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FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 93-03]

IMPLEMENTATION OF SECTION 502 OF PUBLIC LAW 102-582

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is proposing to amend its regulations governing the filing of tariffs and service contracts in order to implement section 502 of Public Law 102-582, which requires certain tariff data to be electronically filed into the Commission's Automated Tariff Filing and Information System and requires this data to be made available without restriction to the public. Additionally, a user-agreement approach is proposed to implement the new law's requirement that the Commission impose a per-minute fee for secondary (remote) electronic access to the tariff data.

DATE: Written comments in response to this notice (original and 15 Copies) must be submitted (actually received at the Commission) by [30 days from publication] to:

Joseph C. Polking, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, DC 20573-0001

FOR FURTHER INFORMATION CONTACT:

John Robert Ewers, Deputy Managing Director
Office of the Managing Director
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, DC 20573-0001

SUPPLEMENTARY INFORMATION:

On November 2, 1992, the President signed the "High Seas Driftnet Fisheries Enforcement Act," Public Law 102-582. Section 502 of this Act ("Section 502" at 46 U.S.C. app. 1707a) relates to the Federal Maritime Commission's ("Commission" or "FMC") own "Automated Tariff Filing and Information System" ("ATFI"). In order to implement Section

502, this proceeding proposes to amend the appropriate provisions of 46 CFR Part 514. *Tariffs and Service Contracts*.

Tariff Form and Availability

Subsection (b)(1) of Section 502 provides:

(1) REQUIREMENT TO FILE.-- Notwithstanding any other law, each common carrier and conference shall, in accordance with subsection (c), file electronically with the Commission all tariffs, and all essential terms of service contracts, required to be filed by that common carrier or conference under the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.), the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), and the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

The filing requirement of Section 502 does not include marine-terminal-operator tariffs, which are currently required to be filed pursuant to the Shipping Act, 1916, 46 U.S.C. app. 801, *et seq.*, and the Shipping Act of 1984, 46 U.S.C. app. 1701, *et seq.*, and implementing provisions. These filing requirements will, therefore, be retained in Part 514, even though the implementation of Section 502's user charges will reflect this omission. See the discussion under: "Fees; Enforcement."

Subsection (b)(2) provides:

(2) AVAILABILITY OF INFORMATION.--The Commission shall make available electronically to any person, without time, quantity, or other limitation, both at the Commission headquarters and through appropriate access from remote terminals--

(A) all tariff information, and all essential terms of service contracts, filed in the Commission's Automated Tariff Filing and Information System database; and

(B) all tariff information in the System enhanced electronically by the Commission at any time.

Additionally, subsection (i) of Section 502 repeals the remote retrieval restrictions of section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c).¹

¹ Section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c), provided: "(a) The Federal Maritime Commission shall require that complete and update electronic copies of the Automated Tariff Filing and Information data base are made available (in bulk) in a timely and nondiscriminatory fashion, and the Commission shall assess reasonable fees for this service consistent with section 552 of title 5, United States Code. (b) The Commission shall impose reasonable controls on the system to limit remote access usage by any one person. (c) The Commission shall provide that any information from the Automated Tariff Filing and Information System that is made available to the public may be used, resold, or disseminated by any person without restriction and without payment of additional fees or royalties."

Accordingly, as required by Section 502, the "remote-retrieval restriction" of automatic logoff from the system after a certain period of time (e.g., 30 minutes), will be removed from §§ 514.12(a)(1) and 514.20(c)(2)(ii). At the same time, however, reasonable system accommodations of access must be retained, such as, the 10-minute logoff for inactivity under § 514.20(c)(2)(i); prohibition of access when the system is down; and reasonable, temporary procedures to provide fair and equal access by more retrievers than the system can handle during severe and unusual surges.

Filing Schedule

Subsection (c) of Section 502 provides:

(c) *FILING SCHEDULE.*--New tariffs and new essential terms of service contracts shall be filed electronically not later than July 1, 1992. All other tariffs, amendments to tariffs, and essential terms of service contracts shall be filed not later than September 1, 1992.

