

all modems in the bank meet the minimum speed. Smart terminal emulation provides for features such as bold, blinking, underlining and positioning to specific locations on the display screen.

(d) *Internet connection.* (1) This connection option requires that systems provide:

(i) A universal resource locator (URL) Internet address (e.g., *http://www.tariffsrus.com* or *http://1.2.3.4*), and/or

(ii) A universal resource locator (URL) Internet address (e.g., *telnet://tariffsrus* or *telnet://1.2.3.4*), for Telnet session access over the Internet.

(2) Marine terminal operators shall ensure that their Internet service providers shall provide static Internet addresses.

(e) *Commission access.* Commission telecommunications access to systems must include connectivity via a dial-up connection over public switched telephone networks (PSTN) or a connection over the Internet. Connectivity will be provided at the expense of the publishers. Any recurring connection fees, hardware rental fees, usage fees or any other charges associated with the availability of the system are the responsibility of the publisher. The Commission shall only be responsible for the long-haul charges for PSTN calls to a terminal schedule initiated by the Commission.

(f) *Notification.* Each marine terminal operator shall notify the Commission's Bureau of Tariffs, Certification and Licensing ("BTCL"), prior to the commencement of marine terminal operations, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its terminal schedule(s), and the publisher, if any, used to maintain its terminal schedule, by electronically submitting Form FMC-1 via the Commission's website at *www.fmc.gov*. Any changes to the above information shall be immediately transmitted to BTCL. The Commission will publish a list on its website of the location of any terminal schedule made available to the public.

(g) *Form and manner.* Each terminal schedule made available by a marine terminal operator shall contain an in-

dividual identification number, effective date, expiration date, if any, and the complete terminal schedule in full text and/or data format showing all its rates, charges, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities.

§ 525.4 OMB control number assigned pursuant to the Paperwork Reduction Act.

The Commission has received Office of Management and Budget approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. In this regard, the valid control number for this collection of information is 3072-0061.

PART 530—SERVICE CONTRACTS

Subpart A—General Provisions

- Sec.
530.1 Purpose.
530.2 Scope and applicability.
530.3 Definitions.
530.4 Confidentiality.
530.5 Duty to file.
530.6 Certification of shipper status.
530.7 Duty to labor organizations.

Subpart B—Filing Requirements

- 530.8 Service contracts.
530.9 Notices.
530.10 Amendment, correction, cancellation, and electronic transmission errors.
530.11 [Reserved]

Subpart C—Publication of Essential Terms

- 530.12 Publication.

Subpart D—Exceptions and Implementation

- 530.13 Exceptions and exemptions.
530.14 Implementation.

Subpart E—Recordkeeping and Audit

- 530.15 Recordkeeping and audit.
530.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

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

§ 530.1

AUTHORITY: 5 U.S.C. 553; 46 U.S.C. 305, 40301-40306, 40501-40503, 41307.

SOURCE: 64 FR 11206, Mar. 8, 1999, unless otherwise noted.

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 (“the Act”) (46 U.S.C. 40502). 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.

[64 FR 11206, Mar. 8, 1999, as amended at 74 FR 50723, Oct. 1, 2009]

§ 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.

46 CFR Ch. IV (10–1–10 Edition)

(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 (46 U.S.C. 40102(16)).

(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 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; 74 FR 50723, Oct. 1, 2009]

§ 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

46 CFR Ch. IV (10–1–10 Edition)

§ 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 amending 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 (46 U.S.C. 40501–40503) and 19 (46 U.S.C. 40901–40904) 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 (46 U.S.C. 41104(12)) 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.

[64 FR 11206, Mar. 8, 1999, as amended at 74 FR 50723, Oct. 1, 2009]

§ 530.7 Duty to labor organizations.

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

(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

Federal Maritime Commission

§ 530.8

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 Re-

lations 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 (46 U.S.C. 40502).

[64 FR 11206, Mar. 8, 1999, as amended at 74 FR 50723, Oct. 1, 2009]

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.

(b) Every service contract filed with the Commission shall include the complete terms of the service contract including, but not limited to, the following:

(1) The origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) The destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(3) The commodity or commodities involved;

(4) The minimum volume or portion;

(5) The service commitments;

(6) The line-haul rate;

(7) Liquidated damages for non-performance (if any);

(8) Duration, including the

(i) Effective date; and

(ii) Expiration date;

(9) The legal names and business addresses of the contract parties; the legal names of affiliates entitled to access the contract; the names, titles and addresses of the representatives signing the contract for the parties; and

§ 530.9

46 CFR Ch. IV (10–1–10 Edition)

the date upon which the service contract was signed, except that in the case of a contract entered under the authority of an agreement or by a shippers' association, individual members need not be named unless the contract includes or excludes specific members. Subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.). Carrier parties which enter into contracts that include affiliates must either:

(i) List the affiliates' business addresses; or

(ii) Certify that this information will be provided to the Commission upon request within ten (10) business days of such request. However, the requirements of this section do not apply to amendments to contracts that have been filed in accordance with the requirements of this section unless the amendment adds new parties or affiliates;

(10) A certification of shipper status;

(11) A description of the shipment records which will be maintained to support the service contract and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 530.15 of this part; and

(12) All other provisions of the contract.

