

( S E R V E D )  
( MARCH 13, 1990 )  
( FEDERAL MARITIME COMMISSION )

FEDERAL MARITIME COMMISSION

46 CFR PARTS 550, 580 AND 581

[DOCKET NO. 85-19]

TARIFF PUBLICATION OF FREE TIME AND DETENTION CHARGES  
APPLICABLE TO CARRIER EQUIPMENT INTERCHANGED WITH  
SHIPPERS OR THEIR AGENTS

[DOCKET NO. 89-4]

TARIFF PUBLICATION OF FREE TIME AND DETENTION CHARGES

**AGENCY:** Federal Maritime Commission.

**ACTION:** Lifting of Stay; Final Rule.

**SUMMARY:** The Federal Maritime Commission ("Commission" or "FMC") issues this Final Rule amending its domestic offshore tariff, and its foreign tariff and service contract filing regulations pertaining to the publication of free time and detention charges applicable to carrier-provided equipment interchanged with inland carriers, consignees and shippers. A Notice of Proposed Rulemaking appeared in the Federal Register on February 3, 1989 (54 FR 5506). Upon consideration of comments received in response to that Proposed Rule, the Commission has made significant changes in the rule as originally proposed. This Final Rule is intended to simplify the filing of equipment interchange agreements ("EIA"). The Final Rule provides guidelines for filing a sample EIA and eliminates the necessity of filing complete copies of EIAs that differ in terms and conditions. Indexing and cross-referencing requirements have been modified to lessen their burden. The Final Rule further sets forth procedures for including EIA provisions in service contracts.

Additionally, a previous Final Rule was issued on this subject in Docket No. 85-19, which was stayed by notice appearing in the Federal Register on August 30, 1988 (53 FR 33139). Given the issuance of the Final Rule in Docket No. 89-4, the stay in Docket No. 85-19 is being lifted.

**EFFECTIVE DATE:** Both the lifting of the stay in Docket 85-19 and the Final Rule in Docket No. 89-4 are effective 60 days after publication in the FEDERAL REGISTER.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

The Commission published a final rule with respect to EIAs in the Federal Register on February 26, 1988, with an effective date of March 28, 1988 (53 FR 5770). That rule, issued in Docket No. 85-19, Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged with Shippers or Their Agents, amended the Commission's domestic and foreign tariff filing regulations to require common carriers to publish in their tariffs EIAs that contain terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers and chassis) by shippers or persons acting on the shippers' behalf. The rule required EIAs to be published in the rules section of a carrier's EIA tariff in accordance with 46 CFR 550.5(b)(8)(xvii) (domestic trades) and 46 CFR 580.5(d)(21) (foreign trades).

On March 9, 1988, a petition was filed by several conferences of ocean carriers requesting a 90-day stay of the effective date of the Docket No. 85-19 final rule to allow additional time for

compliance with the new regulation. The Commission granted that request, extending the effective date of the final rule to June 26, 1988 (53 FR 9629, March 29, 1988).

Because of continuing difficulties faced by the industry in attempting to comply with the rule, the Commission granted a further 90-day extension of the rule's effective date to September 30, 1988 (53 FR 23632, June 23, 1988). On August 30, 1988 (53 FR 33139), the Commission issued an indefinite stay of the effective date of the Docket No. 85-19 final rule to permit resolution of a number of remaining issues regarding compliance with various aspects of the EIA filing requirements.

