



COMMENTS OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
ON FEDERAL MARITIME COMMISSION DOCKET 16-05

Amendments to Regulations Governing Service Contracts and NVOCC Service Arrangements

Submitted September 23, 2016

The National Industrial Transportation League (NITL or League) respectfully submits these comments in response to the Notice of Proposed Rulemaking (NPRM) served by the Federal Maritime Commission (FMC or Commission) on August 16, 2016 and published in the *Federal Register* on August 22, 2016. The League was founded in 1907 and represents companies engaged in the transportation of goods in both domestic and international commerce. The majority of the League's members include shippers and receivers of goods; however, third party intermediaries, logistics companies, and other entities engaged in the transportation of goods are also members of the League. Competitive ocean transportation is vitally important to League members and their customers, and many League members depend highly upon efficient and effective ocean transportation services for both importing and exporting their goods.

As noted by the Commission in the NPRM, the proposed rule is intended to update, modernize, and reduce the burden of the agency's regulations on regulated parties. The proposed amendments to existing Commission rules follow from an Advance Notice of Proposed Rulemaking published on February 29, 2016, and comments filed with the Commission on that ANPRM. The League did not offer comments on the ANPRM; we are pleased to offer the following comments on proposed changes to 49 CFR Part 530, Service Contracts, and Part 531, NVOCC Service Arrangements.

Part 530.3(i) Effective date

Current FMC rules require that a service contract or amendment cannot become effective prior to its filing with the Commission. In this NPRM the Commission has proposed to allow the filing of sequential service contract amendments in the agency's SERVCON system within 30 days of the effective date of the agreement reached between the shipper and carrier on such amendments. The League fully supports this proposed change to the current requirement. We note as well the endorsement of this proposal by many other entities in comments filed on the ANPRM.

League members have discussed this idea on a number of occasions during internal deliberations. The proposed change recognizes the realities of today's ocean transportation market, the extent to which service contracts have been adopted as the preferred means for conducting transactions between carriers and shippers, and the enormous number of contract

amendments to which carriers and shippers routinely agree during the ordinary course of business. The Commission's proposed change is a significant step forward in the efficient administration of the agency's service contract oversight responsibilities, and likewise will provide carriers a significant measure of regulatory relief while still protecting the interests of shippers.

In the NPRM, the Commission provided a very thorough assessment of the technical difficulties associated with filing "batches" of amendments to a single service contract. In light of those difficulties, the League believes the Commission has adopted the appropriate course of action for the present time, to maintain the current requirement for filing sequential amendments while allowing for such filings to occur up to 30 days after agreement has been reached between a carrier and shipper. We appreciate that the Commission has addressed this matter directly, however, and we would encourage further dialogue with stakeholders and internal agency examination of the potential to develop reasonable solutions to the technical barriers.

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

At present, carriers may file a "Corrected Transmission" (CT) within 48 hours of filing a service contract or amendment into SERVCON, but only to correct a purely technical data transmission error or a data conversion error that occurred during uploading. A CT may not be used to make changes to rates, terms or conditions. A proposal to allow up to 30 days in which to file a CT was included in comments submitted in response to the ANPRM and the Commission is now proposing to adopt that longer period of time to make such technical corrections. The League recognizes that the present 48 hour time limit is no doubt a burden on carriers and has no objection to adopting this reasonable extension of time.

The proposed rule also addresses a very different kind of error, an error in the service contract itself rather than one associated with data transmission or data conversion. At present, agency rules allow a carrier to file a service contract correction request within 45 days of filing the service contract. In response to requests from carrier interests the Commission is proposing to extend that period from 45 days to 180 days. No party objected to this possible change in comments on the ANPRM.

In shaping the League's views on this proposal we have considered a number of relevant factors. With the very large numbers of service contracts in effect at any point in time, and the complexity of those service contracts, we recognize the potential for unintended errors and the need for a reasonable period to file corrections. Likewise, today's global supply chains are more complex for shippers and carriers alike; the emergence of very large carrier alliances in recent years has inserted new elements into the management of those supply chains. As noted by others the combination of long voyages, slow steaming in some trades, significant time consumed in invoicing shippers and auditing those invoices by shippers frequently means that errors in the underlying service contracts go undiscovered beyond the current 45 day allowance.

Quadrupling the amount of time to be granted for filing a service contract correction might seem overly generous to some, but the League believes commercial realities support the proposal and we will offer no objection to its adoption.

Extend the Service Contract Correction Procedure to Include Unfiled Contracts and Amendments

The Commission notes that carrier interests sought to extend the service contract correction process to include unfiled service contracts and amendments. The failure to file a contract or contract amendment that is agreed upon between the shipper and carrier can have serious adverse consequences for the shipper. Without a contract on file the tariff rate must apply which is often much higher. Likewise, a prior rate must apply if the amendment is not filed, despite the parties' agreement to modify such rate. An amendment could also address other important issues including the adding of new service lanes or changes to the minimum volume commitment. In our view, the failure to file a contract or contract amendment is a very significant matter, and there should be a process available to ensure that a shipper is not penalized for a carrier's error in failing to file either. The League would also note that it seems unduly burdensome to require the filing of an affidavit to support contract corrections and that this will cause parties to avoid using the corrections procedure if another option may be available to address the contract error.

Publication of Essential Terms and Exceptions and Exemptions

In our view, the publication of essential terms of service contracts has likely now outlived its commercial value. We do not believe that shippers or other primary stakeholders engaged in the ocean shipping market rely on their publication any longer; it is likely a regulatory burden without any benefit, and we encourage the Commission to eliminate the requirement for publication of essential terms in a service contract.

With regard to the Commission's decision not to propose adding new commodities to the list of those exempted from the FMC's tariff publication and service contract filing requirements, the League believes this matter merits further examination and public dialogue. We understand and fully respect the Commission's reliance on these filings for its enforcement responsibilities. However, we believe that acceptable and reliable alternatives are available that could serve the same purposes if and when an investigation and/or enforcement action is necessary.

Turning now to NVOCC Service Arrangements (NSA), the League has long supported contracting rights for NVOCCs, and we note the long term issues of concern to the NVOCC community. In some matters NVOCCs wish to achieve parity with the VOCC industry, and in other matters they wish to be divorced from requirements imposed on VOCCs, arguing that NVOCCs are not "similarly situated" to VOCCs. We note further that the NVOCC community itself is not in full agreement on a number of important matters. The Commission has correctly deferred a decision on proposing more fundamental changes in the NVOCC regulatory realm to a future proceeding.

However, the proposed rule does advance the notion of fairness and parity in important ways. The Commission is proposing to allow NSA amendments to be filed 30 days after the parties

agree on an amendment; the League supports that proposal. Similarly, and in parallel with the requirements on VOCCs, the Commission is proposing to maintain its existing requirement that sequential amendments for NSAs be filed with a single effective date for all changes within that amendment; the League supports this proposal. Likewise, the proposed rule would offer the same relief for NVOCCs as being offered to VOCCs for additional time to correct technical errors and errors in the NSA. We support those proposed changes.

The League appreciates the opportunity to provide these comments, and we commend the FMC for identifying important improvements in its regulatory scheme that should, if adopted, achieve the goals of Executive Order 13563.