(c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly contained in the service contract itself unless those terms are contained in a publication widely available to the public and well known within the industry.

(d) *Other requirements.* Every service contract filed with BTCL shall include, as set forth in appendix A to this part by:

(1) A unique service contract number of more than one (1) but less than ten (10) alphanumeric characters in length ("SC Number"); and

(2) A consecutively numbered amendment number no more than three digits

in length, with initial service contracts using "0" ("Amendment number");

(3) The filed FMC Agreement Number(s) assigned by the Commission under 46 CFR part 535 (if applicable); and

(4) An indication of the method by which the statement of essential terms will be published.

(e) *Exception in case of malfunction of Commission filing system.* (1) In the event that the Commission's filing systems are not functioning and cannot receive service contract filings for twenty-four (24) continuous hours or more, affected parties will not be subject to the requirements of paragraph (a) of this section and § 530.14(a) that a service contract be filed before cargo is shipped under it.

(2) However, service contracts which go into effect before they are filed, pursuant to paragraph (e)(1) of this section, must be filed within twenty-four (24) hours of the Commission's filing systems' return to service.

(3) Failure to file a service contract that goes into effect before it is filed, pursuant to paragraph (e)(1) of this section, within twenty-four (24) hours of the Commission's filing systems' return to service will be considered a violation of Commission regulations.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23793, May 4, 1999; 64 FR 41042, July 29, 1999]

§ 530.9 Notices.

Within thirty (30) days of the occurrence of any event listed below, there shall be filed with the Commission, pursuant to the same procedures as those followed for the filing of an amendment pursuant to § 530.10 and appendix A to this part, a detailed notice of:

(a) Correction (clerical or administrative errors);

(b) Cancellation (as defined in § 530.10(a)(3));

(c) Adjustment of accounts, by re-rating, liquidated damages, or otherwise;

(d) Final settlement of any account adjusted as described in paragraph (c) of this section; and

(e) Any change to:

(1) The name of a basic contract party; or

Federal Maritime Commission

§ 530.10

(2) The list of affiliates under § 530.8(b)(9), including changes to legal names and business addresses, of any contract party entitled to receive or authorized to offer services under the contract.

§ 530.10 Amendment, correction, cancellation, and electronic transmission errors.

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

(1) *Amendment* means any change to a service contract which has prospective effect and which is mutually agreed upon by the service contract parties.

(2) *Correction* means any change to a service contract which has retroactive effect.

(3) *Cancellation* means an event which is unanticipated by the service contract, in liquidated damages or otherwise, and is due to the failure of the shipper party to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the carrier party.

(b) *Amendment.* Service contracts may be amended by mutual agreement of the parties to the contract. Amendments shall be filed electronically with the Commission in the manner set forth in § 530.8 and appendix A to this part.

(1) Where feasible, service contracts should be amended by amending only the affected specific term(s) or subterms.

(2) Each time any part of a service contract is amended, the filer shall assign a consecutive amendment number (up to three digits), beginning with the number "1."

(3) Each time any part of the service contract is amended, the "Filing Date" will be the date of filing of the amendment.

(c) *Corrections.* Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within forty-five (45) days of the contract's filing with the Commission, accompanied by remittance of a \$315 service fee, and shall include:

(1) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify

the initial or amended service contract to be corrected;

(2) A paper copy of the proposed correct terms. Corrections shall be indicated as follows:

(i) Matter being deleted shall be struck through; and

(ii) Matter to be added shall immediately follow the language being deleted and be underscored;

(3) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(4) Documents supporting the clerical or administrative error; and

(5) A brief statement from the other party to the contract concurring in the request for correction.

(6) If the request for correction is granted, the carrier, agreement or conference shall file the corrected contract provisions using a special case number as described in appendix A to this part.

