

ORIGINAL

(S E R V E D)
(April 26, 1999)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PART 520

DOCKET NO. 98-29

CARRIER AUTOMATED
TARIFF SYSTEMS

AGENCY: Federal Maritime Commission.

ACTION: Adoption of final rule.

SUMMARY: This rule adopts as final, with certain clarifying modifications, the interim rule published on February 26, 1999, which added a definition for motor vehicles to the Federal Maritime Commission's regulations concerning automated tariff systems.

DATES: Effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director
Bureau of Tariffs, Certification and Licensing
Federal Maritime Commission
800 North Capitol Street, N.W., Room 940
Washington, D.C. 20573
(202) 523-5796

Thomas Panebianco
General Counsel
Federal Maritime Commission
800 North Capitol Street, N.W., Room 1018
Washington, D.C. 20573
(202) 523-5740

SUPPLEMENTARY INFORMATION:

On March 8, 1999, the Federal Maritime Commission ("FMC" or "Commission") published a final rule establishing requirements for carrier automated tariff systems in accordance with the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1702 et sea., as amended

by the Ocean Shipping Reform Act of 1998 ("OSRA"), Public Law 105-258, 112 Stat. 1902, 64 FR 11218. At the same time, the Commission adopted a new definition for the term "motor vehicle." Because this term was not included in the proposed rule, it went into effect as an interim final rule, and interested parties were given an opportunity to comment on it.

The Commission's proposed definition in § 520.2 stated:

Motor vehicle means an automobile, truck, van, or other motor vehicle used for the transportation of passengers and cargo; but does not include equipment such as farm or road equipment which has wheels, but whose primary purpose is other than transportation.

The Commission explained that although the proposed rule did not contain a definition for "motor vehicle," the appearance of the term in OSRA may have created some confusion in the industry. The Commission concluded that the proposed definition appears consistent with the discussion in the Senate Report on S. 414, S. Rep. No. 61, 105th Cong., 1st Sess. (1997) ("Report").

The Commission received only one comment on the definition of "motor vehicle," from Wallenius Lines AB ("Wallenius"), a common carrier engaged in the transportation of vehicles. Wallenius contends that it was involved in the process that led to the elimination of the tariff publishing requirement for "new assembled motor vehicles." It further submits that those involved in this process were clear as to the intent and reach of this exception, and that the legislative history of OSRA would be adequate to

reflect that intention. It contends, however, that the Commission's proposed definition has upset this balance by adding to the definition of "motor vehicles" vehicles used for transportation of cargo.

Wallenius believes that the legislative history of OSRA indicates that the commodity described as "new assembled motor vehicles" is substantially narrower than that defined by the Commission. It contends that the Report refers to motor vehicles in terms of automobiles that move in ". . . specialized, roll-on, roll-off vessels, usually in very large quantity, single shipment lots pursuant to a . . . [service] contract." Report at 22. Wallenius submits that this type of service is understood in the automobile manufacturing industry and by its transportation providers as referring to "new, fully assembled automobile manufacturer products the primary purpose of which is the non-commercial transportation of passengers." Wallenius contends that this includes vehicles such as automobiles, sport utility vehicles, passenger minivans and pickup trucks, which move in large quantities, in single shipment lots, for the manufacturer under contract with a carrier.

In this regard, Wallenius notes that the Report refers to prior petitions for exemption before the Commission that related exclusively to automotive manufacturers' products. It also notes that the Report states that the reason for the excepted treatment

under OSRA is the nature of the "new, assembled automobile shipper market," which is described as very concentrated and employing unique shipping practices.

Wallenius believes that the market encompassed by the Commission's proposed definition of "motor vehicles" is significantly broader than the market intended to be reached by the exception. It interprets the Commission's proposed definition as including vehicles solely for the transportation of cargo, including commercial trucks and vans (including "18-wheelers"), and buses and trolleys. It argues, however, that such cargoes are not part of the new, assembled automobile shipper market that OSRA intended to address. Wallenius further asserts that such an extension flies in the face of the general rule of statutory construction that exceptions to statutory provisions should not be expanded by implication. Wallenius, therefore, suggests that the Commission adopt the following definition for "new assembled motor vehicles":

a new, assembled passenger vehicle product which is an automobile, a sport utility vehicle, minivan, pickup truck or other wheeled vehicle, the primary purpose of which is the non-commercial transportation of passengers, and which is tendered for shipment by the manufacturer or the manufacturer's authorized representative.

As an initial matter, Wallenius has overstated the breadth of the Commission's proposed definition for motor vehicle. The definition refers to automobiles, trucks, vans, or other motor vehicles used for the transportation of passengers and cargo. The

latter portion of this provision is written in the conjunctive and does not, therefore, include vehicles used solely for the transportation of cargo, e.g. "18-wheelers." It covers simply vehicles used for the transportation of passengers and cargo - for example, automobiles. It was not the intent of the Commission to carve out such a broad exception, as indicated by the further explication that motor vehicle does not include wheeled equipment such as farm or road equipment whose primary purpose is other than transportation.

Wallenius' proposed definition has four distinct elements for a motor vehicle: (1) it must be new and assembled; (2) it must be a passenger vehicle product - i.e. an automobile, a sport utility vehicle, minivan, pickup truck or other wheeled vehicle; (3) its primary purpose must be the non-commercial transportation of passengers; and (4) it must be tendered by the manufacturer or the manufacturer's authorized representative. This particular definition may be somewhat narrower than that intended by Congress, although, as Wallenius points out, Congress did reference the fact that common carriers of automobiles using specialized roll-on, roll-off vessels did previously petition the Commission for an exemption from tariff filing under the 1984 Act. Moreover, the discussion of the motor vehicle exemption was limited to the common carriage of automobiles and the new, assembled automobile shipper

market, and concluded that common carriage requirements are not necessary for that particular market. Report at 22.

Nonetheless, Congress chose the term "motor vehicles" rather than "automobiles" in the statute, and that term must be given its full and proper meaning. The term "motor vehicle" is necessarily broader than the term "automobile." At the very least, "motor vehicle" includes automobiles, but it must include more. In addition, there is nothing in the legislative history that indicates that new, assembled motor vehicles are only excepted if they are tendered by a manufacturer or a manufacturer's authorized representative. Accordingly, the Commission is adopting a compromise definition that should meet most of Wallenius' concerns and still comport with Congress' intent.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for the collection is 3072-0064.

The Commission is not aware of any other federal rules that duplicate, overlap, or conflict with the new rule.

List of Subjects in 46 CFR part 520

Common carriers; Freight; Intermodal transportation; Maritime carriers; Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 46 CFR part 520 which was published at 64 FR 11218 on March 8, 1999, is adopted as a final rule with the following change:

PART 520 - CARRIER AUTOMATED TARIFFS

1. The authority citation for part 520 continues to read as follows:

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. app. 1701-1702, 1707-1709, 1712, 1716; Pub. L. 105-258, 112 Stat. 1902; and sec. 424 of Pub. L. 105-383, 112 Stat. 3411.

2. Amend § 520.2 by revising the definition of motor vehicle to read as follows:

Motor vehicle means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan, or sport utility vehicle.


Bryant L. VanBrakle
Secretary

98-29

responsibility in effect as of April 30, 1999 will be permitted to continue operating without satisfying the requisite qualifications of three years' experience and necessary character to render OTI services.

In addition, we stated that an applicant will be provisionally licensed while the Commission reviews its application. Concerns have been raised as to what the Commission intends by the term "provisionally." The Commission will issue licenses to those NVOCCs who have tariffs and financial responsibility in effect on April 30, 1999 and who file license applications and increase their financial responsibility by May 1, 1999. These entities are permitted to continue operating while the Commission processes their applications. Should the review and investigation of applications reveal that an applicant is otherwise unqualified or unsuitable to retain a license, the regular procedures set forth at § 515.16 for revocation or suspension of a license would apply.

OSRA and 46 CFR part 515 require, for the first time, that NVOCCs obtain a license. Consistent with the licensing provisions applicable to freight forwarders under current regulations at 46 CFR part 510, and applicable to all licensed OTIs effective May 1, 1999 under 46 CFR part 515, separately incorporated branch offices are treated as separate entities. Section 515.3 requires a separate license for separately incorporated branch offices. Branch office is defined at § 515.2(c) as "any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which is located at an address different from that of the licensee's designated home office. This term does not include a separately incorporated entity." Similarly, subpart C of 46 CFR part 515 requires that separately incorporated branch offices obtain their own financial responsibility. Unincorporated branch offices are not required to obtain their own licenses, but the licensee is required to increase its financial responsibility by \$10,000 for each unincorporated branch office.

Section 515.25(a), in conjunction with the licensing requirements of this part, could be read to require that a separately incorporated branch office of an NVOCC publish its own tariff, because an applicant who seeks to obtain a license to operate as an NVOCC must establish its financial responsibility and publish a tariff. We wish to clarify that a separately incorporated branch office of an NVOCC is not required to publish its own tariff.

An NVOCC branch office which provides intermediary services is required to satisfy the licensing and financial responsibility requirements applicable to unincorporated and separately incorporated branch offices, as freight forwarders previously have been, and continue to be, so required. To the extent that a separately incorporated branch office of an NVOCC is issuing, processing, or otherwise handling, the designated home office's bills of lading, based on the rates published in the designated home office's tariff, it is not required to publish its own tariff.

An office under the corporate umbrella that does not provide intermediary services under this part, but for example provides air freight forwarding, does not fall under the branch office requirements of this part, as it is not established or maintained by or under the control of the licensee for the purpose of rendering intermediary services within the meaning of the 1984 Act or this part. Similarly, a licensed OTI is allowed to use an agent, say for sales work on behalf of the licensed principal, and the agent is not required to obtain its own license and financial responsibility, so long as the agent is not, in actuality, operating as a branch office of the licensee, whether unincorporated or separately incorporated.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0012.

The Commission is not aware of any other federal rules that duplicate, overlap, or conflict with the new rule.

List of Subjects in 46 CFR Part 515

Exports, Freight forwarders, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reports and recordkeeping requirements.

Accordingly, the second sentence of § 515.11(a)(1), which was published as an interim final rule within the final rule adding part 515 at 64 FR 11173 on March 8, 1999, is adopted as a final rule without change.

In addition, the following corrections are made:

1. At the end of the preamble on page 11171 in the first column, in the fourth line above the heading for part 510, the words "proposes to remove" are corrected to read "removes", and in the

following line, the word "add" is corrected to read "adds"

2 In § 515.11(a)(3), which was published at 64 FR 11173 in the third column on March 8, 1999, make the following correction. In the first sentence after the word "experience" and before the word "and" add the phrase "and necessary character to render ocean transportation intermediary services".

Bryant L. VanBrakle,

Secretary

[FR Doc 99-10755 Filed 4-28-99; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

46 CFR Part 520

[Docket No. 98-29]

Carrier Automated Tariff Systems

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ACTION: Adoption of final rule.

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DATES: Effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT:

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Wallenius believes that the legislative history of OSRA indicates that the commodity described as "new assembled motor vehicles" is substantially narrower than that defined by the Commission. It contends that the Report refers to motor vehicles in terms of automobiles that move in " * * * specialized, roll-on, roll-off vessels, usually in very large quantity, single shipment lots pursuant to a * * * (service) contract." Report at 22. Wallenius submits that this type of service is understood in the automobile manufacturing industry and by its transportation providers as referring to "new, fully assembled automobile manufacturer products the primary purpose of which is the non-commercial transportation of passengers." Wallenius contends that this includes vehicles such as automobiles, sport utility vehicles, passenger minivans and pickup trucks, which move in large quantities, in single shipment lots, for the manufacturer under contract with a carrier.

In this regard, Wallenius notes that the Report refers to prior petitions for exemption before the Commission that related exclusively to automotive manufacturers' products. It also notes that the Report states that the reason for

the excepted treatment under OSRA is the nature of the "new, assembled automobile shipper market," which is described as very concentrated and employing unique shipping practices.

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Nonetheless, Congress chose the term "motor vehicles" rather than "automobiles" in the statute, and that term must be given its full and proper meaning. The term "motor vehicle" is necessarily broader than the term "automobile." At the very least, "motor vehicle" includes automobiles, but it must include more. In addition, there is nothing in the legislative history that indicates that new, assembled motor vehicles are only excepted if they are tendered by a manufacturer or a manufacturer's authorized representative. Accordingly, the Commission is adopting a compromise definition that should meet most of Wallenius' concerns and still comport with Congress' intent.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for the collection is 3072-0064.

The Commission is not aware of any other federal rules that duplicate, overlap, or conflict with the new rule.

List of Subjects in 46 CFR Part 520

Common carriers; Freight; Intermodal transportation; Maritime carriers; Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 46 CFR part 520 which was published at 64 FR 11218 on March 8, 1999, is adopted as a final rule with the following change:

PART 520—CARRIER AUTOMATED TARIFFS

1. The authority citation for part 520 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701-1702, 1707-1709, 1712, 1716; Pub. L. 105-258, 112 Stat. 1902; and sec. 424 of Pub. L. 105-383, 112 Stat. 3411.

2. Amend § 520.2 by revising the definition of motor vehicle to read as follows:

§ 520.2 Definitions.

* * * * *

Motor vehicle means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan, sport utility vehicle.

* * * * *

Bryant L. VanBrakle,
Secretary

[FR Doc. 99-10783 Filed 4-28-99; 8 45 am]

BILLING CODE 6730-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-173; RM-9361]

Radio Broadcasting Services; Condon, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John L. Zolkoske, allots Channel 228A to Condon, OR, as the community's first local aural service. See 63 FR 53008, October 2, 1998. Channel 228A can be allotted to Condon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45-14-18 N; 120-11-06 W. With this action, this proceeding is terminated.

DATES: Effective May 24, 1999. A filing window for Channel 228A at Condon, OR, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98-173, adopted March 31, 1999, and released April 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1819 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting,
Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows.

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Condon, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

[FR Doc. 99-10751 Filed 4-28-99; 8 45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018-AE08

Importation, Exportation, and Transportation of Wildlife (User Fee Exemptions for Qualified Fur Trappers)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are revising our regulations providing for user fee collections from commercial importers and exporters of wildlife and wildlife products. We provide a fee exemption to trappers of fur-bearing wildlife operating small, low volume businesses engaged in wildlife trade on a small scale where there is relatively low cash flow, to individuals who trap fur-bearing wildlife from the wild as a hobby or to supplement their income and who do not deal in manufactured products or live animals as a primary means of income. The exemption from our inspection fee will apply to commercial importers and exporters based upon specific criteria, including country of origin, numbers of items, and permitting requirements. We therefore modify our user fee regulations to grant this relief to certain individuals and small businesses, meeting the outlined criteria, from the designated port inspection fees, non-designated port administrative fees, and hourly

minimums only. This rule still allows us to continue to collect data on fee collections in order to analyze the impact of user fees on small business for future decision making.

DATES: This rule is effective June 1, 1999.

ADDRESSES: Send correspondence concerning this rule to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203-3247. The complete file for this final rule is available for public inspection, by appointment, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Kevin R. Adams, Chief, Office of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, (703) 358-1949.

