January 29, 2018

Federal Maritime Commission (FMC)
Attn: Rachel E. Dickson, Assistant Secretary
800 North Capitol Street NW
Washington, DC  20573-0001

Re: Docket 17-10, Comments on Proposed NSA/NRA Regulations

BACKGROUND

Dart Maritime Service is a tariff publishing vendor serving approximately 330+ registered OTIs and a small number of Vessel Operators and a Marine Terminal Operator. Personally, I have been on the regulatory side of this industry since 1983, involved in all the major changes and amendments (Shipping Act of 1984; ATFI and Ocean Shipping Reform Act of 1998) and tariff automation initiatives over the last 30+ years. As a vendor, we work not only with entities subject to FMC oversight, but individuals, small companies, 3rd party logistic providers, trade consultants and members of the legal profession representing various interests in the maritime trade. Consequently, I believe we have a very unique and balanced prospective in regard to the effects of potential future amendments to the existing regulations. While I understand and agree with some of the proposed comments to date, I believe, at the expense of sounding self-serving, that they are one-sided and reflect many of the circulated talking points of “complicated”, “unnecessary”, “burdensome” and “expensive” and do not fully represent all the interests in the industry, some who do not have a voice.

PUBLIC TRANSPARENCY AND THE COMMISSION’S ROLE

Part of the FMC’s mission statement is to “protect the public from unfair and deceptive practices”. This should be the main thought in driving these discussions and the primary guiding principle moving forward in reviewing the effects of any regulation.

As a small business owner, I applaud and support any attempt to adjust or remove any cumbersome regulation, but I have never met anyone who likes to comply with ANY regulation, EVER! When bonding and licensing was included for NVOCCs, I remember hearing the complaints of “unnecessary”, “burdensome” and “expensive”, but the industry became better for it, weeding out many unqualified companies and individuals. When the ATFI program was started to eliminate paper filings, I heard those words - “unnecessary”,...
“burdensome” and “expensive”. When ATFI was later shuttered and Carriers were allowed to host their own tariff information instead of having to secure or develop proprietary compliance software, the same phrase was echoed again, “unnecessary”, “burdensome” and “expensive”, but this time “complicated” was added to the mix. The issue here has never been regulatory compliance and its perceived burdens, but rather the removal of any regulation for the sake of the expense to comply. I submit this is not accordance with the mission statement of the FMC in regard to the public interest, which are the ones that may be adversely affected.

The FMC mission statement additionally describes how it helps to “resolve disputes” and handles “investigating and ruling on complaints regarding rates, charges, classifications”, etc., including “holding regulated entities accountable for mislabeling cargo”. I have personally referred a number of individuals and companies to the “Office of Consumer Affairs & Dispute Resolution Services” over the years. Although anecdotal, these referrals came because I was contacted by individuals who “knew I was in the trade business” and asked for help in solving a problem with a Forwarder, NVOCC or Carrier. They were completely unaware of the existence of the FMC or even the taxpayer funded services they offer. Even more, many were surprised when they received assistance and were glad there was an agency to call. The regulations are there to protect those people as well, the ones that don’t know where to turn and need assistance for their small, but personally important international shipment and the discussion of any removal of these protections, regardless of how potentially small or commercially insignificant should include these interests in maintaining the FMC’s role as neutral arbiter.

NSAs

While many are calling for the removal of the NSA regulations, I agreed with the comments for its continued inclusion and usage, while pointing out the obvious that this instrument is OPTIONAL. It only effects the shippers and OTIs that choose to utilize them.

For most small OTIs, NRAs solve the problem. However, there are sophisticated shippers that may want more assurances and services that what can be included in a NRA or Tariff filing and they should have this option. While the Commission may ultimately decide to waive the publication restrictions of the Essential Terms (but only if extended to VOCC Service Contracts as well), I do not think it should abandon the SERVCON system or stop in the requirement to submit Service Contracts and NSAs. The FMC has always been the neutral “referee” in trade disputes and the continued collection of this information is critical to that role, especially since the “cost” of compliance is no more than that of sending an email and poses no economic “burden” and assures independence from protective commercial interests.
NRAs

In regard to NRAs, let me point out again the obvious fact that these are NOT required to be utilized, published or filed ANYWHERE. I read several posted comments that asked to be relieved of NRA publication requirements. Noting that NRAs are not published, have never been published and aren’t required to do so, I view this again as nothing more than a circulated talking point. Not having a “dog in this fight”, I do believe limited ability to amend would be helpful. For my customers that utilize NRAs, being locked into an agreement is restrictive. My only caution would be that NRA amendments are clearly denoted with an amendment number and date or time stamp and that a written response of the accepted amendment version is received prior to acceptance of the cargo.

Regarding allowing a “booking” to serve as acceptance of a NRA, I have been involved in assisting in a number of audits on my customers performed by the FMC’s Bureau of Enforcement (BOE) and have done my share of refund requests via Special Docket over the years. The regular occurrence of “human error” is always present and the main cause for many issues of accidental non-compliance. At the very least, a booking would have to be supported by a written acceptance of the NRA, contain the NRA number and specifically refer to the appropriate amendment number. If not, issues will arise with parties working on different “versions”, only to find out later the final costs were not all specifically agreed to as supported by the many comments who noted the fluid and changing conditions of ocean shipments. Things can change hourly in some cases and the requirement of written acceptance and specific language compelling the NRA number and subsequent amendment number should be included to avoid confusion and needless disputes that could end up in court.

Finally, I do not feel completely qualified to comment on what additional terms should be allowed to be included in the NRA, but I believe there should be a clear demarcation of what can be included when compared to the NSA. There is no need to cross into this area by making the terms and conditions conflicting. Both can equally coexist and should be allowed to remain as viable instruments for use by the OTI in support of the shipping needs of its customer.

Respectfully submitted.

Willie Jefferson
President
Dart Maritime Service