(d) *Electronic transmission errors.* An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting a service contract filing or an amendment thereto is permitted to file a Corrected Transmission ("CT") of that filing within 48 hours of the date and time of receipt recorded in SERVCON (excluding Saturdays, Sundays and legal public holidays). This time-limited permission to correct an initial defective service contract filing is not to be used to make changes in the original service contract rates, terms or conditions that are otherwise provided for in paragraphs 530.10(b) and (c) of this section. The CT tab box in SERVCON must be checked at the time of resubmitting a previously filed service contract, and a description of the corrections made must be stated at the beginning of the corrected service contract in a comment box. Failure to check the CT box and enter a description of the correction will result in the rejection of a file with the same name, since documents with duplicate file names or service contract and amendment numbers are not accepted by SERVCON.

(e) *Cancellation.* (1) An account may be adjusted for events and damages covered by the service contract. This shall include adjustment necessitated by either liability for liquidated damages appearing in the service contract as filed with the Commission under § 530.8(b)(7), or the occurrence of an event described below in paragraph (d)(2) of this section.

(2) In the event of cancellation as defined in § 530.10(a)(3):

(i) Further or continued implementation of the service contract is prohibited; and

(ii) The cargo previously carried under the contract shall be re-rated according to the otherwise applicable tariff provisions.

(f) If the amendment, correction or cancellation affects an essential term required to be published under § 530.12 of this part, the statement of essential terms shall be changed as soon as possible after the filing of the amendment to accurately reflect the change to the contract terms.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23793, May 4, 1999; 67 FR 39860, June 11, 2002; 68 FR 43327, July 22, 2003; 70 FR 10330, Mar. 3, 2005]

§ 530.11 [Reserved]

Subpart C—Publication of Essential Terms

§ 530.12 Publication.

(a) *Contents.* All authorized persons who have a duty to file service contracts under § 530.5 are also required to make available to the public, contemporaneously with the filing of each service contract with the Commission, and in tariff format, a concise statement of the following essential terms:

- (1) The port ranges:
 - (i) Origin; and
 - (ii) Destination;
- (2) The commodity or commodities involved;
- (3) The minimum volume or portion; and
- (4) The duration.

(b) *Certainty of terms.* The terms described in paragraph (a) of this section may not:

- (1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly detailed in the statement of essential terms, unless those terms are contained in a publication widely available to the public and well known within the industry.

(c) *Location—(1) Generally.* The statement of essential terms shall be published as a separate part of the individual carrier’s automated tariff system.

(2) *Multi-party service contracts.* For service contracts in which more than one carrier participates or is eligible to participate, the statement of essential terms shall be published:

(i) If the service contract is entered into under the authority of a conference agreement, then in that conference’s automated tariff system;

(ii) If the service contract is entered into under the authority of a non-conference agreement, then in each of the participating or eligible-to-participate carriers’ individual automated tariff systems, clearly indicating the relevant FMC-assigned agreement number.

(d) *References.* The statement of essential terms shall contain a reference to the “SC Number” as described in § 530.8(d)(1).

(e) *Terms.* (1) The publication of the statement of essential terms shall accurately reflect the terms as filed confidentially with the Commission.

(2) If any of the published essential terms include information not required to be filed with the Commission but filed voluntarily, the statement of essential terms shall so note.

(f) *Agents.* Common carriers, conferences, or agreements may use agents to meet their publication requirements under this part.

(g) *Commission listing.* The Commission will publish on its website, *www.fmc.gov*, a listing of the locations of all service contract essential terms publications.

(h) *Updating statements of essential terms.* To ensure that the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of its most recent publication or revision. When the published statement of essential

Federal Maritime Commission

§ 530.14

terms is affected by filed amendments, corrections, or cancellations, the current terms shall be changed and published as soon as possible in the relevant statement of essential terms.

[64 FR 11206, Mar. 8, 1999, as amended at 64 FR 23793, May 4, 1999]

Subpart D—Exceptions and Implementation

§ 530.13 Exceptions and exemptions.

(a) *Statutory exceptions.* Service contracts for the movement of the following, as defined in section 3 of the Act (46 U.S.C. 40102), § 530.3 or § 520.2 of this chapter, are excepted by section 8(c) of the Act (46 U.S.C. 40502) from the requirements of that section, and are therefore not subject to the requirements of this part:

- (1) Bulk cargo;
 - (2) Forest products;
 - (3) Recycled metal scrap;
 - (4) New assembled motor vehicles;
- and

(5) Waste paper or paper waste.

(b) *Commission exemptions.* Exemptions from the requirements of this part are governed by section 16 of the Act (46 U.S.C. 40103) and Rule 67 of the Commission's Rules of Practice and Procedure, § 502.67 of this chapter. The following commodities and/or services are exempt from the requirements of this part:

(1) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

(c) *Inclusion of excepted or exempted matter.* (1) The Commission will not accept for filing service contracts which exclusively concern the commodities or services listed in paragraph (a) or (b) of this section.