On February 3, 1989, the Commission instituted the present proceeding, Docket No. 89-4, which proposed a further rule (54 FR 5506), to simplify the filing of EIAs by easing tariff filing requirements and clarifying the relationship between EIA filing requirements and service contracts ("Proposed Rule"). The Proposed Rule in Docket No. 89-4: (1) requires the publication of a separate EIA tariff in those instances where an EIA differs from the provisions contained in the carrier's standard EIA; (2) requires the publication of only that portion of the EIA, i.e., free days and charges, which differs from the standard EIA, eliminating the requirement to file the complete differing EIA; (3) provides for the cross-referencing of foreign rate tariffs; (4) allows

conferences to cross-reference the tariff of an individual member; and (5) clarifies the EIA filing requirements for service contracts.<sup>1</sup>

The Proposed Rule also requires minimal information in the EIA tariff in those instances where it differs only with respect to free days and charges. Specifically, the standard EIA would be required to be published in the carrier/conference tariff. If there were deviations from the published standard EIA, the Proposed Rule requires that the deviations be listed in Section 1 of the carrier's EIA tariff. Listed would be those EIAs that deviate from the standard agreement with respect to: location at which the free days and charges applied; equipment subject to the charges; number of free days and charges; and those governing rate tariffs published by the carrier subject to these EIA charges. Where other provisions of the EIA agreement differ, the entire agreement would be required to be published in Section 2 of the carrier's tariff. Additionally, an index would be required to show the name of the rail/motor carrier; location at which the free days and charges applied; equipment subject to the EIA agreement; number of free days and charges; the governing freight tariffs subject to the EIA charges; and the tariff page where the EIA could be located.

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<sup>1</sup> The final rule in Docket No. 85-19 requires carriers and conferences to file each EIA in its entirety, if it differs from the carriers' standard terms and conditions. This would necessitate a number of nearly identical filings, as many EIAs differ only in minor respects, such as "free days and charges" provisions. The rule proposed in Docket No 89-4 provides the methodology for implementing the EIA filing requirement provided by Docket No. 85-19.

Comments on the Proposed Rule have been received from 21 interested parties.<sup>2</sup> In light of the number of submissions and similarity of the arguments, the position taken by each and every commenter will not be individually addressed. Rather, representative comments of certain parties will be presented. Unique comments of the remaining parties will also be noted.

#### COMMENTS

ANERA et al. argue that implementation of untested procedures in a new and complicated area has the potential for massive additional paperwork and manpower burdens on the industry and Commission staff. They suggest that the Commission establish an FMC/industry task force, to confer and examine the effects of the Proposed Rule and, thereafter, offer recommendations regarding

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<sup>2</sup> Comments were submitted by: 1) American President Lines, Ltd.; 2) American Trucking Associations/The ATA Intermodal Council ("ATA"); 3) Asia North America Eastbound Rate Agreement; The "8900" Lines; U.S. Atlantic & Gulf/Australia-New Zealand Conference; and U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement (collectively "ANERA et al."); 4) Aruba Bonaire Curacao Liner Association; 5) Caribbean Shipowners Association; 6) Central America Liner Association and the United States Atlantic & Gulf/Hispaniola Steamship Freight Association; 7) Crowley Maritime Corporation; 8) Independent Container Line, Ltd.; 9) Inter-American Freight Conference; ("IAFC") 10) Intermodal Transportation Association; 11) Matson Navigation Company, Inc.; 12) North Europe-U.S. Pacific Freight Conference/Pacific Coast European Conference; 13) Pacific Coast/Australia-New Zealand Tariff Bureau; 14) Sea-Land Service, Inc.; 15) Steamship Operators Intermodal Committee ("SOIC"); 16) Transax/Rates ("Transax"); 17) Trans-Pacific Freight Conference of Japan and the Japan Atlantic & Gulf Freight Conference; 18) Transpacific Westbound Rate Agreement ("TWRA"); 19) Transportacion Maritima Mexicana, S.A. de C.V.; 20) U.S. Atlantic-North Europe Conference; Gulf-European Freight Association; North Europe-U.S. Atlantic Conference; and North Europe-U.S. Gulf Freight Association; 21) United States Atlantic & Gulf/Venezuela Freight Association and the Venezuela Discussion Agreement (collectively "Venezuela Agreements").

modified methods of implementation. Written comments allegedly are not sufficient to address the Proposed Rule, given the complex and highly technical nature of the tariff filing issues it raises. ANERA et al. allege that compiling and arranging equipment interchange information in the form required by the Proposed Rule would be difficult; that the requirements as they relate to foreign EIAs would be burdensome and possibly lead to uneven compliance and enforcement; and that the indexing and cross-referencing requirements would also be burdensome.