When Section 502 was signed on November 2, 1992, both deadline dates in section 502(c), i.e., July 1, 1992, and September 1, 1992, had long since passed. By Supplemental Report No. 2 and Notice of August 12, 1992, in Docket No. 90-23, the Commission had established a phase-in schedule, which continued during most of 1993, for the required electronic filing of tariff data. Both the Commission and the industry needed and relied upon this implementation plan for the orderly electronic filing and acceptance of tariff data into ATFI. The industry's need for and reliance upon the previous schedule became immediately apparent in comments to the proposed rule in Docket No. 90-23; were verified through direct contact with industry, such as in an oral comment session with the Commission; and were later corroborated again through, *inter alia*, the comments submitted by ANERA and IAFC in that proceeding.

For this reason, the Commission, on December 14, 1992, issued a Notice ("December Notice") to apprise the public of when the Commission would be capable of accepting electronically-filed tariff data. See the *Federal Register* of December 17, 1992, 57 FR 60000. In developing the December Notice, the Commission took into consideration the terms of Section 502, as well as what is actually possible with regard to implementation by both the Commission and the industry, which has to file the tariff data. In pertinent part, the December Notice provides:

Notwithstanding the language of the statute, February 22, 1993, is the earliest possible date the Federal Maritime Commission * * * will be prepared to accept electronically filed tariff data. In Supplemental Report No. 3 and Notice * * * in Docket No. 90-23, Automated Tariff

Filing and Information System (ATFI), the Commission today has published a revised phase-in schedule for the mandatory electronic filing/conversion of tariff data into ATFI. That schedule establishes, according to specified trade areas, the dates during 1993 by which carriers and conferences must convert and file their tariffs electronically. As indicated in that Report, paper tariffs covering the described trade areas which are not converted by the prescribed "complete" date, will be subject to cancellation by order of the Commission in a show cause proceeding. As additionally indicated in that Report, filers must notify the ATFI Hot Line at (703) 883-8350 ten (10) days before beginning to convert a full tariff.

Under the implementation plan developed separately by the Commission, all effective tariff data required to be filed by the Shipping Acts will eventually, and as soon as possible, be electronically filed into and electronically accessible on the ATFI system.

Fees; Enforcement

Subsections (d) and (e) of Section 502 provide as follows.

(d) FEES.--

(1) AMOUNT OF FEE.--The Commission shall charge, beginning July 1 of the fiscal year 1992 and in fiscal years 1993, 1994, and 1995--

(A) a fee of 46 cents for each minute of remote computer access by any individual of the information available electronically under this section; and

(B)(i) for electronic copies of the Automated Tariff Filing and Information System database (in bulk), or any portion of the database, a fee reflecting the cost of providing those copies, including the cost of duplication, distribution, and user-dedicated equipment; and

(ii) for a person operating or maintaining information in a database that has multiple tariff or service contract information, obtained directly or indirectly from the Commission, a fee of 46 cents for each minute that database is subsequently accessed by computer by any individual.

(2) EXEMPTION FOR FEDERAL AGENCIES.--A Federal agency is exempt from paying a fee under this subsection.

(e) ENFORCEMENT.--The Commission shall use systems controls or other appropriate methods to enforce subsection (d).

The Commission has already indicated in the analysis of subsection (c) that it cannot implement retroactive dates. Thus, charging a fee beginning on July 1, 1992, for electronic access to data that cannot be filed by July 1, 1992, is impossible. Again, the Commission will do what it can, that is, establish Section 502's user fees through normal regulatory mechanisms; in this case, rulemaking.

Except for the secondary access user charge (a fee for each minute the database is subsequently accessed under subsection (d)(1)(B)(ii)), Section 502 provides substantially the same user charges as §§ 514.21(g) and 514.21(j). To implement Section 502, therefore, we propose changing the "50 cents per minute of connect time" in § 514.21(g) to "46 cents per minute connect time," as provided in subsection (d)(1)(A) of Section 502.

