

§ 52.2570 Identification of plan.

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(c) * * *
(82) * * *

(i) * * *

(D) NR 439.04(4)(intro.), (5)(a)1. and (5)(a)2. as amended and published in the (Wisconsin) Register, June, 1994, No. 462, effective July 1, 1994.

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[FR Doc. 96-2959 Filed 2-9-96; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MARITIME COMMISSION**46 CFR Part 514**

[Docket No. 95-08]

Service Contract Filing Requirements—Miscellaneous Revisions**AGENCY:** Federal Maritime Commission.**ACTION:** Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules to provide for an optional, abbreviated service contract format; and to require service contracts to include the legal names and business addresses of the signatories and either list affiliates' business addresses or certify that affiliates' business addresses will be provided to the Commission within 10 business days of such request. The final rule in this matter should reduce duplication and Commission and carrier costs, as well as facilitate automation of the Commission's service contract records.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION:**I. Background**

The Federal Maritime Commission ("Commission") initiated this proceeding with a Notice of Proposed Rulemaking ("NPR" or "Proposed Rule") published in the May 23, 1995 Federal Register.¹ The NPR solicited comments on a proposal to amend the Commission's rules to provide for an optional, abbreviated service contract format, on condition that such filings: (1) Incorporate by reference the corresponding electronic essential terms ("ET") filed in the Commission's Automated Tariff Filing and Information

System ("ATFI"); and (2) certify that, other than for those provisions set forth in the filed service contract, said ET sets forth the parties' true and complete contract. The NPR also proposed requiring contracts to set forth the true and complete names and addresses of contract parties, including affiliates, and the typewritten names, titles and addresses of the representatives signing contracts for the contract parties. The Proposed Rule's purposes are to reduce duplication and Commission and carrier costs, facilitate automation of the Commission's service contract records and facilitate the identification of shipper parties, including named affiliates to certain service contracts.

II. Comments

The NPR elicited three comments: (1) Joint comments of the Asia-North America Eastbound Rate Agreement, the Transpacific Westbound Rate Agreement, and the South Europe/American Conference ("ANERA, *et al.*"); (2) joint comments of the Trans-Pacific Conference of Japan and the Japan-Atlantic and Gulf Freight Conference and their member lines ("Japan Conferences"); and (3) the Trans-Atlantic Conference Agreement ("TACA"). The comments generally support the Proposed Rule, but suggest some modifications concerning the Proposed Rule's requirement for "true and complete names, * * * and addresses" of contract parties and information requirements for service contracts involving a significant number of shipper affiliates.

A. Abbreviated Service Contract Format

ANERA, *et al.*, and TACA support the proposed optional abbreviated service contract format, stating that it would reduce costs to them as well as the Commission.

The Japan Conferences do not oppose the abbreviated format, but advise that it might not enjoy widespread usage in their trades. They note that traditional Japanese contracting practices would result in Japanese shippers and most other commercial interests continuing to insist upon single, full-text format contracts instead of "bifurcated" versions that include the associated ET publications. They also advise that Japanese shippers, as well as most other commercial interests, have not yet adopted the practice of contracting via Electronic Data Interchange. They therefore urge that this format be "optional", as currently proposed.

The Japan Conferences also advise that problems could be associated with requiring contract signatories to certify that the terms set forth in the

abbreviated format service contract and ATFI ETs are the true and complete terms covering all aspects of the parties' contract. They believe problems could occur when making certifications about frequently changing terms and conditions in instances where an inadvertent disparity arises between the true contract and the abbreviated version. They contend that the latter would be controlling under the rule but would not reflect the parties' true understanding.

B. Addresses of Contract Signatories

ANERA, *et al.*, support the NPR's proposal to require service contracts to state the contract parties' addresses. TACA opposes the Proposed Rule's use of the term "true and complete" with regard to contract parties' names and addresses,² because the term might have several meanings. TACA offers several examples in this regard: the name shown on a person's birth certificate; the name that a person commonly uses; the official legal name of a company or corporation shown on its certificate of incorporation; or a commonly used acronym, such as "AT&T", rather than "American Telephone and Telegraph Company". Further, it contends that a "true and complete" address could be the postal address of a person or company rather than the business address. TACA therefore believes that this aspect of the Proposed Rule invites uncertainty and confusion. Moreover, it contends that ocean common carrier service contract filers should be allowed to "reasonably rely on the form, style, and completeness of the names of those persons executing such contracts on behalf of shipper parties as are provided them." As an alternative, TACA suggests that requiring a contract to state the "names and postal addresses of contract parties and signers" would be sufficient.³ To this end, it offers the following revision to the first sentence of 46 CFR 514.7(h)(1)(v):

The names and postal addresses of the contract parties and the typewritten names and titles of the representatives signing the contract for the parties along with their postal address if different than that of the Contract party represented.