SUPPLEMENTARY INFORMATION:

Background

Summary of Public Participation

We received 39 comments on the proposed rule published on January 22, 1998 (63 FR 3298) 13 of which were submitted by individuals who we classified as non-consumptive users, i.e., those that do not hunt or trap wildlife. In addition, 11 comments were received from non-consumptive organizations such as the Animal Welfare Institute, Animal Protection Institute, International Primate Protection League, The Humane Society of the United States, and The American Society For The Prevention Of Cruelty To Animals.

We received four comments from individuals who were consumptive users of wildlife and four from consumptive user organizations such as the International Association of Fish and Wildlife Agencies, the Safari Club International, the Alaska Trappers Association, and the National Trappers Association. The states of Alaska, Illinois, Louisiana, and Nebraska also sent in comments to the proposed rule. We received three comments soliciting exemptions for tropical fish imports, and commercially raised quail and pheasant imports from Canada. We did not address these comments; they did not pertain to this rule.

Issues Raised in Public Comments, and Service Responses

Comment: The Service needs the current fee structure as it is designed to allow the Service to pay for the inspection program. Any exemptions would begin to erode the Service's ability to conduct critical inspections of wildlife being imported and exported.

Response: We acknowledge that the Service utilizes collected fees to support

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Monday
April 26, 1999

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Part LVIII

Federal Maritime
Commission

Semiannual Regulatory Agenda

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FEDERAL MARITIME COMMISSION (FMC)

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

Unified Regulatory Agenda

AGENCY: Federal Maritime Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to section 4(b) of E.O. 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission anticipates having under consideration, during the period from April 1, 1999, to March 31, 2000, actions in the areas listed below.

FOR FURTHER INFORMATION CONTACT: For further information concerning

Commission rulemaking proceedings or the status of any matter listed below, contact: Bryant L. VanBrakle, Secretary, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Section 602 of the Regulatory Flexibility Act (5 U.S.C. 602) requires the publication of an agenda of items for which regulatory agencies may propose or promulgate a rule which is likely to have a significant economic impact on a substantial number of small entities. Section 4(b) of Executive Order 12866 also requires agencies to publish a regulatory agenda. The agendas include information on regulatory activities being conducted or

reviewed during the succeeding 12 months by the Commission.

The following is the Commission's unified regulatory agenda. The agenda does not necessarily include all petitions for rulemakings which are under staff review.

In addition, the Commission maintains a compilation of the status of pending rulemaking proceedings and a listing of rules that have become final since the publication of the most recent regulatory agenda. This will be made available to the public, including the press and interested persons.

Bryant L. VanBrakle,
Secretary

Final Rule Stage

Sequence Number	Title	Regulation Identifier Number
4281	Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries (Docket No. 98-28)	3072-AC06
4282	Carrier Automated Taff Systems (Docket No 98-29)	3072-AC07
4283	Service Contracts Subject to the Shrrppng Act of 1984 (Docket No 98-30)	3072-AC08

Long-Term Actions

Sequence Number	Title	Regulation Identifier Number
4284	Coloading Practices and Possible Section 16 Exemtron for Coloading (Docket Nos. 93-22 and 94-26)	3072-AB75
4285	Financial Responsibility Requirements for Nonperformance of Transportation and inquiry Into Alternative Forms (Docket No 94-06 ; Further Notice of Proposed Rulemaking)	3072-AB80
4286	Port Restrictions and Requirements in the United States/Japan Trade (Docket No 96-20)	3072-AB97

Completed Actions

Sequence Number	Title	Regulation Identifier Number
4287	Inquiry into Automated Tariff Filing Systems as Proposed by the Pending Ocean Shipping Reform Act of 1998 (Docket No. 98-10)	3072-AC00
4286	Miscellaneous Amendments to Rules of Practice and Procedure (Docket No. 98-21)	3072-AC02
4289	Amendments to Regulations Governing Restrictive Foreign Shipping Practices and New Regulations Governing Controlled Carriers (Docket No 98-25)	3072-AC03
4290	Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 (Docket No. 98-26)	3072-AC04
4291	Marine Terminal Operator Schedules (Docket No 98-27)	3072-AC05

FEDERAL MARITIME COMMISSION(FMC)

Final Rule Stage

4281. LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES (DOCKET NO. 98-28)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553; 21 USC 862; 31 USC 9701; 46 USC app 1702; 46 USC app 1707; 46 USC app 1709 to 1710; 46 USC app 1712; 46 USC app 1714; 46 USC app 1716; 46 USC app 1718

CFR Citation: 46 CFR 510; 46 CFR 515; 46 CFR 583

Legal Deadline: Final, Statutory, March 1, 1999.

Abstract: The FMC proposes to add new regulations establishing licensing and financial responsibility requirements for ocean transportation intermediaries (OTIs) in accordance with the Shipping Act of 1984, as modified by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. The rule proposes a sliding-scale bond amount for different categories of OTIs, establishes certain requirements for making claims against a surety, specifies what will be included in the term "transportation-related activities" that are covered by a bond, and solicits views on different options for what would qualify for OTI operations "in the United States." This latter point is relevant since only OTIs in the U.S. must be licensed.

Timetable:

Action	Date	FR Cite
NPRM	12/22/98	63 FR 70710
NPRM Comment	01/21/99	
Period End		
Final Rule and Interim	03/08/99	64 FR 11156
Final Rule		
Comments on Interim	03/23/99	
Rule Due		
Final Action	04/00/99	
Final Action Effective	05/00/99	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Austin L. Schmitt, Director, Bureau of Tariffs, Certification, and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573

Phone: 202 523-5796

Fax: 202 523-5830
Email: austins@fmc.gov

RIN: 3072-AC06

4282. CARRIER AUTOMATED TARIFF SYSTEMS (DOCKET NO. 98-29)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553; 46 USC app 1701 to 1702; 46 USC app 1707 to 1709; 46 USC app 1712; 46 USC app 1716; PL 105-258; PL 105-383, sec 424

CFR Citation: 46 CFR 514; 46 CFR 520

Legal Deadline: Final, Statutory, March 1, 1999.

Abstract: The FMC proposes to add new regulations establishing the requirements for carrier automated tariff systems in accordance with the Shipping Act of 1984, as modified by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. The rule sets forth the requirements for publishing automated tariff systems that are accurate and accessible. At the same time, the FMC is repealing its current rules regarding tariffs and service contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/21/98	63 FR 70368
Correction to Proposed Rule	01/15/99	64 FR 2615
NPRM Comment	01/20/99	
Period End		
Final Rule and Interim	03/08/99	64 FR 11218
Final Rule		
Comments on Interim	03/23/99	
Final Rule Due		
Final Action	04/00/99	
Final Action Effective	05/00/99	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Austin L. Schmitt, Director, Bureau of Tariffs, Certification, and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573

Phone: 202 523-5796

Fax: 202 523-5830

Email: austins@fmc.gov

RIN: 3072-AC07

4283. SERVICE CONTRACTS SUBJECT TO THE SHIPPING ACT OF 1984 (DOCKET NO. 98-30)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC app 1704 to 1705; PL 105-258

CFR Citation: 46 CFR 514; 46 CFR 530

Legal Deadline: Final, Statutory, March 1, 1999.

Abstract: The FMC proposes to revise its regulations governing service contracts between shippers and ocean common carriers to reflect changes made to the Shipping Act of 1984 (1984 Act), as modified by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. Specifically, the FMC proposes to revise its regulations implementing section 8(c) of the 1984 Act and create a new regulation which would govern only service contract filings. The FMC proposes to establish new rules for service contract filing and essential terms publication, revise its regulations to include the newly permitted agreement and multiple shipper-party service contracts, and make other conforming changes. The FMC is also proposing an electronic filing system for service contracts, which is intended to reduce the filing burden on parties and accommodate the efficient processing and review of what is predicted to be a large number of filed contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/23/98	63 FR 71062
NPRM Comment	01/22/99	
Period End		
Interim Final Rule	03/08/99	64 FR 11186
Comments on Interim	04/01/99	
Final Rule Due		
Final Action	04/00/99	
Final Action Effective	05/00/99	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Austin L. Schmitt, Director, Bureau of Tariffs, Certification, and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573

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RIN: 3072-AC08

ORIGINAL

Before the

FEDERAL MARITIME COMMISSION

46 CFR Part 520

Docket No. 98-29

CARRIER AUTOMATED TARIFF SYSTEMS

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U.S. DEPARTMENT OF COMMERCE

COMMENTS OF CHINA OCEAN SHIPPING (GROUP) COMPANY

China Ocean Shipping (Group) Company (“COSCO”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in Docket No. 98-29 entitled “Carrier Automated Tariff Systems”, which is intended to carry out the amendments to the Shipping Act of 1984 (“Shipping Act”) contained in the Ocean Shipping Reform Act of 1998 (“OSRA”).

I. Extension of the 30 Day Notice Requirement Under the Controlled Carrier Act to **the** Bilateral Trade Between the United States and China Will Put COSCO At An Unfair Competitive Disadvantage

A. OSRA Extends the Controlled Carrier Act to the Bilateral Trade

COSCO’s primary concern about the proposed regulations derives from COSCO’s status as a controlled carrier within the meaning of the Controlled Carrier Act (“CCA”), Section 9 of the Shipping Act, as amended. Under current law, the CCA does not apply to the bilateral trade between the United States and the country of the controlled carrier (in this case, China). Hence today COSCO is free to compete on an equal footing with all of the other ocean carriers operating in the trade between the United States and China. More specifically, COSCO currently has the right to offer rate decreases in the bilateral trade to be

effective on one day's notice, without regard to whether they are the same or lower than competing carriers' rates.

Once OSRA goes into effect on May 1, 1999, however, the CCA will be expanded to apply to rates quoted by COSCO in both the cross trades and bilateral trades. The effect of this change will be to increase U.S. Government regulation of COSCO's operations in the bilateral trade by subjecting them to regulation under the CCA. Three aspects of regulation under the CCA are especially relevant to these comments: (1) The Controlled Carrier Act prohibits a controlled carrier from charging either tariff rates or service contract rates that are "below a level that is just and reasonable." Section 9(a). (2) Section 9(c) provides that decreases in a controlled carrier's *tariff rates* must be filed on thirty days' notice. (This provision does not apply to rate increases or to decreases in a controlled carrier's *service contract* rates.) However, (3) by its order served March 27, 1998 in proceeding Petition No. P 1-98 ("March 27 Order"), the Commission has exempted COSCO from the thirty day notice requirement in order to allow COSCO "to reduce rates to meet or exceed the filed rates of competing ocean common carriers on one day's notice." March 27 Order at 23.

One of the stated purposes of the proposed revisions to the Commission's tariff publication regulations is to enable the FMC "to review and monitor the activities of controlled carriers pursuant to section 9 of the Act." See proposed § 520.1(b)(4). This purpose can be achieved, however, without extending the 30 day notice requirement to rate reductions in the bilateral trade. All of COSCO's tariff rate will have to be published in accordance with the tariff publication requirements applicable to all shipping lines operating in the U.S. trades. COSCO's tariff rates will be accessible to the general public and the FMC

by electronic means. By adding a 30 day advance notice requirement to COSCO's rate reductions in the bilateral trades (see proposed § 520.8(c)), though, the new regulations will subject COSCO to a substantial competitive disadvantage in a new marketplace.

B. COSCO Needs Flexibility to Offer Reduced Rates on Immediate Notice

OSRA for the first time authorizes ocean carriers to enter into confidential service contracts. It is expected that the introduction of confidential contracts will increase competition and create a dynamic and fast moving marketplace requiring the ability to quote and change rates on short notice. Because of the 30 day advance notice requirement, though, COSCO will not be able to offer short notice rate reductions on its own initiative to customers who prefer the common carriage system of published tariff rates over the new system of confidential contracts. COSCO's competitors, on the other hand, will be able to offer customers a choice of an immediately effective service contract, or an immediately effective tariff rate reduction. Thus shippers which prefer to deal with COSCO are put at a serious disadvantage vis-a-vis shippers dealing with COSCO's competitors because they will not be able to obtain immediately effective tariff rate reductions. This in turn will put COSCO at a severe competitive disadvantage, especially with those customers who have immediate shipment needs, but are unwilling to commit to a service contract.

This is especially true in the bilateral trade, where many of the shippers book containers one, two or three at a time, and want to keep their options open to commit cargo to other carriers rapidly as the freight rate market changes. To serve the needs of those customers, and to compete for their business on a fair and equal basis with other ocean common carriers, COSCO needs the flexibility to offer reduced rates on immediate notice in its tariff, simply to meet the needs of its existing customers. COSCO's competitors have the

ability to reduce their tariff rates effective upon publication. To compete with them, COSCO needs the same ability.

1. The Existing Limited Exemption to Match the Tariff Rates of Other Carriers Does Not Give COSCO Enough Flexibility

The March 27 Order does not give COSCO the competitive flexibility it needs for two reasons. First, the March 27 Order is limited to meeting published rates and second, the March 27 Order only allows COSCO to “meet but not beat” competitors’ published rates. It is anticipated that many of the rates quoted by competing carriers to their customers once OSRA becomes effective will be confidential contract rates which COSCO will not be able to see. If COSCO needs to reduce its corresponding tariff rates on short notice to meet its customers’ needs, it is likely that there will be no published, competing rate against which to compare COSCO’s proposed rate action. Hence COSCO will not be able to use the limited exemption.

For example, suppose that a competing carrier offers service contract rate reductions to shippers of 100 TEUs of a given commodity. COSCO may have customers shipping the same commodity who must have a comparable rate reduction from COSCO to remain competitive. However, unless COSCO’s customer is willing to commit to a service contract, COSCO will have to wait thirty days before making a reduced rate on that commodity available in its tariff.*

If competing carriers offer short notice rate reductions in service contracts, COSCO will have no means of responding, unless it can convince its customers to sign

¹ Since the competing rate likely would be in a service contract, it could not be used as a point of comparison, thus making it impossible for COSCO to make use of the existing limited exemption. Moreover, as it does today, COSCO needs the flexibility in the bilateral trade to offer prices higher, lower or the same as other carriers to market its service effectively.

service contracts as well. Past experience indicates that many of the smaller shippers in the trade will be unwilling to do so, thus putting COSCO at a great competitive disadvantage.

Simply put, COSCO will not be able to use even the limited exemption to match secret rates being offered by competitors. Especially in the bilateral trade, COSCO needs the flexibility to quote rate reductions on short notice in its tariff without regard to the rates in competing carriers' tariffs.

Project cargoes will also present special problems. Most carriers' tariffs do not contain rates on oversize or project cargoes, because they must be evaluated on a case-by-case basis. Yet, COSCO frequently must offer reduced rates on short notice to project cargo shippers to meet delivery deadlines, construction schedules or letter of credit terms. Many project cargo **shippers** will not sign service contracts, and insist upon shipping under tariff rates. If COSCO cannot offer them such rates on short notice, they may go to COSCO's **competitors**.²

2. The Ability to Reduce Rates on One Day's Notice, Even If Those Rates are Below Competitors' Rates, is the Essence of Competition in a Free Market Economy

The new restrictions placed on COSCO's ability to quote reduced prices to its customers on short notice are inconsistent with the mandate in Section 2(4) of the Shipping Act to promote growth "by placing a greater reliance on the marketplace." Generally, lower prices are good for shippers and good for market economies. Price competition is a key objective of the United States' "comprehensive charter of economic liberty." *Northern Pacific Railway v. United States*, 356 U.S. 1, 4 (1958).

