

Table 1.—Wastes Excluded From Non-Specific Sources—Continued

Facility	Address	Waste description
		(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 10 days from the date of the Regional Administrator's notice to present such information.
		(d) Following the receipt of information from the facility described in paragraph (c) or (if no information is presented under paragraph (c) the initial receipt of information described in paragraph (a)), the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
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FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 520

[Docket No. 98-29]

Carrier Automated Tariff Systems

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to add new regulations establishing the requirements for carrier automated tariff systems in accordance with the Shipping Act of 1984, as modified by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. At the same time, the Commission is repealing its current rules regarding tariffs and service contracts at 46 CFR part 514.

DATES: Submit comments on or before January 20, 1999.

ADDRESSES: Address all comments concerning this proposed rule to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, (202) 523-5740
and

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, (202) 523-5796

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998 ("OSRA"),

Pub. L. 105-258, 112 Stat. 1902, amends the Shipping Act of 1984 (46 U.S.C. app. sec. 1702 *et seq.*) ("1984 Act") in several areas, significantly altering the manner by which the United States regulates international ocean shipping. One of the most noteworthy changes is in the treatment of common carrier tariffs, the publications which contain the rates and charges for their transportation services. Currently, common carriers and conferences file their tariffs with the Federal Maritime Commission's ("FMC" or "Commission") Automated Tariff Filing and Information System ("ATFI"). Under OSRA, carriers no longer have to file with the Commission, but are required to publish their rates in private, automated tariff systems. (Section 8(a)(1) of the 1984 Act). These tariffs must be made available electronically to any person, without limits on time, quantity, or other such limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access, except for Federal agencies. (Section 8(a)(2)). In addition, the Commission is charged with prescribing the requirements for the "accessibility and accuracy" of these automated tariff systems. The Commission also can prohibit the use of such systems, if they fail to meet the requirements it establishes. (Section 8(g)).

The Commission is, accordingly, proposing new regulations at 46 CFR part 520, to implement the changes occasioned by OSRA. In addition, the Commission is proposing to remove existing part 514, which deals mainly with the filing of tariffs in ATFI.

In anticipation of the passage of OSRA, the Commission published a notice of inquiry ("NOI") in the **Federal Register** on July 2, 1998, Docket No. 98-10, *Inquiry Into Automated Tariff Filing Systems as Proposed by the Pending*

Ocean Shipping Reform Act of 1998.

The Commission sought comments from the ocean transportation industry and the general public on how best to establish requirements for carriers' automated tariff systems. To this end, the Commission proposed fifteen questions to better focus discussion on the proper areas. The Commission subsequently received comments from eighteen commenters, representing all segments of the ocean transportation industry. Several of these commenters were trade associations representing substantial memberships.

These comments proved useful to the Commission in preparing this proposed rule. Although there was no unanimity among commenters, there was general consensus on some issues. For example, most commenters agreed that tariff information should be retained for 5 years and that there should be some standardization of tariff information. Moreover, some comments enabled the Commission to better focus its efforts in one direction or another.

One of the primary functions of the publication of tariffs is to provide the shipping public with accessible and reliable information on the price and service options to move particular commodities from point A to point B. Consistent with OSRA's common carriage principles, shippers should be able to use this information to compare competing carriers' offerings and to assess whether they are being unreasonably discriminated against vis-à-vis their competitors. In addition, public tariff information enables carriers to monitor their competitors and to gain a complete picture of the marketplace in a particular trade.

An equally important function of tariff publication is to permit the Commission to monitor the rate activity of carriers and conferences. In light of

the fact that OSRA continues to grant antitrust immunity for collective ratemaking, the ability to monitor collectively-established rates remains particularly important. The Commission also needs to be able to monitor carrier rate activity to ensure that the prohibited acts in section 10 of the 1984 Act are not violated. In this regard, the Commission will always need a historical record of rate activity, commensurate with the five year statute of limitations in the 1984 Act. In addition, the ability to monitor the rate activity of controlled carriers is crucial to the Commission's enforcement of the controlled carrier provisions of the 1984 Act.

The proposed rule is an attempt to reconcile these basic purposes of tariff publication with the relative discretion Congress has granted carriers to develop their own automated tariff systems. The report of the Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 61, 105th Cong., 1st Sess. (1997) ("Committee Report"), is instructive in this regard. The Committee noted that innovative private sector approaches, such as World Wide Web pages, should be encouraged, stating that common carriers should be free to develop their own means of tariff publication. Committee Report at 23. Although the Committee reiterated that there should be no government restraints on the design of a private tariff publication system, it also stated that such systems must assure the integrity of the common carrier's tariff and the tariff system as a whole and provide the appropriate level of public access to tariff information. *Id.* The Committee also stated that tariff information should be "simplified and standardized." *Id.* The Committee further noted that the Commission will retain its authority to suspend or prohibit the use of tariffs found to violate the 1984 Act or other United States shipping laws. *Id.* at 22-23.

