

today's FR. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *Compliance with Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

#### *Compliance with Executive Order 12875*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily and any duties on other State, local, or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

#### *Compliance with Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866 and because it does not involve decisions based on environmental health or safety risks.

#### *Compliance with Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Wyoming is not authorized to implement the RCRA hazardous waste program in Indian Country. This action has no effect on the hazardous waste program that EPA implements in Indian Country within the State.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

#### *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be

inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting, and Record keeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 5, 1999.

**William P. Yellowtail,**

*Regional Administrator, Region 8.*

[FR Doc. 99-3388 Filed 2-24-99; 8:45 am]

BILLING CODE 6560-50-U

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## **FEDERAL MARITIME COMMISSION**

### **46 CFR Part 525**

[Docket No. 98-27]

#### **Marine Terminal Operator Schedules**

**AGENCY:** Federal Maritime Commission.  
**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission adds new regulations for marine terminal operator schedules in accordance with the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998.

**DATES:** This rule is effective May 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Austin Schmitt, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol St., NW, Room 940, Washington, DC 20573-0001, (202) 523-5796

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol St., NW, Room 1018, Washington, DC 20573-0001, (202) 523-5740

**SUPPLEMENTARY INFORMATION:** On December 17, 1998, the Federal Maritime Commission ("Commission") published a proposed rule to add new regulations, 46 CFR part 525, to implement changes made by the Ocean Shipping Reform Act of 1998 ("OSRA"), Pub. L. 105-258, 112 Stat. 1902, and the Coast Guard Authorization Act of 1998, section 424 of Pub. L. 105-383, 112 Stat. 3411, to sections 3(15), 8(f), 8(g) and 10(d) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. section 1701 *et seq.*, relating to marine terminal operators ("MTO(s)"). 63 FR 69603-69606, December 17, 1998. The proposed rule sets forth regulations for the publication of terminal schedules by MTOs. Interested parties were given the opportunity to submit comments on the proposed rule. The Commission received four comments, from (1) the Port of Philadelphia Marine Terminal Association, Inc. ("PMTA"), (2) the National Association of Waterfront Employers ("NAWE"), (3) the Port of Palm Beach District and Tampa Port Authority ("Ports of Palm Beach and Tampa") jointly, and (4) American President Lines, Ltd. and APL Co. Pte Ltd. ("APL") jointly.

#### Section 525.1 Purpose and Scope

Section 515.1(c) sets forth an extensive list of definitions traditionally used by the Commission and the shipping industry in their day to day business. In particular § 525.1(c)(19) defines the term "terminal services," which includes a list of terms that are themselves defined within the definition section. APL contends that the definition of "terminal services" itself should be revised, as well as several of the terms included within that definition because they do not "seem to be used in the proposed rule in an operative way." APL at 1-2.

APL argues that the definition of "terminal services" should not include the terms "wharf demurrage" and "wharfage," because they are not services but rather are charges for services. *Id.* APL further contends that the term "dockage" in that definition should be changed to "berthing" to more correctly describe the service provided for that charge. *Id.* Finally, the terms "terminal storage" and "wharf demurrage" should be revised, APL avers, because the service referred to in each is the same. *Id.*

The Commission has developed these definitions in conjunction with the shipping industry over time, and has consistently used them in other rulemakings. The definitions set forth in the rule are the traditional usage of such terms, not the operative usage as APL

desires. Moreover, the rule allows MTOs to develop independent definitions of the terms included in the rule and any other term they wish to use, as long as those definitions are set forth in their terminal schedules and correlated to the definitions in the rule (see § 525.1(c)(19)). As such, the Commission declines to delete or revise any of the definitions requested by APL.

The definition of "bulk cargo," § 525.1(c)(3), is revised to reflect the definition currently in use in 46 CFR part 514 and to correlate with the definition in new 46 CFR part 520, Carrier Automated Tariff Systems.

