

Federal Maritime Commission

§ 510.91

States in such manner as to enable authorized Commission personnel to readily determine the licensee's cash position, accounts receivable and accounts payable. The licensee must maintain the following records for a period of five years:

(a) *General financial data.* A current running account of all receipts and disbursements, accounts receivable and payable, and daily cash balances, supported by appropriate books of account, bank deposit slips, cancelled checks, and monthly reconciliation of bank statements.

(b) *Types of services by shipment.* A separate file shall be maintained for each shipment. Each file shall include a copy of each document prepared, processed, or obtained by the licensee, including each invoice for any service arranged by the licensee and performed by others, with respect to such shipment.

(c) *Receipts and disbursements by shipment.* A record of all sums received and/or disbursed by the licensee for services rendered and out-of-pocket expenses advanced in connection with each shipment, including specific dates and amounts.

(d) *Special contracts.* A true copy, or if oral, a true and complete memorandum, of every special arrangement or contract with a principal, or modification or cancellation thereof, to which it may be a party. Authorized Commission personnel and *bona fide* shippers shall have access to such records upon reasonable request.

**§ 510.25 Anti-rebate certifications.**

(a) Every licensed ocean freight forwarder shall file an anti-rebating certificate on or before December 31, 1992, and thereafter, on or before December 31 of each succeeding even-numbered calendar year.

(b) Every applicant for an ocean freight forwarder license shall file an anti-rebating certificate with its license application. Any application for an ocean freight forwarder license that does not include an anti-rebate certification in accordance with § 510.12 and part 582 of this chapter shall be rejected. Certificates filed with license applications shall be valid from the granting of an ocean freight forwarder

license through the first succeeding December 31 of an even-numbered calendar year.

(c) The anti-rebating certificate shall comply with the requirements of part 582 of this chapter.

[57 FR 39623, Sept. 1, 1992]

**§ 510.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB Control No.
510.12 (Form FMC-18) .....	3072-0018
510.14 .....	3072-0018
510.15 .....	3072-0018
510.19 (Form FMC-18) .....	3072-0018
510.21 through 510.25 .....	3072-0018

**PART 514—TARIFFS AND SERVICE CONTRACTS**

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## § 514.1

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### EXHIBIT 1 TO PART 514—ATFI USER REGISTRATION FORM

AUTHORITY: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814-817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702-1712, 1714-1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101-92, 103 Stat. 601.

SOURCE: 57 FR 36271, Aug. 12, 1992, unless otherwise noted.

### Subpart A—General Provisions

#### § 514.1 Scope, purpose, requirements, penalties and fees.

(a) *Scope.* The regulations of this part govern:

(1) The publication and filing of tariffs, as well as service contracts and their essential terms, covering the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984 (46 U.S.C. app. 1702, et seq.).

(2) The publication, filing, and posting of tariffs for the transportation of property or passengers performed by common carriers by water in interstate commerce which are subject to the Shipping Act, 1916, as amended (46 U.S.C. app. 801, et seq.), including through transportation offered in conjunction with one or more common carriers not subject to said Shipping Act.

(3) The filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common car-

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rier by water in the foreign or domestic offshore commerce of the United States.

(4) The filing of tariffs by terminal barge operators in Pacific Slope States in the foreign and domestic commerce of the United States. See § 514.3(a)(7).

(5) The formatting of tariff materials for electronic filing, processing and retrieval.

(b) *Purpose.* The tariff format and content requirements of this part reflect the Commission’s responsibilities in identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Shipping Act of 1984. The purposes of this part are also to enable the Commission to:

(1) Discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices.

(2) Determine, through the use of information obtained under this part, the propriety of the level of rates, fares, charges, and practices demanded, charged, collected or observed by carriers in the domestic offshore commerce of the United States under the Shipping Act, 1916, as amended by the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, et seq.).

(3) Facilitate, by electronic means, the filing, processing and retrieval of tariff materials to better promote the waterborne commerce of the United States.

(c) *Basic requirements.* Unless exempted or excluded under § 514.3, and as augmented by § 514.8(k)(1), the following are the basic requirements under this part:

(1) *Foreign commerce of the United States.* (i) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, charges, classifications, Tariff Rules and practices for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement

and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984.

(ii) Service contracts and their essential terms are also required to be filed by the 1984 Act and shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States.

(iii) *Anti-rebate certification.* (A) An anti-rebating certification shall be filed in paper format, as prescribed by part 582 of this chapter, by every common carrier in foreign commerce as a prerequisite to obtaining password authority to file its initial tariff under this part, and thereafter, on each succeeding December 31 of an even-numbered calendar year. Except for the initial certification, the certification filed on each succeeding December 31 of an even-numbered calendar year shall be valid for the two calendar years following the December 31 filing date.

(B) Failure of a common carrier to file an anti-rebate certification before filing initial tariffs, as required by this part and part 582 of this chapter, shall result in withholding or suspension of any filing authorization and rejection of that carrier's proposed tariff(s).

(C) Any common carrier who fails to file an anti-rebate certification as required by part 582 of this chapter will be notified by FEDERAL REGISTER publication and by certified mail that if, within forty-five (45) days from the date the certified notice is mailed, the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter, or file the required anti-rebate certification, its tariff(s) will be cancelled and attempted filings rejected.

(D) In the event common carrier rates are published in one or more conference tariffs, the name of every common carrier who did not file an anti-rebate certification will be stricken from the list of carriers participating in those conference tariffs.

(E) The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to

civil penalties as provided in parts 502 and 582 of this chapter. The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 505 and 582 of this chapter. After the forty-five (45) days, any common carrier that does not have an anti-rebate certification on file with the Commission will be notified by FEDERAL REGISTER publication and certified mail, return receipt requested, that its tariff(s) have been canceled and/or its name has been stricken from conference tariff(s).

(2) *Domestic offshore commerce of the United States under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933.* (i) Every domestic offshore carrier shall file with the Commission and keep open to public inspection, tariffs showing its actual rates, fares and charges for or in connection with transportation between all points on its own route, and all points on any through route established in conjunction with other carriers. Such tariffs shall plainly show the places between which freight or passengers will be carried and shall contain any classification of freight and passenger accommodations affecting or determining the rates applicable to such transportation and shall state separately each terminal or other charge, privilege, or facility granted or allowed to shippers or passengers and any Tariff Rules or regulations which in anywise change, affect, or determine any part of the total rates, fares or charges assessed or the value of service rendered to consignors, consignees or passengers.

(ii) Only tariffs of persons engaged in common carriage by water may be filed. Common carriers subject to the Shipping Act, 1916, are those vessel operating and non-vessel operating carriers providing transportation by water between:

(A) Any of the 48 contiguous states or the District of Columbia and Alaska or Hawaii;

(B) Any state or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(C) Alaska and Hawaii;

(D) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession, or district; and

(E) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia), and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105.

(3) *Both foreign and domestic offshore commerce—(i) Terminal operators.* (A) Every person carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities as described in paragraph (a)(3) of this section, including, but not limited to terminals owned or operated by States and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities, shall file, and shall keep open for inspection at all their places of business, a schedule or tariff showing all their rates, charges, Tariff Rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at their terminal facilities,

(B) Every tariff or tariff change shall be filed on or before its effective date, except as required by Commission Order or by agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, and be kept open for public inspection as provided in paragraph (c)(3)(i)(A) of this section.

(C) Persons who file tariffs pursuant to requirements of Commission Orders or agreements, approved under section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, are not relieved of such requirements by this part.

(ii) [Reserved]

(4) *Electronic filing.* All tariffs filed under this part shall be properly formatted as provided in this part and in the ATFI “Batch Filing Guide,” under § 514.8(c)(3).

(d) *Rejection of tariff data.* (1) Acceptance of tariff matter does not establish

the legality of the rates and practices described therein. The mere filing of a tariff does not excuse the tariff owner or publisher from the obligations of the 1916, 1933 or 1984 Acts or this chapter, regardless of whether these obligations preceded or followed the filing of the tariff in question.

(2) Any tariff matter submitted for filing, including service contracts and their essential terms, which fails in any respect to conform with the applicable shipping statutes, with the provisions of this part, or with a Commission Order, is subject to rejection or partial rejection after filing. Cause for rejection includes failure of the filing domestic offshore carrier to comply with the provisions of Rule 67 of the Commission’s Rules of Practice and Procedure (46 CFR 502.67) and/or part 552 of this chapter.

(3) Notices of rejection, with reasons therefor, will be made available to filers through electronic mail and, if not accessed by the filer within a certain period of time, will be sent by regular U.S. mail. For service contracts and/or essential terms, the Commission may also notify the filing party of the Commission’s intent to reject within 20 days of filing. See § 514.7(g). (Note: There will be no notice of rejection for attempted filings which are not accepted into the system because they are not syntactically correct for processing.)

(4) Upon rejection, rejected tariff matter is void and its use is unlawful.

(5) After rejection, the filer is responsible for putting its tariff in order. See § 514.9(b)(19)(iv).

(6) The “Status” function on many ATFI screens displays a pop-up window that shows the status of a filed tariff item, including a code that identifies whether it was accepted or rejected, a description of the code, and comments entered by an FMC Examiner regarding a rejected item.

(e) *Penalties; suspension of tariff material.* (1) Operating without an effective tariff on file with the Commission or charging rates not in conformance with such a tariff is unlawful.

(2) Foreign commerce. Pursuant to section 13 of the Shipping Act of 1984, operating without an effective tariff on

file or charging rates not in conformance with such a tariff is subject to a civil penalty of not more than \$5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed \$25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months. See § 514.19.

(3) Domestic offshore commerce. (i) The Commission may at any time direct the cancellation of tariff matter which does not conform to the 1916 Act or this part. See § 514.19.

(ii) Violations of the provisions of this part are subject to a civil penalty of not more than \$1,000 for each day such violation continues.

(f) *Filing fee*. Under the authority of the Independent Offices Appropriation Act, 31 U.S.C. 9701, the Commission assesses a filing fee for ATFI filings. See § 514.21(i) for filing fees.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 39623, Sept. 1, 1992; 59 FR 63908, Dec. 12, 1994; 60 FR 27229, May 23, 1995]

#### § 514.2 Definitions.

The following definitions (in alphabetical order) shall apply to the regulations of this part and to all tariffs and service contracts filed pursuant to them, unless otherwise indicated by the context of this part.

*Across-the-board increase (domestic offshore commerce)* means any change in rates, fares, or charges in domestic offshore commerce which will: (1) Result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier for the particular trade of less than 3 percent. See § 514.9(b)(1).

*Alternate port service* means substituted service whereby the vessel-operating common carrier for whom the tariff object is filed uses someone else to perform the transportation between the point at which the cargo was tendered by the shipper and the port at which the cargo is actually loaded on

the filing carrier's vessel, or between the port at which the cargo is discharged from the filing carrier's vessel and the point at which the cargo is to be tendered to the consignee.

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

*Assessorial (accessorial)* means a particular service or condition, other than the basic transportation, which is usually described in a commodity description, TLI, or Tariff Rule, and for which a charge may be added to the basic ocean freight rate. See § 514.10(d).

*Assessorial charge* means the amount determined for an assessorial service or condition that is added to the basic ocean freight rate. See § 514.10(d).

*Assessorial charge calculation* means an algorithmic representation of the conditions and mathematical steps necessary to calculate an assessorial charge.

*Associative check* means an automated comparative check of data filed with ATFI to check for logical conformity with Commission tariff filing rules and previously filed tariff matter. See § 514.8(n)(1)(iii).

*ATFI* means the Commission's Automated Tariff Filing and Information System, a computer-based system for creating, filing, processing and retrieving ocean freight and terminal tariffs and the essential terms of service contracts.

*Availability (period of)* means the process of offering essential terms of a service contract to all similarly situated shippers who can accept them for the purpose of entering their own service contract (for a period of 30 days or more). See § 514.17(d)(3).

*Batch filing* means the process by which a tariff filer can transmit to the Commission tariff matter which has been created on the filer's own computer. (Also see "on-line batch filing," "in-bulk batch filing" and "tape batch filing"). See § 514.8 (c), (d)(3), and (l).

*Batch Filing Guide* means an ATFI user document, available upon request from the Commission, which defines the procedures and technical requirements for batch filing. See § 514.8(d)(3).

*BTCL* means the Commission's Bureau of Tariffs, Certification and Licensing.

*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 tariff filing requirements of this part.

*Checking* means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same. See “terminal services.” See § 514.15(b)(23).

*Chemical parcel tanker.* See “common carrier.”

*Co-loading (foreign commerce)* means the combining of cargo, in the import or export commerce of the United States, by two or more NVOCCs for tendering to an ocean carrier under the name of one or more of the NVOCCs. See § 514.15(b)(14).

*Combination rate* means a rate for a shipment moving under intermodal transportation which is computed by the addition of a TLI, and an inland rate(s) applicable from/to inland point(s) not covered by said TLI.

*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, any applicable assessorial, related assessorial charges if any, and the commodity index entries by which the commodity is referenced.

*Commodity description number* means a 10-digit number used to identify a commodity description. See § 514.13(a).

*Commodity index* means an index of the commodity descriptions contained in a tariff. See § 514.13(a).

*Commodity rates* means rates 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. See § 514.13(a).

*Common carrier or carrier (foreign commerce)* 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.

As used in this paragraph, “chemical parcel-tanker” means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

*Conference* means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff. The term shall also include any association of ocean common carriers which is permitted, pursuant to an effective agreement, to fix rates and to enter into service contracts, but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement. For the term “marine terminal conference (agreement),” see § 514.3(a)(8) and §§ 560.307(b) and 572.307(b) of this chapter.

*Conformity checks* means all types of system checks to determine compliance with the criteria of syntax checks (data form and format), validity checks (reference tables’ entries), and associative checks.

*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.

*Contract party* means any party signing a service contract as a common carrier, conference, shipper or shippers' association. See §§ 514.7 and 514.17.

*Controlled common carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier operate; 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 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. See §§ 514.3(a)(2); 514.3(b); 514.4(c); 514.9(b); and 514.13(b)(7).

*Data Element Dictionary (DED)* means a list of the data fields and the values, terms, and expressions allowable for each field. The ATFI-specific Data Element Dictionary is a section in the ATFI "Batch Filing Guide." See § 514.8(d)(3).

*Destination scope* means a location group in a tariff detailing the allowable destinations for TLIs defined in that tariff. See §§ 514.11(b)(10) and 514.13(b).

*Dockage* means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed. See also "terminal services."

*Domestic offshore carrier* means a carrier engaged in the transportation by water of cargo and/or passengers on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or

possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District or possession. See § 514.1(c)(2)(ii).

*Domestic offshore commerce* means commerce that may be engaged in by domestic offshore carriers. See § 514.1(c)(2)(ii).

*Domestic offshore tariff* means a tariff of port to port rates for transporting in domestic offshore commerce.

*Dummy algorithm.* See "null linkage."

*Edit checks.* See "conformity checks."

*Effective date* means the date (12:01 a.m.) upon which a filed tariff or tariff element is scheduled to go into effect by the filer. See §§ 514.9(a) and 514.10(a)(3).

*Equipment interchange agreement* means a sample agreement which includes the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services such as tracing and replenishing fuel or refrigerant for reefer containers) that govern the use of carrier-provided equipment following interchange, including cargo containers, trailers and chassis. It also includes the standard free time allowed, and detention or similar charges assessed. See §§ 514.3(a)(1) and 514.15(b)(21).

*Equipment interchange Tariff Rule or Equipment interchange tariff* means either a Tariff Rule or general reference tariff which contains the terms and conditions, including standard free time and charges, governing the use of carrier equipment following interchange, and may incorporate an equipment interchange agreement and the filer's exceptions thereto. See §§ 514.12(c)(3) and 514.15(b)(21).

*Essential terms.* See "statement of essential terms."

*Essential terms publication* means the single publication which is maintained by each carrier or conference for service contract(s) and which contains statements of essential terms for every such contract. See § 514.17(b).

*Expiration date* means the last day, after which the entire tariff or tariff element (e.g., TLI) is no longer in effect. See "thru date" and § 514.10(a).

*File or filing* (of service contracts or amendments thereto) means actual receipt at the Commission's Washington, DC offices. See § 514.7.

*File or filing* (of tariff matter) means the electronic entering of tariff matter into the ATFI computer after receipt by electronic means or physical delivery of magnetic tape(s). See § 514.8(c).

*Filing date* (established by the ATFI system) means the date any tariff matter is electronically transmitted to and entered into the system as a successful transmission, or physically delivered to a designated location(s) and date-time stamped. See §§ 514.8(c) and 514.10(a)(2).

*FMC examiner* means an employee of the Commission who reviews tariffs to ensure that they conform to the shipping statutes and the regulations set by the Commission.

*Foreign commerce* means that commerce under the jurisdiction of the 1984 Act.

*Forest products* means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, 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 board in rolls and paper in rolls. See §§ 514.3(b)(1) and 514.7(c).

*Free time* means the specified period during which cargo may occupy space assigned to it on terminal property free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel. See "terminal services" and § 514.15(b)(23). "Free time" is also accorded to cargo at destination rail terminals and destination motor terminals located at inland points, as well as at container freight stations and other off-dock delivery points removed from the terminal. Additionally, "free time" is a term commonly used in connection with use of carrier equipment at both origin and destination under, for example, equipment interchange tariffs.

*Freight forwarder.* See "ocean freight forwarder."

*General decrease* (domestic offshore commerce) means any change in rates, fares, or charges which will:

(1) Result in a decrease in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier; and

(2) Directly result in a decrease in gross revenues of said carrier for the particular trade of not less than 3 percent. See § 514.9(b)(7).

*General increase* (domestic offshore commerce) means any change in rates, fares, or charges which will:

(1) Result in an increase in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier; and

(2) Directly result in an increase in gross revenues of said carrier for the particular trade of not less than 3 percent. See § 514.9(b)(7).

*Geographic area* means the general location from which and/or to which cargo subject to a service contract will move in through service. See § 514.17.

*Handling* means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship's tackle. See "terminal services" and § 514.15(b)(23).

*Harmonized Code* means the coding provisions of the Harmonized System. See § 514.13(a).

*Harmonized System* means the "International Convention on the Harmonized Commodity Description and Coding System," which may be obtained from the Customs Cooperation Council ("CCC") in Brussels, Belgium, or any of its authorized distributors. See § 514.13(a).

*Heavy lift* means the service of providing heavy lift cranes and equipment for lifting cargo. See "terminal services" and § 514.15 (b)(4) and (b)(23).

*In-bulk batch filing* means batch filing by tariff publishers using the ATFI transaction sets to create files on magnetic tape for physical delivery to the Commission's ATFI Computer Center. Also referred to as tape batch filing. See § 514.8(c)(3).

*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.) See § 514.15(b)(1).

*Inland rate* means a rate specified from/to an ocean port to/from an inland point, for specified modes of overland transportation. See § 514.15(b)(1).

*Inland rate table* means a structured matrix of geographic inland locations (points, U.S. ZIP 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. See § 514.15(b)(1).

*Interactive filing* means the process by which a tariff filer accesses the ATFI system via dial-up, using telecommunications links, a modem and terminal, and interacts with the system on a transaction by transaction basis to retrieve its own tariff information, create tariff filings, and verify previous filings. See § 514.8(c)(1).

*Interactive retrieval* means the process by which any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal, and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter of carriers, conferences and terminal operators which has been filed in the ATFI database. See § 514.20.

*Intermodal service.* See “intermodal transportation.”

*Intermodal transportation* means continuous 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. See § 514.15(b)(1).

*Joint rates* means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers. See § 514.15(b)(1).

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

from the terminal facility. See “terminal services” and § 514.15(b)(23).

*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. See § 514.15(b)(1).

*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 TLI origin and/or destination. See §§ 514.10(b) and 514.11(b)(10).

*Log in* or *log on* means entering the ATFI system to perform functions such as filing or retrieving, and requires certain formalities, such as password, ID, etc. See § 514.8(f).

*Log off* or *log out* means exiting the ATFI system after the user is finished with functions such as filing or retrieving. Automatic log off or logout can occur after certain periods of time. See § 514.20(c)(2).

*Loyalty contract (foreign commerce)* means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference. See § 514.15(b)(27).

*Marine terminal services agreement* means an agreement as defined in § 560.308(a) or § 572.310(a). See § 514.3(a)(8).

*1984 Act* means the Shipping Act of 1984.

*1916 Act* means the Shipping Act, 1916, as amended (including the Intercoastal Shipping Act, 1933, and the Transportation Act of 1940).

*Non-vessel-operating common carrier (or NVOCC) (foreign commerce)* 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.

*Null linkage or dummy algorithm* means a functionality to label and link assessorial charges in full-text format to ATFI objects, such as TLIs and commodities. See § 514.10(d).

*Ocean common carrier (foreign commerce)* means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

*Ocean freight forwarder (foreign commerce)* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

*On-line batch filing* means the process by which a filer transmits tariff information, properly formatted in accordance with published ATFI transaction set formats, to the ATFI system as a “batch” of transactions via dial-up telecommunications links from its own computer. See § 514.8(c)(2).

*Open for public inspection* means the maintenance, in electronic or paper form, of a complete and current set of the tariffs used by a common carrier, conference or terminal operator, or to which it is a party, in its office(s). See § 514.8(k).

*Open rate (foreign commerce)* 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. See §§ 514.13(b)(19) and 514.15(b)(15).

*Organization name* means an entity’s name on file with the Commission and for which the Commission assigns an organization number. See § 514.11(a).

*Organization record* means information regarding an entity, including its name, address, organization number, carrier type, and the filing and effective dates of the organization record. See § 514.11(a).

*Origin scope* means a location group defining the geographic range of cargo origins covered by a tariff. See §§ 514.11(b)(10) and 514.13(b).

*Owner (of tariff material)* means the carrier, conference or terminal establishing the rates and charges in tariff material and on whose behalf the tariff

material is filed. See “publisher (tariff).”

*Page-based tariff* means the traditional type of tariff in which rates are listed on the pages of a paper document. See § 514.8(k)(2).

*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. See § 514.15(b)(23).

*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. See §§ 514.15(b)(1), (b)(13) and (b)(23).

*Port range* means those ports in the country of loading or unloading of service contract cargo that are regularly served by the contracting carrier or conference, as specified in its tariff of general applicability, even if the contract itself contemplates use of but a single port within that range. See §§ 514.7 and 514.17.

*Port terminal facilities* means one or more structures comprising a terminal unit, which include, but are not limited to wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers. See § 514.15(b)(23).

*Post, posted, posting (of tariff matter—domestic offshore commerce)* means the maintenance of a complete, up-to-date tariff, in electronic or paper form, at the office(s) of each carrier party to the tariff under conditions assuring its availability for inspection by members of the public. See § 514.8(k).

*Practices.* See “tariff.”

*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, public utility or public service purpose, and also including disaster relief projects. See § 514.13(a)(5).

*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. See § 514.15(b)(1).

*Publisher (tariff)* means an organization authorized to file or amend tariff information.

*Rate* means a price quoted 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. See § 514.13(b)(19).

*Retrieval.* See “interactive retrieval.”

*Round trip excursion voyage* means a single voyage in domestic offshore commerce which originates and terminates at the same port, does not permanently disembark passengers at any intermediate port, and does not call at any port outside of the United States, its territories, commonwealths, districts or possessions. See § 514.3(a)(5).

*Rules (in a tariff, i.e., Tariff Rules)* means the stated terms and conditions set by the tariff owner which govern the application of tariff rates, charges and other matters. See § 514.15.

*Scope* means the location group(s) (geographic grouping(s)) listing the ports or ranges of ports to and from which the tariff’s rates apply. See § 514.11(b)(10).

*Service contract* means a contract between a shipper or shippers’ association and an ocean common carrier or conference, in which the shipper makes a commitment to provide a certain minimum quantity of its cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level -- such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of non-performance on the part of either party. See § 514.7.

*Service contract records* means such documents and information as will enable the Commission to verify compliance with the terms of a service contract and shall include freighted ocean bills of lading or equivalent shipping documents which establish that the terms of the contract are being or have been met. See § 514.7(m).

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

*Shipper* means an owner or person for whose account the ocean transportation of cargo is provided and includes the person to whom delivery is to be made (consignee).

*Shippers’ association (foreign commerce)* means a group of shippers that consolidates or distributes freight on a non-profit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

*Special case number* means a code number assigned by the Commission to a specific filer for a limited, designated purpose, such as for a particular rate (TLI) increase to go into effect on less than statutory notice by special permission or for other ATFI associative checks to be bypassed. See § 514.9(b)(19).

*Special permission* means permission, authorized by the Commission, for certain tariff filings that do not conform with applicable regulations, usually involving effectiveness on less than the normal statutory notice.

*Specimen bill of lading* means a sample bill of lading contained in a tariff for example purposes, which, in ATFI, is achieved by electronically entering the terms contained on the carrier’s bill of lading in the appropriate Tariff Rule. See § 514.15(b)(8).

*Statement of essential terms* means the concise summary of all essential terms of a service contract required to be filed with the Commission and made available to the general public in tariff format by the carrier or conference in its Essential Terms Publication. See § 514.17.

