

rigidly continues to preclude such requested options as: a minimal level of residual bundled sales service and use of rate designs other than SFV for cost allocation and billing purposes. Further, the rule attempts to decide issues that I think should be left to individual restructuring proceedings (e.g., whether bids for released capacity should be capped at a given number of years), where there is superior expertise and factual basis for a decision as to the specifics. This point comports with the rule's too rigid one-size-fits-all aspects. This I find surprising from the Commission, which should have a lesser rather than greater affinity for "command and control" type regulation, which this rule imitates in its level of detail for some treatments.

Thus, while the rule adopts what can be characterized as an opportunity for flexibility, with respect to a minuscule percentage of the industry's load, it retains inflexibility with respect to major parts of the pipeline industry's operations. The decisions

here achieve a level of precision that may leave little left to negotiate in the restructuring process and may, in fact, be wrong for the particular system and its customers.

In sum, a major problem with this rehearing order and its predecessor lies not so much in the substance of the calls, but in a nagging belief that, based on the open meeting discussions and treatment of the companion orders, the 636 orders will be implemented by this Commission and its staff in a procrustean manner. I fear that there may be little room left for true negotiation in the restructuring process. If there is some room left to maneuver, I am not optimistic that this Commission will sanction the results of such negotiations, if they in any way deviate from the particular treatments contemplated and specified in the 636-A order.

I suspect that despite the nods to flexibility in the rehearing order and the rhetoric accompanying the voting process, little room

exists to accommodate such things as changes in rate design and other treatments based on pipeline system operational differences and customer wishes.

I hope I am wrong. The situation can possibly be remedied in practice, where it has not been in this document. That is why I can concur. Today's accompanying vote on the ANR settlement in Docket No. RS92-1-001 gives me cause to wonder. It should give the industry and state regulators cause to wonder too. However, dénouement of the Order No. 636 saga is a long way off. Thus, ever optimistic, I will continue to push for flexibility in implementation, keeping in mind that, flexibility in regulation, in this case, is in the public interest.

Branko Terzic,

Commissioner.

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**Wednesday
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Part III

Department of Transportation

Coast Guard

33 CFR Parts 155 and 157

46 CFR Parts 30 et al.

**Double Hull Standards for Vessels
Carrying Oil in Bulk; Interim Final Rule**

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 155 and 157; 46 CFR Parts 30, 32, 70, 90, and 172

[CGD 90-051]

RIN 2115-AD61

Double Hull Standards for Vessels Carrying Oil in Bulk

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: Pursuant to the Oil Pollution Act of 1990 ("OPA 90" or "the Act"), the Coast Guard is adopting standards for double hulls on vessels carrying oil in bulk as cargo or cargo residue that are constructed or undergo a major conversion under contracts awarded on June 30, 1990 or later. The Coast Guard is also issuing standards for double hulls on vessels carrying oil in bulk as cargo or cargo residue that have been constructed or have undergone a major conversion under earlier contracts. The Act requires these vessels to have double hulls according to a timetable commencing in 1995. This rule provides the shipping and shipbuilding industries with interim standards in order to meet the double hull requirement.

DATES: This interim final rule is effective on September 11, 1992. Comments on this interim final rule must be received on or before October 13, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 90-051), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen M. Shapiro, Merchant Vessel Inspection and Documentation Division (G-MVI-2), telephone (202) 267-1181.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking

(CGD 90-051), the specific section of the rule or related documents to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during this comment period. The rule may be changed in view of the comments.

The Coast Guard plans no public hearing. However, persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity to make oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the *Federal Register*.

Drafting Information

The principal persons involved in drafting this document are Mr. Stephen M. Shapiro, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 5, 1990, the Coast Guard published a notice of proposed rulemaking entitled "Double Hull Standards for Tank Vessels Carrying Oil" in the *Federal Register* (55 FR 50192). On September 6, 1991, the Coast Guard published a notice in the *Federal Register* (56 FR 44051) to reopen the comment period for this rulemaking. On August 29, 1991, the Coast Guard published a notice in the *Federal Register* (56 FR 42763) announcing a public meeting to obtain the views of interested parties regarding the scope of the environmental assessment. This notice was supplemented with direct mailings of approximately 150 copies of the announcement to various governmental, industrial, and environmental groups. The Coast Guard subsequently held the scoping meeting on September 26, 1991. On January 15, 1992 the Coast Guard published a notice in the *Federal Register* (57 FR 1854) announcing the availability of the Interim Regulatory Impact Analysis (Interim RIA) and Environmental Assessment (EA). In response to these various notices, the Coast Guard received a total of 112 letters commenting on this rulemaking. One letter requested that the Coast Guard conduct public hearings on this rule. The Coast Guard determined that, apart from the scoping meeting for the environmental assessment, the opportunity to make oral presentations

would not aid this rulemaking. Therefore, a public hearing was not held.

Background and Purpose

Section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101-380) added section 3703a to title 46 U.S. Code. Section 3703a(a) requires a double hull to be fitted on a vessel carrying oil in bulk as cargo or cargo residue. (Note: hereafter, a "vessel" refers to any vessel carrying any quantity of oil in bulk as cargo or cargo residue; refer to paragraph 1 of the "Discussion of Comments and Changes" for a discussion of vessels covered under the Act.) A vessel that is constructed or undergoes a major conversion under a contract placed on June 30, 1990 or later must have a double hull fitted at the time of construction or major conversion (with certain exceptions in the Act). An existing vessel that is constructed or that undergoes a major conversion under an earlier contract must be fitted with a double hull in accordance with a timetable in 46 U.S.C. 3703a(c)(3), which commences in 1995.

Section 3703a does not provide technical standards for a double hull. This rule provides the shipping and shipbuilding industries with standards in order to meet the double hull requirement.

On September 21, 1990, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 2-90. This NVIC provides policy guidance on double hull construction for a vessel undergoing construction or major conversion under a contract awarded on or after June 30, 1990, but prior to the effective date of this rule. A vessel which is built to plans that have been approved in accordance with NVIC 2-90 under a contract awarded before the effective date of this rule will satisfy the double hull requirements in this rule. NVIC 2-90 may not be used for a vessel which undergoes construction or major conversion under a contract awarded on or after the effective date of this rule.

A substantial amount of oil imported to the United States is transported aboard foreign flag vessels. Since the Act applies to all vessels in U.S. waters, including foreign vessels, the Coast Guard recognized that U.S. double hull regulations would have a significant global impact. Therefore, the Coast Guard has also worked at the international level to establish double hull standards. The International Maritime Organization (IMO) is the specific United Nations agency which oversees international maritime affairs. IMO has been responsible for

developing various international conventions, such as the International Convention for the Safety of Life at Sea, 1974, as amended by the Protocol of 1978 (SOLAS), and the International Convention for the Prevention of Pollution by Ships, 1973, as amended by the Protocol of 1978 (MARPOL). The Coast Guard represents the United States at IMO deliberations. In November 1990, the United States submitted a proposal to IMO's Marine Environment Protection Committee (MEPC) for international standards to require double hulls for tank vessels. This proposal resulted in Regulation 13F of Annex I to MARPOL. At the 31st session of the MEPC in July 1991 (MEPC 31), the Committee approved draft Regulation 13F for circulation to IMO member states for their consideration. In November 1991, a MEPC working group subsequently refined Regulation 13F, which was further refined and formally adopted at MEPC 32 on March 8, 1992. The United States reserved its position during the adoption of Regulation 13F, due to differences from OPA 90 regarding the applicability of double hull requirements to certain categories of vessels and the allowance of the mid-deck concept as an alternative to a double hull. The issue of alternative designs is further discussed in paragraph 12 of the following "Discussion of Comments and Changes." The double hull dimensions prescribed in this rule are consistent with those in Regulation 13F as adopted at MEPC 32.

The MEPC also adopted Regulation 13G to Annex I of MARPOL at its 32d session. Regulation 13G contains a schedule for retrofitting (with double hulls) or retiring existing single hull tank vessels 30 years after delivery. This schedule is further discussed in paragraph 11 of the following "Discussion of Comments and Changes." Regulation 13G also requires vessels built prior to requirements for protectively located segregated ballast (pre-MARPOL tankers) to convert tanks protecting 30 percent of the sides or 30 percent of the bottom to segregated ballast tanks no later than 25 years after delivery. This provision will be considered in the separate rulemaking on measures for existing vessels, as discussed in paragraph 40 of the following "Discussion of Comments and Changes." The United States also reserved its position during the adoption of Regulation 13G of Annex I to MARPOL.

A copy of IMO paper MEPC/32/20, which contains Regulations 13F and 13G, has been placed in the public

docket. Regulation 13F, as adopted at MEPC 32, was not significantly revised from the earlier draft reprinted in the Federal Register on September 8, 1991 (56 FR 44052). Regulations 13F and 13G, as adopted at MEPC 32, appear as an appendix to this preamble for the convenience of the reader.

Discussion of Comments and Changes

The Coast Guard thanks the many interested parties who submitted a total of 112 documents containing over 350 comments to the public docket. These comments provided very useful information to the Coast Guard and afforded valuable assistance in the development of this rule.

This section discusses the comments received as well as the Coast Guard's responses and changes to the proposed rule. This section is divided into two subsections. The first subsection discusses comments concerning the specific CFR sections, and the second subsection discusses nonspecific comments concerning other issues relating to this rulemaking and double hull requirements in general.

Comments Relating to Specific CFR Sections

All changes to each section of the rule are discussed within the following paragraphs, and the paragraphs are numbered in the order of their appearance in the CFR.

1. *33 CFR 155.390, 46 CFR 70.05, and 46 CFR 90.05.* Three comments addressed the applicability of this rule to a vessel other than a tank barge or a tankship designed primarily to carry oil. One comment requested a clarification on the applicability of this rule to cargo vessels certificated under 46 CFR subchapter I. Another comment strongly opposed the application of this rule to vessels other than oil tankers in general, and to offshore supply vessels (OSV's) specifically, and requested regional public hearings on this issue.

Subject to the exemptions in 46 U.S.C. 3702, the Act applies double hull requirements to a tank vessel, as defined in 46 U.S.C. 2101(39). Section 2101(39) includes a vessel that carries any quantity of oil in bulk as cargo, including a tank barge, a tanker as defined in 46 U.S.C. 2101(38), and a vessel certificated as a cargo or passenger vessel that carries limited quantities of oil in bulk. The Coast Guard has no discretion in this area; cargo tanks on these vessels must be protected in accordance with this rule. Notes have been added to 46 CFR 70.05 and 46 CFR 90.05 to clarify the applicability of this rule to those vessels.

The exemption provisions of section 3702, which are referenced in revised 33 CFR 157.01, apply to certain OSV's and fishing industry vessels within specified size and service limits. However, an OSV or a fishing industry vessel must meet the requirements of this rule if it exceeds the size limits or provides services not specifically exempted in 46 U.S.C. 3702. For example, the fuel tanks on a fishing or fish tender vessel (of not more than 500 gross tons) that are also used to hold excess fuel to be transferred as cargo to another fishing industry vessel or shoreside fishing industry facility would not have to be double-hulled. This rule does not apply to a fish processing vessel of not more than 5,000 gross tons.

Similarly, the fuel supply tanks on an OSV (including fuel tanks that are also used to hold fuel to be transferred as cargo to an offshore facility) would not have to be double-hulled. However, since the exemption in 46 U.S.C. 3702(b) applies only to fuel supply tanks, other tanks on that OSV which carry oil (including drilling mud that contains oil) as bulk cargo must have double hull protection in accordance with this rule.

The Coast Guard considered the request for public hearings on this issue and concluded that no additional substantive input is likely to be received at such hearings beyond the information already submitted to the public docket. Although no hearings on this issue were held or are anticipated, the Coast Guard specifically invites further comments to the public docket.

The original § 155.390 included requirements from Annex I of MARPOL that apply to tank vessels that are not oil tankers as defined in § 157.03. Since 33 CFR part 157 now applies to all tank vessels, the provisions of § 155.390 have been moved to § 157.08.

2. *33 CFR 157.01.* One comment requested clarification of the applicability of this rule to foreign vessels in innocent passage. Title 46 U.S.C. 3702 exempts such vessels from these requirements. This exemption, as well as exemptions for public vessels and for certain offshore supply and fishing industry vessels (discussed in paragraph 1) were already reflected in existing § 157.01(b), which has been clarified.

Although no other comments on this section were received, § 157.01(a), which was based on 46 U.S.C. 2101(39), has been revised to reflect 46 U.S.C. 3703a(a). Title 46 U.S.C. 3703a(a) includes any vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ). Title 46 U.S.C.

2101(39) includes a vessel within the EEZ that transfers cargo. Sections 157.08 and 157.25 have been revised to maintain the applicability in 46 U.S.C. 2101(39) for sections other than those implementing 46 U.S.C. 3703a.

3. *33 CFR 157.03(k)*. One comment recommended that the retrofitting of a double hull should not, by itself, constitute a major conversion. This would be consistent with current domestic and international practice regarding the retrofitting of segregated ballast tanks. The Coast Guard concurs and has clarified § 157.03(k) to reflect this interpretation. Additionally, provision for the Commandant (G-MVI) to make general determinations on whether a vessel "is essentially a new vessel" (and has therefore undergone a major conversion) has been added to § 157.03(k). This is consistent with the definition of major conversion in 46 U.S.C. 2101(14a), which was not changed by the Act.

Twelve comments recommended more specific guidance as to the type and extent of modifications that will be considered major conversions under this rule. The Coast Guard did not adopt this recommendation. Since the Act did not change the existing definition of major conversion in section 2101(14a), determinations of major conversion for the application of this rule must be consistent with determinations that have been or will be made under this same definition for the application of other safety or pollution prevention requirements. Furthermore, variations among different vessels as well as the wide range of types and extents of modifications that must be considered would make the issuance of more specific guidance impractical. The Coast Guard will continue to make major conversion determinations on a case-by-case basis, using the definition in § 157.03(k). Owners contemplating future modifications are strongly encouraged to request such a determination from Commandant (G-MVI), through the cognizant Officer in Charge, Marine Inspection (OCMI), at the earliest possible stage.

4. *157.03(n)*. One comment requested a clarification on the definition of oil, particularly with respect to animal and vegetable oils. A vessel carrying animal or vegetable oils in bulk is subject to this rule. The definition of oil in 46 U.S.C. 2101(20) was adopted by the Port and Tanker Safety Act (PTSA) and was not amended by OPA 90. The legislative history of the PTSA indicates that "oil" is not limited to petroleum oils. A consistent definition appears in section 311 of the Federal Water Pollution

Control Act (FWPCA), which has been applied to spills of animal and vegetable oils.

The PTSA mandated segregated ballast requirements for certain crude oil and product tankers. When the Coast Guard implemented these requirements in 1979, the legislative history supported an interpretation of "product" that includes only petroleum products. However, OPA 90 requires double hulls for a vessel carrying "oil," rather than for a vessel carrying "crude oil" and "products." Even though accidental spillage of animal and vegetable oils may not result in the same degree of environmental damage as the spillage of certain petroleum products, the Coast Guard cannot administratively limit the application of this rule to vessels carrying specific oils, based on the legislative history of the PTSA and OPA 90.

The Coast Guard recognizes that the definition of oil in 46 U.S.C. 2101(20) is inconsistent with the definition of oil under Annex I of MARPOL. Under MARPOL, oils are limited to crude oil and petroleum products. Animal and vegetable oils are specifically designated as Category D noxious liquid substances (NLS) under Annex II of MARPOL. Therefore, the existing regulations applicable to an oceangoing vessel carrying NLS apply to a vessel carrying animal or vegetable oil in bulk, in addition to the new double hull requirements under this rule.

Section 157.03(n) has been clarified to reflect this long-standing interpretation of the definition of oil in 46 U.S.C. 2101(20). However, comments on this section are specifically invited.

5. *33 CFR 157.03(aa)*. The Coast Guard has modified § 157.03(aa) to make the definition of cargo tank length for barges consistent with that for ships, even though no comments were received on this issue.

Two comments recommended clarifying or modifying the definition of cargo tank length in § 157.03(aa). One of these comments recommended the adoption of the definition of cargo tank length in Annex I of MARPOL, which the comment interpreted as excluding fuel tanks located within the cargo block. The Coast Guard does not concur with this recommendation or this interpretation. Oil tanks located within the cargo block should not be exempted from this rule only because the oil they hold is fuel, rather than cargo. The environmental consequences of oil outflow are the same, whether the oil is carried as cargo or fuel. The Coast Guard does not interpret Regulation 13F of Annex I to MARPOL as permitting

this recommended arrangement. This issue is closely related to the issue of protection for fuel tanks, which is addressed in paragraph 14.

6. *33 CFR 157.03 (ii), (jj), and (kk)*. Eleven comments recommended that oil should be explicitly prohibited from being carried in the spaces between the inner and outer hulls. The Coast Guard considers this interpretation to be the clear intent of Congress. This clarification has been incorporated into the definitions for double hulls, double sides, and double bottoms in § 157.03 (ii), (jj), and (kk). Those definitions have also been modified to clarify that the spaces between the inner and outer hulls are to be watertight. These issues are closely related to the issue of non-oil cargoes within these spaces, which is discussed in the following paragraph.

An additional comment requested clarification of the applicability of this rule to non-oil cargoes. This rule applies only to the carriage of oil cargo as defined in § 157.03(n). The definitions of double hulls, double sides, and double bottoms in §§ 157.03 (ii), (jj), and (kk) prohibit the carriage of oil in those spaces. The carriage of other cargoes in those spaces is not addressed in this rule. Carriage requirements for most chemical cargoes are found in 46 CFR part 151, 46 CFR part 153, and 33 CFR 151.31, which are unaffected by this rule.

The "tanks" that are referred to in the terms double sides, double bottom, and double hull in §§ 157.03 (ii), (jj), and (kk) do not include independent tanks mounted on top of the weather deck. However, tanks mounted in holds are included. All tanks are subject to § 157.10d(e).

7. *33 CFR 157.03(11) and 157.08(n)(2)*. One comment requested a clarification of the exemption provided in 46 U.S.C. 3703a(b)(1) for vessels responding to oil spills. An oil spill response vessel (OSRV) is defined in new § 157.03(11). This definition includes a vessel that exclusively performs escort service for an oil tanker, since the purpose for such escort is to prevent or minimize oil spills by providing maneuvering assistance to the escorted vessel as needed. An OSRV is specifically exempted from this rule by § 157.08(n)(2).

8. *33 CFR 157.03 (mm), (nn), (oo)*. Although no comments on this section were received, the inconsistency between the terms used to apply MARPOL requirements in 33 CFR parts 151 and 155 (which apply MARPOL requirements to "oceangoing" vessels) and part 157 (which applies MARPOL requirements to "seagoing" vessels) has been resolved by applying MARPOL requirements to "oceangoing" vessels in

all three parts. Both terms have been used to implement the Act to Prevent Pollution from Ships (APPS), which applies MARPOL only to "seagoing" vessels in 33 U.S.C. 1903. APPS does not specifically define "seagoing," which is generally interpreted to mean waters beyond the boundary line.

When 33 CFR part 151 was revised in 1983 to implement APPS, the Coast Guard interpreted "seagoing," as used in APPS, to mean "oceangoing" as defined in § 151.05. When 33 CFR part 157 was also revised in 1983 to implement APPS, the undefined term "seagoing" was retained from the regulations existing in part 157 before APPS. The negligible differences between the § 151.05 definition of "oceangoing" and the general interpretation of "seagoing" were considered and discussed when the § 151.05 definition of "oceangoing" was proposed on July 5, 1983 (48 FR 30674). Section 157.03(mm) incorporates this latter definition, which is applied in revised § 157.08.

Another term "inland," is defined in new § 157.03(nn) to include waters inside of "oceangoing" waters, excluding the Great Lakes. This does not change the definition of "inland waters" in § 2.05-20, which applies to other parts.

"Oil tanker" is defined in new § 157.03(oo), which is consistent with the definition of oil tanker in Annex I of MARPOL. This term is more limited than the term "tank vessel," since a vessel designed to carry only limited quantities of oil is a "tank vessel" but not an "oil tanker." This term is broader than the term "tanker," as defined in 46 U.S.C. 2101(38), since a tank barge is an "oil tanker" but not a "tanker." The MARPOL term "oil tanker" has been incorporated in this rule since that term is used in § 157.08 in relation to existing MARPOL provisions and not to the Act.

9. *33 CFR 157.08.* Four comments addressed the applicability of this rule to certain types of tank vessels. One comment recommended that this rule not apply to a small vessel, whereas another comment requested the application of this rule to a vessel of any size. The law does not provide the Coast Guard with discretion to exempt a vessel based on its size. Therefore, § 157.08(a) applies this rule to a tank vessel, regardless of its gross tonnage.

The applicability of certain piping and equipment requirements for tank vessels other than oil tankers, which formerly appeared in § 155.390, now appears in § 157.08(b). The partial exemption for such vessels that have limited cargo capacity has been moved to new § 157.08(e).

One comment requested that this rule be expanded to include certain delivering vessels that offload within lightering zones more than 60 miles offshore. The Coast Guard does not concur with this request. The law specifically describes the locations where delivering vessels engaged in lightering are exempt until January 1, 2015. Section 157.08(n)(3) is consistent with this description in 46 U.S.C. 3703a(b)(3).

Section 157.08(n)(1) has been amended to clarify that the application of this rule is consistent with 46 U.S.C. 3703a(a)(2), which excludes U.S. and foreign flag vessels that operate exclusively outside of U.S. waters and the Exclusive Economic Zone. This rule is not being expanded to include U.S. vessels that operate exclusively overseas, since such requirements could not be equally applied to foreign flag vessels that operate exclusively overseas. Vessels that call at foreign ports in countries that are parties to Annex I of MARPOL will have to meet Regulation 13F to enter those ports. Regulation 13F of Annex I to MARPOL, which is the related international standard, is expected to enter into force on July 6, 1993.

10. *33 CFR 157.10(d).* Even though no comments on this section were received, a conforming amendment has been made to § 157.10(d). The amendment clarifies that the segregated ballast capacity requirements of this section are unchanged. A vessel that must have a double hull must arrange segregated ballast tanks required under this section in accordance with § 157.10d(c)(4). That section applies only to vessels that are required to have segregated ballast tanks under § 157.10(b) and is discussed in paragraph 17. Protective location requirements in § 157.10(d) for existing vessels, which are not immediately required to have a double hull, remain unchanged by this rule.

11. *33 CFR 157.10d(a).* Five comments recommended changes to the schedule for applying double hull requirements to existing vessels in accordance with § 157.10d(a)(4). Three of these comments recommended faster or slower schedules, while two comments recommended schedules based on parameters other than gross tonnage. Since a schedule is specifically mandated in 46 U.S.C. 3703a, the Coast Guard has no discretion to consider modifications. This schedule is provided in new appendix G to part 157, which is discussed in paragraph 29.

Regulation 13G of Annex I to MARPOL contains provisions which will apply double hull requirements to certain existing vessels (crude oil

tankers over 20,000 DWT and product tankers over 30,000 DWT) 30 years after delivery. This schedule is in certain instances faster and in other instances slower than the schedule in 46 U.S.C. 3703a. U.S. vessels calling at foreign ports in countries that are parties to Annex I of MARPOL will have to meet Regulation 13G to enter those ports. U.S. and foreign vessels trading between U.S. ports and foreign ports in countries that are parties to Annex I of MARPOL will have to meet Regulation 13G as well as the timetable in 46 U.S.C. 3703a. The earlier of the two dates (46 U.S.C. 3703a(c)(3) or 30 years) will apply to those vessels. If the United States does not accept Regulation 13G, oceangoing U.S. vessels on domestic coastwise routes will have to meet the schedule in 46 U.S.C. 3703a, but not Regulation 13G.

The United States has not taken a final position with respect to Regulation 13G, which is expected to enter into force on July 6, 1993. Public comments on Regulation 13G are specifically invited. Appendix G to part 157 reflects only the retirement timetables in 46 U.S.C. 3703a(c)(3).

One comment requested that tonnage, as measured under the U.S. Regulatory Measurement system (46 U.S.C. chapter 145), be used to determine the applicable requirements of this rule. Title 46 U.S.C. 14305(a)(1) permits the use of optional regulatory measurement for this rule.

12. *33 CFR 157.10d(b).* Twelve comments recommended an expansion of § 157.10d(b)(1) to permit alternatives to double hulls. Several of these comments proposed specific alternatives, including the use of bladders or liners, vacuum systems, and the intermediate oil tight (mid-height) deck design. Three additional comments favored research on these concepts, but did not recommend immediate adoption of alternatives. Seven comments opposed adopting the mid-height deck as an alternative. Title 46 U.S.C. 3703a does not provide the Coast Guard with any discretion to implement alternatives for a vessel over 5,000 gross tons. Therefore, this rule does not provide for alternatives to double hulls. The Coast Guard has the discretion to permit an equivalent double containment system for a vessel under 5,000 gross tons, which is discussed in paragraph 36.

The IMO has conducted a study to compare the intermediate oil tight deck concept (also known as the mid-height deck or mid-deck concept) with the double hull design. This study was in keeping with the recommendation for further study in the National Academy of Sciences (NAS) report, "Tanker

Spills, Prevention by Design." The Steering Committee of the IMO study concluded that a mid-height deck tanker is equivalent to a double hull tanker with respect to overall oil outflow. However, the United States reserved its position on this conclusion. The results of the IMO study were considered at the 32d session of the IMO Marine Environment Protection Committee (MEPC 32) in March 1992. Based on those results, the MEPC included the mid-height deck as an alternative to double hulls in Regulation 13F.

The Coast Guard is evaluating the IMO and NAS studies, along with other relevant information on potential alternatives. This includes information on specific alternatives that were submitted to this rulemaking docket as well as other information received by the Coast Guard. The Coast Guard has not completed its evaluation of any alternative, including the mid-height deck tanker.

The Coast Guard does not consider it appropriate to use overall oil outflow as the only basis on which to evaluate the equivalency of alternative hull designs in protecting the marine environment. This would presume a strictly linear (proportional) relationship between the quantity of oil spilled and the resulting impact on the environment for all sizes of spills (i.e. presuming that two spills of half the amount spilled from the Exxon Valdez grounding results in the same environmental damage as a single spill of the full amount spilled from the Exxon Valdez). Overall risk to the environment is a function of the probability and the consequences of various sizes and locations of spills.

Section 4115(e) of the Act requires the Coast Guard to send its evaluation of potential alternatives to Congress, along with recommendations on any alternative concepts that afford environmental protection equivalent to (or better than) double hulls, which the Coast Guard considers to merit adoption. Further legislation would be required to authorize the Coast Guard to implement any such alternative. Any alternatives recommended by the Coast Guard and approved by Congress would be implemented through a future rulemaking. Additionally, the Coast Guard would work through IMO to implement any Congressionally-approved alternatives.

13. *33 CFR 157.10d(c)*. Seventy-nine comments addressed the dimensions for double sides and bottoms prescribed in § 157.10d(c)(1) and (2). Most of these comments recommended different dimensions from those proposed. Twenty-seven comments recommended generally larger protective spaces.

Seven comments recommended generally smaller spaces. Sixteen comments generally supported the proposed dimensions.

Sixteen comments recommended that the Coast Guard adopt dimensions consistent with Regulation 13F of Annex I to MARPOL. Three comments recommended that the dimensions be consistent with those in Annex 2 of MARPOL for Noxious Liquid Substances. Three comments recommended that the dimensions should vary as a function of scantlings. One comment recommended that allowances for sloped bottoms be permitted. One comment recommended that an additional requirement for clearance for passage between framing be considered. Another comment recommended that channel depths be considered.

The dimensions prescribed for double hull spaces have been a crucial issue in this rulemaking; no other aspect of the proposed rule generated such a substantial number of comments from industry, environmental advocacy groups, and the general public.

The Coast Guard considers the dimensions in this interim final rule to appropriately balance economic and environmental concerns. The next generation of tank vessels, designed in accordance with these dimensions, will have substantial resistance against accidental spillage as mandated by 46 U.S.C. 3703a. These rules reflect the latest, proven shipbuilding technology, as well as the strong public consensus for increased protection of the marine environment. Furthermore, the double hull dimensions in this rule are consistent with those in the international standards for double hulls in Regulation 13F of Annex I to MARPOL, as adopted at MEPC 32. The Coast Guard considers international consistency to be extremely important due to the global nature of the industry. Therefore, the many recommendations for different dimensions as described above have not been adopted. The issue of dimensions is closely related to the issue of protectively locating segregated ballast, which is discussed in paragraph 17.

14. *33 CFR 157.10d(c)*, continued. Eighteen comments recommended that the protection required under § 157.10d(c)(1) and (2) be extended to include fuel tanks. One comment opposed such extension. The Coast Guard does not concur with the extension of double hull protection to all fuel tanks. Oil that is carried in fuel tanks represents a relatively small risk to the environment compared with the large amounts of oil contained within

the cargo block. Also, integral fuel tanks external to the cargo block are located aft of the cargo block, in way of machinery spaces, which are less vulnerable to damage in a collision or grounding than more forward spaces. An integral tank carrying oil that is within the cargo tank length of the vessel must have double hull protection; this includes fuel tanks. However, a fuel tank aft of the cargo tank length is not required to have double hull protection.

15. *33 CFR 157.10d(c)*, continued, and *157.10d(d)(3)*. Seventeen comments recommended that existing double hull tank vessels be permitted to continue operating, even if the dimensions of such vessels do not meet the dimensions required for new tank vessels. The Coast Guard concurs with this recommendation, which has been incorporated in §§ 157.10d (c)(1)(iii), (c)(2)(iii), and (d)(3). This is consistent with Regulation 13G of Annex I to MARPOL, as adopted at MEPC 32. Requiring existing tank vessels to undergo modification to have existing double sides or bottoms expanded is not justified. One comment recommended that this "grandfather" provision should not be applicable to combination ore-bulk-oil (OBO) vessels. The Coast Guard is not aware of any justification for limiting this provision for any specific class of tank vessels. Therefore, this recommendation is not accepted.

16. *33 CFR 157.10d(c)*, continued. One comment recommended that vessels meeting the double hull requirements for chemical tankers be permitted to carry oil. The Coast Guard has incorporated this recommendation for existing double hull tank vessels in §§ 157.10d (c) (1)(iii), (c)(2)(iii), and (d)(3). However, the Coast Guard does not concur with this recommendation for new tank vessels. Tank vessels must currently meet all requirements for each cargo intended for carriage. Prior to the Act, a tanker carrying chemicals (noxious liquid substances) and oil had to meet the cargo segregation requirements of 46 CFR part 153 as well as the existing protectively located segregated ballast tank (PL/SBT) requirements of 33 CFR part 157. The Coast Guard's position is that new double hull tank vessels carrying chemicals and oils should continue to meet the requirements applicable to both types of cargoes.

17. *33 CFR 157.10d(c)(4)*. Regulation 13F of Annex I to MARPOL, as adopted at MEPC 32, contains a new provision for protectively locating segregated ballast tanks required by existing § 157.10(b) that have a total capacity which is greater than the volume of double hull spaces based on the double

side width "w" and double bottom height "h." This new provision, which has been incorporated in § 157.10d(c)(4)(i), requires the combined volume of the forepeak, double side, double bottom, and afterpeak tanks to equal or exceed the volume of SBT capacity required under § 157.10(b). This will require most new tank vessels over 70,000 DWT to enlarge the size of double sides and double bottoms (beyond w and/or h) so that all required segregated ballast can fit within the double hull (including the forepeak tank) and the afterpeak tank.

Section 157.10d(c)(4) resolves concerns expressed in 25 comments that the dimensions w and h are inadequate, particularly for large vessels. This section also partly incorporates recommendations in two comments that the volume of double hulls required under this rule should not exceed the volume of required SBT capacity. The double hull requirements for large vessels correspond directly to the volume of required SBT capacity. Most vessels over 70,000 DWT will not need to reserve any additional tankage as non-cargo spaces in order to meet the double hull requirements in this rule. However, the requirements in § 157.10d will result in many smaller vessels having double hull volumes (based on w and h) that are greater than the SBT capacity required under § 157.10(b). This is particularly true for vessels that have deadweight capacities under the minimums for which SBT requirements apply. Section 157.10d(c)(4) does not apply to such vessels.

Section 157.10d(c)(4)(ii) further requires that double side and double bottom tanks must be located "as uniformly as practicable along the cargo tank length." The purpose of this requirement is to avoid the design of tankers with large SBT located or extending inboard to meet the SBT capacity requirements of § 157.10(b), thereby reducing the width or depth of other double side or double bottom tanks to the minimum dimensions w and h. Where the SBT capacity required by § 157.10(b) is greater than that provided by a double hull of dimensions w and h, the SBT must be distributed over the cargo tank length through uniformly wider double sides, a uniformly deeper double bottom, or both. The depth of the double bottom need not equal the width of the double sides. Either or both of these dimensions may be expanded at the owner's discretion to meet § 157.10(b).

Two comments recommended that the Coast Guard incorporate these new requirements for locating SBT. Three

comments opposed adopting these requirements, contending that increasing the size of the double hull to accommodate required SBT will not necessarily increase protection against spillage. The Coast Guard does not concur with this contention. Protection against spillage, particularly from low-energy casualties, is a function of the size of protective spaces. Accordingly, SBT must be distributed so as to maximize the size of the double hull. The opposing comments also claimed that these requirements will unduly constrain development of future designs. The Coast Guard understands that these requirements will restrict certain designs. However, the Coast Guard considers these SBT location requirements to be appropriate since they provide a means of expanding cargo tank protection without impacting cargo capacity.

Two comments raised concerns that these requirements for locating SBT could have a detrimental impact on trim, stability, and hull stress. The MEPC working group (tasked to refine Regulation 13F in November 1991 and at MEPC 32 in March 1992) confirmed that distribution of ballast could have an impact on trim, stability, and hull stress. However, the working group determined that these concerns can be satisfactorily addressed during the design process. In some cases, it may be necessary to provide additional ballast in tanks outside of those constituting the double hull to maintain safe levels of trim, stability, and hull stress. However, the provision of such ballast must be in addition to the ballast required under Regulation 13 (SBT capacity for operational purposes) so that appropriate double hull protection is maintained.

18. *33 CFR 157.10d(d) and 157.08(h).* One comment recommended clarification of the phrase "certificated primarily for service on inland routes," as used in § 157.10d(d). This wording is consistent with the current wording in redesignated § 157.08(h), which refers to vessels that are built according to inland structural rules, but are permitted to operate in the Gulf of Mexico from St. Marks to Carrabelle, Florida and in Lake Michigan from Chicago to Burns Harbor, Indiana. Those specific routes in the Gulf of Mexico and Lake Michigan are known as "limited short protected coastwise routes." The Coast Guard has clarified §§ 157.08(h) and 157.10d(d) by removing the reference to "primary" certification.

Additionally, 23 comments addressed the requirements for inland tank vessels in § 157.10d(d). Two comments

supported the double hull dimensions as proposed. Four comments recommended expanding the minimum width of double sides to 3 feet, which is the current requirement for Type II inland tank barges. The Coast Guard does not concur with this recommendation. A width of 2 feet is considered sufficient for pollution prevention and inspection for these vessels. However, owners would be permitted to build vessels with wider double sides that could be certificated for both oils and chemicals (hazardous materials regulated under 46 CFR parts 151 and 153). Six comments recommended smaller double bottoms, which are often fitted under current industry practice. Many existing double hull tank barges have double bottoms that slope to a minimum depth of 21 inches or smaller. The Coast Guard does not concur with this recommendation. Double bottoms less than 2 feet deep are too small to inspect effectively and safely.

Seven comments recommended an additional requirement to ensure adequate clearance for passage between framing within the double hull. The Coast Guard concurs and has incorporated this recommendation for inland tank vessels in § 157.10d(d)(4).

Three comments opposed application of the double hull dimensions in Regulation 13F to inland vessels. The Coast Guard concurs that draft Regulation 13F was generally developed for oceangoing vessels. The dimensions for oceangoing vessels are not being applied to inland vessels under 10,000 deadweight tons. The double hull dimensions adopted in § 157.10d(d) of this interim final rule are consistent with the double hull dimensions for inland vessels in the proposed rule.

Regulation 13F also contains a tank size limitation for vessels under 5,000 DWT that do not have double sides and bottoms. This limitation has not been incorporated in this interim final rule, but it is further discussed in paragraph 24. Vessels under 5,000 DWT are required to have double hulls under OPA 90, but only double bottoms under Regulation 13F.

19. *33 CFR 157.10d(e).* Eight comments addressed the requirement concerning carriage of oil near the bow. Four comments supported the concept in § 157.10d(e), with two of these comments recommending that protection in § 157.10d(e)(2)(ii) be increased to 10 percent of vessel length (instead of 5 percent as proposed). One comment opposed this requirement. The vulnerability of the bow during a collision justifies this requirement. The Coast Guard considers 5 percent of

vessel length to be an appropriate requirement that is consistent with collision bulkhead requirements of the American Bureau of Shipping (ABS) and with related international requirements under SOLAS.

One comment recommended that the carriage of oil be permitted in independent tanks on deck forward of the collision bulkhead. Cargo oil is specifically prohibited from being carried forward of the collision bulkhead. However, limited amounts of ship's service fuel oil (for operating nearby deck equipment) may be carried forward of the collision bulkhead in accordance with § 157.10d(e)(3). This incorporates current policy, as reflected in NVIC 9-86, without change.

One comment recommended that this requirement be moved to the closely related requirements on prohibited oil spaces in § 155.470 of this chapter. The Coast Guard has decided to keep this requirement located with the other double hull provisions since § 155.470 primarily concerns the location of fuel tanks.

Two comments recommended that certain oil piping be permitted forward of the collision bulkhead. Piping requirements are addressed in paragraph 22.

20. *33 CFR 157.10d(e), continued.* One comment recommended that § 157.10d(e)(2)(iii) be amended to clarify its applicability to a box or trail barge. Such barges will always be protected by another barge immediately forward, making them less vulnerable to bow damage than the lead barge. The comment recommended that a box or trail barge should not be permitted to operate as a lead barge, since they may be built with less bow protection than a lead barge. The Coast Guard concurs with this interpretation of the proposed rule. A change has been incorporated to this section which clarifies its application solely to a barge that is operated exclusively as a box or trail barge.

21. *33 CFR 157.10d(f).* One comment objected to § 157.10d(f), which requires protection for the aft end of the cargo block. The objection implied that double hull spaces would be required at the stern, regardless of the proximity of oil tanks. However, § 157.10d(f) only addresses protection of the aft end of the cargo block. This section will generally not affect self-propelled vessels that have machinery spaces aft of the cargo block. This section will primarily affect barges, which could otherwise have no separation between the aft end of the cargo block and the stern.

22. *33 CFR 157.11(g) (1) and (3).*

Twenty-two comments recommended that cargo piping not be permitted in ballast tanks. One comment opposed further standards for piping locations. The Coast Guard concurs with the recommendations for additional standards to prohibit cargo piping in ballast tanks, which have been incorporated in § 157.11(g)(1). This provision is consistent with Regulation 13F as adopted at MEPC 32. This provision incorporates the exception for short runs of welded pipe that was developed at the November 1991 meeting of the MEPC working group tasked to refine Regulation 13F.

One comment recommended that cargo piping be prohibited in all double hull spaces. The piping requirements in Regulation 13F are primarily based on safety concerns, rather than on environmental concerns. The potential safety hazards of cargo piping are more prevalent in ballast tanks, which are subject to greater corrosion from air and seawater than other spaces. The consensus at MEPC 31 in July 1991 was to limit cargo piping into ballast tanks (but not other double hull spaces) and limit ballast piping into cargo tanks. This limitation was further refined at the November 1991 meeting of the MEPC working group tasked to refine Regulation 13F. The working group extended the limitation to include other types of piping, such as air pipes and sounding tubes, that might otherwise pass between cargo and ballast tanks. The working group also recognized that certain types of cargo piping, such as discharge lines from cargo slop tanks, may have to pass through wing ballast tanks. In such cases, where an alternative arrangement is not practical, cargo lines may pass through ballast tanks as long as such lines are completely welded and the length of passage within the ballast tank is as short as possible. These new requirements on piping were adopted without further revision at MEPC 32. A unilateral requirement in this rule is not justified.

Since most double hull spaces in way of cargo tanks will be used for ballast, the requirements in § 157.11(g)(1) will effectively bar cargo piping from the vast majority of double hull spaces. Also, existing requirements in §§ 157.19(d) and (e) place additional restrictions on cargo piping located near the outer shell of an oceangoing vessel. These restrictions will continue to apply to cargo piping located in double hull spaces other than ballast tanks on an oceangoing vessel. Two comments recommended that this provision be extended to inland vessels. The Coast

Guard concurs. Section 157.11(g)(3) incorporates this concept. This new section applies to all oil piping located within the double hull of an inland or Great Lakes (non-oceangoing) tank vessel.

23. *33 CFR 157.11(g)(2).* Twenty-seven comments addressed requirements for suction wells, which appear in § 157.11(g)(2). Four comments opposed new requirements, with two of those comments recommending incorporation of guidance for suction wells in Regulation 23(3)(c) of Annex I to MARPOL. Nine comments recommended that suction wells not be permitted within 2 meters of the bottom, while three comments recommended prohibition of suction wells anywhere within protective spaces. Ten comments generally supported additional requirements for suction wells, while one comment recommended a specific alternative distance from the hull in which they would be prohibited.

Section 157.11(g)(2) is consistent with current U.S. practices (as reflected in Coast Guard NVIC 1-81) as well as with Regulation 13F as adopted at MEPC 32. It is different from MARPOL Regulation 23(3)(c) in that it is mandatory for all vessels, whereas the MARPOL regulation only requires an adjustment to the maximum allowable outflow calculations for an oceangoing vessel that is not in compliance.

24. *33 CFR 157.19.* A provision in Regulation 13F will limit the size of individual cargo tanks on new vessels under 5,000 DWT to no more than 700 cubic meters (4,400 bbls), unless double sides are fitted. This interim final rule requires a vessel of any size to have double sides and bottoms. Therefore, this particular Regulation 13F provision is not included in this interim final rule.

The interim regulatory impact analysis (Interim RIA) of this rulemaking notes that limiting the size of individual cargo tanks is an effective means of mitigating pollution without restricting overall cargo capacity. At present, only a relatively small number of tank vessels do not already meet this requirement.

It is expected that this provision would have negligible economic impact for the following reasons:

- (1) It would apply only to new vessels;
- (2) Present construction practices for inland barges under 5,000 DWT generally result in cargo tanks smaller than 700 cubic meters (4,400 bbls);
- (3) Future vessels less than 5,000 DWT can be designed with tanks that meet the size limitation without incurring additional costs or adversely impacting cargo capacity.

The Coast Guard has already received one comment on this provision, which generally supports the concept of tank size limits. However, the comment questioned (but did not support or oppose) whether these specific numbers (3,000 DWT, since replaced by 5,000 DWT in the final Regulation 13F, and 700 cubic meters) are appropriate for the inland fleet. The comment included data on the potential impact of this provision. The Coast Guard invites further public comment on this provision (see "Request for Comments"), particularly with respect to inland and Great Lakes vessels.

Another comment, which did not address this specific provision, recommended that the maximum potential outflow requirements (which relate directly to tank size) for larger vessels in § 157.19 should be revised. The Coast Guard concurs that these requirements should be reviewed and updated, particularly in light of the Interim RIA results suggesting tank size limits can be a cost-effective measure. This will be accomplished as part of ongoing efforts to revise domestic and international standards based on probabilistic damage criteria. The United States has actively encouraged these efforts through IMO. Substantial progress on probabilistic methods has already been accomplished, particularly with respect to bulk (dry cargo) carriers and passenger vessels. This is a long-term process which requires additional research and development before probabilistic outflow standards for tankers can be implemented. Therefore, it is not practical to accomplish this revision within the scope of this rulemaking.