Absent establishment of a task force, ANERA et al. urge that the Proposed Rule initially be made applicable only to EIAs in the United States. They submit that this would give the Commission the opportunity to observe any problems and resolve them before applying the rule universally.

ANERA et al. state that the degree of standardization is much lower in foreign countries resulting in a geometric increase in the amount of paperwork for foreign EIAs. They note that EIAs abroad are often in a foreign language and governed by the laws of those countries, and they question the Commission's ability to enforce its laws and regulations in foreign countries. According to ANERA et al., the regulatory benefits to be derived by requiring the filing of foreign EIAs in their entirety are dubious at best, and do not justify the burden to be imposed.

ANERA et al. further suggest that only free time and detention terms offered by carriers should be required to be filed. They contend that the filing of the entire EIA is a paperwork burden not

justified by an overriding regulatory or commercial need. Allegedly, the substance of EIA provisions (insurance requirements, relative liability for loss or damage and repairs to equipment) are relatively standard, and EIAs typically vary only in different geographic areas or for different carriers.

It is also argued that Exhibit 7, an index of EIAs which must be published in their entirety if they differ from the standard EIA, is unnecessary, duplicative, and wasteful, since the entire EIA is already on file. ANERA et al. suggest that a reasonable alternative would be to require the publication of EIAs in alphabetical order in one section of the EIA tariff.

ANERA et al. also suggest that columns 7 and 8 of Exhibit 6 are unnecessary and should be eliminated. (Exhibit 6 would indicate those inland carriers whose free days and charges differ from the standard). They contend that column 7, which is a cross-reference to the applicable rate tariff, adds to the paperwork burden, and would be of little benefit to the Commission or the shipping public. They believe that any required cross-reference should be from the rate tariff to the EIA tariff. ANERA et al. also contend that column 8 which requires identification of the replacement EIA number when a new EIA is negotiated is unnecessary because a replacement page will convey the same information.

ANERA et al. point out that section 581.4(a)(2)(iii) of the service contract regulations requires that service contracts cross-reference the tariff of general applicability or the equipment interchange tariff. They assert that this cross-reference could

identify the service contract shipper and could compromise the confidentiality of service contracts. They suggest that section 581.4(a)(2)(iii) be eliminated or modified to provide that cross-references to the tariff of general applicability or equipment interchange tariff be filed with the Commission confidentially with the service contract.

The Venezuelan Agreements state that the Proposed Rule requires all carriers to publish EIAs even if they do not use them. They point out that in Venezuela there are no EIAs because the equipment is interchanged through Trailer Inspection Reports, and the terms and conditions for the interchange of equipment are set forth in the conference tariff or, in the case of carriers party to the Venezuela Discussion Agreement, in the tariffs of the individual members. To require domestic inland carriers in Venezuela to enter into EIAs allegedly would require a change in Venezuelan law. The Venezuelan Agreements seek clarification or a change to stipulate that the Proposed Rule applies only to written EIAs with shippers or persons acting on the shipper's behalf.

The Inter-American Freight Conference suggests that the Commission clarify which parties are subject to the EIA regulations. The IAFC notes that the Proposed Rule refers to "shippers or their agents", "shippers or persons acting on the shippers' behalf", "shippers" and "inland carriers." This is said to be confusing. The confusion is allegedly compounded by section 580.1(c)(8), which provides that EIAs with inland carriers are



exempt if they are not referred to in the ocean carriers' tariffs and do not affect the carriers' rates, charges or practices.