The proposed rule attempts to meld the various Congressional directives on OSRA and its legislative history to produce tariff publication requirements that fully comport with the letter and spirit of OSRA. It should enable common carriers to present their pricing information in a variety of ways, while still allowing shippers and the Commission meaningful access to accurate information. A specific section-by-section analysis of the proposed rule follows.

Section 520.1 Scope and Purpose

This section notes that part 520 contains the regulations governing the publication of tariffs in automated

systems by common carriers and conferences in the United States waterborne foreign commerce, pursuant to the changes occasioned by OSRA. In addition, this section sets forth the four basic purposes of the part, to enable: (1) Shippers and the public to obtain reliable and useful rate information; (2) carriers and conferences to meet their publication requirements; (3) the FMC to ensure that tariffs are accurate and accessible and to protect against section 10 violations; and (4) the FMC to monitor activities of controlled carriers subject to section 9 of the 1984 Act.

Section 520.2 Definitions

This section contains many of the definitions that currently appear at 46 CFR 514.2. Some of these have been updated to reflect changes to the 1984 Act's definitions by OSRA. These include: "common carrier," "controlled carrier," "forest products," "loyalty contract," "ocean transportation intermediary," and "shipper." In addition, new definitions are proposed for "Act," "conference," "effective date," "Harmonized System," "publication date," "retrieval," "tariff rate item ("TRI"), "tariff number," and "TRI number." Modifications have also been made to some of the definitions that have been carried forward so that they comport with changes made elsewhere in the proposed rule.

Section 520.3 Publication Responsibilities

This section sets forth the basic requirement that all common carriers and conferences must publish their tariffs in automated tariff systems, but also notes that they may use agents to meet this responsibility. In addition, proposed § 520.3(b) requires conferences to publish in their systems independent action and open rates offered by their members.

Section 520.3(c) requires that certain basic information must be provided to the Commission prior to a carrier or conference initiating service under an automated tariff. This information includes the organization's legal name, trade name, address, contact, tariff location, publisher, and type of entity. This information is necessary to enable the Commission to meet its responsibilities under OSRA, and must be updated whenever any changes occur. Carriers and conferences can provide this information by submitting Form FMC-1, or by entering the information through an interactive program on the Commission's home page.

Section 520.3(d) provides that the Commission will publish on its website

a listing of the locations of all carrier and conference tariffs. This should enable the general public to find a particular carrier's tariff by simply visiting an all-inclusive site. The Commission specifically requests comments on its proposal to publish this list on the website.

Section 520.4 Tariff Contents

Section 520.4(a) sets forth the general contents for all tariffs published pursuant to this part. This provision does not prescribe a particular design or structure, but does prescribe what must be included in tariffs. The first six items are specifically required by section 8(a)(1) of the 1984 Act. In addition, all tariffs are required to contain an organization record, a tariff record, and tariff rules, while commodity tariffs must also contain commodity descriptions and tariff rate items. Carriers and conferences are otherwise free to structure their tariff publications as they see fit.

The organization record contains basic information about the organization which is publishing the tariff. This includes its: name, assigned number, agreement number, type, address and phone number, and names of affiliates to conferences or agreements. An organization will have only one organization record, which it can use with the various tariffs it may publish.

The tariff record contains information unique to each tariff and includes: Organization name and number, tariff number, tariff title, tariff type, origin and destination scope, contact person and address, and any default measurements and currency units.

Section 520.4(c) does not require tariffs to contain a lengthy set of prescribed rules with very specific contents. Instead, carriers or conferences must simply publish any rule that affects the application of their tariffs. If they adopt rules addressing certain specified subject areas, they are only required to use specific titles for the rules and are free to draft their particular contents in whatever manner they deem appropriate.

Section 520.4(d) requires each separate commodity in a tariff to have a corresponding and unique 10-digit numeric code. Although tariff publishers can use any coding pattern they choose, they are encouraged to use the United States Harmonized Tariff Schedule. In addition, publications must contain a commodity index representing the commodities covered by the tariff.

A tariff rate item ("TRI") is the single freight rate in effect for the transportation of cargo under a specified

set of transportation conditions. Section 520.4(e) sets forth the basic requirements for what must be contained in a TRI. In addition, § 520.4 allows publishers to define and create location groups and requires inland rate tables if carriers provide intermodal transportation at combination rates. Lastly, this section requires conference tariffs to contain specific instructions concerning shipper requests and complaints.

Section 520.5 Standard Tariff Terminology

This section states that the Standard Terminology Codes set forth in appendix A shall be used by tariff publishers. These codes reflect existing industry usage and merely carry forward a standard language for certain items, consistent with Congress' direction that tariff information should be simplified and standardized. Committee Report at 18. The Commission does not believe that this list is necessarily all-inclusive or will remain static, and will, therefore, entertain requests for changes on a case-by-case basis. If the Commission adopts a suggested change, it will provide notice on its web page.

Section 520.5(b) provides that tariffs must use points or locations that appear in the National Imagery and Mapping Agency gazetteer and that ports used should appear in the World Port Index.