25. *33 CFR 157.21*. Two comments recommended additional damage stability standards. Current stability regulations for oceangoing and Great Lakes vessels are in 33 CFR 157.21, 46 CFR 42.20-5, 46 CFR 45.35, and 46 CFR 172.065.

Recognizing that double-hulled tank vessels require greater consideration of damage stability than was provided by existing international requirements, Regulation 13F of Annex I to MARPOL contains new requirements. The Coast Guard is implementing new stability requirements under a separate rulemaking (CGD 91-206), and expects to issue a Notice of Proposed Rulemaking (NPRM) later this year. Interim guidance on stability for double hull tankers has been provided in NVIC 4-92.

A similar comment regarding the stability of inland tank vessels, and a clarification of 46 CFR 172.065 are

discussed in paragraph 33 of this preamble.

26. *33 CFR 157.24(c)*. One comment recommended the adoption of provisions for the submission and review of plans to show compliance with this rule. This recommendation has been incorporated in § 157.24(c). To the extent that Regulation 13F of MARPOL is consistent with this rule, the Coast Guard intends to accept flag administration certification of compliance with Regulation 13F, as evidenced by the International Oil Pollution Prevention (IOPP) certificate, as evidence of compliance with this rule. This follows existing practice under § 157.24, which permits the use of IOPP Certificates to demonstrate compliance with other equivalent domestic and international requirements.

Section 157.04 provides for classification societies to certify the compliance of vessels with certain requirements in 33 CFR part 157. Several classification societies have been authorized to perform certifications under this section, most notably for compliance with § 157.10c. The Coast Guard intends to authorize classification societies to certify the compliance of vessels under their class with the requirements of this rule. Classification societies are invited to request this authorization in accordance with existing § 157.04(b).

27. *33 CFR 157.25(a)*. Even though no comments on this section were received, a conforming amendment clarifies that the applicability of subpart C of part 157 is unchanged.

28. *33 CFR 157.28*. Even though no comments on this section were received, a conforming amendment is necessary due to the paragraph redesignations in § 157.08.

29. *33 CFR 157, Appendix A*. Appendix A to part 157 has been revised to make the requirements on maximum allowable tank length consistent for single and double hull vessels. There has been no substantive change to this requirement. This revision is consistent with amendments to Regulation 24 of Annex I to MARPOL which were adopted at MEPC 32.

30. *33 CFR 157, Appendix G*. Appendix G to part 157 has been added to provide the timetable for applying double hull requirements to existing tank vessels. This timetable is consistent with 46 U.S.C. 3703a and has been included for the convenience of the reader. Regulation 13G will require vessels to be retrofitted with a double hull or retired no later than 30 years after delivery. Appendix G, as it appears in this interim

final rule, does not reflect Regulation 13G.

The Coast Guard has received several inquiries as to the proper interpretation of this schedule. Each year, from 1995 to 2005, a new set of age limitations applies to vessels within each of the three size categories. For example, a 20,000 gross ton single hull tanker delivered on June 15, 1962 would need a double hull on January 1, 1998. A 20,000 gross ton single hull tanker delivered on June 15, 1982 would need a double hull on June 15, 2007.

31. *46 CFR 32.53*. One comment recommended that the inert gas requirements in 46 CFR 32.53 should apply to double hull spaces. This recommendation was prompted by concerns for fire safety, since any leakage from a cargo tank into a void or ballast space creates a vapor explosion risk. Such leakage could occur through holes or cracks in the inner hull bulkhead separating the cargo tanks from the double hull space. Inert gas would ensure that the atmosphere within the double hull space could not contain sufficient oxygen for an explosion to occur.

Since the oiltight integrity of bulkheads separating voids or ballast tanks from cargo tanks is of paramount importance in preventing leakage into such spaces, vessel owners are expected to monitor the condition of the bulkheads and maintain effective anti-corrosion systems. The bulkheads are also subject to periodic inspection by Coast Guard inspectors and classification society surveyors.

The International Maritime Organization's (IMO) Subcommittee on Fire Protection, in cooperation with the International Association of Classification Societies (IACS), has considered the need for additional fire protection measures in void or ballast spaces. The Subcommittee concluded that such spaces should not be permanently inerted (as are cargo spaces) since inert gas poses a danger to personnel and may also tend to accelerate corrosion. However, the Subcommittee has recommended that vessels should have the capability to sample the atmosphere of and admit inert gas to double hull spaces. The Coast Guard may incorporate this recommendation in a future rulemaking.

32. *46 CFR 32.55-45*. Five comments recommended additional standards for venting protective spaces. Although venting standards were beyond the scope of this rulemaking, they may be considered in the future. Existing standards for ventilation are found in 46 CFR 32.55-45.

33. **46 CFR 32.60-1.** Twenty-seven comments recommended additional structural requirements. Eleven of those comments specifically recommended limitations on the use of high tensile steels. Current structural requirements in 46 CFR 32.60-1 incorporate classification society rules. The Coast Guard considers the classification societies to be the appropriate organizations to review and update structural requirements. The Coast Guard actively participates in this review process through its membership on the ABS Board of Managers and ABS Technical Committees. The Coast Guard intends to relay the structural issues raised in comments to this rulemaking to the appropriate ABS committees for consideration. ABS is a member of IACS, which provides an international forum to review, update, and harmonize classification rules.

34. **46 CFR 172.065.** One comment recommended additional stability requirements for inland tank barges. General stability requirements for inspected vessels are in 46 CFR part 170. There are no current standards specifically addressing inland tank vessels carrying oil. Title 46 CFR part 172, subpart E, contains stability requirements for double hull inland barges carrying cargoes regulated under 46 CFR subchapter O. Even though existing 46 CFR 172.065 has been applicable to all vessels that must comply with 33 CFR part 157, subpart B (Great Lakes and oceangoing vessels), the applicability of § 172.065 is not extended to include inland vessels that are now covered under 33 CFR 157.10d. Title 46 CFR 172.060 has been revised to clarify this applicability. Stability considerations are beyond the scope of this rulemaking. However, additional stability standards for inland tank vessels may be considered in the future. Related stability comments are discussed in paragraph 25.

General Comments (Non-CFR Specific)

35. One comment recommended that the regulatory analysis of this rule investigate the impacts on tankers in domestic service. This has been accomplished in the interim regulatory impact analysis (Interim RIA), which is discussed under "Regulatory Evaluation."

36. Two comments recommended that the Coast Guard evaluate the impact of this rule on small businesses. This issue is addressed in the regulatory flexibility analysis, which was performed as part of the Interim RIA. The results of the flexibility analysis are discussed under "Small Entities."

37. Twelve comments addressed standards for equivalent double containment systems, which the Coast Guard may approve in lieu of double hulls for vessels under 5,000 gross tons. Two comments suggested that the Coast Guard issue standards for designing and evaluating double containment systems. The Coast Guard has not adopted this suggestion because the current state of development of these systems is not yet sufficient to permit the drafting of practical specific regulations for evaluating the wide range of possible vessel designs and applications. IMO guidelines for evaluating the pollution prevention equivalency of alternative designs to double hulls will be drafted at MEPC 33 in October 1992. Such guidelines could form a basis for future double containment regulations.

Three comments recommended that the Coast Guard incorporate specific equipment (such as bladders), design features (such as heavier hull plate), or arrangements (such as the mid-height deck) as double containment systems. These comments did not include sufficient evidence of practicality and effectiveness to support a finding that any of the recommended measures are equivalent to a double hull for a vessel under 5,000 gross tons. The Coast Guard is currently evaluating alternative measures for larger vessels as mandated by Congress and noted in paragraph 12 of this preamble. Results of this evaluation may be applicable to these smaller tank vessels.

Four comments recommended that the Coast Guard encourage the development of alternative systems. The Coast Guard encourages such further research and development, since such efforts are in the public interest. However, prospective systems must be proven to be practical and effective before they can be considered for approval.

An owner desiring approval of a double containment system for a specific vessel under 5,000 gross tons should submit a request to Commandant (G-MVI). Such systems will be evaluated only on a case-by-case basis; generic approvals are not anticipated. Applications must contain appropriate evidence of practicality and proven effectiveness in affording spillage prevention that is equivalent to that of a double hull with dimensions as specified in this rule. Systems or arrangements involving operations that are restricted to a specific location must be forwarded through the local Coast Guard Marine Safety Office.

Three comments recommended that double containment provisions be used to permit lesser double hull dimensions

than required by this rule. The Coast Guard does not concur with this concept. Prospective double containment systems must provide equal or greater protection against spillage than a double hull as specified in this rule. Systems providing inferior protection cannot be considered.

38. Eight comments recommended requirements for tank coatings. The Coast Guard strongly encourages owners to apply and maintain effective coatings, particularly in ballast tanks, which are prone to corrosion. The IMO is developing requirements for tank coatings. The Coast Guard is participating in this process and will evaluate the results of these ongoing developments before future regulatory action is considered. In addition, since the issue of tank coatings is closely linked to the issue of hull structure (as discussed in paragraph 33), the classification societies could play a significant role in implementing tank coating requirements.

39. Eight comments requested that a final rule be issued as expeditiously as possible. One comment requested the rule to be finalized after MEPC 31 in July 1991. Another comment recommended that the Coast Guard delay issuing a final rule until after MEPC 32 in March 1992. The Coast Guard has issued this interim final rule as expeditiously as was possible after MEPC 31 (and MEPC 32) to permit plans for the construction of new tank vessels to proceed without further delay. It has been revised since MEPC 32 to incorporate minor technical changes that were made to Regulation 13F at the time of final adoption. This has been done to maintain technical consistency between U.S. regulations and the related international standards.

40. One comment recommended requirements for permanent ballast in order to hydrostatically limit cargo loads on new and existing vessels. The Coast Guard has no authority under the law to permit such systems in lieu of double hulls for new vessels. Such systems were evaluated for supplemental use with a double hull. However, based on the Interim RIA, the Coast Guard does not consider a requirement for such systems, in addition to double hulls, to be justified for new vessels. Requirements for existing vessels are discussed in the following paragraph.

41. One comment recommended that provisions for additional structural and operational measures for existing vessels awaiting double hull retrofit or retirement in accordance with the timetable in 46 U.S.C. 3703a be issued simultaneously with this rule. The Coast

Guard does not concur with this recommendation. The phaseout timetable for existing vessels is incorporated in this rule; other operational and technical measures for existing vessels are being implemented through a separate rulemaking. Delaying this rule pending development of the other provisions for existing vessels would not be in the public interest.

On November 1, 1991, the Coast Guard issued an advance notice of proposed rulemaking (ANPRM) on measures for existing vessels (56 FR 56284). The public comment period on the ANPRM closed on January 31, 1992; a notice of proposed rulemaking (NPRM) is under development. Two comments received under this double hull rulemaking included specific recommendations for existing vessels; these comments have been forwarded to the public docket for the existing vessel rulemaking (CGD 91-045).

Regulation 13G of Annex I to MARPOL includes a requirement that vessels built prior to existing requirements for protectively located segregated ballast (pre-MARPOL tankers) convert tanks protecting 30 percent of the sides or 30 percent of the bottom to non-oil spaces no later than 25 years after delivery. This provision is not included in this interim final rule. However, it will be considered in the separate rulemaking on measures for existing vessels (CGD 91-045). The United States has not taken a final position with respect to Regulation 13G.

42. Two comments recommended that the development of this rule should not necessarily be limited to an extension of existing standards, many of which were developed decades ago. The Coast Guard strongly concurs with this recommendation. These rules, which are applicable to the next generation of tank vessels, reflect the latest available proven technology as well as the public consensus for increased protection for the marine environment. Extensions of existing standards, without consideration of current priorities and technology, would be inappropriate.

43. One comment recommended that this rule be based on the energy absorption capabilities of prospective designs. A related comment recommended that the Coast Guard update its database on marine casualties. The Coast Guard encourages further research on structural failure modes and related energy absorption due to collisions and groundings. However, existing data and engineering analyses of energy absorption phenomena are not sufficiently developed to allow development of design requirements based on those

criteria. This issue is closely related to the issue of probabilistic damage standards discussed in paragraph 24.

44. Two comments recommended that non-design measures for preventing accidental pollution be considered. The Coast Guard concurs. Tank vessel arrangement is just one element of the complex system of tank vessel transportation. Many other elements, particularly those relating to human factors, are worthy of further consideration. However, the scope of this rulemaking was limited to implementing the double hull requirements of OPA 90. Other sections of OPA 90, which are being implemented in separate rulemakings, will address some of these other elements.

Regulatory Evaluation

This rulemaking is major under Executive Order 12291 and significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). An analysis of this rule is in the public docket. Implementation is projected to gradually increase the transportation cost of oil by four-tenths of a cent per gallon over the next 25 years.

This double hull rulemaking is one of several rules which will be issued in accordance with titles IV and V of OPA 90. Some of these rules will interact with each other. The overall impact of these rules may not equal the cumulative total impact of each rule considered individually. For example, the beneficial impact of the double hull rule is the reduced amount of oil spilled after certain grounding or collision casualties. However, the impact of this rule will be reduced by future OPA 90 rulemakings that will improve operational and navigational safety of tank vessels. These other rules will reduce the numbers of collisions and groundings and resulting environmental damage or harm which, in turn, will reduce the overall benefits of (or the total spill reduction attributable to) double hull construction.

The Coast Guard intends to conduct a comprehensive, programmatic RIA for all title IV and V OPA 90 rules, once they are all completed and issued. This comprehensive RIA will evaluate the interaction of rules relative to each other, and assess their impacts in total. However, since the rules will be developed and issued individually over several years, each rule will undergo an interim evaluation (Interim RIA) against a baseline that assumes no other OPA 90 requirements are implemented.

Accordingly, an Interim RIA of this rule was prepared and placed in the public docket. The Interim RIA

addresses the need for this rulemaking, the standards adopted in this rule, the alternatives to this rule, and the anticipated economic impacts of this action. A Notice of Availability of the Interim RIA was published in the Federal Register on January 15, 1992 (57 FR 1854), and public comments on the Interim RIA were invited. Six comments were received; none of the comments resulted in revision of the Interim RIA. An addendum to the Interim RIA has been placed in the public docket to explain a reevaluation of the estimates of the projected benefits of spill prevention. A discussion of oil spill unit values and projected benefits is included in the Summary of the Interim RIA. Summaries of the Interim RIA and the public comments appear in the two following subsections.

Summary of the Interim RIA

The Interim RIA examined the economic costs and benefits of eight hull designs. A design conforming to the current international standards for protectively located segregated ballast (MARPOL tanker), in which a portion of the cargo block is protected by double sides or a double bottom, or both, was used as a base line reference. Other designs analyzed for comparison included a double hull tanker (the design adopted by this rule), a MARPOL tanker with cargo hydrostatically balanced with the surrounding water, a tanker with a double bottom, a tanker with double sides, a tanker with double sides and hydrostatically balanced cargo, and a MARPOL tanker with individual tanks smaller than required under the current maximum tank size standards.

The Interim RIA indicates that the benefit-to-cost ratio for a double hull tanker is comparable to the ratios for the other hull designs that were evaluated. The MARPOL tanker with smaller individual cargo tanks was the only hull design examined with a greater benefit-to-cost ratio than the double hull tanker. Even though the incremental increase in oil transportation costs for a MARPOL tanker with smaller tanks is projected to be half the increase for a double hull tanker, the double hull tanker is estimated to prevent one-third more spillage.

The cost and benefit projections do not vary significantly for variations of double hull designs (i.e. dimensions of protective spaces). The Coast Guard does not have authority to permit the use of an alternative hull design (in lieu of a double hull) for a vessel over 5,000 gross tons.

Worldwide, this rule is projected to increase the total cumulative oil transportation costs during the transition period (1990 to 2015) by \$15 billion (\$3.5 billion discounted to 1991). This increase is primarily the result of additional construction and maintenance costs of double hull tankers. During this period, the transition to double hull tankers is projected to prevent 86,000 tons of oil spillage in U.S. waters that would have otherwise resulted from groundings and collisions. This corresponds to an average undiscounted cost of \$174,000 per ton, or \$24,000 per barrel, of prevented spillage.

The economic benefits of spill prevention are the avoided cleanup costs, third party losses, and natural resource damages that would otherwise be incurred. The projected dollar value of these benefits depends upon estimates of future cleanup costs and the valuation of natural resource use and non-use damages. The Interim RIA projected the benefits of spillage prevented by this rule (during the 1990-2015 transition period) to be \$1.1 billion (\$230 million discounted to 1991), based upon a spill-unit value of \$13,000 per ton for cleanup costs and third party damages. This spill-unit value was derived from an analysis of historic cleanup costs and damage claims for major oil spills in U.S. waters during the period 1970 to 1990. Natural resource damages resulting from these oil spills were not quantified or taken into account. Accordingly, the discounted cost of this rule was projected to exceed the discounted benefits by \$3.3 billion.

The Coast Guard amended the Interim RIA with addenda on May 6, 1992 and on July 29, 1992 to revise the spill unit values and the estimated benefits, based on an alternative approach. This was done because the spill-unit values used in the initial Interim RIA did not include natural resource damages and because cleanup costs were based upon average costs over a twenty-year period. There have been sharp rises in cleanup costs and damage claims in recent years. Revised cleanup and third-party damage costs of \$37,000 per ton were derived from a more current base (1989 to 1991), and natural resources damages of \$35,000 per ton were included, based upon the undiscounted dollar value of the recent settlement of claims in the Exxon Valdez case. These changes resulted in a revised total spill unit value of \$72,000 per ton. This corresponds to a revised benefit of \$6.0 billion (\$1.3 billion discounted to 1991), based on the projected 86,000 tons of spillage prevented by this rule during

the transition period (1990-2015). Therefore, under this approach, the net discounted cost of this rule would be revised to \$2.2 billion, based on the alternative spill unit value.

Both this and the previous approach suffer from potentially serious drawbacks. For example, as discussed above, the first approach omits some important components of the social costs of a spill. The second approach ignores potentially valuable data by excluding from the sample all accidents occurring before 1989. It relies exclusively on data from only one major spill, the *Exxon Valdez* grounding, to estimate the value of natural resource damages. The second approach also assumes that the amount paid by Exxon in its settlement with the State of Alaska and the United States reflects the true social costs of the natural resource damages associated with that accident.

Consequently, the Coast Guard is undertaking further work to refine and expand its database of oil spill cleanup and damage cost information and to further study natural resource damage valuation, which is currently the subject of comprehensive research and evaluation by NOAA. This will facilitate the development of more accurate and representative spill unit values to serve as the basis for reevaluating the benefits estimates in this and other regulatory benefits estimates in this and other regulatory evaluations undertaken for the implementation of OPA 90. It is the Coast Guard's position, based on currently available data, that the spill unit values of \$13,000 per ton and \$72,000 per ton represent reasonable and suitable lower and higher values to serve as a range for the interim economic evaluation of this rule.

For the year 2015, when the transition to double hull tankers serving the U.S. is complete, prevented spillage is projected to be 7,800 tons. This corresponds to annual benefits ranging from \$100 million to \$560 million, based on spill-unit values of \$13,000 and \$72,000 respectively. The incremental increase in annual transportation costs for the year 2015 is \$1.5 billion, which corresponds to a 0.4 cent increase in cost per gallon of oil transported. Therefore, the net annual post-transition cost of this rule will range from \$940 million to \$1.4 billion, depending upon which spill-unit values are assigned to the benefits.

The overwhelming majority of these costs and benefits are attributable to international crude oil shipments. Most vessels in this trade are larger than 65,000 deadweight tons. Double hull vessels of this size will have only a

negligible decrease in cargo capacity from a MARPOL tanker of equivalent dimensions. For smaller vessels, primarily coastal product tankers, an assumed 15 percent reduction in cargo capacity increases the additional (incremental) transportation costs by 50 percent over the base case. This corresponds to a 54 to 80 percent increase in net cost, based on spill-unit values of \$13,000 and \$72,000 respectively. A standard (195 foot long) inland tank barge of double hull construction can carry only 70 percent of the capacity of a single hull barge of equivalent overall dimensions. However, market conditions predating OPA 90 had already prompted a transition to double hull inland tank barges.

A number of vessels, primarily general cargo break-bulk ships, have carried limited quantities (less than 20 percent of total deadweight) of oil in bulk within deep tanks under the cargo holds. New vessels may not carry oil in those tanks, and existing vessels must discontinue carrying oil in those tanks in accordance with the phaseout timetable for existing vessels in the Act. The Coast Guard anticipates that very few vessels of this type would be constructed in the future, even in the absence of this rule, since most dry cargo is now transported in container ships. Therefore, only vessels primarily designed to carry oil in bulk were considered in this analysis.

The economic impact of this rule will be distributed differently across various sectors of the U.S. marine transportation system. Spread over the 25 year implementation period, the impact on international tanker operators is expected to be small, since their vessels are estimated to have a useful life of 25 years. The ability of a small international tanker operator to raise sufficient capital to construct double hull tankers (15 percent to 20 percent more than for an equivalent MARPOL tanker) is likely to be contingent on projected freight rates adequately covering capital and operating costs. Rates may not rise sufficiently to cover these costs during the early years of the transition period, when new double hull tankers will compete against existing single hull tankers. In the long term, rates are expected to rise as older vessels are retired. This will create more favorable financing conditions for new construction.

Operators of coastal tankers and tank barges will face impacts similar to those of owners of international tankers. The smaller cargo capacity of these double hull vessels, compared with the capacity

of single hull vessels with equivalent outer dimensions, could place existing single hull vessels at a greater advantage during the transition years, particularly on routes where draft and beam are restricted. Some coastal tankers may be retired prior to the end of their useful life, since such vessels have a projected useful life slightly longer than for a tanker in international trade. This could hasten orders for new construction at domestic shipyards.

Large operators of inland barges are not expected to be significantly affected by this rule, since double hull construction had become a trend for this segment of the industry prior to the enactment of OPA 90. Smaller, undercapitalized operators of inland barges, harbor tankers, and non-Alaska trade coastal tankers and barges may be adversely impacted. However, the long term situation of these operators will be impacted to a much greater degree by preexisting economic factors unrelated to this rule. These factors have acted to consolidate the inland tank vessel industry for many years.

Public Comments on the Interim RIA

The Coast Guard received six documents containing nearly 30 specific comments on the Interim RIA. Two comments addressed the adverse economic impact of the double hull requirement on the coastal and inland oil transportation operators. Since these sectors include the small entities within the larger marine oil transportation sector, those particular comments are addressed in the next section under "Small Entities." The other comments are discussed in the following paragraphs.

Several comments noted concerns over the high cost of the rule relative to its benefits. This cost results from the transition to double hull construction for new tank vessels. The Coast Guard does not have discretion under OPA 90 to permit any design concept other than a double hull. Therefore, aspects of this rulemaking within the Coast Guard's administrative discretion cannot significantly affect these costs.

One comment suggested that the Interim RIA underestimates the amount of spillage that will be prevented by double hulls because past accidents have demonstrated that double hull construction is much more resistant to hull penetration in high-energy grounding situations than was assumed in the Interim RIA. An opposing comment stated that the Interim RIA overestimates the effectiveness of double hull construction. The Coast Guard believes that the Interim RIA uses a reasonable estimate of the spill

prevention effectiveness of double hulls in view of the many variables relevant to each specific grounding situation (such as the speed and size of vessel, nature of bottom, weather conditions, tides, and currents).

One comment contended that the Interim RIA substantially overestimated the costs of double hull construction. Whereas the Interim RIA used 15 percent to 20 percent as the incremental double hull construction cost (relative to an equivalent single hull vessel), the comment asserted that a carefully designed double hull tanker could be built for considerably less. The Coast Guard concludes that, under certain circumstances (innovative design and production engineering, multiple-ship orders and serial production), cost reductions could be achieved. However, these circumstances cannot be assumed for all replacement construction during the 25 year transition period. The 15 percent and 20 percent figures used in the Interim RIA are based upon recent construction orders (including single hull orders with options for double hulls) and a synthesis of a broad canvass of informed industry opinion. They are intended to be sufficiently conservative to account for unforeseen circumstances and minor cost differentials.

One comment discussed hydrostatically-balanced MARPOL tankers (M-HBL). It included data and analyses asserting that existing MARPOL tankers (if operated in a hydrostatically-balanced condition) could be as economically viable as double-hulled vessels, with the added environmental benefit that this alternative could be implemented immediately. The Coast Guard recognizes that M-HBL tankers may be as effective as double hull vessels under certain grounding scenarios, but M-HBL offers minimal protection under collision scenarios. The long-term intent of OPA 90 is to develop hull designs which maximize environmental protection under as many circumstances as possible. The M-HBL design does not meet this long-term goal; however, it may be an appropriate short-term measure for existing vessels. A copy of this comment has been placed in the public docket for that regulatory project (CGD 91-045).

One comment stated that, contrary to the Interim RIA, the U.S. balance of payments would not be affected by foreign-owned vessels, because construction would be in foreign shipyards with foreign capital. While it is correct that the initial construction capital would not necessarily be U.S. money, the increased construction costs (including interest payments) and

operating costs are ultimately paid by the U.S. in the form of higher transportation costs over the construction amortization period and service life of the vessel. Thus, the U.S. balance of payments is affected as indicated in the Interim RIA.

One comment questioned whether certain U.S. naval vessels (oilers and tankers) should be included in the analysis, since they may be public vessels and therefore exempted from vessel inspection and pollution prevention regulations by 46 U.S.C. 2109. The exemption in section 2109 applies to a "public vessel," as defined in 46 U.S.C. 2101(24). Determinations of public vessel status are made on a case-by-case basis. This rulemaking does not address determinations under § 2101(24). However, the relatively small number of public tank vessels, and the fact that such vessels cannot be engaged in commercial service, precludes a significant impact on the analysis.

Two comments asserted that the Interim RIA overestimates the double hull benefits because it did not account for an increased number of voyages to made up for lost cargo capacity; this would increase in the probability of casualties. The cost-benefit calculations in the Interim RIA made appropriate adjustments for loss of cargo capacity under several of the design alternatives, including double hulls.

One comment held that both crude oil and product imports to the U.S. will increase higher and faster than forecast by the Department of Energy, particularly as a result of announced refinery closings (due to the Clean Air Act Amendments of 1990). Although the Interim RIA places substantial reliance on Department of Energy import forecasts, they were verified against similar forecasts by other energy institutes and associations. Although refinery closings may affect future import levels and distribution patterns, accurate forecasts cannot be made on the basis of announcements alone.

One comment stated that the Interim RIA did not fully represent costs to barge operators, since it did not mention increased fuel consumption from towing heavier (or extra) double-hulled barges in order to move the equivalent amount of cargo. The Interim RIA analyzes transportation costs on a per-ton basis, which takes into account reduced cargo capacity per voyage (referred to as "voyage productivity" in the Interim RIA).

Small Entities

The Coast Guard has evaluated the impact of this rule on small entities in

accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This evaluation was carried out as part of the Interim RIA for this rule.

For purposes of small entity impact, the inland and coastal barge transportation sectors contain the greatest number of small, independently-owned companies:

- The coastal tank barge industry is comprised of 52 companies which operate 191 barges; however, 35 of those companies operate only one or two barges;
- The inland tank barge industry is comprised of 409 companies which operate 3,461 barges; however, 219 of those companies own just one barge.

It is difficult to quantify the degree to which the small entity barge sector will be impacted by this rule. Market conditions have been depressed for some time, forcing operators to defer replacing older barges. The existing barge fleet is already past middle-age; nearly 50 percent of the fleet is over 20 years old. Assuming that the service life of a tank barge is 30 years, then the industry, as a whole, is faced with replacing this fleet over the next 25 years, regardless of OPA 90.

The Interim RIA acknowledges that coastal and inland operators will face problems of capital cost, replacement timing, and freight rate differentials. Smaller, undercapitalized operators will have particular difficulties in financing new construction. However, these difficulties existed prior to OPA 90 and cannot be fully attributed to this rule.

The economic impact of this rule is nominally associated with the additional construction costs (of double hull over single hull tankers) and operating costs (due to loss of cargo capacity). There is evidence that the industry was already adjusting to these conditions, since there has been a trend towards double hull barge construction which began well before OPA 90. This trend appears to be based upon industry's desire to broaden the cargo flexibility of tank barges, since certain chemical cargoes have long been restricted to double hull barges. It should be noted that double side widths required for most chemical barges are greater than the side dimensions under this rule (3 to 4 feet, vice 2 feet). This rule does not change existing carriage requirements for chemicals.

The Interim RIA recognizes that adjustments to the market structure will be necessary if the smaller, undercapitalized companies are to survive. Such adjustments are possible, such as the development of long-term shipping commitments between operator

and customer that will allow contracts to be used as collateral for construction loans (similar to present arrangements for large ship financing).

It must also be noted that the forecast of future inland and coastal transportation of refined oil products is for slow, continued growth above present levels. Thus, there will be a demand for a double-hulled barge fleet comparable to the existing fleet, with comparable crew employment levels. This long-range demand should be adequate to stimulate capital investment opportunities. Financing mechanisms should evolve to meet industry needs over the next 25 years.

Comments With Respect to Small Entities

Two comments on the Interim RIA concerned the adverse economic impact on the coastal and inland vessel operators.

One comment asserted that the Interim RIA substantially underestimates the adverse economic impact on the coastal and inland oil transportation sectors because the phaseout schedule, when viewed against the age of the existing fleet, will result in two brief surges of retirement and replacement (rather than a gradual replacement). It noted that this high-demand construction period, coupled with limited shipbuilding capacity, would result in higher construction costs than assumed in the Interim RIA. The comment further asserted that construction financing may be limited, or available only at high interest costs, since capital markets may be discouraged from investing in replacement construction.

The Coast Guard recognizes that the inland and coastal barge operators will be the most adversely impacted sector since a number of smaller, undercapitalized companies are now engaged in that trade. However, due to the age of the existing barge fleet, this sector is already faced with the need to replace most of the fleet over the next 25 years. The Coast Guard's opinion is that the extended period (until 2015) for the phase out of most single hull barges allows ample time for an orderly transition to double hull barges. Although barge retirements may be in surges, reduced Navy construction programs should make sufficient shipyard capacity available to maintain competitive pricing on replacement construction.

The other comment stated that the Interim RIA did not consider self-propelled vessels smaller than 5,000 gross tons. These vessels include small harbor tankers, typically less than 1,000

gross tons, which refuel commercial ships. The comment alleged that double hull construction costs for this type of vessel would be 60 percent greater than for single hull construction, and that cargo capacity would be reduced by 30 to 50 percent. These conditions would preclude construction of replacements. The Coast Guard has identified 43 existing, self-propelled tank vessels under 1,000 gross tons (excluding oil spill recovery vessels, which are exempted). Under OPA 90, these vessels are allowed to remain in service until 2015. The average age of a vessel in this group is 47 years old; only eight have been built in the last 30 years, and none have been built since 1980. The Coast Guard views this data as a clear indication that the industry has already stopped building such small tankers and has been replacing existing small tankers with tank barges.

Collection of Information

This rule contains collection of information requirements. Section 33 CFR 157 has been revised to require the submission of plans verifying compliance with this rule. No additional information collection burden is anticipated for the owner of a U.S. vessel, since compliance with this rule can be verified from other information that is currently submitted under 33 CFR 157.24 and 46 CFR 31.10. However, the owner of a foreign vessel will have to submit additional information to verify compliance with this rule. Most additional submissions will become unnecessary when related MARPOL amendments enter into force (expected in July 1993), providing for such information on the International Oil Pollution Prevention Certificate (IOPP). The Coast Guard has submitted the information collection requirements in this rule to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and OMB has approved them. The section number is 46 CFR 157.24 and the corresponding OMB approval numbers are OMB Control Numbers 2115-0503 and 2115-0106.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

This interim final rule sets standards for the construction of double hull tank vessels. The authority to regulate tank

vessel construction standards is delegated to the Coast Guard by the Secretary of Transportation, whose authority is committed by statute.

Since tank vessels move between U.S. ports in the national marketplace, and between U.S. and foreign ports in the international marketplace, tank vessel construction is a matter for which regulations should be of national scope to avoid unreasonably burdensome variances. The Coast Guard received no comments addressing the federalism implications of this rule. Therefore, by adopting this interim final rule, the Coast Guard continues the long-established practice of preempting State action addressing the same subject matter.

Environment

The Coast Guard environmental assessment (EA) for Double Hull Design Requirements for Tank Vessels was prepared in accordance with Commandant Instruction M16475.1B, the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91-190), and the Council of Environmental Quality Regulations of July 1, 1986 (40 CFR parts 1500-1508).

This interim final rule implements the double hull provisions in section 4115(a) of OPA 90 (46 U.S.C. 3703a), and is not expected to result in significant impact on the quality of the human environment, as defined in NEPA. The Coast Guard has placed a Finding of No Significant Impact (FONSI) in the public docket.

Public Participation

Industry, environmental advocacy, and other public comments received in response to the proposed rule were considered in preparation of the EA. A public meeting was held on September 26, 1991 to obtain the views of interested parties regarding the scope of appropriate documentation for compliance with the provisions of NEPA. No comments concerning double hull design standards were received as a result of that meeting. On January 15, 1992, a notice of availability was published in the *Federal Register* (57 FR 1854) inviting public review and comment on the EA. Three documents commenting on the EA were received and are discussed under "Public Comments on the EA."

Discussion of the EA

The EA discusses the need for regulatory action, compares the double hull design with other design alternatives for tank ships and barges, summarizes public comments, and describes the significance of the action.

The EA for this rule is summarized as follows:

Owners are required to either retrofit existing tank vessels with double hulls or remove them from service in U.S. waters in accordance with a statutory timetable beginning in 1995. The timetable will result in total conversion of the tank vessel fleet to double hull vessels by 2015. Single hull tank vessels will continue to operate until owners voluntarily retire them from service or until they are prohibited from service in accordance with the timetable.

Double hull construction places a second steel barrier between vessel cargoes and the environment. The second, or inner, hull will be located sufficiently inboard so that the probability of its rupture during a low-energy collision or grounding is relatively low compared to that for a single hull.

U.S. oil imports are expected to increase from 7.61 million barrels per day in 1991 to 12.33 million barrels per day in 2010. This increase in demand is expected to result in a proportional increase in tank vessel traffic with an associated increase in the probability of accidents.

OPA 90 requires the Coast Guard to issue rules implementing various measures to reduce the risk of oil spills in U.S. waters. In order to issue a variety of regulations pertaining to a wide range of issues in a timely manner, a number of individual rulemaking actions will be initiated, each accompanied by its own environmental assessment. The Coast Guard realizes that some of the expected beneficial effects of individual rules may be rendered redundant, or reduced, by the effects of other rules. For example, the benefits of double hull construction are realized from the mitigation of pollution from low energy grounding or collision incidents. Other rules under development to improve the safety of vessel navigation and operation are expected to reduce the occurrence of such incidents, the magnitude of the resulting spills, and the damage from these spills, thus reducing the overall benefits from (total spillage prevented by) double hull construction.

The EA makes only a limited assessment of the specific environmental consequences of the double hull requirement since, even without this rule, double hull construction is required by OPA 90. This rule establishes design standards for use by the shipping and shipbuilding industries in order to comply with the law. The EA also analyzes the environmental consequences of

alternative design concepts as well as the existing (pre-OPA 90) standards.

Approximately 65 percent of total major spill volume in U.S. waters each year results from groundings. Collisions account for approximately 18 percent; structural and other failures, 10 percent; and fire and explosions, 8 percent.

In the aftermath of the *Exxon Valdez* oil spill, the Coast Guard commissioned the National Research Council (NRC) of the National Academy of Sciences to assess whether alternative tank vessel designs would improve maritime safety and environmental protection. An NRC committee examined (1) current tank vessel designs, operations, and regulations; (2) the rupturing phenomena of structural steel hulls and subsequent oil outflow dynamics; (3) engineering and salvage considerations; and (4) benefits and costs associated with various design alternatives. Their report, *Tanker Spills: Prevention by Design*, described their findings and was a significant resource for the Coast Guard's Interim Regulatory Impact Analysis (Interim RIA) of this rule. The Interim RIA examined seven basic design alternatives and two compound designs combining two basic alternatives evaluated. The Interim RIA is the Coast Guard's basis for comparison of the alternatives in the EA.

Alternatives discussed and compared in the EA included: (1) No Action; (2) Double Bottom; (3) Double Sides; (4) Double Hull; (5) Hydrostatic Balance; (6) Intermediate Oil Tight Deck with Double Sides; and (7) Smaller Tanks. All design alternatives were compared to current, international design and construction standards. Vessels meeting the current standards are known generically as MARPOL tankers.

Oil spills in U.S. waters average approximately 9,000 tons per year, of which an estimated 2,100 to 5,400 tons (23 to 60 percent of the total) could be mitigated by tank vessel design improvements. Estimates of oil spillage reduction for each of the design alternatives were determined by applying a common set of casualty scenarios based on simplified assumptions. The assumptions include a casualty mix of 60 percent groundings and 40 percent collisions, and, that 50 percent of accidents occur at speeds of 5 knots (low energy) and 50 percent occur at speeds of 10 knots (high energy). Based on these assumptions, each alternative examined (except double sides) has the potential to reduce oil outflow under certain casualty conditions. Of the proven designs which were evaluated, a double hull provides

the best overall protection for the range of vessel sizes and casualties considered in the EA.

Due to significant differences in design, operation and service routes, barges were analyzed and discussed separately. Most tank barges serve coastal and inland routes. They are typically smaller than tank ships and carry less cargo. However, they operate primarily in waters close to shore, which have a greater environmental sensitivity and more hazards to navigation than open waters.

Prior to OPA 90, double hulls were not required for tank barges unless they were certified to carry certain hazardous chemicals. However, review of recent tank barge construction orders indicates that the industry has been moving toward double-hull construction for all new barge orders, in order to allow maximum cargo-carrying flexibility. However, barge-building activity has been at low levels in recent years; a substantial increase in barge construction is not likely in the near future. Under OPA 90, existing single-hull tank barges of less than 5,000 gross tons (approximately 10,000 cargo deadweight tons) may continue in service until 2015; approximately 96 percent of the tank barge fleet is below this size limit.

Therefore, this rule will only gradually affect this industry as existing single hull barges are replaced with double hull barges over the next 23 years. Consequently, the environmental benefits associated with this rule will not be significant during this transition period.

Public Comments on the EA

One comment stated that the effectiveness of the possible hull designs were all compared to an existing, MARPOL tanker, even though the "no action" alternative was conversion of the fleet to double hulls without the design standards of this rule. The Coast Guard considers the MARPOL tanker to be an appropriate base line (which was used in the NAS study, the Interim RIA, and the EA) for comparing the relative effectiveness of several possible design alternatives, even though alternatives to double hulls are not permitted by OPA 90.

One comment stated that the EA did not include any assessment of secondary effects of this rule, particularly increased smokestack emissions from the increased vessel traffic. The Coast Guard's position is that this increase in emissions, if any, cannot be realistically quantified.

Two comments stated that the EA did not address the (statistically) increased

probability of collisions and groundings due to increased vessel traffic. The Coast Guard recognizes that a reduction of cargo capacity of individual vessels could slightly increase overall traffic and exposure to accident risks, other things being equal. However, the Coast Guard believes this increase would be insignificant compared with the 50 percent increase in traffic projected over the next 25 years due to increasing oil consumption and imports. Large oceangoing vessels will have little or no reduction in cargo capacity (or resulting increase in traffic) due to existing ballast requirements. An increase in coastal traffic could occur if there is retrofitting of existing coastal tankers by replacing the cargo block; however, a significant number of such retrofits are not anticipated. An increase could also occur as a result of limitations on vessel dimensions due to navigational restrictions, such as draft limits and lock dimensions for inland barges. However, barges have been moving toward double hull construction due to influences beyond this rule. Any increase in traffic due to reduced individual capacity will not occur until a significant percentage of the existing fleet is retired and replaced with double-hulled vessels. As stated in the RIA, and other parts of this preamble, other OPA 90 rules addressing a variety of construction, operational, and response planning actions are expected to reduce the probability of casualties, despite any increases in tanker traffic resulting from decreased individual capacity. Since this effect interacts with other OPA 90 provisions, the Coast Guard will incorporate this concept into the final composite RIA.

One comment noted that the diversity of units used in the EA (and Interim RIA), such as barrels, short tons, long tons, and other units, made the analyses difficult to follow. The data used in the studies came from a variety of sources (Department of Energy, Army Corps of Engineers, shipping registers, and similar sources), which published their data in different units. Where the EA and Interim RIA reprinted basic data, the original units were maintained (to allow verification against the sources); appropriate conversions were made for purposes of calculations.

One document containing many detailed comments was received after the expiration of the comment period. These comments contended that the EA does not satisfy the requirements of NEPA and does not justify a FONSI. The Coast Guard does not concur with these comments and has determined that the EA satisfies the requirements of NEPA and justifies issuance of a FONSI.

Several of these comments concern the appropriate degree of environmental documentation under NEPA. As previously discussed, a public meeting on that issue was held on September 26, 1991 and no comments were offered at that time. However, these late comments will be further considered along with other comments that are received in response to this interim final rule. Additional comments on the sufficiency of the EA and on the Coast Guard's FONSI are specifically invited.

Significance of this Rulemaking Action

(1) Double hull construction is mandated by law and will occur with associated economic impacts and environmental benefits;

(2) Once the tanker fleet is fully double-hulled, the proposed standards will prevent the discharge of an estimated 1.5–2.5 million gallons (5,000–8,000 tons) per year of oil into U.S. waters;

(3) Environmental benefits of this rule will be negligible until a substantial portion of the tanker fleet has been converted from single hull to double hull;

(4) Inasmuch as single hull vessels will be phased out over a period commencing in 1995 and continuing until 2015, it will take approximately 20 years for the estimated double hull environmental benefits to come into full effect; and

(5) Double hull construction will prevent or mitigate oil outflow in most groundings and collisions. Additional OPA 90 rules that are under development will reduce the number of such casualties, thereby reducing the actual long-term impact of double hull construction on the environment.

Appendix—MARPOL Amendments for the Prevention of Oil Pollution in the Event of Collision or Stranding

Regulations 13F and 13G of Annex I of MARPOL were adopted by the IMO Marine Environment Protection Committee on March 6, 1992.

Regulation 13F of Annex I to MARPOL

(1) This regulation shall apply to oil tankers of 600 DWT and above:

(a) For which the building contract is placed on or after July 6, 1993, or

(b) In the absence of a building contract, the keels of which are laid or which are at a similar stage of construction on or after January 6, 1994, or

(c) The delivery of which are or after July 6, 1996, or

(d) Which has undergone a major conversion:

(i) For which the contract is placed after July 6, 1993; or

(ii) In the absence of a contract, the construction work of which is begun after January 6, 1994; or

(iii) Which is completed after July 6, 1996.

(2) Every oil tanker of 5,000 DWT and above shall:

(a) In lieu of regulation 13E, as applicable, comply with the requirements of paragraph (3) unless it is subject to the provisions of paragraphs (4) and (5); and

(b) Comply, if applicable, with the requirements of paragraph (6).

(3) The entire cargo tank length shall be protected by ballast tanks or spaces other than cargo and fuel oil tanks as follows:

(a) *Wing tanks or spaces:* Wing tanks or spaces shall extend either for the full depth of the ship's side or from the top of the double bottom to the uppermost deck, disregarding a rounded gunwale where fitted. They shall be arranged such that the cargo tanks are located inboard of the molded line of the side shell plating, nowhere less than the distance w which as shown in Figure 157.10d(c) at any cross section is measured at right angles to the side shell, as specified below:

(i) $w = 0.5 + (DWT/20,000)$ metres; or,

(ii) $w = 2.0$ m., whichever is the lesser.

(iii) The minimum value of $w = 1.0$ m.

(b) *Double bottom tanks or spaces:* At any cross section the depth of each double bottom tank or space shall be such that the distance h between the bottom of the cargo tanks and the molded line of the bottom shell plating measured at right angles to the bottom shell plating as shown in Figure 157.10d(c) is not less than specified below:

(i) $h = B/15$; or

(ii) $h = 2.0$ metres, whichever is the lesser.

