators ("VOCCs").⁴ The VOCCs assert that the Proposed Rule, if implemented, would act to deprive shippers of rate flexibility and deprive carriers of the ability to compete by offering the lowest available rate to their shippers. These commenters believe that the proposed Commission action would result in an increase in rate malpractices; an unmanageable rise in tariff filings of all carrier rate quotations; and a reduction in the use of intermodal services because of the later "receipt" date inherent in port-to-port services.

³These NVOCC commenters are identified in Appendix B.

⁴Comments filed by VOCCs are identified in Appendix C.

Those VOCCs supporting a rule to prescribe an effective date for tariff rates and rules⁵ generally suggest that the relevant date for tariff rating purposes should be the sailing date of the vessel from the loading port.⁶ They assert that carriers are often unable to determine the date of receipt of cargo by their agents and participating inland carriers; that carriers often find that they have received cargo prior to the publication of a negotiated rate due to failings in the cargo booking process; and that the carriers have not experienced problems in application of the current rate effectiveness rule and do not perceive any discrimination or malpractice arising therefrom.

The largest group of comments received were from conferences. Thirteen comments were filed on behalf of twenty-two conferences and ratemaking agreements.⁷ These comments reflect a diversity of positions with three comments filed in opposition to the Proposed Rule, seven voicing their apparent support for the concept and need for an effective date rule (but not necessarily the Proposed Rule)

⁵See, e.g., P&O Containers (TFL) Ltd. Comments on Proposed Rulemaking, at 1; Comments of Waterman Steamship Corporation, at 1-2; and Comments of Ocean Star Container Line, A.G., at 1-2.

⁶Two VOCCs, Forest Lines, Inc. and Crowley Maritime Corp., prefer date of loading aboard the vessel, as distinguished from the date the vessel sails. Certain VOCCs expressed a preference for tariff alternatives based on date of receipt or date of sailing/loading, whichever benefits the cargo.

⁷Comments filed by conference organizations are identified in Appendix D.

and three comments favoring both the Proposed Rule and its underlying rationale.

Conferences opposing the Proposed Rule assert that there exists "no demonstrated need for" the rule,⁸ that an effective date rule would burden conference carriers disproportionately vis-a-vis independent lines, and that such a rule would be inappropriate to particular trades or particular services.

Other conferences endorse the concept of an effective date rule as an appropriate remedy to retroactive ratemaking and pocket rate practices. These conferences nonetheless assert that the Proposed Rule would create administrative difficulties and could result in similarly situated shippers being treated differently. They differ, however, on what date should be prescribed for the effectiveness of tariff rates, rules or charges.⁹

Three comments filed by conferences support the Proposed Rule. These include comments by conferences in two of the most active U.S. trades: the North Europe - U.S. Gulf Freight Conference and North Europe - U.S. Atlantic Conference and the Trans-Pacific

⁸Comments of Inter-America Freight Conference, at 2.

⁹See, e.g., comments filed by the Australian and New Zealand Conferences; and by the U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement, South Europe/U.S.A. Freight Conference, and Greece Westbound Conference. In virtually identical comments, these conferences conclude with mutually exclusive alternatives to the Proposed Rule, viz: date of sailing from last port of loading vs. date of sailing from port of loading, respectively.

Trans-Pacific Westbound Rate Agreement.¹⁰ Conferences supporting the Proposed Rule argue that it is necessary to eliminate a "loophole" in the tariff publication requirements by which carriers engage in practices which are discriminatory as between shippers, and competitively unfair as between carriers.

DISCUSSION

The Commission has determined to publish a Final Rule specifying the date of receipt by the carrier (or its agent) as the effective date for tariff rating purposes. As set forth in greater detail below, the promulgation of a Final Rule is found to be appropriate and necessary (1) to prescribe an effective date which is uniform and consistent with the date on which the carrier assumes its other contractual and regulatory obligations with respect to the transportation, (2) to foreclose a potential avenue for discriminatory ratemaking, and (3) to maintain the integrity of the tariff filing system. Maintenance of the regulatory status quo, or adoption of any of the several tariff rule formulations suggested by the commenters as alternatives to the Proposed Rule, would have the effect of sanctioning carrier rate practices which embody retroactive ratemaking and inadequate notice to the public of rates statutorily required to be set forth in the carrier's or conference's tariff.

¹⁰Supporting comments also were filed by the Mediterranean North Pacific Coast Freight Conference.

