

Issued: February 25, 2016

FEDERAL MARITIME COMMISSION

46 CFR Parts 530 and 531

DOCKET NO. 16-05

RIN: 3072 - AC53

Service Contracts and NVOCC Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (FMC or Commission) is seeking comments on possible amendments to its rules governing Service Contracts and NVOCC Service Arrangements. These possible rule changes are intended to update, modernize, and reduce the regulatory burden.

DATES: Submit comments on or before: March 30, 2016.

ADDRESSES: You may submit comments by the following methods:

- *E-mail:* secretary@fmc.gov. Include in the subject line: "Docket 16-05, [Commentor/Company name]." Comments should be attached to the e-mail as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by e-mail.
- *Mail:* Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, DC 20573-0001.

Docket: For access to the docket to read background documents or comments received, go to the Commission's Electronic Reading Room at: <http://www.fmc.gov/16-05>.

Confidential Information: The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked “Confidential-Restricted,” and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state “Public Version – confidential materials excluded” on the cover page and on each affected page, and must clearly indicate any information withheld. You may submit the public version to the Commission by e-mail or mail.

FOR FURTHER INFORMATION CONTACT: For questions regarding submitting comments or the treatment of confidential information, contact Karen V. Gregory, Secretary, *Phone:* (202) 523-5725. *E-mail:* secretary@fmc.gov. For technical questions, contact Florence A. Carr, Director, Bureau of Trade Analysis. *Phone:* (202) 523-5796. *E-mail:* tradeanalysis@fmc.gov. For legal questions, contact Tyler J. Wood, General Counsel. *Phone:* (202) 523-5740. *E-mail:* generalcounsel@fmc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1984, Congress passed the Shipping Act of 1984 (the Shipping Act or the Act) 46 U.S.C. 40101 *et seq.*, which introduced the concept of contract carriage under service contracts filed in paper format with the Federal Maritime Commission (Commission or FMC). The pricing of liner services via negotiated contracts, rather than exclusively by public tariffs, was a change that had profound effects on the liner industry. The Act also clarified the authority of conference members to offer intermodal pricing (the integration of ocean carriage with truck or rail service).

FMC regulations require all ocean freight rates, surcharges, and accessorial charges in liner trades be published in ocean common carrier tariffs or agreed to in service contracts filed with the Commission. Contemporaneous with the filing of service contracts, carriers are also required to

make available to the public a concise statement of essential terms in tariff format. Initially, service contracts filed with the Commission under the Act could not be amended. In 1992, FMC regulations were revised to allow for service contracts to be amended to adjust terms and/or rates.

In 1998, Congress passed the Ocean Shipping Reform Act (OSRA), amending the Shipping Act of 1984 relating to service contracts. To facilitate compliance and minimize the filing burdens on the oceanborne commerce of the United States, service contracts and amendments effective after April 30, 1999 are required to be filed with the Commission in electronic format. The electronic filing of service contracts and amendments eliminated the regulatory burden of filing in paper format, saving ocean carriers both time and money. In addition, under OSRA, contracts between ocean common carriers and shippers can be agreed to on a confidential basis and the public no longer has access to view their contents.¹ Service contracts and amendments continue today to be filed into the Commission's electronic filing system, SERVCON.

In 2005, the Commission issued a rule exempting Non-Vessel-Operating Common Carriers (NVOCCs) from certain tariff publication requirements of the Shipping Act, pursuant to section 16 of the Shipping Act, 46 U.S.C. 40103. 69 FR 75850 (December 20, 2004) (final rule). Under the exemption, NVOCCs are relieved from certain Shipping Act tariff requirements, provided that the carriage in question is performed pursuant to an NVOCC Service Arrangement (NSA) filed with the Commission and the essential terms are published in the NVOCC's tariff. 46 CFR 531.1, 351.5, and 531.9

On January 18, 2011, President Obama issued Executive Order 13563 (E.O. 13563) to emphasize the importance of public participation in adopting regulations, promote integration and

¹ Prior to OSRA, contract rates were published in the essential terms tariff publication, thereby allowing similarly situated shippers to request and obtain similar terms. In enacting OSRA, Congress limited the essential terms publication to the following terms: the origin and destination port ranges, the commodities, the minimum volume or portion, and the duration.

innovation in regulatory actions, utilize flexible approaches in achieving regulatory objectives, and ensure the objectivity of any scientific and technological information and process in regulatory actions. E.O. 13563 requires executive agencies to develop a plan to periodically review their existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make such agencies' regulatory programs more effective and less burdensome in achieving the regulatory objectives. On July 11, 2011, Executive Order 13579 was issued to encourage independent regulatory agencies to also pursue the goals stated in E.O. 13563.

