

**BEFORE THE
FEDERAL MARITIME COMMISSION**

**SERVICE CONTRACTS AND
NVOCC SERVICE ARRANGEMENTS**

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**DOCKET NO.
16-05**

**COMMENTS OF CROWLEY LATIN AMERICA SERVICES, LLC
AND CROWLEY CARIBBEAN SERVICES, LLC**

Crowley Latin America Services, LLC and Crowley Caribbean Services, LLC (jointly, "Crowley") hereby submit their comments in response to the Federal Maritime Commission's Advance Notice of Proposed Rulemaking in the above-captioned proceeding, 81 *Fed. Reg.* 10198 (February 29, 2016) (the "ANPRM").

I.

Interest of Crowley

Crowley is an ocean common carrier in the foreign commerce of the United States that enters into thousands of service contracts and an even larger number of service contract amendments each year. As such, it is directly and substantially affected by the proposals contained in the ANPRM.

Crowley is a member of the World Shipping Council, which is also filing comments in this docket. Crowley joins in and supports the comments of the World Shipping Council, but is submitting separate comments to emphasize its support for many of the proposals on which the Federal Maritime Commission ("FMC" or "Commission") seeks comment.

II.

Substantive Comments

As noted above, Crowley generally supports the proposals contained in the ANPRM. The reasons for Crowley's position are set forth below.

A. Filing of Service Contract Amendments

Crowley enthusiastically supports the proposal to allow amendments to service contracts to be filed up to 30 days after the terms of the amendment are agreed upon with the shipper or the cargo is received from the shipper, whichever is earlier.

Crowley met with the Commission staff after the filing of ocean carrier comments on May 18, 2012 to explain the extent to which the requirement that service contract amendments be on file prior to receipt of the cargo constitutes a burden on carriers, as well as the considerable burden that results from having to resolve situations in which the cargo is received before such a filing is made. Crowley provided the Commission staff with data on the burden associated with service contract filing as part of the Commission's informal review of the existing regulations.

The resources required to file service contract amendments prior to receipt of the cargo covered by such amendment is real and significant. The problems presented when cargo is received prior to the filing of the applicable amendment are also real and considerable. Allowing contract amendments to be filed within 30 days after agreement is reached on the amendment or receipt of the cargo would significantly reduce these burdens.

Crowley notes that Executive Order 13563 calls for agencies to streamline, expand or repeal regulations so as to make regulatory programs more effective and

less burdensome. Crowley believes allowing this 30-day filing window is one of the most meaningful changes the FMC could make to reduce the burden of its service contract filing requirements.

The appropriateness of this relief is demonstrated by the fact that the Shipping Act itself does not require filing of service contract amendments prior to cargo receipt. See 46 U.S.C. §40502. The statute merely requires that service contracts be filed; the requirement that amendments be filed prior to cargo receipt is a requirement imposed by Commission regulations.

Even if the deadline for filing service contract amendments were statutory, the ANRPM's proposal would meet the criteria for an administrative exemption under 46 U.S.C. §40103, in that it would not result in a substantial reduction in competition or be detrimental to commerce. In this regard, since service contracts and amendments are filed confidentially, and altering the timing of filing would have no impact on competition. Moreover, altering the timing of filing would have no detrimental impact on commerce.

Given that the proposal would have no detrimental impact on competition, commerce or the Commission's ability to carry out its regulatory functions (since it would still be receiving all of the information it currently receives, just on a different timeline), and would reduce the burden on the industry, Crowley urges that it be adopted.

Insofar as the Commission's question on the filing procedure is concerned, Crowley believes the concern is overstated. At present, many service contract amendments filed with the Commission make more than one change to the service

contract. If the proposal is adopted, an amendment which makes several changes that are all effective on the same date would be filed in the same manner as amendments are at present. When an amendment makes multiple changes that were effective on different dates, Crowley envisions that the amendment itself would reflect the effective date of each change, thereby avoiding any need to alter the Commission's SERVCON filing system. However, Crowley would be open to alternative filing approaches, provided that any approach eventually adopted minimizes the burden on the industry.

B. Service Contract Corrections

Crowley supports the extension of the time to file a service contract correction request from 45 days to 180 days (which is the amount of time allowing for the filing of special docket applications under 46 U.S.C. §40503). It also supports the extension of time to make a technical correction to an error in a service contract resulting from a data transmission problem from 48 hours to 30 days.

Where the parties to a service contract have made an error in the preparation or filing of the document, the applicable regulatory system should not frustrate the ability of the parties to implement the contract terms upon which they originally agrees. Both of these proposals would remove regulatory hurdles which can frustrate the ability of service contract parties to implement their commercial agreement.

C. Exempt Commodities

While Crowley supports the expansion of the list of exempt commodities as proposed in the ANPRM, it recommends that the Commission go further and exempt shipments of fruits, vegetables and other agricultural products as well. These commodities are, like the existing exempt commodities, subject to transport by bulk or

reefer operators that, in many cases, are not subject to FMC regulation. Exempting these agricultural commodities would benefit both U.S. importers and exporters.

D. NVOCC Contract Parties

Crowley would support modifications to the SERVCON system that facilitate verification of a service contract signatory's NVOCC status by inputting the signatory's FMC-assigned, six-digit Organization Number. Crowley would oppose any requirement to imbed the Org. No. in the service contract metadata, or any change to SERVCON that would require service contract filers to input an Org. No. but did not provide immediate and definitive feedback on the status of the contract signatory.

E. Definition of "Affiliate"

Crowley reiterates the comments of the World Shipping Council with respect to this issue.

III.

Conclusion

Crowley urges the Commission to adopt the proposals set forth in the ANPRM in accordance with the foregoing comments.

Respectfully submitted,



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Vice President & Chief Counsel

March 25, 2016