

FEDERAL MARITIME COMMISSION**46 CFR Part 520**

[Docket No. 98-29]

Carrier Automated Tariff Systems**AGENCY:** Federal Maritime Commission.**ACTION:** Final rule and interim final rule.

SUMMARY: The Federal Maritime Commission adds new regulations establishing the requirements for carrier automated tariff systems in accordance with the Shipping Act of 1984, as modified by Ocean Shipping Reform Act of 1998 and section 424 of the Coast Guard Authorization Act of 1998. As part of these rules, we are adopting as an interim final rule the definition of motor vehicle which was not included in the proposed rule.

DATES: This rule is effective May 1, 1999.

Comments on the interim final rule portion are due March 23, 1999.

ADDRESSES: Send comments on interim final rule portion to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Room 1046, Washington, D.C. 20573, (202) 523-5725.

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 December 21, 1998, the Federal Maritime Commission ("FMC" or "Commission") published a Notice of Proposed Rulemaking in the **Federal Register** (63 FR 70368), proposing new regulations to implement the changes made in the area of common carrier tariffs by enactment of the Ocean Shipping Reform Act of 1998 ("OSRA"), Public Law 105-258, 112 Stat. 1902. OSRA amended the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1702 *et seq.*, in several significant respects. Previously, common carriers and conferences had to file their tariffs (*i.e.*, the schedules of their rates and charges) with the FMC's Automated Tariff Filing and Information System ("ATFI"). Under OSRA, carriers no longer have to file with the Commission, but are required to publish their rates in private, automated tariff systems. (Section 8(a)(1) of OSRA). These tariffs

must be made available electronically to any person, without limits on time, quantity, or other such limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access, except for Federal agencies. (Section 8(a)(2)). In addition, the Commission is charged with prescribing the requirements for the "accessibility and accuracy" of these automated tariff systems. The Commission also can prohibit the use of such systems, if they fail to meet the requirements it establishes. (Section 8(g)).

The Commission received twenty-two comments on the Proposed Rule. Commenters were: Cargo Brokers International, Inc. ("CBI"); Household Goods Forwarders Association of America, Inc. ("HHGFAA"); China Ocean Shipping (Group) Company ("COSCO"); Fruit Shippers Ltd.; Pacific Coast Tariff Bureau ("PCTB"); Japan-United States Eastbound Freight Conference ("JUSEFC"); Council of European & Japanese National Shipowners' Associations ("CENSA"); Trans-Atlantic Conference Agreement ("TACA"); North American Van Lines, Inc. ("NAI"); Matson Navigation Company, Inc. ("Matson"); P&O Nedlloyd Limited ("P&O"); National Industrial Transportation League ("NITL"); Bicycle Shippers' Association, Inc. ("BSA"); Effective Tariff Management Corporation ("ETM"); Ocean Carrier Working Group Agreement ("OCWG"); National Association of Transportation Intermediaries ("NATI"); National Customs Brokers & Forwarders Association of America, Inc. ("NCBFAA"); American International Freight Association & Transportation Intermediaries Association ("AIFA"); Plus Integration and World Tariff Services ("WTS"); The Associated India/Pakistan Conferences ("India Conferences"); Direct Container Line, Inc. ("DCL"); and Transportation Tariff Publishers, Inc. ("TTP").

General Comments

As a general matter, many commenters believe that the proposed rule goes far beyond what is necessary to implement the prescriptions of OSRA. CENSA contends that the rule imposes "form and manner" requirements, rather than requirements concerning the "accessibility and accuracy" of tariffs. It believes that the rule will result in elaborate and costly systems not warranted by the limited role tariffs will play in the post-OSRA era and states that how a carrier chooses to present its rates and terms of service should be dictated by market demands

and customer requirements. NAI likewise believes the proposed rule far exceeds any requirements relating to accuracy and accessibility and suggests that the Commission eliminate all portions of the rule relating to tariff contents and format. Matson contends that the cost and complexity of the rule goes beyond what is reasonable and continues many ATFI requirements.

NITL notes that the Commission's role in overseeing new private tariff systems has been significantly reduced and submits that the Commission must eschew "command and control" type regulation and instead rely on broad standards that seek general results. It believes that a competitive market will achieve the desired result of accuracy and accessibility.

OCWG also notes that the role of tariffs under OSRA will be reduced in that the large majority of cargo will move under service contracts. It contends that the maximum use of tariffs will occur only through a minimum degree of regulation. OCWG suggests that there are two components of accessibility: (1) can a user find and gain access to a particular tariff; and (2) once in a tariff, can the user locate specific tariff matter? It claims that the Commission's rule largely perpetuates ATFI, even though many aspects of ATFI have been rendered obsolete. Lastly, OCWG alleges that carriers will be forced to rely on outside vendors to design and maintain tariffs and that a system to meet the proposed requirements would cost \$500,000 or more.

The Commission is not insensitive to many of these general concerns raised by these commenters. It has accordingly kept them in mind while addressing other, more specific comments in the proposed rule.

Section 520.2 Definitions

"Co-loading"—P&O contends that this definition should include a provision that when an NVOCC tenders a co-loaded container to an ocean common carrier it certify that all NVOCCs whose cargoes are co-loaded have met all license, tariff and bonding requirements. P&O's concerns are met by § 515.27, which provides that no common carrier (*e.g.*, an NVOCC) may transport cargo for a shipper known to be an NVOCC unless the carrier has determined that the NVOCC has a tariff and financial responsibility required by sections 8 and 19 of the Act.

"Combination rate"—P&O suggests changing this term to "multi-factor through rate" because combination rate is allegedly not a term in general industry usage. We decline to adopt

P&O's suggestion, as the term "combination rate" has been defined and is widely used in current tariffs. In light of the fact that many carriers will simply carry over their current tariffs in their automated systems, this may not be the appropriate time to change the term.

"Commodity description"—P&O avers that the definition appears to require the inclusion of all applicable assessorials, which would undermine the ability of carriers to apply assessorials by rule without notation to a specific TRI. ETM also contends that the requirement to show all assessorials should be removed and that the requirement to show commodity index entries is also redundant. The Commission has adopted these suggestions and deleted the references to assessorials and commodity index entries.

"Common carrier"—Fruit Shippers suggests that this definition should be amended to include changes made by the Coast Guard Authorization Act of 1998, Pub. L. 105-383. Inasmuch as the proposed rule included this change, there is no need to amend this definition in the final rule.

"Conference"—JUSEFC submits that the current definition of conference should be retained since it substantially tracks the definition in the 1984 Act. It further notes that the Commission did not explain the reasons for the change, thereby making comment on it a matter of speculation. P&O and OCWG also argue that the definition should not be revised. The Commission will implement the definition as proposed to comport with the definitions in parts 530 (service contracts) and 535 (agreements). In that latter proceeding, the reasons for proposing such a change were fully explicated.

"Forest products"—PCTB concedes that this definition reflects Congressional intent. It nonetheless maintains that it needs some examples or the Harmonized Codes for the new additions. The Commission declines to adopt this suggestion. Examples or Harmonized Code references are not provided elsewhere in the definitions, and would not seem appropriate here.

"Harmonized system"—PCTB and WTS note that this definition only refers to the codes for imports and that language should be added for Schedule B, which applies to exports. The Commission agrees and has modified the definition accordingly.

"Intermodal transportation"—P&O suggests that the word "through" be inserted between the words "continuous" and "transportation." The

Commission has incorporated this change in the final rule.

"Joint rates"—P&O would change the term to "joint through rates" to properly reflect how the cargo is moving. However, joint rates involve ocean transportation over combined routes of two or more common carriers, and could involve combination rates or through rates. Moreover, the term is currently used widely in tariffs and will likely be carried over to automated systems. It would also benefit from notice and comment, and is not, therefore, adopted.

"Local rates"—P&O suggests that this term be changed to "port to port rates" as better describing the service. However, we decline to adopt this suggestion as port to port rates can be proportional rates which are based on prior or subsequent movements, contrary to the specific language of the definition, which states that local rates are not contingent on prior or subsequent movements.

"Loyalty contract"—ETM contends that this definition should not be restricted to deferred rebate arrangements, but should also include special specific rates or discount provisions. However, the definition in the proposed rule is consistent with the changes in the statutory definition made by OSRA and will therefore remain unchanged.

"Motor vehicle"—The proposed rule did not contain a definition for "motor vehicle." However, OSRA's use of this term in section 8(a) of the 1984 Act may have created some confusion in the industry. The Commission has thus defined the term to include not only automobiles but also trucks, vans and other motor vehicles 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. This definition appears consistent with the discussion in the Senate Report on S. 414, S. Rep. No. 61, 105th Cong., 1st Sess. 22 (1997). Because this definition was not included in the proposed rule, however, it will go into effect as an interim final rule and interested parties will have an opportunity to comment.

"Ocean common carrier"—PCTB notes that this definition is not consistent with proposed §§ 535.104(u) and 530.3(j). WTS also suggests that the terms should be consistently applied throughout. The Commission has retained the definition in the proposed rule, but amended the service contract and agreement rules to achieve consistency.

"Person"—P&O would like the Commission to make it clear that the term "person" includes not only shippers, forwarders and the FMC, but ocean common carriers as well. This suggestion does not appear to be necessary. Ocean common carriers would fit within the ambit of the term as it is currently defined.

"Single factor rate"—P&O would add a definition of "single factor rate" to read "the single amount charged by a common carrier in connection with through transportation involving more than one mode of service." This is essentially what the current definitions of "through rate" and "through transportation" do and is not, therefore, necessary.

"Through rate"—P&O would amend this definition to read "the total amount charged by a common carrier in connection with multi-factor or single-factor through transportation." This change is unnecessary given that the Commission is not adopting P&O's other suggested definitional changes relating to intermodal transportation.