Section 520.6 Retrieval of Information

This section sets forth the requirements and procedures by which retrievers can obtain information from a tariff publication. These requirements are proposed by the Commission in order to meet OSRA's requirement that tariff information be accessible to the public and provide, we believe, a minimal but reasonable degree of accessibility. As an initial matter, tariffs must present users with a tariff selection option or the capability to select an object group, e.g. rules. Tariffs must also provide the capability to search for a commodity by text search or number search. Retriever should also be able to enter all 14 numbers to directly access a specific tariff rate item.

If retrievers select a specific object group, they should be presented with a list of objects within the group or a search mechanism to locate an object within the group. In addition, § 520.5(e) provides that the minimum rate calculation capability for tariffs will be a calculated basic ocean freight ("BOF") (which would include certain adjustments for minimum quantities, quantity discounts, etc.) and a list of all assessorial charges that apply to the retriever-entered parameters. This

should enable shippers to ascertain the true cost of their transportation movement, without requiring carriers to calculate a "bottom-line" freight rate. While "bottom-line" calculations would certainly be a desirable feature of any public tariff system, and have been a requirement in ATFI, the Commission believes that requiring such capabilities would not be consistent with Congressional intent.

Section 520.7 Tariff Limitations

This section contains certain proscriptions on tariffs not otherwise contained in the rule. As a general matter, tariffs must be clear and definite, in English, must not cross-reference other tariffs, nor be duplicative. In addition, carriers and conferences must inform BTCL whenever an existing tariff is canceled.

This section also contains various proscriptions that were previously contained in tariff rules and are deemed still to be relevant. These include subsections addressing: rate applicability, minimum quantity rates, green salted hides, conferences, overcharge claims, and returned cargo.

Section 520.8 Effective Dates

This section restates the basic statutory proscription that new or initial rates or rates resulting in an increased cost to a shipper may not become effective before 30 calendar days after publication. However, rates for the transportation of United States Department of Defense cargo may be effective upon publication as may changes in rates that result in a decrease in cost to a shipper. In addition, the following amendments are permitted upon publication: (1) Those resulting in no change in cost to a shipper; (2) cancellation of a tariff due to cessation of service; (3) addition of certain ports or points to existing groupings; and (4) changes in charges over which the carrier has no control.

Section 520.9 Access to Tariffs

This section sets forth the technical requirements for providing access to automated tariffs systems. First, carriers and conferences must provide public access by way of a personal computer by either dial-up connection via public switched telephone networks ("PSTN") or the Internet. Various requirements relating to each type of connectivity are presented. FMC access must also be via dial-up connection over PSTNs or a connection over the Internet. In addition, any recurring fees shall be the responsibility of the publisher, but the Commission will be responsible for

long-haul charges for PSTN calls initiated by it.

Section 520.9(e) reiterates the statutory proscriptions that: (1) Tariffs must be made available to any person without limits as to time, quantity, or other limitation; (2) carriers do not have to provide terminals for remote access; and (3) carriers may assess reasonable fees for access, but not against Federal agencies, including the FMC; and further states that tariff systems must contain user instructions. Lastly, § 520.9(g) requires carriers to provide the FMC documentation and a requested number of user identification and passwords. This will enable the Commission to meet its responsibilities under the 1984 Act.

Section 520.10 Integrity of Tariffs

In an effort to ensure the integrity of individual tariffs and of the tariff system as a whole, this section requires carriers to maintain data in their tariff publication systems for 5 years from the date the information is superseded, and to provide an on-line access to such data. This is consistent with the five-year statute of limitations for Commission civil penalty actions set forth in section 13(f) of the 1984 Act. In addition, tariffs shall provide an access date capability, so that data in effect on a specified date can be retrieved. Without such capability, it would be impossible for the shippers or the Commission to ascertain accurate rate information concerning past shipments. Carriers must also provide BTCL with a written certification from an officer that the information in their tariffs is true and accurate and that no unlawful alterations will be permitted. The Commission is proposing to accept this procedure in lieu of mandating particular systems for ensuring tariff integrity and security. This section further notes that the Commission will periodically review published tariff systems and will prohibit use of systems that fail to meet the requirements of this part. To aid in this endeavor, carriers must provide the Commission reasonable access to their systems and records in order to conduct reviews.

Section 520.11 Non-Vessel-Operating Common Carriers

This section carries forward and gathers in one place various provisions relating to NVOCCs that were spread throughout part 514. The financial responsibility requirements and agent for service of process have been taken from 46 CFR 514.15(b)(24) and the co-loading provision comes from 46 CFR 514.5(b)(14). The proposed rule essentially carries these provisions

forward, with minor modifications. The Commission may address at a later date the question of co-loading practices with respect to OSRA's modified criteria for exemptions, as well as other changes made by OSRA.

Section 520.12 Time/Volume Rates

The provision relating to time/volume rates in foreign commerce is contained in 46 CFR 514.13(b)(19)(i). The proposed rule has placed them in a separate section, while generally carrying forward the previous requirements affecting time/volume rates. In addition, this section permits carriers to cancel time/volume rates which have not been "accepted" by a shipper within 30 days and prohibits the use of liquidated damages provisions in time/volume rate offerings. The Commission believes that the use of liquidated damages provisions are more appropriate to service contracts.