The IAFC also notes that the Proposed Rule, at sections 580.5(d)(21) and 580.6(m)(1), appears to require EIA tariffs to be published by individual carriers rather than by conferences. It submits that a conference can agree upon EIAs within the scope of its authority and establish a conference-wide EIA or a conference EIA tariff. A conference-wide EIA tariff is seen as simplifying the conference's tariff structure, making it more understandable for shippers and the Commission's staff.

The IAFC further notes that proposed Exhibits 6 and 7 to Part 580 appear to apply only where the standard EIA is filed, and only to the extent that free time and detention charges vary from location to location. It observes that if there are no variances, then a carrier's equipment locations may not be disclosed, since the terms of an EIA do not normally list locations. The IAFC suggests that the regulations be amended to require that all locations be set forth in the applicable tariff.

The IAFC also urges that the regulations be amended to make clear what terms and provisions must be set forth in the EIA. This is said to be necessary since some of the terms and conditions may be established by custom and incorporated implicitly rather than explicitly in EIAs. It suggests that, among other things, EIAs include provisions concerning equipment or services to be furnished with reefer containers; maintenance and repair; insurance; and equipment control and tracing.

The Transpacific Westbound Rate Agreement states that EIAs are negotiated on short notice, and that under the Proposed Rule, a carrier may not be able to implement an EIA for 30 days. TWRA points out that this is a particular problem for controlled carriers, since they, absent special permission, cannot affect any tariff changes on less than 30 days notice. It explains that free time and detention charges may have to be temporarily adjusted in response to changes in a carrier's vessel rotation, as well as weather conditions, port congestion or similar factors. The Proposed Rule's requirement that a carrier not return to its former practice for 30 days allegedly would discourage carriers from giving inland carriers or cargo interests reasonable adjustments based on such factors.

The Steamship Operators Intermodal Committee argues that the requirement that United States and foreign ports be delineated in the text of a tariff page (Exhibits 5 and 8) is unnecessary. SOIC notes that the tariff's geographic scope is already described in Rule 1 and, in abbreviated form, at the top of every tariff page. It urges that the Proposed Rule be amended to provide that a port or point need be mentioned only when the EIA is exclusive to a port or country.

SOIC also suggests that Exhibits 4 and 7 be eliminated entirely. Exhibits 4 (domestic) and 7 (foreign) provide an index of inland carriers with EIAs that differ from the standard. SOIC contends that the alphabetical arrangement of inland carriers required by Exhibits 3 and 6 are, in themselves, an index-(Exhibits

3 (EIA domestic Rule) and 6 (EIA foreign Rule) provide a listing of inland carriers that have free days and/or charges different from the standard set forth in Rule 17 (domestic) or Rule 21 (foreign)). SOIC observes that equipment located overseas frequently moves under EIAs of other parties, such as terminal operators. In these instances, a carrier-controlled container is said to move on a chassis controlled by the third party. SOIC questions whether such EIAs are to be published in a carrier's tariff. It also states that the Proposed Rule does not take into consideration volume movements where it is unreasonable to expect all equipment to be returned within the stipulated free time.

Transax/Rates suggests the filing of EIA information in text format, or allowing for the combination of columns. Transax explains that its electronic systems used for tariff publication or other informational support are based strictly on an 80 column format. It states that the information required on the exhibits in the Proposed Rule exceeds 80 columns. Allowing publication within an 80 column format would allegedly benefit the FMC's Automated Tariff Filing and Information environment once implemented.

The American Trucking Association and the ATA Intermodal Council urge clarification of the term "standard EIA". ATA submits that more than forty ocean carriers and over 2,000 motor carriers are signatories to the Uniform Intermodal Interchange Agreement ("UIIA") administered by the Intermodal Transportation Association. This UIIA agreement sets forth standard terms governing the

interchange of equipment between ocean carriers and motor carriers. ATA suggests that, in the case of UIIA signatory carriers, the UIIA be considered the ocean carrier's standard EIA.