*Submit or submission (foreign commerce—service contracts)* means “file” or “filing” under this section. See § 514.7.

*Substituted service* means the use of transportation performed by someone other than the carrier for whom the

tariff object is filed. See “alternate port service,” “transshipment,” and §§ 514.15(b)(1) and (b)(13).

*Syntax check* means an automatic system review of items in filings to check conformity with data element type and size, and other format requirements outlined in the “Batch Filing Guide.” See § 514.8(n)(1)(i).

*Tape batch filing.* See “in-bulk batch filing.”

*Tariff* means a publication containing the actual rates, charges, classifications, Tariff Rules, regulations and practices of a common carrier, conference of common carriers, or marine terminal operator. 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 marine terminal operator, and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

*Tariff amendments.* See “amendment.”

*Tariff filing* means any tariff or modification thereto which is received by the Commission as properly filed pursuant to these rules. See “file, filing” and § 514.8(c).

*Tariff line item (TLI)* (with a 14-digit number) 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. See § 514.13(b).

*Tariff matter, tariff material, tariff publication* means a tariff and the essential terms of service contracts, or any portion and amendment thereof, tendered for filing with the Commission pursuant to this part.

*Tariff of general applicability (foreign commerce—service contracts)* means the effective tariff, on file at the Commission under this part, that would apply to the transportation in the absence of a service contract. See §§ 514.7(h)(1)(iv) and 514.12(a).

*Tariff record* means a collection of tariff identification data that include the name and type of the tariff, the

tariff number, publishing office, units of weight and measure, and the date the tariff was filed, the date it became effective, and the date it expires. See § 514.11(a).

*Tariff Rule.* See “rules (in a tariff)” and § 514.15.

*Terminal services* includes checking; dockage; free time; handling; heavy lift; loading and unloading; terminal storage; usage; wharfage; and, wharf demurrage, as defined in this section. The definition of terminal services set forth in this section shall be set forth in tariffs filed pursuant to this part except that other definitions of terminal services may be used if they are correlated by footnote or other appropriate method to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in terminal tariffs. See § 514.15(b)(23).

*Terminal storage* means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage, after storage arrangements have been made. See “terminal services” and § 514.15(b)(23).

*Termination date* means the expiration date of a service contract or the date the service contract is terminated for reasons not specifically set forth in the contract. See § 514.17(d).

*Through rate (domestic offshore commerce)* means a total charge for transportation from origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates. See § 514.15(b)(1).

*Through rate (foreign commerce)* means the single amount charged by a common carrier in connection with through transportation. See § 514.15(b)(1).

*Through route (domestic offshore commerce)* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by:

(1) A single domestic offshore carrier offering service between port terminal areas;

(2) Two or more domestic offshore carriers; or

(3) One or more domestic offshore carriers in connection with one or more other carriers. See § 514.15(b)(1).

*Through transportation (domestic offshore commerce)* means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate or combination rate is assessed and which is offered or performed by one or more carriers, at least one of which is a domestic offshore carrier. Through transportation involving joint rates with services subject to ICC jurisdiction is not subject to the jurisdiction of the FMC. See § 514.3(a)(3)(ii).

*Through transportation (foreign commerce)* 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. See § 514.15(b)(1).

*Thru date* means the date (11:59 p.m.) after which an amendment to a tariff element (e.g., TLI rate) is designated by the filer to be unavailable for use and the previously effective tariff element automatically goes back into effect. See “expiration date” and § 514.10(a)(5).

*Time/volume rate (foreign commerce)* means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time. See §§ 514.13(b)(19) and 514.15(b)(26).

*TLI.* See “tariff line item.”

*Trade name(s)* means a name or names that a tariff filer uses for conducting business, but which is not necessarily its legal name. This is also known as a “d/b/a” (doing business as) name. See § 514.11.

*Traditional tariff* means a page-based tariff in which all of the tariff components are contained on the pages of a paper document. See § 514.8(k)(2).

*Transaction set* means a pre-defined, ATFI-compatible data format used for electronic batch filing (electronic data

interchange or EDI) of tariff information. When using third-party software for batch filing, all data must be formatted into the appropriate transaction sets before it can be batch filed to the Commission through the ATFI system. The transaction set formats are available to the public in the ATFI “Batch Filing Guide.” See § 514.8(d)(3).

*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 a vessel-operating carrier subject to the FMC’s jurisdiction. See § 514.15(b)(13).

*Usage* means the use of terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified. See “terminal services” and § 514.15(b)(23).

*Validity check* means a system review of certain items in filings to check conformity with reference tables outlined in the transaction sets and standard glossaries employed in ATFI, e.g., origin and destination locations must be correctly spelled and be members of the ATFI locations glossary. See § 514.8(n)(1)(ii).

*Via port(s)* means the port or port group at which a vessel calls for through transportation of cargo from another origin and/or to another destination.

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

*Wharfage* means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to wharf. Wharfage is solely the charge for use of wharf and does not include charges for any other service. See “terminal services” and § 514.15(b)(23).

*Workdays (domestic offshore commerce)* means all days except Saturdays, Sundays, and all federal holidays observed in the District of Columbia. See § 514.9(b)(24)(ii).

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992; 57 FR 46322, Oct. 8, 1992; 58 FR 27, Jan. 4, 1993]

### § 514.3 Exemptions and exclusions.

Applications for exemptions are governed by § 502.69 of this chapter. The following exemptions are granted from certain described requirements of this part:

(a) *Certain services involved in the following:*

(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, are exempt from the tariff filing requirements of the 1916 and 1984 Acts and the rules of this part. See §§ 514.12(b)(3) and 514.15(b)(21).

(2) *Controlled common carriers in foreign commerce.* A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled common carriers (See § 514.4(c)) 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;

(ii) The controlling state subscribed, as of November 17, 1978, to the shipping policy statement contained in note 1, Annex "A" of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(iii) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph (see § 514.9(b)(24)(i)(A));

(iv) The controlled common carrier's rates, charges, classifications, Tariff Rules or regulations govern transpor-

tation of cargo between the controlling state and the United States, including its districts, territories and possessions (see § 514.9(b)(24)(i)(B)); or

(v) The controlled common carrier operates in a trade served exclusively by controlled common carriers (see § 514.9(b)(24)(i)(C)).

(3) *Interstate Commerce Commission ("ICC").* Transportation in domestic offshore commerce which is subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Ch. 105 is not subject to the tariff filing requirements of the 1916 Act and the rules of this part.

(4) *Marine terminal operations of DOD.* When the Department of Defense (including the military department and all agencies of the Department of Defense) carries on the business of furnishing wharfage, dock, warehouse, or other terminal facilities, as defined in § 514.2, it shall be exempt from the terminal tariff filing and publication requirements of this part.

(5) *Round trip passenger excursion voyages in domestic offshore commerce.* Round trip passenger excursion voyages in domestic offshore commerce are exempt from the tariff filing requirements of the 1916 Act and the rules of this part.

(6) *Certain small vessels in domestic offshore commerce.* Transportation in domestic offshore commerce by vessels with a cargo carrying capacity of 100 tons or less, or with an indicated horsepower of 100 or less, is exempt from the tariff filing requirements of the 1916 Act and the rules of this part, but only if such vessels:

(i) Are not employed by or under the common control or management of a domestic offshore carrier which operates vessels in excess of these limits;

(ii) Are not operated as part of a through route with another domestic offshore carrier; and

(iii) Are not performing lighterage services in connection with or on behalf of another domestic offshore carrier.

(7) *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 filing requirements of the 1916 and 1984 Acts 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 Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service in question as of January 2, 1975.

(8) *Certain terminal services.* (i) The filing requirements of this part do not apply to rates and charges for storage of cargo and services incidental thereto by public warehousemen pursuant to storage agreements covered by issued warehouse receipts.

(ii) Rates, charges, rules and regulations governing terminal services provided to and paid for by common carriers by water pursuant to a marine terminal services agreement as defined in § 560.308(a) or § 572.310(a) of this chapter, need not be separately filed in tariffs for the purposes of this part, on condition that such rates, charges, rules and regulations are not determined through a marine terminal conference agreement, as defined in §§ 560.307(b) and 572.307(b) of this chapter.

(iii) Rates, charges, rules and/or regulations which but for paragraph (a)(8)(ii) of this section would be subject to the tariff-filing requirements of this part may not unilaterally impose exculpatory provisions of a nature prohibited by § 514.4(b)(3)(ii).

(9) *Terminal tariffs; electronic format requirements.* Marine terminal tariffs are exempt from the commodity-description and TLI-object requirements of this part, but only to the extent necessary to accommodate electronic filing of such tariffs in full-text format in Tariff Rule 34 (§ 514.15(b)(34)).

(10) *NVOCCs in domestic offshore commerce.* Non-vessel-operating common carriers ("NVOCCs") providing transportation in domestic offshore commerce are exempt from the provisions of section 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845, and thus, from the suspension provisions of § 514.19(a). The reasonableness of NVOCC rates in domestic offshore commerce may be determined under the provisions of section 18 of the 1916 Act, 46 U.S.C. app. 817.

(b) *Certain cargo types—(1) Bulk, forest products, etc.* (i) Except as provided in paragraphs (b)(1)(ii) and (iii) of this section, this part does not apply to bulk cargo, forest products, recycled metal scrap, waste paper and paper waste in foreign tariffs, terminal tariffs or service contracts.

(ii) Marine terminal operators, carriers or conferences which voluntarily file tariff or service contract provisions covering otherwise exempt transportation thereby subject themselves to all statutory provisions and the requirements of this part, including the requirement to adhere to the filed tariff provisions or service contracts.

(iii) An exempt commodity listed in paragraph (b)(1) of this section may be included in a service contract filed with the Commission only if:

(A) There is a tariff of general applicability for the transportation which contains a specific commodity rate for the exempted commodity; or

(B) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries is exempt from the filing requirements of the 1984 Act and the rules of this part.

(3) *Used military household goods—NVOCCs.* Transportation of used military household goods and personal effects by non-vessel-operating common carriers is exempt from the filing requirements of the 1916 and 1984 Acts and the rules of this part.

(4) *Department of Defense cargo in foreign commerce.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by

the Military Sealift Command ("MSC") and published in a rate guide, quotation or tender is exempt from the tariff filing requirements of the 1984 Act and the rules of this part. An exact copy of the rate guide, quotation or tender, 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 non-vessel-operating common carriers shipped by federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration is exempt from the filing requirements of the 1916 and 1984 Acts and the rules of this part.

(c) *Certain locations in foreign commerce—(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 1984 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 rates 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 Interstate Commerce Commission 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 Shipping Act of 1984.

(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 Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) 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.

(d) *Domestic offshore commerce*—(1) *Notice requirements; general.* Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish:

(i) On one day's notice, any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption may not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the 1933 Act. See § 514.2; and

(ii) On seven workdays' notice, any new or amendatory tariff matter that results in an increased cost to the shipper. This exemption may not apply to any increase which is part of a "general increase in rates" as defined by section 1 of the 1933 Act (see § 514.2), or any increase which is part of an "across-the-board" increase in rates as defined in § 514.2.

(2) *Alaska*—(i) *Bethel—Kuskokwim Bay.* Transportation between Bethel, Alaska and points in the Kuskokwim Bay region in the range from Platinum to Mekoryuk is exempt from the filing requirements of the 1916 Act and the rules of this part.

(ii) *Seattle—S.E. Alaska on State-of-Alaska operated vessels.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington, and ports in Southeastern Alaska, is exempt from the filing requirements of the 1916 Act and the rules of this part, only if said personal vehicles and personal effects are not

transported for the purpose of sale, lease, or other commercial activities.

(3) [Reserved]

(4) *Puerto Rico*—(i) *Bulk liquid cargo.* Transportation between the continental United States and Puerto Rico of bulk liquid cargoes in quantities of not less than 200,000 gallons per shipment (i.e., a single shipper to a single consignee) is exempt from the filing requirements of the 1916 Act and the rules of this part, only if such shipments are carried in tank vessels designed exclusively for bulk liquid cargoes and which are certified under regulations approved by the U.S. Coast Guard pursuant to 46 U.S.C. 3306.

(ii) [Reserved]

(5) [Reserved]

(e) *Electronic filing.* A temporary exemption from the electronic filing requirements of this part may be obtained by application under § 514.8(a), but, during the period of such exemption and unless otherwise exempted by this part, tariff material is required to be filed in paper format under parts 515, 550, 580 and/or 581 of this chapter.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992; 57 FR 44700, Sept. 29, 1992; 58 FR 28790, May 17, 1993; 60 FR 44437, Aug. 28, 1995]

#### **§ 514.4 Content, filing and cancellation of tariff material; general.**

(a) *Effectiveness of new or initial and conference tariffs in the domestic offshore and foreign trades.* Unless otherwise provided by the Commission or this part, all conference and carrier tariff material tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which complies with the appropriate notice period(s) prescribed in § 514.9 or in other sections of this part. The notice period between filing and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the day after the notice period expires.

(b) *Prohibitions*—(1) *Foreign language tariffs.* (i) Tariffs and essential terms of service contracts in foreign languages

will not be accepted. Filers may, however, include foreign language commodity descriptions, TLI notes, and commodity index entries, but only if:

(A) The non-English entries follow the English entries; and

(B) The non-English text is precisely translated from the English.

(ii) The English wording shall have precedence in any question of interpretation.

(2) *Ambiguous, duplicating and conflicting provisions.* No person may publish and file any tariff matter which contains ambiguous language or duplicates or conflicts with any other tariff matter on file with the Commission in which such person is a party or participant, whether filed by such person or by an authorized agent.

(3) *Limiting or qualifying provisions—*  
(i) *Limitation of liability.* Tariffs may not contain Tariff Rules purporting to limit liability for loss or damage in a manner that is prohibited by applicable statute or regulation.

(ii) *Exculpatory tariff provisions.* No terminal tariff may contain provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

(iii) *Rates in other tariffs.* Except as specifically allowed in this part (see § 514.12):

(A) No rate tariff may require reference to or be governed by another rate tariff; and

(B) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

(iv) *Modification of essential terms.* Essential terms of service contracts may not contain any provision permitting modification by the parties other than in full compliance with this part.

(c) *Controlled common carriers—*(1) *Controlled common carrier rates—*(i) *Level of rates and charges.* Except as provided in § 514.3(a)(2), no controlled common carrier may maintain rates or charges

in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, Tariff Rules, or regulations in those tariffs. An unjust or unreasonable classification, Tariff Rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(ii) *Commission disapproval.* The Commission may, at any time after notice and hearing, disapprove any rates, charges, classifications, Tariff Rules or regulations that the controlled common carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled common carrier to demonstrate that its rates, charges, classifications, Tariff Rules or regulations are just and reasonable. Rates, charges, classifications, Tariff Rules or regulations filed by a controlled common carrier that have been rejected, suspended, or disapproved by the Commission are void and their use is unlawful.

(iii) *Effective date of rates.* The rates, charges, classifications, Tariff Rules or regulations of controlled common carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.

(2) *Classification as a controlled common carrier.* (i) The Commission will notify any common carrier of its classification as a controlled common carrier and enter such classification in ATFI.

(ii) Any common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(iii) The Commission shall review the rebuttal and notify the common carrier of its final decision within 30 days from the date the rebuttal statement was filed.

(d) *Duty and authority to file—*(1) *General procedure.* (i) Except as provided in paragraph (d)(1)(ii) of this section, authority to obtain or delegate authority for using USERID and password under § 514.8(f) for filing and amending particular types of tariff material, as well

as authority to change filing and editing authority, must be requested by a responsible official of the tariff owner in writing, using the registration form in exhibit 1 to this part, showing (or attaching) all necessary approvals and paying the appropriate fee under § 514.21.

(ii) In an emergency, a person, already authorized to maintain and edit its firm's organization record under § 514.11(a), may change a "publisher" under § 514.11(a)(9)(iii), verbally notify BTCL, and promptly submit the proper documents.

(2) *Domestic offshore tariffs.* (i) Tariffs in domestic offshore commerce may be filed only by a responsible official of, or a tariff agent appointed by, a domestic offshore carrier participating in the transportation offered therein. When a tariff agent is employed, a delegation of authority from each participating, domestic offshore carrier must be provided.

(ii) The request for filing authority shall state that a tariff agent has been appointed as of a particular date, identify the agent by name and business address, indicate whether and under what circumstances any other person is authorized to serve as an alternate agent, and specifically set forth the agent's powers and duties to act for the carrier in tariff matters. Only one alternate agent may be appointed.

(iii) More than one delegation of authority covering any one tariff is prohibited, except that governing tariffs filed pursuant to § 514.12 may be the subject of separate delegations. Submission of a subsequent delegation of authority covering a tariff, governing tariff or group of tariffs, shall automatically revoke any earlier delegation as to that tariff or tariffs on the day the subsequent delegation is filed, as evidenced by the Commission's receipt notation.

(iv) A delegation of authority to a tariff agent may be revoked in whole or in part by filing a written revocation which clearly identifies the delegation of authority and the particular powers and duties being revoked.

(v) Should a carrier enter receivership, or otherwise come under the control of a trustee, the duty and authority to file tariff material shall be upon

the receiver or trustee appointed until the receivership/trusteeship is terminated.

(3) *Foreign tariffs.* (i) Tariffs in foreign commerce shall be filed by an officer or employee of the common carrier or, if a conference tariff, by an officer or employee of the conference. In the alternative, filing may be accomplished through an agent authorized to act for such common carrier or conference.

(ii) A common carrier or conference may delegate authority to a person, not an official or employee of such common carrier or conference, for the purpose of issuing all its tariffs or any particular tariff.

(iii) Whenever there is a delegation of tariff-issuing authority by a common carrier or conference, the request shall set forth the exact limits of the agent's authority.

(4) *Conference-related situations in foreign commerce—*(i) *Admission to membership.* Before a common carrier is admitted to membership in a conference, it shall electronically file notice of cancellation of any independent tariff applicable to the trade served by the conference, effective upon the date of admission to conference membership, making reference to the conference tariff and where the conference tariff may be examined. The filing of the independent tariff(s) and admission to conference membership may become effective upon the date of filing, except that, unless Special Permission is granted pursuant to § 514.18, cancellation of the independent tariff and admission to conference membership requires 30 days' notice if:

(A) The carrier is a controlled carrier, or

(B) The addition of the carrier to the conference would result in a rate change from the carrier's independent tariff which causes an increase in cost to the shipper.

(ii) *Duties of members.* (A) Common carrier participants in a conference tariff are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 8(a)(1) of the 1984 Act with regard to keeping tariffs open for public inspection. See § 514.8(k)(1).

(B) A common carrier's obligation to file tariffs pursuant to section 8(a) of the 1984 Act and this part must be carried out as follows:

(1) When the common carrier is not a party to an agreement, by filing its own tariff or tariffs.

(2) When the common carrier is party to an agreement, by participation in a single tariff filed by the conference, except that this requirement shall not apply to:

(i) Ratemaking agreements either between or among conferences, or between one or more conferences and one or more independent carriers; or

(ii) New conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements, until ninety (90) days after the fact, unless special permission to extend that period is granted for good cause shown.

(C) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provisions in the conference tariff.

(iii) *Independent action rates of controlled carriers.* Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(5) *Service contracts and essential terms in foreign commerce.* (i) As further provided in paragraph (d)(5)(ii) of this section, the duty under this part to file service contracts, statements of essential terms and notices, and to maintain an essential terms publication under § 514.17, shall be upon:

(A) A service contract signatory carrier which is not a member of a conference for the service covered by the contract; or

(B) The conference which:

(1) Is signatory to the service contract; or

(2) Has one or more member carriers signatory to a service contract for a

service otherwise covered by the conference agreement.

(ii) When a conference files a service contract for and on behalf of one or more of its member lines and the contract covers service from, to or between ports and/or points not included within the scope of the conference, the complete text of the statement of essential terms shall be simultaneously filed in the essential terms publications of both the conference(s) and carrier(s) involved, which shall comply with all other essential terms publication filing and maintenance requirements under §§ 514.7 and 514.17.

(6) *Transfer of operations or control; changes in name or conference membership.* (i)(A) Whenever a conference or common carrier with an individual tariff on file changes its name or transfers operating control to another entity or person, the person who will thereafter manage the conference or operate the common carrier service shall submit a written application to the FMC. The application shall be accompanied by appropriate completed ATFI User Registration Form(s) (exhibit 1 to this part), if needed, and with the proper user charge under § 514.21(c) (for filer initial registration), to procedurally transfer the tariff to the succeeding person or firm. Subsequent amendments to such tariffs shall be in the name of the new conference or common carrier, as applicable.

(B) Requests to procedurally transfer only part of the service extended under a given rate tariff will not be granted.

(ii) Domestic offshore tariffs naming participating carriers shall be amended within 90 days whenever any participating carrier transfers its operations, transfers control of its business, or changes its name, and the successor carrier continues to participate in the service. The amendment shall delete all references to the transferring carrier (or old name) and substitute references to the successor carrier (or new name) in their place.

(iii) Whenever the name of a common carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating common carrier's new name.

(iv) Whenever the operation, control or ownership of a common carrier is transferred resulting in a majority portion of the interest of that common carrier being owned or controlled in any manner by a government under whose registry the vessels of the common carrier are operated, the common carrier shall immediately notify the Commission in writing of the details of the change.

(e) *Cancellation*—(1) *Tariffs*. (i) An entire tariff may be canceled by the filer, or by the Commission for good cause, by appropriately changing the expiration date in the tariff record. See § 514.11(b).

(ii) Cancellation of a tariff due to a cessation of all service by the publishing carrier between the ports or points listed in the canceled tariff may take effect on the same day it is filed.

(iii) The tariffs and delegations of authority of a carrier which ceases operations in a trade for more than 30 days (other than for seasonal discontinuance) shall be canceled within 60 days after the cessation of operations.

(2) *Essential terms*. The statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired. In the event a contract is terminated under § 514.7(l)(1)(ii), the effective date of the termination shall be used as the date of cancellation (contract termination date under § 514.17(d)(5)).

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992]

#### §§ 514.5—514.6 [Reserved]

### Subpart B—Service Contracts

#### § 514.7 Service contracts in foreign commerce.

(a) *Scope and applicability*. Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States. While tariffs and the essential terms of service contracts are required to be filed electronically and made available to the public under subpart C of this part, service contracts themselves and amendments thereto (incorporating mandatory essential terms as described

in § 514.17 and confidential names of shippers, etc.), as well as certain related notices, shall be filed in paper, hard copy format under this subpart and section.

(b) *Confidentiality*. All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

(c) *Exempt commodities*. Except as provided in paragraphs (c)(1) and (c)(2) of this section, this section does not apply to contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper or paper waste.

(1) *Inclusion in service contracts*. An exempt commodity listed in this paragraph may be included in a service contract filed with the Commission, but only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the exempted commodity; or

(ii) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Waiver of exemption*. Upon filing under this paragraph, the service contract and essential terms shall be subject to the same requirements as those for contracts involving non-exempt commodities.

(d) *Service contracts with non-vessel-operating common carriers*. No ocean common carrier or conference may execute or file any service contract in which a contract party or an affiliate of such contract party or member of a shippers' association entitled to receive service under the contract is an NVOCC, unless such NVOCC has a tariff and proof of financial responsibility as required by sections 8 and 23 of the Shipping Act of 1984 and Commission regulations under this part and part 583 of this chapter.

(e) *Certification of shipper status*—(1) *Certification*. The shipper contract party shall certify on the signature page of the service contract its shipper status, e.g., owner of the cargo, shippers' association, NVOCC, or specified other designation, and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the

contract. The certification shall be signed by the contract party.

(2) *Proof of tariff and bond.* If the certification completed by the contract party under paragraph (e)(1) of this section identifies the contract party or an affiliate or member of a shippers' association as an NVOCC, the ocean common carrier or conference shall obtain proof that such NVOCC has a tariff and a bond as required under section 8 and 23 of the 1984 Act before signing the service contract. An ocean common carrier or conference can obtain proof of an NVOCC's compliance by consulting a current list published by the Commission of NVOCCs in compliance with the tariff and bonding requirements or by reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24).

(3) *Joining shippers' association during term of contract.* If an NVOCC joins a shippers' association during the term of a service contract and is entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier or conference the proof of compliance required by paragraph (e)(2) of this section prior to any shipments under the contract.

(4) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier or conference executing a service contract shall be deemed to have complied with section 10(b)(15) of the 1984 Act upon meeting the requirements of paragraphs (e)(1) and (e)(2) of this section, unless the ocean common carrier had reason to know such certification or documentation of NVOCC tariff and bonding was false.

(f) *Availability of essential terms.* A statement of the essential terms of each initial and amended service contract, as set forth in tariff format, shall be made available for inspection by the general public pursuant to the requirements of this section and § 514.17.

(1) *Availability of terms.* The essential terms of an initial or amended service contract shall be made available for use in a contract to all other shippers or shippers' associations similarly situated, under the same terms and conditions, for a specified period of no less than thirty (30) days from the date of filing of the essential terms of the

service contract or amendment thereto under § 514.17, as may be adjusted under paragraph (j)(4) of this section, except that, where a shipper or shippers' association not a party to the original contract exercises its right to access the amended contract, the minimum volume obligation for the accessing shipper or shippers' association shall be pro-rated according to the relation between the duration of the original (now amended) contract and the duration of the access contract. The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same.

