

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).

#### **Sec. 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

(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

agreement executed after the deployment of the Armed Forces of the United States, or other requirements of the nation's defense may be operational upon execution.

[60 FR 38737, July 28, 1995]

#### Sec. 4. Service agreements.

Contract MA \_\_\_\_\_

##### SERVICE AGREEMENT, FEDERAL PORT CONTROLLER

This agreement, made as of \_\_\_\_\_, 19\_\_\_\_, between the United States of America (herein called the "United States"), acting by and through the Director, National Shipping Authority of the Maritime Administration, Department of Transportation, and \_\_\_\_\_, a \_\_\_\_\_, organized and existing under the laws of \_\_\_\_\_ (herein called the "Contractor").

##### WITNESSETH

It is this day mutually agreed between the parties as follows:

Article 1. *Appointment of Federal Port Controller.* The United States appoints the incumbent of the position of \_\_\_\_\_, an employee of the Contractor, as Federal Port Controller, to serve as the agent of the United States and not as an independent contractor, to exercise delegated authority of the Director, NSA, in the control of port operations in time of national emergency.

Art. 2. *Acceptance of appointment.* (a) The contractor agrees to the appointment and undertakes and promises to maintain a qualified incumbent in the position specified in articles 4 and 5 and otherwise required by the Federal Port Controller and agreed to by the United States. Maintaining the equivalent of such specified positions under any subsequent reorganization of port staff is deemed to be in compliance with this article.

(b) The contractor undertakes and promises to ensure that the Federal Port Controller and agreed supporting staff will be relieved of other staff duties and responsibilities during any period in which the arrangements provided for in this agreement are in effect, to the extent necessary to enable them to exercise diligently the authority delegated by the Director, NSA, in accordance with such directions, orders, or regulations not inconsistent with this agreement as the United States (NSA) has by that time prescribed or may from time to time subsequently prescribe to the satisfaction of the director, NSA.

Art. 3. *Scope of Control.* The Federal Port Controller shall exercise the authorities delegated with respect to port operations in the prescribed area of \_\_\_\_\_.

Art. 4. *Responsibilities and functions of the Federal Port Controller—(a) Responsibilities.*

The Federal Port Controller, acting as an agent of the United States (NSA), is charged with exercising due diligence to protect the interests of the United States in support of any deployment of the Armed Forces of the United States, or other requirements of the nation's defense including maintenance of the essential civilian economy and be responsible for insuring the efficient and effective utilization of the port in accordance with such directions, orders, regulations, supervision, and inspections as the United States (NSA) may prescribe (or in the absence of such directions, orders, forms, and methods of supervision and inspection, in accordance with customary commercial practice). Responsibilities generally include:

(1) Formulation of port coordination and support policy and assurance of adherence thereto;

(2) Expediting of ship turnaround and prevention of congestion of ships and cargo in port;

(3) Correlation of arrangements for rapid clearance and rapid transit of commodities through the port;

(4) Correlation of arrangements for berthing ships and their loading and discharging;

(5) Provision through port control agency channels, of advice on daily port capacities and workload; and

(6) Disposition of frustrated cargo to prevent reduction of port capacity.

(b) *Functions.* Subject to the direction and control of the NSA, in accordance with such policies, programs, allocations, and priorities as may be adopted or established, the Federal Port Controller will:

(1) Furnish the NSA necessary information based upon the local situation and conditions, for establishment by the NSA, of periodic maximum quotas of cargo ocean lift for the port. As appropriate such information shall include but not be limited to estimates of port capacity; the port work load; and availability of berths, vessels, cargoes, labor, and equipment.

(2) Recommend changes of destination of ships or cargo to appropriate representatives of the NSA.

(3) Coordinate port operations to accommodate ships diverted in emergencies by naval authorities.

(4) Coordinate through the Federal agency responsible for land transportation, movement of traffic to and from port areas and, as necessary, exercise controls in coordination with said agency, over the movement of traffic into, within, and out of port areas in accordance with requirements and available port capacity for transshipment.

(5) Administer priorities for the movement of traffic through port areas.

(6) Provide guidance for the coordination of port terminal and forwarding operations; exercise control over the utilization of port facilities, port equipment, and port services,

public and private, except those owned by, or organic to any agency or department of the United States and promote maximum efficiency.

(7) Coordinate and make recommendations with respect to the development of port facilities and rehabilitation of substandard port facilities; recommend restoration or replacement of damaged or destroyed port facilities and direct, coordinate and control the activities of Federal, State, local and private agencies in carrying out such restoration or replacement work as may be authorized by proper authority.

(8) Furnish the NSA with pertinent information and data with respect to local port operations in order to assist the NSA in performing its responsibilities at the national level.

(9) Handle "claimant" requests and problems arising at the local level within authorities delegated by the NSA.

(10) As directed, furnish current information to the Federal agency responsible for land transportation in order that it may approve and issue block releases for port bound traffic to the Department of Defense with respect to military traffic and to the NSA with respect to all other oceangoing traffic, in accordance with firm cargo ocean lift schedules for the port. Shipper agencies may provide individual permits to shippers and depots for specific movements to the port areas. Advise the Federal agency responsible for land transportation where circumstances warrant institution of control by the latter agency over traffic-bound inland from the port area in order to minimize congestion in the port.

Art. 5. *Federal Port Controller staff.* The contractor shall provide, in support of the Federal Port Controller, the staff personnel necessary to coordinate actions to overcome any constraints on the effective and efficient conduct of port operations as well as clerical staff to meet the administrative requirements of the Federal Port Controller. The numbers of staff will be determined and agreed to from time to time by the United States (NSA) and the contractor and entered in schedule A attached to this service agreement.