² Again, the existing limited exemption would be unworkable, because it requires a matching rate in another carrier's tariff. To generate such a rate, COSCO would have to send the prospective customer to a competing carrier to get a tariff rate quotation that COSCO then could match. Once

Any concern that COSCO's rates might be "too low" is unwarranted. The Commission has full power and authority to investigate any rate that COSCO files at any time in any U.S. trade, on the grounds that rate is below a level that is just and reasonable. All of COSCO's rates are statutorily required to be at or above a level that is just and reasonable, whether implemented on one day's notice or thirty days' notice.

OSRA amended the CCA to encourage the Commission to take action against unreasonably low rates offered by controlled carriers. The Commission has authority to investigate the rates of COSCO or any other controlled carrier that it believes is charging rates below a level that is just and reasonable. Yet, in more than a decade of operations under the Controlled Carrier Act, the Commission never has challenged a single COSCO rate based on the Controlled Carrier Act.

C. The FMC Should Consider Steps to Mitigate the Damaging Effects of the 30 Day Filing Requirement on COSCO and Its Customers in the United States-China Trade

COSCO notes with great concern and disappointment that, under the FMC's proposed regulations, effective May 1, 1999, COSCO will be subject to new restrictions on its ability to offer competitive rates to its customers in the bilateral trade between the United States and China. Moreover, under the CCA, the FMC has the authority to suspend or prohibit tariff or service contract rates of controlled carriers that it finds to be unjust or unreasonable, taking into account whether the rates are "fully compensatory." The Commission is to consider, as a point of reference, similar rates published by other carriers in the same trade. After May 1, 1999, COSCO no longer will have any way of determining whether the rates it is quoting are higher or lower than its competitors' rates. If other carriers

the customer has gone to COSCO's competitor for the rate quotation, the customer would have no reason to return to COSCO to ship the cargo.

make below cost pricing complaints under the CCA against COSCO, COSCO will have no way of knowing whether the evidence before the Commission (rates in other carriers' confidential service contracts) actually supports such a complaint. COSCO urges the FMC to consider what steps might be taken in issuing final regulations that might mitigate the damaging effect that the 30 day filing requirement is expected to have on COSCO and its customers in the U.S.-China trade.

II. Additional Concerns Regarding Certain Technical Aspects of the NPRM

In addition to the foregoing general comments, COSCO also submits the following specific comments regarding the technical aspects of tariff publication as proposed in the NPRM:

1. Under the proposed regulations, commodity tariffs would be required to assign a unique 10 digit numeric code to each commodity which is identical to current ATFI system. COSCO requests that the FMC clarify how this would apply if a carrier opts to have a class rather than commodity tariff.

2. The proposed rule does not address the standardization of commodity descriptions. Under the current rule, the FMC is able to reject commodity descriptions it feels are deficient. Under the new proposed rule the FMC can not reject commodity descriptions but can address those it considers to be deficient through informal requests or formal enforcement **action**. FMC ought to be clearer on its intent here. COSCO has had several instances where the FMC has rejected its commodity descriptions stating they were deficient even though the commodity descriptions were an exact match of a conference or another independent carrier's description. If the FMC does not clarify this rule, it is possible that COSCO or another carrier may be penalized for filing a description that is a match of a

competitor's description, while that same competitor will not be penalized and continue to use the deficient description.

3. The new rule continues the requirement for all locations in a tariff to appear in the national imagery and mapping agency Gazette or world port index. COSCO has had several problems with this requirement where current names of locations were not updated and COSCO had to use old, out of date names to comply with FMC rules. This caused quite a bit of confusion especially in China and the CIS (location names in these two areas have been severely out of date in the ATFI system). The proposed regulations should be amended to permit use of new place names before they appear in these publications, provided the carrier can demonstrate that the new place names are in current usage,

4. The proposed rule would require a minimum rate calculation capability just short of a bottom line calculation. While we appreciate that the FMC is trying to save the carriers some expense by stopping short of a bottom line calculation, the requirements being suggested will still cause the lines a considerable investment in software to produce these kinds of calculations and searches. The FMC should consider whether they really are necessary.

5. The proposed rules would require historical tariff data to be stored on-line for 5 years. While COSCO does not disagree about storing the data, storing on-line we feel can place an unnecessary burden on carriers. We would like the ability to store hard copies of this data.

6. The proposed rules continue the prohibition against cross-referencing between tariffs. As the new environment will stress global business, COSCO would ask the

FMC to reconsider its proposal on this, and permit cross-referencing as long as the cross-referenced tariff also is available on-line.

7. COSCO would like the FMC to consider a transitional plan for changeover from ATFI. COSCO feels that the ATFI system should remain in place for 1-2 months after May 1, 1999 to allow carriers a smoother transition to on-line publishing.

8. COSCO appreciates and supports the FMC's proposal to set up a location on its WEB site where the public could find a list of the addresses of carrier tariffs for easy reference.

Dated: January 19, 1999

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ALAN F WOHLSTETTER
JOSEPH F MULLINS, JR
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January 19, 1999

Comments of the Household Goods Forwarders
Association of America, Inc. re Proposed Rules -
Carrier Automated Tariff Systems, Docket No. 98-29

The Household Goods Forwarders Association numbers among its membership many ocean transportation intermediaries which are shippers of used military household goods and personal effects via ocean carrier in the foreign trade of the United States. These shipments are made for commercial account, for the account of the Department of Defense and for the account of civilian government agencies under the International Household Goods Program administered by the General Services Administration.

We appreciate the Commission's carrying forward the present exemption from tariff filing for used military household goods and for shipments of civilian agencies shipping under the GSA program. The purpose of these comments is to remedy an apparent clerical error.

Specifically, \$520.13 Exemptions: Provides, inter alia:

* * *

"(c) Cargo types. The following cargo types are not subject to the requirements of this part:

* * *

(3) Used military household goods. Transportation of used military household goods and personal effects by ocean transportation intermediaries.

* * *

(5) Used household goods - General Services Administration. Transportation of used military household goods and personal effects shipped by federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration."

Clearly the language under paragraph (5) is inappropriate since the intent was to exempt civilian household goods moving under the General Services Administration program, and therefore, the adjective "military" appearing on the third line of paragraph (5) should be deleted. (63 F.R. 70378, December 21, 1998). Further, for clarification purposes we suggest that this paragraph be restated to reflect the fact that the shipments are to be made by ocean transportation intermediaries as is properly indicated in paragraph (3) covering used military household goods.

Suggested Language

"(5) Used Household Goods - General Services Administration. Transportation of used military household goods and personal effects by ocean transportation intermediaries shipped for federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration."

I appreciate your making this clerical, but important,

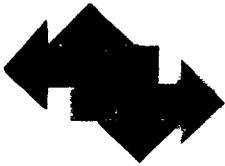
change in the proposed rules. Should anything further be required, I would appreciate being so advised.

Respectfully submitted,

DENNING & WOHLSTETTER

Dated: January 19, 1999

By Alan F. Wohlstetter
Alan F. Wohlstetter
Attorneys for Household Goods
Forwarders Association of
America, Inc.



**CARGO BROKERS
INTERNATIONAL, INC.**

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SECRETARY
FEDERAL MARITIME COMM

Monday 18, 1999

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Mr. Joseph C. Polking, Secretary
Federal Maritime Commission
800 North Capitol Street NW
Room 1046
Washington, DC 20573-0001

Re: OSRA of 1998 / Proposed Rulemaking

Dear Ladies & Gentlemen:

We are pleased to see the good progress made under OSRA, providing a way to move forward on deregulation.

Cargo Brokers International is an air & ocean freight forwarder, customs broker and NVOCC and therefore has great interest in OSRA and deregulation for the future.

In review of some of the proposed rulemaking, we would like to share following comments and suggestions with you for your kind consideration:

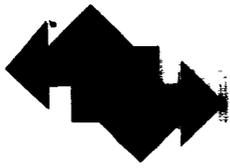
a) Why would ocean common carriers (VOCC's) now be able "bundle" their service contract offerings to include their other service companies (NVO's, forwarders, 3PLP's, consolidators etc.) when they sign service contracts with shippers;-- when OTI's on the other hand will not be able to offer such complete contracts.

b) We believe that OTI's should be able to offer confidential service contracts to shippers which include ocean transportation, specifically since VOCC's will be able to include OTI services in their contracts (see a)).

cont. page -2-



FMC #4355



CARGO BROKERS INTERNATIONAL, INC.

Page -2- 01/18/99
FMC Washington, DC
OSRA Proposed Rulemaking
Comments

c) Tariff filing should be eliminated or considerably simplified or deregulated. OSRA puts a high emphasis on value and competitive export services. Unfortunately tariff filing does not add any value to our services, to the contrary, it **adds considerable** cost and liability exposure which makes our export services less competitive.

d) We believe that the requirement to cross-referencing on NVO B/L's under carrier-to-carrier agreements should be eliminated, again there is no value added service and complicates OTI operations. Same as ocean common carriers (VOCC's) today commonly share vessels and issue their own B/L, NVOCC's should be allowed the same leverage.

e) Claims against an OTI's bond for 'reasons of delay' are not acceptable. This is a vague and ambiguous clause and will cause great confusion and again add additional cost & liability without adding any value.

f) We **would** like to request a clarification of two specific paragraphs in **#515.13 (e) & (k): Theseshould only apply to the OTI acting as a freight forwarder**, but not as a NVOCC. If acting as a NVOCC the licensee does not have to transmit a copy of their invoice from the carrier to the shipper, but is bound to charge for his/her services as per his/her published tariff.

Please do not hesitate to contact the undersigned at any time for further comments or questions at (770) 907-2968.

Sincerely,

Albert W. Saphir
V.P. Export

xc: NCBFA c/o Edward D. Greenberg
Galland, Kharasch & Garfinkle, Washington, DC / Fax 1-202-342-521 9
AIFA c/o Richard D. Gluck
Garvey, Schubert & Barer, Washington, DC / Fax 1-202-965-1 729

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BEFORE THE FEDERAL MARITIME COMMISSION

SECRETARY
FEDERAL MARITIME COMMISSION

DOCKET NO. 98-29

46 CFR Part 520

PROPOSED RULE - CARRIER AUTOMATED TARIFF SYSTEMS

Comments on Proposed Rules

Submitted by

PACIFIC COAST TARIFF BUREAU

Stan Levy
Vice President
Pacific Coast Tariff Bureau
221 Main Street, Suite 530
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January 19, 1999

INTRODUCTION

Pacific Coast Tariff Bureau (P.C.T.B.) has operated as a tariff publisher and information provider for over sixty years. We are certified by the Commission to make batch filings into the Commission's Automated Tariff and Filing Information System (ATFI) of tariff and essential terms data on behalf of our ocean carrier clients. We are also certified to download ATFI data, which we use to process into a variety of rate monitoring reports for distribution to our clients.

Through PLUS Partners, LLC, a partnership owned 50/50 by P.C.T.B. and PLUS Integration Business Solutions, we currently offer PLUS Tariff, a browser based tariff automation system that is deployed in both public Internet and private Intranet applications. We believe PLUS Tariff is precisely the type of innovative private sector approach that the authors of the Ocean Shipping Reform Act (OSRA) suggest "should be encouraged".

P.C.T.B. has been a strong advocate of automated tariff information systems, and has submitted comments in each of the ATFI Rulemaking Proceedings where we felt we had something of significance to contribute.

In August 1998, we submitted comments to the questions posed by the Commission in Docket No. 98-10 Inquiry into Automated Tariff Filing Systems as Proposed by the Pending Ocean Shipping Act Reform Act of 1998. We recognize the efforts that the Commission has taken in this rulemaking to implement a key provision of the OSRA shifting tariffs from being filed with the Commission to being made publically available via the Internet or other electronic means. Our comments herein are not questioning the direction of nor policy issues in the rulemaking but are mostly directed at technical matters associated with implementing the rules.

COMMENTS

520.2 Definitions

Forest Products - The proposed definition has the following additional language which is not contained in Section 3 of the OSRA:

"liquid or granular by-products derived from pulping and papermaking and engineered wood products."

The new definition does reflect the report of the Senate Committee on Commerce, Science and Transportation (see page 18, section 102, Definitions).

Also, the new definition states that the list is "including but not limited to."

Since these Forest Products are exempt from tariff publishing and service contract filing requirements, we request that the Commission provide some examples or the Harmonized Codes on these new additions. Further, we seek some guidance from the Commission on other items which could be deemed a Forest Product yet not specifically mentioned in this definition.

Harmonized System - While the proposed definition has changed from the current definition, our real concern is that the proposed definition only refers to the HS codes for imports. There is another, slightly different coding system for exports, called Schedule B. In many cases, the codes for import and export of the same item are different. Sometimes a code may exist in one system and not the other. [See Exhibit No. 1 attached hereto] This situation has created considerable confusion for current tariff owners, tariff users and FMC examiners. While this coding system is not mandated but highly recommended, we suggest that the definition be revised so that the current language applies to imports and additional language be added for exports to use Schedule B.

Ocean Common Carrier - This is the old definition and does not reflect the proposed new language in 535.104(u) and 530.3(j). This definition should be exactly the same in all three locations.

520.3 Publication Responsibilities

(e) Location of tariffs

P.C.T.B. supports the proposal that the Commission will publish a listing of the locations of all carrier and conference tariffs on its website. Since this information is important to the public and to ocean common carriers to verify that a NVOCC has a published tariff, we recommend that the Commission adopt a specific frequent periodic basis, such as weekly, rather than "on a periodic basis" to make this a useful service.

520.4 Tariff Content

(d) Tariff Rules

P.C.T.B. supports the use of specific titles to identify common rules appearing in most tariffs. The proposed language does not mandate rule numbers, unlike the current regulations. We support this change. However, we solicit some clarification from the FMC that you are not proposing the numbering sequence that it has used to display the rule titles listed in 520.4 (d). Since the proposed rule numbers do not correspond to the present rule numbers mandated in 46 CFR 514.15 (b) Mandatory Tariff Rules, their adoption would create needless reformatting of currently filed tariffs. Otherwise, the proposed rules should be re-numbered to more closely reflect the current requirements in order to minimize any publishing expenses.

520.5 Standard Tariff Terminology

(b) Geographic Names

Like the Senate Committee on Commerce, Science and Transportation (see Report on page 23, section 106 tariffs), we strongly believe in standards. However, there are some potential problems with the proposed use of the National Imagery and Mapping Agency (NIMA) gazeteer as the sole standard.

Firstly, the NIMA gazeteer only covers foreign locations. U.S. locations are developed by the United States Geological Survey (USGS) in cooperation with the U.S. Board on Geographic Names (BGN) and are published in the Geographic Names Information System (GNIS). [See Exhibit No. 2, attached hereto] The BGN is currently mentioned in the ATFI Batch Filing Guide, Appendix A, 5.3 Geographic Locations. Hence, we suggest that the proposed language be amended to reflect the NIMA gazeteers for foreign locations, the GNIS for U.S. locations, and the World Port Index (WPI) for ports.