The Commission regulations at 46 CFR 580.5(d)¹¹ currently allow a carrier or conference unilaterally to provide one or more effective dates for rating and compliance purposes, which dates may differ from the time at which the transportation process commences. Tariff Rule 3 thus may operate to establish two rates applicable at the same time to the same commodity - one being the rate currently published and made effective in the tariff at the time of tender of the goods, and the second being an unpublished rate actually applied to the cargo. Consistent with the tariff filing requirements of section 8(a) of the Shipping Act of 1984, 46 U.S.C. app. 1707 ("1984 Act"), the Proposed Rule seeks to address this situation by prescribing a uniform effective date for rating purposes, based on the date of delivery to the carrier (or its agent) for purposes of transport.

With the enactment of the 1984 Act, Congress defined the boundaries of the Commission's jurisdiction as to matters such as through rates. The provisions of section 8(a) of the 1984 Act give

¹¹This regulation requires each carrier to publish tariff rules governing its practices on specified subjects. As relevant, the regulation requires tariff notice of the following:

- (3) Rate applicability rule. A clear and definite statement of the time at which a rate becomes applicable to any given shipment.

46 CFR 580.5(d)(3) (1988) (hereinafter referred to as "Tariff Rule 3"). Commission requirements in this regard have remained virtually unchanged since 1975.

the Commission jurisdiction over "through transportation"¹² for tariff rate purposes from port or point of receipt to port or point of destination so long as the carrier "assumes responsibility"¹³ for transportation between such ports or points. The Commission's jurisdictional authority over the provision of through transportation thus begins at the port or point of receipt, whether the cargo is tendered directly to the ocean carrier or to another carrier under arrangement for through transport to destination.¹⁴

The date transportation commences is the primary date on which federal regulation may begin pursuant to the commerce clause of the United States Constitution, U.S. CONST. art. 1, §8, cl. 3. See Joy Oil Co. v. State Tax Comm., 337 U.S. 286 (1949); Champlain Realty Co. v. Brattleboro, 260 U.S. 366 (1922); Coe v. Errol, 116 U.S. 517 (1886) (tax cases). See also Baltimore & O.S.W.R. Co. v. Settle, 260 U.S. 166 (1922); Railroad Comm. of Louisiana v. Texas & P.R. Co., 229 U.S. 336 (1913); Texas & N.O.R. Co. v. Sabine Tram Co., 227 U.S. 111 (1913) (transportation cases). This occurs when the

¹²Defined in section 3(26) of the 1984 Act to mean:

. . .continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

¹³See definition of "common carrier" set forth in section 3(6) of the 1984 Act.

¹⁴The Commission was not, however, given jurisdiction over the underlying inland carriers.

goods have been delivered or tendered to a common carrier for transportation beyond the state, or for transportation to another carrier for export. Hammer v. Dagenhart, 247 U.S. 251 (1918), overruled on other grounds, United States v. Darby 312 U.S. 100 (1941); United States v. Freeman, 239 U.S. 117 (1915); Southern Railroad Co. v. Reid, 222 U.S. 424 (1912).

In today's intermodal environment, the carrier's obligation is viewed as commencing upon receipt of the shipper's cargo, whether that event occurs at a port or at an inland point. It is at the point of receipt that a bill of lading generally issues, representing the contract of carriage. The mutual obligations of the carrier to perform the transportation requested and of the shipper to pay the freight costs thereof, accrue on the former's acceptance of the goods. It is also at this point that insurance coverage may begin, and title to the goods may pass between shipper and consignee. Adoption of the Proposed Rule would therefore conform carrier practices as to rate effectiveness with the many commercial and regulatory incidents of the carrier's undertaking, which begin upon the receipt of the goods for transportation.¹⁵

As currently structured, Tariff Rule 3 may render uncertain the shipper's charges under its contract with the carrier because

¹⁵Additional precedent for the action taken here can be found in the Commission's domestic offshore tariff requirements, 46 CFR Part 550. The Commission requires that the rates applicable to joint through movements in the domestic offshore trades be the rates published and in effect on the day the initiating carrier takes possession of the shipment, 46 CFR 550.5(b)(8)(ii). These provisions were implemented without significant controversy, or subsequent problems in their enforcement.

one or more "effective dates" may be established as the points of reference for calculating the applicable freight rate.¹⁶ In such cases, the actual amount of the shipper's financial obligation for the freight is effectively unknown at time of tender, as it remains subject to (1) the transportation operations or exigencies of the carrier in moving any given shipment from port or point of receipt to the vessel for loading; and (2) the carrier's tariff activities in the interim period between the date of receipt by carrier (or originating carrier) and the date of loading aboard vessel. See, e.g., Comments of Forest Lines, Inc., at 2 (carrier's standard practice is to make tariff rate effective on date of loading on ocean-going vessel); Comments of Ocean Star Container Line, A.G., at 4 (carrier proposes uniform rule that date of rate effectiveness be fixed as date vessel sails from port of loading).