While the rule is straightforward in setting forth the regulations for the publication of terminal schedules of all marine terminal operators, in light of the comment discussed below regarding § 525.2, the Commission is adding the following sentence to the end of subsection (c)(13): "For the purposes of this part, marine terminal operator includes conferences of marine terminal operators."

#### Section 525.2 Terminal Schedules

PMTA expresses concern regarding the interpretation of part 525 and proposed 46 CFR part 535, Ocean Common Carrier and Marine Terminal Operator Agreements. It is seeking assurance that (1) part 535 applies only to agreements of ocean common carriers and MTOs, and to ocean common carrier tariffs, but not to "[MTO] tariffs which are redesigned as 'schedules,'" and (2) part 525 applies to all MTO schedules "whether the [MTO] is operating under an 'agreement' . . . or not." PTMA at 2. PMTA correctly interprets the scope of part 525 to cover both individual MTO schedules and MTO conference schedules. Regulations relating to the agreements of marine terminal operators (other than the publication of MTO schedules) are located at part 535 (see § 525.2(c)).

#### Section 525.3 Availability of Marine Terminal Operator Schedules

Proposed § 525.3(a)(2) requires MTOs who elect to make their schedules available to the public to make them available in electronic form. In the proposed rule the Commission specifically sought comments on whether there was a compelling reason for or against allowing MTOs to publish their terminal schedules in paper form. The Ports of Palm Beach and Tampa agree that MTOs should be required to publish their terminal schedules electronically; however, they argue that they should be allowed to publish their terminal schedules in a parallel paper form. Ports of Palm Beach and Tampa at

2-3. The Ports of Palm Beach and Tampa contend that electronic format is not universally accepted and, in fact, "many of the companies and individuals who use [the Ports of Palm Beach and Tampa's] tariffs are not, at present, equipped to obtain access to an electronic form of tariff." *Id.* at 3. Furthermore, the Ports of Palm Beach and Tampa argue that continued use of paper schedules is vital because internal staff, who do not have access to computers, need to have hard copies of the terminal schedules in order to inspect them. *Id.*

The Ports of Palm Beach and Tampa suggest that an MTO be able to make its terminal schedules available in electronic and paper form, with the electronic form being the binding form in the event that there is any discrepancy between the forms. *Id.* at 4. The Ports of Palm Beach and Tampa would add language to the rule to that effect, as well as language providing that paper copies of those schedules be available to the public upon request at a reasonable nondiscriminatory fee. *Id.*

The Commission recognizes that there may be entities in the shipping industry who are unable to access electronic terminal schedules. The rule, as written, does not prohibit an MTO from maintaining parallel terminal schedules in paper form for its own purposes or the purposes of those entities. However, it is unnecessary to incorporate the Ports of Palm Beach and Tampa's suggested language into the final rule, since electronic schedules will be the required method of publication and as such will govern in the event of a conflict with any parallel paper form of terminal schedules which an MTO may choose to maintain and disseminate.

Proposed § 525.3(f) requires all MTOs subject to Commission jurisdiction to file Form FMC-1, a form by which MTOs identify themselves and the location of their terminal schedules, whether or not they make their terminal schedules available to the public. The Commission specifically requested comments on whether Form FMC-1 should be filed in electronic format on the Commission's website or in paper format. Furthermore, the rule proposed the Commission's publication, on its website, of the location of any terminal schedule made available to the public, and comments were requested.

NAWE, the only commenter on this subsection, believes that Form FMC-1 should be filed electronically since "virtually every terminal operator has the means to file electronically." NAWE at 1. NAWE suggests, however, that the Commission acknowledge receipt of an FMC-1 form by electronic notification

to the MTO. *Id.* In light of this comment and the lack of any other comments on this issue, the Commission adds language to the final rule requiring all MTOs to file Form FMC-1 electronically via the Commission's website at [www.fmc.gov](http://www.fmc.gov).<sup>1</sup> To the extent any MTO is unable to file pursuant to this process, it can seek a waiver from the Director, Bureau of Tariffs, Certification and Licensing ("BTCL"), to file by alternate means. The Commission, however, will not provide for electronic acknowledgment of the receipt of Form FMC-1. This Commission does not currently acknowledge receipt of other types of registration forms, and, in any event, MTOs and other filers of Form FMC-1 will be free to call BTCL, if they are concerned about the Commission's receipt of their form.

