List of Subjects

19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above, part 101 and part 122 of the Customs Regulations are amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

2. The list of ports in § 101.3(b)(1) is amended by adding, in alphabetical order under the state of Florida, ''Fort Myers'' in the ''Ports of entry'' column and ''T.D. 99–9 '' in the adjacent ''Limits of port'' column.

PART 122—AIR COMMERCE REGULATIONS

1. The general authority for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.15 [Amended]

2. The list of user fee airports in § 122.15(b) is amended by removing ''Fort Myers, Florida'' from the ''Location'' column and, on the same line, ''Southwest Florida Regional Airport'' from the ''Name'' column.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 15, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–3472 Filed 2–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 123

[T.D. 99–10]

RIN 1515–AB88

Foreign-Based Commercial Motor Vehicles in International Traffic

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow certain foreign-based commercial motor vehicles, which are admitted as instruments of international traffic, to engage in the transportation of merchandise or passengers between points in the United States where such transportation is incidental to the immediately prior or subsequent engagement of such vehicles in international traffic. Any movement of these vehicles in the general direction of an export move or as part of the return movement of the vehicles to their base country shall be considered incidental to the international movement. The benefit of this liberalization of current cabotage restrictions inures in particular to both the United States and foreign trucking industries inasmuch as it allows more efficient and economical utilization of their respective vehicles both internationally and domestically.

EFFECTIVE DATE: March 18, 1999.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Glen E. Vereb, Office of Regulations and Rulings,202–927–2320.

Operational aspects: Eileen A. Kastava, Office of Field Operations, 202–927–0983.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1322, vehicles and other instruments of international traffic shall be excepted from the application of the Customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

This statutory mandate pertaining to foreign-based commercial motor vehicles is implemented in § 123.14 of the Customs Regulations (19 CFR 123.14). Section 123.14(a) states that to qualify as instruments of international traffic, such vehicles having their principal base of operations in a foreign country must be arriving in the United States with merchandise destined for points in the United States, or arriving empty or loaded for the purpose of taking merchandise out of the United States.

Section 123.14(c), Customs Regulations, states that with one exception, a foreign-based commercial motor vehicle, admitted as an instrument of international traffic under § 123.14(a), shall not engage in local traffic in the United States. The exception, set out in § 123.14(c)(1), states that such a vehicle, while in use on a regularly scheduled trip, may be used in local traffic that is directly incidental to the international schedule.

Section 123.14(c)(2), Customs Regulations, provides that a foreign-based truck trailer admitted as an instrument of international traffic may carry merchandise between points in the United States on the return trip as provided in § 123.12(a)(2) which allows use for such transportation as is reasonably incidental to its economical and prompt departure for a foreign country.

In regard to these cabotage restrictions, Customs received a petition from the American Trucking Association (ATA) requesting a change in Customs interpretation of its regulations governing the use of foreign-based trucks in local traffic in the United States. This petition was the culmination of joint discussions beginning in July of 1994 between the ATA and the Canadian Trucking Association (CTA) to obtain mutually agreed upon parameters with respect to the liberalization of current truck cabotage restrictions in their respective countries.

After reviewing the petition, Customs published a notice in the Customs Bulletin pursuant to 19 U.S.C. 1625(c)(1) (see 31 Cust. Bull. and Dec. No. 40, 7 (October 1, 1997)), which revised the interpretation of when a foreign-based truck would be considered as used in international traffic under existing § 123.14. However, the proposal advanced by the ATA regarding the use of a foreign-based commercial motor vehicle, including a truck, in permissible local traffic under § 123.14(c) was, of course, not addressed in the Customs Bulletin notice. To effect this change required an amendment of the regulation under the Administrative Procedure Act, 5 U.S.C. 553.

Accordingly, by a document published in the **Federal Register** (63 FR 27533) on May 19, 1998, Customs proposed an amendment of § 123.14(c)(1), which would allow certain foreign-based commercial motor vehicles, admitted as instruments of international traffic, to engage in the transportation of merchandise between

points in the United States where such local traffic is incidental to the immediately prior or subsequent engagement of such vehicles in international traffic. In addition, this revision would eliminate the current requirement that such international traffic be regularly scheduled. Furthermore, any movement of these vehicles in the general direction of an export move or as part of the return movement of the vehicles to their base country would be considered incidental to the international movement.

In conjunction with the amendments to § 123.14, the proposed rule also included conforming amendments to § 123.16 regarding the return of the qualifying vehicles to the United States.

The benefit of this liberalization of current cabotage restrictions would inure in particular to both the United States and foreign trucking industries inasmuch as it would allow more efficient and economical utilization of their respective vehicles both internationally and domestically. Thus, while prompted by the ATA petition, which was developed in concert with the CTA, as described above, the proposed amendments would be universally applicable, and not be limited to just Canadian-based vehicles.

Discussion of Comments

A total of thirty-three comments were received from the public in response to the notice of proposed rulemaking. Thirteen commenters supported the rule as proposed, although one of these commenters urged that the rule be restricted to Canadian-based vehicles. Twenty commenters opposed the rule, with fifteen of these commenters urging Customs to change the rule, if adopted, so that it would be limited to Canada. Also, the Immigration and Naturalization Service (INS) submitted a comment which, while taking no position on the proposed rule, provided clarification as to that agency's position with regard to the use of alien commercial drivers in the U.S.

A discussion, together with Customs analysis, of the critical issues that were raised with respect to the proposed rule is set forth below.