"Thru date"—ETM suggests that this definition should be removed, because all tariff changes can be accomplished with amendments without the use of a thru date. While we agree that tariff changes may be accomplished without the use of thru dates, there may be system reasons for using them. The term will accordingly remain defined for any carrier that chooses to use it.

P&O also suggests that definitions for "demurrage," "detention" and "free time" should be added and suggests the definitions appearing in the ANERA tariff. These terms presently appear to vary considerably from carrier to carrier and can apply to either carrier equipment or the cargo. We believe that they should continue to be defined in the individual carrier's tariff and are unable to adopt these suggestions at this time. At a minimum, they would warrant additional notice and comment.

Section 520.3 Publication Responsibilities

JUSEFC and OCWG both contend that conference members should continue to have the option of publishing their open rates either in a conference tariff or their own tariffs. P&O further contends that individual carriers should be permitted to publish their own independent action rates and open rates.

Independent action rates are not presently permitted to be published in individual carrier tariffs, unlike open rates. The Commission believes that independent action rates should continue to be published in a common conference tariff. Independent action

items change frequently and would be difficult to follow if they were published in several different independent tariffs. Open rates, on the other hand, are rates for commodities over which a conference has relinquished ratemaking authority and thus more properly appear in independent tariffs. The Commission is accordingly amending paragraph (b) to indicate that conferences "may" publish open rates of their members, and that alternatively, open rates may be published in individual tariffs of conference members.

COSCO supports the Commission's publication on its website of the locations of carriers' tariffs. PCTB likewise supports such a listing, but suggests that the Commission adopt a specific, frequent periodic basis for updates, e.g., weekly. While the Commission believes that it may be possible to update this listing on a frequent basis, it is reluctant to impose any such requirement by rule.

ETM submits that the Commission should clarify that the notification required by paragraph (d) may be by mail, courier, or facsimile. It further suggests that Form FMC-1 should appear on the Commission's website as soon as possible and supports no fee for the submission of the form. The Commission is amending paragraph (d) to indicate that Form FMC-1 be submitted electronically via the Commission's website. The Commission will design an interactive form by which carriers can submit the requisite information.¹ This approach is consistent with our treatment of marine terminal operator schedules. To the extent any carrier 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. In addition, the Commission notes that existing entities operating as common carriers or conferences may continue to use their current organization numbers.

BSA is concerned that the Commission may not be able to ensure that carrier tariff homepages are properly updated and the validity of all common carrier automated tariff systems. It asserts that more definitive regulations addressing webpage security requirements are needed to preserve the security and integrity of the tariff system as a whole. The Commission appreciates these concerns. However, once carriers have begun to operate under the new requirements, the Commission will be

in a better position to address these issues.

Section 520.4 Tariff Contents

PCTB supports the use of specific titles in paragraph (d) to identify common rules appearing in most tariffs. It requests clarification, however, that the Commission is not requiring the numbering sequence used to display the rule titles in that paragraph. ETM recommends that the ordering or numbering of the nineteen (19) items should be at the option of the "filer." WTS asserts that a significant number of retrievers use standard rule numbers to retrieve certain rules and contends that rule numbers should be mandated.

On the other hand, JUSEFC maintains that the required 19 rule titles are rigid and deprive publishers of needed flexibility. It suggests that a violation could occur from the omission of a single, non-essential word and that publishers would be prohibited from separating or consolidating tariff matter. JUSEFC further avers that tariff publishers are in the best position to determine the most effective way to present their tariff information. It concludes by suggesting that tariff titles be recommended rather than mandatory.

JUSEFC's views have merit and, as a result, the Commission is substantially amending paragraph (d). The nineteen subject areas for which specific rule titles were required have been deleted. Carriers simply have to publish any rule that affects the application of their tariffs, but they are free to use any appropriate titles for their rules.

NCBFAA states that the decision to encourage the use of the U.S. Harmonized Tariff Schedule ("HTS") is very helpful, and promotes international acceptance of a common language. While supporting the general content requirements for all tariffs, BSA also strongly supports the FMC's encouraging the use of the U.S. HTS. DCL, on the other hand, believes that listing commodities exclusively through the U.S. HTS would be burdensome for NVOCCs. The Commission continues to believe that use of the U.S. HTS would be beneficial to trade in general. The proposed rule did not mandate use of the U.S. HTS. It simply stated that carriers should use the U.S. HTS "to the maximum extent possible." However, in view of the comments, the final rule has been reworded to indicate that, if carriers use numeric codes for commodities, they are encouraged to use the U.S. HTS.

JUSEFC opposes the requirement in paragraph (e) that commodity descriptions have a distinct 10-digit

numeric code. It considers such a requirement to be a carryover from ATFI, with no technological justification, given the wide variety of software allegedly available. Moreover, it contends that even under ATFI, 10-digit commodity numbering was not necessary. Matson notes that it does not use a 10-digit numbering system internally, and argues that it should be able to use its internal numbering system which interacts with its other systems. NITL opines that if a tariff uses a numeric code to identify a commodity, there is no reason to require only a 10-digit code. As long as a system permits a user to locate covered commodities, NITL sees no reason for numeric codes at all. AIFA notes that NVOCCs often offer rates for classes of commodities on a cubic meter basis, and that 10-digit codes add a needless layer of complexity.

The carrier members of OCWG also oppose 10-digit codes for commodities. They contend that any numeric code is not an indispensable requisite for a tariff and that it is unclear how such codes would assist users in locating specific tariff matter. They further suggest that very few shippers will know the code, particularly when carriers are free to use any system they wish.

In light of the above comments, the Commission is deleting the requirement that a distinct 10-digit numeric code must be used for each separate commodity in a tariff. Instead, the final rule will state that numeric codes "may" be used, and that publishers are encouraged to use the U.S. HTS. In addition, the definitions of "commodity description number" and "TRI number" in § 520.2 have been modified to reflect this change.

P&O suggests that the very detailed requirements of what must be included in a TRI are more detailed and complex than need be. In particular, it points to item nine (9) in paragraph (f) as being unclear and raises several questions about it. OCWG further submits that item two (2) in paragraph (f) should be revised by adding the word "(optional)." The Commission has adopted these suggestions in the final rule. Item 9 has been deleted, item seven (7) combined with item six (6) ("rate and rate basis") and item 2 has been modified to point out that TRI numbers are optional.

COSCO has requested that the Commission clarify how § 520.4(e)(1) (commodity descriptions) would apply to a class rather than a commodity tariff. The Commission notes that this issue was not addressed under the ATFI rules, and that it was up to carriers and conferences to develop their own rules

¹ Form FMC-1 will be operational by April 1, 1999. This provides sufficient time for carriers to comply by May 1, 1999.

and practices under those circumstances. The Commission discerns no reason to alter this situation under OSRA.

JUSEFC contends that § 520.4(e)(3)(ii) will result in complex additional programming to generate the list of TRIs applicable to every indexed item as required separately by § 520.6(c). It states that the requirement appears to apply to "viz" lists, resulting in thousands of unnecessary index entries. The Commission does not consider it burdensome to require index entries for every commodity listed in a commodity description. This should not preclude tariff publishers from using commodity descriptions which are commercially developed; if they include more than one commodity within a commodity description, they simply have to show those commodities in the index.

Section 520.5 Standard Tariff Terminology

BSA supports the use of standardized codes as being consistent with Congressional intent that tariff information and tariff publishing systems be simplified and standardized. Further, BSA asserts that these codes must be enforced by the Commission for all common carriers, conferences and filing parties. NAI suggests two additional codes to the "packaging codes": "Knockdown Wood Crates (KWC)" and "Wood Crates (WC)." NITL, on the other hand, does not believe that standard codes should be adopted, as they are likely to become quickly outdated. JUSEFC maintains that there should be no prior approval for the use of a code not on the list. OCWG argues that approved codes are a form and manner requirement of the type the Commission no longer has authority to issue. It further contends that the proposed terminology is not commonly used in the industry by either shippers or carriers and that standard codes only make sense when all tariffs are filed in the same database.

The Commission continues to believe that the codes contained in the Appendix are the types of standardization envisioned by Congress. Moreover, we seriously doubt that the majority of codes will become quickly outdated or are not used in the industry today. Nonetheless, in light of the comments, the Commission has made several changes to paragraph (a). References to "approved codes" have been deleted and it has been clarified that the codes are intended to provide a standard, terminology baseline. But, rather than have the Commission consider additions to the Appendix on a case-by-case basis, the final rule

provides that tariff publishers may use additional codes, if they are clearly defined in their tariffs.

PCTB notes that the National Imagery and Mapping Agency ("NIMA") gazeteer only covers foreign locations. It suggests the use of the Geographic Names Information System ("GNIS") for U.S. locations. The Commission has adopted this suggestion in the final rule.

The majority of the commenters objected to the requirement that locations in a tariff must appear in the NIMA gazeteer and ports in the World Port Index ("WPI"). COSCO suggests that the Commission should permit the use of new place names, if a carrier can demonstrate that they are in current usage. CENSA would eliminate entirely the requirement that foreign locations be identified with a relevant gazeteer. This would purportedly enable carriers to use simpler tariff structures. Matson likewise believes that NIMA geographic locations should be eliminated, while P&O further objects to the WPI. NITL avers that publishers should be free to use common, everyday names for ports and locations, as long as they are clear. OCWG expresses similar sentiments, questioning the need for standard location names in systems that are all different, unlike ATFI. Moreover, it claims that the use of standardized geographic names was required in ATFI because it was a government database.

In light of these comments, the Commission has amended paragraph (b) to make the use of NIMA, GNIS, or WPI advisory, rather than mandatory. In addition, the rule has been clarified to permit publishers to use geographic names that are currently in use but not yet included in these publications.