NAWE also supports the Commission's proposal to publish a list, on its website, of the location of terminal schedules that are made available to the public. *Id.* at 2. This list would not, however, be so inclusive as to consist of all MTOs who file a Form FMC-1 with the Commission, contrary to NAWE's interpretation. *See Id.* While every MTO that is subject to Commission jurisdiction must file a Form FMC-1 with the Commission, not all of those MTOs will necessarily be making their terminal schedules available to the public. Therefore, the Commission's website will contain a list of MTOs who make their terminal schedules available to the public and the location where those schedules can be found. The Commission will not maintain on its website a list of those terminal schedules that are not made available to the public nor a list of the names of those MTOs.

In this connection, NAWE argues that MTOs operating separate terminals in different states should be free to file FMC-1 forms on a terminal by terminal basis and should be free to withdraw their FMC-1 forms on the same basis. *Id.* at 2. NAWE incorrectly interprets this section of the rule as being more intrusive and less flexible than it is. Again, the rule requires only that all MTOs subject to Commission jurisdiction file a Form FMC-1 so that the Commission can meet its regulatory mandate, regardless of the number of separate terminals operated. An MTO may amend the information published at its electronic location, at its discretion, without notifying the Commission. The only time an MTO needs to notify the Commission is if it

changes any information filed in its FMC-1 form, such as its home office address, its telephone number, or its decision to cease or begin making terminal schedules available to the public through an electronic location.

Finally, NAWE is concerned with the language in § 525.3(f) that requires MTOs to file a Form FMC-1 with the Commission prior to the commencement of terminal operations because "it would appear to deny an MTO that does not choose to file an FMC-1 for a particular terminal prior to the May 1, 1999 effective date of the Rule, the ability to file an FMC-1 form after this date while conducting ongoing operations." *Id.* at 2. Again, all MTOs subject to Commission jurisdiction must file a Form FMC-1 with the Commission. Thus, all MTOs which will be engaged in operations subject to the Commission's jurisdiction upon the effective date of this rule must file a Form FMC-1 prior to May 1, 1999. Only those MTOs who begin operations that would be subject to Commission jurisdiction after the May 1, 1999 deadline would file a Form FMC-1 after that date. The rule therefore requires that in order to properly regulate these entities the Commission must be notified of their existence before they begin operations subject to the Commission's jurisdiction, whether or not they plan to make their terminal schedules available to the public. The rule correctly reflects this requirement.

Except for the changes reflected here, proposed 46 CFR part 525 will be carried forward as a final rule.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. In its Notice of Proposed Rulemaking, the Commission stated its intention to certify this rulemaking because the proposed changes affect only marine terminal operators, entities the Commission has determined do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act. No comments were received in this rulemaking process touching upon the issue. Therefore, the certification is continued.

This regulatory action is not a "major rule" under 5 U.S.C. 804(2).

The Commission has received Office of Management and Budget 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. In this regard, the valid control number for this collection of information is 3072-0061.

#### List of Subjects in 46 CFR Part 525

Freight, Harbors, Reporting and recordkeeping requirements, Warehouses.

For the reasons discussed in the preamble, the Federal Maritime Commission adds part 525 to subchapter B, chapter IV of 46 CFR as follows:

#### PART 525—MARINE TERMINAL OPERATOR SCHEDULES

Sec.

- 525.1 Purpose and scope.
- 525.2 Terminal schedules.
- 525.3 Availability of marine terminal operator schedules.
- 525.4 OMB Control number assigned pursuant to the Paperwork Reduction Act.

