

## § 520.12

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

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

## § 520.12 Time/Volume rates.

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

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

(2) The tariff shall identify:

(i) The shipment records that will be maintained to support the rate; and

(ii) The method to be used by shippers giving notice of their intention to use a time/volume rate prior to tendering any shipments under the time/volume arrangement.

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

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

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

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## § 520.13 Exemptions and exceptions.

(a) *General.* Exemptions from the requirements of this part are governed by section 16 of the Act (46 U.S.C. 40103) and Rule 67 of the Commission's Rules of Practice and Procedure, §502.67 of this chapter.

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

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

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

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

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

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

(i) The cargo is moving between a point in a foreign country or a non-contiguous State, territory, or possession and a point in the United States;

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

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

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

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

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

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

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

(5) *Used household goods—General Services Administration.* Transportation of used household goods and personal effects by ocean transportation intermediaries shipped for federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration.

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

(1) *Between foreign countries.* This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country

and issues a through bill of lading covering its transportation to a foreign point of destination.

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

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

(1) Carriage of property is limited to vehicles;

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

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

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

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

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

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

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

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of such rate divisions, agreements, arrangements or concurrences.

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

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

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

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

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

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

(e) NVOCC Negotiated Rate Arrangements. A licensed NVOCC that satisfies the requirements of part 532 of this chapter is exempt from the requirement in this part that it include rates in a tariff open to public inspection in an automated tariff system.

[64 FR 11225, Mar. 8, 1999, as amended at 74 FR 50722, Oct. 1, 2009; 76 FR 11360, Mar. 2, 2011]

### § 520.14 Special permission.

(a) *General.* Section 8(d) of the Act (46 U.S.C. 40501(e)) authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than the statutory notice. Section 9(c) of the Act (46 U.S.C. 40703, 40704(a)) authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective

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on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part.

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

(c) *Application.* (1) Applications for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent for publishing. Every such application shall be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of \$195.

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

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

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

(ii) Tariff number and title; and

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

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

[64 FR 11225, Mar. 8, 1999, as amended at 67 FR 39860, June 11, 2002; 70 FR 10330, Mar. 3, 2005; 74 FR 50722, Oct. 1, 2009]