On November 4, 2011, the Commission issued its Plan for Retrospective Review of Existing Rules (Retrospective Review Plan or Plan) and invited public comment on how it might improve existing regulations.² The Plan included a review schedule for its existing regulations, which was updated on February 13, 2013. The updated Plan called for review of the existing rules for NVOCC Service Arrangements in 46 CFR Part 531 from 2013 to 2014, and for review of Service Contracts regulations Part 530 in 2013.

In response to the Commission's request for public comment, the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) filed comments regarding Part 532, NVOCC Negotiated Rate Arrangements (NRAs), and Part 531, NVOCC Service Arrangements, on November 21, 2011. NCBFAA's comments supported the Commission's effort to review and streamline its regulations and indicated that several additional steps would significantly ease some of the obstacles that it claims have hindered utilization of Part 532, NVOCC NRAs, and Part 531, NVOCC Service Arrangements. The Commission also received

² A copy of the Retrospective Review Plan and comments filed in response to the plan that are within the scope of this rulemaking have been placed in the docket.

the *Comments of Ocean Common Carriers*³ regarding Part 530, Service Contracts on May 18, 2012. The carriers' comments largely focused on three areas that they believe changes in the service contract regulations would be beneficial, namely, introducing greater flexibility in the timing of service contract amendment filing, making adjustments to the service contract correction process, and expanding the list of commodities exempted from tariff and service contract filing. The comments are described in further detail in discussion of Parts 530 and 531 that follows.

In September 2013, the Commission initiated the present regulatory review of Part 530, Service Contracts, and Part 531, NVOCC Service Arrangements. Executive Order 13563 served as guidance for the Commission in seeking ways in which the regulations should be modified, expanded, or streamlined in order to make the regulations more effective, reduce the regulatory burden, encourage public participation, make use of technology, and consider flexible approaches, keeping in mind the FMC's mission, strategic goals, and regulatory responsibilities.

As part of its review, the Commission informally solicited views from various stakeholders in order to gather a broad range of perspectives. The discussions with stakeholders, including Vessel-Operating Common Carriers (VOCCs), several major trade associations, licensed NVOCCs, beneficial cargo owners (BCOs), and shippers associations, were held on a confidential basis to promote a candid dialogue. The Commission asked stakeholders how existing regulations impact their businesses, what regulatory changes each stakeholder would recommend, and to quantify the cost of its regulatory burden.

³ The commenting carriers consisted of a total of 30 ocean carriers participating in the following agreements active at that time: the 14 members of the Transpacific Stabilization Agreement (TSA); 10 members of the Westbound Transpacific Stabilization Agreement (WTSA); 6 members of the Central America Discussion Agreement (CADA); 11 members of the West Coast South America Discussion Agreement (WCSADA); 5 members of the Venezuela Discussion Agreement (VDA); 3 members of the ABC Discussion Agreement (ABCDA); 6 members of the United States Australasia Discussion Agreement (USADA); and, the 3 members of the Australia New Zealand United States Discussion Agreement (ANZUSDA). For comments, refer to Attachment B.

Below, on a section by section basis, is a discussion of issues on which the Commission is seeking public comment. Further, the public is invited to comment on any provisions contained in Parts 530 and 531.

Part 530-Service Contracts

Subpart A – General Provisions

Section 530.3 Definitions.

Section 530.3 Affiliate.

Currently, there is no definition of affiliate in § 530.3, Service Contracts. A definition of affiliate is provided for NVOCC Service Arrangements, in §531.3(b). In order to provide clarity and consistency, the Commission seeks comment on adding the definition of affiliate contained in §531.3(b) to § 530.3.

Section 530.3(i) Effective date.

Presently, the Commission’s regulations require that a service contract or amendment be filed on or before the date it becomes effective. The Commission is seeking comment on whether it should amend the definition of effective date with respect to service contract amendments to allow the effective date of amendments to be before the filing date of the amendment.