(iii) The minimum value of $h = 1.0$ m.

(c) *Turn of the bilge area or at locations without a clearly defined turn of the bilge:* When the distances h and w are different, the distance w shall have preference at levels exceeding $1.5h$ above the base line as shown in Figure 157.10d(c).

(d) *The aggregate capacity of ballast tanks:* On crude oil tankers of 20,000 DWT and above and product carriers of 30,000 DWT and above, the aggregate capacity of wing tanks, double bottom tanks, forepeak tanks, and afterpeak tanks shall not be less than the capacity of segregated ballast tanks necessary to meet the requirements of regulation 13. Wing tanks, spaces, and double bottom tanks used to meet the requirements of regulation 13 shall be located as

uniformly as practicable along the cargo tank length. Additional segregated ballast capacity provided for reducing longitudinal hull girder bending stress, trim, etc., may be located anywhere within the ship.

(e) *Suction wells in cargo tanks:*

Suction wells in cargo tanks may protrude into the double bottom below the boundary line defined by the distance h provided that such wells are as small as practicable and the distance between the well bottom and bottom shell plating is not less than $0.5h$.

(f) *Ballast and cargo piping:* Ballast piping and other piping such as sounding and vent piping to ballast tanks shall not pass through cargo tanks. Cargo piping and similar piping to cargo tanks shall not pass through ballast tanks. Exemptions to this requirement may be granted for short lengths of piping, provided that they are completely welded or equivalent.

(4)(a) Double bottom tanks or spaces as required by paragraph (3)(b) may be dispensed with, provided that the design of the tanker is such that the cargo and vapor pressure exerted on the bottom shell plating forming a single boundary between the cargo and the sea does not exceed the external hydrostatic water pressure, as expressed by the following formula:

$$(f)(hc)(Rc)(g) + (100)(dP) < \text{or} = (dn)(Rs)(g); \text{ where:}$$

hc = height of cargo in contact with the bottom shell plating in metres;

Rc = maximum cargo density in tons/cubic metre;

dn = minimum operating draught under any expected loading conditions in metres;

Rs = density of sea water in tons/cubic metre;

dP = maximum set pressure of pressure/vacuum valve provided for the cargo tank in bars; and,

f = safety factor = 1.1

g = standard acceleration of gravity (9.81 meters/second squared)

(b) Any horizontal partition necessary to fulfill the above requirements shall be located at a height of not less than $B/6$ or 6 metres, whichever is the lesser, but not more than $0.6D$, above the base line, where D is the molded depth amidships.

(c) The location of the wing tanks or spaces shall be as defined in paragraph (3)(a), except that below a level of $1.5h$ above the base line, where h is as defined in paragraph (3)(b), the cargo tank boundary line may be vertical down to the bottom plating as shown in figure 2. (not shown).

(5) Other methods of design and construction of oil tankers may also be accepted as alternatives to the

requirements prescribed in paragraph (3), provided that such methods ensure the same level of protection against oil pollution in the event of collisions or stranding and are approved in principle by the Marine Environment Protection Committee based on guidelines developed by the Organization.

(6) For oil tankers of 20,000 DWT and above the damage assumptions prescribed in regulation 25(2)(b), shall be supplemented by the following assumed bottom raking damage:

(a) Longitudinal extent:

(i) Ships of 75,000 DWT and above: $0.6L$, measured from the forward perpendicular.

(ii) Ships of less than 75,000 DWT: $0.4L$ measured from the forward perpendicular.

(b) Transverse extent: $B/3$ anywhere in the bottom.

(c) Vertical extent: Breach of the outer hull.

(7) Oil tankers of less than 5,000 DWT shall:

(a) At least be fitted with double bottom tanks or spaces having such a depth that the distance h specified in paragraph (3)(b) complies with the following: $h = B/15(m)$ with a minimum value of $h = 0.76$ metres; in the turn of the bilge area and at locations without a clearly defined turn of the bilge, the cargo tank boundary line shall run parallel to the line of the mid-ship flat bottom as shown in Figure 157.10d(c)(3)(ii); and

(b) Be provided with cargo tanks so arranged that the capacity of each cargo tank does not exceed 700 cubic metres unless wing tanks or spaces are arranged in accordance with paragraph (3)(a) complying with the following: $w = 0.4 + (2.4 DWT/20,000)$ meters, with a minimum value of 0.76 m.

(8) Oil shall not be carried in any space extending forward of a collision bulkhead located in accordance with regulation II-1/11 of the International Convention for the Safety of Life at Sea, 1974 as amended. An oil tanker that is not required to have a collision bulkhead in accordance with that regulation shall not carry oil in any space extending forward of the transverse plane perpendicular to the centreline that is located as if it were a collision bulkhead located in accordance with that regulation.

(9) In approving the design and construction of oil tankers to be built in accordance with the provisions of this regulation, Administrations shall have due regard to the general safety aspects including the need for the maintenance and inspections of wing and double bottom tanks or spaces.

Regulation 13G of Annex I of MARPOL 73/78

(1) This regulation shall:

(a) Apply to crude oil tankers of 20,000 tons deadweight and above and to product carriers of 30,000 tons deadweight and above, which are contacted, the keels of which are laid, or which are delivered before the dates specified in regulation 13F(1) of this Annex; and

(b) Not apply to oil tankers complying with regulation 13F of this Annex, which are contracted, the keels of which are laid, or are delivered before the dates specified in regulation 13F(1) of this Annex; and

(c) Not apply to oil tankers covered by sub-paragraph (a) above which comply with regulation 13F(3)(a) and (b) or 13F(4) or 13F(5) of this Annex, except that the requirement for minimum distances between the cargo tank boundaries and the ship side and bottom plating need not be met in all respects. In that event, the side protection distances shall not be less than those specified in the International Bulk Chemical Code for type 2 cargo tank location and the bottom protection shall comply with Regulation 13E(4)(b) of this Annex.

(2) The requirements of this regulation shall take effect as from July 6, 1995.

(3) (a) An oil tanker to which this regulation applies shall be subject to an enhanced programme of inspections during special, intermediate and annual surveys, the scope and frequency of which shall at least comply with the guidelines developed by the Organization.

(b) An oil tanker over 5 years of age to which this regulation applies shall have on board, available to the competent authority of any Government of a State party to the present Convention, a complete file of the survey reports, including the results of all scantling measurement required, as well as the statement of structural work carried out.

(c) This file shall be accompanied by a condition evaluation report, containing conclusions on the structural condition of the ship and its residual scantlings, endorsed to indicate that it has been accepted by or on behalf of the flag Administration. This file and condition evaluation report shall be prepared in a standard format as contained in the guidelines developed by the Organization.

(4) An oil tanker, not meeting the requirements of a new oil tanker as defined in regulation 1(26) of this Annex shall comply with the requirements of regulation 13F of this Annex not later than 25 years after its date of delivery,

unless wing tanks or double bottom spaces not used for the carriage of oil and meeting the width and height requirements of regulation 13E(4) cover at least 30 percent of L_t for the full depth of the ship on each side or at least 30 percent of the projected bottom area PAs within the length L_t , where L_t and projected area PAs are as defined in regulation 13E, in which case compliance with Regulation 13F is required not later than 30 years after its date of delivery.

(5) An oil tanker, meeting the requirements of a new oil tanker as defined in regulation 1(26) of this Annex, shall comply with the requirements of regulation 13F of this Annex not later than 30 years after its date of delivery.

(6) Any new ballast and load conditions, resulting from the application of paragraph (4) of this regulation, shall be subject to approval of the Administration who shall have regard, in particular, to longitudinal and local strength, intact stability and, if applicable, damage stability and survival capability.

(7) Other structural or operational arrangements such as hydrostatic balance may be accepted as alternatives to the requirements prescribed in paragraph (4), provided that such alternatives ensure at least the same level of protection against oil pollution in the event of collision or stranding and are approved by the Administration based on guidelines developed by the Organization.

List of Subjects**33 CFR Part 155**

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 172

Cargo vessels, Hazardous materials transportation, Marine safety.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 155 and 157, and 46 CFR parts 30, 32, 70, 90, and 172 as follows:

PART 155—OIL AND HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

§ 155.390 [Removed]

2. Section 155.390 is removed.

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO VESSELS CARRYING OIL IN BULK

3. The authority citation for part 157 is revised to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

4. Section 157.01 is revised to read as follows:

§ 157.01 Applicability.

(a) Unless otherwise indicated, this part applies to each vessel that carries oil in bulk as cargo and that is:

(1) Documented under the laws of the United States (a U.S. vessel); or

(2) Any other vessel that enters or operates in the navigable waters of the United States or the United States Exclusive Economic Zone, as defined in 33 U.S.C. 2701(8).

(b) This part does not apply to a vessel exempted under 46 U.S.C. 2109 or 46 U.S.C. 3702.

5. Section 157.03 is amended by revising paragraphs (k), (n), and (aa), and by adding new paragraphs (ii), (jj), (kk), (ll), (mm), (nn), and (oo) to read as follows:

§ 157.03 Definitions.

(k) *Major conversion* means a conversion of an existing vessel that:

(1) Substantially alters the dimensions or carrying capacity of the vessel, except a conversion that includes only the installation of segregated ballast tanks, dedicated clean ballast tanks, a crude oil washing system, double sides, a double bottom, or a double hull;

(2) Changes the type of vessel;

(3) Substantially prolongs the vessel's service life; or

(4) Otherwise so changes the vessel that it is essentially a new vessel, as determined by the Commandant (G-MVI).

(n) *Oil* means oil of any kind or in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. This includes liquid hydrocarbons as well as animal and vegetable oils.

(aa) *Cargo tank length* means the length from the collision bulkhead or, in the absence of a collision bulkhead, from the transverse plane under § 157.10d(e)(2), to the forward bulkhead of the machinery spaces. In the absence of machinery spaces, the cargo tank length is the length to the aft bulkhead of the aftermost cargo tank.

(ii) *Doubles sides* means watertight protective spaces that do not carry any oil and which separate the sides of tanks that hold any oil within the cargo tank length from the outer skin of the vessel.

(jj) *Double bottom* means watertight protective spaces that do not carry any oil and which separate the bottom of tanks that hold any oil within the cargo tank length from the outer skin of the vessel.

(kk) *Double hull* means watertight protective spaces that do not carry any oil and which separate the sides, bottom, forward end, and aft end of tanks that hold any oil within the cargo tank length from the outer skin of the vessel as prescribed in § 157.10d.

(ll) *Oil spill response vessel* means a vessel that is exclusively dedicated to operations to prevent or mitigate environmental damage due to an actual or impending accidental oil spill. This includes a vessel that performs routine service as an escort for a tank vessel, but excludes a vessel that engages in any other commercial activity, such as the carriage of any type of cargo.

(mm) *Oceangoing* has the same meaning as defined in § 151.05 of this chapter.

(nn) *Inland vessel* means a vessel that is not oceangoing and that does not operate on the Great Lakes.

(oo) *Oil tanker* means a vessel that is constructed or adapted primarily to carry crude oil or products in bulk as cargo. This includes a tank barge, a tankship, and a combination carrier, as well as a vessel that is constructed or adapted primarily to carry noxious liquid substances in bulk as cargo and

which also carries crude oil or products in bulk as cargo.

6. Section 157.08 is amended by removing the introductory text, adding a note before paragraph (a), revising paragraph (a), redesignating existing paragraphs (e) through (i) as paragraphs (i) through (m) respectively, redesignating and revising existing paragraphs (b), (c), and (d) as paragraphs (f), (g), and (h) respectively, and adding new paragraphs (b), (c), (d), (e), and (n) to read as follows:

§ 157.08 Applicability of subpart B.

Note: An "oil tanker" as defined in § 157.03 includes barges as well as self-propelled vessels.

(a) Sections 157.10d and 157.11(g) apply to each vessel to which this part applies.

(b) Sections 157.11 (a) through (f), 157.12, 157.15, 157.19(b)(3), 157.33, and 157.37 apply to each vessel to which this part applies that carries 200 cubic meters or more of crude oil or products in bulk as cargo, as well as to each oceangoing oil tanker to which this part applies of 150 gross tons or more. These sections do not apply to a foreign vessel which remains beyond the navigable waters of the United States and does not transfer oil cargo at a port or place subject to the jurisdiction of the United States.

(c) Section 157.21 applies to each oil tanker to which this part applies of 150 gross tons or more that is oceangoing or that operates on the Great Lakes. This section does not apply to a foreign vessel which remains beyond the navigable waters of the United States and does not transfer oil cargo at a port or place subject to the jurisdiction of the United States.

(d) Sections in subpart B of 33 CFR part 157 that are not specified in paragraphs (a) through (c) of this section apply to each oceangoing oil tanker to which this part applies of 150 gross tons or more, unless otherwise indicated in paragraphs (e) through (m) of this section. These sections do not apply to a foreign vessel which remains beyond the navigable waters of the United States and does not transfer oil cargo at a port or place subject to the jurisdiction of the United States.

(e) Sections 157.11 (a) through (f), 157.12, and 157.15 do not apply to a vessel, except an oil tanker, that carries less than 1,000 cubic meters of crude oil or products in bulk as cargo and which retains oily mixtures on board and discharges them to a reception facility.

(f) Sections 157.11 (a) through (f), 157.12, 157.13, and 157.15 do not apply to a tank vessel that carries only asphalt, carbon black feedstock, or other

products with similar physical properties, such as specific gravity and cohesive and adhesive characteristics, that inhibit effective product/water separation and monitoring.

(g) Sections 157.11 (a) through (f), 157.12, 157.13, 157.15, and 157.23 do not apply to a tank barge that cannot ballast cargo tanks or wash cargo tanks while underway.

(h) Sections 157.19 and 157.21 do not apply to a tank barge that is certificated by the Coast Guard for limited short protected coastwise routes if the barge is otherwise constructed and certificated for service exclusively on inland routes.

(n) Section 157.19d does not apply to:

(1) A vessel that operates exclusively beyond the navigable waters of the United States and the United States Exclusive Economic Zone, as defined in 33 U.S.C. 2701(8);

(2) An oil spill response vessel; or

(3) Before January 1, 2015—

(i) A vessel unloading oil in bulk as cargo at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*); or

(ii) A delivering vessel that is off-loading oil in bulk as cargo in lightering activities—

(A) Within a lightering zone established under 46 U.S.C. 3715(b)(5); and

(B) More than 60 miles from the territorial sea base line, as defined in 33 CFR 2.05-10.

7. Section 157.10 is amended by revising the section heading and paragraph (d) to read as follows:

§ 157.10 Segregated ballast tanks and crude oil washing systems for certain new vessels.

(d) Segregated ballast tanks required in paragraph (b) of this section, voids, and other spaces that do not carry cargo must be distributed:

(1) For a vessel to which § 157.10d applies, in accordance with § 157.10d(c)(4); or,

(2) For a vessel to which § 157.10d does not apply, in accordance with the procedure contained in appendix C to this part.

8. A new § 157.10d is added to read as follows:

§ 157.10d Double hulls on tank vessels.

(a) With the exceptions stated in § 157.08(n), this section applies to a tank vessel—

(1) For which the building contract is awarded after June 30, 1990;

- (2) That is delivered after December 31, 1993;
- (3) That undergoes a major conversion for which:
 - (i) The contract is awarded after June 30, 1990; or
 - (ii) Conversion is completed after December 31, 1993; or
- (4) That is otherwise required to have a double hull by 46 U.S.C. 3703a(c).

Note: 46 U.S.C. 3703a(c) is shown in appendix G to this part.

(b) Each vessel to which this section applies must be fitted with:

- (1) A double hull in accordance with this section; and

(2) If § 157.10 applies, segregated ballast tanks and a crude oil washing system in accordance with that section.

(c) Except on a vessel to which § 157.10(d) applies, tanks within the cargo tank length that carry any oil must be protected by double sides and a double bottom as follows:

- (1) Double sides must extend for the full depth of the vessel's side or from the uppermost deck, disregarding a rounded gunwale where fitted, to the top of the double bottom. At any cross section, the molded width of the double side, measured at right angles to the side shell plating, from the side of tanks containing oil to the side shell plating, must not be less than the distance w as

shown in Figure 157.10d(c) and specified as follows:

(i) For a vessel of 5,000 DWT and above: $w = [0.5 + (DWT/20,000)]$ meters; or, $w = 2.0$ meters (79 in.), whichever is less, but in no case less than 1.0 meter (39 in.).

(ii) For a vessel of less than 5,000 DWT: $w = [0.4 + (2.4)(DWT/20,000)]$ meters, but in no case less than 0.76 meter (30 in.).

(iii) For a vessel to which paragraph (a)(4) of this section applies: $w = 0.76$ meter (30 in.), provided that the double side was fitted under a construction or conversion contract awarded prior to June 30, 1990.

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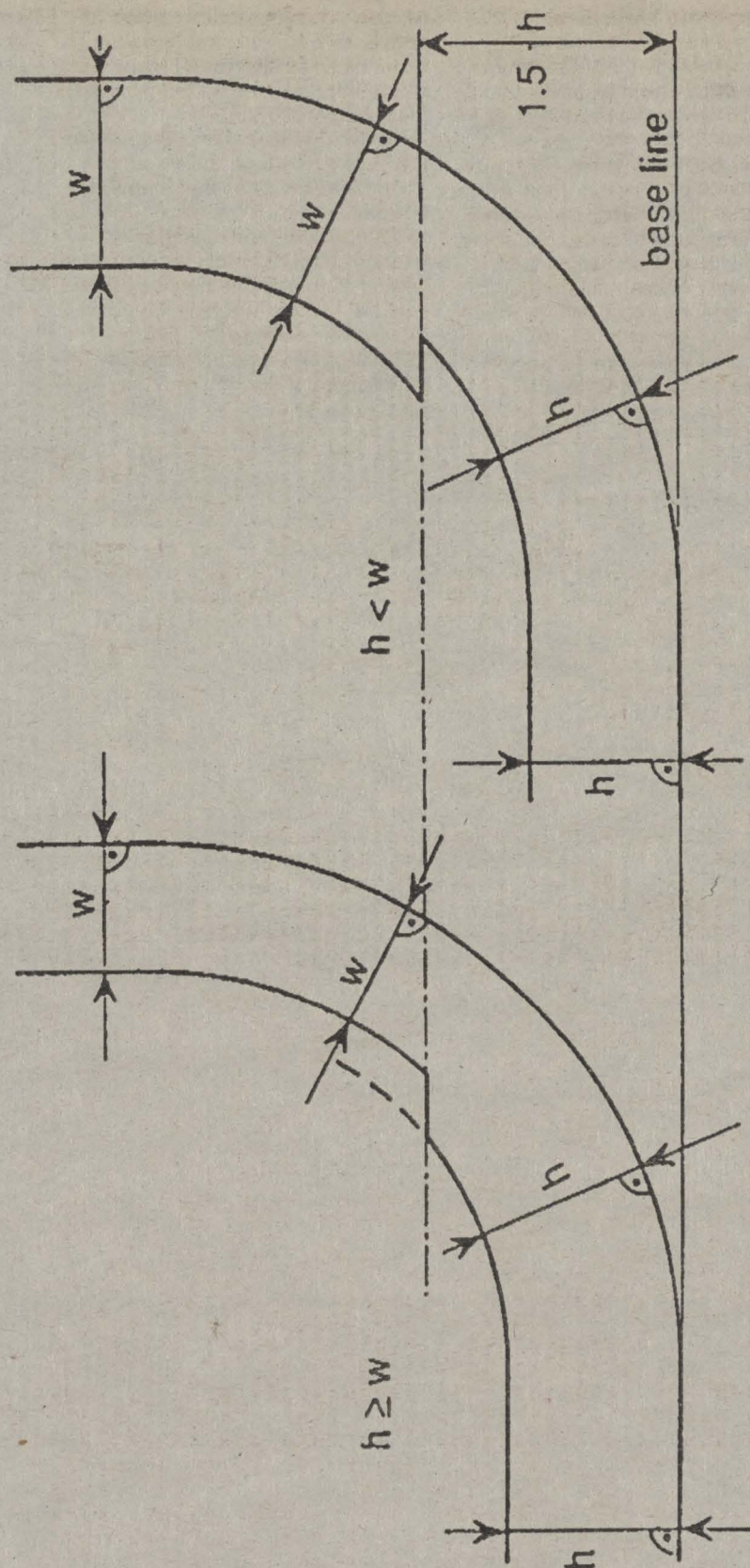


FIGURE 157.10d(c) Minimum Double Hull Dimensions

(2) At any cross section, the molded depth of the double bottom, measured at right angles to the bottom shell plating, from the bottom of tanks containing oil to the bottom shell plating, must not be less than the distance h as shown in Figure 157.10d(c) and specified as follows:

(i) For a vessel of 5,000 DWT and above: $h=B/15$; or, $h=2.0$ meters (79 in.), whichever is less, but in no case less than 1.0 meter (39 in.).

(ii) For a vessel of less than 5,000 DWT: $h=B/15$, but in no case less than 0.76 meter (30 in.).

(iii) For a vessel to which paragraph (a)(4) of this section applies: $h=B/15$; or,

$h=2.0$ meters (79 in.), whichever is the lesser, but in no case less than 0.76 meter (30 in.), provided that the double bottom was fitted under a construction or conversion contract awarded prior to June 30, 1990.

(3) For a vessel built under a contract awarded after September 11, 1992, within the turn of the bilge or at cross sections where the turn of the bilge is not clearly defined, tanks containing oil must be located inboard of the outer shell—

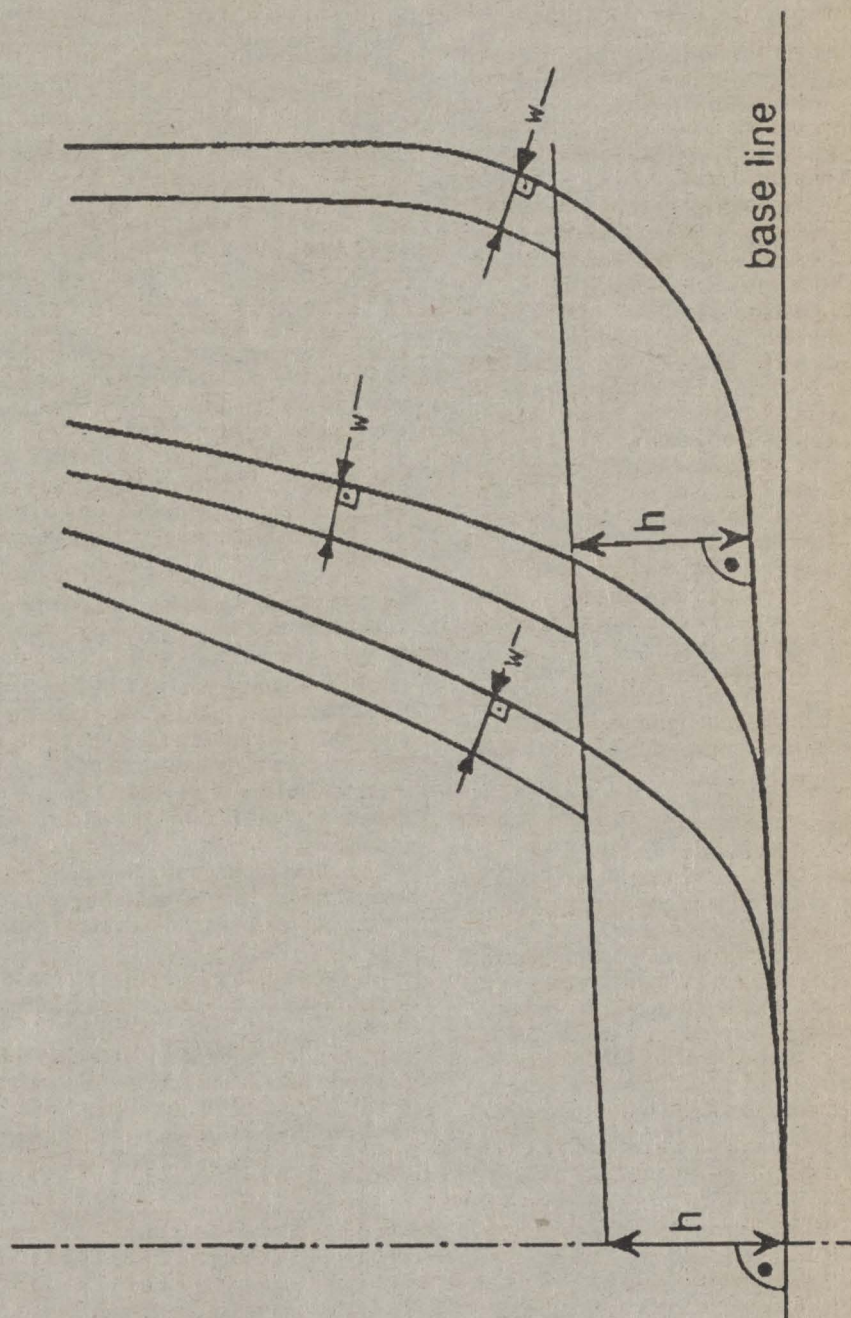
(i) For a vessel of 5,000 DWT and above: At levels up to $1.5h$ above the base line, not less than the distance h , as shown in Figure 157.10d(c) and specified in paragraph (c)(2) of this

section. At levels greater than $1.5h$ above the base line, not less than the distance w , as shown in Figure 157.10d(c) and specified in paragraph (c)(1) of this section.

(ii) For a vessel of less than 5,000 DWT: Not less than the distance h above the line of the mid-ship flat bottom, as shown in Figure 157.10d(c)(3)(ii) and specified in paragraph (c)(2) of this section. At levels greater than h above the line of the mid-ship flat bottom, not less than the distance w , as shown in Figure 157.10d(c)(3)(ii) and specified in paragraph (c)(1) of this section.

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Figure 157.10d(c)(3)(ii) - Minimum Double Hull Dimensions
Within the Turn of the Bilge of Vessels Under 5,000 DWT



(4) For a vessel to which § 157.10(b) applies that is built under a contract awarded after September 11, 1992.

(i) The aggregate volume of the double sides, double bottom, forepeak tanks, and afterpeak tanks must not be less than the capacity of segregated ballast tanks required under § 157.10(b). Segregated ballast tanks that may be provided in addition to those required under § 157.10(b) may be located anywhere within the vessel.

(ii) Double side and double bottom tanks used to meet the requirements of § 157.10(b) must be located as uniformly as practicable along the cargo tank length. Large inboard extensions of individual double side and double bottom tanks, which result in a reduction of overall side or bottom protection, must be avoided.

(d) A vessel of less than 10,000 DWT that is constructed and certificated for service exclusively on inland or limited short protected coastwise routes must be fitted with double sides and a double bottom as follows:

(1) A minimum of 61 cm. (2 ft.) from the inboard side of the side shell plate, extending the full depth of the side or from the main deck to the top of the double bottom, measured at right angles to the side shell; and

(2) A minimum of 61 cm. (2 ft.) from the top of the bottom shell plating, along the full breadth of the vessel's bottom, measured at right angles to the bottom shell.

(3) For a vessel to which paragraph (a)(4) of this section applies, the width of the double sides and the depth of the double bottom may be 38 cm. (15 in.), in lieu of the dimensions specified in paragraphs (d)(1) and (d)(2) of this section, provided that the double side and double bottom tanks were fitted under a construction or conversion contract awarded prior to June 30, 1990.

(4) For a vessel built under a contract awarded after September 11, 1992, a minimum 46 cm. (18 in.) clearance for passage between framing must be maintained throughout the double sides and double bottom.

(e) Except as provided in paragraph (e)(3) of this section, a vessel must not carry any oil in any tank extending forward of:

(1) The collision bulkhead; or

(2) In the absence of a collision bulkhead, the transverse plane perpendicular to the centerline through a point located:

(i) The lesser of 10 meters (32.8 ft.) or 5 percent of the vessel length, but in no case less than 1 meter (39 in.), aft of the forward perpendicular;

(ii) On a vessel of less than 10,000 DWT tons that is constructed and

certificated for service exclusively on inland or limited short protected coastwise routes, the lesser of 7.62 meters (25 ft.) or 5 percent of the vessel length, but in no case less than 61 cm. (2 ft.), aft of the headlog or stem at the freeboard deck; or

(iii) On each vessel which operates exclusively as a box or trail barge, 61 cm. (2 ft.) aft of the headlog.

(3) This paragraph does not apply to independent fuel oil tanks that must be located on or above the main deck within the areas described in paragraphs (e)(1) and (e)(2) of this section to serve adjacent deck equipment that cannot be located further aft. Such tanks must be as small and as far aft as is practicable.

(f) On each vessel, the cargo tank length must not extend aft to any point closer to the stern than the distance equal to the required width of the double side, as prescribed in § 157.10d(c)(1) or § 157.10d(d)(1).

9. Section 157.11 is amended by adding a new paragraph (g) and a note following paragraph (g) to read as follows:

§ 157.11 Pumping, piping, and discharge arrangements.

* * *

(g) Each tank vessel to which § 157.10d applies that is built under a contract awarded after September 11, 1992 must be arranged so that:

(1) Except for short lengths of completely welded (or equivalent) piping,

(i) Ballast piping and other piping to ballast tanks, such as sounding and vent piping, do not pass through cargo tanks, and

(ii) Cargo piping and other piping to cargo tanks do not pass through ballast tanks;

(2) Suction wells in cargo tanks that protrude into the double bottom are as small as practicable and extend no closer to the bottom shell plating than 0.5h, as specified in § 157.10d(c)(2) or § 157.10d(d)(2), as applicable; and

(3) On a vessel that is constructed and certificated for service exclusively on inland, Great Lakes, or limited short protected coastwise routes, any oil piping that is located within double hull spaces must be placed as far from the outer shell as is practicable and must be fitted with valves at the point of connection to the tank served, to prevent oil outflow in the event of damage to the piping. Such valves must be closed whenever the vessel is underway with any oil in tanks served by the associated piping, except as necessary during transfer operations.

Note: Piping location requirements for an oceangoing vessel are in § 157.19(d). Related operating requirements are in § 157.45.

10. Section 157.24 is amended by revising the introductory text and by revising paragraph (c) to read as follows:

§ 157.24 Submission of calculations, plans, and specifications.

The owner, builder or designer of a new vessel to which this part applies shall submit the documentation specified in this section to the Coast Guard before that vessel enters the navigable waters of the United States. The owner, builder, or designer of a vessel that must comply with § 157.10d shall submit the documentation specified in this section to the Coast Guard before that vessel enters the navigable waters of the United States or the U.S. Exclusive Economic Zone.

* * *

(c) Plans and calculations to substantiate compliance with the applicable segregated ballast and double hull requirements in §§ 157.09, 157.10, 157.10a, 157.10b, or 157.10d, or certification from the government of the vessel's flag state that the vessel complies with the segregated ballast and double hull requirements in:

(1) Sections 157.09, 157.10, 157.10a, 157.10b, or 157.10d, as applicable; or

(2) For a vessel to which § 157.10d does not apply, Regulations 13 and 13E of the MARPOL Protocol.

* * *

11. Section 157.25 is amended by revising the section heading, redesignating existing paragraphs (a) and (b) as paragraphs (b) and (c) respectively, and adding new paragraph (a) to read as follows:

§ 157.25 Applicability of subpart C.

(a) This subpart applies to each vessel to which this part applies of 150 gross tons or more, unless otherwise indicated, that carries crude oil or products in bulk as cargo. This subpart does not apply to a foreign vessel which remains beyond the navigable waters of the United States and does not transfer oil cargo at a port or place subject to the jurisdiction of the United States.

* * *

12. Section 157.28 is amended by revising the introductory text to read as follows:

§ 157.28 Discharges from tank barges exempted from certain design requirements.

The person in charge of a tank barge exempted under § 157.08(g) from the requirements in §§ 157.11, 157.13, 157.15,

and 157.23 shall ensure that while the barge is proceeding en route:

13. Appendix A to part 157 is amended by revising paragraph 5 to read as follows:

Appendix A—Damage Assumptions, Hypothetical Outflows, and Cargo Tank Size and Arrangements

5. Allowable length of cargo tanks.

The length of each cargo tank (1a) must not exceed 10 meters or the distance calculated from (a), (b), or (c), as appropriate, whichever is greater:

(a) Where no longitudinal bulkhead is provided inside the cargo tanks:

$1a = [0.5(bi/B) + 0.1] L$, but not to exceed 0.2L.

(b) Where a centerline longitudinal bulkhead is provided inside the cargo tanks: $1a = [0.25(bi/B) + 0.15] L$, but not to exceed 0.2L.

(c) Where two or more longitudinal bulkheads are provided inside the cargo tanks:

(1) For wing cargo tanks: $1a = 0.2L$.

(2) For center cargo tanks:

(i) If (bi/B) is equal to or greater than 0.2, $1a = 0.2L$.

(ii) If (bi/B) is less than 0.2:

(A) Where no centerline longitudinal bulkhead is provided, $1a = [0.5(bi/B) + 0.1] L$.

(B) Where a centerline longitudinal bulkhead is provided, $1a = [0.25(bi/B) + 0.15] L$.

(d) "bi" is the minimum distance from the ship's side to the outer longitudinal bulkhead of the tank in question, measured inboard at right angles to the centerline at the level corresponding to the assigned summer freeboard.

14. Appendix G is added to part 157 to read as follows:

Appendix G—Timetables for Application of Double Hull Requirements

1. *Source.* These timetables conform to 46 U.S.C. 3703a(c).

2. Timetables.

(a) In this section, the age of a vessel is determined from the later of the date on which the vessel is—

(1) Delivered after original construction;

(2) Delivered after completion of a major conversion; or

(3) Qualified for documentation under section 4136 of the Revised Statutes of the United States (46 U.S.C. app. 14).

(b) A vessel of less than 5,000 gross tons for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before

January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 U.S.C. app. 14) before January 1, 1994, may not operate in the navigable waters or the Exclusive Economic Zone of the United States after January 1, 2015, unless equipped with a double hull or with a double containment system determined by the Coast Guard to be as effective as a double hull for the prevention of a discharge of oil.

(c) A vessel for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under 46 CFR subpart 67.19 before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double hull—

(1) In the case of vessel of at least 5,000 gross tons but less than 15,000 gross tons—

(i) After January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 39 years old or older and has a single hull, or is 44 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 37 years old or older and has a single hull, or is 42 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 35 years old or older and has a single hull, or is 40 years old or older and has a double bottom or double sides;

(vii) After January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(2) In the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons—

(i) After January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 38 years old or older and has a single

hull, or is 43 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double side;

(iv) After January 1, 1998, if the vessel is 34 years old or older and has a single hull, or is 39 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 32 years old or older and has a single hull, or is 37 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 30 years old or older and has a single hull, or is 35 years old or older and has a double bottom or double sides;

(vii) After January 1, 2001, if the vessel is 29 years old or older and has a single hull, or is 34 years old or older and has a double bottom or double sides;

(viii) After January 1, 2002, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

(ix) After January 1, 2003, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(x) After January 1, 2004, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(xi) After January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and

(3) In the case of a vessel of at least 30,000 gross tons—

(i) After January 1, 1995, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 24 years old or older and has a single hull, or is 29 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides;

(d) Except as provided in paragraph (b) of this section—

(1) A vessel that has a single hull may not operate after January 1, 2010, and

(2) A vessel that has a double bottom or double sides may not operate after January 1, 2015.

Note: Double sides and double bottoms must meet the relevant requirements in § 157.10d (c) or (d), as appropriate. A vessel will be considered to have a single hull if it has neither double sides nor a double bottom that meets the relevant requirements in § 157.10d(c) or § 157.10d(d).

TITLE 46 CFR

PART 30—GENERAL PROVISIONS

15. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01-2 also issued under the authority of 44 U.S.C. 3507.

16. The note preceding the table of contents to part 30 is amended to read as follows:

Note: Parts 151 through 157 in 33 CFR subchapter O contain additional design, equipment, and operations requirements relating to pollution prevention for vessels that carry oil.

* * * * *

17. Section 30.01-5 is amended by adding a note after the heading to read as follows:

§ 30.01-5 Application of regulations—TB/ALL.

Note: 33 CFR subchapter O (parts 151 through 157) contains additional design, equipment, and operations requirements relating to pollution prevention for vessels that carry oil.

* * * * *

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

18. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

19. Subpart 32.60 is amended by adding a note after the heading to read as follows:

Subpart 32.60—Hull Requirements for Tank Vessels Constructed on or After July 1, 1951

Note: Requirements for double hull construction for vessels carrying oil, as defined in 33 CFR 157.03, in bulk as cargo are found in 33 CFR 157.10d.

* * * * *

20. A new subpart 32.95 is added to read as follows:

Subpart 32.95—Pollution Prevention

§ 32.95-1 Oil pollution prevention—TB/ALL.

(a) Each tank vessel that carries oil in bulk as cargo must comply with the applicable design, equipment, and operations requirements in 33 CFR subchapter O (parts 151-157).

PART 70—GENERAL PROVISIONS

21. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; section 70.01-15 also issued under the authority of 44 U.S.C. 3507.

22. Section 70.05-30 is amended by revising the section heading and adding a note after the heading to read as follows:

§ 70.05-30 Combustible and flammable liquid cargo in bulk.

Note: Requirements for double hull construction for vessels carrying oil, as defined in 33 CFR 157.03, in bulk as cargo are found in 33 CFR 157.10d.

* * * * *

PART 90—GENERAL PROVISIONS

23. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

24. Section 90.05-35 is amended by revising the section heading and adding a note after the heading to read as follows:

§ 90.05-35 Flammable and combustible liquid cargo in bulk.

Note: Requirements for double hull construction for vessels carrying oil, as defined in 33 CFR 157.03, in bulk as cargo are found in 33 CFR 157.10d.

* * * * *

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

25. The authority citation for part 172 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

26. Section 172.060 is revised to read as follows:

§ 172.060 Specific applicability.

This subpart applies to each U.S. tank vessel that is required to comply with 33 CFR 157.21.

Dated: August 4, 1992.

J. W. Kime,

Admiral, U.S. Coast Guard, Commandant.
[FR Doc. 92-18858 Filed 8-11-92; 8:45 am]

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Federal Register

Wednesday
August 12, 1992

Part IV

Federal Maritime Commission

46 CFR Parts 514 et al.
Tariffs and Service Contracts; Interim
Rule

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 515, 550, 580 and 581

[Docket No. 90-23]

Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Interim rule; invitation of comments.

SUMMARY: In order to implement the Federal Maritime Commission's Automated Tariff Filing and Information System ("ATFI"), this action establishes regulations and user charges for the electronic filing, processing and retrieval of tariff data, including the essential terms of service contracts, regarding oceanborne transportation in the foreign and domestic offshore commerce of the United States. In addition to providing for transition to an electronic tariff system, the interim rule incorporates all non-obsolete tariff regulations of 46 CFR parts 515, 550, 580 and 581. These parts may eventually be canceled. This action, however, amends each of these older parts to provide notice during the phase-in implementation period that new part 514 must be used for electronic filing, while the old parts should continue to be followed for the filing of traditional paper tariff material, to the extent it is allowed. The action continues previous statutory exemptions and provides for a new exemption whereby statutory publication and posting requirements can be met either electronically or by paper. The electronic system will substantially facilitate filing and retrieval of tariff data by the shipping public. This is an interim rule, so that it can go into effect like a final rule, and also provide opportunity for further public comment (after some experience with electronic tariff filing), like a proposed rule. The implementation schedule for the conversion of tariff materials by trade area, beginning in January 1993, is being published by a separate order in this proceeding.

DATES: *Effective Date:* The effectiveness of section 514.7(m)(2) is stayed until further notice. Sections 514.21(b), (c) and (e) and 514.91 became effective on December 9, 1991. The balance of the interim regulation is effective September 11, 1992.

Comments: Further written comments by the public are invited to be submitted by close of business on: September 30, 1992 (especially on the electronic filing of the essential terms of service contracts under § 514.17), and also on September 30, 1993.

ADDRESSES: Written comments (original and 15 copies) should be sent to: Joseph C. Polking, Secretary, Federal Maritime Commission, Washington, DC 20573, and served on each other party to this proceeding. A copy of the Service List may be obtained from the Secretary.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, Washington, DC 20573, (202) 523-5800.

SUPPLEMENTARY INFORMATION:

The Federal Maritime Commission ("Commission" or "FMC") administers, *inter alia*, the Shipping Act, 1916 ("1916 Act"), and the Shipping Act of 1984 ("1984 Act"), which apply to domestic offshore commerce (e.g., between the mainland and Hawaii or Puerto Rico), and to foreign commerce, respectively, for both inbound and outbound waterborne transportation. The statutes require that common carriers by water in these trades file and keep open to public inspection their "tariffs." Additionally, the 1984 Act requires that service contracts be filed and that their essential terms be made available to the public in tariff format. See 46 U.S.C. app. 817 and 1707.

A freight "tariff" filed at the Commission is a publication of a carrier or conference which contains a *schedule* of rates, charges, and Tariff Rules applicable to its transportation of cargo.¹ A service contract is a special agreement between shipper(s) and carrier(s) that applies in lieu of the freight tariff. Mutual commitments are made in a service contract, with the shipper guaranteeing the carrier a minimum quantity of cargo over a period of time, in consideration for a commitment by the carrier to a certain rate and service level.

Additionally, terminal tariffs are required to be filed by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water in the foreign or domestic offshore commerce.

The statutes and implementing regulations ensure that certain minimum standards are complied with before tariff material is accepted for filing. For example, a tariff, or amendment thereto, must be clear and definite and must not duplicate or conflict with other tariff provisions already in effect. Moreover, tariffs must contain effective date provisions in compliance with the statutes, e.g., a minimum of 30 days' notice for an increase. If a tariff filing is

defective in any of these respects, it is rejected and the filer must file again in the proper manner before the desired rate can go into effect. Similarly, service contracts and/or their essential terms may be rejected by the Commission if they do not meet certain statutory and regulatory requirements. See 46 CFR parts 515, 550, 580, and 581.

In order to facilitate compliance with the law, there are substantial penalties for not filing, or if properly filed for not adhering to the provisions of, a tariff or the essential terms of a service contract. See, e.g., 46 U.S.C. app. 812, 815, 818, 1708, and 1709.

The Commission also uses the filed tariff and service contract data for surveillance and investigatory purposes and, in its proceedings, adjudicates related issues raised by private parties. For Commission proceedings, as well as in any court case, the tariff or service contract on file at the Commission and in effect, is official evidence of the applicable rate, charge or Tariff Rule, when so "certified" by the Commission. Currently, tariff-type data is filed with and maintained at the Commission in paper format.

Beginning in 1961, carriers in the U.S. foreign commerce were required to file tariffs containing all the rates, charges, and Tariff Rules applicable to their shipments.² The number of tariffs and amendments filed with the Commission has steadily grown until, in fiscal year 1991, there were 1,268,086 tariff pages received and 5,854 service contract filings in the U.S. foreign commerce. At the end of the fiscal year, there were 6,946 tariffs on hand at the Commission.

The enormous amount of paper to be processed by a limited number of employees led the Commission to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry, as well as enhancing the effectiveness of Commission regulation. A systematic exploration of this subject area by the Commission commenced with a series of studies, including an exhaustive Feasibility Study, considered and approved in principle by the Commission's Industry Advisory Committee in 1986. The Feasibility Study developed into a Commission Request for Proposals ("RFP") and award of a contract for the design, development and operation of an Automated Tariff Filing and Information System ("ATFI" or "System").

¹ A Customs "tariff" is a publication of the Government containing a *schedule* of Customs duties.

² A relatively small number of carriers in the domestic offshore commerce have been required to file tariffs since the enactment of the Intercoastal Shipping Act, 1933.