For the purchase of database tapes under subsection (d)(1)(B)(i) of Section 502, there appears to be no need to change the per-tape charge in § 514.21(j), since it is based on the "marginal cost of distribution." The language in Section 502, "a fee reflecting the cost of providing those copies, including the cost of duplication, distribution, and dedicated equipment" will be added to § 514.21(j) for added clarification. The Commission will continue with its plans to make available the full ATFI database tapes, rather than attempt to break the database down into logical, discrete portions (e.g., foreign, domestic, etc.) for sale to the public. (Periodic updates of just those portions of the entire database which are being revised still are being planned for distribution.)

The secondary use fee in section 502(d)(1)(B)(ii), heretofore not intended in the ATFI project, apparently is required from anyone who electronically accesses ATFI data from a private entity which has obtained the data from ATFI. This is 46 cents for each minute of that access, payable to the Commission. Additionally, secondary use under Section 502 also would include access by any employee of the individual who obtained the electronic data, as well as the individual's own subsequent electronic inspection of the data. Because the Section 502 user fees do not apply to printed data (on paper), subsequent inspection of screen-printed data on paper would not require a per-minute fee. The language of Section 502 on this subject is being added to § 514.21(g).

The Commission intends to use system controls, as referred to in subsection (e) of Section 502, to enforce the collection of user fees for all items or services listed in § 514.21. Secondary or subsequent use of ATFI data on other terminals by other individuals, however, cannot be readily monitored and reported by ATFI. Similarly, an "honors-system" approach, whereby every user would be responsible for keeping track of his/her own usage and remitting the appropriate use charge to the Commission, would not appear to be effective, although commenters may be able to propose viable alternatives.

Accordingly, it now appears that the most appropriate way for the Commission to enforce collection of the secondary use fee is through the primary user, i.e., anyone who obtains the data from ATFI and resells it to others. An ATFI User Agreement is proposed for this purpose under new paragraph (l)(3) of § 514.21, and is set forth in full at new Exhibit 2 to Part 514. Under the user-agreement approach, the person most able to monitor the use of the data for user-fee purposes is required to do so. The Commission is advised that the user-agreement approach requires that the data covered by the user agreement be the property of the Commission, as recited in section A.3 (Rights in Data) of the user agreement. The public is especially invited to comment on this aspect of the user agreement.

As required under subsection (d)(2) of Section 502, Federal agencies will be exempt from paying the access fees under new § 514.21(l)(1). As mentioned in the analysis under subsection (b)(1) of Section 502, marine terminal tariff data will be exempt from the secondary use fee under new paragraph (l)(2) of § 514.21.

Penalties

Subsection (f) of Section 502 provides:

(f) PENALTIES.--

(1) CIVIL PENALTIES.--A person failing to pay a fee established under subsection (d) is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation.

(2) CRIMINAL PENALTIES.--A person that willfully fails to pay a fee established under subsection (d) commits a class A misdemeanor.

Section 502 does not authorize the Commission to assess or collect these penalties. Accordingly, Part 514 will merely include reference to these penalties in paragraphs (g) and (j) of § 514.21.

Automatic Filing Implementation

Subsection (g)(1) of Section 502 provides:

(1) CERTIFICATION OF SOFTWARE.-- Software that provides for the electronic filing of data in the Automated Tariff Filing and Information System shall be submitted to the Commission for certification. Not later than fourteen days after a person submits software to the Commission for certification, the Commission shall--

(A) certify the software if it provides for the electronic filing of data; and

(B) publish in the Federal Register notice of that certification.