(2) *Me-too requests and replies.* (i) Whenever a shipper or shippers' association desires to enter into an initial or amended service contract with the same essential terms as in another existing service contract, a request shall be submitted to the carrier or conference in writing.

(ii) The carrier or conference shall reply to the request by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier or conference may require the contract offer to be accepted within a specified period of time.

(3) *Filing of me-too contracts.* The service contract resulting from a request under this section may be implemented as described in paragraph (j)(3) of this section, and no additional statement of essential terms need be filed. The letter transmitting the service contract itself for filing, however, shall indicate that it is a "me-too" contract and reference the essential terms FMC File Number. See § 514.17(d)(4)(i).

(4) *Changes in me-too contracts.* In the case of any expressly described subsequent event which results in a change to an original essential term by the operation of a contract clause in the service contract under § 514.17(d)(7)(viii), the new essential term(s) shall be immediately made available in writing to

other shippers and shippers' associations which have entered into a contract with the same, original essential terms, and which are similarly affected by the event. Copies shall also be submitted to the Commission under paragraph (g)(2)(i) of this section.

(g) *Filing of service contract materials.* Authorized persons under § 514.4(d)(5) shall file with BTCL the following:

(1) *Service contracts.* Within ten (10) days of the electronic filing of essential terms under § 514.17, a true and complete copy of the related contract(s) shall be submitted in form and content as provided by this section and § 514.17, in single copy contained in a double envelope, which contains no other material, as follows:

(i) The outer envelope shall be addressed to: "Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573."

(ii) The inner envelope shall be sealed, contain only the executed contract, and shall state: "This Envelope Contains a Confidential Service Contract."

(iii) The top of each page of a filed service contract shall be stamped "Confidential."

(2) *Notices of: change to contract, contract party or rate; availability of changed terms to similarly-situated shippers; and settlement of account.* There shall be filed with the Commission, pursuant to the procedures of paragraph (g)(1) of this section, a detailed notice, within 30 days of the occurrence, of:

(i) The making available of contingent or amended essential terms to similarly situated shippers under paragraphs (f)(1) or (f)(4) of this section;

(ii) Termination under paragraph (l)(1)(ii) of this section by mutual agreement, breach or default not covered by the service contract;

(iii) The adjustment of accounts, by rerating, liquidated damages, or otherwise under paragraph (l) of this section;

(iv) Final settlement of any account adjusted as described in paragraph (g)(2)(iii) of this section; and

(v) Any change to:

(A) The name of a basic contract party under paragraph (h)(1)(v) of this section; or

(B) The list of affiliates under paragraph (h)(1)(vi) of this section of any contract party entitled to receive or authorized to offer services under the contract.

(h) *Form and content.* Every service contract shall clearly, legibly and accurately set forth in the following order:

(1) *On the first page, preceding any other provisions:* (i) A unique service contract number, and consecutively numbered amendment number, if any, bearing the prefix "SC" (see § 514.17(d)(2));

(ii) The ATFI number ("Tariff # \_\_\_\_\_") of the carrier's or conference's essential terms publication (See §§ 514.11(b) and 514.17(b));

(iii) A reference to the statement of essential terms numbers, as follows:

(A) "ET Number \_\_\_\_\_" as provided in § 514.17(d)(2)(i); and,

(B) "FMC File Number \_\_\_\_\_" as provided in § 514.17(d)(4)(i).

(iv) The ATFI number(s) ("Tariff # \_\_\_\_\_") of the tariff(s) of general applicability;

(v) The typewritten legal names and business addresses of the contract parties; the typewritten legal names of affiliates entitled to access the contract; and the typewritten names, titles and addresses of the representatives signing the contract for the parties. Carriers and/or conferences which enter into contracts which include affiliates must in each instance either:

(A) list the affiliates' business addresses; or

(B) certify that this information will be provided to the Commission upon request within 10 business days of such request (These requirements will apply to previously-filed contracts amended after March 13, 1996). However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the amendment adds new parties or affiliates. subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carriers," "shipper," or "association," etc.); and

(vi) Every affiliate of each contract party named under paragraph (h)(1)(v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by a conference or shippers' association, individual members need not be named unless the contract includes or excludes specific members. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information.

(2) *On the second and subsequent pages:* (i) The complete terms of the contract, including:

(A) All essential terms as required under § 514.17, preferably in the order and format prescribed by § 514.17(d);

(B) Other terms of the contract; and

(C) Section 514.7(h)(2)(i)(A) does not apply to a service contract that incorporates by reference all of the associated essential terms filing as published in ATFI, provided that the parties certify that, other than for those provisions set forth in the filed service contract, such essential terms filing sets forth the true and complete contract.<sup>1</sup>

(ii)(A) A description of the shipment records which will be maintained to support the contract; and

(B) The address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under paragraph (m) of this section; and

(iii) The number of free days and charges for use of carrier or conference provided equipment. The carrier or conference may reference its tariff of general applicability or equipment interchange tariff. In those instances, reference need be made to Tariff Rule 21 (§ 514.15(b)(21)) and the applicable tariff number only.

(3) *On the signature page:* (i) Signatures of all necessary contract parties; and

(ii) A certification of shipper status in accordance with paragraph (e) of this section.

(i) [Reserved]

(j) *Contract rejection and notice; implementation—(1) Initial filing and notice of intent to reject—*(i) Within 20 days after the initial filing of an initial or amended service contract, the Commission may reject, or notify the filing party of the Commission's intent to reject, a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the 1984 Act or this part. The Commission will provide an explanation of the reasons for such rejection or intent to reject.

(ii) Except for rejection on the ground that the service contract or amendment thereto was not filed within ten days of its essential terms, or other major deficiencies, such as not containing an essential term, the parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract (in paper form under paragraph (g) of this section) and/or statement of essential terms (in electronic form under § 514.17), modified to satisfy the Commission's concerns.

(2) *Rejection.* The Commission may reject an initial or amended contract and/or statement of essential terms if:

(i) The initial or amended service contract is not filed within 10 days of the electronic filing of its associated essential terms;

(ii) A mandatory essential term or 30-day me-too notice is missing; or

(iii) Under a notice of rejection pursuant to paragraph (j)(1) of this section, if the objectionable contract or statement of essential terms:

(A) Is not resubmitted within 20 days of the notice of intent to reject; or

(B) Is resubmitted within 20 days of the notice of intent to reject as provided in paragraph (j)(1)(ii) of this section, but still does not conform to the form, content or filing requirements of the Act or this part.

(3) *Implementation; prohibition and re-rating.* (i) Performance under a service contract or amendment thereto may begin without prior Commission authorization on the day its associated statement of essential terms is electronically filed, except for rejection under paragraph (j)(3)(ii) of this section;

<sup>1</sup>See Exhibit II of this part for an example of an abbreviated format service contract.

(ii) When the filing parties receive notice that an initial or amended service contract or statement of essential terms has been rejected under paragraph (j)(2) of this section:

(A) Further or continued implementation of the service contract is prohibited;

(B) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper or shippers' association within 30 days of the date of rejection; and

(C) Detailed notice shall be given to the Commission under paragraph (g)(2) of this section within 30 days of:

(1) The rerating or other account adjustment resulting from rejection under this paragraph; and

(2) Final settlement of the account adjusted under paragraph (j)(3)(ii)(C)(1) of this section.

(4) *Period of availability.* The minimum 30-day period of availability of essential terms required by paragraph (f)(1) of this section shall be suspended on the date of the notice of intent to reject an initial or amended service contract and/or statement of essential terms under paragraph (j)(1)(i) of this section, or on the date of rejection under paragraphs (j)(1)(i) and (j)(2) of this section, whichever occurs first, and a new 30-day period shall commence upon the resubmission thereof under paragraph (j)(1)(ii) of this section.

(k) Modification, correction and cancellation of service contract terms.

(1) *Modifications.* (i) The essential terms originally set forth in a service contract may be amended by mutual agreement of the parties to the contract and shall be electronically filed with the Commission under § 514.17.

(ii) Amended service contracts shall be filed with the Commission pursuant to paragraph (g) of this section.

(iii) Any shipper or shippers' association that has previously entered into a service contract which is amended pursuant to this paragraph may elect to continue under that contract or adopt the modified essential terms as an amendment to its contract.

(2) *Corrections.* Either party to a filed service contract may request permis-

sion to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended service contract to be corrected.

(ii) A paper copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(3) Filing and availability of corrected materials.

(i) If the request for correction is granted, the carrier or conference shall file the corrected contract provisions under this section and/or a corrected statement of essential terms under § 514.17, using a special case number under § 514.9(b)(19). Corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected essential terms. The provisions of paragraphs (f)(1) to (f)(3) of this section shall otherwise apply.

(ii) The provisions of paragraph (k)(3)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms.

(iii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to

continue under that contract with or without the corrected essential terms.

(4) *Cancellation.* See paragraph (1) of this section and § 514.4(e)(2).

(1) *Accounting adjustments; rerating; notice—(1) Account adjustment; rerating—(i) Events and damages covered by contract.* An account shall be adjusted when there is either liability for liquidated damages under § 514.17(d)(7)(vii), or the occurrence of an event described in § 514.17(d)(7)(viii).

(ii) *Mutual termination or shipper failure to meet cargo minimum not covered by the contract.* In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or because the shipper or shippers' association has failed to tender the minimum quantity required by the contract:

(A) Further or continued implementation of the service contract is prohibited; and

(B) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of each shipment.

(2) *Notice to contract party.* A proposed final accounting or rerating under this section shall be issued to the appropriate contract party within 60 days of termination, discontinuance, breach or default of the service contract, for:

(i) Liability for liquidated damages under § 514.17(d)(7)(vii);

(ii) The occurrence of an event under § 514.17(d)(7)(viii); or

(iii) Termination, breach or default not covered by the contract.

(3) *Notice to Commission.* Detailed notice of any termination, rerating, and/or account adjustments, as well as final settlement of an adjusted account, shall be given to the Commission under paragraph (g)(2) of this section.

(m) *Record keeping and audit—(1) Records retention for five years.* Every common carrier or conference shall maintain service contract records in an organized, readily accessible or retrievable manner for a period of five years from the termination of each contract.

(2) [Paragraph (m)(2) is stayed until further notice.] *Where maintained.* (i)

Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (m)(3) of this section.

(ii) If service contract records are not made available to the Commission as provided in paragraph (m)(3) of this section, the Commission may cancel any carrier's or conference's right to maintain records outside the United States pursuant to the certification procedure of paragraph (m)(2)(i) of this section.

(3) *Production for audit within 30 days of request.* Every common carrier or conference shall, upon written request of the FMC's Director, Bureau of Enforcement or any Area Representative, submit requested service contract records within 30 days from the date of the request.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 46322, Oct. 8, 1992; 58 FR 27, Jan. 4, 1993; 58 FR 5622, Jan. 22, 1993; 61 FR 5309, Feb. 12, 1996; 61 FR 51233, Oct. 1, 1996]

EFFECTIVE DATE NOTE: At 57 FR 36271, Aug. 12, 1992, the effectiveness of paragraph (m)(2) is stayed until further notice. The agency will publish a document in the FEDERAL REGISTER.

### Subpart C—Form, Content and Use of Tariff Data

#### § 514.8 Electronic filing.

(a) *Exemptions.* (1) All tariffs required to be filed by this part shall be filed in the proper electronic form and manner unless specifically exempted by the Commission.

(2) A petition for a temporary exemption from the electronic filing requirements of this part shall be filed with the Secretary of the Commission under § 502.69 of this chapter and § 514.21. Unless a complete exemption from filing tariff material is warranted, the petitioner obtaining the exemption will still be required to file tariffs in paper format during the period of the exemption.

(b) *User manual.* A user manual for electronic filing (and/or retrieval) may be purchased from BTCL for a fee set forth in §514.21. The user manual contains the following:

(1) *ATFI Fundamentals Guide*, which provides the basic ATFI concepts and the general system background to understand the procedures for ATFI use.

(2) *ATFI System Handbook*, which describes system use characteristics, provides high-level introduction to users' interfaces, i.e., menus and screens, outlines the information contained in the guides, and is a quick reference source for experienced users.

(3) *ATFI Tariff Retrieval Guide*, which provides complete instructional detail on the retrieval procedures to access all components of a tariff using the ATFI central site system in interactive mode.

(4) *ATFI Tariff Filing Guide*, which provides complete instructional detail on the interactive filing procedures to create and maintain all components of a tariff using the ATFI central site system in interactive mode.

(5) *ATFI "Batch Filing Guide"* (see paragraph (d)(3) of this section), which presents information to tariff filers who prepare new tariff submissions or modifications in an "off-line" or batch mode, and then submit the batch filings to the Commission either electronically (on-line batch) or by tape (tape or in-bulk batch). Contains the ATFI transaction sets for proper formatting of batch filings.

(c) *Filing; types of filing.* In all cases, interactive, on-line batch or bulk (tape) batch, the filing session is processed as soon as possible after submission/receipt of the filing session information. The ATFI system assigns the filing date, which is the date an electronically transmitted (interactive or on-line batch) filing session file transfer is initiated (successful file transfer assumed) or the tape (in-bulk batch) is delivered to a designated location and date-time stamped, in local time in the U.S. Eastern Time Zone. After the filing session is processed, a filing-results message is placed in the filers electronic mailbox on the central site system.

(1) *Interactive filing.* Interactive tariff filing uses a modem and VT-100-type

terminal (or VT-100-type terminal emulation on a personal computer) for ATFI access to create tariff filings, verify previous filings, and perform sample freight calculations for verification of filed information, using ATFI system screens and pop-up windows. The modem must adhere to one of the following standards: Bell 212 (1200 baud); CCITT V.22 (2400 baud); or CCITT V.32 (9600 baud). The filing is submitted when the filer executes the command to "File all Authorized Changes" and ATFI's "sent" response indicates completion of that filing session submission.

(2) *On-line batch filing.* On-line batch filing is performed by transmission of prepared tariff material to the ATFI system over dial-up lines from the filer's own computer, using published ATFI transaction set formats and the KERMIT file transfer protocols. The conclusion of the file transfer sequence is a positive keyboard entry to initiate the transfer and a response that indicates completion of that submission. The modem requirements are the same as those in paragraph (c)(1) of this section. On-line batch filing requires a computer and software capable of producing tariff material according to the ATFI transaction sets, and transmitting via KERMIT protocol. KERMIT is public domain software and is available from: KERMIT Distribution, Columbia University Center for Computing Activities, 612 West 115th Street, New York, NY 10025.

(3) *In-bulk (tape) batch filing.* Tape batch filing is accomplished by physical delivery of prepared tariff material on magnetic tape, in the published ATFI transaction set formats, to designated location(s) and accepted/time-stamped by an ATFI attendant, or date/time stamped and deposited for processing. The tape is processed after receipt at the ATFI Computer Center. In order that in-bulk (tape) tariff data can be deemed to be "filed" on a particular date, the tape(s) must be appropriately delivered (deposited) by 5:00 p.m. on that date, if a normal Commission work day; or if the date desired is a non-work day, by 5:00 p.m. on the previous Commission work day. See §514.10(a)(2)(iii). In-bulk batch filing requires a computer and software capable

of producing tariff material according to the ATFI transaction sets, and recording this on 9-track 1600 bpi or 6250 bpi tape according to standards outlined in the "Batch Filing Guide." See paragraph (d)(3) of this section.

(d) *General format requirements*—(1) *Database format.* The ATFI database is structured from tariff data elements and the tariff objects (see paragraph (h) of this section) formed by logical grouping of those elements. For example, a TLI is a tariff object which contains data elements for origin, destination, rate, basis, service, etc. The tariff objects are relational, with the "master" record being the organization record for a firm. One or more tariff records would be "related" to that organization record. All required and optional Tariff Rules, any number of commodity descriptions, desired location groups and inland rate tables are related to a specific tariff record. TLIs are related to a specific commodity description and assessorial-charge algorithms are related to specific Tariff Rules, commodity descriptions or TLIs. This relational structure allows interactive ATFI users to quickly locate specific tariff objects regardless of the filing organization, tariff type or trade. Although the data formats are very precise and the CRT displays standard, the traditional page format is no longer in use. See paragraph (l)(1) of this section.

(2) *Batch transmission.* Batch transmission of tariff materials to the ATFI computer, either on-line or in-bulk, is governed by the transaction sets contained in the "Batch Filing Guide." Tariff filings not complying with the regulations in this part or the formats and valid codes contained in the "Batch Filing Guide" are subject to rejection.

(3) *"Batch Filing Guide."* The ATFI "Batch Filing Guide" is published and updated in Pike and Fischer, "Shipping Regulation," SR 329:501, and a copy of the Guide is available from BTCL. The "Batch Filing Guide" includes the following items:

(i) *Transaction sets.* The transaction set formats also include transaction set segments, data elements, and reference tables.

(ii) *Data Element Dictionary ("DED") and Valid Reference Table Entries* for certain data elements (e.g., service codes, container type codes, currency codes, etc.), calculation statement definitions, and condition and calculation statement data fields. For interactive filing, valid reference table entries can be accessed on help screens.

(4) *Adding new transaction data.* Requests for major changes or additions to the transaction set data dictionary or reference tables shall be submitted in writing to BTCL, with sufficient detail and reasons for each proposed change. A contact person and telephone number also should be provided in case of questions.

(i) A proposed major change (other than a correction), such as to a transaction set, will require formal configuration management procedures and a minimum of thirty days' advance notice of the change in the FEDERAL REGISTER and the ATFI system news, available at system logon, and by other established Commission communications procedures.

(ii) Minor changes will be entered into the system and published as soon as possible. Such minor changes include additions to any of the following term and reference lists: Cities; States and provinces; Countries; Ports; Container sizes; Container types; Container temperatures; Hazard codes; Inland modes; Packaging types; Rate Bases; Service types; Stuffing mode; Stripping mode; and Currencies. See Appendixes A and B to the ATFI Batch Filing Guide.

(e) *Hardware and software requirements.* The basic equipment suite necessary to access ATFI is a VT-100-type terminal (including CRT) and a modem. A more sophisticated suite for ATFI access would be composed of a personal computer (PC) (including CRT), a VT-100 emulation software package, and a modem. For batch filers, the transmitted filing session must be formatted to comply with the transaction sets. The transmission may be via the use of KERMIT file transfer protocols after establishing a link for on-line batch filing with the ATFI central site computer (see paragraph (c)(2) of this section).

(f) *Password and User ID.* (1) System Identifications ("IDs") for either filing or retrieval logon and initial password assignments are obtained by submitting the User Registration Form (exhibit 1 to this part), along with the proper fee under § 514.21 and other necessary documents prescribed by § 514.4(d) of this part, to BTCL. A separate User Registration Form is required for each individual that will access ATFI.

(2) Logon IDs and passwords may not be shared with or loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any logon ID that is shared with, loaned to or used by parties other than the registrant.

(3) Authority for organizational maintenance, filing or retrieval can be transferred by submitting an amended registration form requesting the assignment of a new logon ID and password (see § 514.4(d)). The original logon ID will be canceled when a replacement logon ID is issued.

(g) *Connecting to ATFI; procedures.* If ATFI user equipment (hardware and software) is compatible with the configurations specified in paragraph (e) of this section, and the proper ID and password have been obtained under paragraph (f) of this section, on-line ATFI services (interactive retrieval, interactive filing, and on-line batch filing) are available to users registered under this section and § 514.21 for the respective services, over commercial telecommunications using standard asynchronous modems with data rates up to 9600 baud. The dial-up procedures are set forth in section 2.3 of the Batch Filing Guide and section 4.2 of the ATFI System Handbook, and the ATFI Hot Line number is available through BTCL.

(h) *Major menu selections.* Proper connection will lead the user to the "ATFI Logo Menu," which allows selections by any user for "Tariff Retrieval," "Retrieval Practice," "Retrieval CBI," "Mailbox," "ATFI System News," "Change Password," "Screen Setup," and "Logout." Additionally, a registered filer can access "Tariff Filing," "Filing CBI," and "Filing Practice." Upon the selection of either "Tariff Filing" or "Tariff Retrieval," the user

will be led to the "Main Menu," which allows selection (with help screens and windows) of the following items and subitems (see also the anti-rebate policy notice in paragraph (j) of this section). The tariff *objects* (in addition to \* "Commodity Descriptions" and \* "TLIs") are marked with an asterisk (\*).

(1) *Select Tariff.* This selection allows access to a particular tariff which can be selected by "Organization Number," "Origin" and "Destination," and/or "Organization Trade Name."

(2) *Rate Inquiry.* This selection is used for "Commodities" (§ 514.13(a)), "TLIs" (§ 514.13(b)), "Access Dates" (§ 514.10(a)(1)), and "Algorithms" for assessorial charges and calculations (§ 514.10(d)). For essential terms publications, "Rate Inquiry" provides access to the \* "Essential Terms" of service contracts (§ 514.17).

(3) *Other Tariff Components.* This selection provides another menu for:

(i) \* *Rules (Tariff Rules).* See § 514.15.

(ii) *Inland Rates.* (This provides access to \* "Inland Rate Tables.") See § 514.15(b)(1).

(iii) *Commodity Index.* (This can also be accessed from the "Commodity Search" screen under "Rate Inquiry.") See § 514.13(a)(7).

(iv) \* *Location Groups.* See § 514.10(b).

(v) *Tariff Definition.* This selection provides another menu for:

(A) \* *Tariff Record.* See § 514.11(b).

(B) *Origin Scope.* See § 514.11(c).

(C) *Destination Scope.* See § 514.11(c).

(D) *Governing Tariffs.* See § 514.12.

(E) \* *Organization Record.* (This item is more directly available by filers who have the authority to edit the "Organization Record.") See § 514.11(a).

(vi) *Select Tariff.*

(vii) *New Access Date.* See § 514.10(a)(1).

(4) *Utilities.*

(i) *Currency Conversion.*

(ii) *Display Options.*

(iii) *Version Information.*

(iv) *New Tariff Creation* (filers only).

(v) *General Rate Increases* (filers only).

(vi) *Authorize/Review Changes* (filers only).

(vii) *Filing Utilities* (filers only).

(5) *Exit Tariff System.*

(6) *V1.00 Information.*

(i) [Reserved]

(j) *Anti-rebate tariff notice.* To further implement the United States policy against untariffed rebates, as reflected in § 514.1(c)(1)(iii), the following notice will appear after logon to the ATFI system:

The foreign commerce carriers whose tariffs are recorded within this system have a policy against the payment of any rebate, directly or indirectly by the company or by any officer, employee or agent, which payment would be unlawful under the Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984. The shipping statutes also prohibit rebates in the domestic offshore trade.

(k) *Publication; paper copies of tariff materials—(1) Publication—(i) Availability for public inspection.* (A) During normal business hours, every carrier, conference and terminal operator shall promptly make available to the public in paper or electronic form and at a reasonable charge (such as for a regular subscription under § 514.15(b)(30)) all tariff material required by this part to be filed by the carrier, conference or marine terminal operator, as well as all Commission actions affecting such tariff material, such as rejections, suspensions, etc.

(B) In addition to the requirements of paragraph (k)(1)(i)(A) of this section, every domestic offshore carrier shall make available to the public at each facility at which it receives freight or passengers for transportation, or at which it employs a general or sales agent, all tariff material governing transportation to and from the facility in question.

(ii) *Availability of domestic offshore tariff materials to government officials.* The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish to a designated government official or office tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Such request may be for the tariff matter either to be made available in electronic format, or to be furnished in no more than two (2) paper copies. Upon receipt of such a request, which shall include the name, address and facsimile transmission number(s) of

the designated official or office, the carrier shall promptly provide to the designated official or office the requested tariff material and add the official or office to its list of tariff subscribers. No charge shall be made for the service, but such officials and offices shall be treated in the same fashion as paid subscribers in all other respects. See § 514.15(b)(30). In addition, a copy of any new or amendatory tariff matter that results in an increased cost to the shipper and that is filed on less than 30 days' notice pursuant to § 514.9(b)(24)(ii), shall be provided to the designated Government officials or offices, on the same day that such tariff matter is filed with the Federal Maritime Commission, by hand delivery or facsimile transmission of one paper copy, or by electronic transmission, if available.

(iii) *Assistance to the public.* Persons requesting to inspect tariff materials shall, upon reasonable notice, be provided sufficient instruction or assistance to allow them to ascertain both the present and proposed rates, charges, classifications, Tariff Rules and practices of the tariff owner.

(iv) *Tariff Rule containing public access details.* Tariff filers shall set forth in detail in Tariff Rule 30 (§ 514.15(b)(30)) all costs, conditions and arrangements for public inspection of tariff material, including the official tariff when it is not available for access in the ATFI system due to a breakdown or similar disaster.

