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(MAY 17, 1995)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR PART 514

[DOCKET NO. 95-08]

SERVICE CONTRACT FILING REQUIREMENTS -- MISCELLANEOUS REVISIONS

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules to provide an optional, abbreviated service contract format and to require service contracts to include certain identifying information concerning the signatories. This should reduce duplication and Commission and carrier costs, as well as facilitate automation of the Commission's service contract records.

DATE: Comments due [insert date 30 days after date of publication in the Federal Register].

ADDRESS: Comments (original and 15 copies) are to be submitted to:

Joseph C. Polking, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573
(202) 523-5725

FOR FURTHER INFORMATION CONTACT:

Bryant L. VanBrakle, Director
Bureau of Tariffs, Certification and Licensing
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573
(202) 523-5796

SUPPLEMENTARY INFORMATION:

Service contracts subject to section 8(c) of the Shipping Act of 1984 ("1984 Act" or "the Act"), 46 U.S.C. app. 1707(c),¹ are filed confidentially with the Federal Maritime Commission ("FMC" or "Commission").² Prior to such filing, a statement of each contract's essential terms ("ET") is filed electronically in the

¹A service contract is defined by section 3(21) of the Act as:

. . . a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined 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 either party.

²Section 8(c) of the 1984 Act provides:

. . . each [service] contract entered into * * * shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include -

- (1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;
- (2) the commodity or commodities involved;
- (3) the minimum volume;
- (4) the line-haul rate;
- (5) the duration;
- (6) service commitments; and
- (7) the liquidated damages for nonperformance, if any.

Commission's Automated Tariff Filing and Information System ("ATFI"), made available to the general public in tariff format, and offered to all similarly situated shippers.³

ETs have been required to be filed in ATFI since November 1993. However, the associated confidential service contracts continue to be filed in paper format and can often be of considerable length. There is significant duplication between a service contract's text and that of its corresponding ET. To the extent the overlap between these interdependent documents can be minimized, the rate of error between the two documents should also be reduced.

Because service contracts are filed confidentially with the Commission, they must be secured under lock and key. Given the rapidly rising number of contract filings, and their sheer physical bulk, these documents are consuming an ever larger portion of the Commission's limited secured storage space.

Apart from the foregoing, the Commission is also proposing to address a ministerial detail relating to the content of service contracts. The current service contract rules do not require contracts to set forth the signatories' addresses. This has resulted in difficulty in clearly identifying shipper parties, including named affiliates, to certain service contracts, and, in some cases, hampered the Commission's investigative efforts.

The Commission therefore proposes to afford service contract parties the option of filing their service contracts in an

³This requirement is implemented in the Commission's rules and regulations at 46 C.F.R. § 514.7(f)(1).

abbreviated format, on condition that such filings incorporate by reference the corresponding ATFI ETs; certify that said ET contains all aspects of the parties' contract which are not set forth in the service contract filing; and set forth certain specific information. The FMC also proposes to require service contracts to set forth the parties' names, titles and addresses.

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 (P.L. 96-511), as amended. Public reporting burden for this collection of information is estimated to decrease to an average of one manhour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Bruce A. Dombrowski, Deputy Managing Director, Federal Maritime Commission, Washington, D.C. 20573 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects in 46 CFR Part 514

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Freight forwarders, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1702, 1707 and 1716), the Federal Maritime Commission proposes to amend Part 514 of Title 46 of the Code of Federal Regulations as follows:

PART 514 -- [AMENDED]

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

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; and sec. 2(b) of Pub. L. 101-92, 103 Stat. 601.

2. Section 514.7 is amended by revising paragraphs (h) (1) (v) and (h) (1) (vi) and adding paragraph (h) (2) (i) (C) to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(h) * * *

(1) * * *

(v) The true and complete names and addresses of the contract parties and the typewritten names, titles and addressees of the representatives signing the contract for the parties. Any further references in the contract to such parties shall be consistent with

the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.); and

(vi) The true and complete names and addresses of every affiliate of each contract party named under paragraph (h) (1) (v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by a conference or shippers' association, individual members need not be named unless the contract includes or excludes specific members. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information.

* * * * *

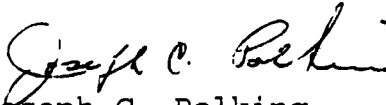
(2) * * *

(i) * * *

(C) § 514.7(h) (2) (i) (A) does not apply to a service contract that incorporates by reference all of the associated essential terms filing as published in ATFI, provided that the parties certify that, other than for those provisions set forth in the filed service contract, such essential terms filing sets forth the parties' true and complete contract.⁴

* * * * *

By the Commission.


Joseph C. Polking
Secretary

⁴See Exhibit II of this part for an example of an abbreviated format service contract.

EXHIBIT II TO PART 514

SAMPLE ABBREVIATED FORMAT SERVICE CONTRACT

Service Contract No.: SC 1-95 FMC File No.: 50,000
Essentials Terms No.: ET 1-95 Amendment No.: _____
Service Contract Essential Terms Publication No.: 003
Tariff(s) of General Applicability No.: 001, 002

CARRIER/CONFERENCE NAME: EFFICIENT LINER TRANSPORTATION, INC.
Carrier/Conference Address: 1227 Seaway Drive
Washington, DC 20573

AND

SHIPPER NAME: ABC ELECTRONICS COMPANY
Shipper Address: 7221 Happiness Lane
New York, NY 10001

This is a service contract pursuant to the Shipping Act of 1984 (46 U.S.C. app. 1701 et seq.) and FMC rules at 46 C.F.R. Part 514, between "CARRIER/CONFERENCE" and "SHIPPER" parties named herein. The contract parties certify that the terms set forth herein and the essential terms as published in Carrier/Conference Service Contract Essential Terms Tariff No. 003, ET No. 1-95, in the Federal Maritime Commission's Automated Tariff Filing and Information System, constitute the true and complete copy of all aspects of this contract and are hereby incorporated by reference.

Further, shipper party named herein certifies its status and that of any affiliate(s)/subsidiary(ies) named herein as (check appropriate box(es)):

NVOCC _____
SHIPPERS' ASSOCIATION _____
OWNER OF CARGO _____
OTHER (Please specify) _____

Records maintained to support shipments under this service contract are: bills of lading, shipping manifests, and other related written correspondence between contract parties.

Contact person for records in the event of a request by the Federal Maritime Commission:

Efficient Liner Transportation, Inc.
Traffic Manager
1227 Seaway Drive
Washington, DC 20573
(202) 523-5856

(Carrier/Conference Signature) _____
Carl T. Booker, President
Efficient Liner Transportation, Inc.

(Shipper Signature) _____
Vanessa M. Banks, President
ABC Electronics Company

Affiliate of shipper: Quality Compact Discs, Inc.
Affiliate's address: 7221-A Happiness Lane
New York, NY 10001