Section 520.6 Retrieval of Information

BSA supports the proposed rule's requirement that tariffs provide users with the ability to search for commodities by text or number search. It further suggests that the Commission could require tariff systems to search for various commodities by U.S. HTS or by a simple description of the commodity in question. ETM suggests that paragraph (a) be clarified to require a "method of tariff selection." CENSA, on the other hand, believes that the complex tariff searching mechanisms are a burden. NITL also submits that the extensive search requirements may not be necessary. It suggests that a comprehensive text search capability, linked to a reference to the applicable basic ocean freight rate and any applicable assessorials would meet shippers' needs for accuracy and accountability. OCWG also asserts that the extensive search requirements will

require carriers to expend significant sums of money and contends that tariffs can be searched by a much simpler mechanism—a text search capability. It concludes that commodities and rules could be located easily and quickly through "key word" searches of a tariff. OCWG also notes that, without a requirement for numeric commodity coding, there is no need for searches based on a 14-digit TRI.

After further review, we believe that the capability to search for tariff matter by text search appears to provide a sufficient degree of accessibility to tariff users at this time. As a result, paragraphs (a), (b), (c), and (d) have been amended in several aspects. Paragraph (a) sets forth general search requirements for tariff systems as a whole, while paragraph (b) limits searches for tariff matter to non-case sensitive text searches. The requirement for direct rate search by TRI number has been deleted. Paragraph (c) states that retriever selection of a specific commodity from a commodity index list will provide an option for searching for a rate. Lastly, paragraph (d) provides a text search mechanism to locate objects within an object group.

Paragraph (e) of the proposed rule required a minimum rate calculation capability for tariffs—the basic ocean freight (to include any adjustments to the basic ocean freight and inland rates for combination rates) and a list of all applicable assessorial charges, by rule number and charge title. NCBFAA supports this proposal, noting that people accessing a tariff should be able to find the "all-in" cost by making a single inquiry. They further contend that this would not require enormous programming expertise. NITL also supports the proposal, stating that it is important that a tariff reveal a calculated basic ocean freight rate and at least a list of all applicable assessorial charges. It views this as the "bottom-line" requirement for tariff accuracy that the statute requires. BSA would continue the "bottom-line" calculation capability currently found in ATFI.

On the other hand, COSCO asserts that the minimum rate calculation capability required by the proposed rule is just short of a bottom-line calculation and would require a considerable investment in software. Matson likewise believes that this capability would require a substantial programming effort and would cost it at least \$1.6 million to develop. JUSEFC argues that the calculated basic ocean freight is contrary to OSRA and should be deleted or made a recommended feature. It questions why the Commission deems tariff users capable of reading and

calculating all assessorials, but finds them unable to read and apply rules pertaining to minimum quantities and quantity discounts. OCWG asserts that the proposed rate calculation capability requires all the functions of ATFI, except reaching a bottom-line rate, and would require ATFI-like algorithms in private systems. The carriers further contend that writing such algorithms and linking them to TRIs would be complex, time-consuming and expensive and would require the use of third party vendors. OCWG concludes by arguing that carriers should be able to provide tariff users with the charges that apply without the use of links or algorithms—by simply listing the charges that apply to all shipments in text format.

Upon reconsideration, the Commission has amended paragraph (e) by deleting the requirement for a calculated basic ocean freight and instead will require a display of the basic ocean freight rate and a list of all applicable assessorial charges. This will significantly reduce the burdens for publishers while still satisfying the requirements of OSRA. This paragraph further states that if other rules or charges may be applicable to a shipment under certain circumstances, the tariff shall so indicate. This approach should still enable a shipper to ascertain all of the charges that will be applicable to a particular shipment, without requiring carriers to engage in the calculations necessary to arrive at a calculated basic ocean freight rate.

OCWG has also proposed that the Commission eliminate the requirement in paragraph (f) that all tariff matter display the publication date and effective date. They argue that in a system with no "access-date capacity," these dates do not provide any useful information. They further contend that matter appearing in a tariff as accessed would by definition be effective and applicable and that only newly filed tariff matter that has not yet become effective should show an effective date.

The Commission declines to accept this suggestion. Under the final rule, tariff systems will still have to provide access date capability to retrievers. This means that tariff users will have access to data in effect on a given date in the past and publication dates and effective dates may be of interest to them. Moreover, a tariff system without such information would make it virtually impossible for a shipper to audit its transportation costs or for the Commission to ascertain compliance with the requirements of the 1984 Act.

Section 520.7 Tariff Limitations

P&O suggests that the Commission should continue the existing practice of permitting ninety (90) days for transition from an individual tariff to a conference tariff. OCWG likewise states that new conferences and new members of conferences should have 90 days to publish their tariffs or begin participating in the conference tariff. The Commission agrees and has amended paragraph (g) accordingly. In addition, the Commission has added new language to indicate that individual conference members may still publish their own separate tariffs on open rates.

Proposed subsection (a)(3) prohibited cross-references to any other tariffs, except a tariff of general applicability maintained by that same carrier or conference. COSCO suggests that the Commission reconsider this prohibition, and permit cross-referencing as long as the other tariff is also available on-line. PCTB maintains that the Commission should allow reference to general reference tariffs (e.g., IMO Dangerous Goods Code, Bureau of Explosives Tariffs), as is currently permitted, if information is provided as to where such tariffs are available for inspection. P&O also questions the reasons for the prohibition and suggests that cross-referencing should be allowed to "another tariff to which the tariff's publisher is also the publisher or a participating carrier." OCWG submits that the prohibition should be eliminated or modified. It notes that in an electronic environment, moving from one tariff to another is much easier. At the least, it contends that cross-referencing for time/volume rates should be allowed.

The Commission agrees with the general thrust of these comments. As an initial matter, the cross-referencing prohibition has been limited to "rate" tariffs. As a result, carriers can reference other publications that are commonly used in the industry, such as general reference tariffs. In addition, the exceptions to the prohibition have been expanded to permit necessary cross-references occasioned by time/volume rate situations.

In its general comments, OCWG noted that the proposed rule is silent on how the Commission intends to deal with tariff matter that it considers deficient. It believes that ground rules would be beneficial for both the industry and the Commission's staff, and has suggested a provision which would require the Commission to seek voluntary correction of allegedly deficient tariff matter. The Commission has not adopted this suggestion in the final rule.

The Commission anticipates that it will seek, under OSRA, voluntary correction of tariff matter that is unclear, incomplete or not in accordance with applicable statutory and regulatory requirements. However, the Commission does not want to hold itself to such rigid requirement in all instances.

Section 520.8 Effective Dates

COSCO, a controlled carrier, claims that the 30-day advance notice requirement for rate reductions in the bilateral trades will disadvantage it, as it will be unable to offer short-notice rate reductions to its customers, many of whom book small amounts of containers at a time. It further contends that the Commission's exemption in Petition No. P1-98 will not give it sufficient flexibility, since it only allows COSCO to meet competitors' published rates. COSCO thus urges the Commission to consider steps to mitigate the damaging effects of the 30-day notice requirement.

The Commission is unable to take any measures in this rulemaking proceeding to mitigate the effects of the 30-day notice requirement for rate reductions by controlled carriers in the bilateral trades, since such relief is outside the scope of this proceeding. Moreover, the Commission questions the appropriateness of such relief, given the fact that Congress consciously repealed the bilateral trade exemption when passing OSRA.

BSA suggests that the Commission should require the effective date of tariffs to be clearly stated on all published tariffs. While there is nothing inherently wrong with such a requirement, its need may be obviated by the fact that § 520.6(f) requires all displays of individual tariff matter to include an effective date. The Commission declines at this time to adopt BSA's suggestion.

PCTB questions the omission of the word "charge" from paragraph (a). It also requests clarification on whether a carrier introducing a new service which has a charge, e.g., new outports subject to an arbitrary charge, can do so without a 30-day delay. The Commission has amended paragraph (a) to include the word "charge." The Commission is reluctant to conclude that the introduction of such a new service should warrant across-the-board relief from the 30 days' notice requirement. Carriers desiring relief can always seek special permission pursuant to § 520.14.

Section 520.9 Access to Tariffs

CENSA supports the access requirements via dial-up or the internet. NATI, however, suggests that other

methods of access should be permitted, subject to Commission approval. ETM claims that a static internet address limits a carrier's ability to change systems or agents. ETM also suggests that proposed § 520.9(e)(3) should be amended to reflect that some carriers and conferences will use systems of their agents. ETM also questions what a reasonable fee should be and asks for confirmation that pricing matrices will be acceptable. P&O again asks clarification that "person" includes ocean common carriers. It also raises the specter of a large number of persons accessing a tariff slowing a site or making it inaccessible to others. P&O suggests that publishers should be free to terminate a connection that has not been active for 10 minutes. P&O also believes that the Commission should clarify that carriers can provide access without user names or passwords, and at no cost.

BSA expresses concern that the rules do not address the unauthorized tampering of websites, resulting in misinformation, and recommends that the FMC initiate an industry-wide forum to discuss and address tariff security and integrity issues. It further recommends the Commission adopt regulations aimed at persons who knowingly access and tamper with the security and integrity of a tariff.

The Commission shares BSA's concerns about tariff security and integrity. However, this rulemaking proceeding is not the proper forum within which to address such issues. Integrity issues can be revisited once the rules implementing OSRA have been in place and we have experience under them. The Commission also notes that anyone seeking to provide another method of access to tariffs could petition for a rulemaking or an exemption. The Commission does not perceive a need to adopt specific rules regarding the length of access-time that is reasonable. We note, however, that in a situation when other potential users are being denied access, it would not be unreasonable to terminate inactive connections. There is no need to indicate that carriers can provide access at no cost since they "may" assess a reasonable fee. The Commission further notes that there is nothing inherently suspect about pricing matrices. Lastly, the Commission has amended paragraph (g) so that user identification and passwords must be provided to the Commission only if the publisher requires them.