Section 530.5 Duty to file.

In addition to converting to electronic filing in 1999, the Commission has made efforts to reduce the regulatory burden of filing service contracts and amendments into its SERVCON system. At the request of one ocean carrier, the Commission developed an automated web services process in 2006, which allows service contracts or NSAs and their amendments to be filed directly from a carrier’s contract management system into SERVCON, thereby reducing the regulatory burden and error rate associated with manual processing. By “pushing” the unique data already

entered in the filer's contract management systems directly to the SERVCON system, it eliminates the time and expense involved in manually logging into SERVCON to file contracts or NSAs. SERVCON then processes the filing and returns a confirmation number if the filing was successful, or an error message giving the reason it was not.

Using web services to file service contracts and amendments reduces a carrier's cost and creates efficiencies for both the carrier and the Commission. The Commission has encouraged the use of web services to carriers throughout the years. Currently, 36% of all service contracts and amendments filed use web services. It is estimated, based on current carrier projections, that approximately 92% of contracts and amendments filed by April 1, 2016 should be filed using web services. Given the Commission's past experience, transitioning to web services can be accomplished in a relatively short period of time using carriers' in-house IT professionals.

The Commission seeks comment on amending its regulations to ensure that carriers are aware of the availability of the automated web service process for filing service contracts and amendments.

Section 530.6 Certification of shipper status.

The provisions in this section set forth the requirement that shippers entering into service contracts certify their status and require vessel-operating common carriers (VOCCs) to obtain proof of an NVOCC's compliance with tariff and financial responsibility requirements. Carriers regularly use the FMC website, www.fmc.gov, to verify whether or not an NVOCC contract holder or affiliate is in good standing. Various carriers employ more rigid standards in certifying NVOCC status by requiring copies of the NVOCC's bond as well as the title page of its respective published tariffs. Further, many VOCCs include the NVOCC's 6-digit FMC Organization Number in the

service contract, which indicates that the VOCC sought to ensure compliance with the requirements of §530.6.

Carriers frequently ask about the FMC's electronic systems' capability to automatically verify whether an NVOCC party named in a service contract or amendment is in compliance with §530.6. While the FMC's SERVCON system does not currently have this capability, the technology exists to add this functionality in the future. One possible approach to accomplish this would be for the FMC to create a new data field in SERVCON which would require a VOCC to enter the NVOCC's 6-digit FMC Organization Number when a NVOCC is a contract holder or affiliate. If multiple NVOCCs are party to a service contract, each NVOCC's respective Organization Number would be required to be listed in this field. SERVCON could be updated so that it would automatically determine at the time a contract or amendment is uploaded for filing, whether the NVOCC(s) is in good standing with the Commission. The development of such an automatic process could potentially save carriers a substantial amount of time currently spent verifying an NVOCC's status.

Another option, which would require a substantial amount of SERVCON system programming and necessitate a standard service contract format to be adopted and agreed to by carriers, would be to require "metadata" to be incorporated into service contracts that would include the 6-digit FMC Organization Number of all NVOCC parties.⁴ For instance, with the required programming implemented this technology could be leveraged to identify during the

⁴ "Metadata is structured information that describes, explains, locates, or otherwise makes it easier to retrieve, use, or manage an information resource. Metadata is often called data about data or information about information." National Information Standards Organization (NIST), *Understanding Metadata*, NIST Press (2004), available at: <http://www.niso.org/publications/press/UnderstandingMetadata.pdf> (last visited Jan. 17, 2016).

filing process contracts or amendments which contain an NVOCC that is not in compliance with §530.6. If an NVOCC is not compliant, an alert would be sent to the carrier filing the contract or amendment and Commission staff.

Therefore, the Commission is seeking comment regarding whether the Commission should move forward in:

- (1) requiring use of the 6-digit FMC Organization Number for NVOCCs who are a contract holder or affiliate in a service contract;
- (2) adding a data field in the Commission's electronic filing system (SERVCON) in order to enter the 6-digit FMC Organization Number when an NVOCC is party to a contract, or
- (3) requiring service contracts to be formatted to contain metadata that includes the 6-digit FMC Organization Number for each NVOCC that is a contract holder or affiliate in a service contract.

Subpart B – Filing Requirements

Section 530.8 Service Contracts.

