

STB EX PARTE NO. 533

FEDERAL MARITIME COMMISSION

DOCKET NO. 96-04

NONCONTIGUOUS DOMESTIC TRADE TARIFFS

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*Decided September 19, 1996*

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AGENCIES: Surface Transportation Board, Department of Transportation;  
Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Surface Transportation Board (STB or Board) and the Federal Maritime Commission (FMC or Commission) provide notice as to how they are implementing the provisions of the ICC Termination Act of 1995 involving tariff filing and rate reasonableness in the noncontiguous domestic trade (49 U.S.C. 13701 and 13702).<sup>1</sup>

EFFECTIVE DATE: October 1, 1996

FOR FURTHER INFORMATION CONTACT: Craig Keats, Office of the General Counsel, STB, (202) 927-6046 or John Cunningham, Office of the General Counsel, FMC, (202) 523-5740. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICC Termination Act), abolished the Interstate Commerce Commission (ICC). The ICC Termination Act transferred jurisdiction over "port to port" operations in the noncontiguous domestic trade,

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<sup>1</sup> The two agencies are handling this matter simultaneously.

which had formerly been regulated by the FMC under the Intercoastal Shipping Act, 1933 (1933 Act) (46 U.S.C. 843-848), to the Board. *See*, new 49 U.S.C. 13501 and 13521 (giving the Board jurisdiction over port to port water carrier transportation in the noncontiguous domestic trade); 49 U.S.C. 13702 (requiring that, with certain exceptions, water carriers operating in the noncontiguous domestic trade file tariffs with the Board); and 49 U.S.C. 13701 (providing that water carrier services in the noncontiguous domestic trade are subject to rate regulation by the Board).

Section 2 of the ICC Termination Act states that: "Except as otherwise provided in this Act, this Act shall take effect on January 1, 1996." Under section 335 of the ICC Termination Act, however, repeal of the 1933 Act, and of portions of the Shipping Act, 1916 (1916 Act), does not become effective until September 30, 1996. In light of these two statutory provisions, the two agencies, in a notice published at 61 Fed. Reg. 5835 (1996), found that there is some ambiguity as to whether, at least until September 30, 1996, water carriers operating in the noncontiguous domestic trade must file their tariffs at the Board or the Commission, and as to which agency would be responsible for rate regulation during this interim period. The Board and the Commission, therefore, sought public comment on how the two agencies could best administer their respective statutes during the transition period ending September 30, 1996, in a manner that would be most efficient and least disruptive to the industry and the shipping public.

Comments and/or replies were filed by 13 carriers, shippers, and government entities. Of the comments that were responsive to the questions raised, some took the position that Congress, by postponing the date on which the relevant provisions of the 1916 Act and the 1933 Act were repealed, must have intended a 9-month transition period. The majority of the commentators, however, expressed the view that, because section 33 of the 1916 Act (46 U.S.C. 832) foreclosed the FMC from regulating operations already subject to ICC (now Board) jurisdiction, the Board assumed exclusive jurisdiction over operations in the noncontiguous domestic trade as of January 1, 1996. Although one of those commentators (Caribbean Shippers' Association) asserted that all

tariffs and agreements on file with the FMC must be canceled immediately, most concluded that the Board could, under delegation of authority principles, permit continued tariff filing at the FMC.

After reviewing the comments, we determined that we would monitor the way in which the industry adapted to the new statute before acting. We found that, although some carriers preferred filing electronically at the FMC, while others preferred to file on paper at the Board, there were no complaints from the shipping public that carriers were not filing their port to port tariffs. For that reason, and in light of the statutory ambiguity, we concluded that we could best facilitate the transition to exclusive Board jurisdiction by permitting carriers to continue filing at either agency, as they saw fit, until September 30, 1996. Therefore, since passage of the ICC Termination Act, each agency has recognized and respected the port to port tariffs filed at the other.

Beginning on October 1, 1996, jurisdiction over port to port transportation will clearly rest only with the Board. Therefore, as of that date, all tariffs for such services must be filed with the Board, rather than the FMC.<sup>2</sup> In light of the Congressional report language urging the Board "to continue the FMC's practice of allowing carriers to file their tariffs electronically,"<sup>3</sup> the two agencies have worked together to permit the Board to receive tariffs filed through the FMC's Automated Tariff Filing and Information System (ATFI). Accordingly, carriers that have filed their port to port tariffs electronically with the FMC may continue to do so. Additionally, the Board will allow carriers to use the ATFI system to file their joint intermodal rate tariffs for noncontiguous domestic transportation electronically. Electronic filing, however, will not be mandatory; carriers may file their port to port and intermodal tariffs in printed form at the Board.<sup>4</sup>

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<sup>2</sup> Similarly, all agreements filed with the FMC pursuant to section 15 of the 1916 Act will be subject to the antitrust laws as of that date.

<sup>3</sup> H.R. Rep. No. 422, 104th Cong., 1st Sess. 206 (1995).

<sup>4</sup> The Board is authorizing these filings by order issued in *Electronic Filing of Noncontiguous Domestic Trade Tariffs*, 1 S.T.B. 635 (1996).

*Regulatory Flexibility Analysis*

The Board and the Commission certify that this action will not have a significant impact on a substantial number of small entities. No new regulatory burdens are imposed, directly or indirectly, on such entities. The purpose of the decision is simply to facilitate the transition to a new regulatory regime.

*Environmental And Energy Analysis*

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

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

By the Commission, Chairman Creel, Commissioners Hsu, Scroggins, and Won.