I. Introduction and Background

After phases for validation of requirements, design and development, the ATFI system's prototype phase (IV) began in April 1990, but before allowing volunteers from the shipping industry to test their tariffs on the System, the Commission and the Contractor mutually agreed upon a list of desirable changes which was developed through Commission and Contractor user comment. These changes included improvements on both technical and tariff policy matters. In July 1990, the basic contract was modified to incorporate these changes into the System.

On August 1, 1990, the Commission issued a second ATFI Notice of Inquiry ("NOI"),³ requesting public comment on some of the basic features being considered for ATFI and how they may impact current paper tariff practices. In September 1990, the first public demonstration of the System was held and public comments on the NOI were submitted by 22 firms in October 1990.

On December 26, 1990, the Commission issued a first Interim Report ("First Interim Report")⁴ which considered the comments, resolved the issues raised in the Notice of Inquiry, and appended the ATFI "Batch Filing Guide" (containing, *inter alia*, transaction sets, file transfer formats, data dictionary, and code reference tables). On February 19, 1991, Supplement # 1 to the "Batch Filing Guide" was released (and mailed out) in the form of an Information Bulletin (IB 3-91) and was also distributed to over 100 attendees of public ATFI demonstrations in Washington, D.C. On April 11, 1991, Supplement # 2 to the "Batch Filing Guide" was issued as IB 11-91. Supplement # 3 was issued on July 23, 1991, as IB 20-91, and notice of availability of the full-text, November 11, 1991, Supplement # 4 was issued as IB 26-91 on November 25, 1991.

On March 25, 1991, the Commission issued a Second Interim Report ("Second Interim Report") that responded to concerns of four Electronic Tariff Filer Firms, which were raised in their testimony at the Commission's fiscal year 1992 authorization hearing held on February 28, 1991, before the Subcommittee on Merchant Marine of

the House Committee on Merchant Marine and Fisheries, and which were submitted to the Commission on March 8, 1991. The Second Interim Report clarified the matters raised, established a schedule (to the extent possible) and reiterated that the "Batch Filing Guide" is all that any person needs to begin immediate development of its own batch filing software. IBs 9-91 and 24-91, both containing Technical Questions and Answers, were issued on April 10, 1991, and September 18, 1991 (after a September 12, 1991, technical meeting for the public), respectively.

The Commission's Third Interim Report ("Third Interim Report") was issued on July 23, 1991 (with notice of availability appearing on July 29, 1991, at 56 FR 35847), and finalized most of the remaining issues listed in the August 1990 Notice of Inquiry, so that a notice of proposed rulemaking could be issued. The additional comments of ten of the original commenters in this proceeding were addressed and further comments were invited on the modified approach to the Harmonized System and the proposed transition plan.

The Fourth Report was published on October 25, 1991, with notice of availability appearing on October 30, 1991 (56 FR 55860). This Report responded to October 1990 comments, established an implementation schedule and addressed the requirement that tariff filers use the Harmonized System of commodity coding.

The proposed rule in this proceeding was issued on September 9, 1991 (56 FR 46044), as a new Part 514 of Title 46 CFR, with the original deadline for comments being October 31, 1991. The Supplementary Information to the proposed rule contains tables showing where the Commission's reports addressed the major policy issues listed in the Notice of Inquiry and the sources in the current CFR of portions of proposed Part 514. At the request of commenters, the comment deadline was extended twice, eventually to December 30, 1991. On December 9, 1991, 46 CFR part 514 became effective as an official part after being published on December 2, 1991 (56 FR 61164), in order that user fees contained in § 514.21 could be established for the preliminary activities of registration, certification of batch-filing capability, and purchase of user guides.

By notice of April 23, 1992 (Federal Register of April 29, 1992, 57 FR 18122), the Commission invited further comments, both written and oral, on the following matters:

The Commission is particularly interested in further comments regarding the suitability

and/or effectiveness of proposed 46 CFR 514.13(a) relating to the use of the Harmonized System, including any benefits and burdens associated therewith. Additionally, filers are requested to address their reasons for delay in filing of tariffs for ATFI testing. The Commission also will accept comment on other aspects of the proposed rules that may be of significant concern to affected parties.

The comments and oral presentations in response to this notice, as more fully described below, were submitted in writing in May 1992, and later, at the oral comment session held on May 19, 1992.

The Commission has considered the entire record in this proceeding and has approved the issuance of this interim rule (with invitation for comments), as further described herein, and an implementation schedule to begin in January 1993, the further details of which are to be developed in a separate Commission report.

In addition to public demonstrations of, and opportunity for informal written comments on, the ATFI system, as well as training, information bulletins and other informal releases, the Commission, as previously described, has used two major vehicles in this proceeding for identifying and addressing the major policy issues. The (interim) reports (three interim reports and a final report) provided opportunity for extensive discussion of the issues, while the traditional rulemaking (proposed, interim and final, as here), is/will be the document for implementation of the policy decisions.

II. The Commenters

Comments in this proceeding have been submitted in response to the Advance Notice of Proposed Rulemaking; to the First Interim Report; to Congress and the FMC, which occasioned the Second Interim Report; and in response to the Third Interim Report and the Fourth Report. Most of the commenters mentioned below submitted previous comments. As more fully described below, 15 written comments on the September 1991 Proposed Rule were submitted in December 1991 on behalf of 31 entities ("1991 comments"); and in May 1992, further comments were submitted by 12 of these 31 entities, as well as by 5 new entities ("1992 comments").

A. Ocean Steamship Conferences

"IAFC" (Inter-American Freight Conferences), comprised of The Inter-American Freight Conference (FMC Agreement No. 202-00968A); Brazil/Puerto Rico and U.S. Virgin Islands

³ The NOI was issued (55 FR 31199) to provide advance notice to the public of the proposed refined functionality and associated implementing technology of ATFI. Federal Register notices of a previous notice of inquiry on this general subject appeared on December 22, 1987 (52 FR 48504); April 20, 1988 (53 FR 13066); June 13, 1988 (53 FR 22048); and December 29, 1988 (53 FR 52785).

⁴ The Reports in this proceeding can be found in Pike and Fischer, "Shipping Regulation."

conference (FMC Agreement No. 202-00968); River Plate/Puerto Rico and U.S. Virgin Islands conference (FMC Agreement No. 202-010122); and Inter-American Freight Conference—Pacific Coast Area (FMC Agreement No. 202-006400). IAFCA submitted three sets of written comments in December 1991, and submitted further comments just before, and at the oral hearing of May 19, 1992.

"IPBCB" (The India, Pakistan, Bangladesh, Ceylon and Burma Outward Freight Conference) submitted written comments in 1991.

"JC" (Joint Conferences/Commenters) submitted written comments in December 1991 for (jointly): Asia North America Eastbound Rate Agreement ("ANERA"); the 8900 Lines Rate Agreement; Israel Trade Conference; Japan-Atlantic and Gulf Freight Conference; North Europe-USA Rate Agreement; South Europe/U.S.A. Freight Conference; Transpacific Freight Conference of Japan; Transpacific Westbound Rate Agreement ("TWRA"); USA-North Europe Rate Agreement; United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference; U.S. Atlantic and Gulf/Australia—New Zealand Conference; United States/East Africa Conference; United States/Southern Africa Conference; and West Coast/Middle East Rate Agreement. Further comments by seven of these conferences were jointly submitted as "TPTAC" for the oral comment session of May 19, 1992.

"TPTAC" (Transpacific and Transatlantic Conferences) submitted written and oral presentations for the May 19, 1992, hearing on behalf of (jointly): Asia North America Eastbound Rate Agreement ("ANERA"); Japan Atlantic & Gulf Freight Conference; Trans-Pacific Freight Conference of Japan; Transpacific Westbound Rate Agreement ("TWRA"); USA-North Europe Rate Agreement; and North Europe-USA Rate Agreement. The South Europe/USA Freight Conference is listed as a participant in these joint comments on the cover page of the written summary, but is omitted in the May 6, 1992, request for participation. Note that all of these conferences are also members of "JC."

"TAAFL" (Trans-Atlantic American Flag Liner Operators). TAAFL submitted written comments in 1991 which support and adopt in their entirety the JC comments.

B. Ocean Common Carriers

"Crowley" (Crowley Maritime Corporation Liner Services) made a

presentation for the May 1992 oral comment session. Crowley listed substantial benefits from its participation as an ATFI Volunteer and suggested that the Commission establish firm dates for ATFI compliance. This, however, must await a Commission decision in a separate order.

"Matson" (Matson Navigation Company, Inc.), which provides direct service between the mainland United States and Hawaii, and between (1) the mainland United States and Hawaii and (2) the Republic of the Marshall Islands and Johnston Island, submitted written comments in 1991, and also, in lieu of oral presentation, in May 1992.

"Sea-Land" (Sea-Land Service, Inc.) files 62 tariffs with the FMC, and is a member of 15 conferences or agreements, which also file tariffs with the FMC. Sea-Land submitted written comments in 1991, and also, in lieu of oral presentation, in May 1992.

"Waterman" (Waterman Steamship Corporation) submitted written comments in 1991.

"Zim" (Zim-American Israeli Shipping Co., Inc.) submitted written comments in 1991.

C. Associations

"AALL" (American Association of Law Libraries) sent an October 31, 1991, letter to FMC Chairman Koch, which is being treated as a comment in this proceeding.

"ALA" (American Library Association) made a presentation at the May 19, 1992, oral comment session.

"IANVOCC" (International Association of NVOCCs) made an oral presentation on May 19, 1992. Certain IANVOCC comments will be considered when the Commission establishes an ATFI implementation schedule by separate order. Such comments are that technical problems still have to be worked out, that the implementation schedule will impose a hardship for those NVOCCs which file worldwide tariffs with the Commission, and that the ATFI implementation schedule should be staggered, with ocean carriers filing first in each designated trade and NVOCCs filing after them. Further, IANVOCC suggests that implementation should be delayed until the Commission finalizes its decision on exempting certain NVOCCs from tariff filing regulations (Docket No. 92-22; See the Federal Register of May 7, 1992 (57 FR 19583)).

"NCBFAA" (National Customs Brokers and Forwarders Association of America, Inc.) made an oral presentation on May 19, 1992.

"The League" (The National Industrial Transportation League) is a voluntary organization of shippers and groups and associations of shippers conducting industrial and/or commercial enterprises, large, medium and small, in all of the United States and in international markets. Its members utilize all of the various modes of transportation, including transportation via ocean carriers regulated by the FMC. The League states that it is the only nationwide organization representing shippers of all sizes and commodities, using all modes of transportation to move their goods in interstate and international commerce. The League submitted written comments in 1991, and also made an oral presentation on May 19, 1992. In its oral presentation, the League stated that it "strongly believes that a truly competitive ocean and surface transportation system requires the elimination of the filing and regulatory enforcement of all tariffs," but, "so long as there is a continuing legal requirement that ocean common carriers maintain their rates in a filed tariff form, the League strongly endorses an ATFI system."

D. Tariff Services

"ITT" (International Trade Tracking) is a tariff filing service for Non-Vessel-Operating Common Carriers (NVOCCs) and submitted written comments in 1991.

"PCTB" (Pacific Coast Tariff Bureau) is a tariff publishing agent for ocean, motor and rail carriers with the FMC, ICC, and state regulatory agencies. PCTB's over 750 clients include conferences, ocean carriers, NVOCCs, and motor carriers. While PCTB submitted written comments only, it also appeared at the May 19, 1992, oral hearing for TPTAC.

"Rijnhaave" (Rijnhaave Information Services, Inc.) provides facilities management, network management, software development and systems integration services to the transportation industry. Rijnhaave views ATFI as "the final link in [its] Shipline Management System." Rijnhaave made an oral presentation on May 19, 1992.

E. Other Commenters

"MSC" (Military Sealift Command, for the Department of the Navy in the United States Department of Defense or "DOD") is the Single Manager Operating Agency for sealift services within DOD. MSC submitted written comments in 1991.

"Tampa" (The Tampa Port Authority) submitted written comments in 1991.

"USDA" (The United States Department of Agriculture, in Kansas City, Missouri). The USDA has an interest in obtaining access to tariff information to be made available in ATFI and utilizes steamship lines to ship a variety of agricultural commodities for various export programs to foreign countries. USDA submitted written comments in 1991.

III. Analysis of the Comments: General

Many of the comments submitted should have been made to one or more of the previous issuances in this proceeding (e.g., Notice of Inquiry, first Interim Report, etc.), or were made to such an issuance and are unnecessarily repeated here. As previously indicated, all of the Commission's earlier actions are affirmed, unless modified herein. Moreover, in issuing this rule, the Commission has considered all comments made, irrespective of whether or not specifically addressed herein.

One commenter indicated that there were legibility problems with the proposed rule in the *Federal Register* small-print page format used for the Commission's official distribution. Accordingly, in conjunction with the traditional *Federal Register* publication, the Commission is using here an adjunct format with larger print for its official issuance within the docket.

Some commenters, including IAFC, suggested that the Commission use a separate rulemaking for "policy" changes that are "not related to ATFI." Others suggested that, in addition to the derivation table (new-from-old sections) published with the proposed rule (56 FR 46050-46053), we make available a distribution table (old-to-new sections). The Commission has considered both of these suggestions and found them unfeasible. With regard to a separate rulemaking, it would unnecessarily duplicate much work and paper, and there would be arguments about what is "related to ATFI" and what is not. Moreover, distribution tables are usually used when the old sections are being repealed. Here, the old and new will continue side-by-side until the proper time(s) for canceling entire part(s).

The 15 weeks provided for comments to the proposed rule should have been sufficient for its appropriate analysis, especially when further comments were invited in May 1992.

A. Legality

JC, IAFC and others have repeated arguments that the Commission does not have the legal authority to require the Harmonized System ("HS"), algorithms or other formatting. As discussed in the

third and fourth reports in this proceeding, and the analysis under § 514.13, herein, the Commission believes it does have this authority, notwithstanding its decision to not require HS for other reasons.

In arguing that the Commission lacks jurisdiction to require carriers to use algorithms and HS, JC place great reliance on the Supreme Court's decision in *Interstate Commerce Commission v. Cincinnati, New Orleans and Texas Pacific Railway Company*, 167 U.S. 479 (1897) ("*ICC v. Cincinnati*"). JC Comments at 22-27. The Commission believes that requiring the use of algorithms and the HS is not analogous to the order of the Interstate Commerce Commission ("*ICC*") that was the subject of the appeal in *ICC v. Cincinnati*. The order under review in that case established the level of various class rates from Cincinnati and Chicago. Although the Supreme Court concluded that the ICC did not have the power to fix rates, it recognized the distinction between the power to fix rates and the power to prescribe the form and manner in which rates were to be filed. The decision states:

The grant to the commission of the power to prescribe the form of the schedules, and to direct the place and manner of publication of joint rates, thus specifying the scope and limit of its functions in this respect, strengthens the conclusion that the power to prescribe rates or fix any tariff for the future is not among the powers granted to the commission.

167 U.S. at 506. The regulations which are the subject of this proceeding do not prescribe the level of rates to be charged. The right of carriers to establish rates remains unfettered. Moreover, carriers remain free to establish rate items using commodity descriptions of their choice.

The fact that the Shipping Act, 1916, and the Shipping Act of 1984 do not specifically mention ATFI, algorithms or the HS does not mean that the Commission lacks the statutory authority to promulgate regulations on these subjects. The Supreme Court has upheld regulations promulgated by administrative agencies based upon generalized statutory grants of regulatory authority. In *American Trucking Associations, Inc. v. United States*, 344 U.S. 298 (1953), the Supreme Court upheld the ICC's rules abolishing the practice of "trip leasing" even though the Interstate Commerce Act ("*ICA*") did not specifically grant the ICC the power to regulate leasing practices. It believed that it was unreasonable to expect that the ICA would specify every evil sought to be cured. The Court recognized that one of the reasons administrative agencies

such as the ICC were created was because Congress hoped that such agencies would " * * * bring to their work the expert's familiarity with industry conditions which members of the delegating legislatures cannot be expected to possess." 344 U.S. 309-310. The same rationale was expressed by the Supreme Court in *American Trucking Associations, Inc. v. Atchison, Topeka & Santa Fe Ry. Co.*, 387 U.S. 397 (1967). Likewise, it is unreasonable to expect the 1984 Act to specify all remedies which the Commission may fashion to carry out the purposes of the Act.

Clarity in the application of rates has long been recognized as a valid regulatory objective.

Tariffs, like statutes, have the force of law; like statutes they must be expressed in clear and plain terms so that those dealing with and governed by them may understand them and act advisedly.

Great Northern Ry. Co. v. Commodity Credit Corp., 77 F. Supp. 780, 786 (D.C. Minn. 1948) citing *Atlantic Coast Line R. Co. v. Atlantic Bridge Co.*, 57 F.2d 654, 655 (5th Cir. 1932). The ratepayer should be able to calculate the total charge for transportation services prior to the shipment.⁵ This is hardly a novel principle. For example, in *Alton & S. R. v. U.S.*, 49 F.2d 414, 422 (N.D. Cal. 1931), a case decided over sixty years ago which involved an ICC-regulated carrier, the court observed:

It is obviously intended * * * that the total charge to be paid by the shipper should be clearly ascertainable from the tariff schedules so that one shipper should not have imposed on him auxiliary charges which might not be imposed on others.

See also, *Sauers Milling Co. v. Louisville & Nashville Railroad Co.*, 216 I.C.C. 358, 362 (1936); *Aggregating Express Shipments*, 192 I.C.C. 301, 314 (1933) and *Street Passenger Cars & Railway Cars*, 163 I.C.C. 141, 144 (1930). Tariff provisions should not be so complicated that only the carrier can divine their meaning. While such arcane tariff provisions may be justified by some as providing "flexibility," in truth, they do nothing more than confuse the shipping public.

The problem of misleading and confusing surcharge provisions was recently addressed by the Commission in *Notice of Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences*, Docket No.

⁵ In other words, the shipper should be able to determine the sum of the charges that can be ascertained at the time of the shipment. Obviously, charges such as demurrage cannot be calculated prior to the shipment.

91-14, — F.M.C. —, 26 S.R.R. 108 (1992). The Commission concluded there that the algorithm requirement in ATFI offered the most feasible solution to the problem. The pertinent parts of the Commission's order are as follows:

Effect on clarity of tariffs

The other major category of complaints about surcharges is that of obfuscation and difficulty in discerning the applicable rates. In this regard, shippers alleged that carriers hide surcharges in tariffs; that surcharge tariff provisions are difficult or laborious to compute; that surcharges change rapidly and cannot be anticipated; that rate quotes frequently omit surcharges; that multiple rate components increase the possibility of computation errors; and that misrepresentations as to the need or justification for surcharges are inherently unlawful.

While not all of these complaints are convincing, the Commission shares the concerns of many shippers that current surcharge practices, including the proliferation of new surcharges, do complicate the process of identifying the applicable bottom-line cost to shippers. The question here is not whether carriers are adhering to their "tariff" rates: section 8 of the 1984 Act and the Commission's rules require that all rates and charges, including those at issue in this Inquiry, be included in the carrier's or the conference's tariffs filed with the Commission. Rather, the issue is whether those tariffs are readable and meaningful and serve to inform the user of the expected transportation costs. A few shippers suggest that tariffs are, because of surcharges, prohibitively complicated or impossibly confusing. On the other hand, several others state that they do not find surcharges difficult to calculate, but merely question what they represent. Most shippers, however, appear to take the intermediate position that carrier surcharge practices purposely and unnecessarily complicate the rate-determining process by rendering it misleading, confusing and time-consuming.

The Commission is especially concerned that infrequent or less sophisticated users of carrier tariffs may encounter difficulty calculating the bottom-line cost when procuring transportation services. To this end, the Commission has, in its most recent proposal to implement ATFI, provided for the use of algorithms which would make instantly available the bottom-line cost to shippers, as well as a listing of the component parts of that cost. This would substantially alleviate shippers' concerns that surcharge usage renders it difficult to understand and compute accurately their expenses. It would also assist employees of the carriers themselves to give accurate rate quotations, thereby providing greater shipper confidence in telephone rate quotes, and eliminate an apparent source of distrust on the part of shippers.

At the same time, the current ATFI proposals would allow the break-down of those expenses for the scrutiny of interested shippers who benefit from knowledge of the charges for the component parts. Several shippers in this proceeding indicated that

they value such information, and expressed their opposition to any proposals which would eliminate the use of break-out rates and mandate or encourage lump-sum rates. These design elements of ATFI have been proposed in the context of a separate rulemaking proceeding, Docket No. 90-23, but the instant Inquiry supports the need for ready shipper and carrier access to this information.

In some respects, the Commission concludes that the complications deriving from surcharge practices have been somewhat overstated by a minority of the shipper participants. We note that a number of shippers specifically represented that surcharges are not difficult to compute; they merely questioned the justification for those charges. Other shippers voiced concern that naive or novice shippers may be bamboozled by deceptive carrier pricing practices. While most shippers expressed some degree of annoyance at the time and care they devote to obtaining accurate price information, no shipper commenters claimed to have had their own naivete so exploited, but several relayed anecdotes about and expressed concern for other shippers, allegedly not so sophisticated. The publicity attendant to this Inquiry has, we trust, attracted the notice of any such shippers, who should by now be aware that surcharges exist and are a proper and necessary subject of inquiry when receiving a rate quote. Furthermore, the ATFI algorithms will serve all tariff users, and may of course be used by carrier personnel as well.

Complaints that surcharges are too volatile and are unpredictable appear to disregard the existence of the 30-day notice requirement for increases for all charges, including surcharges. 46 U.S.C. app. 1707(d). No shippers have contended that the Commission has been excessively liberal in granting Special Permission applications for shorter-notice surcharge increases.

That the use of multiple rate components may augment the possibility of calculation errors does not, we believe, justify regulatorily mandated "simplicity" in pricing. The separate listing of services and charges can serve to alert the tariff user of the purported nature of its expenses, an informational device which several shippers insist be preserved. Mandatory simplification of pricing could have the opposite and less desirable effect of providing a more meager basis of discerning carrier pricing factors. ATFI as presently proposed would facilitate the process of discerning the bottom-line cost while preserving the informational value of separate factors for those who wish to consult them.

The foregoing comments are also applicable to domestic offshore commerce.

The algorithm requirement is intended to identify every assessorial applicable to the shipment and to permit the ratepayer to determine the total charge for the service provided. The argument of the Joint Conferences that the algorithm requirement forces them to express their tariffs in a language other than English

is not persuasive. JC Comments at 26. The subject rules will not require carriers to express their tariffs in a language other than English; carriers will simply be required to provide a mathematical formula for the application of surcharges, handling charges and other ancillary charges that are ascertainable at the time of the shipment. Carriers will continue to express their tariffs in English, and will remain free to set the level of their rates and charges and determine how they will be applied. Obviously, the difficulty of reducing a given charge to a formula or algorithm increases if the application of the charge is subject to numerous exceptions and qualifications. In this sense, the algorithm requirement provides an incentive to simplify tariff provisions relating to surcharges and ancillary charges. However, simplified tariff provisions are not mandated. Ultimately, the choice is the carrier's alone.

B. Terminal Tariffs

Tampa raises questions about the applicability of various parts of the proposed rules to terminal tariffs. After reviewing different types of terminal tariffs, we find that not all of them are susceptible to the ATFI format. Thus, "origin" and "destination" are not appropriate in terminal tariffs, and, for many such tariffs, even commodity descriptions and TLIs would be inapplicable. Accordingly, the Commission will require terminal tariffs to be electronically filed, but not in the usual format. This will be explained primarily in the section-by-section analysis for § 514.3, *Exemptions and Exclusions*.

C. Basic Design of System

1. General

JC continue to attack ATFI's requirements of using algorithms for certain charges to be added to the basic ocean freight rate, and the Harmonized System for commodity coding. JC have previously submitted comments on these subjects and the Commission has addressed both policy issues in its third and fourth reports.

JC also have complained to the Office of Management and Budget ("OMB") that the Commission's estimates of the public burden to convert to ATFI were understated, especially as a result of the Harmonized System and algorithm requirements, and that OMB's Paperwork Reduction Act approval of the proposed rule, therefore, should be reconsidered and withdrawn. While JC's December 1991 comments for the first

time attack the Commission's burden estimates appearing in the Supplementary Information to the September 1991 proposed rule, they did not propose burden estimates of their own. See the discussion under § 514.91 herein.

2. Technical Argument; Basic

JC accuse the Commission of "simply ignoring substantial evidence presented to it." (Page 27.) To support their argument that ATFI's design is "inappropriate" or "defective," JC append to their comments "An Evaluation of the Efficacy of ATFI in Automating the Federal Maritime Commission's Tariff-Filing System" (herein, the "Evaluation"), an analysis by two experts, which lists documents reviewed by those experts in providing their analysis. The documents listed as those which were consulted during the development of the Evaluation do not include any requirements or requirements-validation documents, against which the criticized design and functionality can be appropriately compared. Moreover, notwithstanding the Evaluation's argument on p. 3, paragraph C.4, ATFI was not designed "to emulate the current tariff-filing system," but rather to provide a more effective and efficient system.

Not mentioned in the JC's list of source documents, are:

Any reference to the 1986 Feasibility Study or minutes of the ATFI (Industry) Advisory Committee which met three times to discuss the Feasibility Study and approve it in principle.

The previous public Notice of Inquiry proceeding on ATFI functionality. See footnote No. 3.

The two draft and one final Requests for Proposals ("RFP's") leading to the award of the contract to design and develop ATFI.

The ATFI contract, itself, which has been modified (e.g., in July 1990) for minor design change and the June 26, 1990, General Services Administration's ("GSA's") delegation of procurement authority for the modification.

The August 1990 Notice of Inquiry in this proceeding (Docket No. 90-23).

The Commission's last two annual reports to Congress.

The ATFI Fundamentals Guide [the other guides are listed].

All of these documents are indispensable to understanding ATFI's design. Without reference to these, there can be no substantial evidence of any technical deficiency.

Accordingly, the Commission is incorporating into the record of this proceeding the official minutes of the three ATFI (Industry) Advisory Committee meetings in 1986, and the February 9, 1987, Interim Report to the

Commission; the previous (first) Notice of Inquiry proceeding on ATFI; the ATFI contract (with PRC Inc.); and the ATFI section of the most recent Annual Report to Congress. A copy of any of these materials can be obtained through the Office of the Secretary.

We point out the foregoing omissions in JC's research not as a conclusion in and of itself, but as the foundation for the refutation of JC's major premise, i.e., that ATFI should have been an "electronic filing cabinet," rather than a "database system." Basically, the difference in approach is that an "electronic filing cabinet" provides for retrieval purely by text search, and there is no need for a commodity code or special method of showing assessorials; while in a "database system," data is formatted and entered in such a manner that retrieval is facilitated. This matter was settled by the 1986 ATFI Advisory Committee, in review of the Feasibility Study.

The decision to use a database system was proposed in Deliverable 4 of the Feasibility Study, "Preliminary Assessment of the Feasibility of Tariff Automation" (June 27, 1986). The three options had been: 1. Electronic Filing Cabinet; 2. Standard Database System; and 3. Standard Database System with Commodity and Geographic Codes. The Commission decided for option 3, somewhat modified, and this was reflected in the October 28, 1986, Feasibility Study Final Report, e.g., "the 'system' would be a data base system * * *." The Advisory Committee, the creation and meetings of which were noticed in the Federal Register, met in November 1986 and approved this design approach, and this was reflected in the Advisory Committee's basic decision in November 1986. Moreover, the February 9, 1987, report to the Commission,⁶ subscribed to by Advisory Committee members, recommended that tariff automation was feasible and the Commission should proceed with the next phase of the project.

Steamship conferences were well represented on the Advisory Committee which approved the database approach, and included three representatives of two commenters in this proceeding, two of which are now represented by JC. Further, a representative of another member of the JC appeared at the

November 19, 1986, meeting and supported the direction in which the Commission was going.⁷ JC now modifies the position previously espoused by some of its members, in its comments:

A "full text" system would have readily accomplished this function. The Commission could simply have arranged to put existing tariffs in a data base * * *. The Commission is procuring a remarkable -- and inordinately -- complicated system and then adding further layers of complexity through the algorithm and Harmonized System requirements. (Page 4.) * * *

It should be noted that if ATFI were designed as a full-text system, rather than a data-based system, this problem would not exist. By creating ATFI in its current design, rather than simply creating an "electronic filing cabinet," the Commission has mandated a system that is too complicated and burdensome for its regulatory purposes. Why the Commission took this approach remains truly puzzling, because virtually all of the defects and burden of ATFI discussed in these comments are traceable to this decision -- which was made without proper notice and comment. (Pages 8-9.)

The Commission is not persuaded to change ATFI's design from one that is basically a database type of system. In fact, that type of system was recommended by the ATFI Industry Advisory Committee, which included in its membership some of JC's members.

The Commission's 1986-87 decision to go with the database format found its way into the functional specifications contained in the two draft and one final RFP's, especially in section C and Attachment J-1 thereof. These RFP provisions became part of the current contract, and several modifications to the contract have not disturbed the basic database approach. While steamship lines and conferences apparently did not participate in the comments on the RFPs, most large tariff services did, several of them later submitting offers to become the contractor (or subcontractor). At that time, these firms also provided tariff filing services to many of the members of JC, but did not challenge the database system in their comments or questions.

In December 1987, at about the same time that the RFPs were being developed, the Commission issued a (previous) notice of inquiry, which referred to the Feasibility Study and invited comments on ATFI's proposed functionality. As described in the notice, the functionality was obviously for a database system. See Footnote 3. In January 1988, several predecessors of current members of the JC commented in

⁶ See MARAD/FMC Authorizations, Fiscal Year 1988, Hearing Before the Subcommittee on Merchant Marine of the Committee on Merchant Marine and Fisheries, House of Representatives, 100th Cong., 2d Sess., March 23, 1988, including the answer to question # 5 beginning on page 126, and Advisory Committee materials beginning on page 201.

⁷ Id. at pages 201-202, and 212-213.

that proceeding but had no problem with the basic database approach. Rather, they supported the direction the Commission was taking.⁸

The Commission's last two annual reports to Congress contain fairly detailed histories of the ATFI project, including its current database design. They also provide updates on remote retrieval as directed by Congress. The report for fiscal year 1990, which was filed in March 1991, also states that the off-site host processor is a "minicomputer." The Commission has no reason to believe that the change from a mainframe computer to a minicomputer would be "illegal," as JC contend, especially since this change was approved by GSA in its 1990 delegation of procurement authority.

Finally, in this regard, the August 1990 Notice of Inquiry in this proceeding (Docket No. 90-23), which is not listed as a document consulted by JC's two experts, as well as the subsequent reports which are listed, all describe functions of ATFI that require a database format, rather than text retrieval. Other than the Harmonized System and algorithms, of which JC now complain, the database-type of functions include: standardized location names, rule and essential terms numbers, and other defined terms. These also are not necessary in an electronic-filing-cabinet system, with full-text filing and word-search retrieval.

The Commission decided on a database system because it is a better system. Among other things, rates are more difficult to bury and shippers can more readily retrieve the information that will facilitate their exports and imports. See § 514.8(d)(1) of the proposed rule. The algorithm requirements and commodity coding (with format specifications) are but parts of the approach, but their presence in the system appears necessary to a database design that is to have any integrity at all.

The cost of developing a computer-based tariff filing system can be justified only if the computer-tariff filing system represents a significant improvement over the current paper tariff system. A data base system will dramatically improve the ability of the tariff user to retrieve and compare rates. On the other hand, a computer-based system which is nothing more than an "electronic filing cabinet" will not be an improvement over the current paper tariff system. The Commission could not justify the expenditure of public funds to develop an "electronic filing cabinet" having all

of the infirmities of the current paper tariff system. Indeed, if the tariff filing system cannot be improved to meet the needs of the shipping public, then consideration should be given to abolishing tariff filing all together.

3. Technical Arguments; Miscellaneous

Other arguments advanced by JC's technical consultants in the Evaluation are addressed as follows.

Testing (Evaluation, Chapter V). One must agree with the general emphasis on testing expressed in section B of the Evaluation, p. 10. However, system test terms and methodology may differ without degrading the quality of the tests or the system. As stated in the Evaluation, common terms often related to the testing of computer components are "Alpha Testing," "Beta Testing" and "Prototype." Accepted definitions of the terms are:

"Alpha Testing" means trying a new product out on the employees of one's own company before subjecting it to a Beta Test.

"Beta Testing" means pretesting of hardware and software products with selected "typical" users, to discover bugs before the product is released to the general public. The term, "Beta testing" refers almost exclusively to the release of commercial products to a vendor-selected group of users. The use of the Beta product is generally accomplished on user premises without a system link to a vendor location. Beta users are obligated to document all detected problems in a Beta product, and their selection as a Beta site indicates that they have a vested interest in reporting the bugs.

"Prototype" means the first version or model of a software package or computer hardware device or system ready for preproduction testing.

The term most appropriate to the ATFI public test scenario appears to be "Prototype." That term has been used throughout the program to describe the current program phase as well as the system being tested. A prototype phase, rather than "Beta Testing" suggested by the technical consultants as the only possible type of effective testing, was chosen in the Feasibility Study, which was approved by the ATFI Industry Advisory Committee. However, many of the traditional Alpha and Beta Testing activities were accomplished in ATFI design reviews, module testing during development and FMC acceptance testing. Prototype testing may encompass a variety of test participants and/or test activities which provides latitude for FMC decisions in determining test completion criteria and a production start date consistent with test results, prototype activities and

industry preparedness for implementation/conversion.

The testing of the system has not been "ad hoc," as alleged in the Evaluation, but rather, has been pursuant to explicit and well-designed plans contained in sections C.3.4.4, C.3.4.5, C.3.5, C.3.7 and E.3 of the contract, which was not shown as being reviewed by the consultants. The testing plan was designed and has been implemented to gather meaningful information about the accuracy, robustness, efficiency, reliability and appropriateness of ATFI, notwithstanding the Evaluation's (page 2) conclusion. Some further comments on this subject follow:

Robustness of the system in handling all properly submitted tariff data in any mix or volume from multiple users continues to be tested in all activities during the extended prototype phase. Additionally, participative testing by industry has been welcomed by FMC to include adding "stress" to prototype test activities.

The ATFI prototype system already has been tested, often demonstrated and available for continued prototype use after each delivery of software that provided the new functionality. The events most directly related to test milestones are as follows:

MAJOR DEMONSTRATIONS AND TESTING OF ATFI

UNIX Interface Demo: User Interface Enhancements.	Aug 1990.
Public System Interface Demo.	Sep 1990.
ATFI Retrieval-Filing Software Test.	Dec 1990.
FMC Retrieval-Filing Training using ATFI.	Feb 1991.
ATFI Demo to Congressional Staffers & U.S. Customs.	Feb 1991.
Public ATFI System Demos.	Feb 1991.
Public Prototype Volunteer Training (Group 1).	Apr 1991.
Public Prototype Volunteer Training (Group 2).	May 1991.
Public Prototype Volunteer Training (Group 3).	Jul 1991.
Public Prototype Volunteer Training (Group 4).	Aug 1991.

⁸ Id., Report on Tariff Automation Inquiry, at pages 153, 161-163, 190-191.

MAJOR DEMONSTRATIONS AND TESTING OF ATFI—Continued

ATFI Technical Meeting (System Demo).	Sep 1991.
ATFI Retrieval-Filing Software Enhancements Test.	Sep 1991.
Public Batch Filing Capability Certification Session #1.	Dec 1991.
FMC Examiner-Supervisor Functions Software Test.	Dec 1991.
Public Batch Filing Capability Certification Session #2.	Jan 1992.
FMC Examiner-Supervisor Reports Software Test.	Jan 1992.
Public Batch Filing Capability Certification Session #3.	Feb 1992.
Public Filing of Prototype Test Tariffs ("Parallel" Filings).	1992.
Public Maintenance of Prototype Test Tariffs by Filers.	On-going.

There has been continued public access to the system for interactive retrieval, filing and Computer Based Instruction (CBI) since April 1991. FMC access for these functions began in December 1990 in conjunction with the initial test. All subsequent activities — training, demonstrations, system enhancements (with test), prototype volunteer interactive retrieval/filing, prototype volunteer batch filing and certification, added FMC-specific functionality (with tests) and multiple filings of prototype test tariffs with continuing maintenance that parallels the filing of the same tariffs on paper — have provided continuing testing of the core retrieval/filing software initially tested in December 1990.

The volume of tariffs and tariff data in ATFI continues to grow as the Prototype Phase progresses. Public prototype volunteers have already filed some data and, in the near future, may file more tariff data in any volume, at any time, to ensure ATFI is capable of meeting their filing needs. Batch filing capability provides the opportunity for prototype participants to file tariff data in large quantities from their proprietary systems by simply meeting the ATFI transaction set format.

Several prototype volunteers have stated plans to submit larger quantities

of tariff data to "stress test" the ATFI system prior to the start of the operational phase. That participative testing approach and continued use of the ATFI system during the current extended prototype period to include "parallel" filings will provide additional assurance that the prototype system is successful.

The accuracy of data handling is sound; however, continued prototype use will further validate the integrity of data handling including the relationship of all tariff objects and their individual control data parameters. The system ability to apply all "conformity checks" for ATFI acceptance, rejection or additional review appears robust. Additional "robustness" has been demonstrated during training sessions, certification sessions and recurring prototype user access, to exceed sixteen simultaneous users.

The efficiency and reliability of the ATFI system were fully considered in the selection of ATFI hardware and software that utilize open systems and modular, expandable architectures to provide efficient, cost-effective prototyping with assurance of growth and/or applications software transportability to meet operational sizing, responsiveness, maintainability/supportability and reliability needs. The reliability of the computer software is tracked on a continuous basis.

The appropriateness of a user interface should be determined prior to the final design review; the test plan would then verify that the system presentation met design criteria. This was accomplished by FMC and the appropriateness of the user interface was presented to the industry in September 1990.

Prototype users appear comfortable with the ATFI display formats and the mapping of traditional tariff items to the ATFI objects, as presented in the ATFI Fundamentals Guide (not included in the Evaluation reference documents). Current prototype test tariff filings and on-going amendments appear to validate ATFI functionality and the satisfaction of user needs.

Training and Incorporation of Requested Changes (Evaluation, Chapter V, Section C). When originally announced, Prototype Volunteers requested that the planned FMC training classes be reduced from two weeks to one week in duration. The Commission accommodated that request. Now, JC's consultants assert that the training was insufficient. In all classes, however, instructors and the FMC staff volunteered to provide additional system access and assistance to trainees

who wished to enter their text-based tariff data into ATFI. Trainees were encouraged to initiate tariff filings that could be used for later prototype activities.

To date, the appropriately filed, substantive comments of all Volunteers concerning Docket No. 90-23, including criticisms and complaints, have been addressed by the Commission. Additionally, many ATFI system-specific issues have been addressed in FMC Information Bulletins and the ATFI Hot Line responds to ATFI technical questions and ensures each call to the Hot Line is "closed" in a timely manner. System users have regularly forwarded correspondence to the FMC requesting system changes. All such correspondence is considered by the Commission. As noted, the FMC has responded to many requests. Examples of changes resulting from industry comments/requests are additional TLI detail (e.g., multiple service types, multiple origins, multiple destinations, etc.), a general-rate increase/decrease (GRI/GRD) utility for interactive filers, numerous additional condition/calculation statement data fields (e.g., container, count, inland modes, etc.), and provisions for TLI "rate-breaks" based on minimum quantities. Many of the changes were presented to the industry in FMC IB 20-91, at the ATFI Technical Meeting on September 9, 1991, and the subsequent FMC IB 24-91 that summarized technical questions and responses.

In June 1992, ten system change requests were approved for development and implementation by the Contractor. Six of those system change requests were generated by comments/requests from firms participating in the prototype activities. The proposed changes will also include consideration of those changes requested by Crowley, IAFC, Rijnhaave, Zim, and other parties in this proceeding.

The addition of new "codes" in ATFI validation tables, such as container types, container sizes, currencies, etc. do not present a system issue since only database-table changes are necessary, i.e., no software changes or "recompiles." However, the FMC must carefully assess common industry usage of codes and attempt to ensure the table entries remain discrete (not overlapping), within and between tables, while industry-wide filing requirements are met.

Algorithms (Evaluation, Chapter VI). The Evaluation's conclusion, adopted by JC and TPTAC, that the creation of algorithms, through the use of condition statements and calculation statements with their related fields, conditions, formats and values, consists of "computer programming" is an overstatement. The use of condition and calculation statements to create an algorithm containing one or more condition sets employs conventions currently used in paper tariffs. The most basic high school mathematics courses cover all ATFI conditions and calculations. ATFI prototype participants currently use employees without college degrees in the creation and filing of tariffs, including algorithms. Similarly, the ATFI user interface requires only computer terminal or work station orientation, not training in the use of sophisticated computer and software systems, as argued in the Evaluation.

The use of the terms "Computer program," "specialized language" and "Computer code," when referring to the use of condition and calculation statements in the creation of condition sets in algorithms, is also an overstatement.

As the Evaluation on page 19 quotes from FMC IB 9-91, the calculation/condition statements/definitions provided are designed to accommodate current pricing practices. There is only one condition statement format and there are only six conditions which a user may employ in comparing a condition field to a value. There are twelve calculation statements; five are the basic arithmetic functions of equal, add, subtract, multiply and divide; two allow basic comparison of values using maximum/minimum; three provide for rounding, as requested by the industry during the early prototype phase; and two accommodate the selection of data from tables (not true calculation functions), if employed.

Use of these 18 basic condition and calculation statement definitions should not be construed as either requiring knowledge of mathematics above high school algebra, or as the employment of "special language," "code" or "computer programming." Moreover, TPTAC, itself, recommend use of another algorithm, i.e., the "Null Linkage" or "Dummy Algorithm" to link text-based material to TLIs and commodities.

As the Evaluation states after example 1, each condition/calculation statement "is very important and must be stated in a particular manner" (format); however, the interactive ATFI system steps the filer through

construction and validation of the statements. Additionally, after completion of the algorithm, the ATFI calculation and calculation proof functions may be used by the filer to validate the algorithm.

Example 2 in this section of the Evaluation can be constructed with fewer condition sets in the algorithm by employing a table. This approach could significantly reduce the number of condition statements/sets required for the addition of other locations.

ATFI does provide, in response to industry requests during prototype, a copy function for TLIs, to include algorithms at TLI-level. FMC also expects that many tariff filers/publishers will provide "copy" features in their proprietary systems that may be used to duplicate and/or modify algorithms for use in other tariff objects or other tariffs.

It also is important to note that ATFI provides the filer calculation and calculation proof functions that allow an efficient method for filers to check that their algorithms result in expected assessorial charges. By varying the conditions entered on the calculation screen, the filer may view calculation results for any/all desired/valid combination(s) of TLI conditions. The calculation proof function provides additional detail if the filer needs to determine the reason an expected charge was or was not assessed. This functionality eliminates most of the pencil and paper arithmetic currently used in accumulating assessorial charges.

The ATFI linkage of algorithms to commodity descriptions and TLIs to apply properly filed assessorial charges, where certain conditions are met, precludes a manual search by the filers and retrievers to locate, determine the application, calculate each assessorial, where applicable, and total all assessorial charges and the basic ocean freight to determine the bottom-line-rate. The use of algorithms should no more require changes to operations than the use of pencil and paper; if it does, something is wrong and other changes may be necessary. See also the discussion under § 514.10(d), below.

Harmonized System (Evaluation, Chapter VII). For the reasons set forth in the analysis of § 514.13, the Commission has decided to make the use of the Harmonized System ("HS") voluntary, rather than mandatory. In any event, the Evaluation's discussion of commodity coding in general, including "HS," understates or completely overlooks the following considerations:

The HS (if used on a voluntary basis) is to be applied to the extent possible after the desired commodity description is created.

When a commodity mix would not allow use of an HS category at two digit (Chapter level), the mix category of "99" is used. Use of Chapter 99 in conjunction with a commodity key word as search criteria narrows the search to only mixed commodities.