(v) *Official copies.* (A) Except as provided in paragraph (k)(1)(v)(B) of this section, the official version of a tariff will be the version of any and all tariff objects published and effective on a specific date in the ATFI central site computer or the ATFI archives. Individual tariffs are accessible by registered ATFI interactive retrievers and by the public at terminals in the Commission's Tariff Control Center.

(B) During a major emergency where the ATFI host processor is inaccessible due to an equipment breakdown in the ATFI system, the official tariff of a tariff owner shall be that maintained by the tariff owner for public access during just such an emergency. The access to the emergency tariff shall be described in the tariff owner's Tariff

Rule 30 (§ 514.15(b)(30)). As soon as the ATFI host processor becomes accessible, the tariff owner shall ensure that there are no discrepancies between the emergency tariff and the ATFI tariff.

(2) *Certified paper copies of tariff material.* The Commission will publish paper pages containing filed tariff information only for special Commission requirements, e.g., for requested certification of tariff data by the Commission Secretary for official use in court and in other governmental proceedings under § 503.43(c) of this chapter and § 514.21(d). The pages produced for these purposes will not reflect the formats of traditional, page-based tariffs, but will present tariff objects in effect or filed to become effective on a specific date. The paper format may reflect the printing of a computer screen display or the retrieval and printing of a specific portion of a tariff in the ATFI database or the ATFI database archives.

(1) *Certification of batch filing capability.* (1) The Commission will not make available to the public software packages for firms to use in formulating tariff filings. The Commission has released the "Batch Filing Guide" (with transaction sets) into the public domain so that qualified commercial firms can develop batch filing software for the general market.

(2) *Certification.* Firms which develop batch filing software, by appointment through BTCL and payment of the fee set forth in § 514.21, can be certified for the formatting of one or more of several types of tariff data (e.g., domestic, foreign, essential terms, etc.) in ATFI transaction set format and submission of that data to the FMC ATFI central site computer. The data may be submitted either via on-line batch transmission over dial-up telecommunications links using the required file transfer protocols, or in bulk batch via delivery to the ATFI computer center of magnetic tape containing the tariff data. Certification will require submission of tariff filing sessions to ATFI, with an evaluation of the actual results of the attempted filings to ensure that the transaction set formats are properly employed and that the filing results are consistent with the filer's expectations.

(m) *ATFI screens.* The sample screens used to illustrate tariff objects in this part simulate parts of, but are not the actual, completed ATFI screens used in the electronic filing and retrieval of tariff data, which may also change with technical or regulatory developments. Moreover, certain fields appearing on the actual ATFI screens may be blocked off from directly entering all or certain data in such fields, because of default procedures, developing and copying data from other, preliminary screens, etc. Accordingly, filers must carefully follow instructions in order to properly enter complete and accurate tariff data.

(n) *Validation of data.* Tariff data submitted to ATFI for filing are screened for compliance with ATFI conformity checks, and certain data not automatically rejected by the conformity checks are flagged for Commission examiner review.

(1) *Conformity checks.* The conformity checks are syntax checks, validity checks and associative checks. For interactive filing, the ATFI system will generally not accept tariff material which fails conformity checks and the on-line filer can immediately correct its proposed filing before final submission to the ATFI database. Commercially developed batch filing software can be designed to accomplish the same functionality. However, all proposed filings of tariff materials must undergo the routine system conformity checks before they can be received into the database. Filers will be notified of automatic rejections at this stage by electronic mail, with follow-up letter, if necessary. The conformity checks are:

(i) *Syntax Checks.* Tariff material will be checked for file integrity, proper data types, field lengths, and logical sequence according to the "Batch Filing Guide's" transaction sets. Data not conforming to the data element format or type in the "Batch Filing Guide's" Data Element Dictionary ("DED") and the sequence requirements of the transaction sets and segment definitions will result in rejections of submitted tariff data to include the possible rejection of an entire filing if form and format errors are extensive enough to preclude processing.

(ii) *Validity Checks.* Certain data elements of filed tariff material will also be checked for data validity by type against the DED's published reference tables, such as for container types and sizes, rate basis, and packaging. See § 514.13(b).

(iii) *Associative Checks.* ATFI uses associative checks to identify logical conformity with established tariff filing rules. The following are some representative types of associative checks performed by the ATFI system.

(A) Any *new or amended tariff matter* must have:

(1) A valid organization number and name (§ 514.11 (b)(1)(ii) and (b)(2)).

(2) No suspended carrier or object status (See §§ 514.1(c)(1) and 514.19).

(3) Appropriate publication authority (§ 514.11(a)(9)(iii)).

(4) Filing date same as or prior to effective date (§ 514.10(a)).

(5) Valid and appropriate filing/amendment codes (§ 514.9).

(6) Valid and appropriate filing, effective, thru and expiration dates (§§ 514.9 and 514.10(a)).

(7) When used, valid special case number and filing/amendment code "S," with no other filing/amendment codes entered (§ 514.9(b)(19)).

(B) *Tariff records* (§ 514.11(b)) must have new (unique to carrier/conference/terminal) tariff number (§ 514.11(b)(1)(ii)).

(C) *Commodity description records* (§ 514.13(a)) must have:

(1) Complete textual description and unique number.

(2) At least one commodity index entry.

(D) *Tariff line item (TLI) records* (§ 514.13(b)) must have a valid:

(1) Commodity description and code (§ 514.13(b)(5)).

(2) TLI code (§ 514.13(b)(6)).

(3) Origin and destination (§ 514.13(b)(15)).

(4) Rate basis (§ 514.13(b)(17)).

(5) A specified rate (§ 514.13(b)(19)).

(E) *Tariff Rules* (§ 514.15(b)) must have:

(1) All mandatory rules.

(2) Number of new Tariff Rule not previously used in that tariff.

(F) *New or enlarged scope* (certain tariffs) must have effective date 30 days or more after filing date (§ 514.11(b)(10)).

(G) *Essential terms* (§ 514.17) must have:

(1) All mandatory terms (§ 514.17(d)).

(2) Availability date for initial service contracts and each amendment thereto at least 30 days greater than the filing date (§ 514.17(d)(3)).

(2) *Flag for FMC examiner review.* In ATFI, electronic conformity checks cannot be designed to check and pass/fail every possible rejection situation, such as, for example, conflicting texts or ambiguous language. Other matters, such as filings of controlled carriers, require policy review under the 1984 Act. For these reasons, ATFI will automatically queue for review by a Commission examiner the items which survive the conformity checks described in paragraph (n)(1) of this section. The following are representative types of items flagged for examiner review:

(i) *Any new or amended tariff matter:*

(A) Of a controlled common carrier.

(B) With a filing/amendment code of "G," "K," "M," "P," "T," or "X" (§ 514.9(b)).

(C) When a special case number is present (§ 514.9(b)(19)).

(ii) All *tariff record* filings and amendments (§ 514.11(b)).

(iii) All new *commodity descriptions* (§ 514.13(a)).

(iv) *Tariff line item (TLI) records* (§ 514.13(b)):

(A) With any increase and the filing/amendment code does not contain an "A" or "G" (§ 514.9 (b)(1) and (b)(7)).

(B) With any non-rate data changes (§ 514.13(b)(17)).

(v) *All Tariff Rules* (§ 514.15).

(vi) *Location groups* (§§ 514.9(b)(16) and 514.10(b)):

(A) Any new group or addition to group.

(B) Any deletion of a group member.

(vii) *All service contract essential terms filings.* (§ 514.17).

(3) *Status/rejection codes.* The command line at the bottom of most ATFI screens provides a "Status" option for retrievers to determine whether an ATFI object is accepted, rejected, suspended, etc., and the reasons therefor. The DED "FMC Status/Rejection Code" provides numeric, two-digit

codes for this purposes, e.g., “01—Not rejected; item accepted.”

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992; 57 FR 46324, Oct. 8, 1992; 58 FR 28, Jan. 4, 1993; 60 FR 56123, Nov. 7, 1995]

**§ 514.9 Filing/Amendment codes and required notice periods.**

(a) *General.* (1) Under the shipping statutes, various types of tariff material require different notice periods (beginning with the filing date) before they may become effective. For example, a new tariff or a rate increase usually requires 30 days' notice before the effective date. See § 514.4(a). Paragraph (b) of this section describes the different notice periods for the various types of filed tariff items and their corresponding filing/amendment codes (symbols), which shall be carefully used by the filer for the purposes of guiding the user and triggering accurate associative checks to ensure the integrity of the filed tariff material. See § 514.8(n). The ATFI system makes available a *Help* screen which also lists the uniform symbols.

(2) *Multiple symbols.* Filed tariff material frequently can be coded with more than one symbol. Accordingly, the field, “Amendment Type,” appearing on most ATFI screens, will usually allow up to three different, compatible symbols, but see paragraph (b)(19) of this section.

(3) *Symbol(s) resulting from deletion.* When amendments deleting existing tariff matter alter the amount paid by the shipper/consignee, the effect of this change shall be indicated by the proper code symbol(s), as required by paragraph (b) of this section.

(4) *Restricted use of symbols.* The codes or symbols prescribed in paragraph (b) of this section may not be used for any other purpose, nor shall any symbol be used other than the appropriate symbol(s) described in paragraph (b) of this section.

(5) *Essential terms and terminal tariffs.* Due to the absence of most of the notice requirements otherwise applicable to carrier or conference tariffs, the use of symbols under this section for terminal tariffs will be appropriate for the tariff objects employed and filing/maintenance. Symbols for essential

terms of service contracts under § 514.17 will usually be “I” for initial filings, “S” for corrections, and the appropriate symbols for amendments to essential terms. See § 514.17(d)(5)(i).

(b) *Filing/Amendment codes and notice periods.* For tariffs in foreign and domestic offshore commerce, the following are the notice periods for various types of filings and their corresponding symbols. To the extent applicable and permitted by the ATFI system, the symbols can also be used in other types of tariff material, such as terminal tariffs.

(1) “A” *Increase (Foreign commerce and across-the-board increase which is not a general rate increase in domestic offshore commerce under paragraph (b)(7) of this section [“G”]: 30 days’ notice.* (i)(A) Except for a general rate increase in domestic offshore commerce, amendments which provide for changes in rates, charges, rules, or other tariff provisions (including fares in domestic offshore commerce), which constitute a cost increase in foreign commerce or an across-the-board increase in domestic offshore commerce, shall use the symbol “A” and be filed to become effective not earlier than 30 days’ after the date of filing, unless an exemption or special permission to become effective on less than said 30 days’ notice has been granted by the Commission. See paragraph (b)(24)(ii) of this section for domestic offshore increases which may be filed on seven workdays’ notice.

(B) With the filing of tariff material under this paragraph (b)(1)(i), domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher “cargo n.o.s.” or similar general cargo rate, is a rate increase requiring the appropriate notice period and corresponding symbol under this section.

(2) [Reserved]

(3) “C” *Change resulting in neither increase nor decrease in rates or charges: effective upon “short notice,” i.e., upon filing in foreign commerce, or on one day’s notice in domestic offshore commerce.* (i)

Amendments which result in no change in cost to the shipper, such as an amendment changing only the name or address of the filing party, may become effective upon short notice (i.e., upon filing in foreign commerce, or on one day's notice in domestic offshore commerce) and shall use the symbol "C;" except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(ii) An amendment containing a rate on a specific commodity not previously named in a tariff which results in no change in cost to the shipper may become effective on short notice under this subparagraph, if:

(A) The tariff contains a "cargo, n.o.s." or similar general cargo rate which would otherwise be applicable to the specific commodity;

(B) The specific commodity rate is equal to the previously applicable general cargo rate; and

(C) The common carrier is not a controlled common carrier which has not received special permission or an exemption authorizing the amendment.

(4) [Reserved]

(5) *"E" Expiration: effective upon filing unless it results in an increase under paragraph (b)(1) "A" or (b)(7) "G" of this section.* When amendments deleting or expiring existing tariff matter alter the amount to be paid by the shipper/consignee, the effect of this change shall be indicated by other symbol(s) under this paragraph (b). Otherwise, expired or deleted matter, such as an amendment completely canceling a tariff due to a cessation of all service by the carrier between the ports or points listed in the canceled tariff, may take effect upon filing and shall use the symbol "E."

(6) [Reserved]

(7) *"G" General rate increase or decrease (domestic offshore commerce): 60 days' notice.* Amendments of domestic offshore tariffs which change rates, fares, charges, Tariff Rules, or other tariff provisions and which constitute a general increase or decrease in rates,

shall be filed together with any supporting material required by part 552 and § 502.67 of this chapter at least 60 days prior to their effective date and shall use the symbol "G."

(8) [Reserved]

(9) *"I" New or initial matter: 30 days' notice—(i)(A) New tariffs and, except for a general increase or decrease in domestic offshore commerce, filings which provide for new or initial rates, fares, charges, Tariff Rules or other tariff provisions resulting in an increased cost to the shipper, shall use the symbol "I" and be filed to become effective not earlier than 30 days after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission.*

(B) With the filing of tariff material under this subparagraph, domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) Initial filings of essential terms of service contracts under § 514.17 of this part may not use any symbol other than "I." See paragraph (b)(19)(iii)(A) of this section for corrections to essential terms.

(10) [Reserved]

(11) *"K" Rate or charge filed by a controlled common carrier member of a conference under independent action (foreign commerce): effective upon filing if decrease.*

(i) All changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part. Such changes shall use the most appropriate symbol(s) under this section.

(ii) Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, using the symbol "K," subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the

conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(12) [Reserved]

(13) *"M" Transportation of U.S. Department of Defense Cargo.* Where a rate for military cargo is incorporated as a separate TLI in the commercial tariff of a carrier or conference in foreign commerce, the filing/amendment code "M" shall be used to identify the TLI. Any such military rate may be effective upon filing.

(14)-(15) [Reserved]

(16) *"P" Extension of service to additional port(s) at rates already in effect for similar services at the port(s) being added; or the carrier's establishment of additional terminal facilities at the port(s) already served, at the same rates as those currently applicable to comparable facilities of the carrier at the same port.*

(i) *In domestic offshore commerce:*

(A) Amendments extending actual service to additional ports at rates or fares already in effect for similar service at the ports being added may take effect upon filing and shall use the symbol "P;" and

(B) Carriers may file to be effective upon filing, using the symbol "P," amendments establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor.

(ii) *In foreign commerce:*

(A) Amendments which provide for the addition of a port or point to a previously existing origin or destination field may become effective upon filing and shall use the symbol "P."

(B) A deletion of a port or point from a previously existing origin or destination field may not be coded with a "P," but shall be coded with other appropriate symbol(s) under this section.

(17) [Reserved]

(18) *"R" Reduction (Not a general rate decrease in domestic offshore commerce under paragraph (b)(7) "G" of this section)—(i) Domestic offshore commerce (one day's notice).* Except for a general rate decrease, amendments to domestic

offshore tariffs which provide for changes in rates, fares, charges, Tariff Rules or other tariff provisions resulting in a decrease in cost, shall be filed to become effective not earlier than one day after the date of filing, using the symbol "R," unless an exemption or special permission to become effective on less than said one day's notice has been granted by the Commission.

(ii) *Foreign commerce.* Amendments which provide for changes in rates, charges, Tariff Rules, regulations or other tariff provisions resulting in a decrease in cost to the shipper may become effective upon filing and shall use the symbol "R;" except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(19) *"S" Special case matter: effective upon filing unless otherwise directed by the Commission.* Special case numbers will be developed and issued by the Commission and shall be entered by the filer, along with the symbol "S." Special case matter may not be filed with other types of amendments, including special case matter with other special case number(s). When filing special case matter, no filing/amendments codes other than "S" may be used. Special Case filings may arise from the following situations:

(i) Special permission under § 514.18.

(ii) Special Docket decision under § 502.92 of this chapter.

(iii) Correction or resubmission of essential terms.

(A) Correction under §§ 514.7(k) and 514.17.

(B) Resubmission after notice of intent to reject under § 514.7(j).

(iv) Filing to put tariff in order after rejection or overturning a rejection. (Except with the use of the *Thru-date* under § 514.10(a)(5), the ATFI system cannot by itself restore material that has been superseded or rejected, so the filer is required to make any filings to put its tariff in order, through the special case procedures, if necessary.)

(v) Filing of tariff data after suspension under § 514.19.

(vi) Other situations, as directed by the Commission.

(20) *“T” Terminal rates, charges or provisions or canal tolls over which the carrier has no control: effective upon filing.* Wherever a tariff includes charges for terminal services, canal tolls, additional charges, or other provisions not under the control of the common carrier or conference which merely acts as a collection agent for the charges, and the agency making such changes does so without notice to the tariff owner, such provisions may be changed in the carrier’s or conference’s tariff upon filing and shall use the symbol “T.”

(21)–(22) [Reserved]

(23) *“W” for same-day withdrawal of erroneous data.* A filer may withdraw an erroneous filing by the use of the symbol “W” with the corrected filing, but only if the corrected filing is made on the same date as the erroneous filing.

(24) *“X” Exemptions.* (i) Controlled carrier data in U.S. bilateral trades or in trades served exclusively by controlled carriers. (See § 514.3(a)(2).) A controlled common carrier shall use the symbol “X” for all tariff material filed under the following exempt situations:

(A) As to any particular rate, the controlled common carrier’s tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph;

(B) The controlled common carrier’s rates, charges, classifications, Tariff Rules or regulations govern transportation of cargo between the controlling state and the United States (including its districts, territories and possessions); or

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

(ii) *Domestic offshore tariff increases not general or across-the-board increases (7 workdays’ notice).* (A) Except for an across-the-board increase (“A”) or a general rate increase (“G”) in domestic offshore commerce, an amendment

which provides for changes in rates, fares, charges, rules, or other tariff provisions, which constitutes a cost increase in domestic offshore commerce, shall use the symbol “X” and be filed to become effective not earlier than 7 workdays’ after the date of filing, unless an exemption or special permission to become effective on less than said 7 workdays’ notice has been granted by the Commission. See paragraphs (b)(1) and (b)(7) of this section.

(B) With the filing of tariff material under this paragraph (b)(24)(ii), domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(C) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher “cargo n.o.s.” or similar general cargo rate, is a rate increase requiring the appropriate notice period and corresponding symbol under this section.

(iii) The symbol “X” may be used for other situations involving an exemption or continuing special permission, as directed by the Commission.

(c) *Multiple amendments; same or different TLI.* All filings with adequate notice, but with *different, successive* effective dates (each filing effective after the effective date of the previous filing), will be entered into the ATFI system, whether or not they amend the same TLI. On the other hand, unless an appropriate thru date (§ 514.10(a)(5)) is employed to protect the *same or later* effective date of an *earlier* amendment of the same TLI, only the *later (or last)* filing, which has an effective date the *same as or earlier* than that of the previous filing(s), will be given effect, in which case, the previous filing(s) will be presumed to be erroneous and void.

(d) *Supplements.* “Supplements” to tariffs are prohibited. The ATFI system will electronically accommodate the necessary amendment of each TLI selected for general rate changes, through the GRI/GRD utility, assessorials and/or individual TLI changes. Other matters, previously handled by supplements in traditional,

page-based tariffs, will be handled procedurally and/or through Tariff Rules, TLI notes, etc.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 44509, Sept. 28, 1992; 58 FR 28, Jan. 4, 1993; 58 FR 28790, May 17, 1993]

#### § 514.10 Other items used throughout ATFI.

(a) *Control dates and history.* Various control dates are used for tariff material filed in and/or retrieved from the ATFI system. The following simulated screen illustrates these dates which are found on many ATFI screens and contains corresponding numbers keyed to explanatory and regulatory subparagraphs within this paragraph (in addition to "Today" which is the date of entry into the system and the screen). For special date provisions applicable to the essential terms of service contracts, see §§ 514.17 (d)(3) to (d)(5).

```

[§ 514.10(a)]      Today: 01Jan1992
[Always Today's Date]

[(2)]      Filing date: 01Jan1992
[(3)]      Effective date: 31Jan1992
           [e.g., 30 days' notice]
[(5)]      thru: 01Mar1992
[(4)]      Expiration date: 01May1992
           [for TLI expires (etc).]
-----
[(1)(i)]-- Access date: 01Jan1992
           [Today's date unless changed]
           [Could be changed to e.g.
           01Dec1991 or 01June1992]
[(1)(ii)] History -Rev +Rev

```

(1)(i) *Access date and history.* The default date for the Access date is "Today's date." Interactive ATFI, however, allows the user to set a different, desired access date for retrieving objects within the tariff. See § 514.8(h)(3)(vii). The system will select only tariff items that are in effect on the chosen access date. This allows the user to examine the tariff as it existed on a particular date in the past, or to examine rates and Tariff Rules which have a future effective date.

(ii) *History; -Rev; +Rev.* Similar to the functionality of the Access date, the following functions are also available on many ATFI screens:

(A) *History.* This function displays the entire list of modifications to a tariff item.

(B) *-Rev.* This function displays the previous revision (one revision at a time) of the tariff item just prior to the date displayed in the effective date field. See paragraph (a)(3) of this section.

(C) *+Rev.* This function displays the next (future) revision of the tariff item according to the date in the effective date field. See paragraph (a)(3) of this section.

(2) *Filing date.* The filing date, or the date any tariff or tariff element is processed by ATFI, is used to determine the beginning of the advance notice period required for various types of tariff material under § 514.9(b). The filing date is determined for each of the three basic types of filing, as follows:

(i) *Interactive.* The interactive filing system enters a filing date (current date) for every tariff object or tariff object update to be filed. Proposed objects with an outdated filing date will not be accepted by interactive ATFI. The day of filing is determined by the time of the "Commit Authorized Filings to ATFI" command at the completion of an interactive filing session and the "Sent" response from the system, indicating completion of that command at the ATFI central site, in local time in the U.S. Eastern Time Zone. The function "FileDate" (or "Default-Dates" or "Defaults") enables the user to update its proposed filing date to match the date of expected transmission of the proposed filing.

(ii) *On-line batch.* Filers will have a filing date automatically assigned to all tariff objects filed according to the start time of the file transfer, for file transfers that are successfully completed, U.S. Eastern Time Zone. On-line batch filers should plan the transmission of filing session files to allow for retransmission(s) starting during the same U.S. Eastern Time Zone date, in case the results of the initial transmission(s) are not successful.

(iii) *In-bulk (tape) batch.* Filers will have a filing date (in local time in the U.S. Eastern Time Zone) assigned to all tariff objects filed according to the date of delivery of a tape to a designated location. If the date of delivery

is a normal Commission work day, the filing date can be that date if the tape is delivered by 5:00 p.m. If the delivery date is not a normal Commission work day, or the tape is delivered after 5:00 p.m. on a normal work day, the filing date may not be until the next Commission work day.

(3) *Effective date.* The Effective date is the date upon which a filed tariff or tariff element is scheduled to go into effect by the filer. It determines the end of the advance notice period required for various types of tariff material under §514.9(b). Specifically, a tariff provision becomes effective at 12:01 a.m. on the beginning of the effective date. In interactive filing, the Effective date can be changed through "FileDate," etc., as described in paragraph (a)(2)(i) of this section.

(4) *Expiration date.* The Expiration date is the last day, after which the entire tariff or tariff element (e.g., TLI), which is designated to expire, is no longer in effect. After midnight at the end of this day, the current version of the tariff will not include the expired object. In the screen example, the entire item (e.g., TLI) expires on May 1, 1992, leaving no specific rate, which could result in an increase to an NOS rate, for which advance notice from the filing date is required under §514.9(b). The expired object becomes a part of the history objects for the tariff.

(5) *"Thru" date.* The thru date is the date after which an amendment to a tariff element (e.g., TLI rate) is designated by the filer to be unavailable for use and the previously effective tariff element automatically goes back into effect. After midnight at the end of the Thru date, the previously effective tariff object will resume its effect. Thru-date tariff objects recognize and maintain the validity of the unexpired tariff objects they temporarily supersede during their time of effectiveness. In the screen example, the effective item reverts to the item prior to effectiveness on March 1, 1992, which goes out of existence when expired on May 1, 1992. Where an increase requires an advance notice (e.g., 30 days) under §514.9(b), a Thru-date item which is:

(i) A decrease when initially effective requires 30 days' notice from the Filing date to the Thru date, irrespective of

when it becomes effective (no earlier than Filing).

(ii) An increase when initially effective requires 30 days' notice from the Filing Date to the Effective date, but may revert (Thru date) to the previous item on or after the Effective date.

(b) *Locations and groups.* The names of places entered by filers, such as in origin and destination scopes and TLIs, shall conform in spelling to, and will be validated by, ATFI glossaries.

(1) *Names—(i) Point names.* ATFI recognizes approximately 250,000 world place names.

(ii) *Port names.* ATFI recognizes ocean port names, using spellings concordant with the Point Names list, where there is a corresponding point name.

(2) *Location groups.* In the primary tariff, or in a governing tariff under §514.12(a)(1)(ii), the filer will have the option to 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 TLIs 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. A partial screen illustrating the locations within an origin port group follows:

```

[§ 514.10(b)(2)]
  ATFI LOCATION GROUPS

      Group: US ATL. PORTS
  Port Group: Y
  Origin or Dest: 0

      Origin Ports

  BALTIMORE (port), MD, USA
  BOSTON (port), MA, USA
  JACKSONVILLE (port), FL, USA
  MIAMI (port), FL, USA
  NEW YORK (port), NY, USA
    
```

(c) *Currency.* ATFI recognizes a large number of foreign currencies for rates and charges. The complete list of ATFI-recognized currencies is available on-line. Currency conversion rates are maintained and updated in ATFI on

a periodic basis; except that these conversion rates are for comparison purposes only, not as official conversion rates for booking or billing. See § 514.8(h)(3)(vi).

