

## SUBCHAPTER I-B—CONTROL AND UTILIZATION OF PORTS

### PART 345—RESTRICTIONS UPON THE TRANSFER OR CHANGE IN USE OR IN TERMS GOVERNING UTILIZATION OF PORT FACILITIES

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AUTHORITY: The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

SOURCE: 44 FR 9381, Feb. 13, 1979, unless otherwise noted. Redesignated at 45 FR 44587, July 1, 1980.

#### Section 1 Definitions.

As used in this part or any other part of this chapter XIX the term:

(a) *National Shipping Authority (NSA)*, means the emergency shipping operations activity of the Maritime Administration established by the Secretary of Transportation, when specifically activated during an emergency affecting national security in accordance with existing statutory authority.

(b) *Person* means any individual, partnership, corporation, association, joint stock company, business trust, or other organized group of persons, or any trustee, receiver, assignee, or personal representative, and includes any department, agency, or corporation of the United States, any State, or any political, governmental, or legal entity.

(c) *Federal Port Controller* means a person designated as such in accordance with part 1902 of this chapter XIX, under a standard form of service agreement to exercise delegated authorities of the Director, NSA, in the control of

operations of a designated port or group of ports upon deployment of the Armed Forces of the United States, or other requirements of the nation's defense.

(d) *Port* or *port area* includes any zone contiguous to or a part of the traffic network of an ocean or Great Lakes port, or outport location, including beach loading sites, within which facilities exist for transshipment of persons and property between domestic carriers and carriers engaged in coastal, intercoastal and overseas transportation.

(e) *Port facility* means a specific location in a port where passengers or commodities are transferred between land and water carriers or between two water carriers, specifically including: wharves, piers, sheds, warehouses, yards, and docks.

(f) *Port equipment* means mechanical and other devices used for loading and unloading passengers and commodities, including fork lifts, towmotors, jitneys, straddle carriers, floating cranes, etc.

(g) *Transfer* means to sell, lease, trade, lend, give, relinquish title or possession to, or to physically transfer in any other way.

[44 FR 9381, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, and amended at 60 FR 38736, July 28, 1995]

#### Sec. 2 Effective date.

The provisions of this part are effective during the existence of a state of war or national emergency proclaimed by the President of the United States in accordance with existing statutory authority or by concurrent resolution of the Congress.

[44 FR 9381, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, and amended at 46 FR 36709, July 15, 1981]

#### Sec. 3 Federal control of port facilities.

During any period when the provisions of this part are in effect the NSA shall exercise such control of ports in the United States and its territories or possessions as may be necessary to

meet the requirements of the national security. Control shall be consistent with the orders of the Coast Guard Captain of the Port relating to the safety and security of the port.

**Sec. 4 Port facilities predesignated for emergency use.**

(a) Certain port facilities selected for standby contracts or agreements for use by Government agencies shall be controlled directly by the NSA.

(b) Facilities which are not required by the United States immediately on the effective date of this part will be released. The Director, NSA shall have the discretion to approve contracts for subsequent exclusive use by the United States of port facilities in lieu of formal requisitioning of such properties.

**Sec. 5 Restrictions on the transfer or change in use or in terms governing utilization of port facilities.**

Except as otherwise provided in this part, and irrespective of the terms of any contract or other commitment, whether or not the facility has been designated for emergency use in accordance with section 3 of this part:

(a) No person shall transfer, and no person shall accept transfer of any port facility unless such transfer has been approved by the NSA.

(b) No person shall use any port facility for any purpose or use other than that for which it was being used on the day preceding the effective date of this part, unless such change in purpose or use has been approved by the NSA.

(c) No person shall change or alter the terms or conditions under which any port facility was being operated or used on the day preceding the effective date of this part, unless such change has been approved by the NSA: *Provided*, That this restriction shall not relate to the filing of tariffs with the Federal Maritime Commission as required by applicable law.

**Sec. 6 Application for approval; place of filing; investigation; disposition by Federal Port Controller; request for review; disposition by the NSA.**

(a) Application for approval of a transfer of, or change in use of, or change in terms governing utilization of any port facility shall be in writing,

and shall contain the following information:

(1) Name, address, and principal place of business of applicant;

(2) Specific description and location of port facility involved;

(3) Name, address, and principal place of business of owner and/or operator of such port facility;

(4) Present use of such port facility;

(5) Proposed use of such port facility; and

(6) A statement of the reasons why such transfer, change in use, or change in terms, is in the interests of the war effort, national defense, or the maintenance of the essential civilian economy.

