

(vi) For purposes of paragraph (e)(3) of this section, a small entity as defined in 5 U.S.C. 601.

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(e) *Standards for awards.* (1) * * *
(2) * * *

(3) In an adversary adjudication arising from a Commission action to enforce a party's compliance with a statutory or regulatory requirement, if the demand by the Commission is substantially in excess of the decision of the presiding officer and is unreasonable under the facts and circumstances of the case, the presiding officer shall award to the party fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust.

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(f) *Allowable fees and expenses.* (1)

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(2) No award for the fee of an attorney or agent under this subpart may exceed \$125 per hour. * * *

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§ 502.502 [Amended]

58. In § 502.502, add "[Rule 502.]" to the end of paragraph (d)(3).

§ 502.503 [Amended]

59. In § 502.503, add "[Rule 503.]" to the end of paragraph (j)(2).

60. Revise § 502.601 to read as follows:

§ 502.601 Purpose and scope.

The purpose of this subpart is to implement the statutory provisions of section 19 of the Merchant Marine Act, 1920, section 13 of the Shipping Act of 1984, and sections 2(c) and 3(c) of Public Law 89-777 by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Merchant Marine Act, 1920, the Shipping Act of 1984, Public Law 89-777, and/or any order, rule, or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes. [Rule 601.]

61. Amend § 502.602 as follows:

a. Revise paragraph (h) to read as set forth below;

b. Add "[Rule 602.]" to the end of paragraph (i).

§ 502.602 Definitions.

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(h) "*Violation*" includes any violation of sections 19(6)(d), 19(7)(d) and 19(11)

of the Merchant Marine Act, 1920; any provision of the Shipping Act of 1984; sections 2 and 3 of Public Law 89-777; and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under the Merchant Marine Act, 1920, the Shipping Act of 1984, or Public Law 89-777.

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§ 502.603 [Amended]

62. In § 502.603, add "[Rule 603.]" to the end of paragraph (c).

63. Amend § 502.604 as follows:

a. Revise the first sentence of paragraph (b) to read as set forth below;

b. Add "[Rule 604.]" to the end of paragraph (g).

§ 502.604 Compromise of penalties: Relation to assessment proceedings.

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(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except when otherwise authorized by the Commission, or where circumstances render it unnecessary, send a Notice and Demand Letter ("NDL") to the respondent, by registered or certified mail, or by other means reasonably calculated to give notice. * * *

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64. Amend § 502.605 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Add "[Rule 605.]" to the end of paragraph (c).

§ 502.605 Payment of penalty; Method; default.

(a) *Method.* Payment of penalties by the respondent is to be made by bank cashier's check or other instrument acceptable to the Commission.

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PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

1. Redesignate part 571 as part 545.

2. The authority citation for redesignated part 545 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

3. In redesignated § 545.1, revise paragraph (a) to read as follows:

§ 545.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and conferences to

enter into a service contract with a shippers' association, subject to the requirements of the 1984 Act. Section 10(b)(10) of the 1984 Act prohibits carriers from unreasonably refusing to deal or negotiate. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

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By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98-31856 Filed 12-1-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1312

[STB Ex Parte No. 580]

Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or with a Water Carrier in the Noncontiguous Domestic Trade

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (Board or STB) proposes to modify its tariff filing regulations to eliminate the option of filing tariffs with the Board electronically through the Federal Maritime Commission (FMC) Automated Tariff Filing and Information System (ATFI), which is being phased out effective May 1, 1999. The Board will, however, entertain special tariff authority requests by individual carriers seeking to file their tariffs electronically. **DATES:** Comments are due January 4, 1999.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 580 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 565-1578. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (1995), transferred from the FMC to the Board the responsibility for regulating port-to-port water carriage in the noncontiguous domestic trade. In connection with the

transfer of jurisdiction, the Board entered into an interagency agreement with the FMC and modified its requirements to allow carriers to continue to utilize the FMC's ATFI system to file their tariffs with the Board. This action permitted the transfer of jurisdiction to occur without requiring the carriers to make any new tariff filings, and comported with Congress' suggestion that the Board continue the FMC's practice of allowing carriers to file their tariffs electronically.¹ The recently-enacted Ocean Shipping Reform Act of 1998, Pub. L. No. 105-258, 112 Stat. 1902 (1998) (OSRA) will, however, eliminate the requirement that ocean carriers file their tariffs with the FMC effective May 1, 1999, and in these circumstances, the FMC will not be accepting new ATFI tariff filings on or after that date.