Secondly, we are concerned about the locations used in current tariffs filed in ATFI based on the ATFI location table which are neither in the NIMA gazeteers, nor in the WPI. We cite the following examples:

1. Hong Kong is only in the country of Hong Kong in the NIMA gazeteer, but in ATFI it is also in China.
2. Jakarta and Djakarta, Indonesia are in the NIMA gazeteer. In ATFI they are both considered ports. Neither is in the WPI.
3. The former European countries of the USSR, Czechoslovakia and Yugoslavia are still valid country names in ATFI. NIMA's gazeteers reflect the actual political/geographic country name changes in Europe. That is, the USSR, Czechoslovakia, and Yugoslavia do not exist in the NIMA gazeteers whereas Russia, Belarus, Slovakia, Czech Republic, Croatia, Serbia, etc. are valid country names in NIMA's gazeteers.
4. Dallas, TX is a port in ATFI but not in the WPI.

If the regulations as proposed are adopted, then a significant effort and expense will be required to change the current tariff databases to conform to the new standards. In fact, this change may be very difficult to accomplish between the time the regulations become final (around March 1st) and the May 1st effective date. We strongly recommend that you allow the current ATFI locations to be grandfathered as acceptable locations, and that all new locations and changes to locations (e.g. a point becomes a port) be validated against the NIMA gazeteers, the GNIS and the WPI.

520.7 Tariff Limitations

(a) General (3)

The proposed language only allows a reference to another tariff when it is a "tariff of general applicability maintained by that same carrier or conference." We recommend that this section be amended to allow general reference tariffs, as currently permitted under 514.12(b). These tariffs (e.g. IMO Dangerous Goods Code, Official Intermodal Equipment Register, Bureau of Explosives Tariffs) are not maintained by a carrier nor a conference, but still need to continue to be referenced in tariffs. Since these general reference tariffs will probably no longer be available at the FMC's Bureau of Tariffs, Certification and Licensing (BTCL), we suggest that when cited in a tariff, information must be provided where these general reference tariffs are available for inspection.

520.8 Effective Dates

(a) General (1)

We are unsure if the omission of "charge" in the proposed regulation from the current regulation is deliberate or an oversight (It is mentioned under reductions in part (4).) Many of our carrier clients have experienced a 30 day delay in introducing new service options requested by shippers because they are new and have a charge for the performance of the additional service. Hence, we solicit some clarification from the Commission on the issue when a carrier introduces a new service which has a charge. Some examples:

1. A carrier wants to serve new additional outports subject to an arbitrary charge.
2. A carrier wants to offer a new special type of equipment subject to a special charge.
3. A carrier wants to offer a new store door pick-up and/or delivery service subject to an additional charge for this optional premium service.

The current shipper, who does not avail themselves of this new service, does not have to pay the charge which is not an increase to that shipper. A current shipper, who wants to use the new service and is willing to pay the additional charge, now has to wait 30 days before that service is available, because under the current interpretation by BTCL, it is new and does result in an increase in cost. However, it is not an increase in cost over the current services offered because it is a brand new service. We believe that the spirit of the OSRA to promote innovation in the market should not hinder the introduction of new services for which shippers are willing to pay additional amounts. Of course, an increase to already existing service should still require 30 days notice.

We appreciate this opportunity to comment on the proposed regulations.

Respectfully submitted,



Stan Levy
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San Francisco, CA 94105
415-495-6320
sLevy@PCTB.COM

January 19, 1999

Example:**Search on 1234567890 -****Results -**

Code	Description
1234567890	<Example Description 1>
<Example Code>	<Example description containing 1234567890>

Search on 098765 -**Results -**

Code	Description
098765	<Example description for the 6-digit code>
<Any code starting with 098765>	<Example description 2>
<Any code containing 098765>	<Example description 3>
<Example code>	<Example description containing 098765>



What's the difference between the Schedule B codes (for exports) and the Harmonized Tariff Schedule (HTS) codes (for imports)?

All of the imports and export codes used by the United States are based on the **Harmonized Tariff System (HTS)**. The HTS assigns **6-digit** codes for **general categories**. Countries which use the HTS are allowed to **define commodities** at a more detailed level than **6-digits**, but all definitions must be **within** that L-digit framework.

The U.S. defines products using 10-digit HTS codes. Exports codes (which **the U.S.** calls Schedule B) are administered by the U.S. Census Bureau. Import codes are administered by the U.S. International Trade Commission (USITC).

Web sites for U.S. import and export HTS codes:

- **Export** (Schedule B, administered by U.S. Census)
- **Import** (HTS, administered by USITC)



National Mapping Information

Geographic Names Information System

The Geographic Names Information System (GNIS), developed by the USGS in cooperation with the U.S. Board on Geographic Names (BGN), contains information about almost 2 million physical and cultural geographic features in the United States. The Federally recognized name of each feature described in the data base is identified, and references are made to a feature's location by State, county, and geographic coordinates. The GNIS is our Nation's official repository of domestic geographic names information. Information about foreign geographic feature names can be obtained from the GEOnet Names Server, developed and maintained by the National Imagery and Mapping Agency.

The Antarctica Geographic Names Data Base contains geographic names in Antarctica which are approved by the U.S. Board on Geographic Names for use by the Federal Government.

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Query the GNIS Online Data Bases

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BEFORE THE
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SECRETARY
FEDERAL MARITIME COMMISSION

46 CFR PART 520

[DOCKET NO. 98-29]

CARRIER AUTOMATED
TARIFF SYSTEMS

COMMENTS OF THE JAPAN-UNITED STATES EASTBOUND
FREIGHT CONFERENCE AND ITS MEMBER LINES

Preliminary Statement

These **Comments** in response to the Proposed Rule are submitted on behalf of the Japan-United States Eastbound Freight Conference (JUEFC) and its member lines as conference operators in the Japan-United States Eastbound trades.

The **Proposed** Rule, proposed to conform to the Ocean Shipping Reform Act of 1998 (OSRA), would establish new regulations on conferences and common carriers governing publication of their tariffs using private automated tariff systems, including among other things, regulations governing the use of mandatory rule titles, creation of commodity indexes, mandatory use of ten digit commodity numbering systems and mandatory creation of an automated minimum rate calculation function in every tariff.

The **JUEFC** discusses hereafter its primary concerns regarding this proposal.

Comments

1. Use of listed tariff rule titles should be optional ~~and not mandatory.~~

Section 510.4(d) of the Proposed Rule requires the use of nineteen specific rule titles for tariff subject matter falling within **those** subject headings and permits these rules to be organized in **any** sequence the tariff publisher deems appropriate. While the deletion of the currently required thirty-four mandatory rules, and their content requirements, was a welcomed change, the JUEFC believes that the required nineteen rule titles have the effect of continuing the format rigidity of the current regulations and, hence, deprives publishers of the flexibility promised under OSRA.

This rigidity is demonstrated by the simple fact that a violation can occur due to the omission of a single, non-essential, word from one of the titles (e.g., "payment of freight" rather than "payment of freight charges").

Similarly, mandatory titles would prohibit tariff publishers the flexibility of separating tariff matter into separate rules (e.g., a rule for "surcharges" and another for "arbitraries") or consolidating tariff matter under a single rule (e.g., "shippers requests and overcharge claims"), irrespective of whether there would be no actual, or arguable, diminution of the clarity of the tariff or in the ability of tariff users to locate relevant matter.

As tariff publishers would be in the best position to determine the most effective way to present tariff information for use

by the public **and**, in the **case** of conferences, for their members, the Commission is urged to allow the titles in section 520.4(d) to be treated as **"recommended"** for use rather than as mandatory. In this **regard**, we believe the Commission will agree that though the nineteen titles represent logical divisions, they are not the only logical (and clear) divisions of tariff matter.

In **any** event, the Section 520.7(a)(1) requirement that tariffs be **"clear and definite"** would provide a sufficient incentive to tariff **publishers** to compose fair and understandable titles.

2. The **mandatory** requirement to include commodity index entries for included commodities should be deleted; use of **"viz"** lists should be left to the discretion of tariff **publishers**.

The Proposed Rule in section 520.4(e)(3)(ii) requires, that for every commodity description which **"includes two or more commodities**, each included commodity shall be shown" in the commodity index. This requirement is overly burdensome and does not promote simplification as sought by Congress in passing OSRA and should **be** deleted.

This section, carried over from ATFI, would result in tariff publisher6 having to add complex additional software programming so that their tariffs will generate the list of Tariff Rate Items (TRI's) applicable to every indexed item as required separately by section 520.6(c). As section 520.4(e)(3)(ii) would appear to apply to **"viz" lists** (which the Commission has required under ATFI to be added to commodity descriptions) thousands of unnecessary additional index entries would have to be set out in tariff

publications with every such entry having automatically to generate a TRI list applicable to it.

Tariff publishers should not be burdened with this holdover from ATFI. The indexing requirement for included commodities would not permit tariff publishers to develop a better means for locating commodities in tariffs without incurring a continuance of the unnecessary cost as experienced under ATFI.

With regard to the matter of "viz" lists and commodity descriptions in general, tariff publishers should not be required to use "viz" lists in the manner currently required under ATFI, as such lists would entail the naming of every conceivable product which might move under a commodity description, with dire consequences for failure to do so. Rather, tariff publishers should be permitted in the spirit of OSRA to use commodity descriptions which are commercially developed and well understood by carriers and shippers.

3. The mandatory automated minimum rate calculation function should be deleted.

Section 520.6(e) of the Proposed Rule would require all tariffs to generate "calculated basic ocean freight" which is explained in the Supplemental Information at p. 11 would "include certain adjustments for minimum quantities, quantity discounts, etc." and a list of all assessorial charges that apply to a rate. The Commission states that requiring a bottom-line rating function, as under ATFI, "would not be consistent with Congressional intent" (p.12). The Conference must oppose this proposed rating function

as it would also be contrary to OSRA and therefore should be deleted.

The Proposed Rule concedes that the Commission cannot create a tariff requirement under OSRA which requires automated calculation of assessorial charges; hence, the rule requires tariff users to read the tariff rules and to calculate all the applicable assessorial charges. It is implicit in the Proposed Rule that such assessorial rules will meet the requirement under OSRA that they be clear. Notwithstanding the tariff user's ability to read and calculate all assessorials, oddly, and without explanation, the Commission apparently deems such users unable to read and apply rules such as those pertaining to minimum quantities and quantity discounts.

The application of tariff rules which adjust the rate under the calculated BOF function and rules applying assessorials, is fundamentally identical and all rules must be clear. Therefore, as there is no explanation otherwise justifying the calculated BOF function, the proposed automated calculation function, like the bottom-line rating function, is notwithinth the Congressional intent expressed in OSRA and must be deleted or simply made a "recommended" feature which tariff publishers may or may not include in their tariffs.

4. The current definition of "conference" should be retained without change.

JUEFC opposes the proposed change in the definition of "conference" in section 520.2, as the current definition

substantially tracks the definition in the Shipping Act of 1984 which was not amended by OSRA. In addition, the Commission did not provide commentary explaining the reasons for the change, making comment upon the intended implications of the change a matter of speculation. If such a change is needed it should be included in a later **rulemaking** where reasons for the change are explained.

5. **Publication** of "Open Rates" in either a conference tariff or in each member's separate open rate tariff should be permitted.

Section 520.3(b) provides that conferences shall publish, among other things, "any open rates offered by their members." In contrast, section 514.13(b)(19)(ii)(B) of the current regulations permits conference members the option of publishing their rates on open items in the conference tariff or in a separate tariff filed by the member. JUEFC urges the Commission to continue the flexibility of the current regulation under the final rules issued in this proceeding so that members will have the option to publish their rates on open items in their own tariff or the conference tariff.

It is inconsistent with OSRA that the Commission's treatment of open rates would be made less flexible under the new rules, than under the current regulations. There is, moreover, no technological **reason** why the current flexibility cannot be carried forward, provided that the conference tariff identifies where tariff users may find the members' open rate tariffs.

6. Tariff publishers should not be limited to using the Standard Terminology and Codes in Appendix A of the Proposed Rule.

The Conference opposes the Commission's limitation on tariff publishers to use only the list of Standard Terminology and Codes contained in the Appendix to the Rule. Tariff publishers should be permitted to use and develop their own terminology and coding systems **as may** become necessary so long as the terms or codes they use **are** defined in the tariff. This would comport with OSRA's intent.

The final rules should not require an uncertain application process in order to get new codes approved. Not all tariff publishers' coding needs will be the same and, hence, all **codes** used do not need to be listed. Inclusion of every code used in the Commission's list would be as detrimental as limiting the list to those **proposed**. The Commission should, therefore, permit (without the need for prior approval) use of codes not on the list provided such codes are clearly defined in the tariff.

7. The proposed commodity and tariff rate item numbering schemes should be made optional.

The Conference opposes the mandatory requirement (section 520.4(e)) that commodity descriptions be assigned a ten-digit commodity number.

The Commission rightly does not make the Harmonized Code numbering **scheme** mandatory, permitting tariff publishers to use any numbering **system** they wish. The Commission, however, carries over from ATFI the ten digit requirement when there is no technological

justification to do so under a system where tariffs will be published under a wide variety of different computer software programs, rather than the current software geared to the monolithic ATFI system.

Also, during the life of ATFI, ten digit commodity numbering was, in fact, not needed; hence, there is certainly no reason under the new regimen which can justify its mandatory use. Moreover, Tariff Rate Item numbers would not require fourteen digits where a tariff publisher chooses something other than a 10 digit commodity number.

8. The requirement for a written certification of a tariff's accuracy and that no unlawful alterations will be permitted is of no utility to the Commission and should be deleted.

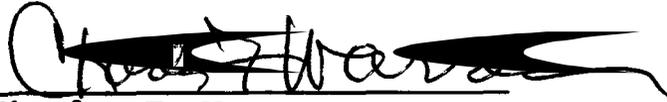
The requirement in section 520.10(e) of the Proposed Rule (that an officer or executive of a conference or carrier must provide written certification that a tariff is true and accurate and that no unlawful alterations will be permitted) should be deleted as unnecessary, as it would be of no utility to the Commission.

Conferences and carriers are sufficiently made responsible for the content of their tariffs by the provisions of the Shipping Act itself and by the Commission's other tariff filing regulations without the need for this section 520.10(e) requirement. The practical and legal effect of the Proposed Rule must be questioned in light of the Commission's experience under the anti-rebating certification requirements which OSRA has repealed.

Conclusion

For ~~the~~ reasons indicated, the Proposed Rule should be revised as requested.

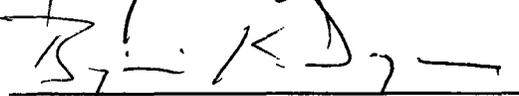
Respectfully submitted,



Charles F. Warren



George A. Quadrino



Benjamin K. Trogdon

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Attorneys for the Japan-United
States Eastbound Freight Conference

Dated: January 20, 1999

January 20, 1999

RECEIVED
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SECRETARY
FEDERAL MARITIME COMMISSION**VIA FACSIMILE: (202)523-0014
AND BY HAND -JANUARY 21,1999**Joseph C. Polking, Secretary
Federal Maritime Commission
800 North Capitol Street, N. W. - Room 1046
Washington, D.C. 20573-0001**COMMENTS TO PROPOSED REGULATIONS ON
CARRIER AUTOMATED TARIFF SYSTEMS
46 CFR, PARTS 514 AND 520
Docket No. 98-29**

Dear Mr. Polking:

The National Association of Transportation Intermediaries ("NATI"), on behalf of its members, hereby submits comments on the above-referenced proposed regulations. NATI's members are primarily concerned about:

1. Maintaining the integrity of their tariffs in a simple and efficient manner; and
2. Providing access to tariffs quickly and inexpensively.