(d) *Assessorials and algorithms*—(1) *Requirement*.—(i) *Charges*. Assessorial or accessorial charges, which are to be added to the basic ocean freight rate to calculate the total cost to the shipper, shall be clearly shown through mathematical formulas or algorithms, as further explained in the Batch Filing Guide (as well as in the rest of the User Manual), when the applicability of the additional charge to the basic ocean freight rate can be accurately determined prior to the carrier's receipt of cargo. Examples of the types of assessorial charges that would usually not be determinable prior to cargo shipment or preparation of the Bill of Lading are:

(A) Free Time and Demurrage under e.g., a rule for detention or demurrage on carrier equipment.

(B) Diversion of cargo.

(C) Blocking, bracing, staking, securing or protective-covering charges that cannot be predetermined.

(D) Cargo held by carrier or terminal storage.

(ii) *Precedence* There should be no conflict between the algorithm and the textual description of the assessorial (if any), but, if there is, the algorithm shall take precedence.

(iii) *Predeterminable charges*. Assessorial charges which can be determined prior to shipment shall be expressed in algorithm form and may be contained in Tariff Rules of tariffs under § 514.15, as well as in commodity descriptions and TLIs of tariffs under § 514.13. Algorithms, including dummy algorithms under paragraph (d)(1)(iv) of this section, are not accommodated in essential terms publications or statements of essential terms under § 514.17.

(iv) *Non-predeterminable charges; null linkage*. Assessorial charges, which cannot be determined prior to shipment

and which are not expressed in the normal algorithm form, shall be set forth in full-text format in the same locations as described in paragraph (d)(1)(iii) of this section. In order to apprise the retriever that such charges may be applicable, however, the filer shall link all of these charges to the appropriate item(s) using null linkage (dummy algorithms), i.e., the algorithm: WHEN—ALWAYS; THEN—NOTHING.

(2) *Overview*. Algorithms are expressed as one or more condition and calculation statement sets. Each set reflects a separate possible condition which may apply, and the means of calculating a tariff additional charge for that condition. A set is composed of a group of condition statements, followed by a group of calculation statements. The allowable condition statements accommodate historically common criteria for the assessment of ocean freight and charges (e.g., “When Destination is ‘New York’,” “When Container Size is ‘40Ft’,” etc.). These statements, in turn, accommodate historically common factors used in the computation of freight and charges (e.g., weight, volume, origin, container size, etc.).

(3) *Calculation statements*. The calculation statements, listed in the Batch Filing Guide at Appendix B, section 2, include common arithmetic functions, including addition [ $\langle X \rangle = \langle A \rangle + \langle B \rangle$ ], subtraction [ $\langle X \rangle = \langle A \rangle - \langle B \rangle$ ], multiplication [ $\langle X \rangle = \langle A \rangle \times \langle B \rangle$ ] and division [ $\langle X \rangle = \langle A \rangle / \langle B \rangle$ ], as well as other operations, such as minimum [ $\langle X \rangle = \text{MIN}(\langle A \rangle, \langle B \rangle)$ ] and maximum [ $\langle X \rangle = \text{MAX}(\langle A \rangle, \langle B \rangle)$ ] functions.

(4) *Screen illustration*. A partial screen (with pop-up help window), illustrating algorithms with multiple condition sets for a commodity description, follows:

[§ 514.10(d)(4)] ATFI COMMODITY DESCRIPTION	
Number	Commodity Description
Assessorial Charge Calculation	
DESC: House to House Surcharge	
CYCLE: 2 (Define RATING values- wt, vol, etc.)	
SET: (1 of 2)	
WHEN:	SERVICE-TYPE is HH
AND:	RATE-BASIS is W
THEN:	RESULT = RATED-WEIGHT x 3.75USD
SET: (2 of 2)	
WHEN:	SERVICE-TYPE is HH
AND:	RATE-BASIS is M
THEN:	RESULT = RATED-VOLUME x 5.00USD

Between the two (condition) sets, there is an implied "OR" operator (weight "OR" measure). This means that either one or the other of these condition sets must be TRUE in order for the assessorial to apply. After entering the rated weight and volume in these condition sets, the system will process them in the order in which they appear, evaluating whether each is TRUE or FALSE. If TRUE, the assessorial is applicable to the shipment and will be entered onto the main screen where other potentially applicable assessorials (e.g., in different Tariff Rules) will also be processed.

(5) *Application.* For filing, a toggling (on or off) function provides specific application ("linking") of an assessorial to a commodity or Tariff Rule. For retrieving, applicable assessorials are added to the applicable TLI to find the overall cost for the shipment. Before shipment, however, there will be some condition sets where the values are not known (e.g., a surcharge for a non-scheduled port where the ship calls in

an emergency and unloads the shipment). In these cases, assessorials cannot be accurately applied prior to booking or sailing. Nonetheless, filers shall use the null linkage or dummy algorithm functionality to label and link assessorials in full text form to other ATFI objects, such as TLIs and commodities, for the purpose of enabling the retriever to identify all potentially applicable charges.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993]

**§ 514.11 Organization and tariff records; tariff scope.**

(a) *Organization record.* The organization record is the master record for all tariff information in ATFI for a specific firm. Each firm wishing to file tariffs or essential terms must complete and submit an ATFI User Registration Form (exhibit 1 to this part) under §§ 514.4(d) and 514.8(f). Upon Commission approval of organization registration in ATFI, a "shell" organization record, specific to the requestor, is established and contains the organization number, organization name and organization type. The firm's authorized representative can then access the newly established organization record (see partial screen), using the special access Logon ID and password for organizational record maintenance, to file the address for the firm's home office, and complete the affiliations, d/b/a, and publisher lists as appropriate. To maximize security of the data, maintenance (editing) of the organization record will be permitted only through the interactive mode by the individual in the firm holding the special access LOGON ID and password for organization record maintenance. The following simulated screen is indexed to subsequent, explanatory subparagraph (numbers) of this paragraph. As with all ATFI screens, filers shall enter complete and accurate data in all required fields.

[§ 514.11(a)]	ATFI ORGANIZATION RECORD XYZ, Inc.	
[(1)]	Org Number: 999999	Agreement #:
[(2)]	Org Name: XYZ, Inc.	
[(3)]	Country of home office: USA	
[(4)]	Org type: NVOCC - NON-VESSEL-OPERATING COMMON CARRIER	
[(5)]	Controlled: N	
[(6)]	SCAC Code: XYZZ	
[(7)]	Home Office Address Information	
	Street1: 201 Broadway	
	Street2: 72nd Floor	
	City: New York, NY, USA	
	Postal Code: 10007	
	Contact: Julian Xavier or Rick Zarones	
	Phone: (212) 555-1235	
	Fax: (212) 555-5678	
[(8)]	-----	
[(9)]	Affiliations	dba's Publishers

(1) *Org number and agreement number.* The organization and agreement numbers are generated by the Commission for the particular tariff owners. The agreement number is filled in only if the organization is an agreement (conference, etc.). The organization number is also used to verify whether a current anti-rebate certification has been filed under § 514.1(c)(1)(iii).

(2) *Org name.* The organization name (filled in by the FMC) is the official name of the firm (from the corporate charter, etc.), often a parent corporation, responsible for filing tariffs, often by several affiliates through d/b/a names. The Org Name on the Org Record screen is not changeable by the filer.

(3) *The Country of home office* is the country in which the firm's headquarters is located.

(4) *Org type* would be ocean carrier, conference, NVOCC, etc.,

(5) *Controlled.* This field is filled in by the Commission and indicates whether the firm is a controlled carrier ("Y" or "N").

(6) *SCAC Code.* The Standard Carrier Alpha Code (assigned by the Motor Freight Association) further identifies the registered organization.

(7) *Home office address information.* A second line for street address is provided, if necessary, and names of contact person(s) shall be entered. Otherwise, the field is self-explanatory.

(8) *Command line.* While not shown on most screen illustrations in this part, the items and functions in (below) the command line provide instructions for accessing help screens, tables and other information relevant to the screen. The data required in paragraph (a)(9) of this section are found on separate screens which are accessed by highlighting the item and pressing "ENTER."

(9) (i) *Affiliations.* The affiliations are: members of a filing conference; participating carriers; or conferences to which a filing carrier belongs. As with the organization, itself, both the name and Commission-assigned number shall be listed.

(ii) *dba's.* The d/b/a ("doing business as") names of affiliated firms are listed

here. Filers shall ensure that the d/b/a's of all firms filing tariffs under the organization umbrella are accurately listed.

(iii) *Publishers.* Filers shall list all publishers used to file and maintain the organization's tariffs. Publishers will be assigned Org Numbers by the FMC which will be entered here.

(b) *Tariff Record.* The tariff record(s) for a specific organization registered

under paragraph (a) of this section show the characteristics of each tariff. The ATFI system provides an index of all organization's tariffs from the data furnished in the Tariff Record. The following simulated screen is indexed to subsequent, explanatory subparagraphs (numbers) of this paragraph. As with all ATFI screens, filers shall enter complete and accurate data in all required fields.

[§ 514.11(b)]		ATFI TARIFF DEFINITION	
[(1)]	Org Number: 999999	Tariff #: 001	Tariff Code: XYZZ001
[(2)]	Org Name: XYZ, Inc.		
[(3)]	d/b/a: XYZ Line		
[(4)]	Title: XYZ Line Worldwide Commodity Tariff		
[(5)]	Tariff type: FC		
[(6)]	Tariff TON: 1 KT or 1.000 CBM		
[(7)]	Monetary Units: USD US Dollar (USD)		
Address Information			
[(8)]	(1 of 3)	Publishing Office	
		Name: XYZ Line	
		Street1: 201 Broadway	
		Street2: 65th Floor	
		City: New York, NY, USA	
		Postal Code: 10007	
		Contact: Maria Yates	
		Phone: (212) 555-1237	
		Fax: (212) 555-5678	
[(9)]	-----		
[(10)]	Origin	Destination	
[(8)]	Select Address		

(1)(i) *Org number* is the same as in paragraph (a)(1) of this section. This number cannot be changed by the filer.

(ii) *Tariff #* is a 3-digit number assigned by the organization to distinguish it from its other tariffs.

(iii) *Tariff code* uniquely identifies a tariff within the ATFI system. It consists of either the organization number plus the user-assigned tariff number (e.g., 999999-001) or the SCAC code (see paragraph (a)(6) of this section) plus the user-assigned tariff number, as in the illustration. The SCAC code takes

precedence when previously provided on the ATFI User Registration Form (Exhibit 1 to Part 514) for entering on the organization record during creation or amendment.

(2) *Org name* is the same as in paragraph (a)(2) of this section.

(3) The *d/b/a* name could be a name different from the organization name, but shall appear in the list of d/b/a's in the organization record under paragraph (a)(9)(ii) of this section.

(4) The *Title* of the tariff is assigned by the organization and could be as shown in the illustration.

(5) *Tariff Type* in the illustration is “FC” for “foreign commodity tariff” as set forth in the “Batch Filing Guide’s” Data Element Dictionary.

(6) *Tariff TON* is the default (unless changed) measurement units throughout the tariff for both weight and volume, as codified in two tables of the “Batch Filing Guide’s” Data Element Dictionary.

(7) *Monetary units* is the default (unless changed) currency unit to be used throughout the tariff. See § 514.10(c).

(8)(i) *Address information* is the same as in paragraph (a)(7) of this section, except that more than one address and contact person can be provided (see “Select Address” in Command Line), such as for the tariff publisher, the organization’s tariff filing, billing and/or claims office, and an agent for service of process under paragraph (b)(8)(ii) of this section.

(ii) *Foreign-domiciled NVOCCs*. Every NVOCC not domiciled in the United States shall enter in the first address field provided in the tariff record the name and address of a person in the United States designated under § 514.15(b)(24)(ii) and § 583.5 of this chapter as its legal agent for service of judicial and administrative process, including subpoenas.

(9) *Command line*. See paragraph (a)(8) of this section.

(10) *Scope: origin and destination*. The scope of each individual tariff is defined in more detail, in Tariff Rule 1 of the tariff (514.15(b)(1)), but entered in two specific location groups (see § 514.10(b)(5)(ii)) in the auxiliary screen for the tariff record. All other origin and destination ports and points filed in the tariff shall be within the geographic scope of the regions and/or countries defined in the tariff record scope.

(i) *Origin*. The origin scope is a single location group or port group in a tariff encompassing the allowable origins for TLIs defined in that tariff.

(ii) *Destination*. The destination scope is a single location group or a port group in a tariff encompassing the allowable destinations for TLIs defined in that tariff.

(iii) *Between tariffs*. The filer may insert a statement in the scope fields that the rates and charges, etc. are between two location groups, but shall create separate origin and destination pairs, as well as TLIs, for each direction.

(iv) *Ports and/or points*. A tariff with origin and destination groups containing only ports will be a port tariff only; no onward through intermodal rates will be allowed. A tariff with non-port cities, states, or country names in either the origin or destination group will be eligible to contain intermodal rates under § 514.15(b)(1).

#### **§ 514.12 Governing and general reference tariffs.**

Where any matter directly affects a TLI, it must be filed in electronic form in the appropriate tariff in the appropriate place. Thus, a governing tariff may be a commodity tariff, but only locations, inland rate tables and Tariff Rule level assessorials (and not commodity descriptions or TLIs) within such a governing tariff may be linked to govern matter in another (“governed”) tariff.

(a) *Governing tariffs (filed electronically)*. A filer which files multiple tariffs with duplicative and/or commonly applicable items, such as Tariff Rules or inland rate tables, may file a governing tariff which contains, and is referred to in the governed tariff(s) as a source for, location groups, inland rates and rules-level assessorial charges, which are applied as if they were a part of the governed tariff.

(1) *Types*. Due to ATFI’s “linkage” design feature, whereby tariff items at rules level (location groups, inland rate tables and algorithms in rules), can be electronically referenced and made applicable from one tariff (governing) to another (governed), a filer may create and use only the following types of governing tariffs, or combinations thereof, which shall accompany governed tariffs in the ATFI electronic format:

(i) *Rules tariffs*, including Hazardous Cargo Tariff Rules and/or other Tariff Rules which contain assessorial charges (see § 514.15(b));

(ii) *Location group tariffs* (see § 514.10(b)(2));

(iii) *Inland rate table tariffs* (see § 514.15(b)(1));

(iv) *Bill of lading tariffs* (see § 514.15(b)(8));

(2) *Creation and link to governed tariff.* Governing tariffs shall be created by using ATFI's standard tariff creation function and referenced in each governed tariff, using the "Governing Tariff" function under § 514.8(h)(3)(v)(D), where the list of governing tariffs may be accessed.

(3) *Conflicts between governing and governed tariffs.* A Tariff Rule affecting a TLI or passenger fare may appear in only one governing tariff. See § 514.4(b)(3)(iii). Filers shall ensure the exclusive and accurate application of tariff matter contained in governing and governed tariffs to every TLI contained in the governed tariff, as illustrated by the following:

(i) *Application of Tariff Rules and associated assessorial charges.* Tariff Rules, and any assessorial charges within the Tariff Rules, from both the governed tariff and the governing tariff, will automatically apply to any shipment, unless the Tariff Rules in either or both tariffs are "turned off," using system-assessorial-charge-application flags to disable the charge application, which will indicate the "Yes" or "No" status to the users of the central site system. Unless "turned off," duplicative, redundant, or overlapping assessorial charges could apply to shipments, because the ATFI central site applications will not deconflict like-type assessorial charges. Where the non-rate-affecting Tariff Rules' texts conflict between governing and governed tariffs, the governed Tariff Rules will prevail.

(ii) *Location groups.* Location groups from both governing and governing tariffs will apply to any shipment, unless both tariffs include a group with the same name. In this case, if not corrected or accommodated by the filer, the location group from the governed tariff will take precedence and the governing tariff location group of the same name will be ignored.

(b) *General reference tariffs (in paper format).* Certain tariffs, other than governing tariffs described in paragraph (a) of this section, are general reference tariffs and, if they do not con-

tain assessorial charges or other matters affecting the TLI, will continue to be "on-file" at, or accepted by, BTCL, in paper format. General reference tariffs are usually compiled by firms (with FMC-assigned Org Numbers) other than those required to file ocean freight tariffs, and are allowed to be cross-referenced in the electronically-filed tariffs. General reference tariffs include:

(1) *Hazardous Cargo Rules Tariffs*, not containing rates or charges (see § 514.15(b)(16) and paragraph (a)(1)(i) of this section).

(2) *Equipment Registers.*

(3) *Equipment Interchange Tariffs.* (i) Equipment interchange tariffs may be filed in electronic format under this part, or, in paper format, arranged in the following order:

(A) Title Page.

(B) Check Sheet (optional).

(C) Table of Contents.

(D) Explanation of Symbols, Abbreviations and Reference Marks.

(E) Tariff Rules.

(F) Free Time and Charges—List of Exceptions to Standard Free Days and/or Charges.

(ii) The Tariff Rules section of the equipment interchange tariff shall include Tariff Rules 1 (Scope, § 514.15(b)(1)) and 21 (Use of Carrier Equipment, § 514.15(b)(21)). Other unused mandatory Tariff Rules in § 514.15(b) shall be noted as "Not Applicable." Equipment interchange tariffs need not reference carrier or conference rate tariffs.

(4) *Mileage guide publications.*

(c) *Essential terms of service contracts.* To the extent possible under the special full-text format for electronic filing of the essential terms of service contracts under § 514.17, the following types of governing tariffs are permissible:

(1) Essential terms publications under § 514.17(b) (solely for essential terms documents); and

(2) Tariffs of general applicability under § 514.17(b)(2) (solely for essential terms publications).

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993; 58 FR 30715, May 27, 1993]

**§ 514.13 Commodities and tariff line items (“TLIs”).**

In ATFI, commodities and rates (TLIs) are created separately for system reasons, but each TLI under paragraph (b) of this section shall be associated with, applicable to, and subsumed under, an already existing, specific commodity under paragraph (a) of this section. There may be many TLIs applicable to one commodity. A different four-digit code must be assigned for every TLI applicable to one particular commodity as a suffix to the one 10-digit commodity code, created by the tariff owner under paragraph (a) of this section.

(a) *Commodities*—(1) *Choice of methodology*. For each separate commodity in a tariff, a separate and distinct 10-digit numeric code shall be used. Within the system’s transaction-set parameters, filers may use any commodity coding they wish but are urged to utilize the Harmonized System (“HS”) for both the commodity coding and associated terminology (definitions), to the maximum extent possible.

(2) *Commodity description*—(i) *General requirements*. (A) Commodity rates shall be specific and may not apply by implication, or otherwise, to analogous articles.

(B) Commodity descriptions shall include dimensions and weights for cargo rated on an “Each” (“EA”) basis, when the packaging is non-standard (e.g., machinery).

(C) Commodities subject to minimum quantity requirements for carriage or rating shall include a clear statement of such requirements in the commodity description and/or TLI to which they apply. See also Tariff Rule 11 (§ 514.15(b)(11)).

(ii) *Exclusions; special provisions*. In the commodity description record, filers shall list commodities excluded from the commodity description and provide notes to articulate any special provisions that may apply to the commodity description, e.g., where a commodity is subject to time/volume, open or independent-action rates, as described in paragraph (b)(19) of this section.

(iii) *Assessorial charges applicable to commodity*. Assessorial charges (see § 514.10(d)) that are specific to a de-

scribed commodity shall be applied to the commodity by creating the appropriate algorithm condition sets in the commodity description record.

(3) *Use of the HS code (Optional)*.—

(i) *The Harmonized System (“HS”)*. In HS, the first two digits identify the chapter. The basic commodity chapters are numbered from “1” to “97.” Each chapter is divided into several commodity headings. The second two HS digits identify the heading. Each heading is divided into several commodity subheadings. The third two HS digits identify the subheading. Finally, four more digits (digits 6–10) can be used to further classify commodities within the HS chapter, heading and subheading.

(ii) *Classification and description under the optional HS code*. When using HS, commodities should be classified as specifically as possible under the HS, in a manner which conforms the product under substantive, rather than simply textual, criteria. Each commodity description should be consistent with the corresponding HS description for the particular code or parts of the code used. When using HS, for the first six digits (of the 10-digit ATFI commodity code), filers should not use other codes not found in the HS, but should use the modified HS and special ATFI codes described in this paragraph. The remaining system four digits are to be user supplied, but different commodities may not have the same 10-digit number.

(iii) *Six-digit code applicable to commodity*. If the commodity description established by the filer coincides with an HS description at the (first) six-digit classification level, the six-digit code should be used, e.g., “9503.10—Electric trains.”

(iv) *Six-digit code inapplicable to commodity*. When the commodity description established by the filer does not fully coincide with any (first) six-digit description in the HS, as provided in paragraph (a)(3)(iii) of this section, and it would be inaccurate to describe it using a six-digit classification, only that part of the HS classification that is applicable to the filer’s commodity description should be used, as follows:

(A) *Four digits.* If a commodity can be classified only by HS chapter and heading, then the filer should use the correct chapter and heading digits (digits 1–4), and the subheading digits (digits 5–6) should be filled in with “00,” e.g., “9501.00—Wheeled toys, n.o.s.”

(B) *Two digits.* If a commodity can be classified only by the chapter (digits 1–2), then the heading and subheading digits (digits 3–6) should be “00.00,” e.g., “9500.00—Toys, n.o.s.”

(4) *Mixed commodities and mixed lots.*  
 (i) Except for project rates under paragraph (a)(5) of this section, mixed commodities (to the extent not accommodated by the “00” HS approach described in paragraph (a)(3)(iv)(B) of this section) will require the ATFI code “99” for the first two digits, whether or not HS is used, with the next four digits (#’s 3–6) available at filers’ option, and will include situations involving:

(A) *One specific commodity description which includes several commodities classified in more than one HS chapter (or filer’s equivalent),* e.g., “Footwear” or “Footwear, n.o.s.” (various types or parts of which are contained in HS chapters 44, 64, 83, 90 and 98); or

(B) *“Mixed commodities” (semble),* as a commodity description, which includes several commodities, all of which must be specifically listed in the description for the mixed commodities, whether or not HS is used.

(ii) Whether or not HS is used, where specified proportions of certain mixed commodities or other conditions are required to comply with the description or to be eligible for a particular TLI associated with the description, the specific proportions and/or conditions shall be set forth specifically for the commodity, and/or in a Tariff Rule under § 514.15, as applicable.

(5) *Projects (for “Project Rates”).* A “Project” commodity description for project rates (TLIs) includes materials and equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also includes disaster relief projects. None of the materials or equipment covered shall be transported for the purpose of

resale or other commercial distribution.

(i) Any “Project” will require the ATFI code: “98” for the first two digits, with the next four digits (#’s 3–6) available at filer’s option, and the commodity description record shall include:

(A) An exact description of the project which demonstrates that it is qualified for a “project rate” under paragraph (a)(5), introductory paragraph, of this section.

(B) A statement that only proprietary materials actually employed in the project are eligible for the project rate. The filer shall provide for the use of a bill of lading clause on all project rate cargo, which shall state that:

All materials included in this bill of lading are of a wholly proprietary nature and shall not be resold or otherwise commercially distributed at destination.

(C) For domestic offshore carriers, a statement that the project rate will cover the carrier’s variable costs and contribute to its fixed expenses.

(ii) As an alternative to listing a “project” as a separate “commodity” under paragraph (a)(5)(i) of this section, project rates can be a stated discount for all commodities, a group of commodities, or particular TLIs thereunder, achieved by algorithms set forth in Tariff Rule 33 (§ 514.15(b)(33)), and properly applied or linked to each commodity and/or TLI, as further described in the ATFI User Guides.

(6) *Codes for non-commodity categories.* A TLI may be applicable to all commodities, or all commodities of a class, on which specific commodity descriptions are not stated, such as “cargo, n.o.s.” (not otherwise specified), “general cargo,” “freight—all kinds,” or other identifying name. Because the ATFI system requires TLIs to be associated with and subsumed within a commodity, TLIs not directly involving specific commodities must still have a “commodity code.” Therefore, TLI rates, such as for “FAK” and “NOS” (entire tariff) will require the first two digits of the “commodity code” to be “00,” with the next four digits (#’s 3–6) available at filer’s option.

(7) *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. Filers 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.

(b) *Tariff Line Items ("TLIs")*—(1) *General requirements.* (i) All rates and charges shall be stated in a systematic and straightforward manner. Rates, charges, Tariff Rules, regulations or classifications may not be duplicative, conflicting or otherwise ambiguous when compared with items in the same tariff or in any other tariff to which the publishing filer is a party.

(ii) The minimum TLI requisites are a valid, accepted commodity description to which the TLI is applicable, valid filing and effective dates, origin and destination locations or location

groups within the scope of the tariff, a rate, rate basis, and service designation.

