



WORLD SHIPPING COUNCIL
PARTNERS IN TRADE

Comments of the

World Shipping Council

Submitted to the

Federal Maritime Commission

In the Matter of

Service Contracts and NVOCC Service Arrangements; Advance Notice of Proposed Rulemaking

Docket No. 16-05

March 30, 2016

The World Shipping Council (“WSC” or “the Council”) files these comments in response to the Advance Notice of Proposed Rulemaking (“ANPRM”) published in the above-referenced docket on February 29, 2016 (81 Fed. Reg. 10198). The Council has addressed the issue of regulatory relief with respect to filing service contract amendments twice in recent years. Our position with respect to this issue remains the same.

On August 26, 2013, WSC filed comments on the Commission’s Initial Draft Strategic Plan for FY 2014-2018. In that filing, WSC requested that the Commission revise its regulations to allow service contract amendments to become effective upon agreement by the parties, with filing to be completed within a specified period following the parties’ agreement on the amendment. WSC proposed a filing period of at least 30 days following commercial agreement. Those comments supported amendments to the Commission’s regulations to provide additional flexibility in correcting clerical errors and making corrections to contract filings, and supported expanding the list of exempt commodities. WSC incorporates its August 26, 2013 comments by reference in this docket (copy attached for ease of reference).

On June 5, 2015, in response to Petition P2-15, WSC again addressed the issue of regulatory relief for filing service contract amendments (pages 5-8), and requested that service contract amendments go into effect upon agreement by the parties, with filing to follow within a prescribed time thereafter. Those comments, attached, are also incorporated herein by reference.

As noted in more detail below, the Council supports the Commission’s proposals in the ANPRM to: (1) allow a service contract amendment to be filed up to 30 days after an amendment is agreed upon by the parties; (2) add flexibility and extend the time periods for service contract corrections and for filing a “corrected transmission”; and (3) expand the list of exempt commodities. We also address the Commission’s questions regarding the definition of “affiliate” and the inclusion of NVOCC Organization Numbers in service contracts.

A. Service Contract Amendment Filing

The ANPRM seeks comment on a proposal to allow service contract amendments to be filed up to 30 days following the parties’ agreement to the amendment. For the reasons stated in earlier WSC comments and as summarized below, the Council urges the Commission to promptly propose and adopt a final rule to implement this change.

The primary reason for the Commission to amend its regulations to allow the filing of service contract amendments within 30 days of their agreement is to remove a regulatory obstacle to the timely implementation of commercial terms to which the shipper and the

carrier have agreed. Over half a million service contract amendments are filed with the Commission each year, representing a substantial flow of documentation. The volume of that document flow is not even throughout the year, and especially in periods of peak activity the requirement to file an amendment before the parties may implement it can create situations in which implementation of the commercial agreement of the parties is delayed. A 30-day period for filing service contract amendments would solve that problem without affecting the Commission's access to amendments.

The Commission voted in early 2013 to initiate a review of service contract filing requirements, and the Commission has received multiple rounds of comments and discussed the issue several times in its public meetings in the intervening years. The Council respectfully submits that the record is complete, and that it is time to move promptly to proposal and adoption of a final rule that amends the Commission's regulations to allow the filing of service contract amendments to be made within 30 days of the parties' agreement to the amendment, with the amendment to become effective as soon as the parties agree to its terms.

On the issue of whether the Commission should allow multiple service contract amendments to be filed in a single document, such a process would provide the greatest relief and would potentially be the most efficient. Based on the discussion in the ANPRM, however, it appears that there may be substantial SERVCON re-programming requirements associated with such functionality. Absent such re-programming, the Commission has suggested that filing multiple amendments in a single document may require substantial manual data input by carriers.

To be clear, the primary focus should be on providing a 30-day period in which to file service contract amendments. If there is a way to accommodate multiple amendments in a single document, that would be ideal. However, if creating the ability to file multiple amendments in a single document would require a cumbersome manual process, then such a process would not be attractive. This is a topic on which it would be useful to obtain more technical information from Commission staff in order for carriers to better understand the trade-offs and system limitations.