**Authority:** 46 U.S.C. app. 1702, 1707, 1709, as amended by Pub. L. 105-258, 112 Stat. 1902, and Pub. L. 105-383, 112 Stat. 3411.

##### § 525.1 Purpose and scope.

(a) *Purpose.* This part implements the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. The form and manner requirements of this part are necessary to enable the Commission to meet its responsibilities with regard to identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Act.

(b) *Scope.* This part sets forth the regulations for the publication of terminal schedules by marine terminal operators. Information made available under this part may be used to determine marine terminal operators' compliance with shipping statutes and regulations.

(c) *Definitions.* The following definitions apply to the regulations of this part:

(1) *Act* means the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998.

(2) *Bulk cargo* means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirements of this part.

(3) *Checking* means the service of counting and checking cargo against appropriate documents for the account

<sup>1</sup> Form FMC-1 will be operational by April 1, 1999. This provides sufficient time for MTOs to comply by May 1, 1999.

of the cargo or the vessel, or other person requesting same.

(4) *Commission* means the Federal Maritime Commission.

(5) *Dockage* means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed.

(6) *Effective date* means the date a schedule or an element of a schedule becomes effective. Where there are multiple publications on the same day, the last schedule or element of a schedule published with the same effective date is the one effective for that day.

(7) *Expiration date* means the last day, after which the entire schedule or a single element of the schedule, is no longer in effect.

(8) *Forest products* means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular by-products derived from pulping and papermaking, and engineering wood products.

(9) *Free time* means the period specified in the terminal schedule during which cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel.

(10) *Handling* means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship's tackle.

(11) *Heavy lift* means the service of providing heavy lift cranes and equipment for lifting cargo.

(12) *Loading and unloading* means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or barges or any other means of conveyance to or from the terminal facility.

(13) *Marine terminal operator* means a person engaged in the United States or a commonwealth, territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A marine terminal operator

includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators.

(14) *Organization name* means an entity's name on file with the Commission and for which the Commission assigns an organizational number.

(15) *Person* includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

(16) *Rate* means a price quoted in a schedule for providing a specified level of marine terminal service or facility for a stated cargo quantity, on and after a stated effective date or within a defined time frame.

(17) *Schedule* means a publication containing the actual rates, charges, classifications, regulations and practices of a marine terminal operator. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the rates, charges or services provided by a marine terminal operator.

(18) *Terminal facilities* means one or more structures comprising a terminal unit, which include, but are not limited to, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

(19) *Terminal services* includes checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined in this section. The definitions of terminal services set forth in this section shall be set forth in terminal schedules, except that other definitions of terminal services may be used if they are correlated by footnote, or other appropriate method, to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in the terminal schedule.

(20) *Terminal storage* means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the

expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage.

(21) *Usage* means the use of a terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified.

(22) *Wharf demurrage* means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage.

(23) *Wharfage* means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to a wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

#### § 525.2 Terminal schedules.

(a) *Marine terminal operator schedules.* A marine terminal operator, at its discretion, may make available to the public, subject to section 10(d) of the Act, a schedule of its rates, regulations, and practices.

(1) *Limitations of liability.* Any limitations of liability for cargo loss or damage pertaining to receiving, delivering, handling, or storing property at the marine terminal contained in a terminal schedule must be consistent with domestic law and international conventions and agreements adopted by the United States; such terminal schedules cannot contain provisions that exculpate or relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

(2) *Enforcement of terminal schedules.* Any schedule that is made available to the public by the marine terminal operator shall be enforceable by an appropriate court as an implied contract between the marine terminal operator and the party receiving the services rendered by the marine terminal operator, without proof that such party has actual knowledge of the provisions of the applicable terminal schedule.

(3) *Contracts for terminal services.* If the marine terminal operator has an actual contract with a party covering the services rendered by the marine terminal operator to that party, an

existing terminal schedule covering those same services shall not be enforceable as an implied contract.

