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## PART 530—SERVICE CONTRACTS

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APPENDIX A TO PART 530—INSTRUCTIONS FOR THE FILING OF SERVICE CONTRACTS  
 EXHIBIT 1 TO PART 530—SERVICE CONTRACT REGISTRATION [FORM FMC-83]

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### Subpart A—General Provisions

#### § 530.1 Purpose.

The purpose of this part is to facilitate the filing of service contracts and the publication of certain essential terms of those service contracts as required by section 8(c) of the Shipping Act of 1984 (“Act”). This part enables

the Commission to review service contracts to ensure that these contracts and the parties to them comport with the requirements of the Act. This part also implements electronic filing provisions for service contracts to facilitate compliance and minimize the filing burdens on the oceanborne commerce of the United States.

#### § 530.2 Scope and applicability.

An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of the Act.

#### § 530.3 Definitions.

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998.

(b) *Agreement* means an understanding, arrangement, or association (written or oral) and any modification or cancellation thereof which has been filed and effective under part 535 of this chapter with the Commission. The term does not include a maritime labor agreement.

(c) *Authorized person* means a carrier or a duly appointed agent who is authorized to file service contracts on behalf of the carrier party to a service contract and to publish the corresponding statement of essential terms and is registered by the Commission to file under § 530.5(d) and appendix A to this part.

(d) *BTCL* means the Commission’s Bureau of Tariffs, Certification and Licensing or its successor bureau.

(e) *Commission* means the Federal Maritime Commission.

(f) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the 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, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to those commodities.

(g) *Conference* means an agreement between or among two or more ocean common carriers which provides for the fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members. The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

(h) *Controlled carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) A majority portion of the interest in the 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 carrier.

(i) *Effective date* means the date upon which a service contract or amendment is scheduled to go into effect by the parties to the contract. A service contract or amendment becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date. The effective date cannot be prior to the filing date of the service contract or amendment with the Commission.

(j) *Expiration date* means the last day after which the entire service contract is no longer in effect.

(k) *File or filing* (of service contracts or amendments thereto) means the use

of the Commission's electronic filing system for receipt of a service contract or an amendment thereto by the Commission, consistent with the method set forth in appendix A of this part, and the recording of its receipt by the Commission.

(l) *Labor agreement* means a collective-bargaining agreement between an employer subject to the Act, or group of such employers, and a labor organization or an agreement preparatory to such a collective-bargaining agreement among members of a multi-employer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multi-employer bargaining group, but the term does not include an assessment agreement.

(m) *Motor vehicle* means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan or sport utility vehicle.

(n) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel 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.

(o) *OIRM* means the Commission's Office of Information and Resources Management.

(p) *Non-vessel-operating common carrier* ("NVOCC") means an ocean transportation intermediary as defined by section 3(17)(B) of the Act.

(q) *Service contract* means a written contract, other than a bill of lading or receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the individual ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as, assured space, transit

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time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

(r) *Shipper* means a cargo owner; the person for whose account the ocean transportation is provided; the person to whom delivery is to be made; a shippers' association; or an NVOCC that accepts responsibility for payment of all applicable charges under the service contract.

(s) *Statement of essential terms* means a concise statement of the essential terms of a service contract required to be published under § 530.12 of this part.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23792, May 4, 1999; 64 FR 41042, July 29, 1999; 65 FR 26513, May 8, 2000]

#### § 530.4 Confidentiality.

All service contracts and amendments to service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence. Nothing contained in this part shall preclude the Commission from providing certain information from or access to service contracts to another agency of the Federal government of the United States.

#### § 530.5 Duty to file.

(a) The duty under this part to file service contracts, amendments and notices, and to publish statements of essential terms shall be upon the individual carrier party or parties participating or eligible to participate in the service contract.

(b) Filing may be accomplished by any duly agreed-upon agent, as the parties to the service contract may designate, and subject to conditions as the parties may agree.