Section 520.10 Integrity of Tariffs

NCBFAA asserts that the five (5)-year data retention requirement in paragraph

(a) is critically important to parties who need it to recall, track, and memorialize tariff information. COSCO accepts a requirement for storing historical data for 5 years, but opposes on-line storage. COSCO and Matson would like the ability to store historical data on hard copies. Matson maintains that keeping tariffs available on-line is beyond its current capabilities and that historical data is rarely required by its customers. P&O suggests that data be maintained on-line for one year, with back-up tapes or other acceptable storage medium for four (4) years. NITL also finds the 5-year requirement overly burdensome. It submits that a requirement that carriers furnish historical data for 5 years without charge to a shipper upon request should be sufficient. AIFA contends that the retention requirement will present particular problems for NVOCCs, all of whose shipments will move under tariff rates that will change often. DCL raises similar concerns. OCWG asserts that there is nothing about retaining historical data on-line that makes past or current data any more or less accurate. They maintain that the Commission and shippers can gain access to historical data off-line, by submitting a written request.

The Commission is pleased to see that all carriers accept the fact that there is a need to maintain historical tariff data for 5 years. The only issues are whether data can be stored off-line in some other form and, if so, for how long. After fully weighing the comments, the Commission concludes that a two (2)-year on-line access requirement will meet its needs and those of the shipping public while the remaining three (3) years may be kept off-line. The final rule has been so modified. In addition, if data is retained in some other electronic form, such data shall be made available to any person or the Commission within a reasonable time. The Commission is not going to define reasonable period of time at this moment, but expects carriers to respond to all requests with due diligence. In addition, carriers will be permitted to charge a reasonable fee for the provision of historical data, not to exceed the fees for obtaining such data on-line, but cannot charge any fees to federal agencies.

JUSEFC suggests that the written certification required by paragraph (e) should be deleted as unnecessary. It contends that carriers and conferences are sufficiently made responsible for the content of their tariffs by the 1984 Act and other tariff regulations. OCWG likewise contends that the certification serves no useful purpose.

The Commission nonetheless concludes that a certification

requirement serves a useful purpose under the 1984 Act, as amended by OSRA. At the very least it serves as notice to a carrier or conference that the information in its tariffs must be correct and remain unaltered. Indeed, given the decision to permit off-line data retention, this certification may take on even greater significance. However, the Commission concludes that a written certification by an officer filed with it may not be necessary. Instead, the purposes of the proposed requirement can be met by publishing a similar statement with the carrier's tariff record. Accordingly, § 520.4(c) has been amended to include the requisite statement.

ETM notes that paragraph (d) of the proposed rule requires carriers to provide the Commission "reasonable access" to their automated systems. It states, however, that systems will require periodic routine maintenance, software upgrades and other actions that may affect accessibility, and, as such, requests that the Commission define "reasonable access." The Commission recognizes that publication systems may require some down-time for the types of activities envisioned by ETM. However, we do not believe that "reasonable access" needs to be further limited or defined, at this point in time. If problems arise during practice, the Commission can address them in a subsequent rulemaking proceeding.

Section 520.11 Non-Vessel-Operating Common Carriers

CBI maintains that the requirement for cross-referencing on NVOCC bills of lading under carrier-to-carrier agreements should be eliminated, because there is no value-added service and it complicates OTI operations. However, the Commission is unable to make such a change at this time. The issue may be more appropriately raised in any overall review of the co-loading rules that may occur once OSRA's implementing regulations are complete.

AIFA asserts that NVOCCs need flexibility to publish extremely simple electronic tariffs in a format best suited to their individual operations. It suggests further that the Commission should conduct a rulemaking to determine whether a full or partial exemption from tariff filing is warranted for NVOCCs. DCL likewise contends that the true solution is an NVOCC exemption from tariff filing. The Commission believes that any such exemption is beyond the scope of this rulemaking proceeding. To the extent that AIFA or others seek to invoke the exemption authority under section 16 of the 1984 Act, as modified by OSRA,

they should file a petition for exemption with appropriate justification.

Section 520.12 Time/Volume Rates

OCWG endorses the proposed changes in §§ 520.12(c) and (e), as codifying existing Commission practice. It suggests, however, that language should be added to paragraph (e) to clarify that carriers are not precluded from rerating cargo in the event a shipper fails to fulfill the minimum volume requirement of a time/volume rate. The Commission agrees, and has added appropriate language to paragraph (e).

Section 520.13 Exemptions

HHGFAA points out an apparent clerical error in § 520.13(c)(5), that perpetuates a similar error in 46 C.F.R. § 514.3(b)(5). It notes that the intent of the exemption was to exempt "civilian" household goods moving under the International Household Goods Program administered by the General Services Administration, and, therefore, the adjective "military" should be deleted. The Commission agrees with this suggestion and has accordingly amended § 520.13(c)(5) in a manner consistent with HHGFAA's comment.

NAI requests that the Commission clarify that the exemption in § 520.13(c)(3) 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 ("DOD"). NAI avers that this "clarification" is consistent with the Commission's intent when it originally adopted the exemption in 1981. Regardless of the merit to NAI's position in this matter, the Commission could not make such a change without first according an opportunity for comment to all potentially affected parties, including DOD.

Section 520.14 Special Permission

ETM suggests that the Commission should define the terms "reasonable promptness" in paragraph (b) and "prompt" in paragraph (d). The Commission does not agree. We need a certain degree of flexibility in addressing special permission applications. The Commission generally allows two weeks as reasonable, but does not wish to be constrained by a prescribed time limit.

European Inland Movements

Another issue raised by the notice of proposed rulemaking was the treatment of inland portions of through movements to Europe. The Commission

noted that the European Commission ("E.C.") prohibited conference tariffs which cover the movement of cargo to inland points in Europe and questioned whether individual tariffs of conference members covering European inland transport for the same customer utilizing a conference tariff for the U.S.-Europe ocean movement, must be published under the Act. The Commission noted that such publishing would appear consistent with the statutory requirements of the Act, to the extent they establish the European inland portion of a through rate charged by a carrier in a U.S.-Europe intermodal movement.

CENSA believes that the elimination of many of the onerous requirements in the proposed rule would reduce the burdens on carriers publishing foreign inland rates. Alternatively, it suggests that the Commission exempt foreign inland rates from these requirements. OCWG likewise believes that if its proposals are adopted, they would substantially reduce the burden of filing foreign inland rates. If its recommendations are not adopted as a whole, OCWG suggests that the Commission adopt one or more with respect to foreign inland rates, e.g., exempt them from the 5-year on-line history requirement or eliminate the requirement that foreign locations appear in gazetteers.

P&O suggests that the issue more appropriately should be whether the FMC should continue to require the publication of inland rates outside of the United States. Nonetheless, it agrees with the Commission that a carrier's inland rates to/from points in Europe are required to be published under the Act. It notes that under E.C. requirements, carriers will be required to make inland rate tariffs available to shippers and presumes that they will have to maintain schedules of such charges. P&O concludes that the publication of European inland rates would not appear to be overly burdensome or expensive and urges the Commission not to consider any exemption as part of this rulemaking.

TACA notes that the E.C. "obligation" (to make tariffs available on request to transport users at reasonable cost or available for examination at offices of shipping lines) applies only to vessel-operating carrier members of liner conferences. It also notes that the failure of a single member of a conference to comply with the obligation could result in the withdrawal of the block exemption afforded the conference as a whole. TACA further suggests that the public tariff availability requirements of the obligation are similar to the

requirements imposed by the 1961 amendments to the Shipping Act, 1916 (P.L. 87-346, 75 Stat. 762).

TACA proposes, therefore, that the Commission should adopt the identical requirements of the obligation with respect to public access to tariff matter covering European inland transport of shipments, with a prior or subsequent movement by sea between ports in Europe and the U.S. It asserts that this would completely harmonize E.C. and U.S. regulatory requirements, ensure unfettered public access to complete and accurate relevant tariff material, and would substantially ease the burdens and expenses of the proposed rules.

TACA's suggestion that the Commission accept tariff publication for European inland movements in the same manner as required under the E.C. obligation (i.e., available on request or at the offices of a carrier) is a substantial deviation from the tariff publishing requirements under the 1984 Act, as amended by OSRA. At the very least, such a procedure could only be adopted after a full and complete exemption hearing pursuant to section 16 of the 1984 Act. It would further appear that the many substantive changes made to the proposed rule will alleviate many of TACA's concerns with respect to the burdens of tariff publishing for these particular movements. In addition, the Commission has recently granted TACA and the U.S. South Europe Conference special permission to cross-reference the tariffs of its individual members for European inland movements, and the Commission will continue this practice after May 1, 1999.

Transition Problems

Another issue that has been raised by several commenters is their ability to implement new private automated tariff systems by May 1, 1999. P&O notes that it is unclear whether the transition from ATFI to private systems can take effect without thirty (30) days advance publication of the system and contends that, as a result, carriers would in effect have 30 days to put their tariffs in place. OCWG raises similar concerns and notes that a waiver of the 30 days' notice requirement would only provide one additional month in which to design, develop, test and populate automated systems. CENSA avers that only a substantial reduction in the requirements will allow carriers to have their systems in place by May 1, 1999.

In light of these concerns, commenters have suggested that the Commission keep ATFI in place for various time periods, to permit a smooth transition to private systems. COSCO and P&O suggest sixty (60) days; OCWG

would extend ATFI until December 31, 1999; and ETM would have ATFI continue until such time as the new systems are ready.