(2) *Illustrative screen.* (i) As with all ATFI screens, filers shall enter complete and accurate data in all required fields. The information shown on the simulated screen is actually entered on the "ATFI NEW (Commodity) DESCRIPTION CREATION" and "ATFI NEW TLI CREATION" screens, but when completed, is displayed on the following simulated screen, which is indexed to explanatory subparagraphs (numbers) of this paragraph. An asterisk (\*) before an item indicates that the particular field is *NOT* required to be completed, except when the situation requires it (e.g., special case number, or when an entry is required to distinguish the TLI from another TLI within the same commodity).

(ii) Where an optional TLI screen field (\*) is filled in, the TLI will apply only to shipments that comply with the condition, e.g., where the packaging type is "Crate (CRT)," then only to the particular commodity as crated. Otherwise, if the packaging code is left blank, the TLI would apply to all shipments of the particular commodity, irrespective of the package type.

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[§ 514.13(b)(2)]      ATFI TARIFF LINE ITEM DETAIL      Today: 01Jan1992
[3]      XYZ Line Worldwide Commodity Tariff [4] ( XYZZ001 )
[5]      9503-10-0010 Electric trains
[6]      TLI#: 9503-10-0010-0001 [8] Amendment Type: R [12] * Spcl.Case #:
[7]      Filed: 01Jan1992 [9] Eff: 01Jan1992 [10] * thru [11]* Exp:

[13]      Tariff Line Item Detail:      [14] Rates per Container Load

[15] From: US ATLANTIC PORTS      [16] * VIA
      To:  PARIS, FRANCE      * VIA  ANTWERP, BELGIUM

[17] Basis: PC (Per Container) 40/PC [18] Units:USD - US Dollars
[19] Rate(s): 2,310.00 USD      Ton - 1 KT or 1.000 CBM

[20]      Service: PH - Pier/House
[21] * (carrier):
[22] * Packaging: CRT      [23]      * Ctr size: 40
[24] * Stow Code: BS      [25]      * Ctr type: PC
[30] * Haz code: NHZ      [27]      * Ctr temp: NA
[26] * (stat code): 030817

[28]      TLI Notes: Rate applies on direct vessel call to
      Antwerp and oncarriage by truck to Paris

[29]      ===== Assessorial Charges=====
      Desc Local:      Paris surcharge
      Rule: 6      Min B/L charge
      Rule: 7      CAF
    
```

(3) *Tariff title.* See § 514.11(b)(4).

(4) *Tariff code.* See § 514.11(b)(1)(iii).

(5) *(Commodity number and description.)* The screen's description corresponds with the optional HS description for the 6-digit HS code used, as described in paragraph (a)(3)(iii) of this section.

(6) *TLI #.* The 14-digit TLI number consists of the commodity code (first ten digits), as described in paragraph (a) of this section, plus four unique *suffix* TLI digits, controlled by the ATFI system to avoid duplications of, and to differentiate, TLIs within the same commodity. For example, the TLI *suffix* of "0001" in the screen is based on a 40-foot container; the *suffix* "0002" could be based on a different TLI for a 20-foot container.

(7) *Filing date ("Filed").* See § 514.10(a)(2).

(8) *Amendment type.* The symbol "R" stands for a reduction under § 514.9(b)(18).

(9) *Effective date ("Effective").* See § 514.10(a)(3). Since the screen amendment is a reduction in foreign commerce and the filer is not a controlled carrier, it can take effect upon filing. See § 514.9(b)(18).

(10) *Thru (date).* See § 514.10(a)(5). *Special or emergency rates* may be filed as thru-date TLIs, with explanation of the rates in the TLI notes, but only if the TLI notes are explanatory, without affecting the level of the rate.

(11) *Expiration date ("Expires").* See § 514.10(a)(4).

(12) *Special case (number).* The special case number (not applicable in the illustration) is assigned by the Commission. See § 514.9(b)(19).

(13) *Tariff Line Item Detail.* This section contains the routing, shipment, rate data, etc.

(14) *Rates per Container Load.* This field echoes the rate basis under paragraph (b)(17) of this section.

(15) *Origin/destination.* The origin and destination of the shipment can be a location point or group under § 514.10(b), but must be within the tariff scope under § 514.11(b)(10).

(i) *Between TLIs prohibited.* Every TLI shall have but one origin and destination and may not purport to show the same rate in both directions. See § 514.11(b)(10)(iii).

(ii) *U.S. to/from foreign country.* In foreign commerce, the origin may not include any port or point within the same country in the destination (including the United States).

(16) *“VIA.”* “VIA” indicates the port or port group through which the cargo will be carried, outbound from its origin, and/or inbound to its destination, for through transportation. In the illustration, the TLI includes all rates and charges for the inland portion from Antwerp to Paris and is, therefore, a “through rate.” See § 514.15(b)(1).

(17) *Rate basis.* In the illustration, the rate basis is “PC (Per Container)” under the “Batch Filing Guide’s” Data Element Dictionary (“DED”) code. Regulations for other rate bases include:

(i) *AV.* When an *Ad Valorem* (“AV”) TLI is published, the filer shall include in the applicable assessorial charges (in commodity description, TLI or Tariff Rule) the algorithm(s) showing the exact method of computing the charge (e.g., shipper’s declaration, invoice value, delivered value), and, in Tariff Rule 12 (§ 514.15(b)(12)), the additional liability, if any, assumed by the common carrier in consideration therefor.

(ii) *EA.* TLIs published on an “Each” basis shall include specific provisions in Tariff Rule 2, Application of Rates (§ 514.15(b)(2)), for the applicable sizes and dimensions of general packaging units (e.g., barrels, crates, cartons under paragraph (b)(22) of this section) when the number of these packages is the basis for the calculation of freight. Commodity descriptions shall include dimensions and weights for cargo rated on an “Each” (“EA”) basis, when the packaging is non-standard (e.g., machinery).

(iii) *W.* TLI’s published on a weight only basis shall use the symbol “W.” For green salted hides in foreign com-

merce rated on a weight (“W”) Basis, see Tariff Rule 17 (§ 514.15(b)(17)).

(iv) *WM.* (A) *Whichever is greater.* TLIs published on a weight or measure (“WM”) basis shall be presumed to mean that the basis generating the greater revenue to the carrier will apply. Filers wishing to publish rates based on the lesser revenue of the two alternate bases shall construct Tariff Rules and assessorials which reflect this method of rate computation. Tariff Rule 2, Application of Rates (§ 514.15(b)(2)), shall set forth the carrier’s intentions in detail.

(B) *Autos in domestic offshore commerce.* If not rated on an “EA” basis under paragraph (b)(17)(ii) of this section, automobiles in domestic offshore commerce may not be rated on either weight or measure, whichever is greater (lesser), but only on one of these bases, and, in addition to using the appropriate rate basis code (“M” or “W”), the TLI Notes shall reflect the appropriate controlling formula, as follows:

(1) *Automobiles rated by measure (“M”).* For automobiles rated by measure, the cubic measurement for the five most recent model years shall be that prescribed by the manufacturer of the particular make and model as shown in Tariff Rule 22 (§ 514.15(b)(22));

(i) Automobiles whose measurements are not shown in Tariff Rule 22 shall be individually measured by the carrier. This fact shall be noted on the bill of lading; and

(ii) Automobiles which, because of additional accessories or equipment, vary in dimensions from the standard measurements shown in paragraphs (b)(17)(iv)(B)(1), introductory paragraph, and (b)(17)(iv)(B)(1)(i) of this section, shall be individually measured by the carrier. This fact shall be noted on the bill of lading along with the actual variation (in cubic feet) from the standard measurements; or

(2) *Automobiles rated by weight (“W”).* Each automobile tendered for shipment shall be individually weighed on the carrier’s scale. Where the carrier does not possess weighing facilities, the shipper shall have the vehicle weighed by a certified weighmaster and furnish the weighmaster’s signed statement to the carrier.

(18) *(Default) Units (of weight/measure.)* The application of all rates and charges shall be clear and definite and explicitly stated per cubic foot, cubic meter, kiloton, kilogram or pound, or specified numbers of such units. In the illustration, the filer has defaulted its tariff to U.S. dollars. See paragraph (b)(19) of this section. The example in the illustration also shows default units of “1 KT” or “1000 CBM,” which were originally set by the filer in the Tariff Record under § 514.11(b)(6). (The default units are not applicable to the illustrated TLI, which is on a “Per Container” basis, but see paragraph (b)(17) of this section.)

(19) *Rate(s).* The rate is the base ocean freight rate to ship the commodity and, in the illustration, is defaulted to U.S. Dollars which can be changed by the filer. See paragraph (b)(18) of this section and § 514.10(c). The commodity description under paragraph (a) of this section, and the TLI, by symbol or TLI note, as appropriate, shall clearly identify and explain the following types of rates and the commodities to which they are applicable:

(i) *Time/Volume rates in foreign commerce.* A time/volume rate means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(A) Time/volume rates may be offered by common carriers or conferences and shall be published as TLIs for each commodity description where they apply. The commodity description shall note the availability and terms of the time/volume rate(s). (See paragraph (a)(2)(ii) of this section.) The TLI(s) shall state in the TLI note(s) that the rate is a time/volume rate.

(B) All rates, charges, classifications, Tariff Rules and practices concerning time/volume rates must be set forth in the appropriate tariff items, e.g., commodity description, TLI, and/or Tariff Rule 26 (§ 514.15(b)(26)), which shall identify the shipment records that will be maintained to support the rate.

(C) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment.

(D) Any shipper utilizing a time/volume rate must give notice to the offering carrier or conference of its intention to use such a rate prior to tendering any shipments under such an arrangement. Notice may be accomplished by any effective method deemed appropriate by the offering carrier or conference and set forth in Tariff Rule 26, and cross-linked in the commodity record and/or TLI Notes.

(ii) *Open rates in foreign commerce.* An open rate in foreign commerce 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 rates on such commodity or commodities. See § 514.15(b)(15).

(A) In the conference tariff, where all TLIs for a given commodity description are opened, the description and commodity index under paragraph (a) of this section shall include the appropriate notation, i.e., the word “OPEN.” Where a conference opens a rate at the TLI level, the TLI shall show the rate as “0.00” and the TLI Note shall contain the appropriate “OPEN” notation. Both commodity description and TLI Note of “opened” rates (where applicable) shall refer to Tariff Rule 15 (§ 514.15(b)(15)) which shall clearly define the word “open,” as used in the tariff, and indicate where the rates of the individual conference member lines on such items may be found.

(B) Where a conference opens rates pursuant to paragraph (b)(19)(ii)(A) of this section, an individual conference member may not charge rates on the open item unless and until the individual member files a proper tariff rate covering such item, as required by this part. This may be accomplished by the individual common carrier member (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing in a separate tariff for open rates or in the regular conference tariff each member’s rates on the opened items, indicating the rates which will be charged by each individual common carrier and the governing Tariff Rules and provisions of the conference tariff applicable

to each common carrier. When conference members publish their open rates in a separate tariff, such tariffs shall identify the conference tariff in which the open-rated condition is reflected.

(C) Controlled common carriers filing open rates are subject to the 30-day controlled common carrier notice requirement of §514.4(c)(1)(iii), except when special permission is granted by the Commission under §514.18.

(D) Notwithstanding paragraph (b)(19)(ii)(C) of this section, a conference may, on less than 30 days' notice, file reduced rates on behalf of controlled common carrier members for open-rated commodities:

(1) At or above the minimum level set by the conference; or

(2) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(iii) *Independent-action rates in foreign commerce.* Each conference agreement must provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the 1984 Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective not later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item. For controlled common carriers, see §§514.4(d)(4)(iii) and 514.9(b)(11).

(20) *Service.* Under the DED codes, the example indicates that the service will be "PH—Pier/House."

(21) (*Carrier.*) In a conference tariff, the "Carrier" field is filled in with the SCAC code (under §514.11(a)(6)) of the carrier, when the TLI is an independent action or open rate of a carrier member of a conference (not applicable in illustration). If not filled in, the field does not appear on the screen. See paragraph (b)(19) of this section.

(22) *Packaging code.* Under the DED, the illustration's packaging code is "CRT" (Crate). See paragraph (b)(2)(ii) of this section.

(23) *Ctr size.* The example container size is 40-foot, using the DED code.

(24) *Stow code.* Under the DED, the illustration's stow code is "BS" (Bottom Stowage.)

(25) *Ctr type.* Under the DED codes, the example indicates that the container type to be "PC" (Dry).

(26) *Stat code.* The statistic code is a numeric field which is provided for convenience to the tariff owner for statistical purposes. The field can handle up to 20 digits. If not filled in, the field does not appear on the screen.

(27) *Ctr temperature.* Under the DED code, the illustration's container temperature requirement is "NA" (Not Applicable.)

(28) *TLI notes.* The TLI notes contain facts or circumstances which pertain to the particular rate. Additional rates, conditions which directly affect the rate, or assessorial charges *may not* be contained in the TLI notes, but shall be entered in the appropriate place, such as in the "Applicable Assessorial Charges" under paragraph (b)(29) of this section, or in inland rate tables under §514.15(b)(1).

(29) *Assessorial charges.* Any matter directly affecting the rate, such as assessorial charges, shall be entered in the Assessorial Charges field, as described in §514.10(d). The illustration shows a (Paris) surcharge and two assessorials found in and linked to Tariff Rules.

(30) *Haz code.* The Hazard code in the example is "NHZ" for "non-hazardous."

(c) *TLI calculation.* ATFI's calculation feature adds potentially applicable assessorials in algorithm form and these and inland rate charges are added to the basic ocean freight to compute the bottom line (total) freight. For a TLI calculation, as with most other ATFI operator functions, the ATFI user manual (§514.8(b)) is almost indispensable. The basic steps for the calculation are:

(1) Retrieve a TLI, such as the example in paragraph (b) of this section.

(2) Exercise the "Calc" option and an "ATFI RATE CALCULATION" screen

appears. It is very similar to the ATFI TARIFF LINE ITEM DETAIL screen in paragraph (b) of this section, except that the retrieving operator enters the actual shipment data in the appropriate fields. Once these data are en-

tered and verified, the operator presses another "Calc" key and screens similar to the following simulated screens ("ATFI RATING RESULTS," (i) and (ii)) are used to show the "Total Freight" ("bottom-line freight"):

```

[§ 514.13(c)(2)(i)]
  ATFI RATING RESULTS
XYZ Line Worldwide Commodity Tariff
  ( XYZZ001 )

Commodity: Electric trains
  TLI: 9503-10-0010-0001

Actual weight: 0.000 KT
Actual volume: 0.000 CBM

      Rate Break Table
-----
2,310.00USD/ PC <--- Selected Rate

=== Establishing Rating Values
      (Cycle 0) ===

=== Establishing Ocean Freight
      (Cycle 1) ===

Basic Ocean Freight    2,310.00USD
    
```

```

[§ 514.13(c)(2)(ii)]

  ATFI RATING RESULTS
XYZ Line Worldwide Commodity Tariff
  ( XYZZ001 )

Freight Basis is PC
Shipment Rated at      2,310.00USD
Shipment Freightaged as 1 CTR

=== Beginning Rating ===

Basic Ocean Freight    2,310.00USD
Paris surcharge        100.00USD
-----
Subtotal                2,410.00USD