(b) The application shall be signed by the applicant or by any lawfully authorized agent or representative of the applicant who is familiar with the facts stated therein.

(c) The application and two clear copies thereof shall be filed in the office of the Federal Port Controller of the port in which the port facility is located, when a Federal Port Controller has been designated for the port. For all other ports, the application and copies shall be filed in the office of the Maritime Administration Region Director for the area where the port is located.

(d) The Federal Port Controller or Region Director may require the applicant to submit reasonable proof of statements made in support of the application, and may make such investigation as may be necessary for proper disposition of the application. The Federal Port Controller or Region Director shall not be required to make any disposition of the application unless and until such reasonable proof has been submitted: *Provided*, That the disposition of any such application by the Federal Port Controller or Region Director shall not be delayed for more than 60 days from the date of the filing thereof for the purpose of completing any such investigation.

(e) The Federal Port Controller, or Maritime Administration's Region Director or Area Officer may approve the application in whole or in part when the action covered by the application to the extent approved, is in the interests of the war effort, national defense,

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or the maintenance of the essential civilian economy.

(f) Any applicant aggrieved by the action of the Federal Port Controller or Region Director in disapproving in whole or in part his application may request, in writing, that such action be reviewed by the Director, NSA. The written request shall contain a statement of reasons why the decision of the Federal Port Controller should be reversed or modified. The Director, NSA, or a designee, will review the application on the record made before the Federal Port Controller and will dispose of the application on its merits in accordance with the standards set forth above.

## Sec. 7 Exemptions.

The provisions of this part shall not apply to any port facility owned by, or organic to, any agency or department of the United States as of the effective date of this order.

## Sec. 8 Applicability.

This part shall apply to the States of the United States, Puerto Rico, and the Virgin Islands.

## Sec. 9 Communications.

Communications concerning this part should refer to 32A CFR part 1901 and should be addressed to the Maritime Administrator, Department of Transportation, Department of Transportation, Washington, DC 20590.

# PART 346—FEDERAL PORT CONTROLLERS

Sec.

1. Purpose.
2. Definitions.
3. Standby agreements.
4. Service agreements.

AUTHORITY: The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061, *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); E.O. 12919, section 201(a), June 3, 1994, 59 FR 29525; 49 CFR 1.45(5).

## Section 1 Purpose.

This part prescribes the standard form of the service agreement to be entered into by the United States of America, acting by and through the Director, National Shipping Authority

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(NSA) of the Maritime Administration, U.S. Department of Transportation, with State or municipal port authorities or, private corporations, covering the appointment of individuals within their organizations as Federal Port Controllers, and providing the required supporting staff and resources.

[44 FR 9382, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980]

## Sec. 2 Definitions.

(a) *Federal control of use of port facilities and services* means the exercise of jurisdiction over the use of port facilities, as defined in section 340.2(o) of 46 CFR Part 340, equipment and services (other than port facilities, equipment and services owned by, or organic to any agency or department of the United States) in time of emergency to meet the needs of the national defense and maintain the essential civilian economy.

(b) *Federal Port Controller* means a person designated as such under a standard form of service agreement to exercise delegated authorities of the Director, NSA, in the use of port facilities of a designated port or group of ports in connection with the deployment of the Armed Forces of the United States, or other requirements of the nation's defense.

[44 FR 9382, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, and amended at 46 FR 36709, July 15, 1981; 60 FR 38736, July 28, 1995]

## Sec. 3 Standby agreements.

The Director, NSA, may negotiate the standard form of service agreement, specified in section 4, with port authorities on a standby basis, prior to the deployment of the Armed Forces of the United States, or other requirements of the nation's defense. In such cases, the contractor accepts the obligation to maintain a qualified incumbent in the position specified in Article 1 of the service agreement and to be prepared to furnish the resources specified in Articles 4 and 5. An agreement executed on a standby basis may become operational in connection with the deployment of the Armed Forces of the United States, or other requirements of the nation's defense. An