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THE PORT AUTHORITY ACT

THE PORT AUTHORITY (PORT MANAGEMENT AND SECURITY) REGULATIONS, 2010

In exercise of the power conferred upon the Port Authority by sections 6 and 7 of the Port Authority Act, the following Regulations are hereby made:—

Preliminary

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| Citation. | 1. These Regulations may be cited as the Port Authority (Port Management and Security) Regulations, 2010. |
| Application of Regulations. | 2. These Regulations shall apply in relation to the operations of berths, stations and port facilities in all ports. |
| Interpretation. | 3. In these Regulations, unless the context otherwise requires— “approved exporter” means an exporter who is designated as an approved exporter under regulation 5; |

First
Schedule.

“approved trucker” means a trucker who transports goods or equipment to or from port facilities and who is designated as an approved trucker under regulation 5;

“cargo integrity form” means a cargo integrity form approved by the Authority for the purposes of these Regulations;

“ISPS Code” means the International Ship and Port Facility Security Code adopted under Chapter XI—2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended from time to time and in force in Jamaica, the text of Part A thereof relating to port facility security, and extract from Part B are set out in the First Schedule;

“container” means a large standardized, seagoing receptacle for the transportation of cargo, which receptacle can be handled as a unit;

“equipment” includes containers and any chassis or other apparatus used therewith;

“exporter” means any person who—

- (a) exports goods or equipment from Jamaica using port facilities; and
- (b) notifies the Authority that he intends to export goods or equipment from Jamaica using any other facilities;

“freight forwarder” means a freight forwarder for the export of goods or equipment from Jamaica;

“functions” includes powers and duties;

“port facilities” means facilities for—

- (a) the drydocking, berthing, towing, mooring or moving of vessels in or entering or leaving a port or its approaches;
- (b) the loading and unloading of goods or embarking or disembarking of passengers in or from any such vessel;
- (c) the lighterage or the sorting, weighing, warehousing or handling of goods; and
- (d) the carriage of passengers or goods in connection with any such facilities;

“shipping agent” means any person who functions as an agent for a shipping line;

“trucker” means a person who in the ordinary course of business transports goods by truck, lorry or other vehicle;

“wharf company” means a company or any other person or body of persons operating port facilities.

Restriction on Exportation and Transportation in Port Facilities

Restriction on exportation and transportation of goods, etc., in port.

4.—(1) No person other than an approved exporter shall export goods or equipment from Jamaica using any port facilities.

(2) No person other than an approved trucker shall transport goods or equipment in any port facilities.

(3) Any person who contravenes paragraph (1) or (2) commits an offence.

Approvals

Application for designation as approved exporter or trucker.

5.—(1) Every exporter who exports or proposes to export goods or equipment from Jamaica shall apply to the Authority to be designated as an approved exporter.

(2) Every trucker who transports or proposes to transport goods or equipment to or from port facilities shall apply to the Authority to be designated as an approved trucker.

(3) An application for designation under paragraph (1) or (2) shall contain such particulars as may be required by the Authority and in the case of an application to be designated as an approved exporter, shall be accompanied by a fee of five thousand dollars.

Grant or refusal of approval.

6.—(1) Upon receipt of an application for the approval of an exporter or trucker, the Authority may, after making such enquiries as it thinks fit—

(a) grant the approval subject to such terms and conditions as it thinks fit;

(b) refuse to grant the approval,

and where the Authority refuses to grant an approval it shall state in writing the reasons for its decision and inform the applicant of his right under regulation 23 to appeal against the decision.

(2) An approval shall not be transferable and shall be valid for such period as is specified therein.

Authorization fees.

7. Prior to the use of a truck, lorry or other vehicle, at any port facility, an approved trucker shall pay an authorization fee of three thousand dollars to the Authority in respect of its authorization of the vehicle for such use,

which fee shall, in respect of such use during any year or part thereof subsequent to that of the initial authorization, be payable to the Authority on or before the 31st day of January in that year.