To achieve these ends, it is important that the final regulation on Tariff Contents (§ 520.4) should not prescribe a particular design or structure for a tariff, but only prescribe what information must necessarily be included in a tariff.

It is also important that access to Tariffs (§ 520.9) permit flexibility to allow for economies as technology expands and allows new means to access electronically published material, including tariffs. It is suggested that a sub-subsection to subsection (a) *Methods to Access* be added to permit other methods of access, subject to approval of the Commission.

Joseph C. Polking
Federal Maritime Commission
January 20, 1999
Page 2

Thank you for your consideration of our comments. Please contact the undersigned if you have any questions, or need additional information.

Sincerely yours,

**NATIONAL ASSOCIATION OF
TRANSPORTATION INTERMEDIARIES**

By: 
Peggy Chaplin
Executive Director

cc: NAT1 members

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January 20, 1999

BY HAND DELIVERY

Bryant L. **VanBrakle**
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W., Room No. 1046
Washington, D.C. 20573-0001

Re: Carrier Automated Tariff Systems
Docket No. 98-29: Notice of Proposed Rulemaking

Dear Mr. **VanBrakle**:

Please accept this letter as the comments of North American Van Lines, Inc., t/a North American International ("NAP"), regarding the proposed regulations for carrier automated **tariff** systems (Docket No. 98-29). NAI operates as a non-vessel-operating common carrier in the foreign commerce of **the** United States. **NAI** provides transportation of household goods and personal effects and other containerized cargo. **NAI** submits the following comments with respect to (1) the excessive **scope** of the proposed regulations relative to the Commission's statutory authority, (2) the used military household goods exemption [section **520.13(c)(3)**], (3) the Standard Terminology and Codes (section 520.5 and proposed Appendix A), and (4) the implementation schedule.

1. **The Proposed Regulations Exceed the Commission's Authority**

As a general matter, the proposed regulations exceed the authority granted the Federal Maritime Commission by section 8(g) of the Shipping Act of 1984, as amended. 46 U.S.C. App. 1707(g). Section **8(g)** provides in pertinent part

The Commission shall by regulation prescribe the requirements for the **accessibility** and **accuracy** of automated tariff systems established under this section.

Id. (emphasis added). The proposed regulations far exceed any requirements relating to accessibility and **accuracy**. For example, the detailed requirements set forth in section 520.4, relating to **Tariff** Contents, appear to have no relationship whatsoever to accessibility or accuracy. If adopted without significant change, the proposed regulations would thwart Congressional intent to encourage innovative, private tariff presentations. In addition, the proposed regulations all but eliminate any chance for **significant** tariff simplification.

NAI urges the Commission to eliminate all portions of the proposed regulations relating to tariff contents and format so that carriers will be free to try new forms as long as those forms are accessible electronically to the public and accurately provide the rates, terms and conditions of **service**.

2. **Request for Clarification of the Used Military Household Goods Exemption**

Section **520.13(c)(3)** converts the Commission's current exemption **from** tariff filing for used military household goods into an exemption **from** publication in the new automated tariff systems. **NAI** requests that the Commission **clarify** this exemption to provide that the exemption

only applies to rates **filed** with the Military **Traffic** Management Command (“MTMC”) for shipments of used military household goods and personal effects for the account of the Department of Defense. This change would be consistent with the language used in the exemption for **NVOCC** financial responsibility. See 46 C.F.R. Part 583.

Section 5 14.3 of the Commission’s current regulations provides

The following exemptions are granted **from** certain described requirements of this part:

* * *

(b) Certain cargo types –

* * *

(3) Used military household goods – **NVOCCs**.
Transportation of used military household goods and personal **effects** by non-vessel-operating common carriers is exempt from the **filing** requirements of the 1984 Act and the rules of this part.

46 C.F.R. 5 14.3. The proposed regulations provide that

The following cargo types are not subject to the requirements of this part:

* * *

(3) Used military household goods. Transportation of used military household goods and personal effects by ocean transportation intermediaries.

Section **520.13(c)**.

The clarification requested by **NAI** reflects the intent of the Commission when it initially adopted the exemption. See FMC. Docket No. 80-37, Final Rule served June 30, **1981**, **20 SRR**

1223. In adopting the exemption, the Commission stated

In promulgating this exemption, the Commission considered, inter alia, the comments of DOD which has requested the modifications of existing regulations to permit it to require NVOCCs to submit their through intermodal rate quotations to DOD's Military **Traffic** Management Command (**MTMC**) and to require these quotations be approved by **MTMC** . . .

FMC Docket No. **80-37, 20** SRR 1223, at 1224. In granting the exemption the Commission **further** stated

The Commission is satisfied that the transportation of used military household goods and personal effects by NVOCCs fall within the category of operations which can be exempted from tariff filing requirements without detrimental effects on any affected interest, particularly because MTMC, the involved shipper, has its own competitive bidding regulations.

Id. (emphasis added). The thrust of the Commission's rationale for granting the exemption involved the **applicability** of **MTMC's** regulations, the filing of rates with MTMC, and the fact that a single shipper - **MTMC** - was involved.

As the Commission knows, however, the following scenario sometimes occurs. MTMC ships used military household goods with NVOCC **#1** pursuant to a tender on file with MTMC. NVOCC **#1** then tenders the shipment of used military household goods to NVOCC **#2**. In other words, NVOCC **#1**, not MTMC, is the shipper vis-a-vis NVOCC **#2**. Unless NVOCC **#2** is required to file its rates with the Commission under current regulations, or publish its rates in an automated tariff system under the proposed regulations, other NVOCCs who are carrying used military household goods for MTMC will not know the rates available **from** NVOCC **#2**.

Carrier Automated Tariff Systems

Docket No. 98-29: Notice of Proposed Rulemaking

January 20, 1999

Page 5

In contrast to the Commission's rationale in adopting the exemption, there is not just one potential **shipper** involved when one **NVOCC** tenders used military household goods to another **NVOCC** for transportation. Moreover, there is nothing in the original proceeding adopting the **exemption to suggest** that the Commission intended the exemption to apply to any rates, terms and conditions other than those filed with MTMC and intended to be charged directly to MTMC **as shipper**.

For these reasons, NAI requests that the Commission clarify the exemption for used military household goods and personal effects by stating explicitly that the exemption only applies to rates filed with MTMC for shipments of used military household goods and personal effects for the account of the Department of **Defense**.¹

3. Standard Terminology and Codes - Appendix A

Appendix A to the proposed regulations provides the Commission's existing approved codes for use in **tariffs**. Section 520.5(a) of the proposed regulations provides that "[T]he Commission will consider additions to the Appendix on a case-by-case basis and publish changes as they are approved on its website."

NAI hereby requests that the Commission add the following two (2) codes to the "Packaging Codes" section of its approved codes and publish them in Appendix A or on its

¹ NAI also believes that the exemption provided currently at 46 C.F.R. **514.3(b)(5)** and in the proposed regulations at section **520.13(c)(5)** should also be clarified, if there is any question **currently**, to provide that the exemption therein only applies when the shipment is for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

website:

Knockdown Wood Crates KWC

Wood Crates WC

Both are commonly used terms in the transportation of household goods and personal effects.

4. Reservation Regarding Implementation Schedule

NAI has begun to assess the steps it must take to implement a new, automated **tariff** system. **NAI** has conducted an internal review and contacted outside vendors to determine what assistance may be available, the level of staff involvement required, and the cost of creating a private automated system. To date, no outside vendor, including tariff publishing services, has been able to provide either assurances that the job can be completed by May 1, 1999 or an estimate of the cost of compliance. As part of its assessment, **NAI** has been unable to determine the extent of the additional burden imposed by the requirement that the automated tariff provide historical data for the five years immediately prior to May 1, 1999.

NAI will make every effort to comply with the final regulations in a timely manner. However, because the deadline for implementation is May 1, 1999, and the final regulations may be published as late as March 1, 1999, **NAI** hereby reserves the right to request, if necessary, a postponement of the **effective** date of the regulations. **NAI** is **mindful** of the statutory requirements in this regard. Nonetheless, in light of the difficulties experienced in the development and initial implementation of the automated tariff filing and information system, **it is**

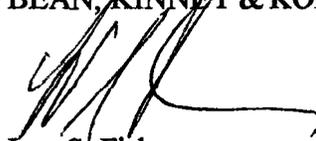
Carrier Automated Tariff Systems
Docket **No.** 98-29: Notice of Proposed Rulemaking
January **20, 1999**
Page 7

not unreasonable to anticipate that carriers may experience delays beyond their control. A short, fixed deadline may be more theoretical than practical,

NAI **respectfully** requests the Commission's consideration of these comments and adoption of the requested changes to the proposed regulations.

Sincerely yours,

BEAN, KINNEY & KORMAN, P.C.



Leo S. Fisher

Attorney for North American Van Lines, Inc., t/a North American International

LSF/clc

Thru date: ETM believes thru date should be removed from the definitions completely. All tariff changes can be accomplished with amendments without the use of thru date. ATFI itself does not handle thru date accurately in all cases, showing the problem and confusion that can be created using thru date.

Part 520.3 Publication responsibilities:

(d) **Notification:** Carriers and conferences are required to notify BTCL prior to the commencement of **common** carrier service utilizing Form FMC- 1 . We assume such notification may be made by **mail**, courier or facsimile. We suggest that this method of delivery be clarified in the regulations. ETM further suggests that Form FMC-1 be included in the FMC's web site for review as soon as possible and in a format that does not require special software or downloading for review and/or retrieval. There is no fee mentioned in the regulations for this notification submission and we support this no fee provision.

Part 520.4 Tariff contents:

(d) Tariff rules:

(1 through 19) We ask that this part of the regulations be clarified to provide that the specific titles shown in items 1 through 19 should be used for those subjects, but the order or numbering of these items is at the option of the filer. Should the order and numbering be required by the final regulations, we believe that the order and numbering should match current ATFI order and numbering requirements with reserved numbers for items not brought forward from the current regulations to maintain the integrity of current data and software systems that have been designed using ATFI specifications.

Part 520.6 Retrieval of information:

(a) General: ETM believes that this part of the regulations may be interpreted as to not allow carriers or agents the freedom to design their own systems as OSRA intended. Strict interpretation of this regulation may have the carrier or agent believe that a tariff selection option screen **would** be presented as the initial retrieval method. We propose that the regulations be clarified to require a "method of tariff selection". Some systems may present a list of the carrier's tariffs, white others would allow a search function such as origin or destination search, search by tariff type, or other options, instead of a simple tariff listing.

(b) Search capability:

(2) Rate searches: The requirement for a "direct" rate search function by entering fourteen numbers for access to a specific TRI may also be interpreted as to not allow carriers or agents the freedom to design their own systems as OSRA intended. While we agree that this search function should be available, the "direct" access may not be desirable in all cases. System prompts, such as "are you sure you want to perform this search" or "are you sure this is the commodity that you want" would improve system efficiencies in some cases, but could be construed to not comply with the direct access requirements.

Part 520.7 Tariff limitations:

(b) Notice of cancellation: Carriers and conferences are required to notify BTCL in writing, whenever a tariff is cancelled and the effective date of that cancellation. We assume such notification may be made by mail, courier, facsimile or e-mail. We suggest that this method of delivery be clarified in the regulations. There is no fee mentioned in the regulations for this notification submission and we support this no fee provision.

(c) Applicable rates: The regulation does not address the issue of multiple or part lot shipments received over a period of time. We suggest that wording as shown below or similar wording be added to this regulation:

“When part lots are received on different days for assembly into a single shipment for carriage on a single Bill of Lading, the entire shipment will be transported at the applicable Rates, Rules and **Charges** lawfully in effect on the date the last component part of the assembled shipment was received by the originating Carrier.”

Part 520.9 Access to tariffs:

(c) **Internet** connection:

(2) The regulations require carriers or conferences to provide a static Internet address. This regulation would seem to limit a carrier's or conference's ability to change systems or agents if desired. We ask that this regulation be further clarified and expanded.

(e) Limitations:

(3) Carriers and conferences may assess a reasonable fee for access to their systems and such fees shall not be discriminatory. We believe some carriers and conferences will utilize the systems of their agents and the regulation should reflect this situation. We also ask what does the Commission believe is a reasonable fee or should the market be free to decide this issue? ETM further believes that pricing matrices based on volume of use, number of users, etc. applied equally to all entities would not be discriminatory and ask for confirmation of this issue.

Part 520.10 Integrity of Tariffs:

(a) Historical data: Carriers and conferences are required to maintain data for five years. We suggest that the regulations specifically state that the live year period commences on May 1, 1999, or the original **effective** date of a tariff if later. Further, ATFI data should remain in ATFI for current data retention regulations. We also request that ATFI be available to the public for review of past data after May 1, 1999.

(d) Access to systems: The regulations require “reasonable access” to carrier and conference automated systems. Systems will require periodic routine maintenance, software upgrades and other actions that may affect accessibility. Please define “reasonable access”.

(e) Certification: Carriers and conferences are required to notify BTCL in writing, that all information contained in their tariff publication is true and accurate and that no unlawful alterations will be permitted. We assume such notification may be made by mail, courier, facsimile or e-mail. We suggest that this method of delivery be clarified in the regulations. There

is no fee mentioned in the regulations for this notification submission and we support this no fee provision.

Part 520.14 Special permission:

(b) Clerical errors: Please **define** "reasonable promptness".

(d) Implementation: Please define "prompt".

General Comments: With the Year 2000 (Y2K) problem facing many organizations, the additional system development time required to comply with new and different posting and filing requirements and the changes in regulations, conforming to the May 1, 1999 effective date may be impractical. ETM suggests that, as an option, a carrier or conference may elect to file a tariff under the new regulations effective on May 1, 1999, or to continue their current ATFI filings until such time as the new tariffs and systems are fully ready. Compliance with original Part 5 14 that governed ATFI was spread over a much more reasonable period of time due to the complexity and volume of the work required and compliance with the new regulations should take this past knowledge of reasonable time requirements into consideration. Additionally, a tariff filed **in** ATFI meets all of the requirements of the current regulations and should be allowed to remain in place as an effective tariff until replaced.

If you have any questions concerning the above comments or if you require any additional information, please contact our office.

Very truly yours,



Joseph K. FitzGibbon
President

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BEFORE THE FEDERAL MARITIME COMMISSION

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DOCKET NO. 98-29

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DOCKET NO. 98-30

COMMENTS OF THE
TRANS-ATLANTIC CONFERENCE AGREEMENT

I. INTRODUCTION

These comments are submitted on behalf of the Trans-Atlantic Conference Agreement ("TACA") and its respective Members.^{1/} TACA is participating in the comments of the Ocean Carrier Working Group Agreement ("OCWGA") in the subject proceedings. These comments are supplemental thereto and address a single topic presented by the Commission's notices of proposed rulemaking in said proceedings (the "Notices") of special interest and concern to TACA and its Members as next discussed.