The Commission declines to accept this invitation to extend ATFI. In this regard, we note that the various changes made to the proposed rule should make the transition to private tariff systems considerably easier. In addition, the Commission will give carriers an additional 30 days to meet the requirements of the rule by issuing blanket special permission for new tariffs with no increases to go into effect without the 30 days' advance notice requirement. Carriers should thus be able to meet the reduced burdens occasioned by the rule by May 1, 1999.

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 amendments will either have no effect on small entities, or in the case where the amendments are likely to impact small entities, the economic impact will be de minimis. The comments received did not dispute the Commission's intention to so certify, and, therefore, the certification is continued.

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

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

List of Subjects in 46 CFR Part 520

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

For the reasons discussed in the preamble, the Federal Maritime Commission adds Part 520 to Subchapter B, Chapter IV of 46 CFR as follows:

Add part 520 to read as follows:

PART 520—CARRIER AUTOMATED TARIFFS

- Sec.
520.1 Scope and purpose.
520.2 Definitions.
520.3 Publication responsibilities.

- 520.4 Tariff contents.
520.5 Standard tariff terminology.
520.6 Retrieval of information.
520.7 Tariff limitations.
520.8 Effective dates.
520.9 Access to tariffs.
520.10 Integrity of tariffs.
520.11 Non-vessel-operating common carriers.
520.12 Time/Volume rates.
520.13 Exemptions and exceptions.
520.14 Special permission.
520.91 OMB control number assigned pursuant to the Paperwork Reduction Act.

Appendix A to Part 520—Standard Terminology and Codes

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

§ 520.1 Scope and purpose.

(a) *Scope.* The regulations of this part govern the publication of tariffs in automated systems by common carriers and conferences in the waterborne foreign commerce of the United States. They cover the transportation of property by such carriers, including through transportation with inland carriers. They implement the tariff publication requirements of section 8 of the Shipping Act of 1984 ("Act"), as modified by the Ocean Shipping Reform Act of 1998 and section 424 of Public Law 105-258.

(b) *Purpose.* The requirements of this part are intended to permit:

- (1) Shippers and other members of the public to obtain reliable and useful information concerning the rates and charges that will be assessed by common carriers and conferences for their transportation services;
- (2) Carriers and conferences to meet their publication requirements pursuant to section 8 of the Act;
- (3) The Commission to ensure that carrier tariff publications are accurate and accessible and to protect the public from violations by carriers of section 10 of the Act; and
- (4) The Commission to review and monitor the activities of controlled carriers pursuant to section 9 of the Act.

§ 520.2 Definitions.

The following definitions shall apply to this part:

Act means the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998.

Amendment means any change, alteration, correction or modification of an existing tariff.

Assessorial charge means the amount that is added to the basic ocean freight rate.

BTCL means the Commission's Bureau of Tariffs, Certification and Licensing or its successor bureau.

Bulk cargo means cargo that is loaded and carried in bulk without mark or count in a loose unpackaged form, having homogeneous 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.

Co-loading means the combining of cargo by two or more NVOCCs for tendering to an ocean common carrier under the name of one or more of the NVOCCs.

Combination rate means a rate for a shipment moving under intermodal transportation which is computed by the addition of a TRI, and an inland rate applicable from/to inland points not covered by the TRI.

Commission means the Federal Maritime Commission.

Commodity description means a comprehensive description of a commodity listed in a tariff, including a brief definition of the commodity.

Commodity description number means a number that may be used to identify a commodity description.

Commodity index means an index of the commodity descriptions contained in a tariff.

Commodity rate means a rate for shipping to or from specific locations a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.

Common carrier means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

- (1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and
- (2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to the carriage of those commodities.

Conference means an agreement between or among two or more ocean common carriers which provides for the fixing of and adherence to uniform tariff

rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members, but the term does not include joint service, consortium, pooling, sailing, or transshipment agreements.

Consignee means the recipient of cargo from a shipper; the person to whom a transported commodity is to be delivered.

Container means a demountable and reusable freight-carrying unit designed to be transported by different modes of transportation and having construction, fittings, and fastenings able to withstand, without permanent distortion or additional exterior packaging or containment, the normal stresses that apply on continuous all-water and intermodal transportation. The term includes dry cargo, ventilated, insulated, refrigerated, flat rack, vehicle rack, liquid tank, and open-top containers without chassis, but does not include crates, boxes or pallets.

Controlled carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by an agency thereof, or by any public or private person controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier.

Effective date means the date upon which a published tariff or tariff element is scheduled to go into effect. Where there are multiple publications to a tariff element on the same day, the last element published with the same effective date is the one effective for that day.

Expiration date means the last day after which the entire tariff or tariff element is no longer in effect.

Foreign commerce means that commerce under the jurisdiction of the Act.

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 engineered wood products.

Harmonized Code means the coding provisions of the Harmonized System.

Harmonized System means the Harmonized Tariff Schedule of the United States ("U.S. HTS"), based on the international Harmonized System, administered by the U.S. Customs Service for the U.S. International Trade Commission, and Schedule B, administered by the U.S. Census Bureau.

Inland point means any city and associated state/province, country, U.S. ZIP code, or U.S. ZIP code range, which lies beyond port terminal areas. (A city may share the name of a port: the immediate ship-side and terminal area is the port, but the rest of the city is considered an inland point.)

Inland rate means a rate specified from/to an ocean port to/from an inland point, for specified modes of overland transportation.

Inland rate table means a structured matrix of geographic inland locations (points, postal codes/postal code ranges, etc.) on one axis and transportation modes (truck, rail, etc.) on the other axis, with the inland rates specified at the matrix row and column intersections.

Intermodal transportation means continuous through transportation involving more than one mode of service (e.g., ship, rail, motor, air), for pickup and/or delivery at a point beyond the area of the port at which the vessel calls. The term "intermodal transportation" can apply to "through transportation (at through rates)" or transportation on through routes using combination rates.

Joint rates means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers.

Local rates means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.

Location group means a logical collection of geographic points, ports, states/provinces, countries, or combinations thereof, which is primarily used to identify, by location group name, a group that may represent tariff origin and/or destination scope and TRI origin and/or destination.

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.

Loyalty contract means a contract with an ocean common carrier or agreement by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or agreement and the contract provides for a deferred rebate arrangement.

Ocean common carrier means a vessel-operating common carrier.

Ocean transportation intermediary means an ocean freight forwarder or a non-vessel-operating common carrier.

For purposes of this part,

(1) *Ocean freight forwarder* means a person that—

(i) In the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) Processes the documentation or performs related activities incident to those shipments; and

(2) *Non-vessel-operating common carrier* ("NVOCC") means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

Open rate means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rate on such commodity or commodities.

Organization name means an entity's name on file with the Commission and for which the Commission assigns an organization number.

Organization record means information regarding an entity, including its name, address, and organization type.

Origin scope means a location group defining the geographic range of cargo origins covered by a tariff.

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

Point of rest means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading.

Port means a place at which a common carrier originates or terminates

(by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

Project rates means rates applicable to the transportation of materials and equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation and public utility or public service purpose, including disaster relief projects.

Proportional rates means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement.

Publication date means the date a tariff or tariff element is published in a carrier's or conference's tariff.

Publisher means an organization authorized to publish or amend tariff information.

Rate means a price stated in a tariff for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated effective date or within a defined time frame.

Retrieval means the process by which a person accesses a tariff via dial-up telecommunications or a network link and interacts with the carrier's or publisher's system on a transaction-by-transaction basis to retrieve published tariff matter.

Rules means the stated terms and conditions set by the tariff owner which govern the application of tariff rates, charges and other matters.

Scope means the location group(s) (geographic groupings(s)) listing the ports or ranges of ports to and from which the tariff's rates apply.

Shipment means all of the cargo carried under the terms of a single bill of lading.

Shipper means:

- (1) A cargo owner;
- (2) The person for whose account the ocean transportation is provided;
- (3) The person to whom delivery is to be made;
- (4) A shipper's association; or
- (5) An NVOCC that accepts responsibility for payment of all charges applicable under the tariff or service contract.

Shippers' association means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

Special permission means permission, authorized by the Commission, for certain tariff publications that do not conform with applicable regulations,

usually involving effectiveness on less than statutory notice.

Tariff means a publication containing the actual rates, charges, classifications, rules, regulations and practices of a common carrier or a conference of common carriers. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier or conference and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

Tariff number means a unique 3-digit number assigned by the publisher to distinguish it from other tariffs. Tariffs may be identified by the 6-digit organization number plus the user-assigned tariff number (e.g., 999999-001) or a Standard Carrier Alpha Code ("SCAC") plus the user-assigned tariff number.

Tariff rate item ("TRI") means a single freight rate, in effect on and after a specific date or for a specific time period, for the transportation of a stated cargo quantity, which may move from origin to destination under a single specified set of transportation conditions, such as container size or temperature.

TRI number means a number that consists of the numeric commodity code, if any, and a unique numeric suffix used to differentiate TRIs within the same commodity description. TRI numbers are not required in systems that do not use numeric commodity coding.

Through rate means the single amount charged by a common carrier in connection with through transportation.

Through transportation means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

Thru date means the date after which an amendment to a tariff element is designated by the publisher to be unavailable for use and the previously effective tariff element automatically goes back into effect.

Time/volume rate means a rate published in a tariff which is conditioned upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

Trade name means a name used for conducting business, but which is not necessarily its legal name. This is also

known as a "d/b/a" (doing business as) name.

Transshipment means the physical transfer of cargo from a vessel of one carrier to a vessel of another in the course of all-water or through transportation, where at least one of the exchanging carriers is an ocean common carrier subject to the Commission's jurisdiction.