In these instances, the absence of a clear and definite statement of the rate applicable to the shipment at the time the transportation commences may render doubtful the validity of the contract. 17 Am. Jur. 2d Contracts §82 (agreement which leaves

¹⁶Tropical Shipping and Construction Co. Ltd.'s tariff provides an exemplar of the effective date rule as implemented by numerous ocean common carriers under the current regulation:

Effective date of rate changes. Rates and charges herein are those in effect on the date the vessel sails from the port of loading or the date the cargo is received at carrier's terminal, whichever benefits the cargo.

Tropical Shipping & Construction Co. Ltd. Comments, attachment at 1.

price for future determination or agreement by parties is not binding); Id. Contracts §83 (reservation to one party of future right to determine price renders contract too indefinite to be enforceable).

Rates made applicable to cargo after transportation has already commenced appear to be a form of retroactive ratemaking which is prohibited by section 8 of the 1984 Act. As the Commission's jurisdiction over the transportation begins on the date the transportation commences, its jurisdiction over the rate for such transportation also attaches from the date of tender to the carrier. Tariff Rule 3, however, currently permits the carrier to establish a date for rating purposes which may, but need not, be the same date on which the carrier assumes its contractual obligations to the shipper and its regulatory obligations to the Commission. This is no longer acceptable. The Commission's jurisdiction should be construed in a manner that is uniform and consistent for all purposes, and not be subject to variance as to time in the matter of rate applicability.

Further, section 8(a) of the 1984 Act obligates the carrier to show in its tariffs "all" its rates, charges and practices applicable to cargo tendered thereunder. We do not believe that this obligation is met where a carrier, already in the process of transporting cargo subject to a rate agreed to with a shipper, does not actually file that rate in an FMC tariff until some later point in the cargo's journey, e.g., immediately prior to vessel loading. The carrier thus may have two rates applicable to the same

commodity - one being the rate currently published in the carrier's tariff at the time of tender; and the second being an unpublished rate, which in fact will ultimately be applied to the cargo. The carrier's tariff operates to permit a future act of tariff publication to "relate back" to shipments already in transit, imposing a new rate over the rate then applicable.¹⁷

Several commenters assert that tariff policy should be to permit the "immediate" effectiveness of all rate reductions to shippers.¹⁸ Nothing in the statute or its legislative history, however, even suggests that rate reductions were intended to apply retroactively. In fact, the contrary is true.

Section 18(b) of the Shipping Act, 1916 ("1916 Act"), formerly 46 U.S.C. 817, is the predecessor to the tariff filing provisions of section 8(a) of the 1984 Act.¹⁹ The original version of section

¹⁷By analogy, Commission tariff regulations prohibit the publication of any rate which would "duplicate or conflict with" existing rates in the same tariff on the same commodity, 46 CFR 580.6(k)(1).

¹⁸See, e.g., Opposition of International Association of NVOCCs, at 1-3; and Comments of National Industrial Transportation League, at 6-7, citing Informal Docket No. 1601(F), 3M Company v. Inter-American Freight Conference 24 SRR 728 (ALJ, 1987).

¹⁹Prior to the 1961 amendments to the 1916 Act, requiring tariff filing by carriers and conferences operating in U.S. international trades, the Commission's predecessors had, by rule, required the filing of tariffs of export rates pursuant to the authority of section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876). Changes in those rates were required to be filed within 30 days after their effective date. See Section 19 Investigation, 1935, 1 U.S.S.B.B. 470, 502, 503 (1935).