(2) Service contracts filed with the Commission may include the commod-

ities or services listed in paragraph (a) or (b) of this section only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the commodity or service in question; or

(ii) The service contract itself sets forth a rate or charge which will be applied if the contract is canceled, as defined in § 530.10(a)(3).

(d) *Waiver.* Upon filing a service contract pursuant to paragraph (c) of this section, the service contract shall be subject to the same requirements as those for service contracts generally.

[64 FR 23793, May 4, 1999, as amended at 74 FR 50724, Oct. 1, 2009]

§ 530.14 Implementation

(a) *Generally.* Performance under a service contract or amendment thereto may not begin before the day it is effective and filed with the Commission.

(b) *Prohibition or suspension.* When the filing parties receive notice that an initial or amended service contract has been prohibited under section 9(d) (46 U.S.C. 40704) or suspended under section 11 of the Act (46 U.S.C. 41301–41302, 41305–41307(a)):

(1) Further or continued implementation of the service contract is prohibited;

(2) All services performed under the contract shall be re-rated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper within five (5) days of the date of prohibition or suspension; and

(3) Detailed notice shall be given to the Commission under § 530.9 within thirty (30) days of:

(i) The re-rating or other account adjustment resulting from prohibition or suspension under paragraph (b)(2) of this section; or

(ii) Final settlement of the account adjusted under § 530.10.

(c) *Agreements.* If the prohibited or suspended service contract was that of an agreement with no common tariff, the re-rating shall be in accordance with the published tariff rates of the carrier which transported the cargo in effect at the time.

[64 FR 11206, Mar. 8, 1999, as amended at 74 FR 50724, Oct. 1, 2009]

Subpart E—Recordkeeping and Audit

§ 530.15 Recordkeeping and audit.

(a) *Records retention for five years.* Every common carrier, conference or agreement shall maintain original signed service contracts, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each contract.

(b) (paragraph (b) is stayed until further notice.) *Where maintained.* (1) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of an agreement or President or Chief Executive Officer of the carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (c) of this section.

(2) *Penalty.* If service contract records are not made available to the Commission as provided in paragraph (c) of this section, the Commission may cancel any carrier's or agreement's right to maintain records outside the United States pursuant to the certification procedure of paragraph (b) of this section.

(c) *Production for audit within 30 days of request.* Every carrier or agreement shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Economics and Agreements Analysis, submit copies of requested original service contracts or their associated records within thirty (30) days of the date of the request.

(d) *Agreement service contracts.* In the case of service contracts made by agreements, the penalties for a failure to maintain records pursuant to this section shall attach jointly and severally on all of the agreement members participating in the service contract in question.

§ 530.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072-0065.

APPENDIX A TO PART 530—INSTRUCTIONS FOR THE FILING OF SERVICE CONTRACTS

Service contracts shall be filed in accordance with the instructions found on the Commission's home page, <http://www.fmc.gov>.

A. Registration, Log-on ID and Password

To register for filing, a carrier, conference, agreement or publisher must submit the Service Contract Registration Form (Form FMC-83) to BTCL. A separate Service Contract Registration Form is required for each individual that will file service contracts. BTCL will direct OIRM to provide approved filers with a log-on ID and password. Filers who wish a third party (publisher) to file their service contracts must so indicate on Form FMC-83. Authority for organizational filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on ID and password. The original log-on ID will be canceled when a replacement log-on ID is issued. Log-on IDs and passwords may not be shared with, loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on ID that is shared with, loaned to or used by parties other than the registrant.

B. Filing

After receiving a log-on ID and a password, a filer may log-on to the service contract filing area on the Commission's home page and file service contracts. The filing screen will request such information as: filer name, Registered Persons Index ("RPI") number and carrier RPI number (if different); Service Contract and amendment number; and effective date. The filer will attach the entire service contract file and submit it into the system. When the service contract has been submitted for filing, the system will assign a filing date and an FMC control number, both of which will be included in the acknowledgment/confirmation message.