Suspension
or revoca-
tion of
approval.

8.—(1) Subject to paragraph (2), the Authority may suspend an approval if the holder—

- (a) has failed to pay any fees or other charges required to be paid under these Regulations;
- (b) contravenes any of these Regulations or any term or condition subject to which the approval is granted;
- (c) is convicted of any offence under regulations made under the Act or any offence under the Dangerous Drugs Act (other than under section 7D of that Act); or
- (d) notifies the Authority in writing that he intends to cease the operations for which he is approved for the period stated in the notice.

(2) Before suspending an approval under paragraph (1) (a), (b), (c) or (d), the Authority shall notify the person in writing of the proposed suspension stating the reason therefor.

(3) The Authority may revoke an approval if it is satisfied that—

- (a) the holder has ceased to comply with the provisions of these Regulations;
- (b) the application for the approval contained any false or misleading information in any material particular;
- (c) any fee payable by the holder remains unpaid for a period of ninety days after the suspension of the approval.

(4) Before revoking an approval under paragraph (3), the Authority shall notify the holder in writing of the proposed revocation stating the reasons therefor.

List of
approved
exporters,
approved
truckers,
shipping
agents and
wharf
companies,
etc.

9. The Authority shall keep a list of the names and addresses of all—

- (a) approved exporters and approved truckers;
- (b) shipping agents and wharf companies; and
- (c) customs brokers and freight forwarders.

Security Procedures

Security
measures at
port
facilities.

10.—(1) The Authority may, after consultation with the Minister responsible for national security, approve security arrangements for the purposes of supervising and regulating entry and exit from port facilities and the movement of persons, equipment and goods in those premises.

(2) Without prejudice to the generality of paragraph (1), the Authority after consultation as aforesaid, may, in approving security arrangements pursuant to that paragraph, authorize any person to issue on its behalf identification documents (hereinafter called “prescribed identification documents”) of various types respecting access to specified areas of port facilities or otherwise, as may be required pursuant to these Regulations.

(3) Any person who, not being the holder of prescribed identification document authorizing access to any specified area, is found in that area, commits an offence unless—

- (a) his presence in that area was necessitated by an emergency; or
- (b) he proves that he was otherwise required or allowed to be in that area by a person having the requisite authority.

(4) Any prescribed identification document shall be surrendered forthwith to the Authority or to the person by whom it was issued—

- (a) upon the expiration of the period for which it was issued; or
- (b) upon request of the Authority or the person by whom it was issued.

(5) Any person to whom a prescribed identification document is issued shall comply with the terms and conditions subject to which it is issued.

(6) Any person who contravenes paragraph (4) or (5) commits an offence.

Security
arrange-
ments.

11.—(1) The operations at port facilities, the entry and exit therefrom and the movement of individuals, goods and equipment therein shall be subject to the imposition by the Authority, on any lessee or other person authorized by the Authority or any person assigned management of the facilities of—

First
Schedule.

- (a) security procedures adopted in accordance with Part A of the Code as set out in the First Schedule, after taking into account the relevant guidance in Part B of the Code as set out in the said Schedule; and

- (b) such other terms and conditions as may be required of users of port facilities including the payment of user fees and reimbursable expenses associated with the security provided.

(2) The Authority shall publish in the *Gazette* a notification specifying the security procedures referred to in paragraph (1) (a).

(3) The Authority or any authorized person or assignee may exclude from any specified port facilities for such period as it may determine, any person who contravenes these Regulations.

Container handling. Second Schedule.

12. The provisions of the Second Schedule shall apply in relation to the handling of containers to be used for export.

Approved exporters and approved truckers to establish security procedures at premises.

13.—(1) Approved exporters and approved truckers, respectively, shall—

- (a) establish at their premises security procedures in relation to the handling of goods and equipment intended for export from port facilities;
- (b) designate high security areas within their premises at which goods and equipment intended for export as aforesaid are to be stored before being transported to port facilities; and
- (c) maintain proper records of all goods, persons or equipment entering or leaving such high security areas.