#### DISCUSSION

Upon review of the comments, the Commission has determined to issue a Final Rule which makes significant revisions to the Proposed Rule. In so doing, the Final Rule addresses most of the concerns raised in the comments submitted with respect to the Proposed Rule and, in fact, expressly incorporates many of the suggestions made in those comments. The Commission is also lifting the stay of Docket No. 85-19 effective with the date of this Final Rule. Carriers/conferences must publish their EIAs in their tariffs no later than the effective date of this Final Rule. These EIAs may become effective, pursuant to the provisions of the 1984 Act, 30 days after publication.

The Final Rule eliminates the requirement to publish the entire EIA in those instances where the deviation from the standard EIA is other than free days and charges. This modification eliminates the need for Exhibits 4 (domestic) and 7 (foreign). Furthermore, the Final Rule eliminates the need to file the remaining exhibits by no longer prescribing a format for presenting the required information.

Another significant change is the deletion of the requirement that the EIA tariff cross-reference the tariff of general applicability and service contract essential terms publication. The Final Rule also requires carriers/conferences to identify the

locations at which the standard EIA or its exception applies. Other changes include clarifying that conferences may file EIAs and permitting carriers that do not have EIAs to only publish the terms and conditions for providing equipment to inland carriers in their tariff.

The Commission has also clarified the Final Rule to address IAFC's concern with regard to certain confusion that it believes surrounds the filing requirements for EIA arrangements between carriers and shippers, inland carriers or consignees. The Commission has modified the language of the Final Rule to make clear that the Rule applies only to those EIAs which affect a carrier/conference's rates, charges and practices that affect the shipper or the consignee. The EIA filing requirement provided by the Final Rule applies only to those agreements between carriers/conferences and shippers/consignees, inland carriers or other persons acting as the agent for the person paying the freight charges that result in charges or practices for the account of the person paying the freight. The Final Rule's filing requirement does not apply to EIA agreements between carriers/conferences and inland carriers that do not result in ocean carrier charges to the shipper.

In summary, this Final Rule: (1) requires publication of a sample EIA with standard free days and charges; (2) allows carriers and conferences to publish separately the free days and charges in those instances where they differ from the standard; (3) provides guidelines for filing a governing EIA tariff; (4) permits the

referencing of EIA tariffs by individual rate tariffs; (5) clarifies that conferences can file EIA provisions in existing rate and EIA tariffs; and (6) clarifies the filing requirements for service contracts.

Rather than requiring the filing of the entire EIA when the terms and conditions differ from the standard EIA, as originally proposed, the Final Rule requires only the filing of a sample EIA. The sample shall include the standard number of free days and charges. In those instances where the free days and/or charges differ from the standard, the carrier or conference need only file the deviation specifying the party to whom the free days and charges apply, location and type of equipment. A separate section must be created in the individual rate tariff for such EIA filings, or the carrier/conference must file an equipment interchange tariff to accommodate the exceptions. If an equipment interchange tariff is filed, the carrier/conference individual rate tariff or service contract must reference the equipment interchange tariff only.

The provisions of this Final Rule apply to vessel operating common carriers and non-vessel-operating common carriers and do not distinguish between foreign and domestic ports. Therefore, use of carrier equipment regulations apply to free time practices in foreign countries. Given the filing simplifications incorporated into the Final Rule, there is no need to limit its application to domestic EIAs, as suggested by ANERA et al. As a result, carriers or conferences must publish EIAs with respect to foreign port operations. The Final Rule does not, however, relieve controlled

carriers from the notice provisions of the 1984 Act as requested by TWRA and SOIC. That matter was not placed at issue in this proceeding and is therefore beyond its scope.