Section 520.13 Exemptions

This section sets forth various services and cargo types that are currently exempt under 46 CFR 514.3. Several of the prior exemptions have not been carried forward because they are no longer relevant to a carrier tariff publication rule or they are no longer subject to the Commission's jurisdiction. However, the Commission questions whether all of the exemptions carried forward are still necessary and accordingly invites comment by interested parties as to the continued need for certain exemptions. The proposed rule further notes future exemption requests will be governed by section 16 of the 1984 Act and Rule 67 of the Commission's rules of practice and procedure. 46 CFR 502.67.

Section 520.14 Special Permission

Proposed § 520.14 essentially carries forward the special permission procedure set forth at 46 CFR 514.18. Minor modifications have been made to reflect the changes occasioned by OSRA.

Inland Portions of Through Movements to Europe

Unlike the United States, it appears that the European Commission ("E.C.")—while permitting conference tariffs for the ocean movement of cargo—prohibits conference tariffs which cover the movement of cargo to inland points in Europe. Therefore, it seems that carriers in the U.S.-European trade may participate in a conference tariff covering U.S.-Europe ocean movements, and utilize individual tariffs covering European inland

transport for the same shipper customer. A question has arisen as to whether these tariffs for European inland transport must be published under the Act. It would seem that publishing would be consistent with statutory requirements to the extent the tariffs establish the European inland portion of a through rate charged by a carrier in a U.S.-Europe intermodal movement. However, the Commission welcomes comments on how it could minimize the regulatory burdens occasioned by these differences in regulatory regimes, to the extent it may do so given its own statutory responsibility.

The reporting requirements contained in 46 CFR part 520 have been submitted to the Office of Management and Budget (OMB). Public burden for this collection of information is estimated to be 313,400 hours for 3,000 respondents. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gather and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information. Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 within 30 days of publication in the **Federal Register**.

The FMC would also like to solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record.

The Chairman of the Commission certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed rule would not, if promulgated, have a significant impact on a substantial number of small entities. The rule will either have no effect on small entities, or in the case where the rule is likely to impact small entities, the economic impact will be *de minimis*.

List of Subjects in 46 CFR Parts 514 and 520

Common Carrier; Freight; Harbors, Intermodal transportation; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, for the reasons set forth above, part 514 to subchapter C, chapter IV of 46 CFR is proposed to be removed and part 520 to subchapter B, chapter IV of 46 CFR is proposed to be added as set forth below:

PART 514—[REMOVED]

PART 520—CARRIER AUTOMATED TARIFFS

Sec.	
520.1	Scope and purpose.
520.2	Definitions.
520.3	Publication responsibilities.
520.4	Tariff contents.
520.5	Standard tariff terminology.
520.6	Retrieval of information.
520.7	Tariff limitations.
520.8	Effective dates.
520.9	Access to tariffs.
520.10	Integrity of tariffs.
520.11	Non-vessel-operating common carriers.
520.12	Time/volume rates.
520.13	Exemptions.
520.14	Special permission.

Appendix A to Part 520—Standard Terminology and Codes

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1702, 1707–1709, 1712, 1716; Pub. L. 105–258, 112 Stat. 1902; and sec. 424 of Pub. L. 105–383.

§ 520.1 Scope and purpose.

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

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

(1) Shippers and other members of the public to obtain reliable and useful information concerning the rates and charges that will be assessed by common carriers and conferences for their transportation services;

(2) Carriers and conferences to meet their publication requirements pursuant to section 8 of the Act;

(3) The Commission to ensure that carrier tariff publications are accurate and accessible and to protect the public from violations by carriers of section 10 of the Act; and

(4) The Commission to review and monitor the activities of controlled carriers pursuant to section 9 of the Act.

§ 520.2 Definitions.

The following definitions shall apply to this part:

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

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

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

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

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

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

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

Commission means the Federal Maritime Commission.

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

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

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

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

(1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and

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

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

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

Conference means an agreement between or among two or more ocean common carriers which provides for the fixing of and adherence to uniform tariff rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members, but the term does not include joint service, consortium, pooling, sailing, or transshipment agreements.

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

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

Controlled carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government; ownership or control by a

government shall be deemed to exist with respect to any common carrier if:

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

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

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

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

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

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

Harmonized Code means the coding provisions of the Harmonized System.

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

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

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

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

axis, with the inland rates specified at the matrix row and column intersections.

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

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

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

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

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

Ocean common carrier means a vessel-operating common carrier.

Ocean transportation intermediary means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this part, the term

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

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

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

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

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

conference to fix its own rate on such commodity or commodities.

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

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

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

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

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

Port means a place at which a common carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

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

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

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

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

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

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

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

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

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

Shipper means:

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

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

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

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

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

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

TRI number means a 14-digit number which consists of the commodity code (first ten digits) and four unique suffix differentiate TRIs within the same commodity description.