(2) The high security areas, goods, equipment and records referred to in paragraph (1) shall be subject to inspection by the Authority at such reasonable times as the Authority may require.

(3) An approved exporter or approved trucker, as the case may require, shall, at the request of the Authority, give such assistance as is required by the Authority in any inspection conducted pursuant to paragraph (2).

Particulars to be included in records.

14.—(1) The records referred to in regulation 13 shall—

- (a) show the nature of the goods and equipment, the weight, dimension (where relevant) and quantity of such goods and equipment and of any packaging; and
- (b) contain a declaration that those particulars are identical to those which will be entered on documents for shipping of the goods and equipment.

(2) Where it is necessary to alter any particulars referred to in paragraph (1)—

- (a) the alteration shall be made in such manner as to leave the original entry, as well as the alteration, legible; and

- (b) every such alteration shall be initialled and dated by the person making it.

Cargo integrity form.

15.—(1) On each occasion that an approved exporter intends to use port facilities for the export of goods or equipment, the approved exporter shall truthfully and accurately complete a cargo Integrity form which shall be signed by the exporter or his authorized agent.

(2) In this regulation “authorized agent” means—

- (a) a customs broker;
- (b) a freight forwarder;
- (c) an approved trucker; and
- (d) any other person authorized in writing by the approved exporter.

Time for delivery of goods or equipment.

16. Goods or equipment shall be delivered to port facilities not later than eight hours prior to the arrival of the exporting vessel unless the Authority, in any particular case, otherwise permits.

Truckers to inspect seals.

17. It shall be the duty of approved truckers—

- (a) before accepting delivery of containers or other equipment, to examine them in order to ensure that all requisite seals thereon are intact; and
- (b) to keep a record of all such examinations, including the date and time of—
 - (i) arrival at the point of collection;
 - (ii) the examination of the seals;
 - (iii) departure from the point of collection; and
 - (iv) arrival at the port facilities or other point of delivery.

Wharf companies to establish security procedures at premises.

18.—(1) Wharf companies shall—

- (a) establish at their premises security procedures in relation to the handling of goods and equipment intended for export from those premises;
- (b) maintain proper records of all goods, equipment and persons entering and leaving port facilities.

(2) The port facilities, goods, equipment and records referred to in paragraph (1) shall be subject to inspection and audit by the Authority at such reasonable times as the Authority may require and payment to the Authority of the fees required by the Authority, to recover the costs of such activities.

(3) Every wharf company shall, at the request of the Authority, give all such assistance as is required by the Authority in any inspection conducted pursuant to paragraph (2).

Security of containers.

19. Wherever possible, containers shall be—

- (a) stored or stacked in such a manner as will ensure their maximum security; and
- (b) protected by security personnel giving twenty-four hour per day surveillance.

Control or access of wharf premises.

20.—(1) Security personnel at port facilities shall take all necessary steps to ensure that only persons holding the requisite authority are allowed to enter those premises, conduct an annual audit of port facilities, and on completion thereof shall submit a report to the Authority for consideration.

(2) The Authority shall notify a port facility's management in writing of any non-compliance which may jeopardize the port facility being issued with a Statement of Compliance pursuant to the Code.

(3) A notice under paragraph (2) shall indicate that the port facility's management may, within a period of thirty (30) days after the date of notification, respond with a plan to correct same.

(4) Upon consideration of the port facility's plan, the Authority shall advise the port facility's management of—

- (a) its acceptance of the plan; or
- (b) the need to amend the plan, stating a timeline to correct the non-compliance.

(5) Where paragraph 3(b) applies, an inspection shall be made by a Compliance Officer employed to the Authority to ensure that corrective measures have been taken.

(6) Failure to correct the areas of non-compliance within the period stipulated will result in the suspension of any Statement of Compliance for thirty days.