Art. 6. *Office Facilities.* The contractor shall provide or arrange for necessary office facilities for the Federal Port Controller activity, including office space, furniture, communications equipment, supplies, utilities, transportation, and other normal administrative support and support services, as necessary and agreed to from time to time by the United States (NSA) and the contractor and recorded in schedule B attached to this service agreement.

Art. 7. *Compensation.* (a) At least once a month, the United States (NSA) shall pay to the contractor compensation for the Federal Port Controller's services, the costs of his

organization, and the costs of office facilities, administrative support services, as follows:

(1) Compensation for services of the Federal Port Controller and his staff shall be in accordance with salary levels plus monetary items directly related thereto (employee service expenses) in force at the time this agreement comes into force: *Provided*, That subsequent cost of living increases authorized under labor agreements and in accordance with Federal or State regulations will apply: *And provided*, That part-time services will be compensated for on a prorated basis. Any adjustments in compensation after the contract comes into force will be negotiated, if appropriate. Employee service expenses will include the employer contributions for social security and pensions, as well as life/health and workmen's compensation insurance.

(2) Compensation for support other than salaries and related expenses (see art. 6) shall be in accordance with published schedules of charges of the contractor; and if schedules of charges have not been published by the contractor, in such fair and reasonable amount as the United States shall from time to time determine and publish in addendums to this service agreement: *Provided*, That, when facilities and support services are shared by the Federal Port Controller and other agencies and activities compensation shall be prorated on a schedule acceptable to the United States and the contractor.

(b) The contractor shall also be entitled to payment or credit for any service, loss, cost, or expense, whether or not specifically provided for or excepted herein, if, and to the extent that such payment or credit is determined within the sole discretion of the Director, NSA, to be fair and equitable and in accordance with the basic principles or intent of this agreement.

Art. 8. *Warranty against contingent fees.* The contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul this agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage, or contingent fee.

Art. 9. *Equal opportunity.* During the performance of this agreement, the contractor agrees that the contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The contractor will take affirmative action to insure that all action related to employment is taken without regard to race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, employment,

promotion, layoff or termination, direct or indirect compensation and selection for training, except where such provisions are governed by State civil service commissions or comparable government agencies. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the NSA setting forth the provisions of this nondiscrimination clause.

Art. 10. *Officials not to benefit.* No persons elected or appointed as members of or delegates to Congress, themselves or by any other persons in trust for them, or for their use or account shall hold or enjoy this agreement in whole or in part, except as provided in Section 433, Title 18, United States Code. The operator shall not employ any member of Congress, either with or without compensation as an attorney, agent, officer, or director.

Art. 11. *Right of Comptroller General to Examine Books and Records.* The Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any pertinent books, documents, papers, and records of the contractor related to this agreement.

Art. 12. *Effective Date, Implementation, Duration and Termination.* (a) This agreement is effective as of the day and year set forth above.

(b)(1) if entered into on a standby basis, this agreement shall be operational as of the day and year when the United States notifies the contractor that the services specified in this agreement are required during a deployment of the Armed Forces of the United States, or other requirements of the nation's defense, *Provided* that during the standby period, the contractor will carry out the obligation specified in paragraph (a) of Article 2. No compensation will accrue to the contractor during the standby period.

(2) if entered into during a deployment of the Armed Forces of the United States, or other requirements of the nation's defense, this agreement shall be operational when executed.

(c) Unless sooner terminated, the agreement shall extend until 6 months after termination of the emergency.

(d) This agreement may be terminated upon thirty (30) days' written notice by either party to the other party hereto: *Provided, however,* That, notwithstanding any such termination, the contractor shall, at the option of the United States, continue to be responsible for the completion of any work which the contractor is performing on the effective date of termination. Termination or expiration of this agreement shall neither affect nor relieve any liability or obligation that may have accrued prior thereto.

(e) This agreement may be amended, modified or supplemented in writing at any time

by mutual consent of the parties hereto. This agreement may not be amended, modified or supplemented otherwise than in writing.

Art. 13. *Renegotiation.* This contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951.

Art. 14. *Headnotes.* The use of headnotes at the beginning of the articles of this agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the articles themselves.

In witness whereof, the parties hereto have executed this agreement in triplicate as of this \_\_\_\_ day of \_\_, 19\_\_\_\_.

UNITED STATES OF AMERICA, DEPARTMENT OF COMMERCE, MARITIME ADMINISTRATION

(Seal)

Attest:

Secretary \_\_\_\_\_  
*Director, National Shipping Authority* \_\_\_\_\_  
 (Corporate Seal)

Attest:

Secretary \_\_\_\_\_

By: \_\_\_\_\_

Approved as to Form:  
 General Counsel \_\_\_\_\_, Maritime Administration.

PART 1902. FEDERAL PORT CONTROLLER

Schedule A

Agreed positions.

Schedule B

Agreed office facilities, furniture and support resources.

[44 FR 9382, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, and amended at 46 FR 36710, July 15, 1981; 60 FR 38737, July 28, 1995]

**PART 347—OPERATING CONTRACT**

Sec.

1. Purpose.
2. Stand-by agreements.
3. Terminal operating contract.

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 9384, Feb. 13, 1979. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

**Sec. 1. Purpose.**

This part prescribes the standard form of marine terminal contract to be entered into by the United States of