This Final Rule supplements the regulation issued in Docket No. 85-19. It provides the framework for implementing that docket's requirement that carriers and conferences must publish EIAs in their tariffs. While this Final Rule significantly eases the tariff filing requirements for EIAs, it does not affect the exemptions granted in Docket No. 85-19 for EIAs which do not affect the rates of the carrier or conference.<sup>3</sup> The Final Rule should facilitate compliance with the regulations and avoid the imposition of unnecessary and costly burdens on the industry, and also clarify the relationship of the EIA filing requirements to service contracts. Accordingly, because the filing requirement has been simplified and reduced to its bare essentials, the Commission therefore believes it unnecessary to adopt the ANERA et al. suggestion that a FMC/industry task force be formed.

The Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, 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)

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<sup>3</sup> The exemption provisions contained in sections 550.1(h) and 580.1(c)(8) provide: "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 tariff rates, charges or practices of the carriers."

significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States - based enterprises to compete with foreign - based enterprises in domestic or export markets.

The Commission finds that the Final Rule is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of the Act excepts from the its purview any "rule of particular applicability to rates or practices relating to such rates . . ." As the Final Rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this Final Rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (P.L. 96-511) and have been assigned OMB control numbers 3072-0005 for 46 C.F.R Part 550, 3072-0009 for 46 C.F.R. Part 580, and 3072-0044 for 46 C.F.R. Part 581.

List of subjects in 46 C.F.R. 550, 580 and 581: Maritime carriers; Rates and fares; Service contracts; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; secs. 8, 9, 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1708, 1709 and 1716); secs. 18(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a) and 841(a)); and sec. 2 of the Intercoastal Shipping Act,



1933 (46 U.S.C. app. 844), the Federal Maritime Commission amends Parts 550, 580 and 581 of Title 46 of the Code of Federal Regulations as follows:

PART 550 -[AMENDED]

1. The authority citation for Part 550 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841, 843, 845a and 847.

2. Section 550.5 is amended by revising paragraph (b)(8)(xvii) as follows:

§ 550.5 Contents of tariffs.

\* \* \* \* \*

(b) \* \* \*

(8) \* \* \*

(xvii) Use of carrier equipment. (A) If a carrier provides equipment to shippers, consignees, or inland carriers or other persons acting as the agent for the person paying the freight charges, a sample equipment interchange agreement or the terms and conditions governing the use of said equipment shall be published in the carrier or conference's tariff. 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 rule and shall clearly identify the location and type of equipment to which they apply. If a carrier does not have a sample equipment interchange agreement, the carrier must publish its terms and conditions and standard free time and charges in its tariff as specified above.

(B) If a carrier 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 included in either a separate section within the tariff or a governing equipment interchange tariff filed in accordance with sections 550.14(a)(1) and 550.20. In either instance, Rule 17 in the carrier's rate tariff shall contain only a reference to the location of the sample EIA and exceptions. Exceptions shall be arranged in alphabetical order by the party to which the exception applies. A carrier is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

\* \* \* \* \*

3. Section 550.14 is amended by revising paragraph (a)(1) to read as follows:

§ 550.14 Governing tariffs.

(a)(1) Rules, bills of lading/contracts of affreightment and equipment interchange agreements may be published separately as a

"rules tariff", "bills of lading tariff" or "equipment interchange tariff", as provided in sections 550.5(a)(8), (b)(7) and (b)(8)(xvii). For the purposes of this rule, classifications of freight, equipment registers, hazardous cargo rules and similar lengthy tariff matters are considered "rules tariffs."

4. A new section 550.20 is added which reads as follows:

§ 550.20 Equipment Interchange Tariffs.

(a) Equipment interchange tariffs may be filed as provided in sections 550.5(b)(8)(xvii) and 550.14(a)(1). They shall be filed in accordance with the tariff filing requirements of Part 550 except as provided herein.

The tariff shall be arranged in the following order:

- \* Title Page
- \* Check Sheet (optional)
- \* Table of Contents
- \* Explanation of Symbols, Abbreviations and Reference Marks
- \* Rules and Regulations
- \* Free Time and Charges - List of Exceptions to Standard Free Days and/or Charges.