18(b), which was the subject of lengthy hearings,²⁰ prescribed a 30-day notice for all rate changes, whether increases or decreases. In response to shipper and carrier testimony, the bill was amended to delete the 30-day notice for rate decreases. The primary concern appears to have been that requiring such notice in U.S. export trades would give an unfair advantage to foreign competitors of U.S. manufacturers who were not constrained by a similar requirement.²¹ It was made clear during this testimony however, that rate reductions were intended to be prospective from the date of filing.²²

In its report urging that the tariff filing and notice requirements of section 18(b) be carried forward into section 8(a) of the 1984 Act, the House Committee on Merchant Marine and Fisheries said:

A clear objective of H.R. 1878 is to enable American carriers and shippers to conduct international ocean commerce transportation in a stable, efficient, and competitive manner within a fair trade environment in which malpractices can be found and punished. Shippers support that need and emphasize their own need for knowledge of all available ocean rates in planning their cargo movements²³ (emphasis added).

²⁰Hearings on H.R. 4299 Before the Special Subcommittee on Steamship Conferences of the House Committee on Merchant Marine and Fisheries, 87th Cong., 1st Sess. (1961).

²¹Id., at 39, 82, 97, 302, 323-324, 365-366 et al.

²²Id. at 187.

²³H.R. REP. NO. 98-53, 98th Cong., 1 Sess. 18-19 (1983).

Citing the action of the former Shipping Board Bureau in requiring the filing of all export rates, the Committee also stated:

On the basis of shipper complaints that rate secrecy and instability hampered them in competing in foreign markets, the Board found that filed tariffs would 'afford equal opportunity to all shippers to avail themselves of such rates and full opportunity to competing carriers to meet such rates.'²⁴

The legislative histories of both former section 18(b) of the 1916 Act and present section 8(a) of the 1984 Act, therefore, support a rule which would preclude the retroactive application of rate changes to cargo previously received by the carrier.

Certain precedents established under section 8(e) of the 1984 Act, 46 U.S.C. app. §1707(e), as to the Commission's remedial authority over clerical and administrative tariff filing errors, underscore the legislative purpose in requiring adequate notice of available freight rates through tariff publication. In these cases the Commission established the principle that, to merit the grant of rate relief, the evidence must demonstrate that the misfiled rate was agreed upon prior to the date of shipment. In Munoz y Cabrero v. Sea-Land Service, Inc., 20 F.M.C. 152, 153 (1977), the Commission stated:

[I]t is clear that 'the new tariff' is expected to reflect a prior intended rate, not a rate agreed upon after the shipment.

Likewise, in Application of Sea-Land Service, Inc. for the Benefit of Alimenta (USA) Inc., 22 F.M.C. 347 (1979), the Commission found

²⁴Id. at 19, citing Section 19 Investigation, 1935, supra, 1 U.S.S.B.B. at 498.

that the date of delivery of an intermodal shipment to an originating inland carrier was the critical date beyond which a new tariff rate could not be negotiated, and stated:

If, for example, a shipment has already commenced before a lower rate is negotiated, . . . the carrier cannot publish, post hoc, a tariff rate which would apply to that shipment. Id. at 347.

The date of delivery to the originating carrier thus serves to define when ratemaking is prohibited as post hoc. Alimenta, supra. Accord, Application of Gulf European Freight Association and Sea-Land Corp. for the Benefit of Arthur J. Fritz & Co., 23 SRR 401 (I.D.) aff'd in part, rev'd in part 23 SRR 786 (F.M.C. 1986); Application of Seawinds Ltd. for the Benefit of Red Spot Paint and Varnish Co., 22 SRR 517 (I.D., administratively final January 10, 1984).²⁵

The Commission believes that either maintenance of the tariff status quo or adoption of a rule permitting rate changes to become effective as of the date of sailing would defeat the underlying Congressional purposes for the filing of tariffs. A tariff rule based on any of the several alternative formulations offered by the

²⁵These cases also provide convincing evidence of a carrier's ability to determine its date of cargo receipt, a matter of some dispute among the carrier commenters. E.g., Special Docket No. 1692, Application of Ocean Star Container Line A.G. for the Benefit of Navistar International Transportation Corp. (Supplemental Initial Decision, February 6, 1989) (on remand, carrier provides contemporaneous Transit Report evidencing date of cargo receipt). In the cited decision, the Administrative Law Judge remarked upon the conflict between Commission precedent in the area of section 8(e) "special docket" proceedings and Tariff Rule 3 as implemented by the carrier.

commenters would continue retroactive ratemaking practices and sanction inadequate notice to the shipping public of the rates at which the carrier is holding out, to some, to provide transportation.