Certification of batch filing capability, which includes the certification of any software associated with an applicant's certification, is already provided for in § 514.8(l) and no rule change appears to be necessary. The user fee for batch filing certification under § 514.21(e), is retained unchanged.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the proposed rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291, 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;
- (3) 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 Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. This is because firms that have traditionally used third party vendors or directly contacted carriers for rate information will most likely continue to use the same sources. Furthermore, the Commission believes that these entities' use of third party vendors will not produce the same increased costs as use of ATFI because these vendors will be able to establish tariff databases independent of ATFI, thereby drawing users away from ATFI and into less expensive arrangements. Any residual ATFI usage on the part of small entities will be limited and will not involve a substantial number of small entities. However, even if third party vendors were not to establish databases independent of ATFI, the Commission believes that the proposed rule will still not have a significant economic impact on a substantial number of small entities because the proposed rule is the least impact alternative on small entities available to the Commission under Public Law 102-582.

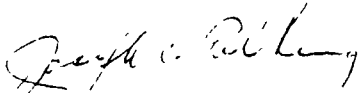
The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the

Paperwork Reduction Act of 1980 (Pub.L. 96-511), as amended. Public reporting burden for this collection of information is estimated to take 25 hours per month, or 300 hours per year, per respondent. This collection of information includes the time for reviewing instructions and contract clauses, completing and reviewing the collection of information, and collecting and reporting receipts. Send comments regarding the 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, Federal Maritime Commission, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 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.

By the Commission.


Joseph C. Polking, Secretary

Therefore, 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, 1702-1712, 1714-1716, 1718, 1721 and 1722; § 2(b) of Public Law 101-92, and § 502 of Public Law 102-582; Part 514 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 514 -- TARIFFS AND SERVICE CONTRACTS

1. The authority citation for Part 514 continues to read as follows:

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, 1702-1712, 1714-1716, 1718, 1721 and 1722; sec. 2(b) of Pub.L. 101-92, 103 Stat. 601.

2. Section 514.12(a)(1) introductory text is revised to read as follows:

§ 514.12 Governing and general reference tariffs.

* * * * *

(a) * * *

(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:

* * * * *

3. Section 514.20(c)(2) is revised to read as follows:

§ 514.20 Retrieval.

* * * * *

(c) * * *

(1) * * *

(2) *Automatic logoff.* All retrievers will be automatically logged off after 10 minutes of inactivity.

* * * * *

4. In section 514.21, paragraphs (g) and (j) are revised, and a new paragraph (l) is added, to read as follows.

§ 514.21 User charges.

* * * * *

(g) *Remote electronic retrieval* (§ 514.20(c)(3)).

(1) The fees for remote electronic access to ATFI electronic data are:

(i) A fee of 46 cents for each minute of remote computer access directly to the ATFI database by any individual; and

(ii) For a person operating or maintaining information in a database that has multiple tariff or service contract information, obtained directly or indirectly from the Commission, a fee of 46 cents for each minute that database is subsequently accessed by computer by any individual.

(2) Section 502 of Public Law 102-582 (46 U.S.C. app. 1707a(f)) provides for a civil penalty of not more than \$5,000 for each violation of failure to pay a fee under this section, and that a person that willfully fails to pay a fee under this section "commits a class A misdemeanor."

* * * * *

(j) *Database tapes* (§ 514.20(d)).

(1) The fees for subscriber tapes, similar to other fees in this section, reflect the cost of providing those copies, including the cost of duplication, distribution, and user-dedicated equipment, and are:

(i) *Initial set* of full database tapes: \$300.

(ii) *Daily updates*: \$25 each.

(iii) *Weekly updates*: \$50 each.

(iv) *Monthly updates*: \$100 each.

(2) Section 502 of Public Law 102-582 (46 U.S.C. app. 1707a(f)) provides for a civil penalty of not more than \$5,000 for each violation of failure to pay a fee under this section, and that a person that willfully fails to pay a fee under this section "commits a class A misdemeanor."

* * * * *

(l) *Exceptions and Enforcement*.

(1) A Federal agency is exempt from paying a fee under paragraphs (g) and (j) of this section.