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

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

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

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

Trade name means a name used for conducting business, but which is not necessarily its legal name. This is also known as a "d/b/a" (doing business as) name.

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

§ 520.3 Publication responsibilities.

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

(b) *Conferences.* Conferences shall publish, in their automated tariff systems, rates offered pursuant to independent action by their members and any open rates offered by their members.

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

(d) *Notification.* Each common carrier and conference shall notify BTCL, prior to the commencement of common carrier service pursuant to a published tariff, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs, by submitting Form FMC-1. Any changes to the above information shall be immediately

transmitted to BTCL. The Commission will provide a unique organization number to new entities operating as common carriers or conferences in the U.S. foreign commerce.

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

§ 520.4 Tariff contents.

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

(1) State the places between which cargo will be carried;

(2) List each classification of cargo in use;

(3) State the level of ocean transportation intermediary, as defined by section 3(17)(A) of the Act, compensation, if any, to be paid by a carrier or conference;

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

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

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

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

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

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

(1) Organization name;

(2) Organization number assigned by the Commission;

(3) Agreement number, where applicable;

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

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

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

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

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

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

(2) Tariff number;

(3) Tariff title;

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

(5) Contact person and address;

(6) Default measurement and currency units; and (7) Origination and destination scope.

(d) *Tariff rules.* Carriers and conferences shall publish in their tariffs any rule that affects the application of the tariff. If they adopt rules addressing the following subject areas, the rule shall use the following specific titles:

(1) Scope;

(2) Payment of freight charges;

(3) Bills of lading;

(4) Freight forwarder compensation;

(5) Surcharges and arbitraries;

(6) Transshipment;

(7) Shipper requests;

(8) Overcharge claims;

(9) Heavy lift;

(10) Extra length;

(11) Minimum bill of lading charges;

(12) Ad valorem rates;

(13) Hazardous cargo;

(14) Returned cargo;

(15) Equipment interchange agreements;

(16) Seasonal discontinuance;

(17) Project rates;

(18) Terminal handling charges; and

(19) Destination or delivery charges.

(e) *Commodity descriptions.* (1) For each separate commodity in a tariff, a distinct 10-digit numeric code shall be used. Tariff publishers may use any numeric commodity coding pattern, but should use the U.S. Harmonized Tariff Schedule ("US HTS") for both the commodity coding and associated terminology (definitions), to the maximum extent possible.

(2) The following commodity types shall be preceded by their associated 2-digit prefixes, with the remaining digits at the publisher's option:

(i) Mixed commodities—"99";

(ii) Projects—"98"; and

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

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

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

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

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

- (1) Brief commodity description;
- (2) TRI number;
- (3) Publication date;
- (4) Effective date;
- (5) Origin and destination locations or location groups;
- (6) Rate;
- (7) Rate basis;
- (8) Service code; and
- (9) Via port or port group if origin and/or destinations are not port/port group.

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

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

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

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

§ 520.5 Standard tariff terminology.

(a) *Approved codes.* The Standard Terminology Appendix provides the existing Commission approved codes which shall be used in tariffs. These approved codes for rate bases, container sizes, service, etc., and the approved units for weight, measure and distance, provide a standard terminology baseline for tariffs and facilitate retriever efficiency. The Commission will consider additions to the Appendix on

a case-by-case basis and publish changes as they are approved on its website.

(b) *Geographic names.* Tariffs shall only employ locations (points) that are valid, published locations in the National Imagery and Mapping Agency ("NIMA") gazetteer. Only ports published or approved for publication in the World Port Index (Pub. No. 150) shall be used in tariffs. A port must have a NIMA gazetteer point to be valid.

§ 520.6 Retrieval of information.

(a) *General.* Tariffs shall present retrievers with a tariff selection option and/or the capability to select an object group (e.g., rules, location groups, etc.).

(b) *Search capability.* Tariffs shall provide the capability to search for a commodity and an associated rate within a commodity tariff by text search and by number.

(1) *Commodity searches.* (i) A text search feature shall allow "non-case sensitive" text searches of commodity descriptions. Text search matches (hits) should result in a commodity or commodity index list.

(ii) A commodity number search shall allow number searches using the first two (chapter), four (heading), eight (subheading) or all ten numbers of the commodity description number.

(2) *Rate searches.* A direct rate search function shall be provided whereby the retriever may enter all fourteen numbers for access to a specific TRI.

(c) *Commodities and TRIs.* Retriever selection of a specific commodity from a commodity list, commodity index or a direct commodity number search shall display the commodity description and provide an option for a TRI display or a TRI list if multiple TRIs are in effect for the commodity on the retriever-entered access date.

(d) *Object groups.* Retriever selection of a specific object group shall result in a list of the objects within the group or present a search mechanism to allow location of an object or object within the group. For example, selection of the rules object group would present a list of the rules. For rules, a "non-case sensitive" text search capability shall be provided to locate rules that contain specific terms or phrases. Selection of the commodities object group shall allow for text and commodity number search capability.