(c) *Registration.* (1) *Application.* Authority to file or delegate the authority to file must be requested by a responsible official of the service contract carrier in writing by submitting to BTCL the Registration Form (FMC-83) in Exhibit 1 to this part.

(2) *Approved registrations.* OIRM shall provide approved Registrants a log-on ID and password for filing and amend-

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ing service contracts and so notify Registrants via U.S. mail.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 41042, July 29, 1999]

#### § 530.6 Certification of shipper status.

(a) *Certification.* The shipper contract party shall sign and 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.

(b) *Proof of tariff and financial responsibility.* If the certification completed by the contract party under paragraph (a) of this section identifies the contract party or an affiliate or member of a shippers' association as an NVOCC, the ocean common carrier, conference or agreement shall obtain proof that such NVOCC has a published tariff and proof of financial responsibility as required under sections 8 and 19 of the Act before signing the service contract. An ocean common carrier, conference or agreement can obtain such proof by the same methods prescribed in § 515.27 of this chapter.

(c) *Joining shippers' association during term of contract.* If an NVOCC joins a shippers' association during the term of a service contract and is thereby entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier, agreement or conference the proof of compliance required by paragraph (b) of this section prior to making any shipments under the contract.

(d) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier, agreement or conference executing a service contract shall be deemed to have complied with section 10(b)(12) of the Act upon meeting the requirements of paragraphs (a) and (b) of this section, unless the carrier party had reason to know such certification or documentation of NVOCC tariff and bonding was false.

#### § 530.7 Duty to labor organizations.

(a) *Terms.* When used in this section, the following terms will have these meanings:

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(1) *Dock area and within the port area* shall have the same meaning and scope as defined in the applicable collective bargaining agreement.

(2) *Reasonable period of time* ordinarily means:

(i) If the cargo in question is due to arrive in less than five (5) days from the date of receipt of the request as defined in paragraph (b) of this section, two (2) days from the date of receipt of the request; but

(ii) If cargo in question is due to arrive in more than five (5) days from the date of receipt of the request as defined in paragraph (b) of this section, four (4) days from the date of receipt of the request.

(3) *Movement* includes, but is not necessarily limited to, the normal and usual aspects of the loading and discharging of cargo in containers; placement, positioning and re-positioning of cargo or of containers; the insertion and removal of cargo into and from containers; and the storage and warehousing of cargo.

(4) *Assignment* includes, but is not limited to, the carrier's direct or indirect control over the parties which, the manner by which, or the means by which the shipper's cargo is moved, regardless of whether such movement is completed within or outside of containers.

(5) *Transmit* means communication by first-class mail, facsimile, telegram, hand-delivery, or electronic mail ("e-mail").

(b) *Procedure*. In response to a written request transmitted from a labor organization with which it is a party or is subject to the provisions of a collective bargaining agreement with a labor organization, an ocean common carrier shall state, within a reasonable period of time, whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transported under a service contract:

(1) The movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within a port area;

(2) The assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area;

(3) The assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; or

(4) The assignment of container freight station work and maintenance and repair work performed at a dock area or within the port area.

(c) *Applicability*. This section requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement which pertains to that carrier.

(d) *Disclosure not deemed admission or agreement*. No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement.

(e) *Dispute resolution*. Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of the ocean common carrier under such agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act, and without reference to this section.

(f) *Jurisdiction and lawfulness*. Nothing in this section has any effect on the lawfulness or unlawfulness under the Shipping Act of 1984, the National Labor Relations Act, the Taft-Hartley Act, the Federal Trade Commission Act, the antitrust laws, or any other federal or state law, or any revisions or amendments thereto, of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under section 8(c) of the Act.

### Subpart B—Filing Requirements

#### § 530.8 Service Contracts.

(a) Authorized persons shall file with BTCL, in the manner set forth in appendix A of this part, a true and complete copy of every service contract or amendment to a filed service contract before any cargo moves pursuant to that service contract or amendment.