

## FEDERAL MARITIME COMMISSION

46 CFR Part 530

Docket No. 03-03

### Proposed Amendment to Service Contract Regulations

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes to amend its regulations on the electronic filing of service contracts for ocean transportation under the Shipping Act of 1984 (“Shipping Act”) (46 U.S.C. app. 1701 et seq.), as amended by the Ocean Shipping Reform Act of 1998 (“OSRA”), to add a provision which would permit persons authorized to transmit electronically service contract filings for vessel-operating common carriers, conferences and agreements, to correct within 48 hours an original service contract filing or an amendment that is defective due to electronic transmission errors. The revision would allow a “corrected transmission” of the original service contract or amendment submission to be designated as such and filed in the Commission’s electronic service contract filing system, SERVCON.

**DATES:** Submit an original and 15 copies of any comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Address all comments concerning this proposed rule to:

Bryant L. VanBrakle, Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W., Room 1046  
Washington, D.C. 20573-0001  
E-mail: *secretary@fmc.gov*.

**FOR FURTHER INFORMATION CONTACT:**

Florence A. Carr, Director  
Bureau of Trade Analysis  
202-523-5796  
E-mail: *florence@fmc.gov*.

**SUPPLEMENTARY INFORMATION:**

Section 8(c) of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (“OSRA”), 46 U.S.C. app. 1707(c), and the Commission’s current service contract regulations, 46 CFR Part 530, Subpart A, require service contracts between shippers and ocean common carriers in the foreign commerce of the United States to be filed electronically with the Commission on a confidential basis. Only an “authorized person,” as defined in 46 CFR 530.3(c), can access the confidential section of the Commission’s electronic service contract filing system, SERVCON, available via the Commission’s website. Each individual service contract filer must register with the Commission to obtain a log-on identification and password. Some carriers use individual employees as the authorized person to file their service contracts; however, the majority of carriers authorize third parties to make their service contract filings. The filings may consist of an original service contract or an amendment to an existing service contract. There are currently more

than 200 persons registered to transmit service contract filings on behalf of 150 vessel-operating common carriers.

Current regulations provide for the amendment, correction, and cancellation of service contract filings (46 CFR 530.10). The Commission, however, has become aware of a need to provide filers the ability to correct purely electronic “transmission errors” made when filing either the original service contract or an amendment to a service contract into SERVCON, or errors made in the process of converting the service contract filing into electronic format for submission to the SERVCON system. Since the start of SERVCON in May 1999, filers have withdrawn or overwritten these errors.

Under the proposed rule, only errors resulting from electronic transmission and data conversion for SERVCON format may be corrected. Corrections to an initial filing would be allowed within 48 hours from the time and date of receipt recorded in SERVCON (excluding Saturdays, Sundays and legal public holidays). For example, an initial filing received at 5:00 p.m. on a Friday must be corrected before 5:00 p.m. the following Tuesday. The SERVCON system currently has and will continue to have the ability to identify such corrected service contract filings. The Bureau of Trade Analysis will continue to monitor filers’ use of the correction process; any abuse of the limited permission in the proposed rule would be considered a violation of the Commission’s regulations. Unlike the current regulations which provide for a process to make a retroactive correction in the terms of a filed service contract due to an oversight by the service contract parties,’ there is no

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‘Either party to a service contract may request permission to correct a clerical or an administrative error in a filed service contract pursuant to 46 CFR 530.10(c). The request must be submitted within 45 days of the contract’s filing and accompanied by a

Commission action involved in the process to correct electronic transmission errors that are caused by failures in the hardware or software used by the filers. Therefore, no fee is being proposed for use of this overwrite function in the SERVCON system.

Some examples of filer generated transmission errors that could be corrected under this restricted overwrite proposal are: incorrect header information, a wrong service contract number, and a wrong file transmitted or uploaded. Examples of substantive service contract changes that would not be allowed under the new proposed 46 CFR 530.10(d) are: changing rates, deletion of a port or point to be served or a commodity to be carried under the contract; addition or deletion of a shipper entitled to access the service contract, and modification of the duration or minimum quantity commitment of the contract. Instead, these types of changes should continue to be made as “amendments” under 46 CFR 530.10(b) or, if retroactivity is deemed necessary, by filing a request for permission to correct a clerical or administrative error in the terms of a filed service contract under 46 CFR 530.10(c).

Under the proposed rule, the SERVCON system would be modified to accept only corrected service contracts that the filer identifies as such and for which the filer provides a description of the changes being made by the correction process. A new field would be added to the online database as a checkbox for the filer to identify the submission as a corrected service contract. If the filer fails to use this new checkbox, the contract will be

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service fee of \$276. Further, a letter of transmittal, affidavit, supporting documentation, and concurrence statement must be included with the request. Upon approval of a request for permission to correct a clerical error, an Order is issued (under delegated authority to the Director, Bureau of Trade Analysis) (see 46 CFR 501.26(n)). The party filing the contract then files an amendment providing for the retroactive correction of the incorrect material.

rejected because the SERVCON system will not accept service contracts that have duplicate file names, service contract or amendment numbers. The system would also flag resubmitted contracts and would give a unique internal file name to the corrected filing for FMC monitoring purposes. A new separate SERVCON field for filers to enter a description of the corrections being made is part of the proposed rule.

Comments are invited on the proposed rule, particularly from registered authorized persons who make electronic service contract filings in the SERVCON system for or on behalf of carriers. Comments identifying specific transmission and data conversion errors that result from a filer's use of SERVCON may enable the Commission to make SERVCON more user friendly. Comments are also solicited specifically on any technical issues related to the proposed 48-hour window for making a correction, as well as those arising from the proposed procedure to include a description of the changes being made in the corrected submission.

The Commission has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. It also does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.). The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities.

**List of Subjects in 46 CFR Part 530**

Freight, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to add new paragraph (d) in 46 CFR Part 530, Subpart B, section 530.10, as follows:

**PART 530 - - SERVICE CONTRACTS**

1. The authority citation for part 530 continues to read as follows:

**Authority:** 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1707, 1716.

2. Amend § 530.10 to revise its title and add paragraph (d) to read as follows:

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

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(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 530.1 O(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, service contract and amendment numbers are not accepted by SERVCON.

3. Redesignate paragraphs 10(d) and (e) as paragraphs 10 and (f) respectively.

By the Commission.

A handwritten signature in black ink, appearing to read 'T. A. Zook', with a stylized flourish at the end.

Theodore A. Zook  
Assistant Secretary