² The NPR proposed requiring service contracts to include "the true and complete names and addresses of the contract parties and the typewritten names, titles, and addresses of the representatives signing the contract for the parties."

³ TACA also believes that it is redundant to state the address of a "contract signer" when its address, in most cases, is the same as that of the contract party it represents. They believe that the revision which they suggest will also remedy this aspect of the Proposed Rule.

¹ 60 FR 27248.

C. Addresses of Contract Parties' Affiliates

ANERA, *et al.*, support a requirement that a contract state the addresses of affiliates named in the contract, stating that this would make it easier for ANERA, *et al.*, and the Commission to enforce the terms of service contracts. However, they suggest that the requirements applying to shippers' association members and affiliates be modified to allow contract parties the following options: (1) Listing the addresses in the contract; or (2) certifying that the addresses have been provided to the carrier or conference to retain and to be made available upon request by the Commission. They believe that this would also achieve the NPR's goals, while allowing the industry flexibility to comply in the most efficient manner.

TACA opposes a requirement that service contracts include shippers' affiliates' addresses. It states that this requirement is "contrary to the paramount purpose of this rulemaking proceeding * * * to reduce the 'sheer physical bulk' of confidential service contract material." As an alternative, TACA suggests that "to meet the purpose regarding difficulty in identifying affiliates to certain contracts which have, in some cases, hampered the Commission's investigative efforts," the Proposed Rule be revised to provide that contract filers obtain and confidentially provide shipper party affiliate address information when requested by the Commission in its investigative efforts. TACA believes that such a modification would serve the Proposed Rule's purpose and "eliminate its undesirable features". It also states that "to include relevant affiliate address information in * * * contracts will increase costs, delay the filing process and otherwise impede it."

III. Discussion

The Commission has considered the comments in this matter and has decided to adopt a Final Rule that modifies the proposal to adopt the suggestion that the Final Rule require "legal names and business addresses", rather than "true and complete names and addresses". The Final Rule also moves the change proposed for section 514.7(h)(1)(vi) into section 514.7(h)(1)(v) and clarifies the Rule's application to previously-filed contracts amended after the Final Rule's effective date.

The Commission is adopting, without change, the Proposed Rule's amendment of 46 CFR 514.7(h)(2)(i)(A) to afford service contract parties the option of

filing service contracts in abbreviated format, on condition that such filings incorporate by reference the corresponding ATFI ETs; and declare that, other than for those provisions set forth in the field service contract, said ET sets forth the parties' true and complete contract. The Final Rule also requires service contracts to set forth the contract parties' names and addresses. Carriers and conferences, like the Japan Conferences, which do not elect to file service contracts in abbreviated form may continue to file service contracts in full-text format, as at present.

TACA has raised questions regarding the "true and complete" aspect of a name or address, and occasional redundancy when the addresses of service contract parties and representatives signing the contract are the same, and has offered a modification to the rule to clarify it in this regard. The Final Rule modifies proposed 46 CFR 514.7(h)(1)(v) by deleting the term "true and complete" and substituting the requirement that the "legal names and business addresses" be set forth in the contract.⁴

While TACA is concerned that a requirement that names and addresses be "true and complete" would invite uncertainty and confusion regarding the term's meaning, the Commission believes that TACA's suggested revision to require the "names and postal addresses" of contract parties is not acceptable. However, to partially address TACA's concerns, the Final Rule herein clarifies that a contract is required to set forth the parties' "legal names and business addresses", as well as the legal names of affiliates of service contract parties entitled to access the contract.

The Commission has considered the comments by ANERA, *et al.*, regarding the NPR's proposal to amend 46 CFR 514.7(h)(1)(vi) with regard to names and addresses of service contract parties' affiliates, and TACA's observation concerning address information for service contracts involving significant numbers of affiliates. The Commission has determined to provide carriers/conferences the option of either (1) listing affiliates' business addresses in the service contract; or (2) certifying in the contract that this information will be provided to the Commission upon request within 10 business days of such request.