If accurate spelling of a keyword is a problem, a search method (slower) using a partial word is still an available option to assist users.

Use of the ATFI commodity index feature for locating desired commodities is not mentioned. This functionality is an especially efficient method of locating commodities within a tariff.

While discussing a key word search in the mixed category, the Evaluation states that "Using the system in this manner is equivalent to not using any indexing scheme to store and retrieve data." This statement should be dismissed as erroneous and misleading. The ATFI functionality to allow word search as a tool for locating desired commodity descriptions augments the user's ability and tools to locate the commodity through knowledge of the tariff and any carrier commodity numbering convention within the 99 category or use of the commodity index.

See also the discussion under § 514.13, below.

Closing Comments (Chapter VIII - The Tractor Trailer Truck). The imprecision of the allegory ordinarily militates against its use in a technical or scientific document, and was not expected in the Evaluation's "closing comments." However, to respond in similar fashion, the Commission would suggest that the "tractor-trailer truck" (ATFI) has been available to the industry since early 1990. Prior to that time, many moving company CEOs (ATFI Industry Advisory Committee members) participated in the conceptual design of the vehicle.

Since early 1990, many moving companies (conferences, carriers, publishers and agents) and their drivers (filers and retrievers) have been trained and have participated in test drives (interactive filings, batch filing and retrievals) over a variety of routes (multiple tariff types and varying mixes of objects within tariffs). During the extended period for the test drives, the manufacturer (FMC) received numerous comments and suggestions from moving companies and drivers for design enhancements (additional condition fields, calculation statements for rounding, TLI copy feature, multiple entries in selected TLI fields, etc.). The majority of these comments and all significant considerations were

discussed in a public forum (Docket No. 90-23). The manufacturer evaluated the comments and in many cases directed the engineers (Contractor) to incorporate changes (ATFI enhancements) based on the comments.

The manufacturer has consistently encouraged moving companies and drivers to increase participation in the test drives, under any load (volume) or route (tariff type, object mix) desired. The garage (ATFI central site) was always available (interactive, on-line batch or bulk batch) and the manufacturer provided economical classroom training (FMC-sponsored ATFI Volunteer Training Classes), access to computer-based instruction (ATFI CBI), instructional and reference materials (ATFI User Guides), and telephone assistance (ATFI Hot Line), as well as unrestricted access (24 hours per day, seven days a week) to the vehicle for any test activity.

All test drivers were encouraged to become familiar with the dashboard control panel (menu driven format, hierarchical/relational structure of tariff objects, screen formats, function keys and first letter selection features, etc.) at their own pace; to try different loads (tariffs and tariff sizes) over various routes; and to try full loads (complete tariffs) and even tandem loads (large tariffs with governing tariffs) over extended periods (weeks or months of tariff maintenance).

The manufacturer feels fortunate that many moving companies have participated in the test drives. Although some moving companies have not demonstrated that their drivers are capable of exiting the present truck (paper filing) and maneuvering the new vehicle (electronic filing in ATFI), many moving companies are now aware of the benefits and economics associated with the new vehicle and a few moving companies have begun routine test drives over existing routes with the same loads (parallel filing of paper and electronic) to ensure future success as one of the leaders in their industry.

We agree with the Evaluation that ATFI needs some further fine tuning, with the help of the industry. Again, rather than attempt to emulate the current paper-based tariff-filing system, the whole purpose of ATFI has been and will continue to be to replace it.

D. Implementation and Interim Rule

The Commission realizes that, initially, compliance with the ATFI formatting requirements, especially algorithms, sometimes may be difficult, while future filings should actually be easier, given the electronic formats, their

original implementation, and some experience with the system. However, notwithstanding the complaints about the length of time it takes to format a tariff for algorithms, as well as for conformity with the Harmonized System (before it was voluntary), several tariffs have been converted and put on the system as test tariffs.

Accordingly, the Commission sees no reason from the comments to further postpone the implementation schedule, which is being finalized by separate order of the Commission in this proceeding. For firms having difficulties, petitions for temporary exemptions from electronic filing under new § 514.8(a) may be in order. Where isolated difficulties arise, such as the absence of a package code unique to a particular carrier's operation, we expect that they will continue to be worked out with the Commission staff.

On the other hand, the Commission sees no harm in the interim-rule approach suggested by IAFC, JC, Sea-Land and PCTB. An "interim rule" is a rule that is usually issued without prior notice of proposed rulemaking. It becomes final, like a "final rule," but is often effective immediately without notice and establishes a further round of comments. The interim rule here will become effective at least 30 days after publication. However, comments may be submitted after effectiveness, but before the first implementation window, and again in 1993, after the tariff-filing windows for some trade routes have been completed and fully informed comments can be developed. At the same time, however, the Commission requests that filers not file requests for minor design changes (e.g., addition to a table) as a rulemaking comment.

IV. Section by Section Analysis

For a further explanation of Part 514, as originally proposed, see the Supplementary Information to the Proposed Rule at 56 FR 46044. This section explains the changes from the proposed rule, other than clarifications and corrections of typographical errors.

After the proposed rule was published in September 1990, certain tariff-related provisions have been designated for review under a proposed FMC Rules Review Program ("Rules Review Program"), described in News Release NR 92-04 of April 15, 1992. While affecting primarily existing parts 515, 550, 580, and 581, such new rules growing out of this program would also impact new Part 514 and are briefly referenced herein in the analysis of the appropriate section(s).

PART 514—TARIFFS AND SERVICE CONTRACTS

Subpart A—General Provisions

Section 514.1—Scope, Purpose, Requirements and Penalties

Rules Review Program initiatives could reduce the annual filing requirement for anti-rebate certifications to every two years (Docket No. 92-27, *Filing Requirements for Anti-rebate Certifications*, June 4, 1992, 57 FR 23653). Additionally, in Docket No. 92-26, *Filing of Tariffs by Terminal Barge Operators in Pacific Slope States*, the Commission is removing 46 CFR Part 520 but, at the same time, exempting terminal barge operators in Pacific Slope States from tariff filing requirements. This results in the deletion of § 514.1(c)(3)(ii) of the proposed rule and a corresponding change to § 514.3(a)(7).

Terminal tariffs will be exempted from some format requirements under this rule, but the introductory paragraph of § 514.1(c) accommodates this exemption. Terminal tariffs, however, may be required to contain certain data from agreements exempted from filing under parts 560 and/or 572 (Docket No. 92-33, *Marine Terminal Facilities Agreements—Exemption*, June 10, 1992, 57 FR 24569).

In § 514.1(d)(2), JC object to rejection of matter "which fails in any respect to conform with the applicable shipping statutes," as an "unwarranted substantive extension of § 8(f) of the 1984 Act." The Commission does not agree. Moreover, current Part 580, at § 580.10(d)(1), contains the phrase, "which fails in any respect to conform with the Act," [i.e., 1984 Act]. The Commission fails to see a significant difference between the new language and the old provision, adequately keyed in the derivation table.

PCTB requests clarification in § 514.1(d)(3) to ensure that rejection notices be made available through electronic mail (and later by regular mail) to the actual "filer" or "filing party" which has the specific authority for filing the particular tariff, as opposed to, for example, the "tariff owner," who hires someone else to file the tariff matter. There never has been any question that the authorized filer should get the notice in the first instance, since it will have to take the action to correct the problem. The Commission will keep this in mind, without the necessity of changing the rule language. To the FMC, "filer" means "the party who actually filed the data," and this is further ensured by the structure of the system, passwords and USERIDs.

In § 514.1(d)(4), the Commission accepts JC's suggestion to pinpoint when tariff matter becomes void after rejection, that is, "upon rejection," as currently set forth in § 580.0(c)(1).

Tampa requests clarification of § 514.1(e)(1), i.e., "charging rates not in conformance with such a tariff is unlawful." This section is keyed to the marine terminal operator tariff filing requirement under § 514.1(c)(3), i.e., to file a tariff showing "all its rates, charges," etc. These two new sections come from current §§ 515.2 and 515.3, respectively.

Section 514.2—Definitions

The analysis under this section deals with miscellaneous definitions and related comments. Certain other definitions will be addressed under other sections to which they relate, i.e.,

"Batch filing" under § 514.8(l).
 "Combination rate;" "Inland point;"
 "Intermodal transportation;" "Substituted service;" "Through transportation;"
 "Transshipment;" and "Via port" under § 514.15. (Several new definitions are added.)
 "Filing date" under § 514.8(c).
 "Project rates" under § 514.13.

The definition of "assessorial" is revised at JC's suggestion to eliminate the apparent but unintended requirement that the service for which the charge is assessed be "special." The new definition also indicates, however, that the service is not basic ocean transportation, but rather some other additional service.

The definition of "bill of lading" is deleted at JC's request.

Tampa questions the application of the definition of "commodity description number" to terminal tariffs. Here, as elsewhere, the format exemption for terminal tariffs under new § 514.3(a)(9) continues the requirement for electronic filing of terminal tariff matter but exempts such matter from the commodity-description and TLI format requirements of part 514, to the extent necessary to permit electronic filing. Thus, if a particular terminal tariff has commodity descriptions, assessorial charges, and/or a commodity index, the term "commodity description" could still apply to the extent the terminal tariff matter conforms with this definition. This obviates the need to create a term other than one in common usage.

Even though only voluntary, the use of HS for commodities contained in terminal tariffs should facilitate both direct access to these commodities, as well as more efficient searches for commodities within HS sections or chapters. Further, without the use of any commodity number and the associated

commodity index entries, users of certain terminal tariffs may experience some difficulty in locating desired items/rates.

However, the 10-digit commodity description number used in ATFI is a format requirement which is optional for marine terminal operators. Moreover, whether or not a terminal tariff lends itself to the use of commodity coding, not every definition needs to be amended to specifically provide for the option.

Tampa also questions the definition of the term "conference," as it may apply to marine terminal operators, especially under the final rule in Docket No. 91-20. See the analysis for § 514.3(a)(8). Cross-references to the key terms, "Marine Terminal Conference Agreement" and "Marine Terminal Services Agreement" are added in various places in the definitions.

At the request of JC, the definition of the term, "container" is revised to reflect current usage.

The term "common carrier by water in interstate commerce," as defined in section 1 of the 1916 Act, has never been updated to reflect the changes made by the 1940 amendments to the Interstate Commerce Act, which brought water carriers serving port-to-port between states on the high seas or Great Lakes under the jurisdiction of the Interstate Commerce Commission ("ICC"), and, for that reason, is not used in new part 514. However, the term, "Domestic offshore carrier," which referred in the proposed rule to "common carrier by water in interstate commerce" is revised to conform to current law.

As suggested by JC, the definitions of "equipment interchange agreement" and "equipment interchange tariff" are amended to clarify that they relate only to the use of carrier equipment following interchange at a port or inland point, i.e., by adding the words, "following interchange" after the phrase "that govern the use of carrier-provided equipment" in each of the definitions.

As suggested by JC, the term "free time" is expanded to include practices commonly used by carriers. Also at the suggestion of JC, the definitions of "General Reference Tariffs" and "Governing Tariffs" are deleted, since they are contained in § 514.12.

The definition of "Harmonized System" (now optional) is changed to include a citation reference to where the public may more easily obtain a copy and to properly describe the version being used.

The definitions of "Inland point" and "Inland rate table" are revised to limit the acceptable data to U.S. ZIP CODES, until the "ZIP CODES" of other

countries are acceptable through submission for approval and validation.

Definitions are added for the synonymous terms of "Log in" and "Log on," as well as for the synonymous terms of "Log off" and "Log out."

Definitions have been provided for "null linkage" ("dummy algorithm"), a new functionality to label and link assessorial charges in full-text format to other ATFI objects, such as TLIs and commodities.

The definition of "Open for public inspection" is revised to provide that tariff data in foreign commerce need be made available in electronic or paper form at only the main office of the filer (carrier, or carrier and conference). See the discussion under § 514.10(k) and also the definition of "Post, posted, posting (of tariff matter—domestic offshore commerce)."

JC request that the definition of the term "port range" be clarified to ensure that the filer may use the term for the designation of fewer than all ports in a particular country. The Commission believes that the language in the definition, i.e., "those ports in the country * * * that are regularly served * * *," already makes that clear.

As suggested by JC, the definitions of "rate" and "Tariff Line Item (TLI)" are amended to avoid the possible and unintended interpretation that an expiration date is always required by the system. Further, the language which could be interpreted as limiting a "rate" or "Tariff Line Item" to a specific commodity is broadened, without changing the requirement to have some type of commodity description for every Tariff Line Item.

However, JC's request that the terms "rate" and "tariff line item" indicate to what extent they contain assessorials is not accepted because it is unnecessarily limiting. Moreover, JC's assumption that a "rate" is always exclusive, and that a "Tariff Line Item" is always inclusive, of any applicable assessorials, is not correct and could be misleading if reflected in the definition.

The term "Rules (in a tariff, i.e., Tariff Rules)" is amended as suggested by JC to eliminate the words "in conformance with Commission regulations" to avoid the use of a definition as an additional regulatory requirement. However, this change should not be interpreted as a waiver of any requirement imposed by statute or set forth elsewhere in part 514.

The definition of the term "tariff" is revised to accommodate marine terminal tariffs.

As suggested by JC, the definition of "trade name" is amended to permit more than one "d/b/a" and to delete the

word "primary" in reference to the carrier's legal name.

Section 514.3—Exemptions and Exclusions

Under the Rules Review Program, tenders for the carriage of Department of Defense cargo ("military rates"), for which special permission is now provided by § 514.3(b)(4), could be completely exempted from filing, or on the other hand, completely subject to all filing requirements, in Docket No. 92-25, *Regulation of Military Rates Under the Shipping Act of 1984*, June 3, 1992, 57 FR 23368. Moreover, certain Non-Vessel-Operating Common Carriers ("NVOCCs") in foreign commerce could be exempted from tariff filing in Docket No. 92-22, *Tariff Filing by NVOCCs*, May 7, 1992 (57 FR 19583), and/or NVOCCs in the domestic offshore trades could be exempted from the investigation and suspension provisions of 46 U.S.C. app. 845, in Docket No. 92-34, *Domestic Offshore Financial Filing Regulations; Exemption Under Section 35 of the Shipping Act, 1916*, June 12, 1992, 57 FR 25005.

As described in the analysis under § 514.1, terminal barge operators in Pacific Slope States are now exempt from tariff filing requirements. This is effectuated in revised § 514.3(a)(7).

Tampa notes the changes regarding terminal tariffs growing out of Docket No. 91-20, *Exemption of Certain Marine Terminal Services Arrangements*. That part of the final rule in that docket (57 FR 4578 of February 6, 1992), which amended the current marine terminal tariff section (§ 515.3), is now incorporated in revised § 514.3(a)(8). Definitions relevant to the final rule in Docket 91-20 are now crossreferenced in § 514.2, *Definitions*. If there are future changes to any regulation involving tariffs, new part 514 will be appropriately considered and amended, as necessary.

As indicated above, marine terminal tariffs are different in form and content from carrier and conference tariffs, and may not lend themselves to be filed under the ATFI commodity-description or TLI formats, such as for locations. At the same time, however, all tariffs filed at the Commission should eventually be on the ATFI system, as strongly urged in previous comments in this proceeding. See the first Interim Report of December 26, 1990, section 18/23.

The Commission, therefore, will require marine terminal tariffs (which have not already been completely exempted from filing) to be filed in electronic form, with the option of using commodity description and TLI objects.

However, if those objects are not employed to file terminal rates, the rates must be filed in full-text form at rules level. Mandatory Tariff Rule 34 (§ 514.15(b)(34)) is designated for this purpose.

While the exemption from the full electronic format requirements is not literally "temporary," since electronic filing is still required, future ATFI design may be developed to accommodate more sophisticated database filing of terminal tariffs and to facilitate retrieval of information contained therein. Such a development may require further rulemaking.

Tampa points out that the exemption for certain commodities under § 514.3(b)(1)(i), applies to terminal tariffs, foreign tariffs and service contracts, while terminal tariffs are not listed under § 514.3(b)(1)(ii), which provides that filers can lose some of the exemption if their tariffs contain provisions otherwise exempt. Tampa's point is well taken and § 514.3(b)(ii) is amended to include terminal tariffs.

Proposed § 514.3(b)(4) relates to Department of Defense cargo and provides for filing of military cargo rates in a specialized format, partially exempted from the form and manner requirements of the part, similar to the scheme provided in existing § 580.1(d). In its comments, MSC stated that it "believes that incorporation of the relevant military rates within the single tariff 'document' will eliminate confusion relating to comparison of government and private rates for transportation of goods over the same routes." The Commission agrees and will attempt to accommodate MSC.

The language in § 514.3(b)(4)(i) is amended by deleting the words "exact copies" to avoid potential confusion with paper filings. Even though MSC suggests consideration of parallel filings of tenders in paper form, the Commission does not think this is necessary or desirable. The purpose of ATFI is to do away with paper filing to the extent possible, and we invite MSC to continue to advise us of any irregularities in the electronic filings.

Section 514.3(b)(4) is further revised to clarify that military rates are to be filed in the applicable foreign commodity tariff, using the commodity description and/or TLI, as applicable. For example, if the commodity is "Tanks," it would probably be an entire, distinct commodity with one or more TLI's; but if it is "sportswear" for military personnel, the military rate would be one or more TLIs under the generic commodity, which would have other TLI's relating to commercial transportation.

The code "M" is a filing/amendment code under § 514.9(b)(13), not a tariff type. This "allows the rate to take effect" on less than 30 days' notice, etc. This and other electronic accessories will facilitate retrieval and comparison of rates, as MSC requests. In the future, more sophisticated data retrieval could also be made available to other U.S. Government agencies and departments through Memoranda of Understandings and similar arrangements with the FMC.

The procedure should also facilitate calculation of the bottom line rate, notwithstanding the possibility of several types of commodities with the same first-six-digit commodity code, since ATFI provides for four more commodity-code digits at filer's choice and four more digits assigned by the system at TLI level, plus up to 20 more digits in the "stat code." See § 514.13.

As suggested by MSC, agreement terms and conditions should be filed in the Tariff Rules, i.e., new Rule No. 32, which is added at § 514.15(b)(32) to effectuate this change. As such, all additional terms and conditions contained in the MSC rate agreements will be made applicable to the military cargo and rate, through algorithm linkage, etc.

The Commission believes it has substantially adapted MSC's suggestions to the design and format of the ATFI system. The proposed adaptation would also appear to obviate the need for any further delay in the implementation of this provision, even though MSC has suggested postponing the effective date until the June 1993 effective date of its next Worldwide Agreements. If there are problems, however, further comments can be submitted, and temporary exemptions under § 514.8(a) may be considered for military cargo tenders.

In addition to revising proposed § 514.3(b)(4) to accommodate military cargo tenders, similar provisions also will appear at § 514.9(b)(13).

Section 514.3(d) is amended to incorporate the exemption provided for domestic offshore carriers by the final rule in Docket No. 91-42 (December 20, 1991, 56 FR 65998), i.e., that new or amendatory tariff matter that does not result in an increased cost to the shipper may be published on one-day's notice, as long as it is not part of a "General Decrease in rates," as defined in § 514.2.

Section 514.4—Content, Filing and Cancellation of Tariff Material; General

Paragraph (a) of this section, which provides for 30-day notice for new or initial tariffs, does not apply to terminal

tariffs, Bill-of-Lading tariffs, or Equipment Interchange tariffs.

Section 514.4(b)(3)(i), which prohibits the limitation of liability not authorized by law, is taken almost verbatim from existing § 550.3(p)(2). Nonetheless, the language is clarified at JC's suggestion to prohibit limitation of liability where prohibited by statute or regulation.

Both IAFC and JC are opposed to the incorporation of current § 550.3(p)(1) into § 514.4(b)(3)(ii). Without any intention to change applicable law or regulation, this subparagraph will be deleted at the commenters' suggestion, and the balance of paragraph (b)(3) renumbered.

In response to Tampa's question, the provision in § 514.4(b)(3) dealing with rates in other tariffs, does apply to terminal tariffs and will be retained in its current form. Any tariff must contain all the rates and charges pertaining to the service offered and not be subject to some other tariff. A limited and controlled exception would be governing tariffs under § 514.12.

Section 514.4(d) carries forward provisions from existing parts which prescribe and adapt for electronic system use implementation procedures for the duty and authority to file tariffs, including procedures to be followed in conference-related situations in foreign commerce. IAFC suggest that the procedures not be limited to foreign commerce, "in view of the fact that there may be conferences in U.S. domestic commerce." Since the provisions regarding conferences are derived solely from the current foreign commerce regulations, we will not attempt to apply the conference provisions to domestic commerce in this proceeding. If there is a need in the future, the Commission will consider the initiation of another rulemaking. In the meantime, the procedures in § 514.4(d) could be used for domestic situations, to the extent applicable.

At the suggestion of IAFC, § 514.4(d)(4)(i), relating to duties of a carrier upon admission to conference membership, has been revised in the interest of clarity.

Paragraph (d)(6)(i)(A) of § 514 requires the transferee to submit a written request to procedurally transfer the tariff under change-of-name types of situations. (See also paragraph (d)(1) of this section). JC urge the Commission not to adopt this provision on the ground that it is a "restriction on entry." The Commission does not believe that this provision proposes any real restriction on entry. Rather, it is a reasonable procedure for electronic systems. It is amended, however, to provide that a

new, proposed registration form be submitted with the letter, if needed.

Under paragraph (d)(6) of § 514.4, a transfer of operations or change of name may require a new password and USERID for filing control. Accordingly, an application for such a change should include a new registration form and be filed with the proper user fee. Paragraph (d)(8) is amended accordingly and to apply to similar situations involving conference tariffs. Section 514.21(c) is amended to add a cross-reference to paragraph (d).

Sections 514.5 and 514.6—[Reserved]

Subpart B—Service Contracts

Section 514.7—Service Contracts in Foreign Commerce

Section 514.7(b)(1) requires all service contracts to be held in confidence. JC suggest that the words "by the Commission" be inserted after the words "be held." The Commission agrees, but is also adding the words "be filed confidentially" to comport with § 8(c) of the 1984 Act.

Under the Rules Review Program, the Commission is considering several changes in the regulations involving service contracts, such as: allowing such contracts to cover foreign-to-foreign locations (Docket No. 90-20, *Service Contracts in Foreign-to-Foreign Trade*, May 1, 1992, 57 FR 18855); allowing parties to a filed service contract to amend its essential terms (Docket No. 90-21, *Amendments to Service Contracts*, May 4, 1992, 57 FR 19102); and permitting two or more shippers to be signatories, regardless of whether they are members of a shippers' association (Docket No. 92-31, *Service Contracts*, June 8, 1992, 57 FR 24220). Additionally, comments are solicited in Docket No. 92-35, *Notice of Inquiry Concerning Various Regulatory Issues*, (June 5, 1992, 57 FR 26637) on: 1. No longer accepting voluntary filing of tariffs or service contracts covering exempt commodities; 2. simplification of the filing of essential terms; 3. defining "similarly situated shipper;" 4. clarification of carriers' and conferences' duty to deal with shippers' associations on service contracts; 5. permitting service contracts to be based on a percentage of a shipper's cargo; and 6. requiring every conference to establish an ombudsman for shippers' complaints.

Section 514.7(d) provides that, in order to be able to execute a service contract, a non-vessel-operating common carrier ("NVOCC") must have a tariff and a bond. JC suggest that the list of NVOCCs in compliance should be made

available as an ATFI menu option. The Commission will look into this suggestion.

The Commission adopts the JC-suggested language to be added to § 514.7(f)(1): "The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same."

In order to accommodate the utilization of an electronic system, § 514.7 of the proposed rule provided that the essential terms of service contracts be electronically filed, while the confidential service contracts, themselves, had to be filed in paper format within 10 days of the electronic filing of their essential terms. JC point out that § 514.7(j)(3) prohibits performance of a service contract until both the contract and its essential terms are on file.

Section 8(c) of the 1984 Act, 46 U.S.C. app. 1707(c), provides for filing of the service contract and its essential terms "at the same time." However, since the statutory scheme of essential terms filing is to make them available to me-too shippers, there appears to be no reason to prohibit implementation of the service contract until it is also on file. If, however, it is not filed within 10 days of the essential terms, both should be rejected. This would require rerating of the cargo under the service contract at applicable tariff terms, as suggested by JC.

Pursuant to § 16 of the 1984 Act, 46 U.S.C. app. 1715, the Commission finds that this partial exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

Accordingly, the Commission will amend § 514.7(j) to allow implementation of a service contract upon electronic filing of its essential terms, but to reject both, if the service contract is not filed within 10 days of the electronic filing of the essential terms. A me-too contract under paragraph (f)(3) of § 514.7 may also be implemented immediately.

JC would not have any service contract or essential terms matter automatically rejected, but suggests that the notice-of-intent-to-reject procedure be applied to all irregularities. However, the failure to timely submit a service contract or essential terms free of major deficiencies is tantamount to no filing at all. See § 514.8(n)(1)(iii)(G). To subject these items to a "notice of intent to reject" would be inappropriate. If

permitted, interactive filing becomes either useless or never ending.

Similarly, JC's theory would require extension of the 30-day me-too period only when an essential term has been modified. This could be unfair to shippers and is not acceptable.

Section 514.7(k)(2)(iii) carries forward current § 581.7(b)(2)(ii), which provides that where a service contract is corrected (through special-case-number procedures), the shipper contract party may elect to continue under the contract with or without the corrected essential term. JC urge the Commission to "reevaluate the equities" of this section. Whatever the merits of this suggestion, it is irrelevant to tariff automation and beyond the scope of this rulemaking proceeding.

As JC point out, the effectiveness of paragraphs (c) and (d) of § 581.10, now incorporated in paragraph (m)(2) of § 514.7, "Recordkeeping and audit," is in a suspended status. This is reflected both on the "Dates" section of the Preamble, and also in paragraph (m)(2) of § 514.7.

Subpart C—Form, Content and Use of Tariff Data

Section 514.8—Electronic Filing

In § 514.8(b), as well as throughout the rule, the name of the "ATFI Interactive Filing Guide" is updated to "ATFI Tariff Filing Guide."

Proposed § 514.8(c) sets forth the procedures for the three types of filing, i.e., interactive, on-line batch, and in-bulk (tape) batch. The most important reason for defining the term, "filing," is to ensure that shippers are given statutory notice of, for example, 30 days for a rate increase. Because of the necessity to physically ensure that new filings are "in the system," the proposed rule utilized the concept of "processing" to provide the basis for determining when "filing" actually occurs. Several commenters disagree with this approach.

IAFC suggest that tariff material "be deemed to have been filed upon receipt," but does not define the term "receipt." IAFC further propose that the "ATFI system must reflect a basis for acceptance of filing date similar to the current process."

PCTB notes the current practices of accepting tariff pages, which include "receipt of tariff filings during other than normal business hours" by a time-stamp procedure in the lobby of the (FMC) building; also, that electronic tariff filings transmitted by electronic modes "will be receipted by a date/time device on the receiving machine." See current §§ 550.3 and 580.3. According to PCTB,

the ATFI filing date, as described in the proposed rule, is no longer certain and controlled by the filer, but rather a date assigned by a computer operation and operator(s) who are "unknown and unpredictable to the filer." IAFC propose that the filing date be the day of "physical delivering of the tariff data." IAFC also propose that tapes ("in-bulk batch") be accepted at FMC headquarters, as well as at the computer site, every day until 11:59 p.m.

Sea-Land questions what will happen when a rate (e.g., a decrease), having been timely delivered, cannot be assessed because "processing" did not occur. Its solution is to accept the filing date as the date of receipt, not the date the material is processed.

JC emphasize that on-line bulk (tape) filing will be the major problem. JC suggest that filing of a tape is when the tape is "received." Again, "the filing date must be the date the tape is filed."

The proposed rule will be changed to reflect current practices, to the extent possible. "Filing" will occur when the tariff data is received (on the date when an electronic transmission has begun), not processed, although in most cases, "processing" will usually begin within minutes after proper receipt. (An electronic transmission that has not been successfully completed will not technically be "received.") As under the current system, rejectable matter can be rejected whenever it is found.

For in-bulk (tape) batch filing, however, tapes must be delivered to the designated deposit box(es) by 5 p.m. on a normal Commission workday in order to be considered "filed" on that day. After 5 p.m., and on non work-days, tapes will not be processed, but filers may utilize interactive or on-line batch filing to directly input their tariff data into the electronic system.

In order to accommodate the modified approach, the final rule incorporates changes in § 514.8(c), introductory paragraph, and § 514.8(c)(3). Additionally, it requires modification of the definition of "filing date" in § 514.2, and changes to § 514.10(a)(2).

ATFI's database format is described in paragraph (d)(1) of § 514.8. The genesis and advantages of this major design feature are addressed in Part III of this Supplementary Information, i.e., "Analysis of the Comments: General. C. Basic Design of the System."

Paragraphs (d)(3) and (d)(4) of § 514.8 deal with the Batch Filing Guide and the addition of new data. PCTB questions the need for the Batch Filing Guide, its incorporation by reference in the rule, and whether or not regulatory requirements for such incorporation have been followed. IAFC, JC and

Rijnhaave urge that addition of data to the Batch Filing Guide be expedited, but JC suggest that public comments on proposed additions be allowed.

In view of the comments and advice from the Office of the Federal Register, the ATFI Batch Filing Guide will not be incorporated by reference, but merely used as guidance or "how to" material. This should facilitate and expedite necessary changes to the rule, while, at the same time, allow for prompt publication of the changes, both proposed and final.

Several commenters on the proposed rule have requested the addition of new data, such as currencies, place names, etc., or for changing system specifications, such as the number of characters for text lines. While the Commission will consider these requests, such matters are more appropriately addressed in system operations, separately from the formal proceeding.

Paragraph (g) of § 514.8, which describes how to connect to the ATFI system, is revised to provide a citation to the Batch Filing Guide. Paragraph (h) is amended to provide an updated list of major menu selections.

Paragraph (k) retains the requirement that the carrier or conference make tariff data available to the public, but provides the option of making it available in either paper or electronic form. ITT renews the argument for retaining paper tariffs, e.g., "a 'sanctioned' paper copy." Given that the purpose of an automated system is to do away with cumbersome paper, we do not find this argument persuasive.

IAFC, on the other hand, comment that, since the Commission will not itself provide paper tariffs, or a system to accommodate them, the Commission should require that carriers or conferences permit electronic access by the public through a terminal only at their main office. The suggestion is based on IAFC's assumption that paragraph (k) requires that each carrier or conference maintain, "in electronic or paper form at each of its offices and those of its agents, a complete and current set of the tariffs used by the carrier or conference."

Paragraph (k), however, provides that tariff data be made available at each office of a carrier only for domestic offshore commerce, as required by § 2 of the 1933 Act. The 1984 Act governing foreign commerce does not have a comparable provision and foreign commerce conferences need to provide access to their tariff(s) only at the main office(s) of the conference and each carrier party.

In both their 1991 and 1992 comments, IAFC express skepticism about the capabilities of third party vendors in creating parallel paper tariffs for use in places which do not have electronic facilities to access ATFI. At the same time, however, IAFC notes that Crowley is a member of one of its conferences, and Crowley, at the May 19, 1992, oral comment session, indicated that it was successful in converting its tariffs to electronic format. The Commission here notes that Crowley's test electronic tariffs are also "page-based," i.e., they can be readily reproduced in paper form. The technology that IAFC desires appears to be fairly well developed.

Proposed paragraph (k) of § 514.8, however, does not provide for an official tariff in case of long-term breakdown in the ATFI computer or access procedures. Paragraphs (k)(1)(iv) and (k)(1)(v), as well as § 514.15(b)(3), are revised to accommodate such a situation.

PCTB points out that paragraph (l) of § 514.8 provides for certification of batch filing software, but "is silent on the matter of who will perform this certification." While FMC originally intended that a contractor other than its current prime contractor assist the Commission in conducting the certifications, this proved to be unrealistic from an economic standpoint. The Commission, assisted by the prime contractor, has performed certifications and PCTB is one of the firms that has been certified. Moreover, the implementation of ATFI has been postponed due to the relocation of Commission headquarters, which should provide still further time for the industry to prepare for full-scale operation of ATFI.

The certification under paragraph (l), however, is not for batch filing *software*, but of batch filing *capability*, which includes the formatting of tariff data in ATFI transaction set format and submission of that data to the FMC ATFI central site computer. See the final rule of December 2, 1991, § 514.21(e) and section-by-section analysis (56 FR 61164). Accordingly, paragraph (l) and the definition of "batch filing" are revised to reflect this fact.

JC comment that paragraph (n) of § 514.8, dealing with associative checks and FMC examiner review, "fails to alert tariff filers of the true and full potential for rejection, without any opportunity to avoid a rejection" and suggest that rejections should involve some sort of "consultation" process. See also the discussion above of their comments on the rejection of essential terms of service contracts under § 514.7.

To avoid rejections, tariff filers must follow the instructions, just as they do now. For example, current § 580.4 (at 46 CFR) provides, *inter alia*, that tariff pages be plainly printed on durable 8 1/2 x 11 inch paper, with no alterations, using certain margins. If these basic specifications, like those for the receipt of official documents in any Government agency or court, are not complied with, the document is rejected, without consultation (but, perhaps, with prompt notice).

The Batch Filing Guide, along with the shipping statutes and regulations, establishes the specifications for electronic "documents." The associative checks and examiner review, generically described in paragraph (n) of § 514.8, merely describe the *methods* by which ATFI or the Commission identifies non-compliance with the specifications.

Revision of the associative checks results in a deletion of paragraph (n)(1)(iii)(A)(5), as well as a change to paragraph (n)(1)(iii)(A)(3), which is changed from "Agent/individual authorized to make filing (§ 514.11(a)(9)(iii))." to "Appropriate publication authority (§ 514.11(a)(9)(iii))." Also deleted is paragraph (n)(1)(iii)(C)(3), providing for an associative check for "valid harmonized code," which is now optional. The rule's associative check for "VIA PORT" entries under paragraph (n)(1)(iii)(D)(4) has been deleted for reasons described in the discussion under § 514.15. The remaining subparagraphs are appropriately renumbered.

While clarifying the associative check area to the extent done here, the Commission will not provide more specific criteria for the review of tariff data by Commission examiners. Again, rejections will be for non-compliance with major standards or requirements; the *methods* for identification of non-compliance will vary over time and are considered to be internal operating procedures which will usually include non-public investigative methods.

Section 514.9—Filing/Amendment Codes and Required Notice Periods

The language of paragraph (b) of the section is clarified with respect to the use of the symbols or filing/amendment codes.

Tampa questions whether the codes and symbols of § 514.9 conflict with those set forth in "Terminal Tariff Circular No. 1." That document, issued in July 1968, was "an information tariff circular and should not be construed as being binding upon marine terminal operators." The codes in that circular

were actually symbols (e.g., tear drop), as opposed to alphabetical letters in the current rules, and were abandoned long ago. The types of tariff material symbolized, however, are basically the same, i.e., reductions, increases, etc. The Commission would prefer that terminal tariffs use the codes in § 514.9 to the extent possible; paragraph (a)(5) indicates that the use of such symbols in marine terminal tariffs is optional.

The League's 1991 comments suggest that paragraph (b)(1) does not adequately cover a situation where the removal of a point or port requires 30 days notice in the event such a removal will require a shipper to use a different port, with a resulting increase in shipping costs. JC suggest that it is unclear whether the deletion of a port or point may become effective immediately.

Paragraph (b)(1) requires the use of filing/amendment code "A" for all increases other than a General Rate Increase in Domestic Offshore Commerce and would, therefore, apply in the situation described by the League in its 1991 comments. It is more specifically addressed in paragraph (b)(16)(ii)(B), which provides:

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

If the deletion results in an increase, as the paragraph states, the appropriate symbol, such as "A," must be used and the proper advance notice must be given. The filer has the duty in the first instance to determine whether any action results in an increase or a decrease. The Commission believes the current language is clear enough, without attempting to enumerate every type of situation in which an increase, such as an "A" situation, could occur. See also paragraph (a)(3) of § 514.9.

Paragraphs (b)(3), (b)(9)(i)(A), (b)(18)(i), and (b)(24)(ii) of § 514.9 are amended to reflect the language in new § 514.3(d), which allows certain domestic offshore tariff matter to be filed on one-day's notice. Internal cross-references are corrected correspondingly.

Under the Rules Review Program, the Commission is considering the reduction of the 30-day notice for commodity rate increases on domestic cargo to 7 work days. Docket No. 92-36, *Reduction of Notice Requirements for Tariff Increases in the Domestic Offshore Trades—Exemption under Section 35 of the Shipping Act, 1916*, June 16, 1992, 57 FR 26809.

Paragraph (b)(13) of § 514.9, which deals with military cargo, is revised to conform to the changes in § 514.3(b)(4), described in the analysis of that section.

A new paragraph (b)(23) is added to provide for a filing/amendment code of "W," to be used for same-date withdrawal of an erroneous filing.

PCTB believes paragraph (c) "adequately addresses" how to deal with multiple amendments of the same TLI filed on the same day. However, to accommodate certain commercial practices identified during prototype filing, § 514.9(c) is revised to accommodate an additional situation where a previous filing, whether or not on the same date, is presumed to be erroneous or superseded and void if a later amendment of the same TLI has an earlier effective date (unless the later filing incorporates a "thru date" to let the earlier filing continue its effectiveness).

With regard to supplements in paragraph (d) of § 514.9, JC comment that the application of GRI/GRDs (general rate increases and decreases) in lieu of supplements (allowed under the current paper system) eliminates a certain amount of flexibility when the filer wishes to make later "large scale adjustments, roll-backs, postponements, and/or cancellations, reflecting shipper pressures and resulting carrier accommodations." In similar fashion, PCTB complains of the inability of the GRI/GRD utility to allow for postponements, mitigations, and/or cancellations. Zim references time constraints and the loss of rate adjustment flexibility.

The use of assessorial for rate changes in ATFI allows later changes on a selective basis (toggling), or an across-the-board change (using the assessorial until the individual rates are firm).

The use of the GRI/GRD utility "rounding feature," previously requested by the industry, will preclude a return to the exact previous rate due to the mathematical impossibility of "backing out" a rate change that was rounded. However, initial use of assessorial, toggling features, and/or individual rate changes, as more fully described above, should accommodate industry requirements without significant adverse impact upon workload.

Paragraph (d) of § 514.9 is amended to clarify the GRI/GRD functionality.

Section 514.10—Other Items Used Throughout ATFI.

Paragraph (a)(2), Filing date, in § 514.10, has been revised as explained in the discussion under § 514.8(a).

On paragraph (b), IAFC, PCTB and TPTAC expressed concern about the

"ATFI glossaries," which will be used to validate spelling of names of places entered by filers. Since the Commission has been informed by the original vendor that it would not support the service sold to the FMC, prototype volunteers have advised that locations they intend to use are not currently in an ATFI glossary. The Commission will replace and/or add to the existing glossary in order to provide an accurate and up-to-date glossary of place names to be used to validate tariff entries.

PCTB suggests that Federal Information Processing Standards ("FIPS") Publication 55 be incorporated by reference in the rule. FIPS PUB 55 is one of the official Government glossaries used for U.S. place names and is required to be used by a Government agency to the extent applicable. For this reason, it is being used in ATFI, to the extent applicable, but it need not be "incorporated by reference," since it contains standards primarily applicable to agencies, and only secondarily applicable to users of those agencies' systems. Moreover, these standards can be readily obtained from the National Institutes of Standards and Technology. See FIRM subpart 201-20.3 (41 CFR subpart 201-20.3).

The last sentence of paragraph (b)(2) of § 514.10 is revised for accuracy and the illustration for 514.10(b)(2) is updated.

JC urge that the currency conversion function described in paragraph (c) of § 514.10 be deleted because "shippers will argue that the wrong conversion rate was applied notwithstanding the rule provision that it is for comparison purposes only." Sea-Land requests that the currency conversion provisions not be used as "a compliance tool." As indicated, paragraph (c) states that the conversion rates are "for comparison purposes only, not as official conversion rates for booking or billing." As such, they ordinarily would not be used as a "compliance tool," but there could be situations where they would be relevant to an investigation. Accordingly, the Commission will not change the paragraph, and it cannot state that the conversion rates would *never* be used in compliance situations.

The Commission is also aware, however, that changes in the conversion rate alone can make a rate look like an increase or decrease in some situations, when, in effect, it is not. To allay Sea-Land's fears, ATFI will not reject a filing as an improperly filed increase or decrease merely because the unofficial exchange rate was updated in the system.

Paragraph (d) of § 514.10 pertains to assessorial and algorithms, which were

covered in Interim Report # 3 of July 23, 1991. See also the discussion under section III of this Supplementary Information.

The subject of the mandatory requirement to put assessorial charges in algorithm format and link them to appropriate items received special emphasis at the May 19, 1991, oral comment session.

Considering both the 1991 and 1992 comments, JC, TPTAC, Matson and ITT did not favor algorithms, while Crowley, SeaLand, and the League supported them. TPTAC's presentation at the oral comment session summarized the perceived problems, as follows:

- ATFI algorithms significantly increase the difficulty of using the ATFI system for both filers and retrievers.
- Using ATFI algorithms has a high likelihood of producing substantial errors in filing tariffs.
- More comprehensive rules and terminology are needed so that ATFI algorithms can cover the full variety of commercial arrangements common in the maritime trade.
- ATFI algorithms are unnecessary for the early implementation of the ATFI system.

The extended implementation schedule and proposed system improvements should alleviate most of these difficulties. Moreover, an assessorial rule which was shown to "explode" into "six pages" of algorithms at the oral comment session, was later actually test-filed into the system, using only a three-column-by-two-row table and 13 condition sets. This shows that some of the algorithm problems are not as difficult as originally perceived.

The alleged errors in the use of algorithms are either human errors, or involve situations where all facts are not known, which would be addressed by the clarification in the rule that charges not determinable before shipment would not be required to be put in algorithm form, but would be linked to objects using yet another algorithm acceptable (after the oral comment session) to TPTAC. Some of the alleged deficiencies may have been the result of confusion between algorithms and the bottom-line functionality.

Accordingly, the Commission has decided to retain the algorithm requirement.

As referred to above, in the Fourth Report of October 25, 1991, the Commission stated that it would provide further guidelines as to which assessorial require algorithms. PCTB and JC request such guidance.

The basic guideline for the use of algorithms is whether or not the application of the assessorial in

question can be determined prior to shipment (or carrier's receipt of cargo). There should be no conflict between an algorithm and the text which describes the assessorial, but, if there is, the algorithm must take precedence. Accordingly, paragraph (d)(1) is amended to reflect these concepts, to provide examples and to add cross-references to §§ 514.12(a), 514.17(b)(2) and 514.17(d)(10).

As requested by the industry, those assessorials which are not pre-determinable, and therefore not susceptible of being put in algorithm format, can and must be set forth in the appropriate place in full-text form. This does not mean, however, that all algorithms may be set forth in full-text, *vis-a-vis* algorithm, format -- only those which cannot be put in algorithm format.

Further, as suggested by the industry, proposed by the ATFI Contractor, and supported by TPTAC in May/June 1992, another type of algorithm is provided for linking assessorials in full-text format to the appropriate TLIs and commodities. This algorithm, i.e., WHEN—ALWAYS; THEN—NOTHING, is the "Null linkage" or "Dummy Algorithm" functionality, and should substantially improve filing and retrieval. This algorithm is provided so that the user of tariff data will know *all* the types of charges potentially applicable to the shipment, whether determinable prior to shipment or not. A new paragraph (d)(1)(iv) is added for this purpose, and paragraph (d)(5) is modified accordingly.

Proposed paragraph (d)(3) listed numerous examples of calculation statements for algorithm purposes. Since the publication of the proposed rule, however, three more types have been added to accommodate industry requests for "rounding" the results of ATFI calculations. See Batch Filing Guide, Appendix B, § 2. Accordingly, paragraph (d)(3) is revised to list only a few such calculations for examples, leaving the rest for the Batch Filing Guide.