[64 FR 41042, July 29, 1999]

EXHIBIT 1 TO PART 530—SERVICE CONTRACT REGISTRATION [FORM FMC-83]

EXHIBIT 1 -- SERVICE CONTRACT REGISTRATION [FORM FMC-83]

ORGANIZATION NO. _____

PLEASE TYPE OR PRINT

SERVICE CONTRACT REGISTRATION

(SEE ATTACHED INSTRUCTIONS)

1. This Registration is: [] Initial [] Amendment (Specify change) _____
[] Dial-up [] Internet-based

2. Registrant

Full Legal Name of firm (or individual, if not a firm)
(Doing Business As)

3. Address of Home Office

(Number and Street) Telephone
(Number and Street) Fax
(City/State/Country) (Federal TIN Number) E - M a i l (optional)

4. Billing Address If Different

(Number and Street) Telephone
(Number and Street) Fax
(City/State/Country) E - M a i l (optional)

5. Organization Number (If known) _____

6. Registrant Type [] VOCC [] Tariff Publisher/Agent/Other
[] Agreement [] Conference/Joint Service

7. Permissions Requested and Person granted these permissions (Check permissions that apply)

Full Legal Name
[] Maintenance of organization record [] File Service Contracts

8. Registered for Batch Filing Prior to May 1, 1999? (Y/N) ____ If Yes, show date ____
If the person to perform the filing already has an existing Log-on, list only the Log-on for that person.

Existing Log-on _____

Signature of Authorized Official date

Print or Type name of Authorized Official

FMC USE ONLY
Logon Initial Password ID Directory
DateAsg / / AsgBy 3/01

INSTRUCTIONS FOR FORM FMC–83

Instructions

Line 1. Registration. Indicate whether this is the initial (first time) registration or an amendment to an existing Service Contract Registration.

Line 2. Registrant. This must be the full legal name of the firm or individual registering for the FMC's Service Contract Filing System and any trade names. The registrant name should match the corporate charter or business license, conference membership, etc. It should be noted that the registrant name cannot be changed by the registrant after the registration without submission of an amended registration fee.

Line 3. Address of Home Office. The complete street address should be shown in addition to the post office box. Also, provide the registrant's Federal Taxpayer Identification Number ("TIN" Number).

Line 4. Billing Address if Different. This should be completed if the billing address differs from the home office address. Show the firm name (if different from the registrant), street address and post office box (if applicable).

Line 5. Organization Number. Complete if known. (Regulated Persons Index or "RPI" number.)

Line 6. Registrant Type. Indicate the type of organization. A registrant cannot be more than one type. This data cannot be changed by the registrant after registration without submission of an amended registration form.

Line 7. Permissions Requested and Person Granted These Permissions. Delegation of the authority to file should be noted here.

*Maintenance of Organization Record—*The person listed in line 8 is authorized to access the organization maintenance functions (i.e., modify organization information, assign publishers, affiliations, and d/b/as).

*Service Contract Filing—*The person listed in line 8 is authorized only to submit filings.

Line 8. Certified for Batch Filing. Indicate whether the registrant was registered with software certified to perform batch filings prior to May 1, 1999. Otherwise, the registrant must first be certified for batch filing as outlined in 46 CFR part 530. After certification, the registrant can submit an amended registration form to request permission for a person in their organization to perform the batch filing. If the person already has an existing log-on, the log-on (not the password) should be listed on the registration form. Also, the certification date received from the FMC should be listed on the registration form.

PART 531—NVOCC SERVICE ARRANGEMENTS**Subpart A—General Provisions**

- Sec.
531.1 Purpose.
531.2 Scope and applicability.
531.3 Definitions.
531.4 Confidentiality.
531.5 Duty to file.

Subpart B—Filing Requirements

- 531.6 NVOCC Service Arrangements.
531.7 Notices.
531.8 Amendment, correction, cancellation, and electronic transmission errors.

Subpart C—Publication of Essential Terms

- 531.9 Publication.

Subpart D—Exceptions and Implementation

- 531.10 Excepted and exempted commodities.
531.11 Implementation.

Subpart E—Recordkeeping and Audit

- 531.12 Recordkeeping and audit.
531.13–531.98 [Reserved]
531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

APPENDIX A TO PART 531—INSTRUCTIONS FOR THE FILING OF NVOCC SERVICE ARRANGEMENTS

EXHIBIT 1 TO PART 531—NVOCC SERVICE ARRANGEMENT REGISTRATION [FORM FMC–78]

AUTHORITY: 46 U.S.C. 40103.

SOURCE: 69 FR 75853, Dec. 20, 2004, unless otherwise noted.

Subpart A—General Provisions**§ 531.1 Purpose.**

This part exempts NVOCCs from certain provisions of the Shipping Act. The purpose of this part is to facilitate the filing of NVOCC Service Arrangements ("NSAs") and the publication of certain essential terms of those NSAs as they are exempt from the otherwise applicable provisions of the Shipping Act of 1984 ("the Act"). This part enables the Commission to review NSAs to ensure that they and the parties to them comport with the conditions of the exemption as set forth below.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50724, Oct. 1, 2009]