Comments of the

World Shipping Council

Submitted to the

Federal Maritime Commission

In the Matter of

Service Contracts and NVOCC Service Arrangements; Notice of Proposed Rulemaking

Docket No. 16-05

September 23, 2016
The World Shipping Council ("WSC" or "the Council") files these comments in response to the Notice of Proposed Rulemaking ("NPRM") published in the above-referenced docket on August 22, 2016 (81 Fed. Reg. 56559). The Council has addressed the issue of regulatory relief with respect to filing service contract amendments three times in recent years. WSC continues to support changes to the Commission’s regulations to make service contract amendment filing and service contract corrections more flexible.

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. 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. Finally, in response to the Commission’s Advance Notice of Proposed Rulemaking (ANPRM) in this docket, WSC filed comments on March 30, 2016. WSC incorporates and adopts by reference those earlier comments.

As stated in its earlier comments, the Council supports the Commission’s proposals in the NPRM to: (1) allow a service contract amendment to be filed up to 30 days after an amendment is agreed upon by the parties; (2) extend from 48 hours to 30 days the time for correcting electronic transmission errors for service contract and amendment filings; and (3) extend from 45 to 180 days the period for filing a request for a service contract correction.

WSC also does not object to the inclusion of the proposed definition of the term “affiliate” in the context of the Commission’s service contract regulations. Finally, the Council supports the adoption of an alternative procedure under which carriers may fulfill their obligation to confirm NVOCC regulatory status by entering an NVOCC’s six-digit organization number in a service contract filed through the Commission’s SERVCON system.

The Council’s detailed comments on the NPRM follow.
A. Service Contract Amendment Filing

1. The Commission Should Adopt Its Proposal to Allow Service Contract Amendments to be Filed within Thirty Days of their Agreement by the Parties.

The Commission’s proposal to allow service contract amendments to be filed within 30 days of commercial effectiveness of the amendment has been thoroughly debated, and the unanimous view from shippers and carriers is that such a change will improve the efficiency and flexibility of commercial relationships, thereby furthering the Shipping Act’s purpose to “establish a nondiscriminatory regulatory process . . . with a minimum of government intervention and regulatory costs. . . .” 46 U.S.C. § 40101(1).

The only objection to this no-risk/high-reward regulatory change comes from Global Maritime Transportation Services, Inc. (GMTS). The GMTS objection (see NPRM at 56561) essentially amounts to a suggestion that commercial parties cannot manage their regulatory obligations in a context in which they file service contract amendments after those amendments become commercially effective. The concern is without merit. Both carriers and shippers have every incentive to manage their service contract documentation carefully, from both a regulatory and a commercial perspective. There is no factual or logical basis to expect that the modest flexibility measures proposed in the NPRM will have any effect on regulatory compliance. In contrast, it is clear that the increased flexibility will benefit both shippers and carriers by making the service contract amendment process more consistent with commercial practices. The balance clearly favors implementing the change as proposed.

2. The Commission Should Not Pursue a Multiple Amendment Programming Change that would Add Filing Complexity.

On the issue of whether the Commission should allow multiple service contract amendments to be filed in a single document, WSC appreciates the additional discussion in the NPRM regarding the SERVCON programming complications that would accompany such an approach (NPRM at 56564). In light of the programming changes that would be required in SERVCON (and the possible programming requirements that might be required by carriers), WSC at this stage accepts the Commission’s proposal not to change the SERVCON system to accept multiple amendments in a single document. Simplicity, not additional complexity, should be the guiding principle.

If it becomes possible for the Commission to process multiple amendments in a single document, then the Commission should accept such filings when the capability becomes available.
B. Flexibility for Correcting Service Contract Filings

WSC supports the Commission’s proposals to: (1) extend the period for filing a “Corrected Transmission” from forty-eight (48) hours to thirty (30) days; and (2) extend the period for filing a service contract correction from forty-five (45) to one hundred eighty (180) days. As the NPRM points out at pages 56564-65, Commission staff has confirmed that errors are sometimes not discovered until after the expiration of the current deadlines for making corrections. The additional time proposed in the NPRM will further contract parties’ interests in having their commercial agreements implemented, a result that is consistent with the Shipping Act’s purpose of “placing a greater reliance on the marketplace.” 46 U.S.C. § 40101(4).

C. NVOCC Status of Contract Parties

In its comments on the ANPRM issued in this docket, WSC requested more detail on how the addition of a dedicated field in SERVCON for NVOCC organization numbers would operate in terms of communicating status information back to the filing carrier. Our understanding based on the discussion in the NPRM (pages 56562-63) is that the Commission’s SERVCON system would automatically verify the regulatory compliance of NVOCC service contract parties whose organization numbers are included in that dedicated field, and that the system would notify the filer in the case of any NVOCC non-compliance. WSC also understands that carriers could continue to rely upon existing compliance procedures outside of SERVCON if they so choose. With those understandings, WSC supports the addition of a dedicated NVOCC organization number field in SERVCON, coupled to a functionality through which SERVCON would notify the filer of any NVOCC non-compliance.

D. Conclusion

The World Shipping Council appreciates the opportunity to file these comments, and urges the Commission to move expeditiously to adopt a final rule implementing the more flexible service contract correction and service contract amendment filing processes proposed in the NPRM. The proposed changes will bring ocean service contract regulatory processes more in line with commercial practices, and will do so in a manner that does not affect the Commission’s ability to carry out its regulatory duties.

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