CAF                    163.26USD
-----
Total Freight          2,573.26USD

===== End of Rating Results =====
    
```

(3) The bottom-line rate calculation facilitates estimation of the total charges for the shipment. However, "Total Freight" may not always be the freight paid by the shipper because of operator error or the application of other assessorial charges which were not in algorithm form because they could not be determined prior to shipment, e.g., detention charges. Such non-predeterminable charges, however, would be flagged for the retriever as potential charges through the dummy algorithm feature under § 514.10(d)(1)(iv).

(4) For the basic ocean freight rate and each item that may be added to it to find the overall cost, a proof screen may be used for verification after the calculation.

**§ 514.14 [Reserved]**

**§ 514.15 Tariff Rules.**

(a) *General.* (1) This section requires the electronic filing of certain tariff matter other than the major ATFI objects (TLIs, etc.) addressed elsewhere in this part, which in any way affects the application of the tariff or is related to tariff objects, as prescribed in this part. Matter required to be filed by this section shall be contained in the ATFI tariff, either:

(i) In mandatorily numbered and titled Tariff Rules under paragraph (b) of this section; or

(ii) Where the listed mandatory subjects of Tariff Rules would not include a specific proposed rule or other tariff matter of the filer, in optional Tariff

Rules under paragraph (c) of this section, with the filer selecting the number (beginning with number 100) and title.

(2) *Algorithms and text.* (i) Where the Tariff Rule directly affects a commodity or TLI, e.g., by the addition of a surcharge for certain conditions, the assessorial charge calculation/condition statement (and assessorial table, where applicable) shall be set forth in the Tariff Rule as an algorithm if determinable prior to shipment. This algorithm shall be electronically linked to each tariff item to which it applies, as described in §514.10(d) and in the ATFI Batch Filing Guide and ATFI Tariff Filing Guide.

(ii) Contents of Tariff Rules other than algorithms shall be entered in full-text format, be clear, explicit and complete, and be linked to appropriate items through the dummy algorithm functionality described in §514.10(d)(1)(iv).

(3) *Application of rule.* Where a Tariff Rule affects only particular items, each affected item, e.g., commodity description, TLI, etc., shall specifically refer and be linked to such rule, as described in the ATFI Batch Filing and ATFI Tariff Filing Guides.

(4) *Subrules.* Where the subject or title of a Tariff Rule permits, obviously-related subrules may be used.

(5) *Rules tariffs.* Tariff Rules may also be contained in separate tariffs, as described in §514.12.

(6) *Rule Access Window.* ATFI's Rule Access Window lists by Tariff Rule number and title all of the Tariff Rules contained in a particular tariff.

(b) *Mandatory Tariff Rules.* Specific Tariff Rules affecting the tariff, and/or other materials required by this part to be included in Tariff Rules, shall be contained in the appropriate Tariff Rules, as designated by the numbers and titles specified in this paragraph. Where notes to commodity descriptions and/or TLIs contain matter that would otherwise be normally contained in Tariff Rules, the applicable Tariff Rule(s) need not duplicate such matter but may simply indicate that the tariff is structured in this manner. In the event that a particular title contained in this paragraph does not apply to any matter affecting the tariff, the rule

number and title shall be entered with a statement that the rule is not applicable ("N/A"). See §514.12(a)(i). Tariff matter obviously falling within a particular title may not be contained in another, less descriptive title and, where a mandatory subject under this paragraph is not applicable, the tariff matter shall be filed in an optional rule under paragraph (c) of this section, with the appropriate title. Mandatory Tariff Rule (and subparagraph) numbers, titles, content (as also may be required by other sections of this part, cross referenced in this paragraph) are as follows:

(1) *Scope.* As described in §514.11(b)(10), the Tariff Record's scope is briefly set forth in location and/or location group pairs for origin and destination. Tariff Rule 1 shall be consistent with the Tariff Record scope, but describe it in complete detail, especially for the following types of tariffs or tariff items:

(i) *Foreign and domestic (offshore) commodity tariffs.*

(ii) *Equipment interchange tariffs* under §514.12(b)(3)(i).

(iii) *Intermodal services.*

(A) Tariff Rule 1 shall describe the modes of intermodal service provided (e.g., rail, truck, etc.).

(B) Tariff Rule 1 shall indicate whether the tariff TLIs are "through rates," which include the rates for all services on the overall route, are combination rates to which rate(s) for other transportation must be added, or both.

(C) Common carriers and conferences which publish more than one intermodal rate tariff from, to or between the same points, ports or regions, based on mode of service, description of commodities, etc., shall provide in Tariff Rule 1 of each respective tariff a cross-reference to the FMC number and description of the application of such other tariff(s).

(D) Tariff Rule 1 shall include a description of any alternate port service, or other substituted service, intended to be offered. If this service falls within the definition of "transshipment," Tariff Rule 1 shall cross-reference Tariff Rule 13, where transshipment services are described.

(E) TLIs involving intermodal service shall include an appropriate statement to this effect in the applicable commodity description record(s) and/or TLI notes under § 514.13, but all rates and charges affecting the TLI shall be entered in the proper form in the Applicable Assessorial Charges section and/or inland rate tables.

(F) If a carrier or conference desires to provide intermodal transportation to or from named points at combination rates, it shall clearly and accurately set forth the applicable charges in the ATFI “Inland Rate Tables” file. Other tables, similar to inland rate tables in that they result in the addition of amounts to TLIs, such as surcharges (assessorials), may be constructed in algorithm format under § 514.10(d) and paragraph (a) of this section. The ATFI “Batch Filing Guide” and the ATFI Tariff Filing Guide provide details on the data creation and filing requirements for inland rate tables, as well as for Tariff Rules’ tables.

(2) *Application of rates and charges.* Tariff Rule 2 shall contain a clear and definite statement of:

- (i) All services provided to the shipper and covered by the TLIs, including the rate bases set forth in §§ 514.13(b)(17)(ii) and (b)(17)(iv)(A); and
- (ii) The extent of any limitation or restriction, if the application of any of the rates, charges, Tariff Rules or regulations stated in the tariff is restricted to any particular port, pier, etc.

(3) *Rate applicability rule.* Tariff Rule 3 shall contain a clear and definite statement of the time at which tariff changes become applicable to any particular shipment, including the following:

- (i) *In foreign commerce,* the tariff rates, Tariff Rules and charges applicable to a given shipment must be those published and 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).

(ii) *In domestic offshore commerce,* for joint rates in intermodal transportation, the rate applicable to any particular cargo movement shall be that rate which is in effect on the day the initiating carrier takes possession of the shipment.

(4) *Heavy lift.* Tariff Rule 4 shall contain a clear and definite statement of all heavy lift practices and charges.

(5) *Extra length.* Tariff Rule 5 shall contain a clear and definite statement of all extra length practices and charges.

(6) *Minimum bill of lading charges.* Tariff Rule 6 shall contain a clear and definite statement of minimum bill of lading charges and applicability.

(7) *Payment of freight charges.* Tariff Rule 7 shall contain a clear and definite statement of:

(i) All requirements for the payment of freight charges;

(ii) Currency restrictions, if any, and the basis for determining the rates of currency exchange (see § 514.10(c)); and

(iii) If credit is extended to shippers, the credit terms available and the conditions upon which credit is extended. In foreign commerce, when credit applications or agreements are required, specimens of such applications or agreements shall be filed as part of this Tariff Rule.

(8) *Bill(s) of lading.* Unless a governing bill of lading tariff has been filed under § 514.12(a)(1)(iv), Tariff Rule 8 shall contain all clauses of every applicable specimen copy of any bill of lading, contract of affreightment, and other document (except for a service contract and its essential terms under §§ 514.7 and 514.17) evidencing the transportation agreement between carrier and shipper. Such shipping contracts shall indicate that they are subject to the terms and conditions of the carrier’s Federal Maritime Commission tariffs and may not contain provisions inconsistent with the Tariff Rules and regulations published in any applicable tariff.

(9) *Freight forwarder compensation.* Tariff Rule 9 shall contain a clear and definite statement of:

(i) *In foreign commerce,* the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in accordance with § 510.23(b) of this chapter.

(ii) *In domestic offshore commerce,* the exact rate or rates, if any, to be paid ocean freight forwarders (see also § 510.23(d) of this chapter).

(10) *Surcharges and arbitraries.* Tariff Rule 10 shall contain algorithms and explanatory text of surcharges and arbitraries for items not elsewhere provided for in this section. Rates from or to designated ports may be established by applying an arbitrary or differential charge based upon the rate applicable to a specified "base port," provided that any such arbitrary or differential is clearly defined, set forth as an algorithm (with table, if necessary) and is referenced (linked) in the commodity description or TLI affected.

(11) *Minimum quantity rates.* See also § 514.13(a)(2)(i)(C). Tariff Rule 11 shall state:

(i) *For foreign commerce:*

When two or more TLIs are named 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 TLI 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 TLI if the weight or measurement declared for rating purposes is increased to the minimum level.

(ii) *For domestic offshore commerce:*

When two or more TLIs are named for the same commodity, and the application is dependent upon the quantity of the commodity shipped, the charges assessed against the smaller shipment may not exceed those for any larger quantity.

(12) *Ad Valorem Rates.* Tariff Rule 12 shall contain a clear and definite statement of:

(i) The method of computing an *ad valorem* TLI or charge, to the extent not included elsewhere in the tariff (e.g., in connection with a TLI under § 514.13(b)(17)(i)); and

(ii) The additional liability, if any, assumed by the tariff owner in consideration for the *ad valorem* rate or charge.

(13) *Transshipment.* When transshipment services are offered pursuant to an ongoing agreement, Tariff Rule 13 shall contain:

(i) The through rate;

(ii) The routings (origin, transshipment and destination ports); additional charges, if any (e.g., port arbitrary and/or additional transshipment charges); and participating carriers; and

(iii) A provision substantially as follows:

The Tariff Rules, regulations and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating connecting or feeder carrier. Every participating connecting or feeder carrier, which is a party to transshipment arrangements, has agreed to observe the Tariff Rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(14) *Co-Loading in foreign commerce.* Tariff Rule 14 governs co-loading by NVOCCs in foreign commerce and shall contain the following provisions:

(i) *Filing requirements.* (A) If an NVOCC does not tender cargo for co-loading, Tariff Rule 14 shall so indicate.

(B) 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 Tariff Rule 14.

(C) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe in Tariff Rule 14 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.

(ii) *Documentation requirements.* NVOCCs which tender 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.

(iii) *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.

(15) *Open rates in foreign commerce.* Tariff Rule 15 of a conference tariff shall contain a clear and definite statement of:

(i) The meaning of the word “open” in “open rates,” and the extent to which conference rates have been opened pursuant to § 514.13(b)(19)(ii);

(ii) Any restriction or limitation on the right of participating common carriers to fix their own rate items, and the extent to which applicable Tariff Rules and regulations of the conference tariff will continue to govern the rates filed by each individual line; and

(iii) Where the rates of the individual conference member lines on open-rated items may be found.

(16) *Hazardous cargo.* When TLIs for explosive, inflammable, corrosive, or other dangerous materials are published (or Tariff Rule 16 does not specifically prohibit carriage of such materials), Tariff Rule 16 shall contain either:

(i) Tariff Rules governing the carriage of all types of hazardous cargo; or

(ii) Reference to applicable governing and/or general reference tariffs, as described in § 514.12.

(17) *Green salted hides in foreign commerce.* For foreign commerce, Tariff Rule 17 shall require that:

(i) The shipping weight for purposes of assessing transportation charges on 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 record or TLI, as referenced by § 514.13(b)(17)(iii); and

(ii) The shipper furnish the common carrier a weighing certificate or dock receipt from an inland common carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo in foreign commerce.* Where the tariff owner offers the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the TLI assessed on the original movement, when such TLI is lower

than the prevailing TLI, Tariff Rule 18 shall provide that:

(i) The return of shipment(s) be accomplished within a specific period not to exceed one year;

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

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return common carrier.

(19) *Shippers requests in foreign commerce.* Tariff Rule 19 shall contain clear and complete instructions in accordance with the effective agreement’s provisions, stating where and by what method shippers may file their requests and complaints and how they may engage in consultation under section 5(b)(6) of the 1984 Act, together with a sample of the rate request form if one is used or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(20) *Overcharge claims.* Tariff Rule 20 shall contain provisions that conform to the following:

(i) No tariff may limit the filing of overcharge claims with a common carrier for private settlement to a period (beginning with the accrual of the cause of action) ending in less than:

(A) Three years in foreign commerce; or

(B) Two years in domestic offshore commerce.

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

(iii) 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.

(iv) Tariff Rule 20 shall also:

(A) Provide that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application; and

(B) Clearly indicate where and by what method such claims are to be filed with the common carrier and that

such claims may also be filed with the Federal Maritime Commission. At a minimum, Tariff Rule 20 shall contain the following provisions:

(1) Claims for freight rate adjustments filed in writing will be acknowledged by the common carrier within 20 days of receipt by written notice to the claimant of the tariff provisions actually applied and the claimant's rights under the 1916 Act or 1984 Act.

(2) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to either:

(i) Section 11(g) of the Shipping Act of 1984 (46 U.S.C. app. 1710) for foreign commerce, and that such claims must be filed within *three years* of the date the cause of action accrued; or

(ii) Section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821) for domestic offshore commerce, and that such claims must be filed within *two years* of the date the cause of action accrues.

(21) *Use of carrier equipment.* Tariff Rule 21 shall contain provisions conforming to the following regulations:

(i) If a carrier or conference provides equipment to shippers, consignees, or inland carriers, or other persons acting as the agent for the person paying the freight charges:

(A) A sample equipment interchange agreement, or the terms and conditions governing the use of said equipment, shall be published in the carrier's or conference's Tariff Rule 21. The sample agreement shall include: the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services, such as tracing and replenishing fuel or refrigerant for reefer containers), that govern the use of carrier-provided equipment, including cargo containers, trailers and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the agreement or Tariff Rule 21, as applicable, and shall clearly identify the location and type of equipment to which they apply.

(B) If a carrier or conference does not have a sample equipment interchange agreement, the carrier shall publish its terms and conditions and standard free time and charges in its Tariff Rule 21,

as described in paragraph (b)(21)(i)(A) of this section. In foreign commerce, where a foreign government prohibits the use of a carrier or conference equipment interchange agreement, Tariff Rule 21 shall contain a statement to that effect.

(ii) If a carrier or conference has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be arranged in alphabetical order of the parties to which the exceptions apply and shall be included in either:

(A) Tariff Rule 21; or

(B) A separate equipment interchange tariff filed by the carrier or conference in accordance with § 514.12(b)(3), in which case Tariff Rule 21 shall identify the separate equipment interchange tariff containing the exceptions. A carrier or conference is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

(22) *Automobile Rates in domestic offshore commerce.* If TLIs for automobiles are published on a volume basis, as described in § 514.13(b)(17)(iv)(B)(1), introductory paragraph, Tariff Rule 22 shall contain:

(i) The cubic measurement for the five most recent model years prescribed by the manufacturer of each applicable particular make or model, arranged in table form with reference to applicable TLIs; and

(ii) A clear and definite description of all other applicable regulations, if not contained in the commodity description record(s).

(23) *Carrier terminal rules and charges.* Tariff Rule 23 of carrier and conference tariffs:

(i) Shall state separately every terminal or other charge and discount and service (including privileges, facilities and services) under the control of the common carrier or conference which is granted or allowed to any shipper, consignee, or passenger, regardless of whether the service results in a charge

or discount separately assessed as an addition to or subtraction from the carrier's basic TLI, in which case it shall be set forth as an algorithm, or is simply included within the basic TLI, without differentiation;

(ii) [Reserved]

(iii) May provide for an amendment, effective upon filing:

(A) Increasing a charge for terminal services, canal tolls or additional items, without the increase being separately stated on the bill of lading, but only if such charge is not under the control of the filing common carrier or conference, which merely acts as a collection agent for the charge, and the agency making such charge to the common carrier or conference increases the charge without notice to the common carrier or conference and is identified in Tariff Rule 23 by name and appropriate tariff number (see § 514.9(b)(20)); and

(B) For domestic offshore commerce, establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor (see § 514.9(b)(16)(i)(B)).

(24) *Financial responsibility for NVOCCs in foreign commerce and legal agent for service of process.* (i) Every non-vessel-operating common carrier ("NVOCC") shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission proof of financial responsibility in the manner and amount required by 46 CFR 583.4 for the payment of any judgment for damages arising from its transportation-related activities under the Shipping Act of 1984, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state the manner of its financial responsibility; whether it is relying in whole or in part on coverage provided by a group or association of NVOCCs to which it is a member; the name(s) and address(es) of the surety company(ies), insurance company(ies) or guarantor(s) issuing the bond(s), insurance pol-

icy(ies) or guaranty(ies); the bond(s), insurance policy(ies) or guaranty(ies) number(s); and, where applicable, the name and address of the group or association of NVOCCs providing full or partial coverage.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall enter in the first address field provided in each of its Tariff Records under 46 CFR 514.11(b)(8)(ii) the name and address of a person in the United States designated under § 583.5 of this chapter as its legal agent for the service of judicial and administrative process, including subpoenas. Every NVOCC using a group or association of NVOCCs not domiciled in the United States for financial coverage, in whole or in part, pursuant to § 583.4 shall state in its tariff the name and address of the group or association's resident agent for service of judicial and administrative process, including subpoenas. The NVOCC also shall state in Tariff Rule 24 that, in any instance in which the designated legal agent(s) cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission will be deemed to be the NVOCC's legal agent for service of process.

(iii) Service of administrative process, other than subpoenas, may be effected upon the legal agent by mailing a copy of the documents to be served by certified or registered mail, return receipt requested.

(25) *Certification of shipper status in foreign commerce.* If a common carrier adopts a procedure other than those set forth in § 583.7 (b)(1) or (b)(2) of this chapter, for determining whether NVOCCs for whom it wishes to transport cargo have complied with the tariff and bonding requirements of sections 8 and 23 of the 1984 Act, that procedure shall be clearly set forth in Tariff Rule 25 of its tariff.

(26) *Time/volume rates in foreign commerce.* In connection with time/volume rates offered under § 514.13(b)(19)(i), Tariff Rule 26 of common carrier and conference tariffs in foreign commerce shall clearly and accurately:

(i) State all charges, classifications, rules and practices concerning time/volume rates;

(ii) Identify the shipment records which will be maintained to support the rates;

(iii) Describe the method to be used for shippers giving notice of their intention to use a time/volume rate prior to tendering any shipment under the time/volume-rate arrangements; and

(iv) State that:

(A) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment; and

(B) Shipper notices and shipment records supporting a time/volume rate will be maintained by any offering carrier or conference for at least five years after any shipper's use of a time/volume rate has ended.

(27) *Loyalty contracts in foreign commerce.* Where the filer intends to use a loyalty contract in foreign commerce:

(i) Tariff Rule 27 shall contain a sample of every loyalty contract, as defined in 46 CFR 514.2, together with regulations which set forth the scope and application of the contract system.

(ii) The use of any sample loyalty contract and applicable regulations filed for inclusion in a tariff under paragraph (b)(27) of this section shall be presumed to be "in conformity with the antitrust laws," within the meaning of section 10(b)(9) of the 1984 Act, if such contract makes reference to a Business Review Letter, issued pursuant to 28 CFR 50.6, indicating no objection to the use of that contract.

(28) *Definitions.* Tariff Rule 28 shall include any filer definitions of technical terms which, however, may not be inconsistent with the 1916 or 1984 Acts or this part.

(29) *Symbols.* Tariff Rule 29 shall include any filer symbols, service codes, etc. and explanations therefor which, however, may not be inconsistent with the those set forth in this part or the "Batch Filing Guide."

(30) *Access to tariff information.* Tariff Rule 30 shall contain a clear and complete description of all costs, conditions and arrangements for public inspection of tariff material, including reasonable provisions for access to emergency tariff(s) under §§ 514.8(k)(1)(iv) and (k)(1)(v).

(31) *Seasonal discontinuance.* (i) Tariff Rule 31 shall contain announcements of

seasonal discontinuance or restoration of service, which shall be filed on not less than ten days' notice, except by special permission under § 514.18. Such announcements shall contain a brief statement announcing the date of discontinuance and/or restoration of service and may include no other tariff matter. The TLIs associated with service discontinuance or restoration shall be amended, expired or filed as applicable, and shall meet all criteria for TLI filings/amendments.

(ii) Tariff Rule 31 of tariffs naming rates, fares or Tariff Rules applicable to all water routes which are closed to navigation during part of a year shall:

(A) Contain provisions governing the handling of shipments which may arrive at the publishing carrier's facilities after the date service is discontinued; and

(B) Expressly provide for the seasonal discontinuance provision's own expiration at the close of the navigation season, or include a rule providing for the discontinuance/restoration of service based on the stated navigation season.

(32) [Reserved]

(33) *Project rates.* Tariff Rule 33 shall contain complete descriptions of all project rates which are stated discounts of other TLI's for given commodities under § 514.13(a)(5)(ii). For domestic offshore carriers, Tariff Rule 33 shall also include a statement that all project rates will cover the carrier's variable costs and contribute to its fixed expenses.

(34) *Terminal Tariffs.* Tariff Rule 34 shall contain the full-text portions of all terminal tariffs filed by marine terminal operators (excluding the Organization Record and Tariff Record, which must be established under § 514.11). Other, mandatory Tariff Rules under this section which are designed for carriers and conferences shall be designated "Not Applicable" or "NA." For logical divisions within the terminal tariff, filers should use subrules, as described in paragraph (a)(4) of this section.

(c) *Optional Tariff Rules.* Tariff Rules numbers 100 and up (to be numbered

consecutively) are available for carrier/conference use.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993; 58 FR 5622, Jan. 22, 1993; 58 FR 28790, May 17, 1993; 60 FR 27230, May 23, 1995]

**§ 514.16 [Reserved]**

**§ 514.17 Essential terms of service contracts in foreign commerce.**

(a) *General.* (1) A concise statement of the essential terms (ETs) of every initial service contract (which is filed in paper form under § 514.7) and appropriate amendments to ETs resulting from any amendment of the filed service contract, shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format. Unlike most other tariff data, ETs shall be filed largely in full text, with a minimum of database formatting (but with certain other standardization), as set forth in this section. Additionally, ETs are not subject to the algorithm or linkage requirements of § 514.10(d). Filing and maintenance of ETs are accomplished through an electronic essential terms publication (ETP) for each carrier or conference filer, which contains ETs for each of the carrier's or conference's service contracts.

(2) *Cross-references*—(i) *Authority to file:* § 514.4(d)(5).

(ii) *Cancellation:* § 514.4(e)(2).

(iii) *Availability of essential terms:* § 514.7(f).

(iv) *Rejection of service contracts and/or essential terms:* § 514.7(j).

(v) *Modification, correction and cancellation:* § 514.7(k).

(vi) *Assessorials and algorithms:* § 514.10(d)(1).

(b) *Essential terms publication*—(1) *Creation and form.* The ETP is created and maintained by the filer as a separate tariff type (“ET” for “ETP”) with a tariff record and number (see § 514.11(b)). A service-contract filer, either carrier or conference, may have only one ETP for all its ETs. The ETP may also contain matter of general applicability to all ETs contained therein, such as Tariff Rules. The ATFI system will coordinate development of ET search indexes by, for example: ET, service contract

or FMC file number; by commodity name or number; by TLI number; and, by origin or destination of the commodity.

(2) *Reference to/in tariffs of general applicability.* The ETP shall:

(i) Contain reference to each carrier's or conference's tariff of general applicability; and

(ii) Be referenced in each of the carrier's or conference's tariffs of general applicability, where required to be filed under this part.

(c) *Statement(s) of essential terms; general requirements.* (1) Essential terms shall be promptly filed by the appropriate person, in the carrier's or conference's ETP and in the content and tariff format as provided by this part. (The service contract, in paper form, is required to be filed within ten (10) days of the electronic filing of the essential terms under § 514.7(g).)

(2) Essential terms may not:

(i) Be uncertain, vague or ambiguous; or

(ii) Contain any provision permitting modification by the parties other than in full compliance with this part.

(d) *Essential terms; specific requirements*—(1) *ATFI sample screen illustration.* The following ATFI simulated screen illustrates the elements required to be contained in essential terms filings and how they may appear in the ATFI system. The references in brackets in each line are to the subparagraphs of this paragraph which explain the requirements for the fields and the data contained therein. See paragraph (b)(1) of this section for provisions regarding the essential terms publication. On the screen, data above the double line, i.e., down through “Contract Termination,” shall be entered in database format in the special fields provided; data beginning with Mandatory Term No. 3 (“Commodities”) shall be entered in “full-text” format without the application of algorithms under § 514.10(d). However, the mandatory ETs (Nos. 1 to 10) shall bear the appropriate term number and exact mandatory term title, as set forth in this paragraph (and the screen). If the mandatory term does not apply (e.g., No. 7 or No. 8), the filer shall also enter the symbol “NA.”

[§ 514.17(d)(1)] ATFI ESSENTIAL TERMS SEARCH

ET Num: 681 .....	JKL Line Essential Terms Publication (XYZ 004) .....	[1]	
SC Num: 765 .....	Personal Computers from Taiwan .....	[2]	
FMC File Num: 123456 .....	Amendment Num: 3—Available until: 31 Jan 1992 .....	[3]	
Amendment Type: C .....	Contract Effective: 01 Dec 1992 .....	[4]	
	Special Case: 123456—Contract Expiration: 15 Jan 1993.	[5]	
Filing Date: 01 Jan 1992 .....	Contract Termination: 15 Jan 1993 .....	[6]	
Term	(Amend)	List of essential terms titles	[7]
1	( 0)	Origin .....	[i]
2	( 0)	Destination .....	[ii]
3	( 0)	Commodities .....	[iii]
4	( 1)	Minimum Quantity .....	[iv]
4	A( 0)	Minimum Quantity in 20ft containers .....	[A]
4	B( 3)	Minimum Quantity in 40ft containers .....	[B]
5	( 0)	Service Commitments .....	[v]
6	( 0)	Contract Rates or Rate Schedules(s) .....	[vi]
7	( 2)	Liquidated Damages for Non-Performance (if any) .....	[vii]
8	( 0)	Later Events Causing Deviation From ET (if any) .....	[viii]
9	( 0)	Duration of the Contract (e.g., "46 days from 01 Dec. 1992 to 15 Jan. 1993") .....	[ix]
10	( 0)	Assessorials .....	[x]
100	( 0)	(Title and text—Optional) .....	[8]
101	( 0)	(Title and text—Optional) .....	[8]
[999 zzz	(999)	Maximum term and amendment values] .....	

(2)(i) *ET Num (statement of essential terms number)*. The "ET Num" is defined by the filer and shall be entered in the appropriate field. See §514.7(h).

(ii) *ET Heading*. The filer's title of the ET document (e.g., "Personal Computers from Taiwan") is entered here and will appear in the ETP index to the included ETs.

(3)(i) *SC NUM (service contract number)*. The "SC Num" is defined by the filer and shall be entered in the appropriate field. See §514.7(h).

(ii) *Amendment Num*. Where feasible, ETs should be amended by amending only the affected specific term(s) or subterms, mandatory or optional. Each time any part of an ET is amended, the filer shall assign a consecutive ET amendment number (up to three digits), beginning with the number "1." (The amendment number field must be "0" or void for the initial ET filing.) Each time any part of the ET is amended, the ET "Filing Date" will be the date of filing of the amendment and the "Available Until Date" will be 30 days from the filing date, but the filer can enter a later date, making the availability period longer. See correction provisions under §514.7(k) and paragraph (d)(5)(ii) of this section.

(iii) *Available until*. The period of availability of the essential terms to similarly situated shippers shall be no

less than thirty (30) days, i.e., from the "Filing Date" (paragraph (d)(6)(i) of this section and §514.10(a)(2)) of the initial filing or the latest amendment, to the "Available until" date (automatically defaulted to 30 days from the Filing Date by the interactive ATFI system, but the filer can enter a later date, making the availability period longer).

(4)(i) *FMC File Num*. The FMC File Numbers will be system assigned as initial ET filings are received/processed. The FMC File Numbers will be assigned sequentially and will start at a number designated by FMC at production start. The FMC File Number will be provided to filers in the acknowledge message (EMail) for filings so that they can put the number in the related service contract when it is filed in paper form. See §514.7(h)(1)(iii)(B). This procedure will facilitate FMC linkage of the ET to its related service contract.

(ii) *Contract effective*. In addition to the period of availability of essential terms to similarly situated shippers, the service contract itself must have an effective date and an expiration date (see paragraph (d)(5)(iii) of this section and §§514.10 (a)(3) and (a)(4)), governing the duration of the contract between the original signatory parties. The duration must also be set forth in

mandatory essential term No. 9, where the duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date).

(5)(i) *Amendment type.* All ATFI amendment codes under § 514.9, except “G” and “S” (§§ 514.9(b)(7) and 514.9(b)(19)), may be used in any combination, with up to three amendment codes for amendments to ETs. No notice period is required for amendments to ETs, except that amendments to ETs require a new “Available until” date, which must be at least 30 days from the filing date. For the amendment code “S,” see paragraph (d)(5)(ii) of this section.

(ii) *Special Case symbol and number.* The “S” amendment code (for special case under § 514.9(b)(19)(iii)) must be used singly, and in conjunction with a validated special case number for corrections to ETs. See correction provisions under § 514.7(k).

(iii) *Contract expiration.* See paragraph (d)(4)(ii) of this section.

(6)(i) *Filing date.* The filing date is automatically set by the system whenever an ET or amendment thereto is filed. See “Available until” in paragraph (d)(3)(iii) of this section.

