

FEDERAL MARITIME COMMISSION

46 CFR part 520

[Docket No. 21-03]

RIN: 3072-AC86

Carrier Automated Tariffs

AGENCY: Federal Maritime Commission

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (Commission) is seeking public comment on proposed modifications to its rules governing Carrier Automated Tariffs through this notice of proposed rulemaking (NPRM). The proposed rule would: (1) remove the option for ocean common carriers to charge a fee to access their tariff; (2) allow non-vessel operating common carriers (NVOCCs) to cross reference certain aspects of other carriers' terms in their tariffs; (3) clarify the ability for NVOCCs to reflect increases in certain charges passed-through by other entities without notice; (4) update the definition of co-loading to apply only to less than container loads; (5) require that documentation be annotated with the names of all NVOCCs involved in a shipping transaction; and (6) make other miscellaneous updates and clarifications to the regulation.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by email to *secretary@fmc.gov*. For comments, include in the subject line: "Docket No. 21-03, Comments on Carrier Automated Tariffs Rulemaking." Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of comments, and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to the Commission’s website unless the commenter has requested confidential treatment.

Docket: For access to the docket to read background documents or comments received, go to the Commission’s Electronic Reading Room at: <https://www2.fmc.gov/readingroom/proceeding/21-03/>.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523-5725; Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

On April 8, 2021, the Commission issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking information on how common carriers interpret and apply certain Commission regulations in 46 CFR part 520.¹ In response to the ANPRM, the Commission received three sets of comments from interested parties: The National Customs Brokers and Forwarders Association of America, Inc (NCBFAA); New York New Jersey Foreign Freight Forwarders & Brokers Association, Inc. (NYNJFFF&BA); and the Association of Food Industries, Inc. (AFI). NCBFAA and NYNJFFF&BA are trade associations whose members include non-vessel operating common carriers (NVOCCs), and AFI is a trade association for the U.S. food import industry. These comments are addressed later in this proposed rule.

A. Tariff Access Fees

¹ Advance notice of proposed rulemaking – Carrier Automated Tariffs, 86 FR 18240 (April 8, 2021).

Before the passage of the Ocean Shipping Reform Act of 1998 (OSRA), which became effective May 1, 1999, vessel operating common carrier (VOCC) and conference tariffs were filed with the Commission through the Commission’s Automated Tariff Filing and Information system. OSRA eliminated the requirement that tariffs be filed with the Commission, and instead, directed carriers and conferences to publish tariffs in carrier automated tariff systems.

The statute at 46 U.S.C. §40501(c) states that “[a] reasonable fee may be charged for” access to tariffs.² The statute and the implementing regulations do not, however, state what is considered “reasonable” in the context of tariff access.³ In response to complaints from potential tariff users that certain tariff access fees and minimum subscription requirements were excessive, the Commission subsequently issued guidance to stakeholders through a Circular Letter which advised that tariff access fees should recover only costs and expenses incurred by carriers in making their tariffs accessible to the public.⁴ More recent experience indicates that, contrary to the Shipping Act and to the guidance provided in the Circular Letter, some tariff access fees may be so high as to effectively prevent tariff users from reviewing certain carrier tariffs. Comments received by the Commission in response to its ANPRM asserted that some carriers charge tariff access fees that “appear to be exorbitant and thus tend to discourage the public access to VOCC rates[.]”⁵

A competitive and efficient ocean transportation system is dependent on transparency and availability of price information to the shipping public. It is the belief of the Commission that any unnecessary roadblocks to that transparency, including cost barriers to tariff access, are

² 46 U.S.C. 40501(c).

³ 46 CFR 520.9(e)(3).

⁴ Circular Letter No. 00-2, *Charges for Access to Tariffs and Tariff Systems* (October 6, 2000) at <https://www.fmc.gov/about-the-fmc/circulars/>.

⁵ Docket No. 21-03, Comments of the National Customs Brokers and Forwarders Association of America, Inc., June 4, 2021, at 2.

contrary to that goal. The Commission has learned that a limited number of carriers are charging unreasonably high fees that prevent public access to tariffs. The Commission's implementing regulations were written at a time when dialup internet via public switched telephone networks was the norm and information was not as easily posted or located as is the case now.⁶

Intervening technological developments and efficiencies have made it nearly essential for businesses to operate a free, publicly accessible website. Seven of the top ten carriers that serve the U.S. make their tariffs available on their websites at no cost. With the ubiquity of websites among carriers, the decreases in the cost of providing information online, the efficiency of providing public access through a website, and the prevalence of free and open access to tariffs among the largest carriers, the Commission believes that free public access to tariffs is reasonable.

While the Commission does not wish to place an undue burden on common carriers to make their tariffs available to the public, the Commission proposes to require carriers and conferences to provide free access to tariffs by removing the option to assess a fee for tariff access currently found at 46 CFR 520.9(e)(3). The Commission welcomes comments on what specific costs the carriers would incur in order to provide free access to tariffs and comments from carriers who do not charge access on their rationale for that decision.

B. Cross referencing tariffs

In contrast to the current regulations in part 520, the Commission has granted broad flexibility to NVOCCs with regard to increases in charges passed through by VOCCs in 46 CFR part 531 – Negotiated Service Arrangements (NSAs), and 46 CFR part 532 – NVOCC Negotiated Rate Arrangements (NRAs). These regulations allow an increase in a VOCC charge

⁶ 46 CFR 520.9(a).

to be passed through, without markup of the charges, by an NVOCC to its shipper if the shipper agrees to this arrangement, provided the underlying charge is listed in an NRA or NSA, or included in the NVOCC's rules tariff.

The Commission is persuaded that it is beneficial to address the pass through of charges by the NVOCC to the shipper in its rules governing carrier automated tariffs to align the regulations more closely in part 520 with those regulations in part 531 (NSAs) and part 532 (NRAs) by allowing NVOCCs to cross reference an existing VOCC tariff in their NVOCC tariff. The Commission notes that, beyond the flexibility this regulation will grant to NVOCCs in their performance of transportation service, it also will clarify for shippers where certain charges originate, and will track when and how those charges may increase.

Any increases in VOCC-originated surcharges and assessorial must be published in the VOCC tariff 30 days prior to taking effect. Although VOCCs are required to file 30-day notice of increases, NVOCCs commented in response to the ANPRM that, particularly in the current environment of high demand for vessel capacity, the number of new charges and frequent increases to existing charges make it impracticable for NVOCCs to provide same-day notice of those charges in their own tariffs. Therefore, NVOCCs may be unable to recover increases in VOCC surcharges and assessorial assessed to the NVOCC. Furthermore, NVOCC customers may have difficulty keeping up with new charges and increases in existing charges as they are imposed by various parties in the ocean shipping supply chain.

To facilitate the transparency and application of VOCC-originated charges which are passed through from the NVOCC to its shipper, the Commission proposes to add a new § 520.7(a)(3)(iv) to allow an NVOCC to cross reference a VOCC's tariff for certain specified surcharges and assessorial. The Commission notes that it is not the intent of this regulation to

waive the application of § 520.8(a)(1) to any charge or increase in charge being published in a carrier tariff. This cross referencing of another tariff is to be used only for those charges which are being passed through to the shipper at cost. The Commission believes that this proposed rule will allow for greater transparency in the sourcing of various fees and assessorials in the ocean shipping market, which will in turn foster a more competitive marketplace.

The Commission proposes to add § 520.7(a)(3)(iv) to the regulations to allow NVOCCs to cross reference a VOCC's tariff for certain specified surcharges and assessorials.

C. Charges passed through by VOCCs

NVOCCs are periodically assessed increases in charges by a VOCC that are “passed through” after being imposed on the VOCC by an outside entity, such as canal tolls, taxes, or other third-party levies over which the VOCC has no control. In recognition of the fact that the entity collecting these types of charges is not necessarily subject to an obligation to provide 30-day notice of increases to the carrier, current regulations allow increases in these types of existing charges to take effect upon publication in the VOCC's tariff. Commission regulations stipulate at 46 CFR § 520.8(b)(4) that this exemption only applies when the collecting agency has not given advance notice of the change to the common carrier.

Currently, Commission regulations do not explicitly allow NVOCCs to pass through increases in these charges outside of the control of a common carrier, thereby preventing them from passing through to their customer an increase in a charge imposed by an outside entity and then subsequently passed through by a VOCC without the required 30-day notice. For this reason, an NVOCC may not be able to recover an increase in these types of charges if it is does not publish the increase in its own tariff sufficiently in advance of any such charge becoming effective in the tariff of the VOCC.

The Commission is persuaded that it is beneficial to address the pass through of charges by the NVOCC to its shipper in its rules governing carrier automated tariffs to more closely align the regulations with the flexibilities afforded VOCCs. The Commission notes that, beyond the flexibility this regulation will grant NVOCCs in their performance of transportation service, it will also clarify for shippers the types of increases in charges that can be posted in an NVOCC's tariff without a 30-day waiting period.

The Commission proposes to add a new § 520.7(h) which would explicitly state that NVOCCs can pass through charges not under the control of an ocean carrier in the same manner as VOCCs.

The Commission interprets the passing through of a charge to mean it is assessed with no markup to the charge imposed on the common carrier by the underlying collecting agency. The proposed regulations which reference charges that may be passed through explicitly prohibit marking up these charges. However, current regulations at 46 CFR § 520.8(b)(4) do not address the mark up of the charges listed. Therefore, the Commission proposes to revise regulations at 46 CFR § 520.8(b)(4) to specify that these charges may not be marked up above cost to be considered a pass-through cost.

The Commission believes that clarity facilitates consistency in the application of regulations, which in turn provides a measure of assurance to the shipper that certain practices will be carried out uniformly among common carriers. The nature of pass-through charges, such that a shipper may not know the amount of a particular charge in advance, can deny full transparency to the shipper prior to being invoiced for such a charge. More recently, as expressed by all commenters, there is an increased number and variety of additional fees, and frequent changes to those fees, which has escalated the chances that a shipper is unaware of the final cost

of transportation when tendering cargo for shipment. To address these inconsistencies, the Commission offers the following guidance as to the intended application of the proposed regulations at 46 C.F.R. § 520.7(a)(3)(iv) and (h), and the existing regulations at 520.8(b)(4).

1. General Rate Increases

Some NVOCC commenters expressed concern that General Rate Increases (GRIs), when originating from an underlying VOCC, can appear similar to surcharges. Historically, the Commission has classified GRIs as a component of the base ocean freight assessed by the common carrier and are therefore not surcharges and not subject to any exemption under 46 C.F.R. § 520.8(b)(4). The Commission declines to categorize GRIs as surcharges because they apply to the base freight rate for carriage, not a separate fee for ancillary costs associated with that transportation. Thus, in this proposed rule, GRIs will continue to be classified as a component of the base ocean freight assessed by the common carrier and will not be considered exempted from the regulations at 520.8(a).

2. Fees Connected to Pass-Through Charges

Some of the comments reference “administrative fees” in connection with the pass through of charges from the NVOCC to its shipper. Current regulations, at 46 C.F.R. § 520.8(b)(4) and proposed regulations at 520.7(a)(3)(iv) would relieve the common carrier from the requirement to provide a shipper with advance notice of an increase in a charge, under the condition that the common carrier itself was not advised of the increase in advance. This exemption is not intended to allow a markup of the charge above what the third party has billed to the NVOCC, which includes not allowing administrative or other named fees assessed by the NVOCC that apply only to charges passed through by that NVOCC, whether through a cross-referenced tariff or by name.

3. Demurrage and Detention

The Commission notes that comments included references to demurrage and detention charges levied by an underlying VOCC. Although demurrage and detention practices are not within the scope of this rulemaking, the Commission has issued guidance on how it assesses the reasonableness of demurrage and detention practices.⁷ Also, it has issued an Advance Notice of Proposed Rulemaking to seek comment on whether the Commission should require common carriers and marine terminal operators to include certain minimum information on or with demurrage and detention billings.⁸ The Commission is interested in receiving comments on whether it should require common carriers and marine terminal operators to adhere to certain practices regarding the timing of demurrage and detention billings. These changes were recommended by the Fact Finding Officer in Commission Fact Finding 29: International Ocean Transportation Supply Chain Engagement. The Commission welcomes additional comments on demurrage and detention practices in the docket for the Advance Notice of Proposed Rulemaking.⁹

4. Application of exemption at 46 C.F.R. § 520.8(b)(4) to NVOCCs

The current regulations at 46 C.F.R. § 520.8(b)(4) have exempted VOCCs from notifying shippers in advance of changes in charges for terminal services, canal tolls, additional charges, or other provisions which are not under the control of the common carriers or conferences when it acts as a collection agent for such charges, and it received no notice for such changes. This exemption from the waiting period set forth at § 520.8(a)(1) has been applied to VOCCs, but its application to NVOCC tariffs has been unclear. The Commission interprets the § 520.8(b)(4)

⁷ Interpretive Rule on Demurrage and Detention Under the Shipping Act, 85 FR 29638 (May 18, 2020).

⁸ Doc. No. 22-04: Demurrage and Detention Billing Requirements Advance Notice of Proposed Rulemaking, 87 FR 8506 (February 15, 2022); <https://www2.fmc.gov/readingroom/proceeding/22-04/>.

⁹ *Id.*

exemption to apply to NVOCCs as well, provided that the underlying charge originates with an entity that is not subject to the requirements of § 520.8(a)(1), and that the change was made without notification from the owner of the originating tariff.

D. Definition of Co-loading

The Commission considered but declined to limit the definition of co-loading to less-than-container load (LCL) (as opposed to full container load (FCL)) cargo in its 1984 rulemaking because “coloding FCLs was less prevalent and less likely than coloding LCL cargo.”¹⁰ Although the definition of co-loading and its practices was revisited by the Commission in 1993 and 1994, these docketed items were discontinued without further action.¹¹ OSRA also continued the co-loading definition without substantive change.¹²

In order to align regulations with current industry practices, the Commission proposes to amend the definition of co-loading to state specifically that co-loading applies to LCL cargo. The Commission proposes to add the term “less than container loads of” to the existing co-loading definition at §520.2.

E. Documentation for Co-Loading and Other NVOCC Arrangements

Shipments involving multiple NVOCCs encompass a wide and complex range of interactions between parties in the supply chain. The various arrangements made among NVOCCs can provide efficiencies and result in lower transportation costs to the beneficial cargo owner (BCO). On the other hand, co-loading practices have the potential to reduce transparency

¹⁰ Docket No. 84-27, Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States – Co-Loading Practices by NVOCCs, 49 FR 29980, 29982 (July 25, 1984).

¹¹ https://www2.fmc.gov/readingroom/docs/93-22/93-22_003716807.pdf/ and https://www2.fmc.gov/readingroom/docs/94-26/94-26_003718346.pdf/. (Nov. 1, 2004).

¹² Docket No. 98-29, Final Rule and Interim Final Rule: Carrier Automated Tariff Systems, 64 FR 11225 (Mar. 8, 1999).

in the shipping process and can lead to NVOCCs controlling cargo without the knowledge of the BCO.

The current definition of co-loading at 46 CFR § 520.2 is “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.” As discussed above, this definition applies to the physical combining of LCL shipments in a single shipping container. Regulations at 46 CFR § 520.11(c)(2) require that the applicable bill of lading for co-loaded cargo be annotated with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Since the promulgation of co-loading regulations, practices have evolved among NVOCCs that include the tender for transport of FCL shipments by one NVOCC to another NVOCC without the knowledge or consent of the BCO. This practice is often referred to in the industry as co-loading, despite not conforming to the definition set forth by the Commission.

The Commission proposes to add a regulation at 46 CFR § 520.11(d) to require that the documentation accompanying FCL shipments is annotated with the name of all NVOCCs associated with the cargo. This annotation requirement ensures that, for either co-loaded cargo or full container loads, the BCO has the information required to contact any NVOCC which may have control of its cargo. This information is critical to the BCO, particularly in cases of failure to perform by the NVOCC with which the BCO contracted to transport its cargo.

F. Other Proposed Changes to Part 520

1. Clarifying revisions

The Commission proposes to revise several provisions within part 520 to clarify when the regulations are expressing a requirement or obligation. For example, the Commission proposes to replace the term “shall” with the term “must” to clearly indicate that certain acts are required and

to identify regulatory obligations. In addition, the Commission proposes similar revisions by either deleting the word “shall” or other clarifying edits. Similarly, the Commission also proposes replacing certain usages of the term “may” with the term “must” to identify requirements or obligations.

2. § 520.2 Definitions

The proposed rule would: add clarifying language to the definition of “bulk cargo” to explain that bulk “containerized cargo tendered by the shipper” is subject to mark and count and is, therefore, subject to the requirements of this part; amend the definition of combination rate to spell out the abbreviation for Tariff Rate Item; amend the definition of harmonized system to remove an outdated reference to the U.S. Customs Service; amend the definition of publisher to mean a person rather than an organization, and specify that a publisher is authorized to act by a common carrier; amend the definition of retrieval to remove outdated references to dial-up telecommunications and a network link; amend the definition of rules to clarify that a common carrier or a conference of common carriers govern the application of tariff matters; amend the definition of shipper to specify that ocean transportation refers to the transportation of cargo, and to specify that the person to whom delivery is to be made may be a consignee; amend the definition of shippers’ association to make a grammatical change; and amend the definition of through transportation to remove wording which does not affect the meaning of the definition. The Commission also proposes to add definitions for destination scope and inland division. Finally, the Commission proposes to remove as unnecessary the definitions of joint rates, commodity description number, local rates, points of rest, and shippers’ association.

3. § 520.3 Publication Responsibilities

Pursuant to §520.3(d), the Commission requires that all common carriers publish a tariff in an automated tariff system and provide the location of that tariff to the Commission prior to the commencement of common carrier service. However, some NVOCCs will publish a tariff upon initially being licensed, but later allow the tariff to lapse and fall out of compliance. The Commission believes adding notice in §520.3 of the consequences which already exist pursuant to 46 CFR §515.1 and §515.14 for failure to maintain a tariff could improve tariff compliance. The Commission therefore proposes to add a provision to §520.3 that specifies the failure to maintain a tariff will result in the revocation of an NVOCC's license or suspension of a foreign-based NVOCC's registration. In addition, the Commission proposes to change the term used for the person a common carrier may use to meet their publication requirements from "agent" to "publisher"; include the common carrier's email address in the list of items provided to the Commission prior to commencement of common carrier service pursuant to a published tariff; and define the time period allowed for the common carrier to provide changes to its Form FMC-1 to the Commission to within 30 calendar days.

4. § 520.4 Tariff Contents

The Commission proposes to revise § 520.4(a)(3) to clarify that the ocean transportation intermediary that may receive compensation paid by a carrier or conference is an ocean freight forwarder as defined by section 3(17)(A) of the Shipping Act. In addition, the Commission proposes to: use plain language to reword the regulation at § 520.4(a)(4) requiring that a tariff state each charge separately; revise § 520.4(a)(5) to state that sample copies of bills of lading must be legible; and revise § 520.4(a)(8) to state that commodity tariffs must contain a retrievable commodity index.

The Commission also proposes to delete § 520.4(e)(1) which describes voluntary coding for commodity descriptions. To streamline the rule and remove a non-mandatory regulation, the Commission proposes to delete paragraph (e)(1). Tariff publishers are still not required to use any numeric code to identify commodities and the Commission still encourages the use of the Harmonized Tariff Schedule of the United States for both the commodity coding and associated terminology (definitions). In addition, the regulations still address the use of numeric codes to identify commodities.

5. § 520.5 Standard tariff terminology

The Commission proposes to update the source for geographic names listed in tariffs because they are currently out of date and inaccurate.

6. § 520.6 Retrieval of information

The Commission proposes to revise the search capability requirement for the retrieval of tariff information to specify that a search for a commodity description must result in a commodity or retrievable commodity index list.

7. § 520.7 Tariff limitations

The Commission proposes to revise for clarity the date on which a new conference member's participation in the conference tariff becomes effective and specify that the minimum time allowed to file an overage claim with a common carrier applies to claims filed by a shipper. The Commission also proposes to remove the regulation stipulating the methods to be used to compute the weight of green salted hides, in light of requirements mandated by the International Maritime Organization. In addition, the Commission proposes to add paragraph (h) to § 520.7 that states that NVOCCs may pass through certain charges received from ocean common carriers

that are not under the control of the common carrier or conferences. The Commission clarifies that the charges must be clearly listed in the NVOCC's tariffs and not marked up above cost.

8. § 520.8 Effective Dates

The Commission proposes to change "destination grouping" to "destination scope" in § 520.8(b)(3), consistent with other references to "destination scope" in 46 CFR part 520.

9. § 520.9 Access to Tariffs

The Commission proposes to update the regulations under this section to remove references to obsolete technologies.

10. § 520.10 Integrity of tariffs

The Commission proposes to revise the requirement to maintain historical tariff data in § 520.10(a) to define the time period that data must be made available to the Commission to within 45 days of a request. The Commission believes 45 days is a reasonable period of time for a carrier or a conference to respond to a request for archived data. The Commission also proposes grammatical corrections to the requirement that carriers provide tariff access to the Commission.

11. § 520.11 Non-vessel-operating common carriers

The Commission proposes to remove the current regulation that an NVOCC must note in its tariff that it does not tender cargo for co-loading. This regulation is considered to be an unnecessary burden on an NVOCC that does not co-load. The Commission also proposes to remove the current regulation that an NVOCC may not offer special co-loading rates for the exclusive use of other NVOCCs. This regulation is outdated in light of 46 C.F.R. part 531 – Negotiated Service Arrangements, and 46 C.F.R. part 532 – NVOCC Negotiated Rate Arrangements which allow an NVOCC to negotiate rates for the exclusive use of another NVOCC.

12. § 520.12 Time/Volume rates

The Commission proposes to clarify the requirements applicable to time/volume rates. The Commission also proposes revisions that clarify that common carriers or conferences may cancel time/volume rates when no shipper accepts these rates within thirty (30) days after the rates are published.

13. § 520.13 Exemptions and exceptions

The Commission proposes to make change to update the governing rules of this part, and the requirements for Department of Defense cargo. The Commission also proposes to remove references to a business no longer in existence.

14. § 520.14 Special Permission

The Commission proposes to add a regulation which specifies the documents required when requesting confidential treatment of an application for special permission and update the process for submission and payment of applications for special permission.

II. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

You may submit your comments via email to the email address listed above under ADDRESSES. Please include the docket number associated with this notice and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by email to the address listed above under ADDRESSES:

1. A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
2. A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page.
3. A public version of your comments with the confidential information excluded. The public version must state “Public Version—confidential materials excluded” on the cover page and on each affected page and must clearly indicate any information withheld.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission’s Electronic Reading Room at the addresses listed above under ADDRESSES.

III. Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, the agency must prepare and make available for public comment an initial

regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

The proposed rule would require all common carriers to provide free tariff access, which the Commission believes will provide a benefit by ensuring there are minimal constraints to inhibit the shipping public from obtaining pricing information for ocean transportation. As referenced earlier, advancements in technology have significantly eased the burden on common carriers to make their tariffs available to the public, and many carriers are already providing their tariffs to the public free of charge. The rule also provides flexibility for NVOCCs to pass through to their customers charges assessed by other entities, which allows the NVOCC to recover payments made on behalf of its shipper. In addition, the rule provides a documentation annotation requirement for shipments arranged by two or more NVOCCs. This requirement provides information to the beneficial cargo owner which allows for a more expedient determination of cargo status and location and places no additional burden on the NVOCC.

Because the costs to comply with this rule are minimal and few small entities are currently non-compliant, the proposed rule would not have a significant economic impact on a substantial number of small entities. For these reasons, the Chairman of the Federal Maritime Commission certifies that if this rule is promulgated, it would not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 et seq. The rule will not result in: (1) An annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects

on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies. 5 U.S.C. 804(2).

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) requires Federal agencies to consider the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the proposed action. When a Federal agency prepares an environmental assessment, the Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR parts 1500 through 1508) require it to “include brief discussions of the need for the proposal, of alternatives [. . .], of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.” 40 CFR 1508.9(b). This section serves as the Commission's Draft Environmental Assessment (Draft EA) for the proposed changes to 46 CFR part 520.

Upon completion of an environmental assessment, it was determined that the proposed rule will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and that preparation of an environmental impact statement is not required. This Finding of No Significant Impact (“FONSI”) will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed by any of the methods described in the ADDRESSES section of the document. The FONSI and environmental assessment are available for inspection at the Commission’s Electronic Reading Room at: <https://www2.fmc.gov/readingroom/proceeding/21-03/>

This document sets forth the purpose of and need for this action. The purpose of this

rulemaking is to update current regulations to reflect changes in industry practices. The rulemaking also proposes to remove the cost burden to the public associated with access to Carrier Automated Tariffs. Lastly, the rulemaking makes updates and clarifications to current regulations, which are largely technical.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public.¹³ The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking.¹⁴

The information collection requirements associated with the carrier automated tariffs requirements in part 520 are currently authorized under OMB Control Number 3072-0064. In compliance with the PRA, the Commission has submitted the proposed revised information collection to the Office of Management and Budget and is requesting comment on the proposed revision.

With the proposed addition of a new 46 CFR § 520.7(a)(3)(iv), there will be a shift in burden when NVOCCs can potentially direct shippers to existing VOCC tariffs for certain specific surcharges as opposed to listing those surcharges individually. However, the Commission believes that this shift in burden will not increase or decrease the overall industry burden. Although under the proposed rule shippers may be required to review a VOCC tariff alongside an NVOCC tariff, the NVOCC will no longer need to maintain a tariff precisely

¹³ 44 U.S.C. 3507.

¹⁴ 5 CFR 1320.11.

matching the terms of the chosen VOCC. It will not have a significant impact on members of the shipping public.