(e) *Basic ocean freight.* The minimum rate calculation capability for tariffs shall be a calculated basic ocean freight ("BOF") (to include any adjustments to the BOF and inland rates for combination rates) and presentation of a list of all assessorial charges, by rule number and charge title, that apply for

the retriever-entered shipment parameters.

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

§ 520.7 Tariff limitations.

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

- (1) Be clear and definite;
- (2) Use English as the primary textual language;
- (3) Not contain cross-references to any other tariffs, except a tariff of general applicability maintained by that same carrier or conference; and
- (4) Not duplicate or conflict with any other tariff publication.

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

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

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

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

shipment is tendered for ocean transportation.

(f) *Conference situations.* (1) New members of a conference shall cancel any independent tariffs applicable to the trades served by the conference, subject to paragraph (f)(2)(ii) of this section. Admission to the conference may be effective on the date notice is published in the conference tariff.

(2) Cancellation of an independent tariff requires 30 days' notice if:

(i) The carrier is a controlled carrier, or

(ii) The addition of the carrier to the conference results in a rate change from the independent tariff which causes an increase in costs to a shipper.

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

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

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

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

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

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

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

§ 520.8 Effective dates.

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

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

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

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

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

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

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

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

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

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

§ 520.9 Access to tariffs.

(a) *Methods to access.* Carriers and conferences shall provide access to their published tariffs, via a personal computer ("PC"), by:

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

(2) The Internet (Web) by:

(i) Web browser; or

(ii) Telnet session.

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

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

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

(iii) Telephone line quality for data transmission.

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

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

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

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

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

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

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

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

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

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

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

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

§ 520.10 Integrity of Tariffs.

(a) *Historical data.* Carriers and conferences shall maintain the data in their tariff publication systems for a period of 5 years from the date any information is superseded, canceled or withdraws, and shall provide on-line access to such data.

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

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

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

(e) *Certification.* Before a tariff becomes effective, carriers and conferences shall provide BTCL with a written certification by an officer or executive that all information contained in their tariff publication is true and accurate and that no unlawful alterations will be permitted.

§ 520.11 Non-vessel-operating common carriers.

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

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

(2) The manner of its financial responsibility;

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

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

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

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

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

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

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

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

(iii) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe its co-loading practices and specify its

responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

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

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

§ 520.12 Time/volume rates.

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

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

(2) The tariff shall identify:

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

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

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

(d) *Records.* Shipper notices and shipment records supporting a time/volume rate shall be maintained by the offering carrier or conference for at least five 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.

§ 520.13 Exemptions.

(a) *General.* Exemptions from the requirements of this part are governed by section 16 of the Act and Rule 67 of

the Commission's rules of practice and procedure, § 502.67 of this chapter.

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

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

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

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

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

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

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

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

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

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

(1) *Bulk cargo, forest products, etc.* This part does not apply to bulk cargo, forest products, recycled metal scrap, new assembled automobiles, 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 military household goods and personal effects shipped by federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration.

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

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

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

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

(1) Carriage of property is limited to vehicles;

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

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

(4) The common carrier does not participate in any joint rate establishing

through routes or in any other type of agreement with any other common carrier.

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

(ii) *British Columbia and Puget Sound Ports; rail cars.*—(A) *Through rates.*

Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, only if the cargo does not originate in or is not destined to foreign countries other than Canada, but only if:

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

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

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

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

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

(iii) *Incan Superior, Ltd.*

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

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

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

the effectiveness of such rate divisions, agreements, arrangements or concurrences.

§ 520.14 Special permission.

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

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

(c) *Application.* (1) Applications for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent for publishing. Every such application shall be submitted to BTCL and be accompanied by a filing fee of \$179.

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

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

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

(ii) Tariff number and title; and

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

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

Appendix A—Standard Terminology and Codes*I. Publishing/Amendment Type Codes*

Code Definition

- A Increase
- C Change resulting in neither increase nor decrease in rate or charges
- E Expiration (also use "A" if the deletion results in the application of a higher "cargo, n.o.s." or similar rate)
- I New or initial matter
- K Rate or change filed by a controlled common carrier member of a conference under independent action
- M Transportation of U.S. Department of Defense cargo by American-flag common carriers.
- P Addition of a port or point
- R Reduction.
- S Special Case matter filed pursuant to Special Permission, Special Docket or other Commission direction, including filing of tariff data after suspension, such as for controlled carriers. Requires "Special Case Number."
- T Terminal Rates, charges or provisions or canal tolls over which the carrier has no control.
- W Withdrawal of an erroneous publication on the same publication date
- X Exemption for controlled carrier data in trades served exclusively by controlled carriers or by controlled carriers of states receiving most-favored-nation treatment.