Section 514.11—Organization and Tariff Records; Tariff Scope

Paragraph (a) of § 514.11 is revised to clarify that maintenance of the organization record is limited to one authorized individual.

PCTB and several other commenters have proposed questions about the SCAC code in paragraphs (a)(6) and (b)(1)(iii) of § 514.11. The organization record field for Standard Carrier Alpha Code (assigned by the Motor Freight Association) is optional, since many carriers, such as NVOs, may not have one. The SCAC code, however, would

be convenient for a carrier to use since it is four characters, while the carrier code is six digits, and the system use of the SCAC code (when supplied) is more descriptive in the "tariff code" under paragraph (b)(1)(iii). Moreover, the Commission understands that a SCAC code ordinarily will be issued by the Association upon application. Accordingly, the Commission recommends that if a filer wishes the shorter SCAC code to be used, that it should obtain one in the near future to use when implementation of ATFI begins. Paragraph (b)(1)(iii) is amended to clarify how the SCAC code may be used.

Section 514.12—Governing and General Reference Tariffs

If the filer creates the appropriate electronic linkage for the essential terms of service contracts, an Essential Terms Publication can be a Governing Tariff for essential terms documents, and, in turn, the "Tariffs of General Applicability" (e.g., commodity tariffs) can be the Governing Tariffs for the Essential Terms Publication. See § 514.12(a)(1)(v) - (vi). Under this design, the Tariffs of General Applicability cannot be linked directly to the essential terms documents as Governing Tariffs, and this appears to present a problem for essential terms filers. Section 514.17 is the generic section for the electronic filing of essential terms and the analysis (below) under that section sets forth various options upon which further comment is invited. As indicated, the governing-tariff functionality, along with electronic linkage, should be considered by commenters.

JC suggest that Equipment Interchange Tariffs be moved from paragraph (b) to paragraph (a). Paragraph (b)(3) indicates that such tariffs may be filed in electronic format or in paper format (depending on the circumstances). To be a Governing Tariff under paragraph (a), the tariff must be filed electronically and must be electronically linked to the governed tariff(s) by the filer. And where any matter directly affects a TLI, it must be filed in electronic form under the initial paragraph of § 514.12. Paragraph (a) of the section is revised for accuracy and, as revised, the Commission is of the opinion that the section is clear enough on this point.

For the same reasons and in response to another question from JC, electronic Governing Tariffs of third parties may be filed as long as they are properly linked to the governed tariffs by the filer. Such a tariff could be a Rules Tariff of a tariff-filing service which governs

tariffs "belonging to" many carriers, also, perhaps, filed by the service.

IAFC comments that their FMC #32 tariff does not appear to be included or approved in § 514.12. This tariff, IAFC's U.S. Inland and Terminal Operating Tariff, which included U.S. Terminal Handling Charges, U.S. Inland Zip Codes and Equipment Interchange Agreement rules, appears to be acceptable as a Governing Tariff (for four governed sections) under § 514.12(a). While it is not just one of the types listed, combinations of the types are acceptable, but would be filed as a single tariff type, presumably a Rules Tariff, with the appropriate tariff title. Again, the Governing Tariff must be linked properly to the governed tariffs.

Most of these types of individual questions ordinarily would be handled informally during the prototype phase.

MSC has suggested that common carrier tenders for military cargo be included as a separate and distinct tariff type, but that they be properly linked to the carrier's commercial tariff charges through the governing-tariff mechanism under this section. This would be unnecessary, however, in view of the Commission's changed procedures under §§ 514.3(b)(4) and 514.9(b)(13). See the Commission's discussion under § 514.3. The linkages between military commodities and/or TLIs, on the one hand, to assessorials in algorithm form on the other hand, will be easier and more effective in the same tariff.

Section 514.12(b) is amended by adding "Mileage guide publications" to the sample types of "general reference tariffs," which do not contain assessorials or other matters affecting the TLI, and, on that condition, will be considered "on file" in paper format for cross-referencing in the electronically-filed tariffs.

Section 514.13—Commodities and Tariff Line Items ("TLIs")

The requirement to use a modified version of the Harmonized System of Commodity Coding ("HS") was addressed in the Commission's Fourth Report of October 25, 1991, in this proceeding. See also the Third Interim Report of July 23, 1991, and the discussion herein under III. Analysis of the Comments: General, A. Legality.

As stated above, the notice of the May 19, 1992, oral comment session, indicated that the Commission was particularly interested in further comments regarding the suitability and/or effectiveness of proposed paragraph (a) of § 514.13 relating to the use of the Harmonized System, including any

benefits and burdens associated therewith.

Only Crowley and SeaLand expressed general support for continuation of the requirement. Many other commenters advocated that the HS requirement be completely eliminated, but at a minimum, suggested changes. IAFC, JC, TPTAC, Matson and SeaLand mentioned "optional" or "voluntary" for the HS functionality as one alternative.

At the oral comment session, TPTAC and its experts alleged various perceived difficulties with HS, as provided in the proposed rule. TPTAC argued that:

- HC is not needed to make ATFI work.
- Pacific trade experience shows HC has no benefits.
- HC creates large costs, both tangible and intangible.
- HC tariffs are less usable than current tariffs
- [Future Question: "Can there be a uniform commodity code?"]

Primarily, it was alleged that the problem with HS is its lack of suitability in classifying ocean freight tariff items. Many types of traditional tariff items would have to be classified in more than one place, depending on how they are made or processed, -- an alleged artificial and needlessly duplicative exercise for a carrier filer. At the same time, however, one conference indicated it would continue to use the HS at the two-digit level, although a 4-digit or 6-digit approach would be unsuitable.

Several conferences suggested the alternative of making the Harmonized System optional or voluntary, instead of mandatory, as provided in the proposed rule. These basic alternatives have been considered and the Commission has determined to adopt the "optional" or "voluntary" alternative. This adoption includes certain other mandatory commodity-coding features described below.

The Commission also has determined that the subject of commodity coding will be revisited in 1993, for the purpose of exploring the basic alternatives, under any new developments by that time, including ATFI implementation.

As further described below, the ATFI system will continue to accept commodity data in HS format and filers are urged to use the HS to the extent possible, in order that some degree of standardization can be incorporated in the system to facilitate retrieval. Moreover, certain features of commodity coding other than HS are retained as mandatory, such as the ten-digit code (of the filer's choice) and certain standard prefix digits for project and mixed commodities.

Paragraph (a) of § 514.13 is revised to incorporate these changes. Many of the commenters' other objections to and suggestions for commodity coding are addressed below.

Some commenters claim that use of the HS is contrary to the intent of Congress. The legislative history of bills preceding the 1984 Act is cited for the proposition that Congress did not intend the Commission to implement uniform commodity descriptions.⁹ However, the use of the HS, to the extent it is consistent with the narrative description of the commodity written by carrier, does not amount to imposing a system of uniform commodity descriptions on carriers. Carriers will remain free to describe commodities as they see fit. The carrier, not the HS, determines how a given commodity will be described.

It also is contended that the HS "is intended to be implemented by customs officials" and, to require the carrier's rate clerks to perform similar duties of interpretation would be unreasonable. It is our understanding, however, that the importer, not a Customs official, is responsible for preparing the Customs entry and providing the HS number for the merchandise being imported. 19 CFR 141.61(e)(2). If the information is erroneous on its face, the entry is subject to rejection. 19 CFR 141.61(e)(4).

Under ATFI, the carrier would provide the 10-digit commodity codes for the commodities described in its tariff. Since the HS is voluntary, this could be the filer's own commodity code, the HS, or a mixture of both. If there was an unintended duplication, i.e., the same commodity code for two very different commodities, one of the items would be subject to rejection. However, the carrier would not be subject to penalties just as it is not subject to penalties under the paper tariff system for filing a tariff provision that is rejected.

IAFC also assert that mandating the use of the HS would "violate the rights of carriers to due process under the U.S. Constitution," because a carrier will be liable for penalties if it misinterprets its tariff. The argument is apparently based on the assumption that carriers will be forced to use only those commodity descriptions that are included in the HS and that they will, in essence, be forced to rate cargo under tariff items they did

not write. IAFC's argument would also apply to the voluntary use of HS.

As discussed above, this is incorrect. The voluntary HS user retains control over how the rate item is drafted, using only those HS digits that are consistent with the carrier's narrative description. Filers will be responsible for properly rating cargo using the rate items which they have established as they are today.

Use of the HS will not increase the carrier's exposure to penalties for misrating cargo, nor will it make the rate clerk's job more difficult. In rating shipments under a tariff item containing both a narrative description of the commodity and the appropriate HS, the carrier's rate clerks would function in the same manner they do today.

In sum, it is the carrier, not the HS or other type of commodity coding, that determines how a given commodity is described in a rate item. It is not a denial of due process to require carriers to properly rate cargo moving under commodity descriptions which they have drafted.

Zim's suggestion that the FMC make it mandatory that the HS code appear on the Bill of Lading is a substantial change to the regulations and is outside the scope of the proposed rule.

Zim also suggests that it would be helpful for the Commission to make available a dictionary of "real life descriptions and their HS code counterparts." It is not possible to do this at this time but will be given future consideration.

As further explained in the discussion for § 514.3, marine terminal tariffs will not be required to use the standardized commodity coding or tariff line items under § 514.13.

MSC has concerns about the possibility of two different commodities having the same commodity code at the six-digit level. While this is possible, we note that, in addition to the first six digits, the filer can supply four more digits in the commodity code and 20 more digits in the "Stat" code. The potential use of these additional digits also should resolve many problems raised by other commenters, such as IAFC.

With respect to commodities, JC object to the requirement to "include well-known synonyms and alternate names," as well as the prohibition of trade names, trade marks, etc. In view of the elimination of the HS requirement, paragraphs (a)(2)(i)(A) and (a)(2)(i)(D) of the proposed rule are deleted and the remaining provisions of paragraph (a)(2) are appropriately renumbered.

PCTB suggested that several provisions of paragraph (a) of the

⁹ The specific document cited is a letter dated March 20, 1980, from the Assistant Secretary for Maritime Affairs of the U.S. Department of Commerce to Senator Daniel K. Inouye, regarding S. 2585, a distant predecessor to the 1984 Act. In it, the Assistant Secretary, voices the Administration's opposition to uniform commodity descriptions. It is unclear what, if any, reaction Congress had to the Administration's views.

proposed rule, when read together, required that the tariff descriptions "shall be the text used in HS." For HS, however, especially as modified for voluntary use, the rewritten paragraph merely requires that the tariff description of a commodity may not be inconsistent with the HS description for the commodity code used.

JC comment that the coding provisions of paragraph (a)(3)(iii) of the proposed rule (renumbered "(a)(4)") for mixed commodities, with a required four zeroes after the first two digits of "99," will not accommodate more than 9,999 mixed commodity items in one tariff. This would allegedly create a problem for several of their tariffs. The paragraph, renumbered as (a)(4), is amended to allow filer utilization of any of the four digits following the first two. This should provide the needed codification for a sufficient number of items in large tariffs.

Similar flexibility is provided for project rates ("98" in renumbered paragraph (a)(5)) and "non-commodities" (e.g., "FAK" situations, for which "00" is used in renumbered paragraph (a)(6)).

The Commission also is aware of current tariff problems with commodities being booked, either "straight" or "mixed." While generally a straight-forward tariff feature providing for flexibility for both shipper and carrier, the use of these terms for one or more commodity descriptions under ATFI could inadvertently lead to duplicating or conflicting rates for the same commodity, shipper specific rates, and/or disputes as to which rate applies. The Commission does not wish to impair commercial flexibility and will not, at this time, attempt to prohibit practices which are not illegal per se. Accordingly, the Commission will delete the requirement in paragraph (a)(3)(iii)(A)(2) of the proposed rule (renumbered as (a)(4)(i)(B) in this interim rule), that all commodities included within a "mixed commodity" description be specifically listed with their individual HS codes.

IAFC, IPBCB, JC and Waterman comment that the definition and procedures for project rates are too limiting and burdensome and should, therefore, be changed to accommodate existing practices. The Commission agrees. Accordingly, paragraph (a)(3)(iv) of the proposed rule and the definition of "project rates" are revised, and a new Tariff Rule 33 (§ 514.15(b)(33)) is created. The new provisions do not require every commodity within a 'project rate' category to be listed in every instance because, as the commenters point out, when a 'project'

is established, neither the carrier nor shipper know all the commodities that eventually will be a part of a project. See renumbered paragraph (a)(5).

The ATFI screen for Tariff Line Item Detail has been updated. Thus, the corresponding simulated screen in paragraph (b)(2) of § 514.13 is revised. The new screen requires slight changes to paragraphs (21) and (26), plus a new paragraph (30) for "Hazard Code." Otherwise, the screen is the same as the screen set forth in the proposed rule and, for this reason, the basic numbering of paragraph (b) has been retained.

Regarding paragraph (b)(6) of § 514.13, PCTB comments that the four unique suffix TLI digits are "assigned by the system" only during interactive filing, while off-line batch filers assign this number in their own system. While PCTB is technically correct, there can be no duplication of TLI numbers under the same commodity for different services and a batch filing of such duplicating numbers is subject to rejection. The paragraph and the introductory paragraph of § 514.13 are amended to more accurately describe the assignment of the four suffix digits, which must be unique.

Paragraph (b)(16) of § 514.13, relating to "via ports," is revised to provide greater flexibility, as further explained in the discussion under § 514.15(b)(1). Sea-Land's and IAFC's concern that the use of "Via Port" in the TLI or inland rates table allows the entry of only one port is obviated by the capability of the system (and the filer) to use port groups in the Via Port field. This feature should save time and difficulty in filing and retrieval.

Sea-Land comments that the filer should not have to maintain a table of automobile measurements if the vehicles are carried on a "per vehicle" ("EA") basis. See paragraph (b)(17)(iv)(B) of § 514.13 and § 515.15(b)(22). The proposed rule, however, did not intend this result. See paragraphs (a)(ii) and (b)(17)(ii) of § 514.13, which are modified for further clarification.

Under paragraph (b)(19)(i) of § 514.13, Zim suggests that time/volume rates (in foreign commerce) "should be filed under [HS] Chapter 98 in a similar fashion as Project Cargo (which would contain the commodity, rate terms and conditions)." Unlike project cargo, however, a time/volume rate in ATFI is a TLI for a specific commodity, and a Chapter 98 approach would not be appropriate. For example, under paragraph (b)(19)(i)(A), if a time/volume rate is intended, the appropriate subsidiary TLI (time/volume rate) shall so state in the TLI note. The paragraph is amended accordingly.

IAFC is concerned about the provisions in paragraph (b)(19)(ii) requiring a conference to file a separate open rate tariff. We have, accordingly, revised paragraph (b)(19)(ii)(B) to provide that a conference may file its member's rates (TLIs) on opened items in a separate tariff or in its regular tariff. Members have the option to file their own, individual tariffs for TLIs on opened commodities and TLIs.

Paragraph (c) of § 514.13, "TLI calculation," is revised to update and clarify calculation procedures and to reflect two new, simulated screens, which supersede the obsolete screen in the proposed rule. Paragraph (c) has also been modified to reflect the clarified approach to algorithms (§ 514.10(d)) and the "Dummy algorithm" functionality for assessorial charges which cannot be determined prior to shipment.

Section 514.14—Intermodal and Transshipment Services; Inland Rate Tables

In response to the comments on § 514.14, the entire section is deleted ([Reserved]), and the various provisions are transferred to § 514.15(b)(1), for intermodal services, and § 514.15(b)(13), for transshipment services. Internal cross references also are revised accordingly. See the discussion under § 514.15.

Section 514.15—Tariff Rules

Paragraph (a)(2) of § 514.15 is clarified to indicate that an assessorial in a Tariff Rule can affect either a commodity or TLI and should be properly linked either through an algorithm or null linkage. The algorithm and null linkage functionalities are provided under § 514.10(d). Also, as previously mentioned, the algorithm requirement is optional for marine terminal tariffs.

The introductory paragraph of § 514.15(b) is clarified to indicate that matter found in notes to commodity descriptions and TLIs need not be repeated in the Tariff Rules, but the applicable Tariff Rule(s) shall contain a statement to this effect.

As indicated in the analysis under § 514.14, appropriate provisions regarding intermodal services are moved from that section to paragraph (b)(1) of § 514.15, and the relevant provisions regarding transshipment services are moved to paragraph (b)(13). The two paragraphs are revised to accommodate the additions, which also are clarified in response to the comments.

Under the Rules Review Program, the Commission has eliminated current section 550.8, under which domestic intermodal tariff rates subject to ICC jurisdiction had to be filed with the FMC. Docket No. 92-28, *Elimination of Certain Regulatory Provisions*. This change has been accommodated in § 514.15(b)(1).

As suggested by the commenters, the revisions to the intermodal and transshipment provisions have resulted in the need to add or modify the definitions in § 514.2 of: "alternate port service;" "combination rate;" "inland point;" intermodal transportation;" substituted service;" "through transportation (domestic offshore commerce);" and "via ports." The definition of "transshipment" has been amended to apply both to foreign and domestic offshore commerce. The revised, somewhat more "generic" definitions, coupled with the changes to the new substantive provisions on intermodal service and transshipment, should alleviate the commenters' concerns about flexibility.

Various commenters' concerns about the electronic filing of bills of lading under paragraph (b)(8) of this section were previously addressed in the interim reports in this proceeding.

While the ATFI system, without drastic design changes, cannot accommodate 80 instead of 60 characters per text line, as Zim requests, each title of every mandatory Tariff Rule in § 514.15 is now less than 60 characters, with the change of the title of Tariff Rule 19 to "Shippers requests in foreign commerce."

The introductory paragraph under paragraph (b)(22) of § 514.15 is modified to clarify that automobile cubic measurements need to be provided only when the vehicle is rated on a volume basis. See the discussion under § 514.13(b)(17).

Regarding paragraph (b)(25) of § 514.15, IAFC request that their petition for reconsideration in Docket No. 91-1, Bonding of Non-Vessel-Operating Common Carriers, be considered in this proceeding. On January 29, 1992, the Commission reconsidered its Final Rule in Docket 91-1, but indicated that it did not believe that any modifications to the Final Rule were necessary. See 57 FR 3950, February 3, 1992. Procedures described in the Reconsideration of Final Rule, however, should alleviate any problems.

ITT complains about the filer's charges for public inspection of tariff data that must be described in Tariff Rule 30. This is governed by § 8(a)(2) of the 1984 Act, 46 U.S.C. app. 1707(a)(2), which provides that: "Copies of tariffs

shall be made available to any person, and a reasonable charge may be assessed for them."

The official tariff under Tariff Rule 30 and the development of a new Tariff Rule 32 are discussed in the analyses to §§ 514.8(k)(1)(v) and 514.3(b)(4), respectively. The geneses of new Tariff Rules 33 and 34 are explained in the analyses of §§ 514.13(a)(3)(iv) and 514.3(a)(9), respectively.

Section 514.16—[Reserved]

Section 514.17—Essential Terms of Service Contracts in Foreign Commerce

Special Comments Requested

The requirement to electronically file the essential terms of service contracts in the format prescribed by the proposed rule received special attention at the May 19, 1992, oral comment session. Previously, the major problems with the filing of essential terms were expressed primarily in terms of the difficulty of using algorithms. At the oral comment session, TPTAC summarized these algorithm problems as follows:

Algorithms in ETs

- Do not accurately represent Contractual Terms
- Do not convey charge ceilings to retrievers
- Would require hours to prepare and test

As part of Commission-approved testing requested by JC, however, further difficulties were identified, not the least of which were linking essential terms to charges in tariffs of general applicability and attempting to electronically compare charges between different tariffs (essential terms). The correspondence involved in the analysis of two essential terms is included in the record of this proceeding.

One of TPTAC's suggested solutions for the difficulty in filing essential terms was to completely waive the requirement to file them electronically and to continue the paper filing of both service contracts and their essential terms. At the oral comment session, TPTAC argued that essential terms were not that valuable to retrievers and supported this argument with the following screen:

Do ETs Fit the ATFI Model?

- No updates
- Available for only 30 days
- Limited Audience
- Retriever needs a macroscopic view
- Actual rate may be higher or lower than ATFI calculation

Otherwise, TPTAC's displays at the oral comment session made the following comparisons:

ESSENTIAL TERMS FILING

Typical ET

TODAY	ATFI
10-12 pages	750-1,000 TLIs
By-product of contracting process (insures accuracy of information).	Requires rekeying of information (increased opportunity for errors)
Requires less than 1 hour to prepare.	Requires more than 10 hours to prepare
FMC reviews and files at end of ET Publication.	FMC must review 200-300 screens of information.

ESSENTIAL TERMS RETRIEVAL

Typical ET

TODAY	ATFI
10-12 pages	750-1000 TLIs -- 200-300 Screens
Available from watching service.	Available by MODEM
Costs less than \$10	ATFI charges and telephone costs greater than \$10 (on average)
Scan in 10-15 minutes.	Review in 60-90 minutes
Retain hard copy for future reference.	No hard copy -- must reconnect to review again.

The Commission believes that some of the essential terms' problems are addressed by the following:

The use of additional rules/subrules and associated algorithms and tables, in conjunction with the toggle feature, allow considerable flexibility, as well as the use of algorithms at commodity description and TLI levels, as appropriate.

An alleged footnote problem described by TPTAC overlooks the setting of the default dates for filing date, effective date and access date to preclude the need for reentry of these dates for use in multiple retrievals or multiple filings in interactive mode (see ATFI Tariff Filing Guide, section 3.1, Modifying System Default Dates). For those who may file via batch mode, this is not an ATFI issue.

The current method of filing large numbers of locations in some ETs may be partially alleviated in ATFI by using location groups. The practice of filing very large numbers of locations in an ET where only limited commodities and a comparatively small number of contract TEUs are allowed appears somewhat contradictory to usual "contractual arrangements." The comments on screen printing and retriever time limits overlook the expected availability of paper tariff products from tariff services firms and the possibility of longer ATFI retriever access windows.

The Commission has determined to continue the requirement to electronically file the essential terms of service contracts. At the same time, however, the Commission believes that there is more than one way to electronically file essential terms, and it seeks input on the best method.

Accordingly, the Commission, while issuing the interim rule with the present requirements for essential terms, is inviting further comments on several, possibly more acceptable options for possible inclusion in the Rule before essential terms have to be electronically filed. The "window" for the mandatory electronic filing of essential terms would be at the end of the implementation period, probably in November or December 1993.

THEREFORE, SPECIAL COMMENTS FROM THE PUBLIC ARE REQUESTED ON THE FOLLOWING MAJOR OPTIONS FOR THE FUTURE ELECTRONIC FILING OF THE ESSENTIAL TERMS OF SERVICE CONTRACTS IN ATFI:

(a) The format in this interim rule, i.e., Essential Terms documents or "ETs" (within an Essential Terms Publication or "ETP"), which contain mandatory terms, commodity descriptions and TLIs [a new paragraph (d)(10) has been added to clarify the application of algorithms];

(b) The format in this interim rule (as described in (a), above), with null linkage (dummy algorithms) to label and link text-only assessorial charge descriptions to commodities and TLIs;

(c) The format in this interim rule, except that all ET commodities, rates and assessorial charges would be in text only (no commodity description(s) or TLIs created as ATFI-formatted objects); or

(d) Suggestion(s) for other format(s) that may be implemented within the existing transaction-set format using existing text-only provisions.

Comments on any or all of the major format options listed above should also address the following features:

(1) Linkage of essential terms to tariffs of general applicability (or other governing tariffs), as set forth in § 514.12 and the analysis of that section above.

(2) Standard numbering and/or positioning of the seven required essential terms under section 8(c) of the 1984 Act (46 U.S.C. app. 1707(c)).

(3) Changes in FMC rules for service contracts in other dockets. See the discussion under § 514.7, above.

Other than comments on the basic procedures for filing essential terms, one relevant comment is addressed here. With respect to § 514.17, Zim suggests that the rule should provide that, "when a Service Contract does not contain specific charges, the Service Contract will still be subject to tariff charges as contained in the Freight Tariffs or Rules Tariffs named in 'tariff of General Applicability.' This will eliminate the need for repeating all rules or charges in the Service Contract which are not altered or modified by the Service Contract."

In the rule, however, as with current part 581 of title 46, CFR, the Commission must be careful in distinguishing the confidential service contract (maintained in paper format) from the statement of the essential terms of the service contract (which may be identical to the service contract, except for the name of the shipper, and is filed in ATFI in electronic format for public access).

What can be incorporated by reference in a service contract is primarily a matter of contract law between the parties and, other than for activity subject to 1984 Act standards, is outside of the Commission's jurisdiction. Where the terms of the service contract are essential, however, the Commission can develop rules for their filing.

The essential terms of a service contract are subject to whatever tariff charges the parties desire. These charges, through algorithms and governing tariffs, can be provided for in the Essential Terms Publication and made applicable to individual statements of essential terms, without the need for repeating all the rules and charges in every statement of essential terms. The way this is done, however, is most important. The filer must provide specific linkage between the governing and governed tariffs/documents, both electronic and textual, so that there is no doubt as to what is being made applicable. The ATFI system and the rule currently facilitate such features, but an addition to the rule providing that

a particular governed document will be subject to a particular governing document and/or certain of its terms is neither practical nor desirable.

Section 514.18—Special Permission

With respect to special permissions, IAFB suggest that: "In order to avoid disruptions, it should be provided in § 514.18 or elsewhere that any existing special permission granted prior to the effectiveness of Part 514 will continue in effect and will be assigned an 'S' number for purposes of filings under Part 514." ATFI will accommodate the electronic filing of existing tariff matter with a special case number and letter assigned by the Commission after being shown by the filer that it is required. Therefore, no change to the rule appears to be necessary.

Section 514.19—Suspension of Tariff Matter

JC question the Commission's authority to issue an order suspending tariff matter other than in domestic rate cases or involving controlled carriers. The rule is not intended to give the Commission any additional suspension authority, but only to describe the procedure the Commission will follow to exercise the statutory authority it does have. For example, the Commission can suspend tariffs under § 13(b) of the 1984 Act, 46 U.S.C. app. 1712(b), and under § 10002(e) of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a. Also, some rejection situations involve a type of suspension. (If done by the system or by the staff, the rejection can be overturned by order of the Commission upon appeal.) Orders of the Commission involving tariffs in foreign commerce are addressed in § 14 of the 1984 Act, 46 U.S.C. app. 1713.

Section 514.20—Retrieval

Both USDA and MSC commented that they would have a need to be retrievers of ATFI data and requested accommodation. As indicated in the analysis under § 514.3, the Commission believes that the best way to handle the individualized needs of other U.S. Government agencies is through memoranda of understanding, to the extent their needs are different from those of public retrievers. Once ATFI begins implementation, such users should contact BTCL at (202) 523-5796.

On the restrictions on remote retrieval, the League's 1991 comments stated:

The League continues to be concerned with several aspects of remote retrieval. Specifically, the limitations of access both as

to a single commodity-type tariff and for a 30-minute time period will significantly limit the ATFI system's usefulness to shippers. The League also expressed appreciation for the Commission's willingness to re-examine the 30-minute time limit once practical experience has been gained. However, the League does not fully understand why a shipper must be limited to searching only one commodity-type tariff, particularly in circumstances where the first tariff searched does not have a tariff line item for the specific commodity sought by the shipper. The requirement that the shipper log-off the system and call again is inconvenient and inefficient. The Commission should explore ways in which there can be multiple tariff access while remaining within the parameters of Congressional policy.

Although the rule uses a 30-minute period as an example, the rule does not and will not contain a particular time for automatic logoff of remote retrievers. The period, whatever it is, may vary too often to be published in the *Federal Register* and rather, will be published in the ATFI logon bulletin from time to time.

As previously indicated, a retriever may look at only one tariff at a time. This will continue as a system feature. ATFI does not accommodate divided screens, so a person can literally look at only "one tariff at a time." Further, in response to the League's 1991 comments, the system will be modified so as not to inhibit a user from accessing another tariff within the designated time period, whether it be a governing tariff or a different commodity tariff.

The modification to our previous approach continues to comply with the restrictions imposed by Congress in Public Law No. 101-92 (103 Stat. 601), which requires the Commission to impose reasonable controls on the system to limit remote access by any one person. Again, the Commission will continue to closely monitor utilization of ATFI through periodic but detailed electronic reports. If abuses occur, the Commission can take action, including but not limited to reducing the access period before automatic logoff.

Accordingly, the only automatic log offs will be for inactivity for 10 minutes, or a retrieval session after the designated period, such as 30 minutes. Paragraph (c)(2) of § 51.20 is further clarified accordingly.

Paragraph (f) of § 51.20 is amended to distinguish between individuals with "read only" authorization and those with "write" privileges to the tariff being accessed. In order to accommodate filing and editing of electronic tariff data, only individuals with "write" privileges to tariffs have unlimited access to those tariffs, without the necessity of paying a user charge.

Individuals who merely wish to access tariff data without making changes are considered to be retrievers subject to the limitations, irrespective of whether they are employed by firms which have certain filing privileges.

Moreover, employees of carriers which have delegated tariff filing authority to conferences, as well as employees of carriers and conferences which have delegated tariff filing authority to third party vendors, must enter the ATFI system as retrievers. Registration of users will be handled accordingly.

Section 514.21—User Charges.

The IANVOCC and NCBFAA are opposed to the imposition of user fees for ATFI. The Commission, however, believes it is required to establish some ATFI user charges under the Independent Offices Appropriation Act and other authorities mentioned in the Supplemental Information to the September 9, 1991, proposed rule (56 FR 46049). Moreover, in their opposition to user fees, at least two commenters were referring to user fees proposed in pending legislation, not those set forth in the proposed rule. In its 1992 comments, the League stated:

The League would like to reiterate that it supports user fees connected with ATFI services only if they are based strictly upon the cost of service and are aligning cost responsibility with cost causation. The League opposes current efforts by some interests to propose fees for ATFI use which exceed the costs of, and are not to be used to support, the public's use of the ATFI system.

User charges for § 514.21, paragraphs (b), the user manual, (c), registration, and (e), certification of batch filing capability, were finalized, effective December 8, 1991 (56 FR 61164). Paragraphs (c), registration, and (e), certification of batch filing capability, continue in effect to permit registration and further certifications, but are amended for clarification.

IAFC suggest that the user fee schedules (and communications facilities) accommodate differences in locations desiring access, so that there be "adequate access to the ATFI System also for those operating overseas," where the cost for communications will be "far in excess for that of domestic filers." The Commission notes that all persons who remotely access the ATFI system, either for filing or retrieval, will pay their own telephone charges, and there will not be any ATFI system charges that are geared to location. For this reason, among others, the ATFI system will not "know" where the call is coming from. It would appear, however,

that overseas users can keep costs at a minimum by hiring a U.S.-based agent.

As indicated in the Supplementary Information to the proposed rule (56 FR 46049-46050), the 50-cents-per-minute connect-time charge for remote retrieval is on the low side of current per-minute charges for access to most other large commercial databases. Nonetheless, because the proposed charge is based on cost estimates, it will be reviewed periodically, as the League's 1991 comments suggest.

AALL also requests that ATFI revenue should be used to maintain the ATFI information dissemination program. User charges collected by the Commission must be deposited into the U.S. Treasury. Moreover, the retrieval charge is based on the marginal cost of dissemination, similar to the FOIA standard, and cannot be used to subsidize or offset filers' costs, (or the costs of the system, itself), as feared by the League in its 1991 comments. This should also address IAFC's concerns about foreign-based retrievers and filers, given the fact that all accessors will be responsible for the costs of their own "telephone calls."

As promised in the Supplementary Information to the final rule of December 2, 1991 (effective December 8, 1991; 56 FR 61164), the Commission has continued to analyze AALL's request that tariff data be furnished free of charge to Federal Depository Libraries. In the May 1992 oral comment session, ALA made similar arguments, i.e., that tariffs were "Government publications," which should be furnished free to Federal Depository Libraries. ALA compared ocean freight tariffs to "tariff schedules, like those of the International Trade Commission." We have seen nothing, however, which would change our earlier analysis:

The Commission does not believe that ocean freight tariffs of steamship operators which may be filed with the Commission (either in paper or electronic form) are "publications" within the meaning of title 44 of the United States Code. This tariff data is not primarily Government information which vitally affects the general public, but is more akin to a record in the files of the Government which is available through Freedom-of-Information-Act procedures. The data is not created at taxpayer expense, but is carrier data of business interest to only shippers and other carriers. The law and policy considerations which demand more widespread dissemination of government information do not appear to be applicable to ATFI data. See also other Commission reports on ATFI previously appearing in the *Federal Register* of December 22, 1987 (52 FR 48504), June 13, 1988 (53 FR 22048) and December 29, 1988 (53 FR 52785).

See also the Proposed Revisions to OMB Circular No. A-130 of April 29, 1992 (57 FR 18296).

In order to accommodate the utilization of tapes for the furnishing of databases other than the ATFI database, itself, a new paragraph (k) to § 514.21 is added to provide for reasonable user charges for other data furnished on tape. The basis for the charge is essentially the same as for the ATFI database tapes, i.e., the cost of the tape itself.

The Commission will revisit all user charges after sufficient experience is obtained.

Section 514.91—OMB Control numbers assigned pursuant to the Paperwork Reduction Act

The September 9, 1991, proposed rule, at 56 FR 46054, contained the appropriate notice that the collection of information requirements contained therein had been submitted to OMB for review. On October 30, 1991, no comments from the public had been received and OMB approved Part 514 and Exhibit 1 thereto for use through September 3, 1994. This was noted in the Supplemental Information to the final rule of December 2, 1991 (56 FR 61165), which finalized § 514.91 and published the OMB-assigned control number of 3072-0055. There was no complaint about the information-collection requirement burdens or the Commission's estimates until the December 30, 1991, comments to the proposed rule.

The commenters, primarily JC, attacked the Commission's September 1991 estimate of "19 hours" per response as too low, but did not attempt to provide estimates of their own. Even now, there is little experience in formatting tariffs for filing with ATFI, and accurate estimates continue to be scarce, either by the industry or the Commission.

At about the same time that the proposed rule was issued in September 1991, Crowley started converting and inputting tariffs into a system similar to that of the ATFI software. As of June 1, 1992, Crowley has been the only filer of substantial tariff data and Crowley's experience, as described in its statement at the oral comment session, appears to be the most reliable guideline to other tariff filers. It advised:

Crowley publishes independent, or participates as a member of 42 different, tariffs that are presently on file with the FMC. We are converting all of these tariffs and inputting them into the electronic information system for accessibility by all Crowley personnel and for filing, where

applicable, with the Federal Maritime Commission.

In addition to the FMC tariffs, Crowley Maritime also is responsible for publishing ICC tariffs. These tariffs as well are being converted and input into the system for electronic dissemination to all Crowley users.

Before automating Crowley's tariffs, our internal distribution exceeded 1,100 hard copies throughout our network, at a cost of over \$65,000 in expenses. Those expenses covered mailing, supplies, reproduction and nearly \$570,000 for clerical posting and filing under these tariffs and maintaining the tariffs in an updated fashion.

Once all of our tariffs are converted, this expense will be eliminated. We have converted over 16 tariffs, covering trade routes served by Crowley, between U.S. ports and points and locations in Central America, all Caribbean islands served by Crowley, and in the countries located in South America.

The tariffs converted to date total 7,285 pages; 9,513 commodity descriptions; 2,790 rules; and nearly 66,000 tariff line items. Also 418 tables, 202 location groups, and 3,600 algorithms in the tariffs have been converted so far. The tariffs converted to date range in size between 60 pages and 1,400 pages;¹⁰ our experience is that it takes approximately 320 man hours to convert a tariff of 455 pages. Our cost is \$2,400 per tariff, at an average cost per page of \$5.27.

Conversion of these tariffs is currently being performed by 12 temporary employees under the supervision of three supervisors and one director. The temporary employees are trained by the supervisors to perform harmonization of commodity descriptions, and input rule text and TLI creation -- tariff line item creation.

The construction and input of the algorithms are performed by the supervisors and the director responsible for the project. Having converted and harmonized 9,500 commodity descriptions, we have had little problem in harmonizing to two digits, and often are able to harmonize to four and six digits.

The built-in harmonization utility within the system is generally sufficient to categorize all types of commodities. If commodities do not fit within a single harmonized code number, they can be split into separate commodity descriptions, or listed under Chapter 99 for mixed commodities.

Our experience with the construction of over 3,600 algorithms is that creating these algorithms requires the same thought process that is necessary in interpreting a rule or a charge today. Since the creation of this accessorial is permitted -- is performed by pricing or other tariff management personnel, its application is consistent and does not require interpretation by other tariff users.

The algorithm utilities provided by the system and in ATFI make it simple to select the WHEN and THEN application of the additional charge. It does not take a mathematical wizard or any very trained

personnel to master the tables and the selections.

As part of our conversion, we subject the converted tariff data to a rigorous proofing process. This proofing process, in fact, takes longer than the conversion itself. As part of our proofing process, we post audit (using the system) manually-rated bills. This allows us to pick out bugs in the conversion as well as identify in some cases bills that were rated incorrectly in the manual process.

The converted tariffs that Crowley publishes were filed in page-based format compliant with existing regulations. We filed a page-based tariff using the system. The system we're using is able to produce a page from the ATFI system. That tariff is filed with the Federal Maritime Commission, along with the prototype data.

These tariffs are available to both the Commission and authorized, trained ATFI users and provide for comparison by the Commission and trained ATFI users the difference between a page and data. You can actually go into the system and compare the algorithms to the text algorithms that are outlined in the rules. You can compare the harmonized code in the item number of the tariff with the harmonized code in the system. The data in the system is as current as the filing of the paper tariff.

This allows the Commission to train your examiners. It allows the general public access to ATFI data. You don't have steel-toed work shoes, or other strange commodity descriptions, but a live tariff. It allows the Commission to streamline their examination process.

The filing of the tariffs also allows the other carriers, conferences, and general public the ability to get into a live tariff that's being used today to rate, bill and quote rates, and actually examine the harmonized codes that we have employed within our shop and examine the algorithms that we have created and have attached to the TLIs from the rules in the tariff.

Since 1991 or December of 1991, converted tariffs have replaced paper tariffs within our network at Crowley. We presently have over 150 users relying on the automated system to perform rate quotations, bill shipments, perform audits and many other tariff-related functions. These users access the data through a mainframe computer located at our headquarters in San Francisco. This computer receives daily updates from a publishing center in Jacksonville, Florida.

Internally, Crowley has experienced the following improvements since implementing the automated system: Faster, more accurate rate quotations; faster distribution of tariff information and updates; reduced costs of paper distribution; elimination of clerical posting and filing on converted tariffs; less training and knowledge by tariff users.

In the past, when it was required to train a tariff person, it would take at least three, four, several months to train tariff users from a page-based tariff. Today, with the automated system, we train tariff users for retrieval and quotation purposes in two days.

It also creates standard formats. There is no difference between one conference's tariff and another conference's tariff. Trade route

¹⁰ For statistical purposes, including the estimates of burdens under the Paperwork Reduction Act, the Commission continues to use "100 pages" as the size of the average (or perhaps median) tariff.

tariffs will all be the same format and easy to understand.

Crowley Maritime supports the Federal Maritime's decision to eliminate paper tariffs and automate the filing and retrieval of this information.

The Commission can now say that its original, rough estimate was too low. Based upon Crowley's experience (320 man hours to convert a tariff of 455 pages) under the requirements of the September 9, 1991, proposed rule, the burden estimate for the average tariff of 100 pages would have been 71 hours. The requirements of the proposed rule, however, have been further modified, resulting in a different estimate for producing the average tariff, as further described below.

OMB CONTROL NUMBER: The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072-0055. The first-year public reporting and conversion burden for this collection of information is estimated to average 75 hours per response (tariff), including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed and completing and reviewing the collection of information. After the first year (during the second year), the burden of maintaining each (converted) tariff is estimated to average 70 hours. However, these estimates may ultimately prove to be high, given the expected substantial reductions in burden resulting from the elimination of the harmonized-code requirement, anticipated modification in the procedures for the electronic filing of the essential terms of service contracts, and other changes made in the Rule in response to industry's comments. For the third and subsequent years, the burden should be significantly less as a result of further experience with electronic filing. A supplemental SF-83 (worksheet) statement is being forwarded to OMB to reflect the adjustments from the proposed rule. Comments regarding the revised burden estimates or any other aspect of this collection of information, including suggestions for further reducing the burdens, may be sent to: Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, D.C. 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, D.C. 20503.

Exhibit 1 to Part 514—ATFI User Registration Form

The User Registration Form, FMC 63, finalized in December 1991, is now further revised and instructions are added to accommodate the many types of authority requested, e.g., filing or retrieval, corporate or individual, new or amended.

Cross References in Existing Parts 515, 550, 580 and 581

As previously indicated, once part 514 is enacted in full, it is the Commission's intention to cancel those parts of Title 46 CFR which govern the filing of paper tariff pages because they will be unnecessary. Until then, however, electronic tariffs will be phased into the ATFI system by trade route, and certain filers still will be required to file tariffs in paper form. Accordingly, cross-references to part 514 are added to parts 515, 550, 580 and 581 to indicate that the new part governs ATFI filings and to call BTCL about the phase-in schedule, if there are any questions.

Although the Commission is not subject to the requirements of Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or
- (3) Significant adverse effect on competition, employment, investment, productivity, innovations, or of the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small government jurisdictions. ATFI will not have a significant economic impact on a substantial number of small businesses because such firms that have traditionally used third party vendors or directly contacted carriers for rate information will most likely continue to use the same sources. Any residual ATFI usage on the part of small entities will be limited and will not involve a substantial number of small entities.

List of Subjects

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and record keeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 515

Barges; Cargo; Cargo vessels; Exports; Freight; Harbors; Imports; Maritime carriers; Motor carriers; Ports; Rates and fares; Reporting and record keeping requirements; Trucks; Water carriers; Waterfront facilities; Water transportation.

46 CFR Part 550

Barges; Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers; Rates; Reporting and record keeping requirements; Water carriers; Water transportation.

46 CFR Part 580

Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers; Rates; Reporting and record keeping requirements; Surety bonds; Water carriers; Water transportation.

46 CFR Part 581

Cargo; Cargo vessels; Exports; Freight; Imports; Maritime Carriers; Rates; Reporting and record keeping requirements; Surety bonds; Water carriers; Water transportation.

For the reasons set forth in the preamble, and pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814-817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702-1705, 1707-1709, 1712, 1714-1716, 1718 and 1722; and § 2(b) of Public Law 101-92, the Federal Maritime Commission amends title 46, chapter IV, Code of Federal Regulations, as follows:

1. Part 514 is revised to read as follows:

PART 514—TARIFFS AND SERVICE CONTRACTS

Subpart A—General Provisions

- Sec.
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Exhibit 1 to Part 514—ATFI User Registration Form

Authority: 5 U.S.C 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and sec. 2(b) of Pub.L. 101–92, 103 Stat. 601.

Subpart A—General Provisions

§ 514.1 Scope, purpose, requirements and penalties.

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

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

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

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

thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

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

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

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

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

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

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

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

(1) *Foreign commerce of the United States.* (i) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, charges, classifications, Tariff Rules and practices for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984.

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

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

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

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

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

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

(2) *Domestic offshore commerce of the United States under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933.* (i) Every domestic offshore carrier shall file with the Commission and keep open to public inspection, tariffs showing its actual rates, fares and charges for or in connection with transportation between all points on its own route, and all points on any through route established in conjunction with

other carriers. Such tariffs shall plainly show the places between which freight or passengers will be carried and shall contain any classification of freight and passenger accommodations affecting or determining the rates applicable to such transportation and shall state separately each terminal or other charge, privilege, or facility granted or allowed to shippers or passengers and any Tariff Rules or regulations which in anywise change, affect, or determine any part of the total rates, fares or charges assessed or the value of service rendered to consignors, consignees or passengers.