§ 520.3 Publication responsibilities.

(a) *General.* Unless otherwise exempted by § 520.13, all common carriers and conferences shall keep open for public inspection, in automated tariff systems, tariffs showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established.

(b) *Conferences.* Conferences shall publish, in their automated tariff systems, rates offered pursuant to independent action by their members and may publish any open rates offered by their members. Alternatively, open rates may be published in individual tariffs of conference members.

(c) *Agents.* Common carriers or conferences may use agents to meet their publication requirements under this part.

(d) *Notification.* Each common carrier and conference shall notify BTCL, prior to the commencement of common carrier service pursuant to a published tariff, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs, by electronically submitting Form FMC-1 via the Commission's website at www.fmc.gov. Any changes to the above information shall be immediately transmitted to BTCL. The Commission will provide a unique organization number to new entities operating as common carriers or conferences in the U.S. foreign commerce.

(e) *Location of tariffs.* The Commission will publish on its website, www.fmc.gov, a list of the locations of all carrier and conference tariffs. The Commission will update this list on a periodic basis.

§ 520.4 Tariff contents.

(a) *General.* Tariffs published pursuant to this part shall:

- (1) State the places between which cargo will be carried;
- (2) List each classification of cargo in use;
- (3) State the level of ocean transportation intermediary, as defined

by section 3(17)(A) of the Act, compensation, if any, to be paid by a carrier or conference;

(4) State separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part of the aggregate of the rates or charges;

(5) Include sample copies of any bill of lading, contract of affreightment or other document evidencing the transportation agreement;

(6) Include copies of any loyalty contract, omitting the shipper's name;

(7) Contain an organization record, tariff record, and tariff rules; and

(8) For commodity tariffs, also contain commodity descriptions and tariff rate items.

(b) *Organization record.* Common carriers' and conferences' organization records shall include:

(1) Organization name;

(2) Organization number assigned by the Commission;

(3) Agreement number, where applicable;

(4) Organization type (e.g., ocean common carrier (VOCC), conference (CONF), non-vessel-operating common carrier (NVOCC) or agent);

(5) Home office address and telephone number of firm's representative;

(6) Names and organization numbers of all affiliates to conferences or agreements, including trade names; and

(7) The publisher, if any, used to maintain the organization's tariffs.

(c) *Tariff record.* The tariff record for each tariff shall include:

(1) Organization number and name, including any trade name;

(2) Tariff number;

(3) Tariff title;

(4) Tariff type (e.g., commodity, rules, equipment interchange, or bill of lading);

(5) Contact person and address;

(6) Default measurement and currency units;

(7) Origination and destination scope; and

(8) A statement certifying that all information contained in the tariff is true and accurate and no unlawful alterations will be permitted.

(d) *Tariff rules.* Carriers and conferences shall publish in their tariffs any rule that affects the application of the tariff.

(e) *Commodity descriptions.* (1) For each separate commodity in a tariff, a distinct numeric code may be used. Tariff publishers are not required to use any numeric code to identify commodities, but should they choose to do so, they are encouraged to use the

U.S. Harmonized Tariff Schedule ("U.S. HTS") for both the commodity coding and associated terminology (definitions).

(2) If a tariff publisher uses a numeric code to identify commodities, the following commodity types shall be preceded by their associated 2-digit prefixes, with the remaining digits at the publisher's option:

(i) Mixed commodities—"99";

(ii) Projects—"98"; and

(iii) non-commodities, e.g., "cargo, n.o.s.," "general cargo," or "freight-all kinds"—"00".

(3) *Commodity index.* (i) Each commodity description created under this section shall have at least one similar index entry which will logically represent the commodity within the alphabetical index. Publishers are encouraged, however, to create multiple entries in the index for articles with equally valid common use names, such as, "Sodium Chloride," "Salt, common," etc.

(ii) If a commodity description includes two or more commodities, each included commodity shall be shown in the index.

(iii) Items, such as "mixed commodities," "projects" or "project rates," "n.o.s." descriptions, and "FAK," shall be included in the commodity index.

(f) *Tariff rate items.* A tariff rate item ("TRI") is the single freight rate in effect for the transportation of cargo under a specified set of transportation conditions. TRIs must contain the following:

(1) Brief commodity description;

(2) TRI number (optional);

(3) Publication date;

(4) Effective date;

(5) Origin and destination locations or location groups;

(6) Rate and rate basis; and

(7) Service code.

(g) *Location groups.* In the primary tariff, or in a governing tariff, a publisher may define and create groups of cities, states, provinces and countries (e.g., location groups) or groups of ports (e.g., port groups), which may be used in the construction of TRIs and other tariff objects, in lieu of specifying particular place names in each tariff item, or creating multiple tariff items which are identical in all ways except for place names.

(h) *Inland rate tables.* If a carrier or conference desires to provide intermodal transportation to or from named points/postal regions at combination rates, it shall clearly and accurately set forth the applicable charges in an "Inland Rate Tables" section. An inland rate table may be

constructed to provide an inland distance which is applied to a per mile rate to calculate the inland rate.

(i) *Shipper requests.* Conference tariffs shall contain clear and complete instructions, in accordance with the agreement's provisions, stating where and by what method shippers may file requests and complaints and how they may engage in consultation pursuant to section 5(b)(6) of the Act, together with a sample rate request form or a description of the information necessary for processing the request or complaint.

(j) *Inland divisions.* Common carriers are not required to state separately or otherwise reveal in tariffs the inland division of a through rate.

§ 520.5 Standard tariff terminology.

(a) *Approved codes.* The Standard Terminology Appendix contains codes for rate bases, container sizes, service, etc., and units for weight, measure and distance. They are intended to provide a standard terminology baseline for tariffs to facilitate retriever efficiency. Tariff publishers may use additional codes, if they are clearly defined in their tariffs.

(b) *Geographic names.* Tariffs should employ locations (points) that are published in the National Imagery and Mapping Agency ("NIMA") gazetteer or the Geographic Names Information System ("GNIS") developed by the U.S. Geological Survey. Ports published or approved for publication in the World Port Index (Pub. No. 150) should also be used in tariffs. Tariff publishers may use geographic names that are currently in use and have not yet been included in these publications.

§ 520.6 Retrieval of information.

(a) *General.* Tariffs systems shall present retrievers with the ability to:

(1) Search for commonly understood tariff objects (e.g., commodities, origins, destinations, etc.) without restricting such search to a specific tariff;

(2) Search a tariff for a rate on the basis of origin, destination and commodity;

(3) Employ a tariff selection option; or

(4) Select an object group (e.g., rules, locations, groups, etc.) within a particular tariff.

(b) *Search capability.* Tariffs shall provide the capability to search for tariff matter by non-case sensitive text search. Text search matches for commodity descriptions should result in a commodity or commodity index list.

(c) *Commodities and TRIs.* Retriever selection of a specific commodity from a commodity index list shall display the commodity description and provide an option for searching for a rate (e.g., on

the basis of origin/destination) or a TRI list, if multiple TRIs are in effect for the commodity.

(d) *Object groups.* Retriever selection of a specific object group shall result in a list of the objects within the group or present a text search mechanism to allow location of an object within the group. For example, selection of the rules object group would present a list of the rules or a text search mechanism for locating specific terms or phrases within the rules.

(e) *Basic ocean freight.* The minimum rate display for tariffs shall consist of the basic ocean freight rate and a list of all assessorial charges that apply for the retriever-entered shipment parameters. If other rules or charges may be applicable to a shipment under certain circumstances, the tariff shall so indicate.

(f) *Displays.* All displays of individual tariff matter shall include the publication date, effective date, amendment code (as contained in Appendix A of this part) and object name or number. When applicable, a thru date or expiration date shall also be displayed. Use of "S" as an amendment code shall be accompanied by a Commission issued special use number.

§ 520.7 Tariff limitations.

(a) *General.* Tariffs published pursuant to this part shall:

- (1) Be clear and definite;
- (2) Use English as the primary textual language;
- (3) Not contain cross-references to any other rate tariffs, except:
 - (i) A tariff of general applicability maintained by that same carrier or conference,
 - (ii) The individual tariffs of members of a non-conference agreement to enter into time/volume rates may cross-reference the tariffs of other members for purposes of said time/volume rates, and
 - (iii) Multiple common tariffs of a conference agreement to enter into time/volume rates may cross-reference their own multiple conference tariffs for purposes of said time/volume rates; and
- (4) Not duplicate or conflict with any other tariff publication.

(b) *Notice of cancellation.* Carriers and conferences shall inform BTCL, in writing, whenever a tariff is canceled and the effective date of that cancellation.

(c) *Applicable rates.* The rates, charges, and rules applicable to any given shipment shall be those in effect on the date the cargo is received by the common carrier or its agent including originating carriers in the case of rates for through transportation.

(d) *Minimum quantity rates.* When two or more TRIs are stated for the same commodity over the same route and under similar conditions, and the application is dependent upon the quantity of the commodity shipped, the total freight charges assessed against the shipment may not exceed the total charges computed for a larger quantity, if the TRI specifying a required minimum quantity (either weight or measurement; per container or in containers) will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower TRI if the weight or measurement declared for rating purposes is increased to the minimum level.

(e) *Green salted hides.* The shipping weight for green salted hides shall be either a scale weight or a scale weight minus a deduction, which amount and method of computation are specified in the commodity description. The shipper must furnish the carrier a weight certificate or dock receipt from an inland common carrier for each shipment at or before the time the shipment is tendered for ocean transportation.

(f) *Conference situations.* (1) New members of a conference shall cancel any independent tariffs applicable to the trades served by the conference, within ninety (90) days of membership in the conference. Individual conference members may publish their own separate open rate tariffs. Admission to the conference may be effective on the date notice is published in the conference tariff.