II. Valid Unit Codes

Weight Units

- Kilograms.....KGS
- 1000 Kgs (Metric Ton).....KT
- Pounds.....LBS
- Long Ton (2240 LBS).....LT
- Short Ton (2000 LBS).....ST

Volume Units

- Cubic meter.....CBM
- Cubic feet.....CFT

Length Units

- Centimeters.....CM
- Feet.....FT
- Inches.....IN
- Meters.....M

Measure Board Feet

- Thousand Board Feet.....MBF

Distance Units

- Kilometers.....KM
- Miles.....MI

Rate Basis

- Ad Valorem.....AV
- Each.....EA
- Lump Sum.....LS
- Measure.....M
- Thousand Board Feet.....MBF
- Per Container.....PC
- Weight.....W
- Weight/Measure.....WM

Container Size Codes

- Not Applicable.....N/A
- Less Than Load.....LTL
- 10FT Any Height.....10X
- Weight Units
- Kilograms.....KGS

- 1000 Kgs (Metric Ton).....KT
- Pounds.....LBS
- Long Ton (2240 LBS).....LT
- Short Ton (2000 LBS).....ST

Volume Units

- Cubic meter.....CBM
- Cubic feet.....CFT

Length Units

- Centimeters.....CM
- Feet.....FT
- Inches.....IN
- Meters.....M

Measure Board Feet

- Thousand Board Feet.....MBF

Distance Units

- Kilometers.....KM
- Miles.....MI

Rate Basis

- Ad Valorem.....AV
- Each.....EA
- Lump Sum.....LS
- Measure.....M
- Thousand Board Feet.....MBF
- Per Container.....PC
- Weight.....W
- Weight/Measure.....WM

Container Size Codes

- Not Applicable.....N/A
- Less Than Load.....LTL
- 10FT Any Height.....10X
- 20FT 8'6".....20
- 20FT 90 High Cube.....20A
- 20FT 9'6" High Cube.....20B
- 20FT 8'0".....20S
- 20FT Any Height.....20X
- 24FT 8'6".....24
- 24FT 9'0" High Cube.....24A
- 24FT 9'6" High Cube.....24B
- 24FT 8'0".....24S
- 24FT Any Height.....24X
- 35FT 8'6".....35
- 35FT 9'0" High Cube.....35A
- 35FT 9'6" High Cube.....35B
- 35FT 8'0".....35S
- 35FT Any Height.....35X
- 40FT 8'6".....40
- 40FT 9'0" High Cube.....40A
- 40FT 9'6" High Cube.....40B
- 40FT 8'0".....40S
- 40FT Any Height.....40X
- 42FT 8'6".....42
- 42FT 9'0" High Cube.....42A
- 42FT 9'6" High Cube.....42B
- 42FT 8'0".....42S
- 42FT Any Height.....42X
- 43FT 8'6".....43
- 43FT 9'0" High Cube.....43A
- 43FT 9'6" High Cube.....43B
- 43FT 8'0".....43S
- 43FT Any Height.....43X
- 45FT 8'6".....45
- 45FT 9'0" High Cube.....45A
- 45FT 9'6" High Cube.....45B
- 45FT 8'0".....45S
- 45FT Any Height.....45X
- 48FT 8'6".....48
- 48FT 9'0" High Cube.....48A
- 48FT 9'6" High Cube.....48B
- 48FT 8'0".....48S
- 48FT Any Height.....48X
- 53FT 8'6".....53
- 53FT 9'0" High Cube.....53A

- 53FT 9'6" High Cube.....53B
- 53FT 8'0".....53S
- 53FT Any Height.....53X

Container Type Codes

- Not Applicable.....N/A
- Atmosphere Control.....AC
- Collapsible Flatrack.....CF
- Drop Frame.....DF
- Flat Bed.....FB
- Flat Rack.....FR
- Garment Container.....GC
- Half-Height.....HH
- Hardtop.....HT
- Insulated.....IN
- Open Top.....OT
- Dry.....PC
- Platform.....PL
- Reefer.....RE
- Tank.....TC
- Top Loader.....TL
- Trailer.....TR
- Vehicle Racks.....VR
- Double-length Skid.....DSK
- Double-length.....DTB
- Firkin.....FIR
- Flo-Bin.....FLO
- Frame.....FRM
- Flask.....FSK
- Forward Reel.....FWR
- Garment on Hanger.....GOH
- Heads of Beef.....HED
- Hogshead.....HGH
- Hopper Car.....HPC
- Hopper Truck.....HPT
- On Hanger/Rack in bx.....HRB
- Half-Standard Rack.....HRK
- Half-Stand. Tote Bin.....HTB
- Jar.....JAR
- Keg.....KEG
- Kit.....KIT
- Knockdown Rack.....KRK
- Knockdown Tote Bin.....KTB
- Liquid Bulk.....LBK
- Lifts.....LIF
- Log.....LOG
- Loose.....LSE
- Lug.....LUG
- Lift Van.....LVN
- Multi-roll Pak.....MRP
- Noil.....NOL
- Nested.....NST
- Pail.....PAL
- Packed—NOS.....PCK
- Pieces.....PCS
- Pirns.....PIR
- Package.....PKG
- Platform.....PLF
- Pipe Line.....PLN
- Pallet.....PLT
- Private Vehicle.....POV
- Pipe Rack.....PRK
- Quarters of Beef.....QTR
- Rail (semiconductor).....RAL
- Rack.....RCK
- Reel.....REL
- Roll.....ROL
- Reverse Reel.....RVR
- Sack.....SAK
- Shook.....SHK
- Sides of Beef.....SID
- Skid.....SKD
- Skid, Elev, Lift Trk.....SKE
- Sleeve.....SLV
- Spin Cylinders.....SPI
- Spool.....SPL
- Tube.....TBE