In the filed *Comments of Ocean Common Carriers*, a number of carriers cite the filing of service contract amendments as the largest administrative burden for both carriers and their customers. Many ocean carriers believe that the service contract effective date requirement is overly burdensome and restrictive given current commercial practices, particularly with respect to amendments to contracts. The carriers claim that the vast majority of amendments are for minor revisions to commercial terms, such as a revised rate or the addition of a new origin/destination or commodity. The carriers advise that shippers will often tender cargo to them without first formally accepting their proposal. Therefore, according to ocean common carriers' comments, the carrier

and shipper often agree on a rate without memorializing that agreement in a form that can be filed as an amendment. The carriers claim that filing amendments within 30 days would enable shippers and carriers to apply agreed-upon terms immediately and thus do business without disrupting or delaying that business.

Based on the above practices, the carriers recommend that §530.8(a) be amended to permit the contract parties to implement a service contract amendment immediately, provided that the amendment is entered into by the parties and filed within 30 days of whichever occurs first: (1) the date agreement on the amendment is reached; or (2) the date the carrier receives the cargo to which the amendment applies. Under this proposal, the carriers note that the Commission would still receive all service contract amendments, however, not prior to implementation.

The revised regulation envisioned by the carriers would require that each filed amendment state the effective date of each change to the contract made by the amendment, so the Commission could determine the date from which any given rate or term was to apply. Carriers state that filing within 30 days would also reduce the filing burden by enabling carriers to aggregate several contract changes together in a single amendment. The carriers contend that the Commission would maintain the authority to request service contract records, including the evidence that the parties reached agreement on a particular term as of a particular date.

When Commission staff met individually with large beneficial cargo owners (BCOs) and NVOCCs, those shippers relayed that they had not experienced delays as a result of carriers' inability to process service contract amendments in a timely manner prior to movement of their cargo. It was the shippers' understanding that the carriers' requirement to file amendments with the Commission prior to acceptance of the cargo protects rate and contract commitments. Shippers advised the Commission that carriers were responsive to their rate requests and the shippers were

confident that VOCCs would honor the rates and contract commitments knowing their contracts were being filed with the Commission.

In order to minimize the filing burden, the Commission is seeking comment on whether it should allow an amendment to be filed up to 30 days after an amendment is reached by the parties. A change in the definition of effective date would only affect the filing date of the amendment, as the parties must still agree to the rates and/or contract terms prior to receipt of the cargo.

In commenting on the carriers' suggestions, consideration should also be given to the manner in which service contracts and amendments would be filed into the FMC's SERVCON system. SERVCON is designed to process the filing of the initial service contract, designated as Amendment "0," with subsequent amendments to the contract numbered sequentially, beginning with Amendment No. "1". If the definition of effective date is changed to allow amendments to be filed up to 30 days after the date on which they are agreed, and amendments are filed using the existing filing process, which requires sequential filing of amendments starting with Amendment No. 1, then no programming changes would be required in SERVCON.

In connection with the 30-day period for filing service contract amendments, the carriers also proposed aggregating several contract changes in a single amendment in what, in effect, could be a monthly filing. In a monthly filing that consolidates a number of service contract amendments, it would be necessary for carriers to specify the effective date of each amendment. In some cases, for example, the same rate may change more than once in a monthly period. Since the SERVCON system is not designed to process multiple amendments in a single filing, this would require a substantial amount of reprogramming for the system to be able to capture both the effective date and amendment number should, for example, Amendments Nos. 7 through 12 be combined into a single document. Further, based on input from the Commission's Office of

Information Technology, carriers would need to manually input the effective date of each amendment into SERVCON. Therefore, absent the requisite reprogramming, this process could possibly result in more, rather than less, of a filing burden. Additionally, consolidating several service contract amendments may also prevent carriers from using the Commission's web services technology in accordance with §530.5, thereby offsetting the advantages of web services, which do not require manual input and are intended to reduce the burden of filing.

The Commission seeks comments on whether it should revise its regulations to allow: (1) a service contract amendment to be filed individually and sequentially within 30 days of its effectiveness; or (2) any number of service contract amendments to be consolidated into a single document, but filed within 30 days of the effective date of the earliest of all amendments contained in the document. Any clarifications or refinements to the suggestions made by the commenters, given the information technology constraints, are also requested.