During the period between agreement upon the commodity rate and its subsequent publication, the unpublished (but agreed to) rate remains for all intents a secret rate between that shipper and carrier. Only the shipper party to the rate agreement can access that rate, i.e., tender cargo in the knowledge of the intended rate filing. In Ghiselli Bros. v. Micronesia Interocean Line Inc., 13 F.M.C. 179 (1969), the Commission stated:

The "filing" of a schedule with the Commission evidences that the rates and charges contained therein have been put in force or established for the future. The purpose of requiring the submission of tariff schedules . . . is to secure uniformity and equality of treatment in rates and services to all shippers. Requiring the public establishment of tariff schedules prevents special and secret agreements thereby suppressing unjust discrimination and undue preferences.

13 F.M.C. at 181 (emphasis added), citing United States v. Illinois Terminal R. Co. 168 F. 546, 549 (S.D. Ill. 1909) ("Secret rates will inevitably become discriminating rates. Whenever discriminating rates or practices are made public, a thousand forces of self-interest and of public policy will be set to work to reduce them to fairness and equality"). See also, C.H. Leavell & Co. v. Hellenic Lines Ltd., 13 F.M.C. 76, 85 (1969) (purpose of section 18(b) is to provide shipping public with advance notice of

rates, certainty of transport charges, and assurance of equal treatment to shippers).

Several of the commenters assert that they can perceive no discriminatory effects in the current rate practices sought to be addressed in this rulemaking, because other shippers have access to the negotiated rate once it is published,²⁶ and other shippers have not complained to the carriers of the use of such rate practices.²⁷ We disagree. We believe there is a clear potential for discrimination between shippers in situations where one shipper has access to rates not yet filed in any tariff, while a second shipper does not. Any such discrimination would be no less real for the fact that the second shipper remains unaware of the rate arrangement, and thus cannot complain. The fact is similar shippers would not be receiving like treatment.

One of the principal arguments asserted in opposition to a "date of receipt" rule is that any change in the tariff subsequent to receipt of some cargo may result in two shippers paying different rates for the same commodity on the same vessel. This argument is raised in nine of the twenty-six comments, and generally assumes that the earlier shipper will be prejudiced because it would not obtain the benefit of a subsequent rate

²⁶ Comments of National Industrial Transportation League, at 5; Comments of Chemical Manufacturers Association, at 4.

²⁷ Letter comments of Israel Eastbound Conference, at 2; Comments of Waterman Steamship Corp., at 1.

reduction. These commenters generally favor an alternative to the Proposed Rule based on the date of vessel loading or of sailing.

A rule of the type suggested by these commenters, permitting rate changes to apply to all cargo on the same voyage, is itself subject to shipper discrimination. For example, a rule establishing the date of sailing as the effective date would permit rate reductions to apply retroactively to cargo already received by the carrier and in the process of being transported.²⁸ Likewise, rate increases which become effective as of the date of sailing would apply retroactively to cargo already received by the carrier and in transit. This result would appear to be inconsistent with the spirit, if not the language, of the statute's 30-day notice requirement for rate increases. We also expect it would not be any better received by the shipper community in general.

The competitive consequences of pocket rate practices directly affect the carrier industry as well. A carrier cannot market its services effectively on a rate basis when the cargo is already moving at the time a competing carrier publishes the applicable new rate. Competition is therefore diminished (or alternatively, the carriers may respond in kind through undisclosed rate arrangements with other shippers, in a rapidly proliferating carrier practice). Similarly, a carrier who is approached for a rate reduction based

²⁸One commenter, the International Association of NVOCCs (IANVOCC), asserts that shippers are "entitled" to benefit from any rate reductions filed by the carrier subsequent to shipment, notwithstanding their retroactive effect. Opposition of IANVOCC, at 1.

on a competitor's rate quote is left without a basis to gauge the real or apparent accuracy of the quoted rate, or to assess the true competitive need for equal (or greater) rate reductions.

Rate flexibility alone is not a reason to forgo regulation of this aspect of carrier ratemaking, given its potential for rate instability and discrimination. The rule which the Commission is adopting is intended to restrict those tariff practices which may give rise to unlawful methods of competition. See e.g., sections 10(b)(6), (10), (11) and (12) of the 1984 Act. See also, Rates, Charges and Practices of L. & A. Garcia & Co., 2 U.S.M.C. 615, 617-19 (1941) (discounting of tariff rate pursuant to "confidential" arrangement with shipper held violation of sections 16 and 17 of Shipping Act, 1916); Section 19 Investigation, 1935, supra, 1 U.S.S.B.B. at 502 (statutory prohibitions against undue and unreasonable preferences give rise to obligation on every common carrier to make all its rates public and available on equal terms).