(2) New conference agreements have ninety (90) days within which to publish a new tariff.

(g) *Overcharge claims.* (1) No tariff may limit the filing of overcharge claims with a common carrier to a period of less than three (3) years from the accrual of the cause of action.

(2) The acceptance of any overcharge claim may not be conditioned upon the payment of a fee or charge.

(3) No tariff may require that overcharge claims based on alleged errors in weight, measurement or description of cargo be filed before the cargo has left the custody of the common carrier.

(h) *Returned cargo.* When a carrier or conference offers the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the TRI assessed on the original movement, and such TRI is lower than the prevailing TRI:

(1) The return shipment must occur within one (1) year;

(2) The return movement must be made over the line of the same common carrier performing the original movement, except in the use of a conference tariff, where return may be made by any member line when the original shipment was carried under the conference tariff; and

(3) A copy of the original bill of lading showing the rate assessed must be presented to the return common carrier.

§ 520.8 Effective dates.

(a) *General.* (1) No new or initial rate, charge, or change in an existing rate, that results in an increased cost to a shipper may become effective earlier than thirty (30) calendar days after publication.

(2) An amendment which deletes a specific commodity and applicable rate from a tariff, thereby resulting in a higher "cargo n.o.s." or similar general cargo rate, is a rate increase requiring a 30-day notice period.

(3) Rates for the transportation of cargo for the U.S. Department of Defense may be effective upon publication.

(4) Changes in rates, charges, rules, regulations or other tariff provisions resulting in a decrease in cost to a shipper may become effective upon publication.

(b) *Amendments.* The following amendments may take effect upon publication:

(1) Those resulting in no change in cost to a shipper;

(2) The canceling of a tariff due to cessation of all service by the carrier between the ports or points covered by the tariff;

(3) The addition of a port or point to a previously existing origin or destination grouping; or

(4) Changes in charges for terminal services, canal tolls, additional charges, or other provisions not under the control of the common carriers or conferences, which merely acts as a collection agent for such charges and the agency making such changes does so without notifying the tariff owner.

(c) *Controlled carriers.* Published rates by or for controlled carriers shall be governed by the procedures set forth in part 565 of this chapter.

§ 520.9 Access to tariffs.

(a) *Methods to access.* Carriers and conferences shall provide access to their published tariffs, 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.

(b) *Dial-up connection via PSTN.* (1) This connection option requires that tariffs 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 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.

(c) *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 URL Internet address (e.g., <telnet://tariffsrus> or <telnet://1.2.3.4>), for Telnet session access over the Internet.

(2) Carriers or conferences shall ensure that their Internet service providers provide static Internet addresses.

(d) *Commission access.* Commission telecommunications access to systems must include connectivity via a dial-up connection over PSTNs 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 tariff initiated by the FMC.

(e) *Limitations.* (1) Tariffs must be made available to any person without time, quantity, or other limitations.

(2) Carriers are not required to provide remote terminals for access under this section.

(3) Carriers and conferences may assess a reasonable fee for access to their tariff publication systems and such fees shall not be discriminatory.

(4) Tariff publication systems shall provide user instructions for access to tariff information.

(f) *Federal agencies.* Carriers and conferences may not assess any access charges against the Commission or any other Federal agency.

(g) *User identifications.* Carriers and conferences shall provide the Commission with the documentation it requires and the number of user identifications and passwords it requests to facilitate the Commission's access to their systems, if they require such identifications and passwords.

§ 520.10 Integrity of tariffs.

(a) *Historical data.* Carriers and conferences shall maintain the data that appeared in their tariff publication systems for a period of five (5) years from the date such information is superseded, canceled or withdrawn, and shall provide on-line access to such data for two (2) years. After two (2) years, such data may be retained on-line or in other electronic form, and shall be made available to any person or the Commission upon request in a reasonable period of time. Carriers and conferences may charge a reasonable fee for the provision of historical data, not to exceed the fees for obtaining such data on-line. No fee shall apply to federal agencies.

(b) *Access date capability.* Each tariff shall provide the capability for a retriever to enter an access date, i.e., a specific date for the retrieval of tariff data, so that only data in effect on that date would be directly retrievable. This capability would also align any rate adjustments and assessorial charges that were effective on the access date for rate calculations and designation of applicable surcharges. The access date shall also apply to the alignment of tariff objects for any governing tariffs.

(c) *Periodic review.* The Commission will periodically review published tariff systems and will prohibit the use of any system that fails to meet the requirements of this part.

(d) *Access to systems.* Carriers and conferences shall provide the Commission reasonable access to their automated systems and records in order to conduct reviews.

§ 520.11 Non-vessel-operating common carriers.

(a) *Financial responsibility.* An ocean transportation intermediary that operates as a non-vessel-operating common carrier shall state in its tariff publication:

(1) That it has furnished the Commission proof of its financial responsibility in the manner and amount required by part 515 of this chapter;

(2) The manner of its financial responsibility;

(3) Whether it is relying on coverage provided by a group or association to which it is a member;

(4) The name and address of the surety company, insurance company or guarantor issuing the bond, insurance policy, or guaranty;

(5) The number of the bond, insurance policy or guaranty; and

(6) Where applicable, the name and address of the group or association providing coverage.

(b) *Agent for service.* Every NVOCC not in the United States shall state the name and address of the person in the United States designated under part 515 of this chapter as its legal agent for service of process, including subpoenas. The NVOCC shall further state that in any instance in which the designated legal agent cannot be served because of death, disability or unavailability, the Commission's Secretary will be deemed to be its legal agent for service of process.

(c) *Co-Loading.* (1) NVOCCs shall address the following situations in their tariffs:

(i) If an NVOCC does not tender cargo for co-loading, this shall be noted in its tariff.

(ii) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement shall be noted in the tariff.

(iii) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(2) *Documentation requirements.* An NVOCC which tenders cargo to another NVOCC for co-loading, whether under a shipper-to-carrier or carrier-to-carrier relationship, shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

(3) *Co-loading rates.* No NVOCC may offer special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shippers.

§ 520.12 Time/Volume rates.

(a) *General.* Common carriers or conferences may publish in their tariffs rates which are conditioned upon the receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(b) *Publication requirements.* (1) All rates, charges, classifications rules and practices concerning time/volume rates must be set forth in the carrier's or conference's tariff.

(2) The tariff shall identify:

- (i) The shipment records that will be maintained to support the rate; and
- (ii) The method to be used by shippers giving notice of their intention to use a time/volume rate prior to tendering any shipments under the time/volume arrangement.

(c) *Accepted rates.* Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment. If no shipper gives notice within 30 days of publication, the time/volume rate may be canceled.

(d) *Records.* Shipper notices and shipment records supporting a time/volume rate shall be maintained by the offering carrier or conference for at least 5 years after a shipper's use of a time/volume rate has ended.

(e) *Liquidated damages.* Time/volume rates may not impose or attempt to impose liquidated damages on any shipper that moves cargo under the rate. Carriers and agreements shall rerate cargo moved at the applicable tariff rate, if a shipper fails to meet the requirements of the time/volume offer.

§ 520.13 Exemptions and exceptions.

(a) *General.* Exemptions from the requirements of this part are governed by section 16 of the Act and Rule 67 of the Commission's Rules of Practice and Procedure, § 502.67 of this chapter.

(b) *Services.* The following services are exempt from the requirements of this part:

(1) *Equipment interchange agreements.* Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers.

(2) *Controlled carriers in foreign commerce.* A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled carriers when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(ii) The controlled carrier operates in a trade served exclusively by controlled carriers.

(3) *Terminal barge operators in Pacific Slope states.* Transportation provided by terminal barge operators in Pacific Slope states barging containers and containerized cargo by barge between points in the United States are exempt from the tariff publication requirements of Act and the rules of this part, where:

(i) The cargo is moving between a point in a foreign country or a non-

contiguous State, territory, or possession and a point in the United States;

(ii) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading; and

(iii) Such terminal operator is a Pacific Slope state, municipality, or other public body or agency subject to the jurisdiction of the Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

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

(1) *Bulk cargo, forest products, etc.* This part does not apply to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper and paper waste. Carriers or conferences which voluntarily publish tariff provisions covering otherwise exempt transportation thereby subject themselves to the requirements of this part, including the requirement to adhere to the tariff provisions.

(2) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

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

(4) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Transportation Management Command ("MTMC") and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed in paper format with the Commission as soon as it becomes available.

(5) *Used household goods—General Services Administration.* Transportation of used 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.

(d) *Services involving foreign countries.* The following transportation services involving foreign countries are not subject to the requirements of this part:

(1) *Between foreign countries.* This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to

another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(2) *Between Canada and U.S.* The following services are exempt from the filing requirements of the Act and the rules of this part:

(i) *Prince Rupert and Alaska. (A) Vehicles.* Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(1) Carriage of property is limited to vehicles;

(2) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(3) The vessel operator does not move the vehicles on or off the ship; and

(4) The common carrier does not participate in any joint rate establishing through routes or in any other type of agreement with any other common carrier.

(B) *Passengers.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada, only if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(ii) *British Columbia and Puget Sound Ports; rail cars. (A) Through rates.* Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, only if the cargo does not originate in or is not destined to foreign countries other than Canada, but only if:

(1) The through rates are filed with the Surface Transportation Board and/or the Canadian Transport Commission; and

(2) Certified copies of the rate divisions and of all agreements, arrangements or concurrences, entered into in connection with the transportation of such cargo, are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(B) *Bulk; port-to-port.* Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, only if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers, except that:

(1) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada; and

(2) The carrier will remain subject to all other provisions of the Act.