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

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

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

(C) Alaska and Hawaii;

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

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

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

(B) Every tariff or tariff change shall be filed on or before its effective date, except as required by Commission Order or by agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, and be

kept open for public inspection as provided in paragraph (c)(3)(i)(A) of this section.

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

(ii) [Reserved]

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

(d) *Rejection of tariff data*. (1) Acceptance of tariff matter does not establish the legality of the rates and practices described therein. The mere filing of a tariff does not excuse the tariff owner or publisher from the obligations of the 1916, 1933 or 1984 Acts or this chapter, regardless of whether these obligations preceded or followed the filing of the tariff in question.

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

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

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

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

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

(e) *Penalties; suspension of tariff material*. (1) Operating without an effective tariff on file with the

Commission or charging rates not in conformance with such a tariff is unlawful.

(2) *Foreign commerce*. Pursuant to section 13 of the Shipping Act of 1984, operating without an effective tariff on file or charging rates not in conformance with such a tariff is subject to a civil penalty of not more than \$5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed \$25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months. See § 514.19.

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

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

§ 514.2 Definitions.

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

Alternate port service means substituted service whereby the vessel operating carrier for whom the tariff object is filed uses someone else to perform the transportation between the port of ultimate origin or destination and another port at which the vessel operating carrier actually calls for pickup or delivery. See also "substituted service" and § 514.15(b)(1).

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

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

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

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

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

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

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

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

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

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

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

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

Chemical parcel tanker. See "common carrier."

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

Combination rate means a freight rate for a particular shipment, which is computed by the addition of a TLI for a movement to or from a port, combined with freight charge(s) to or from other point(s) on the same route. See also: "through rate." See § 514.15(b)(1).

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 charges, and the commodity index entries by which the commodity is referenced. See § 514.13(a).

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

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

Commodity rates means rates for shipping to or from specific locations a commodity or commodities specifically named or described in the tariff in which the rate or rates are published. See § 514.13(a).

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

- (1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and
- (2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker.

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

Conference means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff. The term shall also include any association of ocean common carriers which is permitted, pursuant to an effective agreement, to fix rates and to enter into service contracts, but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement. For the term "marine terminal conference

(agreement)," see § 514.3(a)(8) and §§ 560.307(b) and 572.307(b) of this chapter.

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

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

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

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

Controlled common carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier operate; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

- (1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or
- (2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier. See §§ 514.3(a)(2); 514.3(b); 514.4(c); 514.9(b); and 514.13(b)(7).

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

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

Dockage means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for

mooring to a vessel so berthed. See also "terminal services."

Domestic offshore carrier means a carrier engaged in the transportation by water of cargo and/or passengers on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District or possession. See § 514.1(c)(2)(ii).

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

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

Dummy algorithm. See "null linkage."

Edit checks. See "conformity checks."

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

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

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

Essential terms. See "statement of essential terms."

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

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

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

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

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

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

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

Forest products means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls and paper in rolls. See §§ 514.3(b)(1) and 514.7(c).

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

Freight forwarder. See "ocean freight forwarder."

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

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

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

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

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

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

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

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

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

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

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

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

Inland point means any city and associated state/province, country, U.S. ZIP code, or U.S. ZIP code range, which lies beyond port terminal areas. (A city may share the name of a port: the immediate ship-side and terminal area is the port, but the rest of the city is considered an inland point.) See § 514.15(b)(1).

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

Inland rate table means a structured matrix of geographic inland locations (points, U.S. ZIP code ranges, etc.) on one axis and transportation modes (truck, rail, etc.) on the other axis, with the inland rates specified at the matrix row and column intersections. See § 514.15(b)(1).

Interactive filing means the process by which a tariff filer accesses the ATFI system via dial-up, using telecommunications links, a modem and terminal, and interacts with the system on a transaction by transaction basis to

retrieve its own tariff information, create tariff filings, and verify previous filings. See § 514.8(c)(1).

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

Intermodal transportation means continuous transportation involving more than one mode of service, (e.g., ship, rail, motor, air), for pickup and/or delivery at a point beyond the area of the port at which the vessel calls. The term "intermodal transportation" can apply to "through transportation (at through rates)" or transportation on through routes using combination rates. See § 514.15(b)(1).

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

Loading and unloading means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or barges or any other means of conveyance to or from the terminal facility. See "terminal services" and § 514.15(b)(23).

Local rates means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement. See § 514.15(b)(1).

Location group means a logical collection of geographic points, ports, states/provinces, countries, or combinations thereof, which is primarily used to identify, by location group name, a group that may represent tariff origin and/or destination scope and TLI origin and/or destination. See §§ 514.10(b) and 514.11(b)(10).

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

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

Loyalty contract (foreign commerce) means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which

a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference. See § 514.15(b)(27).

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

1984 Act means the Shipping Act of 1984.

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

Non-vessel-operating common carrier (or NVOCC) (foreign commerce) means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

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

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

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

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

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

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

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

Open rate (foreign commerce) means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rate on such commodity or commodities. See §§ 514.13(b)(19) and 514.15(b)(15).

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

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

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

Owner (of tariff material) means the carrier, conference or terminal establishing the rates and charges in tariff material and on whose behalf the tariff material is filed. See "publisher (tariff)."

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

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

Point of rest means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading. See § 514.15(b)(23).

Port means a place at which a common carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement. See §§ 514.15(b)(1), (b)(13) and (b)(23).

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

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

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

Practices. See "tariff."

Project rates means rates applicable to the transportation of materials and equipment to be employed in the construction or development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also including disaster relief projects. See § 514.13(a)(5).

Proportional rates means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement. See § 514.15(b)(1).

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

Rate means a price quoted in a tariff for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on and after a stated effective date or within a defined time frame. See § 514.13(b)(19).

Retrieval. See "interactive retrieval."

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

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

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

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

nonperformance on the part of either party. See § 514.7.

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

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

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

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

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

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

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

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

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

Substituted service means the use of transportation performed by someone other than the carrier for whom the tariff object is filed. See "alternate port service," "transshipment," and §§ 514.15(b)(1) and (b)(13).

Syntax check means an automatic system review of items in filings to check conformity with data element

type and size, and other format requirements outlined in the "Batch Filing Guide." See § 514.8(n)(1)(i).

Tape batch filing. See "in-bulk batch filing."

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

Tariff amendments. See "amendment."

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

Tariff line item (TLI) (with a 14-digit number) means a single freight rate, in effect on and after a specific date or for a specific time period, for the transportation of a stated cargo quantity, which may move from origin to destination under a single specified set of transportation conditions, such as container size or temperature. See § 514.13(b).

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

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

Tariff record means a collection of tariff identification data that include the name and type of the tariff, the tariff number, publishing office, units of weight and measure, and the date the tariff was filed, the date it became effective, and the date it expires. See § 514.11(a).

Tariff Rule. See "rules (in a tariff)" and § 514.15.

Terminal services includes checking; dockage; free time; handling; heavy lift; loading and unloading; terminal storage; usage; wharfage; and, wharf demurrage, as defined in this section. The definition of terminal services set forth in this section shall be set forth in tariffs filed pursuant to this part except that other

definitions of terminal services may be used if they are correlated by footnote or other appropriate method to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in terminal tariffs. See § 514.15(b)(23).

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

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

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

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

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

- (1) A single domestic offshore carrier offering service between port terminal areas;
- (2) Two or more domestic offshore carriers; or
- (3) One or more domestic offshore carriers in connection with one or more other carriers. See § 514.15(b)(1).

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

Through transportation (foreign commerce) means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for

which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port. See § 514.15(b)(1).

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

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

TLI. See "tariff line item."

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

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

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

Transshipment means the physical transfer of cargo from a vessel of one carrier to a vessel of another in the course of all-water or through transportation, where at least one of the exchanging carriers is a vessel-operating carrier subject to the FMC's jurisdiction. See § 514.15(b)(13).

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

Validity check means a system review of certain items in filings to check conformity with reference tables outlined in the transaction sets and standard glossaries employed in ATFI, e.g., origin and destination locations must be correctly spelled and be

members of the ATFI locations glossary. See § 514.8(n)(1)(ii).

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

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

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

§ 514.3 Exemptions and exclusions.

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

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

(1) *Equipment interchange agreements.* Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers, are exempt from the tariff filing requirements of the 1916 and 1984 Acts and the rules of this part. See §§ 514.12(b)(3) and 514.15(b)(21).

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

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

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

(iii) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established

pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph (see § 514.9(b)(24)(i)(A));

(iv) The controlled common carrier's rates, charges, classifications, Tariff Rules or regulations govern transportation of cargo between the controlling state and the United States, including its districts, territories and possessions (see § 514.9(b)(24)(i)(B)); or

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

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

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

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

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

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

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

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

(7) *Terminal barge operators in Pacific Slope States*. Transportation provided by terminal barge operators in Pacific Slope States barging containers and containerized cargo by barge between points in the United States are exempt from the tariff filing requirements of the 1916 and 1984 Acts and the rules of this part, where:

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

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

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

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

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

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

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

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

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

including the requirement to adhere to the filed tariff provisions or service contracts.

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

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

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

(2) *Mail in foreign commerce*.

Transportation of mail between the United States and foreign countries is exempt from the filing requirements of the 1984 Act and the rules of this part.

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

(4) *Department of Defense cargo in foreign commerce - certain requirements*. Transportation in foreign commerce of U.S. Department of Defense cargo by American-flag common carriers, under terms and conditions negotiated and approved by the Military Sealift Command ("MSC"), is subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the 1984 Act, if all the following conditions are met:

(i) All common carrier quotations or tenders, including amendments thereto, are filed with the Commission as soon as possible after they are accepted and approved by MSC, but no later than on the effective date;

(ii) MSC tenders are filed in the carrier's foreign commodity tariff(s) covering the trade route(s) applicable to the tender(s);

(iii) MSC tenders are filed for distinct commodities or as separate TLI's within a commodity, as applicable, using the filing/amendment code "M" under § 514.9(b)(13);

(iv) The use of the filing/amendment code "M" is understood by the filer to mean that the tariff material filed is submitted in accordance with the requirements of the Shipping Act of 1984 and this part; and

(v) The terms and conditions governing the military rates, as set forth in the applicable MSC rate agreement(s), are included in Tariff Rule 32, § 514.15(b)(32), and assessorials are properly formatted and linked to the commodity description and/or TLI.

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

(2) *Between Canada and U.S.* The following services are exempt from the filing requirements of the 1984 Act and the rules of this part:

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

(1) Carriage of property is limited to vehicles;

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

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

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

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

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

(1) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(2) Certified copies of the rate divisions and of all agreements, arrangements or concurrences, entered

into in connection with the transportation of such cargo, are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

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

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

(2) The carrier will remain subject to all other provisions of the Shipping Act of 1984.

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

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

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

(d) *Domestic offshore commerce*—(1) *Notice requirements; general*. Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish on one day's notice any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843. See § 514.2.

(2) *Alaska*—(i) *Bethel—Kuskokwim Bay*. Transportation between Bethel, Alaska and points in the Kuskokwim Bay region in the range from Platinum to Mekoryuk is exempt from the filing

requirements of the 1916 Act and the rules of this part.

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

(3) [Reserved]

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

(ii) [Reserved]

(5) [Reserved]

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

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

(a) *Effectiveness of new or initial carrier and conference tariffs in the domestic offshore and foreign trades*. Unless otherwise provided by the Commission or this part, all conference and carrier tariffs tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which permits at least 30 days' notice of the filing. The 30-day notice period between filing date and effective date shall commence at 12:01 a.m. of the day of filing under § 514.10(a)(2). The tariff may take effect at 12:01 a.m. of the 31st day. See §§ 514.9 and 514.10(a). The 30-day notice requirement is not applicable to service contracts and their essential terms under §§ 514.7 and 514.17.

(b) *Prohibitions*—(1) *Foreign language tariffs*. (i) Tariffs and essential terms of service contracts in foreign languages will not be accepted. Filers may, however, include foreign language

commodity descriptions, TLI notes, and commodity index entries, but only if:

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

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

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

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

(3) *Limiting or qualifying provisions—*

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

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

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

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

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

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

(c) *Controlled common carriers—(1) Controlled common carrier rates—(i) Level of rates and charges.* Except as provided in § 514.3(a)(2), no controlled common carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, Tariff Rules, or regulations in those tariffs. An unjust or unreasonable classification, Tariff Rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

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

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

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

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

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

(d) *Duty and authority to file—(1) General procedure.* (i) Except as provided in paragraph (d)(1)(ii) of this section, authority to obtain or delegate authority for using USERID and password under § 514.8(f) for filing and amending particular types of tariff material, as well as authority to change filing and editing authority, must be requested by a responsible official of the tariff owner in writing, using the registration form in exhibit 1 to this part, showing (or attaching) all necessary approvals and paying the appropriate fee under § 514.21.

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

(2) *Domestic offshore tariffs.* (i) Tariffs in domestic offshore commerce may be filed only by a responsible official of, or a tariff agent appointed by, a domestic offshore carrier participating in the transportation offered therein.

When a tariff agent is employed, a delegation of authority from each participating, domestic offshore carrier must be provided.

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

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

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

(v) Should a carrier enter receivership, or otherwise come under the control of a trustee, the duty and authority to file tariff material shall be upon the receiver or trustee appointed until the receivership/trusteeship is terminated.

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

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

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

(4) *Conference-related situations in foreign commerce—(i) Admission to membership.* Before a common carrier is admitted to membership in a conference, it shall electronically file notice of cancellation of any independent tariff applicable to the trade served by the conference, effective upon the date of admission to conference membership,

making reference to the conference tariff and where the conference tariff may be examined. The filing of the independent tariff(s) and admission to conference membership may become effective upon the date of filing, except that, unless Special Permission is granted pursuant to § 514.18, cancellation of the independent tariff and admission to conference membership requires 30 days' notice if:

(A) The carrier is a controlled carrier, or

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

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

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

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

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

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

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

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

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

(5) *Service contracts and essential terms in foreign commerce.* (i) As

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

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

(B) The conference which:

(1) Is signatory to the service contract; or

(2) Has one or more member carriers signatory to a service contract for a service otherwise covered by the conference agreement.

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

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

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

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

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

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

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

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

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

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

§ 514.5 [Reserved]

§ 514.6 [Reserved]

Subpart B—Service Contracts

§ 514.7 Service contracts in foreign commerce.

(a) *Scope and applicability.* Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States. While tariffs and the essential terms of service contracts are required to be filed electronically and made available to the public under subpart C of this part, service contracts themselves (incorporating mandatory essential terms as described in § 514.17 and confidential names of shippers, etc.), as well as certain related notices, shall be filed in paper, hard copy format under this subpart and section.

(b) *Confidentiality*—(1) *Service contracts*. All service contracts shall be filed confidentially with the Commission and shall, to the full extent permitted by law, be held by the Commission in confidence.

(2) *Amendments to non-essential terms*. Amendments to non-essential terms of a service contract shall be accorded similar confidential treatment. (Essential terms may not be amended but may be corrected under paragraph (k) of this section.)

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

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

- (i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the exempted commodity; or
- (ii) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

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

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

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

(2) *Proof of tariff and bond*. If the certification completed by the contract party under paragraph (e)(1) of this section identifies the contract party or an affiliate or member of a shippers'

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

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

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

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

(1) *Availability of terms*. The essential terms of an initial service contract shall be made available for use in a contract to all other shippers or shippers' associations similarly situated, under the same terms and conditions, for a specified period of no less than thirty (30) days from the date of filing of the essential terms of the service contract under § 514.17, as may be adjusted under paragraph (j)(4) of this section. The conference or carrier may specify in the Essential Terms Publication the information which must accompany a me-too request and the procedures for submitting same.

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

(ii) The carrier or conference shall reply to the request by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a

contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier or conference may require the contract offer to be accepted within a specified period of time.

(3) *Filing of me-too contracts*. The service contract resulting from a request under this section may be implemented as described in paragraph (j)(3) of this section. No additional statement of essential terms need be filed.

(4) *Changes in me-too contracts*. In the case of any expressly described subsequent event which results in a change to an original essential term by the operation of a contract clause in the service contract under § 514.17(d)(8)(vi), the new essential term(s) shall be immediately made available in writing to other shippers and shippers' associations which have entered into a contract with the same, original essential terms, and which are similarly affected by the event. Copies shall also be submitted to the Commission under paragraph (g)(2)(i) of this section.

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

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

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

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

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

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

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

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

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

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

(v) Any change to:

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

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

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

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

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

(iii) A reference to the statement of essential terms ATFI number ("ET Number _____") as provided in § 514.17(d)(2);

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

(v) The names of the contract parties. Any further references in the contract to such parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.); and

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

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

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

(B) Other terms of the contract;

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

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

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

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

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

(i) [Reserved]

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

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

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

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

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

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

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

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

(3) *Implementation; prohibition and rerating.* (i) Performance under a service

contract may begin without prior Commission authorization on the day its associated statement of essential terms is electronically filed, except for rejection under paragraph (j)(3)(ii) of this section;

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

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

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

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

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

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

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

(k) *Modification, correction and cancellation of service contract terms.* The essential terms originally set forth in a service contract may not be amended but may be corrected pursuant to this section and § 514.17.

(1) *Request for correction.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

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

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

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

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

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

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

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

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

(ii) The provisions of paragraph (k)(2)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms publication.

(iii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to continue under that contract with or without the corrected essential terms.

(3) *Cancellation.* See paragraph (l) of this section and § 514.4(e)(2).

(l) *Accounting adjustments; rerating; notice—(1) Account adjustment; rerating—(i) Events and damages covered by contract.* An account shall be adjusted when there is either liability for liquidated damages under § 514.17(d)(8)(v), or the occurrence of an event described in § 514.17(d)(8)(vi).

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

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

(B) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff

provisions of the carrier or conference in effect at the time of each shipment.

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

(i) Liability for liquidated damages under § 514.17(d)(8)(v);

(ii) The occurrence of an event under § 514.17(d)(8)(vi); or

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

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

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

(2) [Paragraph (m)(2) is stayed until further notice.] *Where maintained.* (i) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (m)(3) of this section.

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

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

Subpart C—Form, Content and Use of Tariff Data

§ 514.8 Electronic filing.

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

unless specifically exempted by the Commission.

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

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

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

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

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

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

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

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

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

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

(3) *In-bulk (tape) batch filing.* Tape batch filing is accomplished by physical delivery of prepared tariff material on magnetic tape, in the published ATFI transaction set formats, to designated location(s) and accepted/time-stamped by an ATFI attendant, or date/time stamped and deposited for processing. The tape is processed after receipt at the ATFI Computer Center. In order that in-bulk (tape) tariff data can be deemed to be "filed" on a particular date, the tape(s) must be appropriately delivered (deposited) by 5:00 p.m. on that date, if a normal Commission work day; or if the date desired is a non-work day, by 5:00 p.m. on the previous Commission work day. See § 514.10(a)(2)(iii). In-bulk batch filing requires a computer and software capable of producing tariff material according to the ATFI transaction sets, and recording this on 9-track 1600 bpi or 6250 bpi tape according to standards outlined in the "Batch Filing Guide." See paragraph (d)(3) of this section.

(d) *General format requirements—(1) Database format.* The ATFI database is

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

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

(3) *"Batch Filing Guide."* The ATFI "Batch Filing Guide" is published and updated in Pike and Fischer, "Shipping Regulation," SR 322:421, and a copy of the Guide is available from BTCL. The "Batch Filing Guide" includes the following items:

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

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

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

(i) A proposed major change (other than a correction), such as to a

transaction set, will require formal configuration management procedures and a minimum of thirty days' advance notice of the change in the **Federal Register** and the ATFI system news, available at system logon, and by other established Commission communications procedures.

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

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

(f) *Password and User ID.* (1) System identification ("ID") for logon and initial password assignments, for either filing or retrieval, are obtained by submitting to BTCL the ATFI User Registration Form (exhibit 1 to this part), along with the proper fee under § 514.21 and other necessary documents prescribed by § 514.4(d) of this part. The logon IDs and Passwords are issued to individual users. Logon IDs remain constant unless circumstances dictate a change (forgotten, lost, compromised, etc.); however, passwords should be changed during the first session and regularly after that. Each ATFI user is responsible for maintaining security and control over its individual password.

(2) Because ATFI will have sophisticated accounting and reporting functions to track utilization for user charges under § 514.21 and other purposes, users who disclose their logon ID or password assume the following risks:

(i) System use by another person using the "borrowed" logon ID will be included in the utilization statistics for the registered user;

(ii) The "borrowing" user may change the password, thus precluding use by the registered user; and

(iii) Substandard, inaccurate or rejected filings by the "borrowing" person will be traced to the registered user in an audit.

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

(h) *Major menu selections.* Proper connection will lead the user to the "ATFI Logo Menu," which allows selections by any user for "Tariff Retrieval," "Retrieval Practice," "Retrieval CBI," "Mailbox," "ATFI System News," "Change Password," "Screen Setup," and "Logout." Additionally, a registered filer can access "Tariff Filing," "Filing CBI," and "Filing Practice." Upon the selection of either "Tariff Filing" or "Tariff Retrieval," the user will be led to the "Main Menu," which allows selection (with help screens and windows) of the following items and subitems (see also the anti-rebate policy notice in paragraph (j) of this section). The tariff objects (in addition to "Commodity Descriptions" and "TLIs") are marked with an asterisk (*).

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

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

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

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

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

(iii) *Commodity Index.* (This can also be accessed from the "Commodity

Search" screen under "Rate Inquiry.") See § 514.13(a)(7).

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

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

(A) *Tariff Record.* See § 514.11(b).

(B) *Origin Scope.* See § 514.11(c).

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

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

(E) *Organization Record.* (This item

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

(vi) *Select Tariff.*

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

(4) *Utilities.*

(i) *Currency Conversion.*

(ii) *Display Options.*

(iii) *Version Information.*

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

(v) *General Rate Increases* (filers

only).

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

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

(5) *Exit Tariff System.*

(6) *V1.00 Information.*

(i) [Reserved]

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

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

(k) *Publication; paper copies of tariff material—(1) Publication—(i)*

Availability for inspection. During normal business hours, every carrier, conference and terminal operator shall promptly make available to the public, in paper or electronic form, all tariff material required by this part to be filed by the carrier, conference or marine terminal operator, as well as all Commission actions affecting such tariff material, such as rejections, suspensions, etc. A reasonable charge, such as for a regular subscription, may be made for this service, except that domestic offshore carriers shall provide this service free of charge to the governor (or governor's designee) of any state, commonwealth or territory for domestic offshore tariffs pertaining to trades affecting the particular state, commonwealth or territory.

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

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

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

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

(B) During a major emergency where the ATFI host processor is inaccessible due to an equipment breakdown in the ATFI system, the official tariff of a tariff owner shall be that maintained by the tariff owner for public access during just such an emergency. The access to the emergency tariff shall be described in the tariff owner's Tariff Rule 30 (§ 514.15(b)(30)). As soon as the ATFI host processor becomes accessible, the tariff owner shall ensure that there are no discrepancies between the emergency tariff and the ATFI tariff.

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

format may reflect the printing of a computer screen display or the retrieval and printing of a specific portion of a tariff in the ATFI database or the ATFI database archives.

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

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

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

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

(1) *Conformity checks.* The conformity checks are syntax checks, validity checks and associative checks. For interactive filing, the ATFI system will generally not accept tariff material which fails conformity checks and the on-line filer can immediately correct its

proposed filing before final submission to the ATFI database. Commercially developed batch filing software can be designed to accomplish the same functionality. However, all proposed filings of tariff materials must undergo the routine system conformity checks before they can be received into the database. Filers will be notified of automatic rejections at this stage by electronic mail, with follow-up letter, if necessary. The conformity checks are:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Complete textual description and unique number.

(2) At least one commodity index entry.

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

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

(2) TLI code (§ 514.13(b)(6)).

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

(4) Rate basis (§ 514.13(b)(17)).

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

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

(1) All mandatory rules.

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

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

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

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

(2) Availability date at least 30 days greater than the filing date (§ 514.17(d)(3)).

(3) All amendments filed with a special case number (§§ 514.7(k) and 514.9(b)(19)).

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

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

(A) Of a controlled common carrier.

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

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

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

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

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

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

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

(v) All *Tariff Rules* (§ 514.15).

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

(A) Any new group or addition to group.

(B) Any deletion of a group member.

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

(3) *Status/rejection codes.* The command line at the bottom of most ATFI screens provides a "Status" option for retrievers to determine whether an ATFI object is accepted, rejected, suspended, etc., and the reasons therefor. The DED "FMC Status/Rejection Code" provides numeric, two-digit codes for this purposes, e.g., "01—Not rejected; item accepted."

§ 514.9 Filing/Amendment codes and required notice periods.

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

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

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

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

(5) *Essential terms and terminal tariffs.* Due to the absence of most of the notice requirements otherwise applicable to carrier or conference tariffs, the use of symbols under this section for terminal tariffs will be appropriate for the tariff objects employed and filing/maintenance. Symbols for essential terms of service contracts under § 514.17 will usually be limited to "I" for initial filings and "S" for amendments.

(b) *Filing/Amendment codes and notice periods.* For tariffs in foreign and

domestic offshore commerce, the following are the notice periods for various types of filings and their corresponding symbols. To the extent applicable and permitted by the ATFI system, the symbols can also be used in other types of tariff material, such as terminal tariffs.

(1) *"A" Increase (Not a general rate increase in domestic offshore commerce under paragraph (b)(7) of this section ["G"]): 30 days' notice—*(i)(A) Except for a general rate increase in domestic offshore commerce, amendments which provide for changes in rates, fares, charges, Tariff Rules or other tariff provisions resulting in an increase in cost, shall use the symbol "A" and be filed to become effective not earlier than 30 days' after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission.

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

(ii) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "cargo, n.o.s." or similar general cargo rate, is a rate increase requiring 30 days' notice under this subparagraph.

(2) [Reserved]

(3) *"C" Change resulting in neither increase nor decrease in rates or charges: effective upon "short notice," i.e., upon filing in foreign commerce, or on one day's notice in domestic offshore commerce.* (i) Amendments which result in no change in cost to the shipper, such as an amendment changing only the name or address of the filing party, may become effective upon short notice (i.e., upon filing in foreign commerce, or on one day's notice in domestic offshore commerce) and shall use the symbol "C," except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

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

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

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

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

(4) [Reserved]

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

(6) [Reserved]

(7) *"G" General rate increase or decrease (domestic offshore commerce): 60 days' notice.* Amendments of domestic offshore tariffs which change rates, fares, charges, Tariff Rules, or other tariff provisions and which constitute a general increase or decrease in rates, shall be filed together with any supporting material required by part 552 and § 502.67 of this chapter at least 60 days prior to their effective date and shall use the symbol "G."

(8) [Reserved]

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

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

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

(10) [Reserved]

(11) *"K" Rate or charge filed by a controlled common carrier member of a conference under independent action*

(foreign commerce): effective upon filing if decrease.

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

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

(12) [Reserved]

(13) "M" *Transportation of U.S. Department of Defense cargo by American-flag common carriers under terms and conditions negotiated and approved by the Military Sealift Command ("MSC"). (Foreign Commerce): Effective upon filing.* Under § 514.3(b)(4), the following services are subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the 1984 Act, if all the following conditions are met:

(i) All common carrier quotations or tenders, including amendments thereto, are filed with the Commission as soon as possible after they are accepted and approved by MSC, but no later than on the effective date;

(ii) MSC tenders are filed in the carrier's foreign commodity tariff(s) covering the trade route(s) applicable to the tender(s);

(iii) MSC tenders are filed for distinct commodities or as separate TLI's within a commodity, as applicable, using the symbol "M" under § 514.9(b)(13);

(iv) The use of the filing/amendment code "M" is understood by the filer to mean that the tariff material filed is submitted in accordance with the requirements of the Shipping Act of 1984 and this part; and

(v) The terms and conditions governing the military rates, as set forth in the applicable MSC rate agreement(s), are included in Tariff Rule 32, § 514.15(b)(32), and assessorials are properly formatted and linked to the commodity description and/or TLI.

(14)-(15) [Reserved]

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

(i) *In domestic offshore commerce:*

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

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

(ii) *In foreign commerce:*

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

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

(17) [Reserved]

(18) "R" *Reduction (Not a general rate decrease in domestic offshore commerce under paragraph (b)(7) "G" of this section)—(i) Domestic offshore commerce (one day's notice).* Except for a general rate decrease, amendments to domestic offshore tariffs which provide for changes in rates, fares, charges, Tariff Rules or other tariff provisions resulting in a decrease in cost, shall be filed to become effective not earlier than one day after the date of filing, using the symbol "R," unless an exemption or special permission to become effective on less than said one day's notice has been granted by the Commission.

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

suspension proceeding under § 514.19 of this part.

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

(i) Special permission under § 514.18.

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

(iii) Correction or resubmission of essential terms.

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

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

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

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

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

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

(21)-(22) [Reserved]

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

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

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

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

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

(ii) [Reserved]

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

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

(d) *Supplements.* "Supplements" to tariffs are prohibited. The ATFI system will electronically accommodate the necessary amendment of each TLI selected for general rate changes, through the GRI/GRD utility, assessorials and/or individual TLI changes. Other matters, previously handled by supplements in traditional, page-based tariffs, will be handled procedurally and/or through Tariff Rules, TLI notes, etc.

§ 514.10 Other Items used throughout ATFI.

(a) *Control dates and history.* Various control dates are used for tariff material filed in and/or retrieved from the ATFI system. The following simulated screen illustrates these dates which are found on many ATFI screens and contains corresponding numbers keyed to explanatory and regulatory subparagraphs within this paragraph (in

addition to "Today" which is the date of entry into the system and the screen). For special date provisions applicable to the essential terms of service contracts, see §§ 514.17 (d)(3) to (d)(5).

[§ 514.10(a)]	Today: 01Jan1992
[Always Today's Date]	
[(2)]	Filing date: 01Jan1992
[(3)]	Effective date: 31Jan1992
	[e.g., 30 days' notice]
[(5)]	thru: 01Mar1992
[(4)]	Expiration date: 01May1992
	[or TLI expires (etc).]

[(1)(i)]	Access date: 01Jan1992
	[Today's date unless changed]
	[Could be changed to e.g.
	01Dec1991 or 01June1992]
[(1)(ii)]	History -Rev +Rev

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

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

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

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

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

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

(i) *Interactive.* The interactive filing system enters a filing date (current date) for every tariff object or tariff object

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

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

(iii) *In-bulk (tape) batch.* Filers will have a filing date (in local time in the U.S. Eastern Time Zone) assigned to all tariff objects filed according to the date of delivery of a tape to a designated location. If the date of delivery is a normal Commission work day, the filing date can be that date if the tape is delivered by 5:00 p.m. If the delivery date is not a normal Commission work day, or the tape is delivered after 5:00 p.m. on a normal work day, the filing date may not be until the next Commission work day.

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

(4) *Expiration date.* The Expiration date is the last day, after which the entire tariff or tariff element (e.g., TLI), which is designated to expire, is no longer in effect. After midnight at the end of this day, the current version of the tariff will not include the expired object. In the screen example, the entire item (e.g., TLI) expires on May 1, 1992, leaving no specific rate, which could

result in an increase to an NOS rate, for which advance notice from the filing date is required under § 514.9(b). The expired object becomes a part of the history objects for the tariff.

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

(i) A decrease when initially effective requires 30 days' notice from the Filing date to the Thru date, irrespective of when it becomes effective (no earlier than Filing).

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

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

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

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

(2) *Location groups.* In the primary tariff, or in a governing tariff under § 514.12(a)(1)(ii), the filer will have the option to define and create groups of cities, states, provinces and countries (e.g. location groups) or groups of ports (e.g. port groups), which may be used in the construction of TLIs and other tariff objects in lieu of specifying particular place names in each tariff item, or creating multiple tariff items which are identical in all ways except for place names. A partial screen illustrating the locations within an origin port group follows:

(§ 514.10(b)(2))

ATFI LOCATION GROUPS

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

Origin Ports

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

(c) *Currency.* ATFI recognizes a large number of foreign currencies for rates and charges. The complete list of ATFI-recognized currencies is available on-line. Currency conversion rates are maintained and updated in ATFI on a periodic basis; except that these conversion rates are for comparison purposes only, not as official conversion rates for booking or billing. See § 514.8(h)(3)(vi).

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

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

(B) Freight forwarder compensation collect charges, e.g., brokerage fees and commissions.

(C) Diversion of cargo.

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

(E) Cargo held by carrier or terminal storage.

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

(iii) *Predeterminable charges.* Assessorial charges which can be determined prior to shipment shall be expressed in algorithm form and may be contained in Tariff Rules of tariffs and essential terms publications (See

§§ 514.15 and 514.17(b)), as well as in commodity descriptions and TLIs of tariffs and essential terms documents (See §§ 514.13 and 514.17(d)). Algorithms are not accommodated in the mandatory or optional terms of essential terms under § 514.17 (d)(8) and (d)(9). See also §§ 514.12(a), 514.17(b)(2) and 514.17(d)(10).

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

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

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

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

[§ 514.10(d)(4)]

ATFI COMMODITY DESCRIPTION

Number Commodity Description
Assessorial Charge Calculation
DESC: House to House Surcharge

CYCLE: 2 (Define RATING values-
wt, vol, etc.)

SET: (1 of 2)

WHEN: SERVICE-TYPE is HH

AND: RATE-BASIS is W

THEN: RESULT =

RATED-WEIGHT x 3.75USD

SET: (2 of 2)

WHEN: SERVICE-TYPE is HH

AND: RATE-BASIS is M

THEN: RESULT =

RATED-VOLUME x 5.00USD

Between the two (condition) sets, there is an implied "OR" operator (weight "OR" measure). This means that either one or the other of these condition sets must be TRUE in order for the assessorial to apply. After entering the rated weight and volume in these condition sets, the system will process them in the order in which they appear, evaluating whether each is TRUE or FALSE. If TRUE, the assessorial is

applicable to the shipment and will be entered onto the main screen where other potentially applicable assessorials (e.g., in different Tariff Rules) will also be processed.

(5) *Application.* For filing, a toggling (on or off) function provides specific application ("linking") of an assessorial to a commodity or Tariff Rule. For retrieving, applicable assessorials are added to the applicable TLI to find the overall cost for the shipment. Before shipment, however, there will be some condition sets where the values are not known (e.g., a surcharge for a non-scheduled port where the ship calls in an emergency and unloads the shipment). In these cases, assessorials cannot be accurately applied prior to booking or sailing. Nonetheless, filers shall use the null linkage or dummy algorithm functionality to label and link assessorials in full text form to other ATFI objects, such as TLIs and commodities, for the purpose of enabling the retriever to identify all potentially applicable charges.

§ 514.11 Organization and tariff records; tariff scope.

(a) *Organization record.* The organization record is the master record for all tariff information in ATFI for a specific firm. Each firm wishing to file

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

[§ 514.11(a)]

ATFI ORGANIZATION RECORD

XYZ, Inc.

[(1)] Org Number: 999999 Agreement #:
[(2)] Org Name: XYZ, Inc.
[(3)] Country of home office: USA
[(4)] Org type: NVOCC - NON-VESSEL-OPERATING COMMON CARRIER
[(5)] Controlled: N
[(6)] SCAC Code: XYZZ
[(7)] Home Office Address Information
Street1: 201 Broadway
Street2: 72nd Floor
City: New York, NY, USA
Postal Code: 10007
Contact: Julian Xavier or Rick Zarones
Phone: (212) 555-1236
Fax: (212) 555-5678

[(8)] -----

[(9)] Affiliations dba's Publishers

(1) Org number and agreement number. The organization and

agreement numbers are generated by the Commission for the particular tariff

owners. The agreement number is filled in only if the organization is an

agreement (conference, etc.). The organization number is also used to verify whether a current anti-rebate certification has been filed under § 514.1(c)(1)(iii).

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

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

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

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

(6) *SCAC Code.* The Standard Carrier Alpha Code (assigned by the Motor

Freight Association) further identifies the registered organization.

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

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

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

(ii) *dba's.* The d/b/a ("doing business as") names of affiliated firms are listed here. Filers shall ensure that the d/b/a's of all firms filing tariffs under the organization umbrella are accurately listed.

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

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

[§ 514.11(b)]		ATFI TARIFF DEFINITION	
[(1)]	Org Number: 999999	Tariff #: 001	Tariff Code: XYZ001
[(2)]	Org Name: XYZ, Inc.		
[(3)]	d/b/a: XYZ Line		
[(4)]	Title: XYZ Line Worldwide Commodity Tariff		
[(5)]	Tariff type: FC		
[(6)]	Tariff TON: 1 KT or 1.000 CBM		
[(7)]	Monetary Units: USD US Dollar (USD)		
Address Information			
[(8)]	(1 of 3)	Publishing Office	
		Name: XYZ Line	
		Street1: 201 Broadway	
		Street2: 65th Floor	
		City: New York, NY, USA	
		Postal Code: 10007	
		Contact: Maria Yates	
		Phone: (212) 555-1237	
		Fax: (212) 555-5678	
[(9)]	-----		
[(10)]	Origin	Destination	
[(8)]	Select Address		

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

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

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

user-assigned tariff number, as in the illustration. The SCAC code takes precedence when previously provided on the ATFI User Registration Form (Exhibit 1 to Part 514) for entering on the organization record during creation or amendment.

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

(3) The d/b/a name could be a name different from the organization name, but shall appear in the list of d/b/a's in

the organization record under paragraph (a)(9)(ii) of this section.

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

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

(6) *Tariff TON* is the default (unless changed) measurement units throughout the tariff for both weight and volume, as

codified in two tables of the "Batch Filing Guide's" Data Element Dictionary.

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

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

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

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

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

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

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

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

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

§ 514.12 Governing and general reference tariffs.

Where any matter directly affects a TLL, it must be filed in electronic form in the appropriate tariff in the appropriate

place. Thus, a governing tariff may be a commodity tariff, but only locations, inland rate tables and Tariff Rule level assessorial (and not commodity descriptions or TLLs) within such a governing tariff may be linked to govern matter in another ("governed") tariff.

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

(1) *Types*. Due to ATFI's "linkage" design feature, whereby tariff items at rules level (location groups, inland rate tables and algorithms in rules), can be electronically referenced and made applicable from one tariff (governing) to another (governed), a filer may create and use only the following types of governing tariffs, or combinations thereof, which shall accompany governed tariffs in the ATFI electronic format and will not constitute "separate" tariffs for the purpose of the remote retrieval limitation of "one tariff at a time" (see § 514.20(a)(1)(ii)):

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

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

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

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

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

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

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

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

(i) *Application of Tariff Rules and associated assessorial charges*. Tariff

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

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

(b) *General reference tariffs (in paper format)*. Certain tariffs, other than governing tariffs described in paragraph (a) of this section, are general reference tariffs and, if they do not contain assessorial charges or other matters affecting the TLL, will continue to be "on-file" at, or accepted by, BTCL, in paper format. General reference tariffs are usually compiled by firms (with FMC-assigned Org Numbers) other than those required to file ocean freight tariffs, and are allowed to be cross-referenced in the electronically-filed tariffs. General reference tariffs include:

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

(2) *Equipment Registers*.

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

(A) Title Page.

(B) Check Sheet (optional).

(C) Table of Contents.

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

(E) Tariff Rules.

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

(ii) The Tariff Rules section of the equipment interchange tariff shall include Tariff Rules 1 (Scope, § 514.15(b)(1)) and 21 (Use of Carrier Equipment, § 514.15(b)(21)). Other

unused mandatory Tariff Rules in § 514.15(b) shall be noted as "Not Applicable." Equipment interchange tariffs need not reference carrier or conference rate tariffs.

(4) *Mileage guide publications.*

§ 514.13 Commodities and tariff line items ("TLIs").

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

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

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

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

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

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

(iii) *Assessorial charges applicable to commodity.* Assessorial charges (see § 514.10(d)) that are specific to a described commodity shall be applied to the commodity by creating the

appropriate algorithm condition sets in the commodity description record.

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

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

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

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

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

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

(4) *Mixed commodities and mixed lots.* (i) Except for project rates under paragraph (a)(5) of this section, mixed

commodities (to the extent not accommodated by the "00" HS approach described in paragraph (a)(3)(iv)(B) of this section) will require the ATFI code "99" for the first two digits, whether or not HS is used, with the next four digits (#'s 3–6) available at filers' option, and will include situations involving:

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

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

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

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

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

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

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

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

(C) For domestic offshore carriers, a statement that the project rate will cover

the carrier's variable costs and contribute to its fixed expenses.

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

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

(7) *Commodity index.* (i) Each commodity description created under

this section shall have at least one similar index entry which will logically represent the commodity within the alphabetical index. Filers are encouraged, however, to create multiple entries in the index for articles with equally valid common use names, such as, "Sodium Chloride," "Salt, common," etc.

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

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

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

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

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

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

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

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[5] 514.13(b)(2) ATFI TARIFF LINE ITEM DETAIL Today: 01Jan1992
[3] XYZ Line Worldwide Commodity Tariff [4] ( XY22001 ) *
[5] 9503-10-0010 Electric trains
[6] TLI#: 9503-10-0010-0001 [8] Amendment Type: R [12] * Spl. Case #:
[7] Filed: 01Jan1992 [9] Eff: 01Jan1992 [10] * thru [11] * Exp:

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

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

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

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

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

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) *"VIA."* "VIA" indicates the port or port group through which the cargo will be carried, outbound from its origin, and/or inbound to its destination, for through transportation. In the

illustration, the TLI includes all rates and charges for the inland portion from Antwerp to Paris and is, therefore, a "through rate." See § 514.15(b)(1).

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

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

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

(iii) *W.* TLIs published on a weight only basis shall use the symbol "W." For green salted hides in foreign commerce rated on a weight ("W") basis, see Tariff Rule 17 (§ 514.15(b)(17)).

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

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

(1) *Automobiles rated by measure ("M").* For automobiles rated by measure, the cubic measurement for the five most recent model years shall be that prescribed by the manufacturer of

the particular make and model as shown in Tariff Rule 22 (§ 514.15(b)(22));

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

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

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

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

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

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

(A) Time/volume rates may be offered by common carriers or conferences and shall be published as TLIs for each commodity description where they apply. The commodity description shall

note the availability and terms of the time/volume rate(s). (See paragraph (a)(2)(ii) of this section.) The TLI(s) shall state in the TLI note(s) that the rate is a time/volume rate.

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

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

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

(ii) *Open rates in foreign commerce.* An open rate in foreign commerce means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rates on such commodity or commodities. See § 514.15(b)(15).

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

(B) Where a conference opens rates pursuant to paragraph (b)(19)(ii)(A) of this section, an individual conference member may not charge rates on the open item unless and until the individual member files a proper tariff rate covering such item, as required by this part. This may be accomplished by the individual common carrier member (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing in a

separate tariff for open rates or in the regular conference tariff each member's rates on the opened items, indicating the rates which will be charged by each individual common carrier and the governing Tariff Rules and provisions of the conference tariff applicable to each common carrier. When conference members publish their open rates in a separate tariff, such tariffs shall identify the conference tariff in which the open-rates condition is reflected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Exercise the "Calc" option and an "ATFI RATE CALCULATION" screen appears. It is very similar to the ATFI TARIFF LINE ITEM DETAIL screen in paragraph (b) of this section, except that the retrieving operator enters the actual shipment data in the appropriate fields. Once these data are entered and verified, the operator presses another "Calc" key and screens similar to the following simulated screens ("ATFI RATING RESULTS," (i) and (ii)) are used to show the "Total Freight" ("bottom-line freight"):

[§ 514.13(c)(2)(i)]
ATFI RATING RESULTS
 XYZ Line Worldwide Commodity Tariff
 (XYZ2001)

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

Actual weight: 0.000 KT
 Actual volume: 0.000 CBM

Rate Break Table

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

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

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

Basic Ocean Freight 2,310.00USD

[§ 514.13(c)(2)(ii)]

ATFI RATING RESULTS

XYZ Line Worldwide Commodity Tariff
 (XYZ2001)

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

=== Beginning Rating ===

Basic Ocean Freight 2,310.00USD
 Paris surcharge 100.00USD

Subtotal 2,410.00USD

CAF 163.26USD

Total Freight 2,573.26USD

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

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

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

§ 514.14 [Reserved]

§ 514.15 Tariff Rules.