^{1/} Atlantic Container Line; MSC; Maersk; POL-Atlantic; NYK; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Sea-Land; OOCL; and Hapag Lloyd.

II. GENERAL DISCUSSION

The Notices include similar sections regarding "Inland portions of through movement to Europe".^{2/} They read as quoted below.

"Unlike the United States, it appears that the European Commission ("E.C.") -- while permitting conference tariffs for the ocean movement of cargo -- prohibits conference tariffs which cover the movement of cargo to inland points in Europe. Therefore, it seems that carriers in the U.S.-European trade may participate in a conference tariff covering U.S.-Europe ocean movements, and utilize individual tariffs covering European inland transport for the same shipper customer. A question has arisen as to whether these tariffs for European inland transport must be published under the Act. It would seem that publishing would be consistent with statutory requirements to the extent the tariffs establish the European inland portion of a through rate charged by a carrier in a U.S.-Europe intermodal movement. However, the Commission welcomes comments on how it could minimize the regulatory burdens occasioned by these difference in regulatory regimes to the extent it may do so given its own statutory responsibility." Dkt 98-29 Notice at 16-17.

* * * * *

"Unlike the United States, it appears that the European Commission ("E.C.") -- while permitting

^{2/} TACA assumes that the "to Europe" references of the Notices also pertain to shipment from Europe and, further, that all tariff/service contract material involving relevant inland transport in Europe, and not merely inland portions of through rates alone, are intended to be covered. If not, TACA suggests that the Commission ought nevertheless also concurrently consider these substantively indistinguishable aspects of the matter.

conference service contracts for the ocean movement of cargo -- prohibits conference contracts which cover the movement of cargo to inland points in Europe. Therefore, it seems that carriers in the U.S. European trade may participate in a conference service contract covering U.S.-Europe ocean movements, and sign an individual service contract covering European inland transport for the same shipper customer. A question has arisen as to whether these contracts for European inland transport must be filed with the Commission. It would seem that filing would be consistent with statutory requirements to the extent the contracts establish the European inland portion of a through rate charged by a carrier in a U.S.-Europe intermodal movement. However, the Commission welcomes comments on how it could minimize the regulatory burdens occasioned by these differences in regulatory regimes, to the extent it may do so given its own statutory responsibility." Dkt 98-30 Notice at 20.

TACA considers that the Commission is right in focusing its attention on European inland transport, and as distinguished from inland transport in other areas of the world involving U.S. import/export ocean liner commerce, owing to the unique requirements of the European Commission (the "EC"), as described by the Notices, and which extend beyond the borders of the European Union ("EU") and embrace the entire European Economic Area ("EEA") under applicable treaty.^{3/} Insofar as TACA is aware, only within the territory of the EEA, and to the exclusion of the remainder of the globe, is it legally impermissible for Conference members to cooperate with respect to the terms and conditions of the inland transport of shipments with a prior or

^{3/} This is not to say, however, that the Commission ought not consider easing the burdens of its proposed tariff/service contract publication/filing rules with respect to relevant inland transport services provided by carriers engaged in U.S. seaborne import/export liner commerce in other areas of the world and as suggested in the OCWGA comments.

subsequent movement by sea aboard their ocean line-haul vessels. Moreover, it need be emphasized that this prohibition applies not only to the inland transport of such shipments between ports and points within the territory of the EEA but, further, to any inland transport which traverses the territory of the EEA. This, for example, the relevant prohibition extends to the inland transport of a shipment between a point in Switzerland, or in Poland, or in Romania, etc. (not within the EEA) and a port within the EEA. TACA stresses these facts to demonstrate that the Commission's broad approach to Europe as a whole, rather than a narrow approach to the EU, or even the EEA, is a valid one.

It is therefore evident that the Commission has most appropriately taken cognizance of the singular legal regime which prevails in Europe with respect to relevant inland transport and of the regulatory burdens its proposed tariff and service contract publication/filing rules would impose in the face of "these differences in regulatory regimes" and, accordingly, invited comments "on how it could minimize" those burdens "to the extent it may do so given its own statutory responsibility." TACA responds to that invitation as set forth in the next part of this submission.

III. TACA's PROPOSAL

A. Basis of Proposal

As an obligation attaching to the block exemption from the antitrust prohibitions of Article 85(1) of the Treaty establishing the European Economic Community afforded under Article 3 of EEC Council Regulation 4056/86 ("4056"), Article 5(4) of 4056 prescribes as follows:

"Tariffs, related conditions, regulations and any amendments thereto shall be made available on request to transport users at reasonable cost, or they shall be available for examination at offices of shipping lines and their agents. They shall set out all the conditions concerning loading and discharge, the exact extent of the services covered by the freight charge in proportion to the sea transport and the land transport or by any other charge levied by the shipping line and customary practice in such matters." (Emphasis added).

The corresponding "Whereas" clause of 4056 provides insight with respect to this obligation by explaining that:

"Whereas certain obligations should also [be attached to the exemption; whereas in this respect users must at all times be in a position to acquaint themselves with the rates and conditions of carriage applied by the members of the Conference, since in the case of inland transport . . . the latter continue to be subject to Regulation (EEC) No 1017/68; . . ."]. (Emphasis added).

Three preliminary observations regarding the above described obligation would appear to be highly relevant and material. Each is next considered.

First, the subject obligation applies to vessel-operating carrier ("VOCC") members of liner conferences alone. It does not therefore apply to non-vessel operating common carriers ("NVOCCs") or to VOCCs operating as "independent" or "non-conference" carriers. Consequently, the proposal of TACA in response to the Commission's request for comments in this matter is limited to those entities reached by the obligation, i.e., liner conference members, and is not intended, and ought not, in TACA's view, be applied to any other entity or entities.

Secondly, the obligation is not without teeth but, rather, subject to the rigorous oversight and enforcement under the "Monitoring of exempted agreements" provisions of 4056, Article 7, which stipulates, in relevant part, as follows:

"1. Breach of an obligation

"Where the persons concerned are in breach of an obligation which, pursuant to Article 5, attaches to the exemption provided for in Article 3, the Commission may, in order to put an end to such breach and under the conditions laid down in Section II:

- " - address recommendations to the persons concerned;
- " - in the event of failure by such persons to observe those recommendations and depending upon the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out or requires them to perform specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption according to Article 11(4) or withdraws the benefit of the block exemption which they enjoyed."
(Emphasis added).

The bottom line of the foregoing is that the failure of even a single member of a conference to comply with the obligation could result in the withdrawal of the benefit of the block exemption afforded to the conference as a whole, a consequence analogous to a statutory empowerment for the Federal Maritime Commission to disapprove a Conference Agreement upon a finding that a Conference, or any member thereof, had failed to comply with the Commission's tariff filing/publication regulations and a request to cure that deficiency.

Thirdly, the public tariff availability requirements of the obligation are remarkably similar to those enacted by Congress under the 1961 amendments to the Shipping Act, 1916 (P.L. 87-346, 75 Stat. 762) and which remained essentially intact until the advent of the Commission's Automated Tariff Filing and Information System ("ATFI"). Thus, whereas the obligation stipulates, in pertinent part, that tariffs, including those covering European inland transport services, of Conference members:

" . . shall be made available on request to transport users at reasonable cost, or they shall be available for examination at offices of shipping lines and their agents."

the parallel antecedent provisions of the Shipping Act likewise stipulated that:

". . . every conference . . . shall . . . keep open to public inspection tariffs
* * * Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor."
Section 18(b)(1).

and the Commission's long standing implementing rules elaborated upon the above quoted statutory provisions by defining the term "Open for public inspection" to mean:

". . . the maintenance of a complete and current set of the tariffs used by a common carrier, or to which it is party, in each of its offices and those of its agents in every city where it transacts business involving such tariffs." 46 CFR 536.2(k). 4/

and by prescribing that tariffs show, inter alia:

4/ As revised through October 1, 1983.

"The subscription price of the tariff (and any major components thereof offered separately), or a statement that the entire tariff will be furnished without charge, accompanied by a reference to a tariff rule which clearly states where subscriptions may be obtained and the materials which will be furnished to subscribers."
46 CFR 536.5(a)(12). 5/

On the basis of the foregoing, and with respect to the Commission's proposed tariff/service contract publication/filing rules, as they pertain to European inland transport services provided by TACA Members, TACA respectfully submits that there is at hand an effective, harmonious and eminently sensible means to minimize the regulatory burdens occasioned by the differences in the regulatory regimes established by the U.S. Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), on the one hand, and European Community on the other, and which would neither result in a reduction of competition nor be detrimental to commerce to any extent whatsoever or impede the discharge of the Commission's statutory responsibilities.

B. Specific Proposal

TACA proposes that the Commission adopt and apply a regulation prescribing the identical requirements of the obligation under 4056, Article 5(4), as quoted at page 5 of this submission, with respect to public access to any and all tariff matter covering European inland transport of shipments, with a prior of subsequent movement by sea between ports in Europe and the U.S. (within the geographic scope of TACA), carried aboard

5/ Ibid

vessels of TACA Members and constituting commercial import/export traffic ("foreign commerce") of the U.S. and the countries of Europe.^{6/} TACA submits that such a Commission regulation would have the following manifestly beneficial attributes.

1. It would harmonize completely EC and U.S. regulatory requirements and with respect to a matter, i.e., European inland transport services provided by TACA Members in connection with U.S./European commercial import/export commerce, of special interest and concern to the Commission of the European Communities, an authority which, in its wisdom, has opted not to endeavor to subject U.S. inland transport of such commerce to its regulations but, rather, to defer to the regulation thereof by U.S. authorities, an act of comity worthy of emulation.

2. It would ensure unfettered public access to complete and accurate relevant tariff material without time, quantity or other limitation. Indeed, and for this single component of the entire tariff universe, i.e., relevant European inland transport service, it would essentially restore the historic status quo ante ATFI, a condition which a search of precedent reveals to have occasioned virtually no regulatory concern. Indeed, with OSRA's substitution of private tariff publication systems for governmental tariff filing, TACA's instant proposal is consistent with the paramount deregulatory purposes and policies of OSRA.

3. It would substantially ease the burdens and expenses associated with the Commission's proposed rules and, therefore, facilitate commerce and reduce the costs which TACA Members need recover through their rates and charges to remain viable commercial enterprises.

6/ Should the Commission be disposed to adopt this specific proposal and/or those which follow concerning service contracts, as urged by TACA, it is submitted that such relief ought also apply to any Conference which may replace or supersede TACA.

Insofar as service contracts are concerned, there would appear to be two distinct elements to the matter. First, the publication of essential service contract terms mandated by OSRA and, under the Commission's proposed rules, a requirement to be met by publication in special tariff sections (as distinguished from non-tariff and discrete service contract essential terms publications under currently effective regulations in force since the effective date of the Shipping Act of 1984). With regard to this element of the matter, TACA proposes that public access to and disclosure of such material be accomplished in precisely the same manner as it has herein proposed with respect to European inland transport tariff material.

Secondly, and with regard to the confidential filing of the full text of service contracts with the Commission, and which the proposed rules would require be accomplished exclusively by electronic ATFI-like means, TACA proposes that sections of those contracts stating the terms and conditions of European inland transport of shipments covered thereby and which, under EC law need be negotiated bilaterally between individual TACA Members and shipper parties and held in confidence vis-a-vis all third parties (including all other TACA Members and even other participating TACA Members in the case of multi-carrier, i.e., joint individual, contracts), ought not be required to be filed with the Commission but, instead, provided to it by individual carriers upon request and, optionally, either in hard copy paper format or, if electronically, in plain text and without ATFI or ATFI-like panoply.

TACA submits that the foregoing service contract filing and publication proposals would entail the same beneficial attributes as listed above with respect to the European inland tariff proposal it has advanced. Moreover, those proposals would aid significantly to ensure the confidentiality of relevant

European inland service contract terms EC law mandates since they would eliminate the need of some, if not most or all TACA Members, to engage third party service providers and/or Conference staff personnel (however carefully segregated) to perform filing functions on their behalf and, thereby, create a potential source of leakage, whether occasioned by mere human error or otherwise.

IV. CONCLUSION

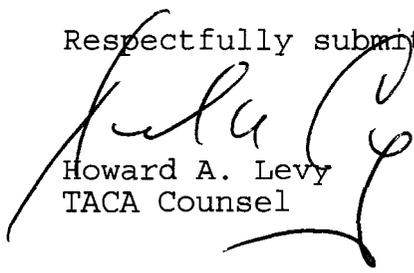
TACA wishes to express its appreciation to the Commission for its recognition of the extraordinary and unique circumstances which pertain to the publication/filing of tariff and service contract material concerning the European inland transport of shipments carried by its Members and for inviting comments and soliciting proposals as to means by which it may minimize the burdens with respect thereto under the rules proposed in these proceedings. TACA submits that the proposals it has presented herein would serve to accomplish the ends the Commission has identified and would be of immeasurable benefit to the cause of commerce, international comity and the public interest. Last, but not least, TACA submits that those proposals would carry out the overriding purposes and policies of both OSRA and European Community law.

Wherefore, TACA urges that the proposals set forth in these comments merit careful consideration and ought be adopted.

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January 20, 1999

Respectfully submitted,


Howard A. Levy
TACA Counsel

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BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 98-29
CARRIER AUTOMATED TARIFF SYSTEMS

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FEDERAL MARITIME COMMISSION

COMMENTS

submitted on behalf of

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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Dated: January 20, 1999

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 98-29
CARRIER AUTOMATED TARIFF SYSTEMS

COMMENTS
submitted on behalf of
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

The National Industrial Transportation League (“League”) hereby files its Comments with the Federal Maritime Commission (“FMC” or “Commission”) in response to the Notice of Proposed Rulemaking published by the agency on December 21, 1998. 63 Fed. Reg. 70368 (December 21, 1998). In this proceeding, the Commission proposes to add new regulations establishing the requirements for carrier automated tariffs systems in accordance with the Shipping Act of 1984, as amended by the recently-enacted Ocean Shipping Reform Act of 1998, Pub. L. 105-258, 112 Stat. 1902 (1998) (“OSRA”) and Section 424 of the Coast Guard Authorization Act of 1998, Public Law 105-383. At the same time, the Commission is repealing its current rules regarding tariffs and service contracts at Part 514 of Chapter 46 of the Code of Federal Regulations.

IDENTITY AND INTEREST OF THE LEAGUE

Founded in 1907, The National Industrial Transportation League is the oldest and largest organization of shippers in the United States. Its members conduct industrial and/or commercial enterprises of all sizes throughout the nation and overseas. The

League's members ship a wide variety of commodities, via all modes of carriage, across interstate, **intrastate**, and international boundaries. They are substantial users of ocean carriers within the jurisdiction of the Federal Maritime Commission. The League was extremely active in seeking passage of the Ocean Shipping Reform Act, and that Act significantly affects the interests of its members by promoting competitive ocean transportation. Therefore, the League has a substantial interest in this proceeding.