Upon consideration of the comments, the 1984 Act and its legislative history, and existing case law, the Commission has determined to adopt the Proposed Rule as a Final Rule,²⁹ so as to prescribe an effective date for rating purposes which is uniform and consistent with the date on which the carrier assumes its

²⁹ One language clarification has been made in the Final Rule. The reference in the Proposed Rule to "ocean carrier" has been changed to "common carrier." Use of the term "common carrier," which is defined earlier in Part 580, makes it abundantly clear that the requirements of the rule apply equally to NVOCCs and VOCCs.

contractual and regulatory obligations with respect to the transportation.³⁰ This Final Rule is intended to foreclose a potential avenue for post hoc ratemaking and to avoid the potential discriminatory and detrimental effects of such rates and practices both as to shippers and carriers. The Final Rule should also serve to provide a fairer, more open and informed competitive environment.

The Commission has determined that this regulation 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 finds that the Final Rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601. Section 601(2) of that Act excepts from its coverage any "rule of particular applicability to rates or practices relating to such rates * * *" As the Final Rule relates to particular applications

³⁰Comments not specifically addressed herein were nonetheless considered by the Commission and found to be either irrelevant, without merit or subsumed within other comments expressly addressed.

of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072-0009.

Public reporting burden for complying with this amendment regarding the effective date of tariff changes is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the 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 Federal Maritime Commission, Bureau of Domestic Regulation; 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 580

Maritime carriers; Rates and fares; Reporting and record keeping requirements.

Therefore, pursuant to 5 U.S.C. 553; secs. 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 amends part 580 of Title 46 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. In § 580.5 revising paragraph (d)(3) to read as follows:

§ 580.5 Tariff contents

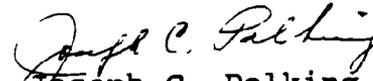
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(d) * * *

(3) Effective date rule. All tariffs shall provide that the tariff rates, rules and charges applicable to a given shipment must be those published and in effect when the cargo is received by the common carrier or its agent (including originating carriers in the case of rates for through transportation).

* * * * *

By the Commission.


Joseph C. Polking
Secretary

FMC DOCKET NO. 88-19

APPENDIX A

COMMENTS RECEIVED FROM
SHIPPERS

- 1) Chemical Manufacturers Association
- 2) National Industrial Transportation League

FMC DOCKET NO. 88-19

APPENDIX B

COMMENTS RECEIVED FROM
NVOCCs

- 3) International Association of NVOCCs
- 4) Hemisphere Forwarding Inc.
- 5) Carolina Freight Carriers Corporation
- 6) Grace Navigation Inc.

FMC DOCKET NO. 88-19

APPENDIX C

COMMENTS RECEIVED FROM
VOCCs

- 7) Forest Lines, Inc.
- 8) Ocean Star Container Line, A.G.
- 9) Tropical Shipping & Construction Co., Ltd.
- 10) P & O Containers (TFL) Ltd.
- 11) Waterman Steamship Corp.
- 12) EAC Lines Trans Pacific Service, Ltd.
- 13) Crowley Maritime Corporation

FMC DOCKET NO. 88-19

APPENDIX D

COMMENTS RECEIVED FROM
CONFERENCES

- 14) Calcutta, East Coast of India and Bangladesh/USA Conference;
- 15) U.S./South and East Africa Conference, and South and East Africa/U.S. Conference;
- 16) Inter - American Freight Conference;
- 17) Australia/Eastern U.S.A. Shipping Conference, Australia-Pacific Coast Rate Agreement, New Zealand/U.S. Atlantic and Gulf Shipping Lines Rate Agreement, and New Zealand/Pacific Coast North America Shipping Lines Rate Agreement;
- 18) U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement, South Europe/U.S.A. Freight Conference, and Greece Westbound Conference;
- 19) Israel Eastbound Conference;
- 20) United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference;
- 21) United States Atlantic and Gulf/Venezuela Freight Conference;
- 22) Atlantic & Gulf/West Coast of South America Conference, U.S. Atlantic & Gulf/Central America Freight Association, and U.S./Central America Liner Association;
- 23) North Europe - U.S. Pacific Freight Conference;
- 24) Mediterranean North Pacific Coast Freight Conference;
- 25) North Europe - U.S. Gulf Freight Conference, and North Europe - U.S. Atlantic Conference;
- 26) Transpacific Westbound Rate Agreement