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

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

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

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

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

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

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

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

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

(6) *Rule Access Window.* ATFI's Rule Access Window lists by Tariff Rule

number and title all of the Tariff Rules contained in a particular tariff.

(b) *Mandatory Tariff Rules.* Specific Tariff Rules affecting the tariff, and/or other materials required by this part to be included in Tariff Rules, shall be contained in the appropriate Tariff Rules, as designated by the numbers and titles specified in this paragraph. Where notes to commodity descriptions and/or TLIs contain matter that would otherwise be normally contained in Tariff Rules, the applicable Tariff Rule(s) need not duplicate such matter but may simply indicate that the tariff is structured in this manner. In the event that a particular title contained in this paragraph does not apply to any matter affecting the tariff, the rule number and title shall be entered with a statement that the rule is not applicable ("N/A"). See § 514.12(a)(i). Tariff matter obviously falling within a particular title may not be contained in another, less descriptive title and, where a mandatory subject under this paragraph is not applicable, the tariff matter shall be filed in an optional rule under paragraph (c) of this section, with the appropriate title. Mandatory Tariff Rule (and subparagraph) numbers, titles, content (as also may be required by other sections of this part, cross referenced in this paragraph) are as follows:

(1) *Scope.* As described in § 514.11(b)(10), the Tariff Record's scope is briefly set forth in location and/or location group pairs for origin and destination. Tariff Rule 1 shall be consistent with the Tariff Record scope,

but describe it in complete detail, especially for the following types of tariffs or tariff items:

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

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

(iii) *Intermodal services.*

(A) Tariff Rule 1 shall describe the modes of intermodal service provided (e.g., rail, truck, etc.) and the carrier's liability to the shipper for each type of intermodal movement.

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

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

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

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

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

(2) *Application of rates and charges.* Tariff Rule 2 shall contain a clear and definite statement of:

(i) All services provided to the shipper and covered by the TLIs, including the rate bases set forth in § 514.13 (b)(17)(ii) and (b)(17)(iv)(A) and inland rate tables

under paragraph (b)(1) of this section; and

(ii) The extent of any limitation or restriction, if the application of any of the rates, charges, Tariff Rules or regulations stated in the tariff is restricted to any particular port, pier, etc.

(3) *Rate applicability rule.* Tariff Rule 3 shall contain a clear and definite statement of the time at which tariff changes become applicable to any particular shipment, including the following:

(i) *In foreign commerce,* the tariff rates, Tariff Rules and charges applicable to a given shipment must be those published and in effect on the date the cargo is received by the common carrier or its agent (including originating carriers in the case of rates for through transportation).

(ii) *In domestic offshore commerce,* for joint rates in intermodal transportation, the rate applicable to any particular cargo movement shall be that rate which is in effect on the day the initiating carrier takes possession of the shipment.

(4) *Heavy lift.* Tariff Rule 4 shall contain a clear and definite statement of all heavy lift practices and charges.

(5) *Extra length.* Tariff Rule 5 shall contain a clear and definite statement of all extra length practices and charges.

(6) *Minimum bill of lading charges.* Tariff Rule 6 shall contain a clear and definite statement of minimum bill of lading charges and applicability.

(7) *Payment of freight charges.* Tariff Rule 7 shall contain a clear and definite statement of:

(i) All requirements for the payment of freight charges;

(ii) Currency restrictions, if any, and the basis for determining the rates of currency exchange (see § 514.10(c)); and

(iii) If credit is extended to shippers, the credit terms available and the conditions upon which credit is extended. In foreign commerce, when credit applications or agreements are required, specimens of such applications or agreements shall be filed as part of this Tariff Rule.

(8) *Bill(s) of lading.* Unless a governing bill of lading tariff has been filed under § 514.12(a)(1)(iv), Tariff Rule 8 shall contain all clauses of every applicable specimen copy of any bill of lading, contract of affreightment, and other document (except for a service contract and its essential terms under §§ 514.7 and 514.17) evidencing the transportation agreement between carrier and shipper. Such shipping contracts shall indicate that they are subject to the terms and conditions of the carrier's Federal Maritime

Commission tariffs and may not contain provisions inconsistent with the Tariff Rules and regulations published in any applicable tariff.

(9) *Freight forwarder compensation.* Tariff Rule 9 shall contain a clear and definite statement of:

(i) *In foreign commerce,* the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in accordance with § 510.23(b) of this chapter.

(ii) *In domestic offshore commerce,* the exact rate or rates, if any, to be paid ocean freight forwarders (see also § 510.23(d) of this chapter).

(10) *Surcharges and arbitraries.* Tariff Rule 10 shall contain algorithms and explanatory text of surcharges and arbitraries for items not elsewhere provided for in this section. Rates from or to designated ports may be established by applying an arbitrary or differential charge based upon the rate applicable to a specified "base port," provided that any such arbitrary or differential is clearly defined, set forth as an algorithm (with table, if necessary) and is referenced (linked) in the commodity description or TLI affected.

(11) *Minimum quantity rates.* See also § 514.13(a)(2)(i)(C). Tariff Rule 11 shall state:

(i) *For foreign commerce:*

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

(ii) *For domestic offshore commerce:*

When two or more TLIs are named for the same commodity, and the application is dependent upon the quantity of the commodity shipped, the charges assessed against the smaller shipment may not exceed those for any larger quantity.

(12) *Ad Valorem Rates.* Tariff Rule 12 shall contain a clear and definite statement of:

(i) The method of computing an *ad valorem* TLI or charge, to the extent not included elsewhere in the tariff (e.g., in connection with a TLI under § 514.13(b)(17)(i)); and

(ii) The additional liability, if any, assumed by the tariff owner in consideration for the *ad valorem* rate or charge.

(13) *Transshipment*. When transshipment services are offered pursuant to an ongoing agreement, Tariff Rule 13 shall contain:

- (i) The through rate;
- (ii) The routings (origin, transshipment and destination ports); additional charges, if any (e.g., port arbitrary and/or additional transshipment charges); and participating carriers; and
- (iii) A provision substantially as follows:

The Tariff Rules, regulations and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating connecting or feeder carrier. Every participating connecting or feeder carrier, which is a party to transshipment arrangements, has agreed to observe the Tariff Rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(14) *Co-Loading in foreign commerce*. Tariff Rule 14 governs co-loading by NVOCCs in foreign commerce and shall contain the following provisions:

- (i) *Filing requirements*. (A) If an NVOCC does not tender cargo for co-loading, Tariff Rule 14 shall so indicate.
- (B) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement shall be noted in Tariff Rule 14.

(C) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe in Tariff Rule 14 its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

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

(iii) *Co-loading rates*. No NVOCC may offer special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated

and carried under tariff provisions which are available to all shippers.

(15) *Open rates in foreign commerce*. Tariff Rule 15 of a conference tariff shall contain a clear and definite statement of:

(i) The meaning of the word "open" in "open rates," and the extent to which conference rates have been opened pursuant to § 514.13(b)(19)(ii);

(ii) Any restriction or limitation on the right of participating common carriers to fix their own rate items, and the extent to which applicable Tariff Rules and regulations of the conference tariff will continue to govern the rates filed by each individual line; and

(iii) Where the rates of the individual conference member lines on open-rated items may be found.

(16) *Hazardous cargo*. When TLIs for explosive, inflammable, corrosive, or other dangerous materials are published (or Tariff Rule 16 does not specifically prohibit carriage of such materials), Tariff Rule 16 shall contain either:

- (i) Tariff Rules governing the carriage of all types of hazardous cargo; or
- (ii) Reference to applicable governing and/or general reference tariffs, as described in § 514.12.

(17) *Green salted hides in foreign commerce*. For foreign commerce, Tariff Rule 17 shall require that:

- (i) The shipping weight for purposes of assessing transportation charges on green salted hides shall be either a scale weight or a scale weight minus a deduction which amount and method of computation are specified in the commodity description record or TLI, as referenced by § 514.13(b)(17)(iii); and
- (ii) The shipper furnish the common carrier a weighing certificate or dock receipt from an inland common carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo in foreign commerce*. Where the tariff owner offers the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the TLI assessed on the original movement, when such TLI is lower than the prevailing TLI, Tariff Rule 18 shall provide that:

(i) The return of shipment(s) be accomplished within a specific period not to exceed one year;

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

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return common carrier.

(19) *Shippers requests in foreign commerce*. Tariff Rule 19 shall contain clear and complete instructions in accordance with the effective agreement's provisions, stating where and by what method shippers may file their requests and complaints and how they may engage in consultation under section 5(b)(6) of the 1984 Act, together with a sample of the rate request form if one is used or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(20) *Overcharge claims*. Tariff Rule 20 shall contain provisions that conform to the following:

(i) No tariff may limit the filing of overcharge claims with a common carrier for private settlement to a period (beginning with the accrual of the cause of action) ending in less than:

- (A) Three years in foreign commerce; or
- (B) Two years in domestic offshore commerce.

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

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

(iv) Tariff Rule 20 shall also:

(A) Provide that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application; and

(B) Clearly indicate where and by what method such claims are to be filed with the common carrier and that such claims may also be filed with the Federal Maritime Commission. At a minimum, Tariff Rule 20 shall contain the following provisions:

(1) Claims for freight rate adjustments filed in writing will be acknowledged by the common carrier within 20 days of receipt by written notice to the claimant of the tariff provisions actually applied and the claimant's rights under the 1916 Act or 1984 Act.

(2) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to either:

(i) Section 11(g) of the Shipping Act of 1984 (46 U.S.C. app. 1710) for foreign commerce, and that such claims must be filed within three years of the date the cause of action accrued; or

(i) Section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821) for domestic offshore commerce, and that such claims must be filed within two years of the date the cause of action accrues.

(21) *Use of carrier equipment.* Tariff Rule 21 shall contain provisions conforming to the following regulations:

(i) If a carrier or conference provides equipment to shippers, consignees, or inland carriers, or other persons acting as the agent for the person paying the freight charges:

(A) A sample equipment interchange agreement, or the terms and conditions governing the use of said equipment, shall be published in the carrier's or conference's Tariff Rule 21. The sample agreement shall include: the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services, such as tracing and replenishing fuel or refrigerant for reefer containers), that govern the use of carrier-provided equipment, including cargo containers, trailers and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the agreement or Tariff Rule 21, as applicable, and shall clearly identify the location and type of equipment to which they apply.

(B) If a carrier or conference does not have a sample equipment interchange agreement, the carrier shall publish its terms and conditions and standard free time and charges in its Tariff Rule 21, as described in paragraph (b)(21)(i)(A) of this section. In foreign commerce, where a foreign government prohibits the use of a carrier or conference equipment interchange agreement, Tariff Rule 21 shall contain a statement to that effect.

(ii) If a carrier or conference has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be arranged in alphabetical order of the parties to which the exceptions apply and shall be included in either:

(A) Tariff Rule 21; or

(B) A separate equipment interchange tariff filed by the carrier or conference in accordance with § 514.12(b)(3), in which case Tariff Rule 21 shall identify the separate equipment interchange tariff containing the exceptions. A carrier or conference is not precluded from publishing a separate equipment interchange tariff even though it does

not have exceptions to the standard free days and charges.

(22) *Automobile Rates in domestic offshore commerce.* If TLIs for automobiles are published on a volume basis, as described in § 514.13(b)(17)(iv)(B)(1), introductory paragraph, Tariff Rule 22 shall contain:

(i) The cubic measurement for the five most recent model years prescribed by the manufacturer of each applicable particular make or model, arranged in table form with reference to applicable TLIs; and

(ii) A clear and definite description of all other applicable regulations, if not contained in the commodity description record(s).

(23) *Carrier terminal rules and charges.* Tariff Rule 23 of carrier and conference tariffs:

(i) Shall state separately every terminal or other charge and discount and service (including privileges, facilities and services) under the control of the common carrier or conference which is granted or allowed to any shipper, consignee, or passenger, regardless of whether the service results in a charge or discount separately assessed as an addition to or subtraction from the carrier's basic TLI, in which case it shall be set forth as an algorithm, or is simply included within the basic TLI, without differentiation;

(ii) Shall contain a rule in compliance with part 525 of this chapter, if the tariff names rates on import traffic shipped through the port of New York, or to a range of ports which includes New York; and

(iii) May provide for an amendment, effective upon filing:

(A) Increasing a charge for terminal services, canal tolls or additional items, without the increase being separately stated on the bill of lading, but only if such charge is not under the control of the filing common carrier or conference, which merely acts as a collection agent for the charge, and the agency making such charge to the common carrier or conference increases the charge without notice to the common carrier or conference and is identified in Tariff Rule 23 by name and appropriate tariff number (see § 514.9(b)(20)); and

(B) For domestic offshore commerce, establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor (see § 514.9(b)(16)(i)(B)).

(24) *NVOCCs in foreign commerce: bonds and agents.* NVOCCs in foreign commerce are governed by the

provisions of this subparagraph and Tariff Rule 24 of each of their tariffs shall contain provisions substantially as follows:

(i) Every non-vessel-operating common carrier ("NVOCC") in foreign commerce shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission a bond in the amount required by 46 CFR 583.4 to ensure the financial responsibility of the NVOCC for the payment of any judgment for damages arising from its transportation-related activities, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state its bond number and identify the name and address of the surety company issuing the bond.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall enter in the first address field provided in each of its Tariff Records under 46 CFR 514.11(b)(8)(ii) the name and address of a person in the United States designated under 46 CFR 583.5 as its legal agent for the service of judicial and administrative process, including subpoenas. The NVOCC shall also state in Tariff Rule 24 that, in any instance in which the designated legal agent cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the NVOCC's legal agent for service of process.

(iii) Service of administrative process, other than subpoenas, may be effected upon the legal agent by mailing a copy of the documents to be served by certified or registered mail, return receipt requested.

(25) *Certification of shipper status in foreign commerce.* If a common carrier adopts a procedure other than those set forth in § 583.7 (b)(1) or (b)(2) of this chapter, for determining whether NVOCCs for whom it wishes to transport cargo have complied with the tariff and bonding requirements of sections 8 and 23 of the 1984 Act, that procedure shall be clearly set forth in Tariff Rule 25 of its tariff.

(26) *Time/volume rates in foreign commerce.* In connection with time/volume rates offered under § 514.13(b)(19)(i), Tariff Rule 26 of common carrier and conference tariffs in foreign commerce shall clearly and accurately:

(i) State all charges, classifications, rules and practices concerning time/volume rates;

(ii) Identify the shipment records which will be maintained to support the rates;

(iii) Describe the method to be used for shippers giving notice of their intention to use a time/volume rate prior to tendering any shipment under the time/volume-rate arrangements; and

(iv) State that:

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

(B) Shipper notices and shipment records supporting a time/volume rate will be maintained by any offering carrier or conference for at least five years after any shipper's use of a time/volume rate has ended.

(27) *Loyalty contracts in foreign commerce.* Where the filer intends to use a loyalty contract in foreign commerce:

(i) Tariff Rule 27 shall contain a sample of every loyalty contract, as defined in 46 CFR 514.2, together with regulations which set forth the scope and application of the contract system.

(ii) The use of any sample loyalty contract and applicable regulations filed for inclusion in a tariff under paragraph (b)(27) of this section shall be presumed to be "in conformity with the antitrust laws," within the meaning of section 10(b)(9) of the 1984 Act, if such contract makes reference to a Business Review Letter, issued pursuant to 28 CFR 50.6, indicating no objection to the use of that contract.

(28) *Definitions.* Tariff Rule 28 shall include any filer definitions of technical terms which, however, may not be inconsistent with the 1916 or 1984 Acts or this part.

(29) *Symbols.* Tariff Rule 29 shall include any filer symbols, service codes, etc. and explanations therefor which, however, may not be inconsistent with the those set forth in this part or the "Batch Filing Guide."

(30) *Access to tariff information.* Tariff Rule 30 shall contain a clear and complete description of all costs, conditions and arrangements for public inspection of tariff material, including reasonable provisions for access to emergency tariff(s) under §§ 514.8(k)(1)(iv) and (k)(1)(v).

(31) *Seasonal discontinuance.* (i) Tariff Rule 31 shall contain announcements of seasonal discontinuance or restoration of service, which shall be filed on not less than ten days' notice, except by special permission under § 514.18. Such announcements shall contain a brief statement announcing the date of discontinuance and/or restoration of service and may include no other tariff

matter. The TLIs associated with service discontinuance or restoration shall be amended, expired or filed as applicable, and shall meet all criteria for TLI filings/amendments.

(ii) Tariff Rule 31 of tariffs naming rates, fares or Tariff Rules applicable to all water routes which are closed to navigation during part of a year shall:

(A) Contain provisions governing the handling of shipments which may arrive at the publishing carrier's facilities after the date service is discontinued; and

(B) Expressly provide for the seasonal discontinuance provision's own expiration at the close of the navigation season, or include a rule providing for the discontinuance/restoration of service based on the stated navigation season.

(32) *Military cargo terms.* Tariff Rule 32 shall contain all the terms and conditions pertaining to MSC tenders under §§ 514.3(b)(4) and 514.9(b)(13).

(33) *Project rates.* Tariff Rule 33 shall contain complete descriptions of all project rates which are stated discounts of other TLI's for given commodities under § 514.13(a)(5)(ii). For domestic offshore carriers, Tariff Rule 33 shall also include a statement that all project rates will cover the carrier's variable costs and contribute to its fixed expenses.

(34) *Terminal Tariffs.* Tariff Rule 34 shall contain the full-text portions of all terminal tariffs filed by marine terminal operators (excluding the Organization Record and Tariff Record, which must be established under § 514.11). Other, mandatory Tariff Rules under this section which are designed for carriers and conferences shall be designated "Not Applicable" or "NA." For logical divisions within the terminal tariff, filers should use subrules, as described in paragraph (a)(4) of this section.

(c) *Optional Tariff Rules.* Tariff Rules numbers 100 and up (to be numbered consecutively) are available for carrier/conference use.

§ 514.16 [Reserved]

§ 514.17 Essential terms of service contracts in foreign commerce.

(a) *General.* (1) A concise statement of the essential terms (ETs) of service contracts (which are filed in paper form under § 514.7) shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format under this section. Filing and maintenance of ETs are accomplished through an electronic essential terms publication (ETP) for each carrier or conference filer, which contains ETs for

each of the carrier's or conference's service contracts.

(2) *Cross-references*—(i) *Authority to file:* § 514.4(d)(5).

(ii) *Cancellation:* § 514.4(e)(2).

(iii) *Availability of essential terms:* § 514.7(f).

(iv) *Rejection of service contracts and/or essential terms:* § 514.7(j).

(v) *Modification, correction and cancellation:* § 514.7(k).

(vi) *Assessors and algorithms:* § 514.10(d)(1).

(b) *Essential terms publication*—(1) *Creation and form.* The ETP is created and maintained by the filer as a separate tariff type ("ET" for "ETP") with a tariff record and number (see § 514.11(b)). A service-contract filer, either carrier or conference, may have only one ETP for all its ETs. The ETP may also contain matter of general applicability to all ETs contained therein, such as Tariff Rules. The ATFI system will coordinate development of ET search indexes by, for example: ET, service contract or FMC file number; by commodity name or number; by TLI number; and, by origin or destination of the commodity.

(2) *Reference to/in tariffs of general applicability.* The ETP shall:

(i) Contain reference to each carrier's or conference's tariff of general applicability; and

(ii) Be referenced in each of the carrier's or conference's tariffs of general applicability, where required to be filed under this part.

(c) *Statement(s) of essential terms; general requirements.* (1) Essential terms shall be promptly filed by the appropriate person, in the carrier's or conference's ETP and in the content and tariff format as provided by this part. (The service contract, in paper form, is required to be filed within ten (10) days of the electronic filing of the essential terms under § 514.7(g).)

(2) Essential terms may not:

(i) Be uncertain, vague or ambiguous; or

(ii) Contain any provision permitting modification by the parties other than in full compliance with this part.

(d) *Essential terms; specific requirements*—(1) *ATFI sample screen illustration.* The following ATFI simulated screen illustrates the elements required to be contained in essential terms filings (here for one commodity and one TLI) and how they appear in the ATFI system. (The references in brackets are to the paragraphs of this section which explain the requirements for the fields and the data contained therein.)


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[§ 514.17(d)(1)]      ATFI ESSENTIAL TERMS SEARCH
                        JKL Line Essential Terms Publication ( XYZ 004 )      [(b)(1)]
[(d)(2)] ET Num: 681   SC Num: 765   ET Filing date: 01Jan1992      [(d)(3)]
[(d)(3)] Available until: 31Jan1992 Contract Eff.Date: 01Dec1992      [(d)(4)]
                        Contract Expiration date: 15Jan1993      [(d)(4)]
                        Contract Termination date: 15Jan1993      [(d)(5)]
Description: Alarm clocks      [(d)(6)]

                        Full Service Contract Essential Terms Display

Commodity: 9105-11-0023 Clocks      [(d)(6)]
Full: Alarm clocks; battery or AC powered      [(d)(6)]
Excludes:      [(d)(6)]
      TLI: 9105-11-0023-0002 PP LS 40 01Jan1992 3,100.00USD [(d)(7)(ii)]
===== End of Commodity 9205-90-0023 =====

REQ TERM 1:ORIGIN (location or group name)      [(d)(8)(i)]
REQ TERM 2:DESTINATION ( " )      [(i)]
REQ TERM 3:MINIMUM QUANTITY (text)      [(i)]
REQ TERM 4:SERVICE COMMITMENTS (text)      [(iv)]
REQ TERM 5:LIQUIDATED DAMAGES FOR NON-PERFORMANCE (if any)      [(v)]
REQ TERM 6:LATER EVENTS CAUSING DEVIATION (if any)      [(vi)]
REQ TERM 7:DURATION (e.g., "46 days from 01DEC1992 to 15JAN1993") [(vii)]
OPT TERM 1:(TITLE and text)      [(d)(9)]
OPT TERM 2:(TITLE and text)-----[(d)(9)]

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(2) *ET (statement of essential terms) and SC (service contract) numbers.* The "ET Num" and "SC Num" are defined by the filer and shall be entered in the appropriate fields.

(3) *Period of availability.* The period of availability of the essential terms to similarly situated shippers shall be no less than thirty (30) days, i.e., from the "Filing date" (automatically entered by ATFI under § 514.10(a)(2)) to the "Available until" date (automatically defaulted to 30 days from the filing date, but the filer can enter a later date, making the availability period longer).

(4) *Duration of contract.* In addition to the period of availability of essential terms to similarly situated shippers, the service contract itself must have an effective date and an expiration date (see §§ 514.10 (a)(3) and (a)(4)), governing the duration of the contract between the original signatory parties. The duration must also be set forth in required essential term # 7 under paragraph (d)(8)(vii) of this section.

(5) *Contract termination date.* A statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired under the terms of the contract, or have been terminated for reasons not specifically set forth in the contract. See §§ 514.4(e)(2) and 514.7(l)(1)(ii). The contract termination date would, therefore, be the same as the contract expiration date, unless terminated

sooner, in which case the filer would enter the earlier date when the termination event occurred.

(6) *Commodity.* The commodities covered by a service contract shall be entered as described in § 514.13(a). See § 514.7(c) for exempt commodities.

(7) *Mandatory terms.* (i) Essential terms shall contain the contract rates or rate schedule(s), including any additional or other charges (i.e., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges; except that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission. In ATFI, the mandatory terms shall be entered as described in paragraphs (d)(7)(ii) and (d)(8) of this section.

(ii) *TLI.* The tariff line items for essential terms are similar in format to those in a commodity tariff, as prescribed by § 514.13(b). In the screen example, the ATFI system adds four digits to the commodity code to obtain the TLI number. As set forth in the "Batch Filing Guide's" Data Element Dictionary, the basic conditions and terms of service include: "PP" (Shipment service code for "Pier to Pier"); "LS" (Rate basis for "Lump Sum"); and "40" (Container size for a 40-foot container).

The date, "01Jan1992" is the TLI filing date and the basic rate is \$3,100 (U.S. dollars).

(8) *Other required terms.* In addition to the data described in paragraphs (d)(2) through (d)(7) of this section, essential terms shall also contain the following terms, with the mandatory numbers and subjects as follows:

(i) *Origin.* The origin port range(s) in the case of port-to-port movements, and the origin geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b).

(ii) *Destination.* The destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b).

(iii) *The minimum quantity of cargo or freight revenue necessary to obtain the rate or rate schedule(s),* except that the minimum quantity of cargo committed by the shipper may not be expressed as

a fixed percentage of the shipper's cargo.

(iv) The *service commitments* of the carrier, conference or specific members of a conference, such as assured space, transit time, port rotation or similar service features.

(v) *Liquidated damages for non-performance, if any.* See 514.7(l).

(vi) *Later events causing deviation (if any).* Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, a clear and specific description of the event, the existence or occurrence of which shall be readily verifiable and objectively measurable. See § 514.7(l). This requirement applies to, *inter alia*, the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in which case the contract shall set forth a rate, charge, or rate basis which will be applied;

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential terms of the contract.

(vii) The *duration of the contract*, stated as a specific, fixed time period, with a beginning date (effective date) and ending date (expiration date). See paragraph (d)(4) of this section.

(9) *Optional essential terms.* Any essential term of a service contract not specifically provided for in this section shall be entered after the required terms and in numerical order, beginning with # 1.

(10) *Assessorials and algorithms.* Assessorial charges in full-text or algorithm form, as required and further explained in § 514.10(d), may be contained in Tariff Rules within essential terms publications under paragraph (b) of this section, and/or in the commodity descriptions and TLIs of particular essential terms documents under paragraphs (d)(6) and (d)(7) of this section, respectively. Algorithms are not accommodated in other mandatory terms or the optional terms of essential terms described in paragraphs (d)(8) and (d)(9) of this section.

§ 514.18 Special permission.

(a) *General.* Section 8(d) of the 1984 Act and section 2 of the 1933 Act authorize the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 514.9. Section 9(c) of the 1984 Act authorizes the Commission to permit a controlled common carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will grant such permission only in cases where merit is demonstrated.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be submitted with reasonable promptness after filing the defective tariff material. For correction of clerical errors in the essential terms of service contracts, see § 514.7(k)(1).

(c) *Application—(1) By authorized official: filing fee.* Application for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent that holds authorization under § 514.7(d) to file the tariff matter. Every such application shall be submitted to BTCL and be accompanied by the filing fee provided in § 514.21.

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

(3) *Content.* Except as provided in § 514.7(k)(1) for correction of essential terms, applications for special permission shall contain the following information:

(i) The organization name, number and d/b/a of the conference or carrier under § 514.11(b);

(ii) The tariff number, title and tariff code under § 514.11(b); and

(iii) The rate, commodity, Tariff Rules, etc. (related to the application), and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this

part or to warrant a tariff change upon less than the statutory notice period.

(d) *Implementation.* (1) If all conditions are complied with and if the authority granted by special permission is used, it shall be used in its entirety and in the manner set forth by the Commission, including the prompt electronic filing of the material for which permission is requested, with the filer using the special case number assigned by the Commission for that filing and the special case symbol "S," as prescribed in § 514.9(b)(19)(i).

(2) If Commission-specified conditions are not complied with, or if the exact authority granted by the special permission is not used and more, less or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

§ 514.19 Suspension of tariff matter.

All use of suspended tariff matter shall be deferred for the period specified in the Commission's suspension order. In addition to other affected places in the tariff, as provided in this section, the fact that tariff matter is suspended is also displayed through the "Status" function in the command line, as described in § 514.8(n)(3).

(a) *Domestic offshore commerce—(1) Suspension; period.* The Commission may suspend from use any rate, fare, charge, classification, Tariff Rule, regulation, or practice of a domestic offshore carrier for a period of up to 180 days beyond the time it would otherwise have lawfully taken effect.

(2) *Implementation.* Upon issuance of an order suspending tariff matter in whole or in part, BTCL shall immediately make the appropriate entry in the domestic offshore carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff matter suspended and sets forth any tariff provisions which may remain effective in lieu of the suspended provisions;

(ii) Bears an effective date coinciding with that in the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(3) *Amendment of suspended tariff matter.* (i) Neither suspended matter nor matter continued in effect as a result of a suspension, may be amended, deleted or withdrawn except through use of the special case number and symbol procedure under § 514.9(b)(19) referred to in the order or special permission issued by the Commission, except that a tariff affected by a suspension order may be amended during the suspension period if the amendment does not affect the suspended materials.

(ii) If, prior to receiving a suspension order, a carrier files an amendment reissuing, deleting, canceling or amending any tariff matter named in a subsequent suspension order, the amendment shall be rejected.

(4) *Vacating suspension of tariff matter.* Should the Commission vacate a suspension order earlier than the date to which the subject tariff matter was originally suspended, BTCL shall immediately change the thru date to the specified date in the Commission's order vacating the suspension order.

(5) *Cancellation of suspended matter.* (i) Should the Commission subsequently cancel all or any part of previously-suspended tariff matter, BTCL shall immediately change the expiration date to the date of cancellation set forth in the Commission's order. See § 514.4(e).

(ii) If suspended tariff matter is not canceled by the Commission prior to its thru date, it shall take effect automatically on the thru date and any tariff matter which was continued in effect during the suspension period shall be automatically superseded by the tariff matter that had been suspended but was not canceled.

(b) *Controlled common carriers in foreign commerce.*

(1) *Suspension; period.* Tariff matter filed by a controlled common carrier may be suspended at any time before its effective date. Tariff matter already in effect may be suspended upon the Commission's issuance of a show cause order on not less than 60 days' notice to the common carrier. In either instance, the suspension period shall not exceed 180 days.

(2) *Implementation.* Upon issuance of an order suspending tariff matter in whole or in part, the Commission's BTCL shall immediately make the appropriate entry into the controlled common carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff material suspended;

(ii) Bears an effective date coinciding with that of the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(3) *Replacement rates.* (i) Controlled common carrier tariff matter filed to become effective during a suspension period in lieu of the suspended matter:

(A) May become effective immediately upon filing or upon the effective date of the suspension, whichever is later; and

(B) Shall be filed using the special case symbol and number issued by the Commission under § 514.9(b)(19).

(ii) In determining whether to reject replacement rates, the Commission will consider whether such rates result in total charges (e.g., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a U.S.-flag or reciprocal-flag common carrier serving the same trade.

(iii) At the same time it files replacement rates, the controlled common carrier shall submit to BTCL a letter (in paper format) identifying the specific U.S.-flag or reciprocal-flag common carrier's rates, charges, classification or Tariff Rules resulting in total charges which equal or are lower than its own.

(c) *Other suspension situations.* When the Commission, upon good cause shown, issues an order to suspend tariff matter not addressed in paragraphs (a) or (b) of this section, it will set forth in the order the procedures for effectuating the suspension.

(d) *Other filings in suspension situations.* In suspension situations, when filings, not provided for elsewhere in this section and not otherwise permitted by the rules of this part, may become necessary or desirable, such filings may be directed by the Commission and shall use the assigned special case symbol and number procedure under § 514.9(b)(19).

§ 514.20 Retrieval.

(a) *General.* The Commission will not provide to the public tariff data in paper format, except pursuant to requests for certification of copies for court or government agency use, as provided in § 514.8(k)(2).

(b) *User charges.* User charges for services under this section are provided in § 514.21.

(c) *Interactive retrieval.* Interactive retrieval means the process by which

any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal (see § 514.8(e)), and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter which has been filed in the ATFI database.

(1) *Registration.* Every public interactive retriever will be required to register in advance with BTCL under § 514.8(f) to obtain a USERID and password.

(2) *Retrieval restrictions.* Due to system design and Congressional policy to impose reasonable restrictions on retrieval, a registered public interactive retriever will be logged off (automatically) the ATFI system:

(i) After 10 minutes of inactivity; or

(ii) After a period of time, e.g., 30 minutes (shown at logon), which the Commission has determined is sufficient to allow access to several TLIs (and related tariff objects).

(3) *Remote retrieval by modem.* A public retriever may access and/or obtain (through screen prints) ATFI filed tariff data through modem and telecommunications links and procedures authorized by the Commission.

(4) *Tariff Control Center.* A public retriever may access and/or obtain ATFI filed tariff data through personal operation of one of several terminals provided in the Tariff Control Center at the FMC headquarters in Washington, D.C.

(d) *Batch retrieval through database tapes.* Interested parties may subscribe to all tariff filings/updates received by the Commission on a daily, weekly, or monthly basis. The ATFI System Administrator will record on 1600 bpi or 6250 bpi, 9 track, magnetic tape all of the tariff updates received during the previous calendar day, or other applicable subscriber-designated period, as well as any tariff update created by the Commission (e.g., suspensions, rejections, etc.). These subscriber tapes will be distributed to subscribers via first class mail or made available for pick-up at the FMC ATFI Computer Center.

(e) *Instructional materials—(1) ATFI "Batch Filing Guide" and user manual.* The ATFI user guides applicable to retrieval functions are the "ATFI Fundamentals Guide," "ATFI System Handbook," and "ATFI Tariff Retrieval Guide." See § 514.8(b). The user of subscriber tapes will also need the ATFI transaction set formats and specifications detailed in the "Batch Filing Guide." See § 514.8(d)(3). The transaction set formats published for

batch filers are used for the formatting of subscriber tapes.

(2) *Computer based instruction ("CBI")*. Computer based instruction for ATFI retrieval is a menu option for registered interactive retrievers using the ATFI central site system. See § 514.8(h).

(f) *Filers*. Properly registered individuals who will have "write" privileges for editing tariff data may access those tariffs for which they have such filing privileges without restriction. Where filing firms or employees thereof also register as public retrievers for access to all tariff data, the restrictions in paragraph (c)(2) of this section shall apply when they enter ATFI as a retriever.

§ 514.21 User charges.

In accordance with 5 U.S.C. 552 and 31 U.S.C. 9701, the following user charges are established for services under this part:

(a) *Application for exemption* (See §§ 514.3 and 514.8(a)): As provided in § 502.69 of this chapter.

(b) *User manual* (of ATFI "Guides" -- § 514.8(b)).

(1) *In diskette form*: \$15 for diskette(s) containing all user guides in WordPerfect 5.0 format.

(2) *Printed, in paper form* (Batch Filing Guide is free of charge and is furnished separately):

(i) *Package A: Fundamentals Guide and System Handbook* (125 pages) are made available jointly and are a prerequisite for use of either of the packages in paragraphs (b)(2)(ii) or (b)(2)(iii): \$18.00.

(ii) *Package B: Tariff Retrieval Guide*: \$15.00.

(iii) *Package C: Tariff Filing Guide*: \$27.00.

(iv) *Package D: All Guides listed in paragraphs (b)(2)(i) through (b)(2)(iii)*: \$55.00.

(3) *Ordering manuals*. Requests for user manual package(s) should be in writing and addressed to "BTCL Manuals," Federal Maritime Commission, Washington, DC 20573. A check for the appropriate amount should be made to the "Federal Maritime Commission."

(4) *Updates*. Updates to the user manual in any format will not be furnished automatically and are not included in the user charge. The Commission will publicize notice of upgrades when they occur.

(c) *Registration for user (filer and/or retriever) ID and password* (See exhibit 1 to this part and §§ 514.4(d), 514.8(f) and 514.20): \$100 for initial registration for firm and one individual; \$25 for additions and minor changes.

(d) *Certification by Commission Secretary of tariff data* (§ 514.8(k)(2)): As provided in § 503.43(c) of this chapter.

(e) *Certification of batch filing capability (by appointment through BTCL)* (§ 514.8(l)).

(1) *User charge*: \$200 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial changes to the ATFI system).

(2) *Certification submissions*:

(i) May be made in one or more scheduled certification periods;

(ii) May include transaction sets for one of each different tariff type listed in Appendix A (# 14) of the ATFI Batch Filing Guide; and

(iii) May be made to the ATFI central site computer via on-line batch or to the ATFI Computer Center via bulk batch (9-track tape), or both.

(f) *Application for special permission* (§ 514.18): \$100.

(g) *Remote retrieval by modem* (§ 514.20(c)(3)): 50 cents per minute of connect time.

(h) *Printing* (screen prints) of downloaded tariff matter at Commission's Tariff Control Center (§ 514.20(c)(4)): as provided in part 503, subpart E.

(i) [Reserved]

(j) *Database tapes* (§ 514.20(d)): The fees for subscriber tapes are:

(1) *Initial set of full database tapes*: \$300.

(2) *Daily updates*: \$25 each.

(3) *Weekly updates*: \$50 each.

(4) *Monthly updates*: \$100 each.

(k) *Miscellaneous tapes*. The fee for tape data other than the ATFI database described in paragraph (j) of this section, shall be \$25 per tape.

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

The information collection requirements contained in these regulations (46 CFR part 514 and Exhibit 1 to part 514) have been approved by the Office of Management and Budget [OMB] in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control number 3072-0055.

BILLING CODE 5730-01-M

• OMB 3072-0055; Expires 9-30-94 •

Exhibit I to Part 514

ORG NO. _____

ATFI USER REGISTRATION FORM

PLEASE TYPE OR PRINT
(SEE INSTRUCTIONS)FMC USE ONLY
ARC _____ BOND _____ CC _____1. This Registration is: ☐ Initial ☐ Amendment (Specify change) _____

2. Registrant _____

Full Legal Name of firm (or individual, if not a firm)

(Doing Business As) _____

3. Address of
Home Office

(Number and Street) _____

Telephone (_____) _____

(Number and Street) _____

Fax (_____) _____

(City/State/Country) _____

4. Billing
Address If
Different

(Number and Street) _____

Telephone (_____) _____

(Number and Street) _____

Fax (_____) _____

(City/State/Country) _____

5. Organization Number (If known) _____ 6. SCAC/STAC CODE _____ (If Applicable)

7. Registrant Type ☐ VOCC ☐ Terminal ☐ Tariff Publisher/Agent/Other
(Check one) ☐ NVOCC ☐ Conference/Joint Service

[SEE INSTRUCTIONS BEFORE COMPLETING LINE 8]

8. Permissions Requested and Person granted these permissions (Check permissions that apply)

Print Full Legal Name _____

☐ Retrieval☐ Create/modify tariff data☐ Maintenance of organization record☐ Review/Authorize/Transmit data9. Certified for Batch Filing (Y/N) _____ If Yes, show Certification date _____
If the person to perform the Batch filing already has an existing Login, list only the Login for that person.

Existing Login _____

Signature of Authorized Official _____

Print or Type name of Authorized Official _____

Date _____

FMC USE ONLY

Login _____ Initial Password _____ User ID _____ Directory _____
Form FMC-63 (5-92) DateAsg _____ / _____ / _____ AsgBy _____

Instructions for Exhibit 1 to Part 514 ATFI User Registration Form

Line 1. Registration. Indicate whether this is the initial (first-time) ATFI registration or an amendment to an existing ATFI registration.

Line 2. Registrant. This must be the full legal name of the firm or individual registering for ATFI and any trade names. The registrant name should match the corporate charter or business license, anti-rebate certification, surety bond, conference memberships, etc. It should be noted that the registrant name cannot be changed by the user after registration without submission of an amended registration form. A separate form must be submitted for each person registering to use ATFI.

Line 3. Address of Home Office. The complete street address should be shown in addition to the Post Office Box.

Line 4. Billing Address if Different. This should be completed when the billing address differs from the home office address. Show the street address in addition to the post office box.

Line 5. Organization Number. Complete if known. (This is also known as the Regulated Person Index number or RPI number).

Line 6. SCAC/STAC Code. SCAC (Standard Carrier Alpha Code) and STAC (Standard Tariffs Agent Code) is not mandatory for tariff filing in ATFI. These codes are used for the convenience of tariff filers/retrievers. SCAC/STAC codes are available from the National Motor Freight Traffic Association, Alexandria, VA.

Line 7. Registrant Type. Indicate the type of organization. A company cannot be more than one type. This data cannot be changed by the user after registration without submission of an amended registration form.

Line 8. Permissions Requested and Person Granted these Permissions.

Retrieval - Granted to all ATFI user(s).

Maintenance of Organization Record - The user listed can access the organization maintenance functions, i.e., modify organization information, assign publishers, affiliations, and doing-business-as (DBAs).

Create/Modify Tariff Data - The user is permitted to use the interactive system to enter tariff data.

Review/Authorize/Transmit Data (Interactive filing only) - The user may review previously entered, but not yet filed, tariff data. They may place data on a hold status, remove from the hold status, and may transmit data to ATFI.

Line 9. Certified for Batch Filing. The user is permitted to submit batch filings. The registrant must first be certified for batch filing as outlined in 46 CFR 514.8(l)(1) & (2). After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing login, the login (not the password) should be listed on the requesting form. Also, the certification date received from the Federal Maritime Commission should be listed on the requesting form.

** Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, FMC, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. **

Send completed form with appropriate user charge under 46 CFR 514.21 to BTCL, FMC, Washington, DC 20573.

BILLING CODE 6730-01-C

PART 515—FILING OF TARIFFS BY MARINE TERMINAL OPERATORS—[AMENDED]

2. The authority citation for 46 CFR part 515 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 833a, 841a, 1709, 1714, 1715 and 1716.

3. Section 515.0 is added to read as follows:

§ 515.0 ATFI Filings.

This part governs the filing of marine terminal operator tariffs in paper form. For filing in electronic form under the ATFI system, see part 514 of this chapter. If there is a question whether tariff material should be filed in paper form, or electronically under ATFI, contact the Federal Maritime Commission's Bureau of Tariffs, Certification and Licensing.

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE—[AMENDED]

6. The authority citation for 46 CFR part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

7. Section 550.0 is amended by adding paragraph (c) to read as follows:

§ 550.0 Scope.

(c) This part governs the publishing, filing and posting of tariffs in domestic offshore commerce in paper form, including certain electronically filed tariff pages under § 550.3(e). For filing, posting and publishing under the electronic ATFI system, see part 514 of this chapter. If there is a question whether tariff material should be filed in paper form, or electronically under ATFI, contact the Federal Maritime Commission's Bureau of Tariffs, Certification and Licensing.

PART 580—PUBLISHING AND FILING OF TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES—[AMENDED]

8. The authority citation for 46 CFR part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702-1705, 1707, 1709, 1710-1712, 1714-1716, 1718, AND 1722.

9. Section 580.0 is amended by adding paragraph (d) to read as follows:

§ 580.0 Scope.

(d) This part governs the publishing and filing of tariffs by common carriers in the foreign commerce of the United States in paper form, including certain electronically filed tariff pages under § 580.3(a). For publishing and filing under the electronic ATFI system, see part 514 of this chapter. If there is a question whether tariff material should

be filed in paper form, or electronically under ATFI, contact the Federal Maritime Commission's Bureau of Tariffs, Certification and Licensing.

PART 581—SERVICE CONTRACTS—[AMENDED]

10. The authority citation for 46 CFR part 581 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714-1716, 1718 and 1722.

11. Section 581.0 is added to read as follows:

§ 581.0 ATFI Filings.

This part contains regulations that govern service contracts and their essential terms in foreign commerce, where essential terms are not required to be filed in electronic format in the ATFI system. For contracts with their essential terms required to be filed in the ATFI system, see part 514 of this chapter. If there is a question whether the essential terms of a service contract should be filed in paper form, or electronically under ATFI, contact the Federal Maritime Commission's Bureau of Tariffs, Certification and Licensing.

By the Commission,

Joseph C. Polking,
Secretary.

[FR Doc. 92-19091 Filed 8-11-92; 8:45 am]

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