(2) Marine terminal tariff data is not subject to a secondary use fee under paragraph (g)(2) of this section.

(3) In addition to the requirement to promptly pay user charges for all services/products received under this section, every individual desiring to purchase any tape under paragraphs (j) or (k) of this section must first execute the ATFI User Agreement set forth as Exhibit 2 to Part 514 and comply with all provisions thereof, including the submission of a model of its charging system under section C.5 of that agreement.

5. Exhibit 2 to Part 514, the *ATFI User Agreement*, is added to read as follows:

FEDERAL MARITIME COMMISSION
AUTOMATED TARIFF FILING AND INFORMATION SYSTEM ("ATFI")
USER AGREEMENT

AGREEMENT entered into between the FEDERAL MARITIME COMMISSION (hereinafter "FMC"), pursuant to 46 U.S.C. app. 1707a, and:

Firm Name: _____

Address: _____

Contact: _____

Telephone: _____

(hereinafter "User").

A. USE PROVISIONS

1. Use. During the term of this Agreement, subject to the terms and conditions hereof, FMC grants User the non-exclusive, non-transferable, limited right to access, through magnetic tape media, all tariff information and all essential terms of service contracts ("data") filed in the FMC's Automated Tariff Filing and Information System database ("ATFI"). FMC shall make such magnetic tape(s) available to User pursuant to 46 CFR § 514.21(k), and the schedule(s) published under 46 CFR §§ 514.21(j)(1) through 514.21(j)(4).

2. Limitation of Use. No part of the ATFI data may be copied, downloaded, published, transmitted, transferred or otherwise used, in any form or by any means, without prior written permission from the FMC, except as follows:

(a) User may access ATFI data contained in the magnetic tapes for its own use subject to the charges set forth in Part C.

(b) User may permit other persons to access electronically the data in its possession and shall pay the FMC user charges set forth in Part C, for such use by others.

(c) By use of the "Print Screen" function, User may print the data obtained electronically from ATFI, and may permit others who electronically access the data in its possession to print the data only through the use of the "Print Screen" function, all subject to the user charges set forth in Part C.

3. Rights in Data. Except for the license granted herein, all right, title and interest in ATFI data are and shall continue to be the exclusive property of FMC to the fullest extent permitted by law.

4. Disclaimer of Warranties and Limitation of Liability. ATFI data are provided "as is," without warranty of any kind, express or implied, including, but not limited to the warranties of performance, merchantability and fitness for a particular purpose. User shall make no claim(s) for damages relating to ATFI data. FMC's entire liability and the User's exclusive remedy shall be the replacement of any defective magnetic tapes which are returned to the FMC with a copy of the User's receipt. FMC has no liability whatsoever to User for any claim(s) relating in any way to:

(a) User's inability or failure to access or use data properly or completely; or

(b) Any lost profits, consequential, incidental or other special damages relating in whole or in part to User's rights hereunder or use of or inability to use data, even if FMC has been advised of the possibility of such damages.

B. GENERAL PROVISIONS

1. Responsibility for Certain Matters. User shall be responsible for all access to and use of ATFI data by User's personnel or by means of User's equipment, whether or not User has knowledge of or authorizes such access or use.

2. Term and Termination. This agreement shall become effective on the date executed by the FMC, and shall continue in force until terminated by either party upon at least thirty (30) days prior written notice of termination to the other party. Notwithstanding the foregoing, either party may terminate this agreement immediately upon giving written notice of termination to the other party if the other party commits a material breach thereof. The FMC may suspend or terminate furnishing ATFI data tapes to User, after written notice, if User commits a material breach of this Agreement. Upon termination of this agreement, the Commission may require the User to immediately:

(a) Deliver to the FMC all previously obtained magnetic tapes of ATFI;

(b) Destroy all ATFI data in its possession in whatever form; and

(c) Provide written certification to the FMC that the actions described in subsections (a) and (b) of this section B.2 have been accomplished.