(b) *Cargo types not subject to this part.* (1) Except as set forth in paragraph (b)(2) of this section, this part does not apply to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper and paper waste in terminal schedules.

(2) Marine terminal operators which voluntarily make available terminal schedules covering any of the commodities identified in paragraph (b)(1) of this section thereby subject their services with respect to those commodities to the requirements of this part.

(c) *Marine terminal operator agreements.* The regulations relating to agreements to which a marine terminal operator is a party are located at part 535 of this chapter.

#### § 525.3 Availability of marine terminal operator schedules.

(a) *Availability of terminal schedules—(1) Availability to the Commission.* A complete and current set of terminal schedules used by a marine terminal operator, or to which it is a party, shall be maintained in its office(s) for a period of five (5) years, whether or not made available to the public, and shall promptly be made available to the Commission upon request.

(2) *Availability to the public.* Any terminal schedule that is made available to the public shall be available during normal business hours and in electronic form. The public may be assessed a reasonable nondiscriminatory charge for access to the terminal schedules; no charge will be assessed against the Commission.

(b) *Access to electronically published schedules.* Marine terminal operators shall provide access to their terminal schedules via a personal computer (PC) by:

(1) Dial-up connection via public switched telephone networks (PSTN); or

(2) The Internet (Web) by:

(i) Web browser; or

(ii) Telnet session.

(c) *Dial-up connection via PSTN.* (1) This connection option requires that terminal schedules provide:

(i) A minimum of a 14.4Kbps modem capable of receiving incoming calls,

(ii) Smart terminal capability for VT-100 terminal or terminal emulation access, and

(iii) Telephone line(s) quality for data transmission.

(2) The modem may be included in a collection (bank) of modems as long as all modems in the bank meet the minimum speed. Smart terminal emulation provides for features such as bold, blinking, underlining and positioning to specific locations on the display screen.

(d) *Internet connection.* (1) This connection option requires that systems provide:

(i) A universal resource locator (URL) Internet address (e.g., <http://www.tariffsrus.com> or <http://1.2.3.4>), and/or

(ii) A universal resource locator (URL) Internet address (e.g., <telnet://tariffsrus> or <telnet://1.2.3.4>), for Telnet session access over the Internet.

(2) Marine terminal operators shall ensure that their Internet service providers shall provide static Internet addresses.

(e) *Commission access.* Commission telecommunications access to systems must include connectivity via a dial-up connection over public switched telephone networks (PSTN) or a connection over the Internet. Connectivity will be provided at the expense of the publishers. Any recurring connection fees, hardware rental fees, usage fees or any other charges associated with the availability of the system are the responsibility of the publisher. The Commission shall only be responsible for the long-haul charges for PSTN calls to a terminal schedule initiated by the Commission.

(f) *Notification.* Each marine terminal operator shall notify the Commission's Bureau of Tariffs, Certification and Licensing ("BTCL"), prior to the commencement of marine terminal operations, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its terminal schedule(s), and the publisher, if any, used to maintain its terminal schedule, by electronically submitting Form FMC-1 via the Commission's website at [www.fmc.gov](http://www.fmc.gov). Any changes to the above information shall be immediately transmitted to BTCL. The Commission will publish a list on its website of the location of any terminal schedule made available to the public.

(g) *Form and manner.* Each terminal schedule made available by a marine terminal operator shall contain an individual identification number, effective date, expiration date, if any, and the complete terminal schedule in full text and/or data format showing all its rates, charges, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities.

#### § 525.4 OMB control number assigned pursuant to the Paperwork Reduction Act.

The Commission has received Office of Management and Budget 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. In this regard, the valid control number for this collection of information is 3072-0061.

By the Commission

**Bryant L. VanBrakle,**

Secretary.

[FR Doc. 99-4585 Filed 2-24-99; 8:45 am]

BILLING CODE 6730-01-M