Comment: It was believed that the proposed expanded operation of foreign trucks in the U.S. would further encourage the employment of lower-cost foreign drivers. This would result in a significant increase in unauthorized foreign driver activity in the U.S., and induce U.S. trucking companies ultimately to pressure the INS to relax its current restrictions in this regard, thereby reducing jobs for U.S. truck drivers.

Customs Response: Customs believes that the expanded use of foreign-based vehicles in the U.S., as proposed, will not have any impact on the existing limited scope of alien-driver activities in the U.S., as enforced by the INS. Customs will, of course, continue to defer to the INS in this matter.

To make this clear, § 123.14(c)(1) is revised to indicate that alien drivers will not be permitted to operate foreign vehicles carrying merchandise or passengers between points in the U.S., unless the drivers are in compliance with the applicable regulations of the INS.

Generally, under the existing rules of the INS, as explained in its comment on the proposed rule, a nonimmigrant alien who is driving a truck or operating another commercial motor vehicle in international traffic is admitted to the U.S. only as a visitor for business (a so-called ''B–1'' classification) under the Immigration and Naturalization Act (INA), as amended (8 U.S.C. 1101(a)(15)(B)).

However, while an alien who is admitted as a B–1 visitor may transport goods or passengers from a foreign country to the U.S., and may transport goods or passengers from the U.S. to a foreign country, the alien would not be permitted to engage in point-to-point transportation of goods or passengers within the U.S. This restriction is codified in the INS regulations, specifically at 8 CFR 214.2(b)(4) which also describes the permissible scope of business activities for aliens admitted under the B–1 classification, and defines the criteria for admission of B–1 visitors pursuant to Chapter 16 of the North American Free Trade Agreement (NAFTA) (Appendix 1603.A.1 to Annex 1603 of the NAFTA).

Thus, while the subject rule allows for the use of commercial motor vehicles in the transportation of goods between points within the U.S., provided such use is incidental to the employment of those vehicles in international traffic as prescribed in § 123.14(c)(1), an alien driver or other vehicle operator seeking admission to the U.S. as a B–1 visitor for business under these circumstances would be denied admission.

In order to load and transport goods or passengers within the U.S. from one location to another (which, as noted, is outside the scope of the B–1 classification), an alien must either be a lawful permanent resident of the U.S. or must have authorization from the INS for employment in the U.S.

Comment: One commenter thought that the adoption of the proposed amendments would have a negative competitive impact on the domestic-based commercial motor carrier industry, by affording lower-cost foreign carriers greater access to domestic freight markets.

Customs Response: Customs does not contemplate any significant competitive impact on carriers that operate exclusively within the U.S., given the petition and strong support for the adoption of the subject rule by the American Trucking Association (ATA), which represents over 35,000 motor carriers of every type and class in the U.S. It should further be mentioned in this context that the domestic use of foreign-based commercial vehicles under the rule is strictly circumscribed by, and contingent upon, such use of the vehicles being incidental to their immediately prior or subsequent engagement in international traffic, as described in § 123.14(c)(1).

Comment: It was urged that the proposed amendments be limited to Canadian-based vehicles. To do otherwise, it was argued, would occasion an increase in the number of unsafe and uninsured vehicles on U.S. roads. It was also emphasized here that the reciprocity in relation to truck cabotage restrictions that would result from the adoption of the proposed amendments would exist only between Canada and the U.S.

Customs Response: Our international obligations do not permit a reciprocity requirement with regard to this matter. As such, no reciprocal agreement may be required for vehicles of any country in order to engage in local traffic as prescribed under the subject regulatory amendments. Nevertheless, foreign-based vehicles must, of course, comply with the operating requirements imposed by the Department of Transportation and other U.S. Government agencies before being used as provided in § 123.14(c)(1).

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments with the modification discussed above should be adopted.

Regulatory Flexibility Act and Executive Order 12866

The final rule document greatly relaxes current cabotage restrictions for both the U.S. and foreign trucking industries, enabling more efficient and economical use of their respective vehicles both internationally and domestically. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the rule will

not have a significant economic impact on a substantial number of small entities. Nor does the rule result in a ''significant regulatory action'' under E.O. 12866.

List of Subjects in 19 CFR Part 123

Administrative practice and procedure, Canada, Common carriers, Customs duties and inspection, Imports, International traffic, Motor carriers, Trade agreements, Vehicles.

Amendments to the Regulations

Part 123, Customs Regulations (19 CFR part 123), is amended as set forth below.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123, and the relevant specific sectional authority citation, continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

Sections 123.13—123.18 also issued under 19 U.S.C. 1322;

* * * * *

2. Section 123.14 is amended by revising paragraph (c)(1) to read as follows:

§ 123.14 Entry of foreign-based trucks, busses and taxicabs in international traffic.

* * * * *

(c) *Use in local traffic.* * * *

(1) The vehicle may carry merchandise or passengers between points in the United States if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Any such carriage by the vehicle in the general direction of an export move or as part of the return of the vehicle to its base country shall be considered incidental to its engagement in international traffic. An alien driver will not be permitted to operate a vehicle under this paragraph, unless the driver is in compliance with the applicable regulations of the Immigration and Naturalization Service.

* * * * *

3. Section 123.16 is amended by revising paragraph (b) to read as follows:

§ 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.

* * * * *

(b) *Use in local traffic.* Trucks, busses, and taxicabs in use in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of their use in international traffic, shall be considered to have been exported and must be regularly entered on return.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 15, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–3473 Filed 2–12–99; 8:45 am]

BILLING CODE 4820–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7707]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain