E.O. 13175 (see above), the Agency applied the standards established by the Tribe. In addition, the Agency considered the Interstate Technology and Regulatory Council's February 2006 technical and regulatory guideline, ''Characterization, Design, Construction, and Monitoring of Bioreactor Landfills.'' Nothing about this analysis has changed since the 2009 site-specific rule was promulgated nor does the proposed extension of the total possible term of the RD&D unit's operations in accordance with the site-specific rule from 12 years to 21 years affect this analysis.

Congressional Review Act (CRA). This action is not subject to the CRA because the term ''rule'' as it is used in the CRA does not include ''any rule of particular applicability,'' such as a site-specific rule. See, 5 U.S.C. Section 804(3)(A).

Environmental Justice—Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and the accompanying presidential memorandum advising Federal agencies to identify and address, whenever feasible, disproportionately high and adverse human health or environmental effects on minority communities or low-income communities. The action will not adversely impact minorities or low-income communities.

Authority: Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act, as amended, 42 U.S.C. Sections 6907, 6912, 6944, and 6949a. Delegation 8–54, Site-Specific Rules for Flexibility from Owners/Operators of Municipal Solid Waste Landfills (MSWLFs) in Indian Country, November 24, 2010. Regional Delegation R9–8–54, October 10, 2014.

List of Subjects in 40 CFR Part 258

Environmental protection, Municipal landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 26, 2021.

Steven Barhite,

Acting Director, Land, Chemicals and Redevelopment Division, Region IX.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 258 as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

Subpart D—Design Criteria

■ 2. Revise § 258.42 paragraphs (a)(5) through (10) to read as follows:

§ 258.42 Approval of site-specific flexibility requests in Indian country.

(a) * * *

(5) The owner and/or operator shall submit reports to the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 as specified in ''Research, Development, and Demonstration Permit Application Salt River Landfill,'' dated September 24, 2007 and amended on April 8, 2008, including an annual report showing whether and to what extent the site is progressing in attaining project goals. The annual report will also include a summary of all monitoring and testing results, as specified in the application.

(6) The owner and/or operator may not operate the facility pursuant to the authority granted by this section if there is any deviation from the terms, conditions, and requirements of this section unless the operation of the facility will continue to conform to the standards set forth in § 258.4 and the owner and/or operator has obtained the prior written approval of the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 or the Director's designee to implement corrective measures or otherwise operate the facility subject to such deviation. The Director of the Land, Chemicals and Redevelopment Division or designee shall provide an opportunity for the public to comment on any significant deviation prior to providing written approval of the deviation.

(7) Paragraphs (a)(2), (3), (5), (6) and (9) of this section will terminate on March 19, 2024, unless the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 or the Director's designee renews this authority in writing. Any such renewal may extend the authority granted under paragraphs (a)(2), (3), (5), (6) and (9) of this section for up to an additional three years, and multiple renewals (up to a total of 21 years from March 19, 2009) may be provided. The Director of the Land, Chemicals and Redevelopment Division or designee shall provide an opportunity for the public to comment on any renewal request prior to providing written approval or disapproval of such request.

(8) In no event will the provisions of paragraphs (a)(2), (3), (5), (6) or (9) of this section remain in effect after March 19, 2030, 21 years after the March 19, 2009 date of publication of the site-specific rule in this section. Upon termination of paragraphs (a)(2), (3), (5), (6) and (9) of this section, and except with respect to paragraphs (a)(1) and (4) of this section, the owner and/or operator shall return to compliance with the regulatory requirements which would have been in effect absent the flexibility provided through the site-specific rule in this section.

(9) In seeking any renewal of the authority granted under or other requirements of paragraphs (a)(2), (3), (5) and (6) of this section, the owner and/or operator shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 or the Director's designee has determined are necessary for the approval of any renewal and has communicated in writing to the owner and operator.

(10) The owner and/or operator's authority to operate the landfill in accordance with paragraphs (a)(2), (3), (5), (6) and (9) of this section shall terminate if the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 or the Director's designee determines that the overall goals of the project are not being attained, including protection of human health or the environment. Any such determination shall be communicated in writing to the owner and operator.

[FR Doc. 2021–06902 Filed 4–7–21; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 520

[Docket No. 21–03]

RIN 3072–AC86

Carrier Automated Tariffs

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (Commission) has identified inconsistencies in the manner in which different carriers are interpreting and applying certain aspects of the Commission's rules. This Advance Notice of Proposed Rulemaking (ANPRM) will facilitate a fuller understanding of these issues prior to the Commission potentially proposing regulatory changes to its tariff regulations. The Commission observes that carriers are charging widely varying

fees and imposing varying minimum requirements for access to common carrier tariffs. The Commission seeks information regarding the impact of such fees and minimum requirements on public access to common carrier rules, rates, practices and charges in published tariffs and whether existing fees or requirements are unreasonable. Additionally, certain non-vessel-operating common carriers (NVOCCs) are applying what are commonly known as ''pass-through charges'' inconsistently under common carrier tariffs, and the Commission seeks to gain a broader understanding and information from industry stakeholders, including NVOCCs and vessel-operating common carriers (VOCCs).

DATES: Submit comments on or before June 7, 2021.

ADDRESSES: You may submit comments, identified by Docket No. 21–03, by the following methods:

- *Email: 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: Rachel E. Dickon, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Shipping Act of 1984, as amended (46 U.S.C. 40101–41309) (Shipping Act or Act) requires that common carriers (*i.e.,* VOCCs and NVOCCs) and conferences keep open for public inspection in an automated tariff system, their tariffs showing all rates, charges, classifications, rules and practices, and to make those tariffs available electronically to any person without time, quantity, or other limitation. 46 U.S.C. 40501(c). The Act charges the Commission with establishing requirements for the accuracy and accessibility of all private automated systems used to provide tariff information to the public. § 40501(g)(1). The Act also provides that a reasonable fee may be charged for such access, except that Federal agencies may not be charged a fee. § 40501(c).

Pursuant to the Commission's *Plan for Regulatory Review of Existing FMC Rules,* the Commission's regulations at 46 CFR part 520, *Carrier Automated Tariffs,* are currently under review.[1] As part of this initiative, two issues have been identified that would benefit from receiving clarifying information from industry participants and other supply chain stakeholders. Accordingly, the Commission is seeking comment regarding: (1) Tariff access fees and minimum access requirements; and (2) pass-through charges prior to potentially moving forward with a proposed rulemaking.

II. Request for Comment

A. Tariff Access Fees

Before the passage of the Ocean Shipping Reform Act of 1998 (OSRA), which became effective May 1, 1999, carrier 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 Commission promulgated implementing regulations reflecting this change effective May 1, 1999, in FMC Docket No. 98–29, *Carrier Automated Tariff Systems.*[2] Once carriers and conferences deployed their carrier automated tariff systems, the Commission began receiving informal complaints regarding certain tariff access fees and minimum subscription requirements that potential tariff users believed were excessive. As a result, on May 9, 2000, the Commission initiated FMC Docket No. 00–07, *Advance Notice of Proposed Rulemaking Concerning Public Access Charges to Carrier Automated Tariffs and Tariff Systems Under the Ocean Shipping Reform Act of 1998,* to determine whether certain tariff access charges and monthly subscription requirements might limit the public's ability to access tariffs and tariff systems, and sought public comment to address the reasonableness of tariff access charges. Based on an assessment of the comments received in response to Docket No. 00–07, the Commission determined that promulgating a proposed rule on tariff access charges and their reasonableness was not necessary. The Commission did, however, issue a Circular Letter to provide guidance to common carriers, conferences, and tariff publishers with respect to the issue of reasonable fees, and subsequently discontinued the proceeding.[3] In relevant part, Circular Letter No. 00–2 read:

> The Commission has not promulgated regulations governing tariff access charges. However, it appears that ''a reasonable charge'' for access should recover only costs and expenses incurred by carriers in making their tariffs accessible to the public, and should not recover the costs and expenses associated with:
>
> (1) Developing or publishing a tariff/essential terms publication;
>
> (2) Providing access to federal agencies;
>
> (3) Providing access to the publishing carrier's employees or agents or to a publishing conference's employees or its members' employees or agents; or
>
> (4) Developing any other function or service for possible use by a carrier's or conference's employees or agents, as the case may be.

Any subscription fees assessed should also be consistent with these criteria.

While the foregoing relates to the Commission's experience at the inception of carrier automated tariff systems in 1999, more recent experience indicates that some tariff access fees may be so high that they effectively prevent tariff users from reviewing certain carrier tariffs, particularly those with substantial minimum charges, such as $1,000 or $1,500.[4] This can be an issue, not only for shippers who primarily ship cargo under tariff rates, but also for shippers using service contracts. Once the shipper's minimum quantity commitment under the service contract has been fulfilled, the carrier often rates subsequent shipments under its tariff rates, For this reason, shippers may have a need to access tariffs to determine the applicable rate for their cargo once the volume commitment for their service contract has been fulfilled. The unimpeded access to tariffs is also

[1] See *Plan for Regulatory Review of Existing FMC Rules,* updated November 23, 2020, at *https://www.fmc.gov/wp-content/uploads/2020/11/RegulatoryReformPlan.pdf.*

[2] *See* Final Rule and Interim Final Rule, *Carrier Automated Tariff Systems,* 64 FR 11218 (March 8, 1999).

[3] *See* FMC Docket No. 00–07 (Proceeding Discontinued, July 11, 2001) at *https://www2.fmc.gov/readingroom/proceeding/00-07/. See also* 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/.*

[4] Fee range based on information reported to Commission staff when contacted periodically by users for guidance and assistance with tariff access.

imperative during periods of rate volatility, to ensure the shipper is aware of the most current applicable rates.

The Commission notes, however, that many major VOCCs and NVOCCs that self-publish tariffs provide access free of charge. While for such carriers, it is customary to request a user to register for tariff access by providing contact information and creating a Login/Username and Password. Once this has been accomplished, free access has generally been granted. For those carriers that do not provide tariff access free of charge, access fees appear to vary widely, with some carriers charging what appear to be excessive fees. This may indicate that, contrary to guidance provided by the Commission in Circular Letter 00–2, some carriers are not relating charges only to the actual costs of providing public access to tariff systems.

For the foregoing reasons, the Commission is concerned that the level of some tariff access fees may impair the public's ability to access the information in carrier tariffs. Accordingly, the Commission seeks responses to the following questions, as well as any additional information related to the public's experience with tariff access fees.

1. Do you agree or disagree with the Commission's guidance found in Circular Letter 00–2, that '' 'a reasonable charge' for access should recover only costs and expenses incurred by carriers in making their tariffs accessible to the public''? In your response, please provide examples of potential other costs that should be included or excluded in an access fee, and why.

2. In your experience, do you believe the carriers you do business with are charging tariff access fees that only recover the costs and expenses incurred in making tariffs accessible to the public? If not, please provide examples where this may not be the case.

3. Are you inhibited from accessing common carrier tariffs because of tariff access fees or tariff access processes?

In your response, where possible, please include the carrier name, tariff number and title, tariff publisher (if applicable), and access fees for any tariffs you believe have excessive fees or unreasonable access requirements.

B. Pass-Through Charges

The Commission has become aware of disparate industry interpretations of the types of charges that may be ''passed through'' to shippers without markup (not to exceed the charge the common carrier incurs) in connection with shipments moving under common carrier tariffs, particularly by NVOCCs. While the Commission's tariff regulations do not define so called ''pass-through charges,'' such charges are referenced in 46 CFR 520.8, *Effective Dates,* which specifies the types of tariff amendments that may become effective immediately upon tariff publication. More specifically, § 520.8(b)(4) provides that amendments may take effect upon publication that make 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.

Historically, we understand VOCCs have relied on this provision to make changes to port charges, governmental charges, and other similar charges beyond their control effective upon publication in their tariffs. In contrast, NVOCCs have varied widely in the types of charges they have attempted to charge to shippers pursuant to § 520.8(b)(4) when applying tariff rates, particularly with respect to VOCC charges and surcharges. The Commission has encountered narrow interpretations by NVOCCs of the types of VOCC charges that can be passed through without markup, but more commonly, broader interpretations by NVOCCs have been seen, including the pass-through of all VOCC charges and surcharges, as well as VOCC General Rate Increases (GRIs).

In this regard, some NVOCCs appear to be conflating the Commission's tariff regulations with the Commission's 2018 rulemaking that expanded the flexibility of NVOCC Negotiated Rate Arrangements (NRAs) and NVOCC Service Arrangements (NSAs).[5] NVOCCs using NRAs are exempt from the general tariff publication requirements in 46 U.S.C. 40501 and many of the corresponding regulations in 46 CFR part 520. 46 CFR 532.2. Unlike common carriers subject to the tariff requirements in 46 U.S.C. 40501 and 46 CFR part 520, NVOCCs using NRAs must describe the applicable pass-through charges in either the NRA or rules tariff but need not specify the amount of those charges. 46 CFR 532.5(d)(2). Rather ''[f]or any pass-through charge for which a specific amount is not included in the NRA or the rules tariff, the NVOCC may only invoice the shipper for charges the NVOCC incurs, with no markup.'' 46 CFR 532.5(d)(2)(iv). For NVOCC NRAs, the Commission provided greater flexibility by further stating that ''[t]he Commission is removing the prohibition on the pass-through of ocean carrier GRIs in order to increase efficiency and flexibility within the NRA framework.'' 83 FR 34780, 34787 (July 23, 2018).

The current tariff regulations permit common carriers to apply changes to any governmental or non-governmental charge beyond the carrier's control (*e.g.,* terminal handling charges or canal tolls) effective on publication. 46 CFR 520.8(b)(4). But the Commission does not view VOCC GRIs as falling within this provision. A GRI is an adjustment to the base freight rate rather than a surcharge and may not become effective immediately on publication under § 520.8(b)(4). While the Commission has treated VOCC GRIs as pass-through charges under the NVOCC NRA exemption from tariff rate publication, there is no corresponding provision in the Commission's regulations for cargo moving under tariffs. VOCCs and NVOCCs are common carriers in their relationship with their shippers. Therefore, like VOCCs, NVOCCs must also publish GRIs in their tariffs and provide 30 days' notice of the increase to their shippers, as required by the Commission's regulation at 46 CFR 520.8(a)(1). Additionally, common carriers, which include NVOCCs, must include in their tariffs all rates and charges, including the charges described in 46 CFR 520.8(b)(4). 46 CFR 520.3.

The Commission is concerned that the widely varying interpretations and inappropriate application of so-called pass-through charges under common carrier tariffs may result in harm to shippers. The practice of some carriers to incorrectly pass-through charges could deny the shipper full transparency regarding the total freight charges that will apply to a shipment, as well as deprive the shipper of advance notice of any increase in those charges. The Commission, therefore, seeks responses to the following questions, as well as any additional information related to the public's experience with pass-through charges.

1. For an ocean common carrier (VOCC), what are the typical charges that are not under its control and for which the ocean common carrier merely acts as a collection agent?

2. For an ocean common carrier (VOCC), how does its tariff specify or address those charges for which it merely acts as a collection agent?

3. For an NVOCC, what are the typical charges that are not under its control and for which the NVOCC merely acts as a collection agent?

4. For an NVOCC, how does its tariff specify or address those charges for which it merely acts as a collection agent?

5. How do common carriers communicate to shippers that the so-

[5] *See* Final Rule in FMC Docket No. 17–10, *Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements,* 83 FR 34780 (July 23, 2018).

called pass-through charges are for the account of shippers?

6. How can shippers be assured that common carriers collect pass-through charges without adding any mark-up?

In your response, where possible, please include the carrier name(s) and the relevant tariff provisions.

III. 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**:

- 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.
- 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.
- 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**.

In addition to soliciting the comments of regulated entities, the shipping public and supply chain stakeholders, the Commission encourages any interested party to comment on these questions and any experience they have related to these two issues.

By the Commission.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–06128 Filed 4–7–21; 8:45 am]

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