Tote Bin	TBN
Tank Car Rail	TKR
Tank Truck	TKT
Intermdl Trlr/Cntnr	TLD
Tank	TNK
Tierce	TRC
Trunk and Chest	TRK
Tray	TRY
Trunk, Salesmen Samp	TSS
Tub	TUB
Unpacked	UNP
Unit	UNT
Vehicles	VEH
Van Pack	VPK
On Own Wheels	WHE
Wheeled Carrier	WLC
Wrapped	WRP
Not Applicable	N/A
Shipment Stowage Location Codes	
Not Applicable	N/A
On Deck	OD
Bottom Stowage	BS
Hazard Codes	
Not Applicable	N/A
IMD Stow Category A	A
IMD Stow Category B	B
IMD Stow Category C	C
IMD Stow Category D	D
IMD Stow Category E	E
Hazardous	HAZ
Non-Hazardous	NHZ
Stuffing/Stripping Modes	
Not Applicable	N/A
Mechanical	MECH
Hand Loading	HAND
FC	Foreign Commodity Tariff
FR	Foreign Rules Tariff
TM	Terminal Tariff
SC	Service Contracts

By the Commission:

Joseph C. Polking,

Secretary.

[FR Doc. 98-33701 Filed 12-18-98; 8:45 am]

BILLING CODE 6730-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking concerning child seat labels. This petition is denied because all of the suggested amendments either have been made pursuant to other

rulemaking activities or have not been supported by new information.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Mary Versailles, Office of Safety Performance Standards, NPS-31, telephone (202) 366-2057.

For legal issues: Deirdre Fujita, Office of Chief Counsel, NCC-20, telephone (202) 366-2992.

SUPPLEMENTARY INFORMATION: NHTSA received a petition for rulemaking from Applied Safety and Ergonomics, Inc. requesting changes to the labeling requirements specified in Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems." The first change relates to a warning label required by S5.5.2(k)(1)(ii) or S5.5.2(k)(2)(ii) concerning rear-facing child seats and air bags. The second change relates to features required of the air bag warning label, specified in S5.5.2(k)(4). The third change relates to a label specified in S5.5.2(l) requiring a diagram showing placement of a child restraint system in the right front outboard seating position equipped with a continuous-loop lap/shoulder belt.

Sections S5.5.2(k)(1)(ii) and S5.5.2(k)(2)(ii) require rear-facing child restraints or child restraints that can be used rear-facing, respectively, to be labeled with a statement warning that the child restraint should not be placed in the front seat of a vehicle with an air bag. S5.5.2(k)(3) requires this statement to be on a "red, orange or yellow contrasting background." The petition states that this can result in poor color contrast and requests that the requirement be amended to require background color contrast only behind the signal word, and not as a background for the entire label.

This aspect of the petition is denied as moot. Sections S5.5.2(k)(1)(ii), (k)(2)(ii), and (k)(3) no longer apply to child restraints manufactured on or after May 27, 1997. The current label requires a white background except for the heading. Therefore, the petitioner's suggested changes to the required background color for the label already are reflected in the labeling requirement.

Section S5.5.2(k)(4) requires child seats manufactured on or after May 27, 1997 to be labeled with a warning concerning children and air bags. The label reads:

Warning

DO NOT place rear-facing child seat on front seat with air bag.

DEATH OR SERIOUS INJURY can occur.

The back seat is the safest place for children 12 and under.

The heading must be black with a yellow background.

The petition notes that ANSI Z535.4 calls for an orange background in the heading area when the signal word is "warning." The petition asks NHTSA to at least allow manufacturers the option of using orange.

In the final rule on air bag labels, NHTSA discussed the focus group reactions to orange and yellow (November 27, 1996; 61 FR 60206). Based on that, NHTSA decided to specify yellow rather than orange because group evidence overwhelmingly suggests that yellow would be a more effective color than orange for attracting attention to the label. The petition offers no explanation or evidence that this reasoning was in error. Therefore, this aspect of the petition is denied.

S5.5.2(l) requires child seats to be labeled with a diagram showing placement in the right front outboard seating position equipped with a continuous-loop lap/shoulder belt. The petition asks NHTSA to change this requirement to specify a rear seat location, since a rear-facing infant seat should never be in a front seat if the vehicle has air bags.

This change has already been made to the standard in a final rule published October 1, 1998. NHTSA changed this requirement to delete the requirement that the diagram show a front seating position (63 FR 52626). This will allow manufacturers to change the label to show a rear seat. Therefore, this issue is also moot.

As the issues raised by the petitioner have been addressed in other rulemaking actions or have not been supported by new information, the agency is denying the petition for rulemaking.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: December 15, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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