COMMENTS OF THE LEAGUE

OSRA has worked a sea-change in the requirements applicable to the publication by ocean common carriers of tariffs which contain the rates and charges for their transportation services. Under current law, carriers must file their tariffs with the FMC and must use the agency's Automated Tariff Filing and Information System ("ATFI"). However, under OSRA, the carriers no longer have to file their tariffs with the agency; Congress has effectively abolished ATFI. Under the new statute, carriers are simply required to publish their rates in private automated tariff systems. These systems are to be made available to any person, without time, quantity, or other limitations, through appropriate access from remote locations. A reasonable charge may be assessed.

OSRA has also established important limitations upon the Commission's ability to regulate the carriers' new private automated tariff systems. Under prior law, the agency had the power to "prescribe the form and manner in which tariffs . . . may be published and filed." 46 U.S.C. § 1707(f). Now, OSRA states that the agency may only prescribe "requirements for the accessibility and accuracy of the automated tariffs systems established under this section." OSRA, § 106(f), amending Section 8 of the Shipping Act of 1984, 46 U.S.C. § 1707(f).

Moreover, beyond these specific statutory commands, OSRA has added an important new policy to the Shipping Act of 1984, which states that the agency is to "promote the growth and development of United States exports through competitive

and efficient ocean transportation and by placing a greater reliance upon the marketplace.” OSRA, Section 2 (emphasis added).

The meaning of these statutory commands in the context of this rulemaking is further clarified by a resort to the legislative history. The Senate Report notes:

Instead of using the FMC’s Automated Tariff Filing and Information System (ATFI) . . . , the bill would require that common carriers publish their tariffs electronically through private systems. Many common carriers have already developed electronic information publication systems, such as World Wide Web home pages, that are more advanced than ATFI and improve these common carrier’s business processes with their customers. The Committee believes that this innovative private sector approach should be encouraged and that common carriers should be free to develop their own means of electronic publication either individually or collectively, including the use of third party information providers . . . There should be no government constraints on the design of a private tariff publication system as long as that system assures the integrity of the common carrier’s tariff and of the tariff system as a whole.

S. Rep. No. 105-61, at 23 (1997) (“Senate Report”).

It is extremely clear from both the legislative language and the legislative history that the Congress intended two things with respect to the carriers’ publication of their tariffs in private, automated tariff systems.

First, the role and regulation of the agency in overseeing the new private tariff systems is to be significantly reduced, compared to the agency’s authority under prior law. The agency is only to be broadly responsible for “accuracy” and “accessibility” of tariffs: it can no longer oversee in detail the “form” and “manner” of tariffs. What this means in practice is that the agency must eschew “command and control” type regulation; in other words, the approach that resulted in ATFI has been now changed by the Congress. Instead, the agency must rely on the publication of broad standards that must be adhered to by ocean common carriers. These standards should seek to insure a general result, rather than prescribing the specific means by which that result is to be obtained. In other words, “form” and “manner” regulation empowers the agency to dictate the exact means by which a result is to be achieved. Prescribing requirements for

“accessibility” and “accuracy” instead focuses on those results themselves, leaving it to the carriers to develop the means by which these goals must be attained.

Secondly, it is very clear from both the statute and the legislative history that the agency is to rely, to the greatest extent possible, on the competitive market to achieve the desired result of “accuracy” and “accessibility.” Reliance upon the marketplace is not just a philosophical abstraction: it is integral to the new emphasis upon competition that OSRA commands. Only by permitting marketplace freedoms will individual carriers have the opportunity to innovate and to drive costs out of their systems, actions that will enable them to succeed in the new world to which OSRA has created. If the agency shackles ocean carriers by micro-managing their business systems, it will make it more likely, rather than less, that individual carriers will be plagued by returns that do not permit them their needed level of investment, to the detriment of both the carriers and the shipping public.

This discussion of the general goals and specific requirements of the statute is important, the League believes, because in some respects, the agency’s proposed rules do not give the carriers the freedoms that they need for a competitive, innovative ocean transportation system. In other words, the agency’s approach still relies too heavily on detailed, rigid rules prescribing the form and manner of the carrier’s private tariff systems, rather than adopting broad standards that prescribe a desired result, and leave it to the individual carriers to achieve that result in the way that they believe will be most efficient and effective.

The League understands that all players in the new regime created by OSRA, including the **FMC**, are to some extent groping for familiar handholds. However, the League firmly believes that OSRA, in important respects, requires that parties, including the **FMC**, reach for the unknown -- to trust that the competitive marketplace will in fact create opportunities and advantages that direct and detailed governmental regulation cannot.

In the new privatized, competitive tariff system, for example, the League believes that the carriers will have substantial incentives to create new and better ways to publish their prices, to develop systems that are more user-friendly and accessible. If an individual carrier does not, it is likely to lose customers to the carrier that does. The League firmly believes that this sanction -- the loss of a customer -- is far more potent than detailed agency oversight, or grudging carrier compliance with rigid agency requirements. The Commission can best play its part by encouraging, to the maximum extent possible, the competitive milieu that will drive innovation and creativity and prevent commercial abuses, and by drawing the carriers voluntarily and enthusiastically into an industry-wide effort to improve their processes and systems.

In light of the above, the League sets forth several areas where it believes that the proposed rules need to be made more flexible. The League believes that the carriers, who are most intimately familiar with their present tariff systems and the burdens that the new rules are likely to impose, will present more detailed suggestions. The League encourages the agency to permit maximum flexibility within the statutory requirements that tariffs be “accurate” and “accessible.” Nothing more is required.

1. The Numeric Code Requirement Should Be Made More Flexible

The proposed regulations require that all commodity descriptions in tariffs have a distinct 10-digit numeric code. See, proposed 46 C.F.R. § 520.4(e)(1). Tariff publishers under the proposed rule are strongly encouraged to use the U.S. Harmonized Tariff Schedule (“Harmonized Code”) in assigning the required 10-digit code.

The proposed regulation appears to be too inflexible. If a tariff uses a numeric code to identify commodities, there does not appear to be any reason for only requiring a ten-digit code. Moreover, as long as a private tariff system permits a user to locate the commodities covered (for example, through the use of a search mechanism other than a

code, such as a text search or key word search), there does not seem to be any reason to require a numeric code at all.

2. The Requirement for Tariff Retention On-Line For A Five Year Period Appears Overly Burdensome

Section 520.10 of the Commission's proposed regulations would require tariff publishers to maintain tariff data in their systems for five years from the date any such data is superseded, canceled or withdrawn, and would require publishers to provide on-line access to that data. The proposed rule appears overly burdensome. It is important for carriers to maintain records for the full five-year period of the Commission's authority, and it makes sense for the Commission to require on-line access for a reasonable period during which an individual commercial transaction is of relatively current interest -- for example, until a reasonable period for auditing a payment for transportation services passes (perhaps twelve months). However, a requirement to maintain records on-line for five years would appear to be excessive; instead, after a reasonable period to maintain data on-line, a requirement that a carrier furnish historical data for up to five years without charge to a shipper upon request would appear to be sufficient.

3. The Geographic Location Requirement Could Be Made More Flexible

The proposed rules would require that tariffs use only those port names found in the World Port Index and only those location names found in the National Imagery and Mapping Agency gazetteer. This requirement appears to be too inflexible: tariff publishers should be able to use the common, everyday name of a port or location so long as it clearly identifies the location to which it refers. The League is also concerned about the intersection of this requirement with the proposed requirements for service contracts. Since service contracts are (under the agency's proposed rules published in Docket No. 98-30) subject to the associative checks of the ATFI system, a requirement

that only certain location names be used may result in the rejection of contracts, thereby injecting the Commission into and interfering with the commercial contracting process. The proposed requirement should be deleted.

4. The Use of Standard Terminology Should Not Be Required

Proposed 520.5(a) and Appendix A of the proposed rules would require all tariff publishers to use certain standard, approved codes in their tariff, for describing rates, equipment, units of measurement, etc. The Commission should not adopt this requirement. The League believes that, however well intentioned, the prescription of specific terminology in a formal rule is likely to become quickly outdated. In this area in particular, carriers and shippers have a common incentive to develop and utilize descriptions that are in fact descriptive, as long as the Commission encourages a competitive marketplace in which carriers must be as clear and precise as possible if they are to keep their customers satisfied. Again, an overall rule requiring that tariffs clearly describe rates, charges, commodities, etc., to permit shippers recourse in the unlikely event of “sharp” business practices, would appear to be the more appropriate approach.

5. The Commission Should Insure That Mandated Search Capabilities Is Both Responsive to Shippers’ Needs and Efficient for the Carriers

Sections 520.6(a) through (d) of the proposed rule would impose a number of requirements with respect to the search capabilities of tariffs. The League believes that it is important for a tariff to reveal a calculated basic ocean freight rate and at least a list of all applicable accessorial charges, to enable a shipper to readily determine the rate applicable. See proposed Section 520.6(e). This would appear to be a “bottom-line” requirement for tariff “accuracy,” as the statute requires. However, it is not clear to the League that the extensive search requirements imposed by the proposed rule are all necessary, if simpler and more flexible requirements would still result in searches that provide the necessary “bottom line” information for the commodity being shipped. For

example, a comprehensive text search capability in a tariff, linked to a reference to the applicable basic ocean freight rate and any applicable accessorial charges, would appear to meet shippers' needs for accuracy and accessibility.

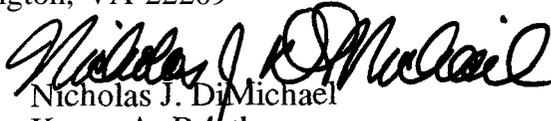
Other simplifications to the proposed rules might also be appropriate. For example, if numeric commodity coding is not required, the proposed requirement that tariffs be searched based on a 14-digit number of a tariff rate item would appear to be unnecessary.

CONCLUSION

The League respectfully requests the Commission to consider these comments and to implement changes to its proposed rules as set forth herein.

Respectfully submitted,

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Dated: January 20, 1999

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**Council of European & Japanese
National Shipowners' Associations**

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January 20, 1999

**DOCKET #98-28: LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS,
AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES; &**

DOCKET #98-29: CARRIER AUTOMATED TARIFF SYSTEMS

Comments by the
Council of European and Japanese National Shipowners' Associations (CENSA)
to the
Federal Maritime Commission

Bryant L. VanBrakle
Secretary of the
Federal Maritime Commission
800 North Capitol Street, NW
Washington DC 20573-0001

Dear Mr. VanBrakle,

I submit the attached comments on Docket #98-28: Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries; and -Docket #98-29: Carrier Automated Tariff Systems.

As your comment-gathering progresses, CENSA, which I represent, would be willing to discuss this further.

Thank you for this opportunity to comment on the OSRA regulatory proposals.

Sincerely,
Lars Kjaer

Also the Washington Representative for the International Chamber of Shipping &
the International Shipping Federation

CENSA

Council of European & Japanese National Shipowners' Associations

Comments by the
Council of European and Japanese National Shipowners' Associations (CENSA)
to the Federal Maritime Commission

**DOCKET #98-28: LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS,
AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES; &**

DOCKET #98-29: CARRIER AUTOMATED TARIFF SYSTEMS

Docket #98-28

In this Docket the Commission has proposed rules which, among other things, would implement the new licensing requirements for ocean transportation intermediaries in the United States who are performing services associated with the transportation of cargo. The Commission has suggested two alternative definitions of "in the United States" for purposes of such licensing requirements. CENSA believes either definition would be acceptable. CENSA also believes that the proposed rules on bonding are consistent with applicable statutory requirements.

In both of these respects, CENSA commends the Commission for its careful and well-reasoned proposals and does not have any further comments to offer on this Docket.

Docket #98-29

CENSA is concerned that the proposed rules would impose requirements with respect to the "form and manner" of tariff publication rather than the "accessibility and accuracy" of tariffs as required by Section 8 of the Shipping Act as amended by the Ocean Shipping Reform Act of 1998. The requirements that tariffs assign numeric codes to commodity descriptions (proposed 520.4), display certain information (proposed 520.6(f)), use standard terminology (proposed 5205(a)), and use only approved geographic locations (proposed 520.5) underpin our concerns.

Other aspects of the proposed rule are also burdensome. Examples include the complex tariff searching mechanisms proposed by the Commission (proposed 520.6) and the requirement that historical tariff data be maintained on-line and be retrievable through an "access date" feature (proposed 520.10). These requirements will result in elaborate and costly systems and are not warranted by the role tariffs will play in ocean transportation in the foreign commerce of the United States after May 1, 1999, when most cargo will be moving under service contracts. Moreover, such onerous requirements fail to take into account the limited amount of time carriers have to develop such systems in order to comply with the May 1, 1999 deadline for private tariff publishing.

CENSA believes that in eliminating the requirement that the tariffs be filed with the FMC, **Congress intended** for carriers to have greater flexibility in designing their tariff systems. **How** a carrier chooses to present its rates and terms of carriage should be dictated by market demands and customer requirements. Thus, instead of prescribing detailed requirements relating to the specific elements of tariffs, the final rule **should** allow carriers to use any tariff system that is accessible to tariff users (including the Commission), and limit itself to regulate the accessibility of the tariff and the accuracy of the Information contained therein. The requirements for access to tariffs via a **dial-up connection** or the Internet set forth in proposed 520.9 are examples of such a focused approach, which we welcome.

The supplementary information that accompanies the proposed tariff publishing regulations specifically seeks comments on how the Commission might reduce the burden on carriers of publishing foreign inland rates. CENSA believes that the elimination of the onerous requirements identified above would reduce this burden. Alternatively, if such an approach is not adopted with respect to all aspects of tariff publishing systems, the Commission should exempt foreign inland rates from these requirements. In **this** regard, elimination of the requirements that foreign locations be identified **in** accordance with the relevant gazetteer would be particularly helpful. The elimination of such **requirements** would enable carriers to utilize simpler tariff structures to publish their foreign inland rates, such as zip code rates or zone or mileage **rates**. **This** modification would also be of assistance with respect to the service contracts, which could incorporate these simplified inland rate structures by reference.

In conclusion, CENSA urges the Commission to reconsider its proposed regulation with an eye toward reducing the burden and expense of developing and maintaining private tariff publication systems. Only a substantial reduction of the requirements will allow carriers to have tariff publication systems in place by May 1, 1999.

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**PROPOSED RULEMAKING REGULATIONS RE
CARRIER AUTOMATED TARIFF SYSTEMS**

FMC DOCKET NO. 98-29

COMMENTS OF THE BICYCLE SHIPPERS' ASSOCIATION, INC.

Submitted by:

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Dated: January 20, 1999

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FEDERAL MARITIME COMMISSION**

**PROPOSED RULEMAKING REGULATIONS RE
CARRIER AUTOMATED TARIFF SYSTEMS**

FMC DOCKET NO. 98-29

COMMENTS OF THE BICYCLE SHIPPERS' ASSOCIATION, INC.

The Bicycle Shippers' Association, Inc. ("BSA") submits the following comments to the regulations proposed by the Federal Maritime Commission ("FMC" or "Commission") in Docket No. 98-29, 46 CFR Parts 514 and 520 ("Docket 98-29"), and respectfully requests that the Commission make **certain** changes thereto in order to ensure the fulfillment of Congress' intent in passage of the Ocean Shipping Reform Act of 1998, Pub. L. 105-258, 112 Stat. 1902 ("OSRA"), which amends the Shipping Act of 1984 ("1984 Act").