(iii) *Incan Superior, Ltd.*

Transportation by Incan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario, and Superior, Wisconsin, only if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

(A) The through rates are filed with the Surface Transportation Board and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

§ 520.14 Special permission.

(a) *General.* Section 8(d) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than the statutory notice. Section 9(c) of the Act authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be submitted with reasonable promptness after publishing the defective tariff material.

(c) *Application.* (1) Applications for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by

the common carrier, conference or agent for publishing. Every such application shall be submitted to BTCL and be accompanied by a filing fee of \$179.

(2) Applications for special permission shall be made only by letter, except that in emergency situations, application may be made by telephone or facsimile if the communication is promptly followed by a letter and the filing fee.

(3) Applications for special permission shall contain the following information:

(i) Organization name, number and trade name of the conference or carrier;

(ii) Tariff number and title; and

(iii) The rate, commodity, or rules related to the application, and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(d) *Implementation.* The authority granted by the Commission shall be used in its entirety, including the prompt publishing of the material for which permission was requested. Applicants shall use the special case number assigned by the Commission with the symbol "S".

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

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

Appendix A to Part 520—Standard Terminology and Codes

I.—PUBLISHING/AMENDMENT TYPE CODES

Code	Definition
A	Increase.
C	Change resulting in neither increase nor decrease in rate or charges.
E	Expiration (also use "A" if the deletion results in the application of a higher "cargo, n.o.s." or similar rate).
I	New or initial matter.
K	Rate or change filed by a controlled common carrier member of a conference under independent action.
M	Transportation of U.S. Department of Defense cargo by American-flag common carriers.
P	Addition of a port or point.
R	Reduction.

I.—PUBLISHING/AMENDMENT TYPE CODES—Continued

Code	Definition
S	Special Case matter filed pursuant to Special Permission, Special Docket or other Commission direction, including filing of tariff data after suspension, such as for controlled carriers. Requires "Special Case Number."
T	Terminal Rates, charges or provisions or canal tolls over which the carrier has no control.
W	Withdrawal of an erroneous publication on the same publication date.
X	Exemption for controlled carrier data in trades served exclusively by controlled carriers or by controlled carriers of states receiving most-favored-nation treatment.

II.—UNIT CODES

A. Weight Units:	
Kilograms	KGS
1000 Kgs (Metric Ton)	KT
Pounds	LBS
Long Ton (2240 LBS)	LT
Short Ton (2000 LBS)	ST
B. Volume Units:	
Cubic meter	CBM
Cubic feet	CFT
C. Length Units:	
Centimeters	CM
Feet	FT
Inches	IN
Meters	M
D. Measure Board Feet:	
Thousand Board Feet	MBF
E. Distance Units:	
Kilometers	KM
Miles	MI
F. Rate Basis:	
Ad Valorem	AV
Each	EA
Lump Sum	LS
Measure	M
Thousand Board Feet	MBF
Per Container	PC
Weight	W
Weight/Measure	WM
G. Container Size Codes:	
Not Applicable	N/A
Less Than Load	LTL
10 FT Any Height	10X
20 FT 8'6"	20
20 FT 9'0" High Cube	20A
20 FT 9'6" High Cube	20B
20 FT 8'0"	20S
20 FT Any Height	20X
24 FT 8'6"	24
24 FT 9'0" High Cube	24A
24 FT 9'6" High Cube	24B
24 FT 8'0"	24S
24 FT Any Height	24X
35 FT 8'6"	35
35 FT 9'0" High Cube	35A
35 FT 9'6" High Cube	35B
35 FT 8'0"	35S
35 FT Any Height	35X
40 FT 8'6"	40

II.—UNIT CODES—Continued

40 FT 9'0" High Cube	40A
40 FT 9'6" High Cube	40B
40 FT 8'0"	40S
40 FT Any Height	40X
42 FT 8'6"	42
42 FT 9'0" High Cube	42A
42 FT 9'6" High Cube	42B
42 FT 8'0"	42S
42 FT Any Height	42X
43 FT 8'6"	43
43 FT 9'0" High Cube	43A
43 FT 9'6" High Cube	43B
43 FT 8'0"	43S
43 FT Any Height	43X
45 FT 8'6"	45
45 FT 9'0" High Cube	45A
45 FT 9'6" High Cube	45B
45 FT 8'0"	45S
45 FT Any Height	45X
48 FT 8'6"	48
48 FT 9'0" High Cube	48A
48 FT 9'6" High Cube	48B
48 FT 8'0"	48S
48 FT Any Height	48X
53 FT 8'6"	53
53 FT 9'0" High Cube	53A
53 FT 9'6" High Cube	53B
53 FT 8'0"	53S
53 FT Any Height	53X
H. Container Type Codes:	
Not Applicable	N/A
Atmosphere Control	AC
Collapsible Flatrack	CF
Drop Frame	DF
Flat Bed	FB
Flat Rack	FR
Garment Container	GC
Half-Height	HH
Hardtop	HT
Insulated	IN
Open Top	OT
Dry	PC
Platform	PL
Reefer	RE
Tank	TC
Top Loader	TL
Trailer	TR
Vehicle Racks	VR
I. Container Temperature Codes:	
Not Appl/Operating	N/A
Artificial Atmo Ctrl	AC
Chilled	CLD
Frozen	FRZ
Heated	HTD
Refrigerated	RE
Ventilated	VEN
J. Packaging Codes:	
Bag	BAG
Bale	BAL
Bar	BAR
Barrel	BBL
Bundle	BDL
Beam	BEM
Bing Chest	BIC
Bin	BIN
Bulk	BLK
Bobbin	BOB
Box	BOX
Barge	BRG
Basket/Hamper	BSK
Bushel	BUS
Box, with Inner Cntn	BXI

II.—UNIT CODES—Continued

Bucket	BXT
Cabinet	CAB
Cage	CAG
Can	CAN
Carrier	CAR
Case	CAS
Cntnrs of Bulk Cargo	CBC
Carboy	CBY
Can Case	CCS
Cheeses	CHE
Core	COR
Cradle	CRD
Crate	CRT
Cask	CSK
Carton	CTN
Cylinder	CYL
Dry Bulk	DBK
Double-length Rack	DRK
Drum	DRM
Double-length Skid	DSK
Double-length	DTB
Firkin	FIR
Flo-Bin	FLO
Frame	FRM
Flask	FSK
Forward Reel	FWR
Garment on Hanger	GOH
Heads of Beef	HED
Hogshead	HGH
Hopper Car	HPC
Hopper Truck	HPT
On Hanger/Rack in bx	HRB
Half-Standard Rack	HRK
Half-Stand. Tote Bin	HTB
Jar	JAR
Keg	KEG
Kit	KIT
Knockdown Rack	KRK
Knockdown Wood Crates	KWC
Knockdown Tote Bin	KTB
Liquid Bulk	LBK
Lifts	LIF
Log	LOG
Loose	LSE
Lug	LUG
Lift Van	LVN
Multi-roll Pak	MRP
Noil	NOL
Nested	NST
Pal	PAL
Packed—NOS	PCK
Pieces	PCS
Pirns	PIR
Package	PKG
Platform	PLF
Pipe Line	PLN
Pallet	PLT
Private Vehicle	POV
Pipe Rack	PRK
Quarters of Beef	QTR
Rail (semiconductor)	RAL
Rack	RCK
Reel	REL
Roll	ROL
Reverse Reel	RVR
Sack	SAK
Shook	SHK
Sides of Beef	SID
Skid	SKD
Skid, Elev, Lift Trk	SKE
Sleeve	SLV
Spin Cylinders	SPI

II.—UNIT CODES—Continued

Spool	SPL
Tube	TBE
Tote Bin	TBN
Tank Car Rail	TKR
Tank Truck	TKT
Intermdl Trlr/Cntnr	TLD
Tank	TNK
Tierce	TRC
Trunk and Chest	TRK
Tray	TRY
Trunk, Salesmen Samp	TSS
Tub	TUB
Unpacked	UNP
Unit	UNT
Vehicles	VEH
Van Pack	VPK
On Own Wheels	WHE
Wheeled Carrier	WLC
Wood Crates	WC
Wrapped	WRP
Not Applicable	N/A
K. Shipment Stowage Location Codes:	
Not Applicable	N/A
On Deck	OD
Bottom Stowage	BS
L. Hazard Codes:	
Not Applicable	N/A
IMD Stow Category A	A
IMD Stow Category B	B
IMD Stow Category C	C
IMD Stow Category D	D
IMD Stow Category E	E
Hazardous	HAZ
Non-Hazardous	NHZ
M. Stuffing/Stripping Modes:	
Not Applicable	N/A
Mechanical	MECH
Hand Loading	HAND
N. Inland Transportation Modes:	
Not Applicable	N/A
Motor	M
Rail	R
Barge	B
Motor/Rail	MR
Rail/Motor	RM
Motor/Barge	MB
Barge/Motor	BM
Rail/Barge	RB
Barge/Rail	BR
O. Shipment Service Types:	
Barge	B
Door	D
House	H
Motor	M
Ocean Port	O
Pier	P
Rail Yard	R
Container Station	S
Terminal	T
Container Yard	Y
Rail Siding	U
Team Tracks	X
P. Freight Forwarder/Broker Type Codes:	
Not Applicable	N/A
Freight Forwarder	FF
Customs House Broker	CB
Other	OTH
Q. Tariff Type Codes:	
Bill of Lading Tariff	BL
Equipment Interchange Agreement Tariff	EI

II.—UNIT CODES—Continued

Essential Terms Publication	ET
Foreign Commodity Tariff	FC
Foreign Rules Tariff	FR
Terminal Tariff	TM
Service Contracts	SC

By the Commission.*

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99-5293 Filed 3-5-99; 8:45 am]

BILLING CODE 6730-01-P