Section 530.10 Amendment, correction, cancellation, and electronic transmission errors.

In *Comments of Ocean Common Carriers*, the carriers noted that the current service contract correction procedures largely pre-date both service contract amendments (first permitted in 1992) and confidential individual carrier contracts introduced by OSRA, and maintain that these procedures are "ill suited" to the manner in which service contracts are employed today. The carriers identified a number of revisions to the requirements governing Service Contract Correction Requests at §530.10(c), some of which are discussed below.

With respect to the forgoing carrier proposals, the Commission is considering stakeholder comments and staff experience regarding service contract correction requests, corrected transmissions, and the proposed "conforming amendment." An item by item discussion follows.

30 Day Grace Period

The carriers propose that the Commission allow a 30 day grace period in which a carrier would not be required to file a service contract correction request (requesting retroactive effectiveness to correct a clerical or administrative error) or a formal amendment to the contract (effective upon filing or in the future), but rather, be permitted to submit a new type of filing, designated as a “conforming amendment” or some other special designation (in order to retroactively correct a “typographical or clerical error”).

The Commission questions whether this process would, in effect, be a substitute for the service contract correction process within the first 30 days after filing, without an affidavit and other documentation used for verification purposes that establishes the nature of the error and the parties’ intent. The Commission also has concerns that the use of the term “amendment” in the proposed special designation “conforming amendment” could be confusing, as the submission would be a corrective filing, rather than an actual sequential amendment to the contract.

There is an additional approach under which a service contract or amendment can currently be corrected that is somewhat similar to the proposed “conforming amendment,” though its application is limited to a narrow set of circumstances, that of a Corrected Transmission. Pursuant to §530.10(d), *Electronic transmission errors*, carriers may file a “Corrected Transmission” (CT) within forty-eight (48) hours of filing a service contract or amendment into SERVCON, however, 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.

While the vast majority of service contracts are uploaded into the Commission’s electronic filing system, SERVCON, without encountering any problems, staff has noted that, when errors do occur, many times carriers do not discover the error until after the initial 48 hour period has

passed. The vast majority of these mistakes are attributable to data entry errors on the SERVCON upload screen (e.g. the incorrect amendment or service contract number is entered, an incorrect effective date is typed, or the wrong contract or amendment is attached for uploading). Staff verifies that these are indeed purely clerical data errors that do not make changes to rates, terms, or conditions prior to accepting the CT filings.

While incorporation of web services filing would reduce the occurrence of many of the technical and data transmission errors leading to a Corrected Transmission, the Commission is seeking comments on whether the current 48-hour period in which to file a CT after filing the original contract or amendment should be extended to thirty (30) days to afford carriers with a more realistic time frame to correct purely clerical data transmission errors. The Commission notes that extending the time period for filing CTs would also facilitate ensuring that the service contract terms and conditions agreed to by the carrier and shipper are those on file with the Commission in the SERVCON system while maintaining adequate shipper protections.

Extend Filing Period for Correction Requests to 180 Days

The Commission is considering extending the time period for a service contract correction from forty-five (45) to one-hundred eighty (180) days. An error in a service contract may not be discovered until after cargo has moved, been invoiced on the bill of lading, the shipper reviews it and notes that the rate assessed is not the agreed upon rate. Given long transit times due to carriers' global pendulum services and slow steaming, in many cases this type of error is not discovered until well after 45 days has transpired. In other cases, shippers engage in audits of bills of lading and identify errors in the service contract that do not match the rates offered. Again, these audits may be well after the 45-day period. To provide needed flexibility in this process, the Commission is considering whether a longer time period in which to file is appropriate. The Commission seeks

comment on extending the amount of time a service contract correction request can be filed from within 45 days of the contract's filing with the Commission up to 180 days.

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

The ocean carriers provided a number of arguments in support of allowing the correction process to be utilized for unfiled service contracts and service contract amendments. Service contracts are required by law, under the Shipping Act, 46 U.S.C. 40502, to be filed with the Commission. Shippers advised that they believe that a filed contract provides them with the assurance that the rates and terms of the service contract will be adhered to by both the shipper and carrier.