I. INTRODUCTION AND SUMMARY

BSA is a shippers' association, as defined by the 1984 Act,' whose members are involved in the international bicycle recreational industry. Presently, the BSA consists of over 40 members that are involved in the direct importation of new bicycles, bicycle parts, components, and accessories for the retail sales market across North America. Since its formation, the BSA has negotiated both conference-wide and individual service contracts with various non-conference ocean carriers that provide transportation services on the inbound North and South

Asia-to-U.S. trade lanes. The members of BSA are involved in all modes of transportation both internationally and domestically and therefore have a substantial interest in the proposed regulations. Since the majority of bicycle parts, components and accessories originate in Asia, the BSA is very familiar with the current service contract and tariff environment which shippers* associations-and **shippers** in general-have faced this past year due to the severe trade imbalance between the United States and its various trading partners throughout Asia. Further, due to this trade imbalance, where imports have far exceeded exports in the Asia-U.S. trades, BSA members have experienced the ramifications of carrier activities. BSA has also witnessed the rise in recent years of the Trans-Pacific Stabilization Agreement (“TSA”), a discussion agreement, in which carriers active in the Asia trades routinely meet to observe, discuss, and exchange information regarding the overall marketplace situation. The FMC is aware of the development of TSA and, at the request of smaller shippers and non-vessel-operating common carriers involved in the inbound Asia-U.S. trades, began a formal proceeding into alleged discriminatory activities of the vessel operators. See FMC Fact Finding Investigation No. 98-23.

II. DISCUSSION OF LEGISLATIVE HISTORY OF OSRA PERTAINING TO AUTOMATED CARRIER TARIFF SYSTEMS.

OSRA makes substantial changes to the treatment of common carrier tariffs, the publications which contain the rates and charges for their transportation services. Currently, the 1984 Act requires that all common carriers² and conference tariffs must be filed with the FMC’s

¹ A shipper’s **association** is defined as “a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to secure carload, truckload, or other volume rates or service contracts.” See 46 app. U.S.C. (22) (1998).

² References throughout these comments to “common carrier” also includes the tariff publication obligations and requirements of “non-vessel-operating common carriers”, as that term is defined at 46 App. U.S.C. 1702(17) (1997),

Automated Tariff Filing and Information System (“ATFI”). Under OSRA, carriers no longer have to file tariffs with the FMC, but are required to publish their tariff rates in a private, automated tariff system. See Section 8(a)(1). These private systems are to be made available to the general shipping public, the FMC, and other Federal agencies electronically and without limits on time, quantity, or other such limitations, through appropriate access from remote locations and a reasonable charge for such access, except for Federal agencies. Further to the report of the Senate Commerce, Science, and Transportation Committee, S. Rep. No. 61, 105” Cong., 1” Sess. (1997), issued when S. 414 was reported out of the Full Committee, the Commission is charged with the duty to prescribe the necessary requirements to ensure the “accessibility and accuracy” of private, automated tariff systems. Id. at 23. The Committee also noted that the private sector should be free to design the automated tariff systems-but recognized that shippers using the various systems must be assured of the integrity of the common carrier’s tariff and the tariff system as a whole, thus preserving an appropriate level of public access to tariff information. Id. The Committee also stated that tariff information should be “simplified and standardized”, while permitting the FMC to periodically inspect and prohibit the use of tariffs found to violate the 1984 Act or other U.S. shipping laws. Id. at 22-23. In general, recognizing that OSRA provides sometimes competing duties and limitations on the Commission to oversee tariff publication, BSA supports the proposed FMC regulations that would implement OSRA’s tariff publication requirements for common carriers, but requests that the agency consider the following comment when promulgating final rules under these sections.

and the subsequent statutory redesignation of the term “ocean transportation Intermediary” subpart (b) of the OSRA, which retains the legal definition of the term NVOCC.

III. SECTION 520.3 PUBLICATION RESPONSIBILITIES.

At 46 CFR 520.3(e), the FMC proposes to publish on its website (www.fmc.gov) a listing of the locations of all common carrier and conference tariffs, which the Commission states “should enable the general public to find a particular carrier’s tariff by simply visiting an all inclusive site.” BSA believes that the proposed rule, while apparently acknowledging the Committee’s suggested use of such technological means as the Internet’s World Wide Web for tariff publication requirements, does not address issues related to assuring a shipper that the information accessed via a hyperlink between the FMC’s homepage and a common carrier’s homepage meets the integrity requirements of the 1984 Shipping Act, as amended. BSA is concerned that the FMC will not be able to ensure that carrier tariff homepages (linked to the FMC’s homepage) are properly updated and, more importantly, the Commission may not be able to accurately ensure the validity of all common carrier automated tariff systems. As the FMC may be aware, the issue of Internet security is not new and has been the topic of much concern and discussion by other Federal agencies, including the Social Security Administration and the National Security Council.³ While BSA understands that the FMC is charged with the responsibility of ensuring the accuracy and accessibility of an automated tariff system, while at the same time Congress clearly decided to terminate the government’s direct involvement in the tariff industry by ending tariff filing with the FMC, BSA believes that more definitive regulations addressing webpage security requirements that preserve the security and integrity of the tariff system as a whole will assist the FMC meet the congressional intent of ensuring

³ See generally John Schwartz and Barbara J. Saffir, “Social Security Web Site Takes Hit Over Access” Washington Post, April 8, 1997 at A1.

accuracy of any given common carrier or conference automated tariff filing system. BSA is also concerned whether the FMC has the capability of ensuring that all common carrier **websites** are compliant with the demands of the so-called Year 2000 computer-related problems which the Federal government and private-sector are presently attempting to resolve prior to January 1, 2000. A shipper must be assured of valid and effective tariff information when accessing a common carrier's tariff via the Internet or other remote electronic means, such as a **Telnet** session as the FMC proposes at 46 CFR 520.9(2) et seq.

IV. SECTION 520.4 TARIFF CONTENTS.

BSA supports the proposed rules at 46 CFR 520.4(a), which set forth the general contents for all tariffs published pursuant to this part of the regulations. BSA believes that the proposed rules again reflect the conflicting congressional requirements that the Commission ensure accessibility and accuracy of a common carrier's tariff system, while restraining government oversight of the design of a private tariff publication system. Specifically, BSA strongly supports proposed 46 CFR 520.4(d), where the FMC encourages the use by common carriers, conferences and tariff publishers of the United States Harmonized Tariff Schedule ("USHTS"). The USHTS is based on the international Harmonized System, and administered by the U.S. Customs Service for the U.S. International Trade Commission. The international Harmonized System is a globally accepted standard for the classification of all commodities that move in the foreign commerce of all member states of the World Trade Organization ("WTO"). Further, BSA notes that even select nations that are presently not party to the WTO have voluntarily adopted the standards set by the international Harmonized System. Most shippers (exporters and importers), freight forwarders, non-vessel-operating common carriers, customs brokers, carriers,

and other **members of** the international trade community have embraced the Harmonized System to help facilitate the flow of global commerce. Use of the USHTS by tariff publishers and common carriers would greatly assist all parties involved in the international transportation of goods in the foreign **commerce** of the United States.

V. **SECTION 520.5 STANDARD TARIFF TERMINOLOGY.**

BSA supports the proposed regulations in this section that set forth the **Standard Terminology Codes** to be used by tariff publishers. BSA agrees with the Commission that the proposed regulations at 46 CFR 520.5 are consistent with the congressional intent that tariff information and tariff publishing systems be simplified and standardized. Further, BSA believes that to properly ensure that the congressional intent of OSRA under this section is met, the use of the proposed Standard Terminology Codes must be enforced by the Commission for all common **carriers, conferences** and filing parties.

VI. **SECTION 520.6 RETRIEVAL OF INFORMATION.**

This section proposes the new regulations by which retrievers can obtain tariff information which the FMC believes will provide the general shipping public with a minimal but reasonable degree of accessibility. In general, BSA supports the FMC's proposed regulations which enable a retriever to search for a commodity by text or number search. In furtherance of the Commission's **statement** of support for use of the USHTS, BSA would recommend that the FMC consider requiring tariff publishers to design automated tariff systems which utilize search engines **that** enable retrievers to search for various commodities by the USHTS or by a simple description of the commodity in question. BSA believes that the industry-wide incorporation of the USHTS in carrier automated tariff systems will result in greater retrieval ease of tariff/rate

information in the more deregulatory environment which OSRA creates. Lastly, the BSA does not agree with the FMC's decision to discontinue the "bottom-line" calculation capability currently found in the Commission's ATFI system. BSA believes that one of the few true benefits which ATFI has provided the ocean shipping public and industry since its implementation 1993, is the ability for shippers (and other parties-including Federal government agencies that rely on ATFI) to determine the total ocean transportation charges for a given movement. Further, as has been noted, BSA believes that the legislative history of OSRA clearly provides for "simplified and standardized" automated tariff private systems, designed by the private sector, but overseen by the FMC to ensure "accuracy and accessibility" for the shipping public. BSA believes that requiring "bottom-line" transportation calculation by all common carrier automated tariff systems, given that the capability presently exists in the ATFT system, is no more burdensome on the shipping industry or beyond the congressional intent of OSRA than the Commission's proposed regulations at 46 CFR 520.5(b) that requires that tariffs must use points or locations that appear in the National Imagery and Mapping Agency gazetteer and that ports used should appear in the World Port Index, which BSA also supports. Retaining "bottom-line" calculation requirements for the new automated tariff systems will preserve a benefit that the ocean shipping public has come to rely upon in the current ATFI environment—being able to determine total transportation charges prior to tendering cargo for shipment.

VII. SECTION 520.8 EFFECTIVE DATES.

BSA supports the FMC's proposed restatement of the basic statutory proscription that new or initial rates or rates resulting in an increased cost to a shipper may not become effective before 30 calendar days after publication. The only suggestion that BSA makes for this section

is that the FMC promulgate a final regulation which requires that the effective date of tariffs be clearly stated on all tariffs published via a carrier's (or third party vendor) automated tariff filing system.

VIII. SECTION 920.9 ACCESS TO TARIFFS AND SECTION 520.10 INTEGRITY OF TARIFFS.

This section sets forth the technical requirements for providing access to automated tariff systems maintained by individual carriers, conferences, or third party tariff publishers. In general, BSA does not object to the proposed regulations, and encourages the FMC to take advantage of modern technology to assist with its regulatory role. However, BSA has concern over whether the ~~proposed~~ regulations address the issue whether common carrier tariffs made available to the general public, FMC, and other Federal agencies, remain protected from unauthorized access and tampering by third parties. Specifically, BSA is concerned that the proposed regulations do not consider the possibility that unauthorized tampering (by parties other than the **common** carrier, conference or a third party tariff publisher) of various **websites** may result in misinformation being made available to the shipping public and the Federal government. Many business of all sizes have experienced the adverse complications of **Internet**-spread computer viruses (typically but not exclusively via **email** transmissions) that infect the computer operational environment of the individual user and many times render software, hardware and related devices inoperable. BSA believes that such potential tampering with carrier automated tariff systems may be possible via the Internet and that the proposed FMC regulations do not appear to consider this issue in detail. While BSA understands that the FMC has proposed regulations that attempt to reconcile the conflicting congressional intent to minimize government control over tariffs and the continuation of the 1984 Act's common

carriage mandate, BSA recommends that the FMC initiate an industry-wide forum to discuss and address tariff security and integrity issues at a later date.

At 46 CFR 520.10, the FMC proposes a requirement that carriers provide the Bureau of Tariffs, Certification and Licensing with a written certification from an officer that the information in the carrier's tariffs is "true and accurate and that no unlawful alterations will be permitted." BSA proposes that the FMC promulgate regulations (which may be similar to existing Federal statutory civil and criminal penalties)⁴ for any person who knowingly accesses tariff information via a common carrier's or conference's website or other remote electronic vehicle (Telnet session) and tampers with the security and integrity of the common carrier's or conference's tariffs, BSA believes that such action would deter possible "computer hackers", either within or without of the industry, that seek to destroy the security and integrity of common

⁴ Presently, when one logs onto the FMC's ATFI system to search and retrieve tariff information, the individual is greeted with the following statement: "Warning . . . Warning . . . Warning . . . Unauthorized access to this United States Government Computer Systems and/or software is prohibited by Title 18 U.S.C. Sec. 1030. Whoever knowingly accesses a computer without authorization or exceeds authorized access, . . . obtains, . . . use(s) . . . , alters, damages, or destroys . . . , or prevents authorized use of (computer or information) a Federal interest computer . . . shall be punished by . . . a fine (and/or) . . . imprisonment. The punishments range from \$10,000 and 10 years, depending on the nature and extent of the violation." See 18 U.S.C. 1030(a) (4). Although OSRA terminates the Federal government's direct role in the filing/accepting of tariffs, as discussed above, BSA believes that the congressional intent of the OSRA clearly maintains a vital role for the FMC-and at times increases this role due to the other related statutory changes which maintain the overall common carriage mandate of the 1984 Act and the FMC's responsibilities in safeguarding against discriminatory activities of carriers and/or conferences-in ensuring that tariffs are "accessible and accurate." This FMC responsibility is not only for the general shipping public, but is in conjunction with various Federal cargo preference laws of the United States. See generally Cargo Preference Act of 1904, (10 U.S.C. 2637); title IX of the Merchant Marine Act of 1936, as amended, (46 U.S.C. 1241); the Cargo Preference Act of 1954, (46 U.S.C. 1241(b)); and section 2634(a) of title 10 United States code. BSA would argue that to properly oversee the compliance of U.S.-flag carriers with the Cargo Preference Act of 1904, and related laws, the Department of Defense (DOD), and other agencies, must be certain that tariff information is valid and has not been tampered with by unauthorized individuals. BSA would also argue that the "Federal interest computer" language that Title 18 refers to would include common carrier and conference published automated tariff systems, since DOD and other agencies clearly have a Federal interest in ensuring that the cargo preference laws are satisfied when shipments move via a general tariff. Although OSRA is anticipated to substantially increase the usage of service contracts, which the Federal government will also utilize, it is reasonable to also anticipate that the Federal government will continue to use tariff rates for shipments at times. Therefore, FMC rules that reference Title 18 would assist not only in meeting the congressional mandate of the 1984 Act, as amended, but other federal agencies that seek to meet their obligations under other U.S. shipping laws. BSA encourages the FMC to promulgate similar regulations reference Title 18, if permissible.

carrier tariffs which would undermine the FMC's ability to oversee the accuracy and **accessibility** of carrier automated tariff systems.

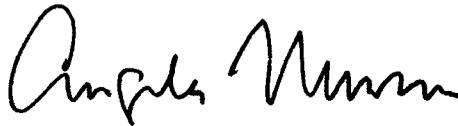
IX. CONCLUSION.

For the foregoing reasons, the BSA respectfully request that the FMC consider **the** suggested revisions **to** the proposed regulations at 46 CFR Parts 5 14 and 520 and that the suggested revisions be incorporated into the final rules promulgated by the Commission. **BSA's** proposed changes not only take into consideration the legislative intent of Congress in drafting the new provisions of OSRA, but also would result in regulations that protect the interest of the general shipping public, common carriers, and the Federal government with respect to the use and reliance of automated carrier tariff systems.

Respectfully submitted,

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