

exempting the designation of agents, its comments appear to support using alternative methods of service under section 723: “[T]here [are] no major expenses for the Board in effecting service under § 723 for, as the [September notice] acknowledges, a Board action “shall be served immediately on the agent or *in another manner provided by law.*” UTU–GCA petition at 5 (emphasis in original) (citation omitted).⁶

Because there may be potential informational benefits from the designation of agents, particularly in the light of the increase in the number of small carriers, we will not exempt rail carriers from the requirement that they designate agents.⁷ While our September notice proposed that carriers be exempted from designating agents, our notice was also directed to the serving of the decisions on agents: We indicated that not serving agents would result in cost reductions and efficiency benefits for rail carriers and the Board, that service on agents was not a requirement because alternative methods of service were permitted; and the Board was in fact making decisions and notices available through first class mail, our Docket File Reading Room, our Internet Web site, and, for late releases and where no agent is designated, our first floor bulletin board.

We find that the grounds for not serving decisions and notices on agents are still valid. Moreover, no one has objected to not serving agents, and the only filed comment appears to support this. Accordingly, we are announcing a change in policy and will no longer serve decisions and notices on designated agents but will rely on the alternative methods of service and notice. We believe that making decisions and notices available in this manner is consistent with the requirement of section 723(c) that, as an alternative to service on designated agents, service may be made “in another manner provided by law.”

The statute does not explicitly define what “in another manner provided by law” means. It does, however, list alternative methods of service where no

agent is designated: Posting a notice in the Board office (section 723(c)) and service on a carrier’s attorney in cases involving rate lawfulness (section 723(d)). We note that, consistent with these, the Board posts notices for all late releases, as well as cases where no agent is designated, and all decisions are mailed by first class mail to all parties of record. Moreover, Rule 5(b)(2)(B) of the Federal Rules of Civil Procedure (FRCP) provides that service of court orders may be made by “[m]ailing a copy to the last known address of the person served.”⁸ We also make official copies of all Board decisions and notices available in the Docket File Reading Room, which goes beyond the requirements of FOIA (5 U.S.C. 552). We also make these decisions and notices available on our Internet Web site, which also exceeds the requirements of EFOIA (5 U.S.C. 552(a)(2)(E)). As noted in our September notice, the availability of decisions and notices on the Internet usually provides faster notice than messenger delivery to designated agents.⁹ We believe that these alternative methods of service and notice are consistent with the requirement under section 723(c) that, if service is not immediately made on a designated agent, it be made in another lawful manner.

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

Decided: May 15, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams,
Secretary.

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DEPARTMENT OF THE TREASURY

Delegation of Authority to the Secretary of Homeland Security

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

DATES: Treasury Department Order 100–16 became effective on May 15, 2003.

⁸ The FRCP were issued in original form through joint action of Congress and the United States Supreme Court. *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 433 (1956). “[T]he Federal Rules of Civil Procedure, like any other statute, should be given their plain meaning.” *Berckley Inv. Group, LTD. v. Colkitt*, 259 F.3d 135, 143 n.7 (3rd Cir. 2001) (citations omitted).

⁹ Section 723(c) provides that, when service is made on a designated agent, it shall be done “immediately.” In many cases, the decision or notice is available on our Web site before the agent receives it.

SUMMARY: On May 15, 2003, the Secretary of the Treasury issued Treasury Department Order 100–16. The Order allocates authorities between Treasury and Homeland Security concerning Customs regulations, rulings, and other matters. It delegates to the Secretary of Homeland Security general authority over Customs revenue functions vested in the Secretary of the Treasury pursuant to the Homeland Security Act of 2002, subject to certain exceptions. Under the Order, the Secretary of the Treasury retains the final authority over regulations concerning specified Customs revenue functions, and the authority to review, modify, or revoke specified determinations or rulings. The Order also specifies that the Advisory Committee on the Commercial Operations of Customs (COAC) will be administered jointly by the Departments of Treasury and Homeland Security. The Order rescinds and supplants Treasury Department Order 165–09 (February 28, 2003), which delegated to the Department of Homeland Security authority to perform specified Customs revenue functions pending the issuance of this Order.

SUPPLEMENTARY INFORMATION: The text of Treasury Department Order 100–16 is printed below.

Dated: May 19, 2003.

Richard S. Carro,
Senior Advisor to the General Counsel,
(Regulatory Affairs).

Treasury Department Order No. 100–16

Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over Customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002.

Treasury Department

Washington, DC.

May 15, 2003.

By virtue of the authority vested in me as the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and section 412 of the Homeland Security Act of 2002 (Pub. L. 107–296) (Act), it is hereby ordered:

1. Consistent with the transfer of the functions, personnel, assets, and liabilities of the United States Customs Service to the Department of Homeland Security as set forth in section 403(l) of the Act, there is hereby delegated to the Secretary of Homeland Security the authority related to the Customs revenue functions vested in the Secretary of the Treasury as set forth in sections 412 and 415 of the Act, subject to the following exceptions and to paragraph 6 of this Delegation of Authority:

(a)(i) The Secretary of the Treasury retains the sole authority to approve any regulations concerning import quotas or trade bans, user

⁶ We agree with UTU–GCA that there is no “inextricable” linkage between designation and service, because, while designation is mandatory, the statute does not require service on agents if an alternative service method is effected. Our September notice described why we believed that that result would have been consistent with the statute.

⁷ Because we believe that retention of designated agents would serve a useful purpose, we will withdraw the proposed exemption without deciding the issue of whether a provision of Subtitle I of Title 49 can be exempted under 49 U.S.C. 10502.