While ATFI has served well as an electronic filing option for STB tariffs, its feasibility has always been predicated upon the basic system being operated and maintained by the FMC to support its own tariff filing requirements. STB tariff filings constitute less than 5% of total ATFI tariff filings, and absent the 95-plus percent of the filings accounted for by the FMC's requirements, it will not be economically feasible to operate and maintain the ATFI system or any similar system solely for STB tariffs.

Under the interagency agreement between the FMC and the Board, the Board pays an annual fee to FMC to cover the Board's portion of ATFI contract costs and certain in-house services provided by FMC, and FMC remits to the Board the filing and access fees attributable to STB tariffs. However, the Board's share of ATFI costs and fees is minuscule in terms of total system cost and fees. While the drastic reduction in tariff filings would undoubtedly reduce certain variable costs, the fixed costs of ATFI, spread over solely STB tariffs, would require the imposition of prohibitive tariff filing and access fees in order for the Board to recover any reasonable portion of its out-of-pocket costs.² In these circumstances, it is clear that ATFI would not be viable solely for STB tariff filings. Similarly, it would not be feasible for the Board to undertake an

effort to design, develop and implement a new electronic tariff filing system geared solely to STB requirements, given the limited scope of the Board's remaining tariff filing requirements and the extensive staff and monetary resources that would be required.

Although the Board's regulations will no longer routinely provide for electronic tariff filings if the proposed revisions are adopted, we will not rule out, and indeed will encourage, electronic tariff filing proposals from interested carriers. ATFI filings were initially accepted pursuant to special tariff authority granted by the Board,³ and we are amenable to special tariff authority requests for individual electronic tariff filing proposals submitted by carriers. By way of illustration in this regard, we would point out that our predecessor organization, the Interstate Commerce Commission (ICC), issued a decision several years ago granting a rail carrier's request to file certain tariffs on computer diskettes.⁴ Parties proposing alternative tariff filing systems must, of course, explain how the proposed systems will fulfill all of the various needs for tariff information.⁵

Request for Comments

We invite comments on the proposed regulations. We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 6.1, or formatted so that it can be readily converted into WordPerfect 6.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

The Board preliminarily concludes that these rules, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed regulations will eliminate the existing option to file tariffs electronically through the FMC's ATFI system, but many carriers already opt to file printed tariffs, and any cost differences for alternative tariff filing methodologies that carriers may propose are unlikely to be significant.

³ STB Special Tariff Authority No. 4, served October 1, 1996.

⁴ Special Tariff Authority No. 93-12, ICC served July 25, 1994.

⁵ Our staff is available to consult informally with carriers in this regard.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1312

Motor carriers, Noncontiguous domestic trade, Tariffs, Water carriers.

Decided: November 24, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, the Board proposes to amend part 1312 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NONCONTIGUOUS DOMESTIC TRADE

1. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 721(a), 13702(a), 13702(b) and 13702(d).

§ 1312.1 [Amended]

2. In § 1312.1(c), the definition of "ATFI" is removed.

3. Section 1312.6 is amended by revising paragraph (c) to read as follows:

§ 1312.6 Advance notice required.

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(c) Receipt of tariffs by the Board. The Board will receive tariff filings between the hours of 8:30 A.M. and 5:00 P.M. Eastern time, on workdays. Tariff filings delivered to the Board on other than a workday, or after 5:00 P.M. on a workday, will be considered as received the next workday.

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4. Section 1312.17 is removed.

[FR Doc. 98-32104 Filed 12-1-98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 111998A]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

¹ H.R. Rep. No. 422, 104th Cong., 1st Sess. 206 (1995).

² We are aware that the FMC's Notice of Inquiry concerning the implementation of OSRA (63 FR 37088) raised the possibility of continuing to operate some portion of ATFI to provide for the electronic filing of service contracts. An electronic filing system geared to the requirements of service contracts, however, would not fulfill the requirements for an electronic tariff filing system