The collection of information requirements contained in this final rule

⁴ A business address need not be repeated in instances where the business address of the person signing the contract is the same as the business address of a contract party.

were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), as amended. (OMB Control No. 3072-0055, expires May 31, 1998.) Public reporting burden for this collection of information will 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.

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 final 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 amends 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 paragraph (h)(1)(v) and adding paragraph (h)(2)(i)(C) to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(h) * * *

(1) * * *

(v) The typewritten legal names and business addresses of the contract parties; the typewritten legal names of affiliates entitled to access the contract; and the typewritten names, titles and addresses of the representatives signing the contract for the parties. Carriers and/or conferences which enter into contracts which include affiliates must in each instance either:

(A) list the affiliates' business addresses; or

(B) certify that this information will be provided to the Commission upon request within 10 business days of such request (These requirements will apply to previously-filed contracts amended after March 13, 1996). 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. subsequent references in the contract to the contract parties shall be consistent with the first reference (e.g., (exact name), "carriers," "shipper," or "association," etc.); and

* * * * *

(2) * * *

(i) * * *

(C) Section 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 true and complete contract.¹

3. Exhibit II is added to Part 514, reading as follows:

BILLING CODE 6730-01-M

¹ See 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.: 50,000Essentials Terms No.: ET 1-95 Amendment No.: _____Service Contract Essential Terms Publication No.: 003Tariff(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 al.) and FMC rules at 46 C.F.R. 514, between "CARRIER/CONFERENCE" and "SHIPPER" parties named herein. The contract parties declare 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 the essential terms 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 _____
SHIPPER'S 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

Date	Date
(Carrier/Conference Signature)	(Shipper Signature)
Carl T. Booker, President	Vanessa M. Banks, President
Efficient Liner Transportation, Inc.	ABC Electronics Company

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

By the Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 96-2946 Filed 2-9-96; 8:45 am]
BILLING CODE 6730-01-C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837 and 1852

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters, such as promotion of compliance with current Federal-wide policies on Government property, revision of headings, and delegation of authority.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: David K. Beck, (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Background

NASA is reviewing and rewriting 48 CFR chapter 18, the NASA FAR Supplement, in its entirety in order to implement recommendations of the National Performance Review. During this review, NASA is eliminating reporting requirements and making

other changes in order to reduce and simplify the regulation. This rule is part of the effort to simplify NASA's regulations.

Summary of Changes

Section 1837.204 is added to delegate authority to make the determinations of non-availability of personnel under FAR 37.204 (FAC 90-33, Item II, 60 FR 49720 and 49723, 9-26-95). In addition, section 1815.413-2 is revised, in the context of FAR 37.203 and 37.204, to refer to the determinations to be made under the new section 1837.204.

To promote compliance with Federal-wide policy, a reference is added in 1815.970(b) to the policy under FAR 45.302-3(c) on excluding the cost of facilities when contracting officers calculate a profit or fee objective prior to contract negotiation.

The prescription is revised in 1815.7002 for the ombudsman clause in order to remove the reference to Section L of the solicitation. NASA will instruct contracting officers to place the clause in Section I which is more appropriate for information that may be useful before *and after* contract award.

Section 1816.505 is added (per FAC 90-33, Item III, 60 FR 49723, 9-26-95) on task and delivery order contracts in order to enable persons to identify the appropriate NASA ombudsman.

In order to conform to changes in the FAR made by FAC 90-32, Item V (60 FR 48206, 9-18-95) headings are changed in part 1819.

This rule increases from \$25,000 to the "simplified acquisition threshold" the dollar amount at which the Safety and Health clause of 1852.223-70 is automatically included in construction contracts and subcontracts. Regardless

of dollar amount, the clause is included when there are known hazards.

This rule removes paragraph (b) of 1835.003 which refers to a NASA Management Instruction entitled "Recoupment Policy for the Sale, Use, Lease, or Other Transfer of NASA-Developed Technologies." The NASA Management Instruction has been canceled because we know of no occasion where the policy has been used by NASA to recoup R&D or other nonrecurring costs.

Section 1852.227-15 is redesignated as 1852.227-17 because the section provides a paragraph to be added to the basic clause at FAR 52.227-17.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no burdens on the public under the Paperwork Reduction Act of 1995, as implemented under 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, 1852

Government procurement.

Tom Luedtke,
Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1815, 1816, 1819, 1823, 1827, 1835, 1837, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).