B. Flexibility for Correcting Service Contract Filings

The Commission seeks comment on possible amendments to two processes for correcting errors in service contract filings.

The Commission's first proposal is to extend the period for filing a "Corrected Transmission" under 46 C.F.R. §530.10(d) from forty-eight (48) hours to thirty (30) days. As the

Commission suggests, the 30-day period is more realistic, and extending the filing period would enhance the accuracy of filed service contract information without affecting regulatory purposes. The Council supports this proposed change.

The Commission's second proposal is to extend the period for filing a service contract correction from forty-five (45) to one hundred eighty (180) days. As the ANPRM points out at page 10202, the nature of some services, in conjunction with the time involved in the issuance of an invoice by a carrier and the review of that invoice by a shipper (the process through which errors are most likely to be discovered) makes the existing 45-day period inadequate in many circumstances. The Commission's service contract regulations should support the parties' interests in having their commercial agreements implemented, and allowing additional time to discover and correct mistakes would further that purpose and reduce disputes. Therefore, the Council supports the Commission's proposal to extend the period for filing service contract correction requests from forty-five to one hundred eighty days.

C. Exempt Commodities

In comments filed in 2012, several groups of ocean carriers requested that the Commission expand the list of exempt commodities to include commodities that are similar in nature to the commodities that are currently exempt under the Shipping Act and the Commission's regulations. WSC supported that request in its comments filed on August 26, 2013 on the Commission's Initial Draft Strategic Plan for FY 2014-2018. The basis for this proposal is that the commodities for which exempt status is requested may be moved in bulk or by tramp vessels, and that the exemption would provide flexibility that would increase competition for these cargoes. The Council continues to support adding the following to the exempt commodities list: grain, soybeans, meal, flour, corn products, cotton, resins, coffee, animal feed, seeds, food additives, clay, hay, hides, and plastic scrap.

D. Definition of "Affiliate"

The Commission proposes to define the term "affiliate" as used in its service contract regulations. The proposed definition is consistent with definitions that are often included in service contracts (either directly or through incorporation of tariff definitions). Therefore, WSC has no objection to adoption of the proposed definition. However, the Council does ask the Commission, when it publishes its Notice of Proposed Rulemaking, to clarify that adoption of a definition of "affiliate" does not preclude more specific definitions of that term in service contracts or tariffs, so long as those more specific definitions fall within the scope of the

Commission's definition. For example (and perhaps the only example), we would not expect a Commission objection if a service contract included in its definition of "affiliate" a minimum level of common ownership between two shipper entities before they would be considered "affiliates." Such a term would be within the subject matter that one would expect to be covered by commercial negotiation, and its inclusion would be consistent with both the language and the purpose of the Commission's proposed definition.

E. NVOCC Status of Contract Parties

On the issue of possible changes to the Commission's SERVCON system to automatically verify the regulatory compliance of NVOCC service contract parties, it would be useful to have a better idea of how the system would work. For example, if a VOCC could simply add the Organization Number of an NVOCC service contract party into a specified field in SERVCON, and the system would then generate either a "green light" or "red light" response, then such a system would have the potential to simplify compliance and reduce costs. However, as seems to be the case with another option identified in the ANPRM, if parties would have to structure their service contracts in a rigid fashion in order for a re-configured SERVCON to be able to pull "metadata" that could be checked against the NVOCC database, then the disadvantages of such a system would outweigh any advantages. Simplicity, efficiency, and automation should be the criteria against which any such changes are evaluated.

F. Conclusion

The World Shipping Council appreciates the opportunity to file these comments, and urges the Commission to move expeditiously to propose and adopt a final rule implementing the more flexible service contract correction and service contract amendment filing processes proposed in the ANPRM.