In its proposed addition of a new 46 CFR § 520.11(d), the Commission is proposing an information collection burden for those NVOCCs issuing bills of lading on FCL shipments where they would place the cargo in the control of a different NVOCC. This requirement of placing this information in the document is *de minimis*, and the Commission believes that current industry best practices already in place mean that this change would not impact NVOCCs.

Title: 46 CFR Part 520—Carrier Automated Tariff Systems and Related Form FMC-1

OMB Control Number: 3072-0064.

Abstract: 46 U.S.C. 40502 and 46 CFR part 520 requires common carriers and conferences of common carriers to publish tariffs to be made available to the public in automated tariff systems.

Current Action: The proposed rule would clarify, modernize and update the current regulations.

Type of Request: Revision of a previously approved collection.

Needs and Uses: The Commission requires tariffs to be made available to ensure compliance with the Shipping Act of 1984.

Frequency: The frequency of publishing and maintaining data in tariffs is determined by the common carrier and its customers. It is the common carrier's responsibility to ensure that the rates and terms applicable to a shipment are published prior to the receipt of cargo for that shipment.

Type of Respondents: Common carriers or their duly appointed agents are required make tariffs available to the public for inspection.

Number of Annual Respondents: The Commission does not anticipate that the proposed revisions would affect the number of respondents. The Commission anticipates an annual respondent universe of 6,331 common carriers.

Estimated Time per Response: The Commission does not anticipate that the proposed revisions would affect the estimated time per response, which would continue to range from .0167 to 2 person-hours for tariff content requirements, notification and filing requirements, and reporting and recordkeeping requirements contained in the regulations, and 0.5 person-hours for completing Form FMC-81.

Total Annual Burden: The Commission does not anticipate that the proposed revisions would affect the number of tariffs made publicly available or the burden associated with each tariff and, therefore, would not affect the total annual burden. The Commission estimates the total person-hour burden at 2,509 person-hours.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Whether the Commission's estimate for the burden of the information collection is accurate;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by the methods described in the ADDRESSES section of this document.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards in E.O. 12988 titled, “Civil Justice Reform,” to minimize litigation, eliminate ambiguity, and reduce burden. Section 3(b) of E.O. 12988 requires agencies to make every reasonable effort to ensure that each new regulation: (1) clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects in 46 CFR Part 520

Freight, Maritime carriers, Intermodal transportation, Report and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Maritime Commission proposes to amend 46 CFR part 520 as follows:

Part 520-CARRIER AUTOMATED TARIFFS

1. The authority citation for part 520 continues to read as follows:

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 305, 40101-40102, 40501-40503, 40701-40706, 41101-41109.

2. Amend § 520.2 by:

- a. Deleting “shall” from the introductory text of § 520.2;
- b. Revising the definitions of bulk cargo, co-loading, combination rate, commodity description, controlled carrier, harmonized system, location group, publisher, retrieval, rules, shipper, tariff number, tariff rate item, through date, and through transportation;
- c. Adding definitions for destination scope and inland division;
- d. Removing definitions of commodity description number, joint rates, local rates, point of rest, and shippers’ association; and
- e. Reordering the definition for through date so that it comes after TRI number and before through rate.

The revisions read as follows:

§ 520.2 Definitions.

The following definitions apply to this part:

* * * * *

Bulk cargo means cargo that is loaded and carried in bulk without mark or count in a loose unpackaged form, having homogeneous characteristics. Bulk containerized cargo tendered by the shipper is subject to mark and count and is, therefore, subject to the requirements of this part.

Co-loading means the combining of less than container loads 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 Tariff Rate Item (“TRI”) and an inland rate applicable from/to inland points not covered by the TRI.

* * * * *

Commodity description means a comprehensive description of a commodity listed in a tariff, including a brief definition of the commodity, that may be identified by a specific number.

* * * * *

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 will be deemed to exist with respect to any common carrier if:

* * * * *

Destination scope means a location group defining the geographic range of cargo destinations covered by a tariff.

* * * * *

Harmonized System means the Harmonized Tariff Schedule of the United States, published by the U.S. International Trade Commission, and Schedule B, administered by the U.S. Census Bureau.

Inland division means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

* * * * *

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 represents tariff origin and/or destination scope and TRI origin and/or destination.

* * * * *

Publisher means a person authorized by a common carrier to publish or amend tariff information.

* * * * *

Shipper means:

- (1) A cargo owner;
- (2) The person for whose account the ocean transportation of cargo is provided;
- (3) The person to whom delivery is to be made

(4) A shipper's association meaning a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts; or

(5) An NVOCC that accepts responsibility for payment of all charges applicable under the tariff or service contract.

* * * * *

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

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

* * * * *

Through 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.

* * * * *

3. Amend § 520.3 by:

- a. Revising paragraphs (a), (b), (c), (d), and (e); and
- b. Adding paragraph (f).

The revisions and addition read as follows:

§ 520.3 Publication responsibilities.

(a) *General.* Unless otherwise exempted or excepted by §520.13, all common carriers and conferences must 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 must publish, in their automated tariff systems, rates offered pursuant to independent action by their members and may publish any open rates offered by their members. Alternatively, open rates may be published in individual tariffs of conference members.