(7) During the thirty-day period of suspension, the port facility may correct the areas of non-compliance, failing which, the Statement of Compliance may be withdrawn.

General

Delegation of powers of Authority.

22.—(1) The Authority may, if it thinks fit delegate to any person any of its functions under these Regulations.

(2) A delegation under paragraph (1) shall not prevent the exercise by the Authority of any function so delegated.

(3) Notice of a delegation under paragraph (1) shall be published within seven days thereafter in a daily newspaper printed and circulated in Jamaica.

Appeals. 23.—(1) Any person aggrieved by the refusal of the Authority to grant an approval or the suspension or revocation by the Authority of his approval, may, within fifteen days of being notified in writing of such refusal, suspension or revocation, appeal in writing to the Minister who shall thereupon appoint a Tribunal pursuant to paragraph (2) to hear and determine the appeal.

Third Schedule. (2) The provisions of the Third Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.

(3) On the determination of an appeal under this regulation the Tribunal may make such order as it thinks fit and the decision of the Tribunal shall be final.

Offence of making false declarations, etc. 24. A person who—

- (a) for the purposes of obtaining, whether for himself or for any other person, the issue, grant of any approval under this Act, makes any declaration or statement which is false or misleading in any particular;
- (b) knowingly furnishes to the Authority or any other person performing any duty in relation to these Regulations, a document that contains information which is false or misleading in any particular;
- (c) makes a statement in a cargo integrity form, in purported compliance with regulation 15, which he knows to be false or misleading;
- (d) knowingly utters, produces, or makes use of any such declaration or statement or any document containing any false declaration or statement; or
- (e) falsifies or amends any information contained in an approval commits an offence.

Penalty. 25. A person who commits an offence under these Regulations is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Revocation. 26. The Port Authority (Port Bustamante Security) Regulations, 1989, and the Port Authority (Port Management and Security) By-Laws, 2010, are hereby revoked.

FIRST SCHEDULE

(Regulations 3 and 11)

International Ship and Port Facility Security Code

SECOND SCHEDULE

(Regulation 12)

Handling of Containers to be used for Export

1. Every empty container, before leaving port facilities for an approved exporter's premises shall be checked by the designated security representative of the respective port facility to determine the true internal dimensions of the container and to verify that it is an empty container.

2. It shall be the duty of the approved exporter whenever he is ready to load the container to notify an officer or sub-officer of the Jamaica Constabulary Force and a customs officer of such loading not less than 24 hours prior to the time of loading the container.

3. On completion of loading the container, the seals of the Authority and of the shipping line shall be placed on that container at the approved exporter's premises; and a container loaded for export shall not be and of the shipping line shall be placed on that container at the approved exporter's premises; and a container loaded for export shall not be permitted to leave the premises of the approved exporter, unless the approved exporter has certified in writing on the Cargo Integrity Form that the container is free of contraband substances.

4. Upon delivery of the container to the port facilities, the consistency of the seal number on the container with that on the Cargo Integrity Form shall be verified by the wharf company (whether electronically or otherwise).

THIRD SCHEDULE

(Regulation 23)

Tribunal

1. —(1) The Tribunal shall, subject to paragraph 2, consist of three members, one of whom shall be appointed chairman.

(2) Whenever the Minister thinks appropriate, one of the members of the Tribunal shall be chosen from among persons appearing to the Minister by virtue of their training or experience to be familiar with the type of service rendered by the appellant in connection with the export of goods.

2. For the hearing of any appeal under these Regulations, the Tribunal may, if the appellant consents, consist of one member sitting alone.

3. Subject to paragraph 2, the decision of the Tribunal shall be by a majority of votes of the members, and in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.

4. Subject to the provisions of these Regulations, the Tribunal shall regulate its own proceedings.

Dated the 13th day of December, 2010.

NOEL HYLTON
Chairman, Port Authority.