(b) The rules and regulations section of the equipment interchange tariff shall include a list of ports or points served (section 550.5(b)(3)), and Rule 17 (Use of Carrier Equipment, section 550.5(b)(8)(xvii)). Required Rules 1 through 16 shall be noted as "Not Applicable."

## PART 580 [AMENDED]

5. The authority citation for Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702-1705, 1707, 1709, 1712, 1714-1716 and 1718.

6. Section 580.5 is amended by revising paragraph (d)(21) and adding paragraph (g)(5).

§ 580.5 Tariff contents.

\* \* \* \* \*

(d) \* \* \*

(21) Use of carrier equipment. (i) If a carrier or conference provides equipment to shippers, consignees, or inland carriers or other persons acting as the agent of the person paying the freight charges, a sample equipment interchange agreement or the terms and conditions governing the use of said equipment shall be published in the carrier or conference's tariff. 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 rule and shall clearly identify the location and type of equipment to which they apply. If a carrier or conference does not have a sample equipment

interchange agreement, the carrier must publish its terms and conditions and standard free time and charges in its tariff as specified above. Where a foreign government prohibits the use of a carrier or conference equipment interchange agreement, Rule 21 should 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 included in either a separate section within the tariff or the carrier or conference must file a governing equipment interchange tariff filed in accordance with sections 580.5(a)(7) and 580.17. In either instance, Rule 21 in the carrier or conference rate tariff shall contain only a reference to the location of the sample equipment interchange agreement and exceptions. Exceptions shall be arranged in alphabetical order by the party to which the exception applies. 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.

\* \* \* \* \*

(g) \* \* \*

(5) Reference may be made to an equipment interchange tariff for free time allowed and detention or similar charges, if applicable.

7. In section 580.13, the first sentence of paragraph (a) and paragraph (b) are revised to read as follows:

§ 580.13 Governing tariffs.

(a) Rules, bills of lading/contracts of affreightment and equipment interchange agreements may be separately published as a "rules tariff", "bill of lading tariff", or "equipment interchange tariff" as provided in sections 580.5(c)(10), (d)(8) and (21).

\* \* \*

(b) Except for equipment interchange tariffs, no rate tariff shall refer to or be governed by another rate tariff.

8. A new Section 580.17 is added which reads as follows:

§ 580.17 Equipment interchange tariffs.

(a) Equipment interchange tariffs may be filed as provided in sections 580.5(d)(21) and 580.13(a). They shall be filed in accordance with the tariff filing requirements of Part 580, except as provided herein.

The tariff shall be arranged in the following order:

- \* Title Page
- \* Check Sheet (optional)
- \* Table of Contents
- \* Explanation of Symbols, Abbreviations and Reference Marks
- \* Rules and Regulations
- \* Free Time and Charges - List of Exceptions to Standard Free Days and/or Charges.

(b) The rules and regulations section of the equipment interchange tariff shall include Rules 1 (Scope, section

580.5(d)(1)) and 21 (Use of Carrier Equipment, section 580.5(d)(21)). Required Rules 2 through 20 shall be noted as "Not Applicable." Equipment interchange tariffs need not reference carrier or conference rate tariffs.

PART 581 [AMENDED]

9. The authority citation for Part 581 continues to read:

Authority: 46 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714-1716 and 1718.

10. Section 581.4 is amended by the addition of a new paragraph (a)(2)(iii) as follows:

§ 581.4 Form and manner.

(a) \* \* \*

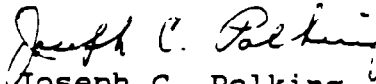
(2) \* \* \*

(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 Rule 21 and the applicable FMC tariff number only.

\* \* \* \* \*

FURTHER, IT IS ORDERED, that the stay of the Final Rule published in Docket No. 85-19, 46 C.F.R. §§ 550.5(b)(8)(xvii) and 580.5(d)(21), appearing in the Federal Register on August 30, 1983 (53 FR 33139), is lifted.

By the Commission.

  
Joseph C. Polking  
Secretary