(c) *Publishers.* Common carriers or conferences can use publishers to meet their publication requirements under this part.

(d) *Notification.* (i) Prior to the commencement of common carrier service pursuant to a published tariff, each common carrier and conference must electronically submit to BTA, Form

FMC-1 via the Commission's website at *www.fmc.gov*. (ii) The common carrier and conference must include on Form FMC-1 its organization name, organization number, home office address, name, e-mail address and telephone number of firm's representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs. (iii) Any changes to the above information must be transmitted to BTA within 30 calendar days. (iv) The Commission will provide a unique organization number to new entities operating as common carriers or conferences in the U.S. foreign commerce.

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

(f) *NVOCC failure to update tariff*. Failure to maintain a tariff will result in revocation of an NVOCC's license or suspension of a foreign-based NVOCC's registration.

4. Amend § 520.4 by:

- a. Replacing "shall" in the introductory text for paragraph (a) and in paragraphs (b), (c), (d), and (h) with "must";
- b. Revising paragraphs (a)(3), (a)(4), (a)(5), (a)(8), (f)(5), (g), and (i);
- c. Removing paragraph (e)(1);
- d. Redesignating paragraphs (e)(2) and (e)(3) as paragraphs (e)(1) and (e)(2) respectively;
- e. Replacing "shall" in redesignated paragraphs (e)(1), (e)(2)(ii), and (e)(2)(iii) with "must"; and
- f. Revising redesignated paragraph (e)(2)(i).

The revisions read as follows:

§ 520.4 Tariff contents.

(a) * * *

(3) State the level of compensation, if any, to be paid by a carrier or conference to an ocean freight forwarder, as defined by section 3(17)(A) of the Act (46 U.S.C. 40102(19));

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

(5) Include sample copies of any bill of lading showing legible terms and conditions, contract of affreightment and/or other document evidencing the transportation agreement;

* * * * *

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

* * * * *

(e) * * *

(2) *Commodity index.* (i) Common carriers or their publishers must have at least one similar index entry which will logically represent the commodity within the alphabetical index for each commodity description it creates under this section. Common carriers or their publishers must create multiple entries in the index for articles with equally valid common use names, such as, “Sodium Chloride,” “Salt, common,” etc.

* * * * *

(f) * * *

(5) Origin and destination scopes or location groups;

* * * * *

(g) *Location groups.* In the primary tariff, or in a governing tariff, a publisher may define and create groups of cities, states, provinces, and countries (e.g., location groups) or groups of ports (e.g., port groups), which can 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.

* * * * *

(i) *Shipper requests.* Conference tariffs must contain clear and complete instructions, in accordance with the agreement's provisions, stating where and by what method shippers can file requests and complaints and how they can engage in consultation pursuant to section 5(b)(6)-(7) of the Act (46 U.S.C. 40303(b)(6)-(7)), together with a sample rate request form or a description of the information necessary for processing the request or complaint.

* * * * *

5. Amend § 520.5 by

a. Replacing "may" in paragraph (a) with “can”; and

b. Revising paragraph (b) to read as follows:

§ 520.5 Standard tariff terminology.

* * * * *

(b) *Geographic names.* Tariffs should employ locations (points) that are provided by the National Geospatial-Intelligence Agency or the Geographic Names Information System

developed by the U.S. Geological Survey. Ports published or approved for publication in the World Port Index (Pub. 150) should also be used in tariffs. Tariff publishers can use geographic names that are currently in use and have not yet been included in these publications.

6. Amend § 520.6 by:

- a. Replacing “shall” in paragraphs (a), (c), and (d) with “must”; and
- b. Revising paragraphs (b), (e), and (f) to read as follows:

§ 520.6 Retrieval of information.

* * * * *

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

* * * * *

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

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

7. Amend § 520.7 by:

- a. Replacing “shall” in paragraphs (a), (b), and (c) with “must”;
- b. Replacing “may” in paragraphs (a)(3)(ii) and (a)(3)(iii) with “can”;
- c. Adding a new paragraph (a)(3)(iv);
- d. Removing paragraph (e).
- e. Redesignating paragraphs (f) through (h) as paragraphs (e) through (g);
- f. Revising redesignated paragraphs (e) and (f); and
- g. Adding a new paragraph (h).

The revisions and redesignations read as follows:

§ 520.7 Tariff limitations.

(a) * * *

(3) * * *

(iv) An NVOCC may cross-reference an ocean common carrier tariff for the purpose of charging its shipper the ocean common carrier's surcharges and assessorial charges, provided the named charges are clearly listed in the NVOCC's tariff, and not marked up above cost.

* * * * *

(e) *Conference situations.* (1) New members of a conference must cancel any independent tariffs applicable to the trades served by the conference, within ninety (90) days of membership in the conference. Individual conference members can publish their own separate open rate tariffs. A new member's participation in the conference tariff is effective on the date notice of membership is published in the conference tariff, unless a later effective date is specified.

* * * * *

(f) *Overcharge claims.* (1) A tariff must not limit the filing of overcharge claims by a shipper with a common carrier to a period of less than three (3) years from the accrual of the cause of action.

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

(3) A tariff must not 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) *Charges assessed by ocean common carriers to non-vessel operating common carriers.* NVOCCs may pass through charges received from ocean common carriers for terminal services, canal tolls, additional charges, or other provisions which are not under the control of the common carrier or conferences, and for which the ocean common carrier merely acts as a collection agent. The charges must be clearly listed in the NVOCC's tariffs, and not marked up above cost.