Eliminate Carrier Affidavit and Significantly Reduce Filing Fee

Carriers requested that the Commission eliminate the affidavit requirement for service contract correction requests and also significantly reduce the filing fee. The Commission's filing fee reflects time expended by Commission staff to research and verify information provided in the correction request and to conduct its analysis. The Commission could reduce the filing fee from \$315 to around \$100 or less by streamlining its internal processes, provided that the affidavit requirement is not eliminated. If the affidavit requirement were eliminated, staff time researching and verifying information would increase, and thus, the filing fee would need to be increased commensurate with the additional time required for processing and analysis. The Commission is seeking comment on these proposals.

Subpart C – Publication of Essential Terms

Section 530.12 Publication.

Several stakeholders advised the Commission that essential terms publications were no longer accessed by the public or useful to stakeholders. However, other stakeholders indicated that they do rely on them for various purposes, such as during a grievance proceeding.

Subpart D – Exceptions and Implementation

Section 530.13 Exceptions and exemptions.

§530.13(a) Statutory exceptions. In *Comments of Ocean Common Carriers*, the carriers recommend that the Commission, pursuant to its authority to grant exemptions from statutory requirements, expand the list of commodities which are exempt from the tariff publication and service contract filing requirements of 46 USC 40501(a)(1) and 40502(b)(1). The carriers' rationale is that the existing list of exempt commodities: bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, was largely adopted to provide ocean common carriers serving the U.S. trades with greater flexibility to compete with bulk and tramp carriers serving both the U.S. and neighboring countries (Canada, Mexico), which do not require carriers to adhere to published tariffs. They assert that the exemption should apply to other, similar commodities.

After the implementation of OSRA, carriers continued to offer service contracts to many shippers of exempt commodities. Many VOCCs today still offer service contracts for exempt commodities, while other carriers choose only to offer such contracts to a select group of customers. Various carriers opt to use exempt commodity tariffs instead of agreeing to offer service contracts. This may diminish a shipper's ability to conclude service terms such as free time, demurrage and detention, credit, and other terms that could be negotiated in service contracts. Further, a VOCC's standard governing rules tariff does not apply to exempt commodities and

therefore, shipments of those commodities would not have the same protections under the Act and the Commission's regulations.

Section 530.14 Implementation.

If the carriers' proposal to allow up to 30 days for filing service contract amendments is later adopted, corresponding changes would be made to §530.14.

Part 531—NVOCC Service Arrangements

Subpart A – General Provisions

Section 531.1 Purpose.

In their comments on the Commission's Retrospective Review Plan, NCBFAA states that NSAs are private, negotiated contracts between NVOCCs and their shipper customers.⁵ NCBFAA adds that the various NSAs that have been filed with the Commission provide little information that is of use to the agency.

NCBFAA indicated that, with the advent of NVOCC Negotiated Rate Arrangements (NRAs), it is less likely that NSAs will be used in the future. NCBFAA stated that it believes one of the main impediments to any significant industry use of the NSA procedure was caused by the Commission's perceived need to regulate them in the identical manner as ocean carrier service contracts. They further elaborate that, as a result, these privately- and individually-negotiated contracts between NVOCCs and their shipper customers are required to follow the same filing and essential term tariff procedures as are applicable to ocean carrier agreements with their customers.

⁵ NCBFAA recently filed a petition for rulemaking. Docket No. P2-15, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Initiation of Rulemaking* (Apr. 18, 2015). The Commission is currently reviewing the petition as well as the comments filed in response to the petition, and has not made a determination on whether to initiate a rulemaking. Therefore, the proposals presented by NCBFAA in its petition will not be addressed in this ANPRM.

NCBFAA also states that NVOCCs do not enjoy antitrust immunity and therefore do not contain “collectively established boilerplate terms and conditions or consider, let alone follow, ‘voluntary guidelines’ relating to pricing or service conditions.” NCBFAA further advocates that, inasmuch as there are situations where NVOCCs and their customers would like to enter into more formal, long-term arrangements, which cannot be accomplished through NRAs, the industry would benefit by having the Commission reexamine the need for continuing the filing of NSAs and the publication of essential terms.

Section 531.3 Definitions.

Section 531.3(k) Effective date.

Presently, the Commission’s regulations require that an NSA or amendment be filed on or before the date it becomes effective. In response to filed VOCC comments, the Commission is considering whether to allow the filing of service contract amendments pursuant to Part 530 to be delayed up to 30 days after an amendment is agreed to by the contract parties. In order to minimize the filing burden on NVOCCs as well, the Commission is seeking comment on whether it should, similarly, allow amendments to NSAs to be filed up to 30 days after an amendment is agreed to by the parties.