3. Effect of Agreement. This Agreement embodies the entire understanding between the parties with respect to the use of ATFI data, and supersedes any and all prior understandings and agreements, oral or written, relating thereto.

4. Force Majeure. FMC's obligations under this agreement are subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

5. Notices. Except as otherwise specifically provided herein, all notices required to be given to the FMC shall be in writing, addressed to Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001. Notice to User shall be at the address set forth above.

6. Governing Law. This agreement shall be governed by and construed under federal law. Any and all proceedings relating to the subject matter of this agreement shall be maintained in the Federal District Court for the District of Columbia, which court shall have exclusive jurisdiction for such purpose. User hereby submits to the jurisdiction of the Federal District Court for the District of Columbia and waives service of process except by regular mail.

7. Other Provisions. Neither this agreement nor any part thereof shall be assigned, sublicensed or otherwise transferred by User without prior written consent from the FMC. Should any provision of this agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby. Failure of a party to enforce any provision of this agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this agreement are for convenience only and do not constitute a part thereof.

C. CHARGES

1. Charges Payable by User. Charges payable by User for access to the ATFI data contained on the magnetic tapes are forty-six U.S. cents (46¢/\$00.46) per minute, or any portion thereof.

2. Modification of Charges. Charges for use of the data are prescribed by 46 U.S.C. app. 1707a(d). In the event the charges in such law are modified, the User will be promptly notified and the User agrees to pay the charges as modified unless it terminates under section B.2., hereof.

3. Billing and Payment. Within ten (10) calendar days after the end of each month, beginning _____, User shall transmit to the Office of Budget and Financial Management, Federal Maritime Commission, 800 North Capitol Street, N.W. Washington, D.C. 20573-0001, a report of all usage of ATFI data listed by user, date and minutes used. User shall simultaneously transmit payment (to "the Federal Maritime Commission") for such usage at the rate of 46 cents (46¢/\$00.46) per minute. If payment is not made when due, User may thereafter be assessed interest, penalties and administrative costs associated with collection of late payments in accordance with the Federal Claims Collection Standards, 4 CFR 102.13. FMC intends to utilize the provisions of the Debt Collection Act, 5 U.S.C. 5514, including disclosure to consumer reporting agencies, to ensure prompt payment. FMC reserves the right to suspend or terminate furnishing ATFI data tapes to User if payment is not made when due.

4. Recordkeeping. The User shall maintain, for a period of three (3) years during, and after termination of, this agreement, books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) sufficient to reflect properly the charges to be paid under this agreement, including, specifically, all records of access granted, fees charged, and payments made to User and remittances to FMC. The FMC or its representatives shall have the right to examine and audit all of the User's books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) for the purpose of evaluating the accuracy and completeness of the reports required by section C.3, above. The right of examination shall extend to all documents and other data, regardless of form, necessary to permit adequate evaluation of the reports submitted, along with the computations used.

5. Accounting System. Prior to obtaining magnetic tapes of ATFI data, User shall submit to the FMC a model of the charging system it intends to use to comply with sections C.3 and C.4, to enable the FMC to determine whether such system is sufficient to provide accurate and complete reports as required herein. The FMC shall have up to sixty (60) calendar days after submission to evaluate such system and its approval will be assumed unless the FMC otherwise formally notifies the applicant within the sixty-calendar-day period. Magnetic tapes of ATFI shall not be made available to User until its charging system is approved by FMC.

D. PENALTIES

1. Civil Penalties. Civil penalties may be imposed for refusal to pay the required user fee. See 46 U.S.C. app. 1707a(f)(1).

2. Criminal Penalties. Criminal penalties may be imposed for refusal to pay the required user fee. See 46 U.S.C. app. 1707a(f)(2).

3. Enforcement. The Department of Justice will be responsible for enforcement of violations of this agreement.

FEDERAL MARITIME COMMISSION

By _____

Title _____

Date _____

USER

Signature _____

Title _____

Date _____