8. Amend § 520.8 by:

- a. Revising paragraph (b)(3) and (b)(4); and
- b. Replacing "shall be" in paragraph (c) with "are".

The revisions read as follows:

§ 520.8 Effective dates.

* * * * *

(b) * * *

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

(4) Changes in charges which are not under the control of the common carrier or conference (including terminal services, canal tolls, additional charges, or other provisions), for which the carrier or conference merely act as a collection agent for such charges, and the agency making such changes does so without notifying the tariff owner. The carrier must not mark up these charges above cost.

* * * * *

9. Revise § 520.9 to read as follows:

§ 520.9 Access to tariffs.

(a) *Methods to access.* Carriers and conferences must provide access to their published tariffs, via the internet.

(b) *Internet connection.* (1) The internet connection requires that systems provide a uniform resource locator (“URL”) Internet address (e.g., <http://www.tariffsrus.com> or <http://1.2.3.4>). (2) Carriers or conferences must ensure that their Internet service providers provide static Internet addresses.

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

(2) Carriers and conferences must provide free access to their tariff publication system.

(3) Tariff publication systems must provide user instructions for access to tariff information.

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

(e) *User identifications.* Carriers and conferences must provide the Commission with the requisite documentation and the number of user identifications and passwords required to facilitate the Commission's access to their systems, if those systems require such identifications and passwords.

10. Amend § 520.10 by revising paragraphs (a), (b), and (d) to read as follows:

§ 520.10 Integrity of tariffs.

(a) *Historical data.* Carriers and conferences must keep the data that appeared in their tariff publication systems for a period of five (5) years from the date such information is superseded, canceled or withdrawn, and must provide on-line access to such data for two (2) years. After two (2) years, such data must be retained on-line or in other electronic form, and must be made

available to any person or the Commission upon request within 45 days, unless otherwise agreed. Carriers and conferences may charge a reasonable fee for the provision of historical data, not to exceed the fees for obtaining such data on-line. Carriers and conferences must not charge a fee to the Commission or any other Federal agency.

(b) *Access date capability.* Each tariff must 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 also applies to the alignment of tariff objects for any governing tariffs.

* * * * *

(d) *Access to systems.* Carriers and conferences must provide the Commission reasonable access to their automated systems and records for the Commission’s review.

11. Amend § 520.11 by:

- a. Replacing “shall” in the introductory text in paragraphs (a) and (c) with “must”;
- b. Revising paragraphs (a)(5) and (b);
- c. Removing paragraph (c)(1)(i);
- d. Redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as (c)(1)(i) and (c)(1)(ii), respectively;
- e. Replacing “shall” in redesignated paragraph (c)(1)(i) with “must”;
- f. Revising redesignated paragraph (c)(1)(ii);
- g. Removing paragraphs (c)(2) and (c)(3); and
- h. Adding paragraph (d).

The revisions and addition read as follows:

§ 520.11 Non-vessel-operating common carriers.

(a) * * *

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

* * * * *

(b) *Agent for service.* Every NVOCC not in the United States must 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 must also state that in any

instance in which the designated legal agent cannot be served because of death, disability, or unavailability, the Commission's Secretary will be deemed to be its legal agent for service of process.

(c)(1) * * *

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

(d) *Annotation.* An NVOCC which tenders cargo to another NVOCC must annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered. Such annotation must be shown on the face of the bill of lading in a clear and legible manner.

12. Amend § 520.12 by:

- a. Revising paragraphs (a), (c), and (e); and
- b. Replacing “shall” in paragraphs (b)(2) and (d) with “must”.

The revisions read as follows:

§ 520.12 Time/Volume rates.

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

* * * * *

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

* * * * *

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

13. Amend § 520.13 by:

- a. Revising paragraphs (a), (b)(2), (c)(4), (d)(2)(ii)(A), and (d)(2)(ii)(B)(1); and
- b. Removing paragraph (d)(2)(iii).

The revisions read as follows:

§ 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 the Commission's Rules of Practice and Procedure, §502.92, of this chapter.

(b) * * *

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

* * * * *

(c) * * *

(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 Surface Deployment and Distribution Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, must be provided to the Commission in electronic format upon request.

* * * * *

(d) * * *

(2) * * *

(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, if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

* * * * *

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

* * * * *

14. Amend § 520.14 by:

- a. Revising paragraphs (b), (c)(1), (c)(2), (c)(3), and (d); and
- b. Adding paragraph (c)(3)(iv).

The revisions and addition read as follows:

§520.14 Special permission

* * * * *

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority. Every special permission application must plainly specify the error and present clear evidence of its existence. The special permission application must also include a full statement of the attending circumstances. The special permission application must 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 must be made by the common carrier, conference, or agent for publishing. Every such application must be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of \$313.

(2) Applications for special permission must be made by letter, submitted via mail or e-mail, followed promptly by electronic payment of the filing fee.

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

* * * * *

(iv) A statement that identifies any part(s) of the application for which confidential treatment is sought and a justification for such confidential treatment. In such cases, the applicant must provide both a confidential version and a public version of the application.

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

By the Commission.

William Cody
Secretary