(ii) *Contract termination date.* A statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired under the terms of the contract, or have been terminated for reasons not specifically set forth in the contract. See §§ 514.4(e)(2) and 514.7(l)(1)(ii). The contract termination date would, therefore, be the same as the contract expiration date under paragraph (d)(5)(iii) of this section, unless terminated sooner, in which case the filer would enter the earlier date when the termination event occurred.

(7) *Terms and subterms.* Mandatory essential terms Nos. 1 to 10 shall address the subjects and bear the terms’ titles for the respective numbers exactly as provided in this section. If a subject is not included, such as No. 7 or No. 8, the number must be listed with the appropriate title and the designation “NA.” All essential terms, mandatory and optional, may be subdivided into subterms (as illustrated for mandatory

term No. 4) to facilitate retrieval and amendment. The mandatory terms are as follows:

(i) *Origin (No. 1).* “Origin” includes the origin port range(s) in the case of port-to-port movements, and the origin geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of “port ranges” or “geographic areas,” but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b). Origin point and port locations will be validated against the ATFI Locations database. The validated names will be “inserted” by the system in Mandatory Term #1. The Mandatory Term may not contain text, but if the filer wishes to use full text to clarify or expand on the point/port entries in Term 1, full text may be used in subterms.

(ii) *Destination (No. 2).* “Destination” includes the destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of “port ranges” or “geographic areas,” but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b). Destination point and port locations will be validated against the ATFI Locations database. The validated names will be “inserted” by the system in Mandatory Term #2. The Mandatory Term may not contain text, but if the filer wishes to use full text to clarify or expand on the point/port entries in Term 2, full text may be used in subterms.

(iii) *Commodities (No. 3).* Mandatory term No. 3 shall include commodities covered by the service contract, but these commodities may not be entered as described in § 514.13(a), i.e., commodities cannot be entered in data-element format, but the full-text format may incorporate the same elements of information, as desired. See § 514.7(c) for exempt commodities. For each commodity filed in this term, a separate formatted commodity index entry is required.

(iv) *Minimum quantity (No. 4)*. Mandatory term No. 4 shall address the minimum quantity or volume of cargo and/or amount of freight revenue necessary to obtain the rate or rate schedule(s), except that the minimum quantity of cargo committed by the shipper may not be expressed as a fixed percentage of the shipper's cargo.

(A) *Subterm*. Example: Minimum quantity in 20FT Containers.

(B) *Subterm*. Example: Minimum quantity in 40FT Containers.

(v) *Service commitments (No. 5)*. Mandatory term No. 5 shall address the service commitments of the carrier, conference or specific members of a conference, such as assured space, transit time, port rotation or similar service features.

(vi) *Contract rates or rate schedule(s) (No. 6)*. Mandatory term No. 6 shall contain the contract rates or rate schedules, including any additional or other charges (i.e., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges; except that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission.

(vii) *Liquidated damages for non-performance (if any) (No. 7)*. Mandatory term No. 7 shall include liquidated damages for non-performance. See §514.7(1).

(viii) *Later events causing deviation from ET (if any) (No. 8)*. Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, mandatory term No. 8 shall include a clear and specific description of the event, the existence or occurrence of which shall be readily verifiable and objectively measurable. See §514.7(1). This requirement applies to, *inter alia*, the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in which case the contract shall set forth a rate, charge, or rate basis which will be applied.

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential term of the contract.

(ix) *Duration of the Contract (No. 9)*. The duration of the contract shall be stated as a specific fixed time period, with a beginning date (effective date) and an ending date (expiration date). See paragraph (d)(4)(ii) and (d)(5)(iii) of this section.

(x) *Assessorials (No. 10)*. Mandatory Term 10 shall contain all ET assessorials, preferably using a separate subterm for each type of assessorial. For every assessorial, the filer shall set forth either:

(A) The full assessorial; or

(B) A complete cross-reference to the place(s) where it may be found.

(8) *Optional terms*. Any essential term of a service contract not otherwise specifically provided for in this section shall be entered after the mandatory terms and in numerical order, beginning with No. 100.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 28, Jan. 4, 1993; 61 FR 35686, July 8, 1996]

#### §514.18 Special permission.

(a) *General*. Section 8(d) of the 1984 Act and section 2 of the 1933 Act authorize 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 statutory notice under §514.9. Section 9(c) of the 1984 Act authorizes the Commission to permit a controlled common 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. The Commission

will grant such permission only in cases where merit is demonstrated.

(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 filing the defective tariff material. For correction of clerical errors in the essential terms of service contracts, see § 514.7(k)(2).

(c) *Application*—(1) *By authorized official; filing fee.* Application 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 that holds authorization under § 514.4(d) to file the tariff matter. Every such application shall be submitted to BTCL and be accompanied by the filing fee provided in § 514.21.

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

(3) *Content.* Except as provided in § 514.7(k)(2) for correction of essential terms, applications for special permission shall contain the following information:

(i) The organization name, number and d/b/a of the conference or carrier under § 514.11(b);

(ii) The tariff number, title and tariff code under § 514.11(b); and

(iii) The rate, commodity, Tariff Rules, etc. (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.* (1) If all conditions are complied with and if the authority granted by special permission is used, it shall be used in its entirety and in the manner set forth by the Commission, including the prompt

electronic filing of the material for which permission is requested, with the filer using the special case number assigned by the Commission for that filing and the special case symbol “ S,” as prescribed in § 514.9(b)(19)(i).

(2) If Commission-specified conditions are not complied with, or if the exact authority granted by the special permission is not used and more, less or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

[57 FR 36271, Aug. 12, 1992, as amended at 57 FR 46324, Oct. 8, 1992; 58 FR 30, Jan. 4, 1993]

#### § 514.19 Suspension of tariff matter.

All use of suspended tariff matter shall be deferred for the period specified in the Commission's suspension order. In addition to other affected places in the tariff, as provided in this section, the fact that tariff matter is suspended is also displayed through the “Status” function in the command line, as described in § 514.8(n)(3).

(a) *Domestic offshore commerce*—(1) *Suspension; period.* The Commission may suspend from use any rate, fare, charge, classification, Tariff Rule, regulation, or practice of a domestic offshore carrier for a period of up to 180 days beyond the time it would otherwise have lawfully taken effect.

(2) *Implementation.* Upon issuance of an order suspending tariff matter in whole or in part, BTCL shall immediately make the appropriate entry in the domestic offshore carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff matter suspended and sets forth any tariff provisions which may remain effective in lieu of the suspended provisions;

(ii) Bears an effective date coinciding with that in the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such

direction, reproduces the suspension order in its entirety.

(3) *Amendment of suspended tariff matter.* (i) Neither suspended matter nor matter continued in effect as a result of a suspension, may be amended, deleted or withdrawn except through use of the special case number and symbol procedure under § 514.9(b)(19) referred to in the order or special permission issued by the Commission, except that a tariff affected by a suspension order may be amended during the suspension period if the amendment does not affect the suspended materials.

(ii) If, prior to receiving a suspension order, a carrier files an amendment re-issuing, deleting, canceling or amending any tariff matter named in a subsequent suspension order, the amendment shall be rejected.

(4) *Vacating suspension of tariff matter.* Should the Commission vacate a suspension order earlier than the date to which the subject tariff matter was originally suspended, BTCL shall immediately change the thru date to the specified date in the Commission's order vacating the suspension order.

(5) *Cancellation of suspended matter.* (i) Should the Commission subsequently cancel all or any part of previously-suspended tariff matter, BTCL shall immediately change the expiration date to the date of cancellation set forth in the Commission's order. See § 514.4(e).

(ii) If suspended tariff matter is not canceled by the Commission prior to its thru date, it shall take effect automatically on the thru date and any tariff matter which was continued in effect during the suspension period shall be automatically superseded by the tariff matter that had been suspended but was not canceled.

(b) Controlled common carriers in foreign commerce.

(1) *Suspension; period.* Tariff matter filed by a controlled common carrier may be suspended at any time before its effective date. Tariff matter already in effect may be suspended upon the Commission's issuance of a show cause order on not less than 60 days' notice to the common carrier. In either instance, the suspension period shall not exceed 180 days.

(2) *Implementation.* Upon issuance of an order suspending tariff matter in whole or in part, the Commission's BTCL shall immediately make the appropriate entry into the controlled common carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff material suspended;

(ii) Bears an effective date coinciding with that of the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(3) *Replacement rates.* (i) Controlled common carrier tariff matter filed to become effective during a suspension period in lieu of the suspended matter:

(A) May become effective immediately upon filing or upon the effective date of the suspension, whichever is later; and

(B) Shall be filed using the special case symbol and number issued by the Commission under § 514.9(b)(19).

(ii) In determining whether to reject replacement rates, the Commission will consider whether such rates result in total charges (e.g., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a U.S.-flag or reciprocal-flag common carrier serving the same trade.

(iii) At the same time it files replacement rates, the controlled common carrier shall submit to BTCL a letter (in paper format) identifying the specific U.S.-flag or reciprocal-flag common carrier's rates, charges, classification or Tariff Rules resulting in total charges which equal or are lower than its own.

(c) *Other suspension situations.* When the Commission, upon good cause shown, issues an order to suspend tariff matter not addressed in paragraphs (a) or (b) of this section, it will set forth in the order the procedures for effectuating the suspension.

(d) *Other filings in suspension situations.* In suspension situations, when filings, not provided for elsewhere in this section and not otherwise permitted by the rules of this part, may become necessary or desirable, such filings may be directed by the Commission and shall use the assigned special case symbol and number procedure under § 514.9(b)(19).

**§ 514.20 Retrieval.**

(a) *General.* The Commission will not provide to the public tariff data in paper format, except pursuant to requests for certification of copies for court or government agency use, as provided in § 514.8(k)(2).

(b) *User charges.* User charges for services under this section are provided in § 514.21.

(c) *Interactive retrieval.* Interactive retrieval means the process by which any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal (see § 514.8(e)), and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter which has been filed in the ATFI database.

(1) *Registration.* Every public interactive retriever will be required to register in advance with BTCL under § 514.8(f) to obtain a USERID and password.

(2) *Automatic logoff.* All retrievers will be automatically logged off after 10 minutes of inactivity.

(3) *Remote retrieval by modem.* A public retriever may access and/or obtain (through screen prints) ATFI filed tariff data through modem and telecommunications links and procedures authorized by the Commission.

(4) *Tariff Control Center.* A public retriever may access and/or obtain ATFI filed tariff data through personal operation of one of several terminals provided in the Tariff Control Center at the FMC headquarters in Washington, D.C.

(d) *Batch retrieval through data base files.* Interested parties may subscribe to all tariff filings/updates received by the Commission on a daily basis. The ATFI System Administrator will create a daily subscriber data update file which will be accessible to subscribers.

The daily updates subscriber will access the ATFI system to on-line download the tariff updates received during the previous workday and any intervening weekend/holidays, as well as any tariff updates created by the Commission (e.g., suspensions, rejections, etc.). Subscribers may request that daily updates be forwarded on tape (either 9 track, 6250 bpi or 8 mm cartridge, Exabyte 8500 compatible) when the file size indicates that the on-line download option is not cost-effective. Subscriber responsibility and charges for use of this option are specified in § 514.21(j)(2). The Commission may also send selected daily updates by first class mail (or as directed by subscribers at subscriber's expense) or make updates available at the ATFI computer center when the magnitude of the file size indicates that downloads would degrade ATFI access for other ATFI user functions. The charge specified in § 514.21(j)(2) will apply, but subscribers will not be required to provide tapes. Subscribers requesting update data on tape are responsible for insuring that the Commission has received sufficient pre-paid monies before the last business day of the preceding month in order to subscribe to the next month's filings. The Commission will terminate the download capability of any accounts in arrears.

(e) *Instructional materials—(1) ATFI “Batch Filing Guide” and user manual.* The ATFI user guides applicable to retrieval functions are the “ATFI Fundamentals Guide,” “ATFI System Handbook,” and “ATFI Tariff Retrieval Guide.” See § 514.8(b). The user of subscriber tapes will also need the ATFI transaction set formats and specifications detailed in the “Batch Filing Guide.” See § 514.8(d)(3). The transaction set formats published for batch filers are used for the formatting of subscriber tapes.

(2) *Computer based instruction (“CBI”).* Computer based instruction for ATFI retrieval is a menu option for registered interactive retrievers using the ATFI central site system. See § 514.8(h).

(f) *Filers.* Properly registered individuals who will have “write” privileges for editing tariff data may access those tariffs for which they have such filing privileges without restriction. Where

filing firms or employees thereof also register as public retrievers for access to all tariff data, the restrictions in paragraph (c)(2) of this section shall apply when they enter ATFI as a retriever.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 30715, May 27, 1993; 60 FR 56123, Nov. 7, 1995]

#### § 514.21 User charges.

In accordance with 5 U.S.C. 552 and 31 U.S.C. 9701, the user charges in this section are established for services under this part. Unless otherwise provided in this part, checks, drafts or money orders shall be remitted and made payable to "Federal Maritime Commission (OBFM)," 800 North Capitol Street, NW., Washington, DC 20573. Unless otherwise specified, overdue payments will be charged interest in accordance with the rate established by the Department of the Treasury for each 30-day period or portion thereof that the payment is overdue. In addition to any other remedy and penalty provided by law and regulation, if payment is overdue for 90 days, ATFI services will be denied:

(a) *Application for exemption* (See §§ 514.3 and 514.8(a)): As provided in § 502.69 of this chapter.

(b) *User manual* (of ATFI "Guides" -- § 514.8(b)).

(1) *In diskette form*: \$15 for diskette(s) containing all user guides in WordPerfect 5.0 format.

(2) *Printed, in paper form* (Batch Filing Guide is free of charge and is furnished separately):

(i) *Package A*: Fundamentals Guide and System Handbook (125 pages) are made available jointly and are a prerequisite for use of either of the packages in paragraphs (b)(2)(ii) or (b)(2)(iii): \$18.00.

(ii) *Package B*: Tariff Retrieval Guide: \$15.00.

(iii) *Package C*: Tariff Filing Guide: \$27.00.

(iv) *Package D*: All Guides listed in paragraphs (b)(2)(i) through (b)(2)(iii): \$55.00.

(3) *Ordering manuals*. Requests for user manual package(s) should be in writing and addressed to "BTCL Manuals," Federal Maritime Commission, Washington, DC 20573. A check for the

appropriate amount should be made to the "Federal Maritime Commission."

(4) *Updates*. Updates to the user manual in any format will not be furnished automatically and are not included in the user charge. The Commission will publicize notice of upgrades when they occur.

(c) *Registration for user (filer and/or retriever ID and password* (see exhibit 1 to this part and §§ 514.4(d), 514.8(f) and 514.20)): \$162 for initial registration for firm and one individual; \$136 for additions and changes.

(d) *Certification by Commission Secretary* of tariff data (§ 514.8(k)(2)): As provided in § 503.43(c) of this chapter.

(e) *Certification of batch filing capability (by appointment through the Bureau of Administration)* (§ 514.8(l)).

(1) *User charge*: \$359 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial changes to the ATFI system).

(2) *Certification submissions*:

(i) May be made in one or more scheduled certification periods;

(ii) May include transaction sets for one of each different tariff type listed in Appendix A (# 14) of the ATFI Batch Filing Guide; and

(iii) May be made to the ATFI central site computer via on-line batch or to the ATFI Computer Center via bulk batch (9-track tape), or both.

(f) *Application for special permission* (§ 514.18): \$146.

(g) *Remote electronic retrieval* (§ 514.20(c)(3)). The fees for remote electronic access to ATFI electronic data are:

(1) A fee of 46 cents for each minute of remote computer access directly to the ATFI database by any individual; and

(2) Through September 30, 1995, for a person operating or maintaining information in a database that has multiple tariff or service contract information, obtained directly or indirectly from the Commission, a fee of 46 cents for each minute that database is subsequently accessed by computer by any individual.

(h) *Printing* (screen prints) of downloaded tariff matter at Commission's Tariff Control Center

(§ 514.20(c)(4)): as provided in part 503, subpart E.

(i) *Tariff filing fee.* The fee for tariff filing in either the foreign or domestic offshore commerce of the United States shall be 17 cents per filing object; the fee for filing service contract essential terms shall be \$1.65 per filing set.

(j) *Daily Subscriber Data (§ 514.20(d)).* (1) Persons requesting download of daily updates must pay 46 cents per minute as provided by § 514.21(g)(1).

(2) Persons requesting daily updates on tape must supply the tapes and return postage, and pay \$43 per daily update.

(k) *Miscellaneous tapes.* The fee for tape data, other than the ATFI database described in paragraph (j) of this section, shall be \$61 for the initial tape plus \$25 for each additional tape required.

(l) *Exceptions.*

(1) Marine terminal tariff data are not subject to a secondary user charge for access under paragraphs (g)(2) or (m)(2) of this section.

(2) Subject to the secondary access restrictions and user fees under paragraph (m)(2) of this section:

(i) Filers may, without the necessity of paying a user fee under this section, access only those tariffs or parts of tariffs for which they have an authorized filer USERID and password.

(ii) A Federal agency is exempt from paying a fee under paragraphs (g) and (j) of this section.

(m) *Enforcement of section 502 of Public Law 102-582 (until September 30, 1995).* Through September 30, 1995, and in order to comply with section 502 of Public Law 102-582 (46 U.S.C. 1707a), official ATFI tariff data may be accessed by computer only as described in this paragraph:

(1) *Direct access.* (i) *Retrievers.* Any person may, with a proper retrieval USERID and password, enter the official ATFI database to obtain computer access of tariff matter, as provided in this part, but may download ATFI data only through the "Print Screen" function, which prints one screen at a time on paper. The user fee for this computer access is 46 cents a minute, for which the user will be billed at the end of each month.

(ii) *Filers.* Any person with a proper filer USERID and password may enter the official ATFI database to obtain computer access of tariff matter as provided in this part, but may download ATFI data only through the "Print Screen" function, which prints one screen at a time on paper, and the filer ATFI-mail-file-transfer function, which prints the contents of the filer's ATFI mail on paper.

(2) *Indirect access: purchase and use of database tapes.* (i)(A) Any person purchasing or subscribing to, or otherwise acquiring, ATFI database tapes under § 514.20(d) and this section shall first submit for approval to BTCL of the FMC a description and model of the accounting or charging system it intends to use to comply with this paragraph so that the FMC can determine whether such system is adequate. There shall be included in the application for approval detailed descriptions of:

(1) The methodology for, *inter alia*, monitoring, collecting, reporting and payment to the FMC of the secondary access fee for all indirect access of data, as prescribed by section 502 of Public Law 102-582 and this part;

(2) Features to protect the security of tariff data;

(3) How the applicant intends to categorize and handle "mixed" data, i.e., data which is, as well as data which is not, subject to the user fee.

(4) All the records which will be necessary to perform the functions set forth in paragraphs (m)(2)(i)(A)(1) through (m)(2)(i)(A)(3) of this section, to permit adequate evaluation of the reports submitted and computations used, and sufficient to reflect properly the charges to be collected and paid under this paragraph, including, specifically, all records of access granted, fees charged and collected for each secondary retriever, and remittances to FMC. These records, which must be retained for possible audit under paragraph (m)(2)(ii) of this section, shall include books, records, documents, and other evidence and accounting procedures and practices, regardless of form, e.g., machine readable media such as disk tape, or type, e.g., data bases, applications software, data base management software, utilities.

(B) Those parts of the charging system which the applicant wishes not to be disclosed to the public because they are considered business sensitive, e.g., "trade secrets," shall be kept completely separate from the balance of the application, along with a full justification of their non-disclosability. The Commission will consider any request for these records under the Freedom of Information Act.

(C) The FMC will evaluate the charging system within sixty (60) calendar days after submission and approval will be assumed unless the FMC otherwise formally notifies the applicant within the sixty-day period.

(D) The database tapes of ATFI may not be made available to any person until its charging system is approved by FMC.

(ii)(A) Every person who is authorized to purchase ATFI database tapes under paragraph (m)(2)(i) of this section shall maintain those records described in paragraph (m)(2)(i)(A)(4) of this section until October 1, 1998.

(B) The FMC or its representatives shall have the right to examine and audit all records described in paragraphs (m)(2)(i)(A)(4) and (m)(2)(ii)(A) of this section, for the purpose of evaluating the accuracy and completeness of the reports required by this paragraph. The right of examination shall extend to all documents and other data, regardless of form, necessary to permit adequate evaluation of the reports submitted, along with the computations used.

(iii)(A) Any person having an ATFI database tape may access by computer the data contained therein for its own use, and/or may permit others to access by computer the data, but only if it records all such access and pays to the FMC the 46-cents-a-minute user charges for all computer access to such data, as prescribed in paragraph (g)(1)(ii) of this section under the approved charging system described in paragraph (m)(2)(i) of this section.

(B) The access of data on paper, e.g., that which has been printed or written on the paper, is not subject to the indirect (secondary) user fee under this paragraph, even if subsequently converted into computer, e.g., database, format.

(iv) No person having an ATFI database tape may allow downloading of the data contained therein other than by an effectively-designed and functioning "Print-Screen" function, which allows printing of one screen at a time onto paper.

(v) Billing and Payment.

(A) Within ten (10) calendar days after the end of each month, each database-tape purchaser under paragraph (m)(2)(i) of this section shall transmit to the Office of Budget and Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573-0001, a report of all computer access to ATFI data listed by user, date and minutes accessed. Each such purchaser shall simultaneously transmit payment to "the Federal Maritime Commission" for such usage at the rate of 46 cents per minute.

(B) If payment is not made when due, the database purchaser under paragraph (m)(2)(v)(A) of this section may be assessed interest, penalties and administrative costs associated with collection of late payments in accordance with the Federal Claims Collection Standards, 4 CFR 102.13. The FMC intends to utilize the provisions of the Debt Collection Act, 5 U.S.C. 5514, including disclosure to consumer reporting agencies, to ensure prompt payment.

(C) The FMC reserves the right to suspend or terminate furnishing ATFI data tapes to any person if payment is not timely made.

[57 FR 36271, Aug. 12, 1992, as amended at 58 FR 30, Jan. 4, 1993; 58 FR 30715, May 27, 1993; 59 FR 59171, Nov. 16, 1994; 59 FR 63908, Dec. 12, 1994; 60 FR 56124, Nov. 7, 1995]

**§514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in these regulations (46 CFR part 514 and Exhibit 1 to part 514) have been approved by the Office of Management and Budget [OMB] in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0055.

• OMB 3072-0055; Expires 9-30-94 •

Exhibit 1 to Part 514

ORG NO. \_\_\_\_\_

**ATFI USER REGISTRATION FORM**

PLEASE TYPE OR PRINT  
(SEE INSTRUCTIONS)

FMC USE ONLY  
ARC \_\_\_\_\_ BOND \_\_\_\_\_ CC \_\_\_\_\_

1. This Registration is:     Initial     Amendment (Specify change) \_\_\_\_\_

2. Registrant  
\_\_\_\_\_ Full Legal Name of firm (or individual, if not a firm)  
\_\_\_\_\_ (Doing Business As)

3. Address of Home Office  
\_\_\_\_\_ (Number and Street)    \_\_\_\_\_ (Telephone)  
\_\_\_\_\_ (Number and Street)    \_\_\_\_\_ (Fax)  
\_\_\_\_\_ (City/State/Country)

4. Billing Address If Different  
\_\_\_\_\_ (Number and Street)    \_\_\_\_\_ (Telephone)  
\_\_\_\_\_ (Number and Street)    \_\_\_\_\_ (Fax)  
\_\_\_\_\_ (City/State/Country)

5. Organization Number (if known) \_\_\_\_\_    6. SCAC/STAC CODE \_\_\_\_\_ (If Applicable)

7. Registrant Type     VOCC     Terminal     Tariff Publisher/Agent/Other  
(Check one)     NVOCC     Conference/Joint Service

[SEE INSTRUCTIONS BEFORE COMPLETING LINE 8]

8. Permissions Requested and Person granted these permissions (Check permissions that apply)

\_\_\_\_\_ Print Full Legal Name  
 Retrieval     Create/modify tariff data  
 Maintenance of organization record     Review/Authorize/Transmit data

9. Certified for Batch Filing (Y/N) \_\_\_\_\_ If Yes, show Certification date \_\_\_\_\_  
If the person to perform the Batch filing already has an existing Login, list only the Login for that person.  
Existing Login \_\_\_\_\_

\_\_\_\_\_ Signature of Authorized Official    \_\_\_\_\_ Print or Type name of Authorized Official  
\_\_\_\_\_ Date

**FMC USE ONLY**  
Login \_\_\_\_\_ Initial Password \_\_\_\_\_ User ID \_\_\_\_\_ Directory \_\_\_\_\_  
Form FMC-63 (5-92)    Date Asg \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_    Asg By \_\_\_\_\_

**Instructions for Exhibit 1 to Part 514  
ATFI User Registration Form**

**Line 1. Registration.** Indicate whether this is the initial (first-time) ATFI registration or an amendment to an existing ATFI registration.

**Line 2. Registrant.** This must be the full legal name of the firm or individual registering for ATFI and any trade names. The registrant name should match the corporate charter or business license, anti-rebate certification, surety bond, conference memberships, etc. It should be noted that the registrant name cannot be changed by the user after registration without submission of an amended registration form. A separate form must be submitted for each person registering to use ATFI.

**Line 3. Address of Home Office.** The complete street address should be shown in addition to the Post Office Box.

**Line 4. Billing Address if Different.** This should be completed when the billing address differs from the home office address. Show the street address in addition to the post office box.

**Line 5. Organization Number.** Complete if known. (This is also known as the Regulated Person Index number or RPI number).

**Line 6. SCAC/STAC Code.** SCAC (Standard Carrier Alpha Code) and STAC (Standard Tariffs Agent Code) is not mandatory for tariff filing in ATFI. These codes are used for the convenience of tariff filers/retrievers. SCAC/STAC codes are available from the National Motor Freight Traffic Association, Alexandria, VA.

**Line 7. Registrant Type.** Indicate the type of organization. A company cannot be more than one type. This data cannot be changed by the user after registration without submission of an amended registration form.

**Line 8. Permissions Requested and Person Granted these Permissions.**

**Retrieval** - Granted to all ATFI user(s).

**Maintenance of Organization Record** - The user listed can access the organization maintenance functions, i.e., modify organization information, assign publishers, affiliations, and doing-business-as (DBAs).

**Create/Modify Tariff Data** - The user is permitted to use the interactive system to enter tariff data.

**Review/Authorize/Transmit Data (Interactive filing only)** - The user may review previously entered, but not yet filed, tariff data. They may place data on a hold status, remove from the hold status, and may transmit data to ATFI.

**Line 9. Certified for Batch Filing.** The user is permitted to submit batch filings. The registrant must first be certified for batch filing as outlined in 46 CFR 514.8(l)(1) & (2). After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing login, the login (not the password) should be listed on the requesting form. Also, the certification date received from the Federal Maritime Commission should be listed on the requesting form.

*\* Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, FMC, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. \**

*Send completed form with appropriate user charge under 46 CFR 514.21 to BTCL, FMC, Washington, DC 20573.*

**BILLING CODE 6730-01-C**

Pt. 514, Exh. II

46 CFR Ch. IV (10-1-96 Edition)

EXHIBIT II TO PART 514

Sample Abbreviated Format Service Contract

Service Contract No.: SC 1-95
FMC File No.: 50,000
Essentials Terms No.: ET 1-95
Amendment No.: \_\_\_\_\_
Service Contract Essential Terms Publication No.: 003
Tariff(s) of General Applicability No.: 001, 002
Carrier/Conference Name: Efficient Liner Transportation, Inc.
Carrier/Conference Address: 1227 Seaway Drive, Washington, DC 20573
and
Shipper Name: ABC Electronics Company
Shipper Address: 7221 Happiness Lane, New York, NY 10001

This is a service contract pursuant to the Shipping Act of 1984 (46 U.S.C. app. 1701 et seq.) and FMC rules at 46 CFR Part 514, between "CARRIER/CONFERENCE" and "SHIPPER" parties named herein. The contract parties certify that the terms set forth herein and the essential terms as published in Carrier/Conference Service Contract Essential Terms Tariff No. 003, ET No. 1-95, in the Federal Maritime Commission's Automated Tariff Filing and Information System, constitute the true and complete copy of all aspects of this contract and are hereby incorporated by reference.

Further, shipper party named herein certifies its status and that of any affiliate(s)/subsidiary(ies) named herein as (check appropriate box(es):

NVOCC \_\_\_\_\_
Shippers' Association \_\_\_\_\_
Owner of Cargo \_\_\_\_\_
Other (Please specify) \_\_\_\_\_

Records maintained to support shipments under this service contract are: bills of lading, shipping manifests, and other related written correspondence between contract parties.

Contact person for records in the event of a request by the Federal Maritime Commission: Efficient Liner Transportation, Inc., Traffic Manager, 1227 Seaway Drive, Washington, DC 20573, (202) 523-5856.

(Carrier/Conference Signature)

Date
Efficient Liner Transportation, Inc.

(Shipper Signature)

Date
ABC Electronics Company
Affiliate of shipper: Quality Compact Discs, Inc.

Affiliate's address: 7221-A Happiness Lane, New York, NY 10001

[61 FR 5311, Feb. 12, 1996; 61 FR 14979, Apr. 4, 1996]

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

- Sec.
540.1 Scope.
540.2 Definitions.
540.3 Proof of financial responsibility, when required.
540.4 Procedure for establishing financial responsibility.
540.5 Insurance, guaranties, escrow accounts, and self-insurance.
540.6 Surety bonds.
540.7 Evidence of financial responsibility.
540.8 Denial, revocation, suspension, or modification.
540.9 Miscellaneous.

FORM FMC-131
FORM FMC-132A
FORM FMC-133A

APPENDIX A TO PART 540—EXAMPLE OF ESCROW AGREEMENT FOR USE UNDER 46 CFR 540.5(b)

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

- 540.20 Scope.
540.21 Definitions.
540.22 Proof of financial responsibility, when required.
540.23 Procedure for establishing financial responsibility.
540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.
540.25 Evidence of financial responsibility.
540.26 Denial, revocation, suspension, or modification.
540.27 Miscellaneous.

FORM FMC-132B
FORM FMC-133B

Subpart C—General

540.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89-777, 80 Stat. 1356-1358