

FEDERAL MARITIME COMMISSION

46 CFR PART 550

[DOCKET NO. 87-1]

AUTOMOBILE MEASUREMENT RULE

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission amends its rules pertaining to the publishing, filing and posting of tariffs in domestic offshore commerce to permit the rating of automobiles on other than a weight or cube measurement basis. This final rule also indefinitely suspends reference to the Federal Maritime Commission's "Automobile Manufacturers' Measurements" guide.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

This proceeding was initiated by the Federal Maritime Commission ("Commission" or "FMC") in response to a Petition for proposed rulemaking ("Petition") filed by Matson Navigation Company ("Matson"). [51 FR 34502].

The existing Commission regulations pertaining to the rating of automobiles at 46 CFR 550.5(b)(8)(xiv) require that they be rated according to either weight or cube. Carriers are required to weigh or measure each type of vehicle carried or rely upon the figures in "Automobile Manufacturers' Measurements," which is published annually by the Commission.

Matson's proposed amendment would leave in place the requirements pertaining to the rating of automobiles on a weight or cube basis but would permit, as an alternative, the rating of automobiles on a per unit basis.

In its Notice of Proposed Rulemaking [52 FR 4040], the Commission proposed an amendment in the form advocated by Matson and also requested comments on the desirability of deleting the automobile rating rule in its entirety. The Commission noted that if the rule was deleted in its entirety, carriers would be free to rate automobiles in the same fashion that they rate other types of cargo. The alternative would also obviate the need for the Commission to publish the "Automobile Manufacturers' Measurements."

Comments in response to the proposed rulemaking were filed by: Chrysler Motors ("Chrysler"), Crowley Maritime

Corporation ("CMC"), the State of Hawaii ("Hawaii"), the U.S. Department of Transportation ("DOT"), Matson and the Guam Rate Agreement No. 8454 ("Rate Agreement").

Chrysler, CMC, and DOT support deletion of the auto measurement rule in its entirety. Chrysler wants to simplify the rate determination process without affecting carrier revenues. Chrysler believes the Commission should allow sufficient freedom for both carriers and shippers to develop workable rate schedules to satisfy their needs. CMC also notes that automobile manufacturers and other large shippers (rental car companies) "invariably" desire per unit rates as they are much simpler and more expedient to administer. CMC also advises that it is a competitive necessity for FMC regulated carriers to have the same rating flexibility as carriers regulated by the Interstate Commerce Commission, which are not precluded from rating automobiles on a "per unit" basis.

Matson argues that to the extent automobiles are still freighted on a weight or measurement basis, the existing requirements are needed to preclude the misrating practices which gave rise to the rule in the first place. The Rate Agreement supports the position taken by Matson in its comments.

Although Hawaii supports the proposal, it is concerned that a per vehicle rating scheme may yield different revenues to a carrier. Hawaii believes that lower automobile revenues are not in the rate payer's interest because of the importance of auto carriage to this trade.

Lower auto revenues, allegedly, could result in "cross subsidization between automobiles and other commodities, and depressed revenues," with any revenue deficiency being made up by revenues from the carriage of other commodities. (Hawaii comments at 3.) Hawaii argues that the implementation of a single unit rate for automobiles would require the unit rate to be set at the average revenue level, in order to maintain existing automobile revenues. This, according to Hawaii, would result in a substantial rate increase for small automobiles while large automobiles would experience a rate reduction. Hawaii therefore recommends:

the establishment of a range of unit rates, perhaps three, in number, as opposed to a single unit rate. A range of unit rates would result in a closer alignment of the unit rate with the existing rate, and reduce the maximum possible difference between the existing and the proposed rating methods. (Hawaii comments at 4.)

Upon consideration of all of the comments, the Commission has determined that the final rule should give carriers the option to rate automobiles on a "per unit" basis but should continue to set out the requirements for rating automobiles on a weight or cube basis.

At the time the current rule was established the Commission explained the need for the rule as follows:

Because passenger automobiles vary extensively in size and are susceptible to mismeasurement it is believed that publication of uniform measurements is a necessity in order to provide identical treatment for all such shipments; to enable shippers of automobiles to accurately ascertain ocean transportation charges prior to movement; and to facilitate billing of automobile shipments by the carrier.

Uniform Weights and Measurements of Automobiles, 9 S.R.R. 148, 149 (1967). Chrysler, CMC and DOT have all provided cogent arguments in favor of giving carriers the flexibility to rate automobiles on a "per unit" basis. However, they have not explained why, to the extent carriers may choose to continue to rate automobiles on weight or cube, a measurement rule is unnecessary.

It is likely that few carriers will continue to publish automobile rates on a weight or cube basis. Indeed, given the wide support for "per unit" rates, it seems doubtful whether enough carriers will continue to rate automobiles on the basis of weight or cube to justify the expense of publishing the "Automobile Manufacturers' Measurements." Accordingly, the Commission will not publish the "Automobile Manufacturers' Measurements" until it can be determined that there is sufficient need for the document to justify the expense of publication. The parenthetical reference to the "Automobile Manufacturers' Measurements" contained in section 550.5(b)(8)(xiv) will be indefinitely suspended.

The Commission has considered the concerns of Hawaii over the effects of "unit pricing" and has determined not to modify the final rule as Hawaii suggests. "Per unit" rates are based on the cost of service and do not discriminate among commodities on the basis of the "value of service" or "what the traffic will bear." This fact does not render

them unlawful "per se."¹ Whether a given "per unit" rate is discriminatory, unfair or otherwise unlawful depends on the facts peculiar to that rate. It would be premature for the Commission to attempt to formulate a rule of general application to deal with a problem that has not been shown to exist.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions. The primary economic impact of this rule would be on domestic offshore common carriers which generally are not small entities.

List of subjects in 46 CFR Part 550: Publishing, filing and posting of tariffs in domestic offshore commerce.

Therefore, for the reasons set forth above, Part 550 of Title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841a and 843-847.

¹ See Agreement No. 9955-1 A/S Billabong; Westfal-Larsen and Co. A/S; Fred. Olsen and Co. and Star Shipping A/S, 18 F.M.C. 426, 472 (1975).

2. In section 550.5(b)(8)(xiv), the introductory text is amended to read as follows:

§ 550.5 Contents of Tariffs.

*	*	*	*	*
(b)	*	*	*	*
(8)	*	*	*	*

(xiv) Automobile Rates. If rates for automobiles are published on a weight or measurement basis, one of the following rules (i.e., (A) or (B)) must be employed in its entirety:

3. In section 550.5(b)(8)(xiv), the parenthetical language in subparagraph (A) which reads, "(Alternatively, the carrier may state 'as shown in Federal Maritime Commission publication, Automobile Manufacturers' Measurements.')

By the Commission.

Joseph C. Polking
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Secretary