

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 16-05**

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**AMENDMENTS TO REGULATIONS GOVERNING  
SERVICE CONTRACTS AND NVOCC SERVICE ARRANGEMENTS**

**COMMENTS OF THE NATIONAL CUSTOMS BROKERS AND FORWARDERS  
ASSOCIATION OF AMERICA, INC.**

The National Customs Brokers and Forwarders Association of America, Inc. (“NCBFAA” or “Association”) submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) published in this docket on August 22, 2016 (81 Fed. Reg. 56559). As the Commission is aware, the NCBFAA is the national trade association representing the interests of freight forwarders, NVOCCS and customs brokers in the shipping industry and it previously submitted comments in the Advance Notice of Proposed Rulemaking in this docket on March 30, 2016.

As in its previous comments, the NCBFAA supports the Commission’s effort to reform its rules to comport with the ever-changing demands and environment of the shipping industry. As explained below, the Association believes that the NPRM will have the positive result of reducing some of the unnecessary regulatory burdens that reduce the effectiveness of service contracts and NVOCC Service Arrangements (“NSAs”).

In summary, the Association supports the proposed revision to the current regulations that would allow the filing of amendments for both service contracts and NSAs to be delayed up to 30 days after an amendment is agreed to by the parties. The revision would provide much needed flexibility for VOCCs and, perhaps even more so, for NVOCCs, who are required to

constantly monitor and react to all VOCC daily rate and surcharge adjustments, and incorporate those adjustments into NSA amendments. The burden of ensuring that NSA amendments are timely filed unnecessarily adds to the already significant pressure associated with NVOCCs' daily operations and impedes NVOCCs' ability to timely react to the daily changes in the ocean shipping marketplace. Simply stated, allowing for retroactive submission of amendments to NSAs would help substantially alleviate that pressure and enhance the efficiency of NVOCC.

There is one caveat to this that needs to be considered. Although this is probably implicit in the proposal, it is important to ensure that the amendment does in fact reflect a meeting of the minds of the parties. As the Commission is aware, the VOCCs often announce and file general rate increases and peak season surcharges at various times. These publications are usually overstated in amount and mitigated prior to the announced effective date. With the approval of retroactive filing of amendments, it is possible that the carriers could establish these increased charges but not advise the contracting parties of the actual rate until the retroactive publication is made. Consequently, the Commission should ensure that any retroactive amendment reflects the actual agreement between the parties at the time that agreement is reached.

Similarly, the Association supports the Commission's proposal to allow for: (1) the extension of the time period in which to file a Corrected Transmission to remedy an electronic transmission error from 48 hours to 30 days; and (2) the extension of the time period for filing a correction request from 45 to 180 days. These revisions represent a welcome change from the unnecessarily inflexible requirements that imposed a significant burden on VOCCs and NVOCCs without benefitting shippers or other industry participants, or enhancing the effectiveness of the Commission's oversight.

Moving on, the NCBFAA appreciates the Commission's acknowledgment of its proposal to both to eliminate NSA filing and publication requirements and broaden the utility of NVOCC

Negotiated Rate Arrangements (“NRAs”). As the Commission is aware, the Association has been urging these changes since it originally filed the petition seeking to eliminate rate tariff filing in Docket No. P2-15 (the “Petition”).

While the Association understands that the FMC would prefer to entertain the issues raised in its Petition and the comments filed in the ANPRM in this docket as part of a separate rulemaking proceeding initiated at a later point; it urges the Commission to move forward with this expeditiously. The NCBFAA continues to believe that the NSA essential terms publication and filing requirements do not serve a legitimate purpose. So, while allowing for the retroactive filing of amendments is certainly a step in the right direction; complete elimination of this requirement for NSAs is warranted and the Commission should promptly initiate a rulemaking proceeding to consider whether there is an appropriate basis to continue to treat NSAs in exactly the same way as service contracts vis-à-vis the need for filing and publication.

At the same time, the NCBFAA reiterates its request that the Commission consider broadening the NRA exemption. In addition to allowing NRAs to be amended, the Commission should allow inclusion NRAs to include non-rate economic terms, including but not limited credit and payment terms, rate methodology, surcharges, minimum quantities, forum selection and arbitration clauses. Allowing for incorporation of these terms would enable NVOCCs to negotiate and memorialize a complete transaction in a convenient, rational and transparent manner. The existing need to separate the so-called economic from non-economic terms is an arbitrary requirement that served little purpose when first implemented and today interferes with the efficient memorialization of the negotiated rate arrangements between NVOCCs and their customers.

Accordingly, the Association urges the Commission not to wait until the issuance of the final rule in this proceeding to initiate a rulemaking on elimination of the publication and filing

requirement for NSAs and expansion of NRAs. While the Commission undoubtedly has a number of pressing matters on its agenda, the efficiencies and benefits that would accrue to NVOCCs and their customers by promptly following up on these issues would be no less important than is the narrow issue of retroactive service contract and NSA filing that is the subject of this proceeding.

Respectfully submitted,



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Edward D. Greenberg  
Svetlana V. Lyubchenko  
GKG Law, P.C.  
The Foundry Building  
1055 Thomas Jefferson Street, NW  
Suite 500  
Washington, DC 20037-4492  
Telephone: (202) 342-5200  
Facsimile: (202) 342-5219

Attorneys for  
THE NATIONAL CUSTOMS BROKERS AND  
FORWARDERS ASSOCIATION OF AMERICA,  
INC.

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