Section 531.5 Duty to file.

The Commission is considering and seeks comment on whether to amend the regulations so NVOCCs, like VOCCs, are aware of the availability of the automated web service process in the filing of NSAs and amendments.

Subpart B – Filing Requirements

Section 531.6 NVOCC Service Arrangements.

Presently the Commission's regulations require that an NSA or amendment be filed on or before the date it becomes effective. If the Commission should later allow up to 30 days for filing NSA amendments, corresponding changes to §531.6 would be made.

Section 531.6(d) Other requirements.

Pursuant to §531.6(d)(4), an NVOCC may not knowingly and willfully enter into an NSA with another NVOCC that is not in compliance with the Commission's tariff and proof of financial responsibility requirements. As discussed more fully under §530.6 above pertaining to service contracts, the industry frequently refers to the Commission's website, www.fmc.gov, to verify whether or not an NVOCC contract holder or affiliate is compliant with these requirements.

As noted previously, many VOCCs include all NVOCCs' 6-digit FMC Organization Number in their service contracts, and Commission staff notes this practice with respect to some NSAs as well. As VOCCs have frequently asked about the FMC's electronic systems' capability to automatically verify whether an NVOCC party named in a service contract or amendment is in compliance with FMC regulations at §530.6, the Commission is considering whether to facilitate this in the SERVCON system in which both service contracts and NSAs are filed. Therefore, the Commission seeks comment on whether NSAs should include the 6-digit FMC Organization Number for each NVOCC party to an NSA including affiliates. If so, comment is sought on the appropriate manner to update SERVCON to allow electronic verification of NVOCC status against the FMC's database of active NVOCCs. For further discussion of the technological changes being considered were this requirement to be implemented, see the more expansive explanation in §530.6 above.

Section 531.6(d)(5) Certification of Shipper Status.

Presently, the NSA regulations do not include a requirement that the NSA shipper certify its status, which is a requirement for shippers under current service contract regulations in Part 530. The Commission seeks comment on whether to make these requirements consistent and uniform for NVOCCs and VOCCs, as both are common carriers, and such certification assists in compliance.

Section 531.8 Amendment, correction, cancellation, and electronic transmission errors.

Under the Commission's regulations, VOCC service contracts and NVOCC service arrangements are both agreements between a common carrier and a shipper for the carriage of cargo. Given these congruencies, the Commission is considering whether changes being proposed by the VOCCs to the correction procedures for service contracts should be handled in a similar manner for NSAs. A complete discussion of the changes requested with respect to service contract amendment, correction, cancellation, and electronic transmission errors is included in §530.10 above.

Subpart C – Publication of Essential Terms

Section 531.9 Publication

In NCBFAA's comments regarding the Commission's Retrospective Review Plan, NCBFAA requested that the Commission consider whether the essential term tariff publication requirements are necessary.

Subpart D – Exceptions and Implementation

Section 531.10 Excepted and exempted commodities.

For consistency, the Commission is seeking comment on whether to treat VOCC service contracts and NVOCC service arrangements similarly with respect to exempted commodities. The

Commission is requesting comment on whether it should add to this Part additional commodity exemptions approved by the Commission in §530.13.

Section 531.11 Implementation.

Proposed changes regarding the effective date of service contract amendments are under consideration by the Commission. If the Commission determines to make such changes to Part 530 (Service Contracts), it will consider whether to revise similar requirements for NSA amendments in Part 531 (NVOCC Service Arrangements), which would include §531.11.

Regulatory Notices and Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 USC. 601 *et. seq.*, requires an agency to review regulations to assess their impact on small entities and prepare an initial regulatory flexibility analysis (IRFA), unless the agency head determines that the regulatory action will not have a significant impact on a substantial number of small entities. The Commission does not believe the proposed changes in this ANPRM would have a significant impact on a substantial number of small entities, but invites comments to facilitate the assessment of the potential impact of a rule implementing any of the proposals in this ANPRM.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is no information collection requirement associated with this ANPRM.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda).

The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at:

<http://www.reginfo.gov/public/do/eAgendaMain>.

By the Commission.

Karen V. Gregory
Secretary