

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

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, NW, Room 940, Washington, DC 20573, (202) 523-5796

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW, Room 1018, Washington, DC 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. section 1702 *et seq.*, 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:

§ 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, or 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 NL; 120-11-06 WL. 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), 1919 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