BEFORE THE
FEDERAL MARITIME COMMISSION

Comments on Notice of Proposed Rulemaking regarding
Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements
and NVOCC Service Arrangements

NON-CONFIDENTIAL

January 29, 2018

I. Introductory Comments on the FMC’s Notice of Proposed Rulemaking

Livingston International, Inc. (“Livingston” or the “Company”) hereby submits the following comments to the Federal Maritime Commission (“FMC” or “Commission”) in response to the publication of the Commission’s Notice of Proposed Rulemaking regarding Amendments to Regulations Governing Negotiated Rate Arrangements and NVOCC Service Arrangements (“Notice of Proposed Rulemaking” or “NPR”), published in the Federal Register at 82 Fed. Reg. 56,781 (November 30, 2017). Livingston strongly supports the efforts of the Commission to identify regulations governing Negotiated Rate Arrangements (“NRAs”) and NVOCC Service Arrangements (“NSAs”) that it would be appropriate to reform or eliminate.¹

Livingston is full service logistics company, headquartered in Chicago, Illinois. Livingston’s services include, but are not limited to, ocean transportation services and premier customs brokerage services. Livingston is a licensed non-vessel-operating common carrier

Livingston operates pursuant to FMC Ocean Transportation Intermediary License No. 021216. The Company provides NVOCC and other port-to-port, intermodal transportation, and related logistics services, to/from the United States and various points and ports throughout the world. As an NVOCC, Livingston does not own or operate vessels. Additionally, Livingston does not own any product shipped on its customers’ behalf; rather, as an NVOCC, Livingston’s involvement is limited to arranging the shipment of product on behalf of its customers.

Livingston submits the comments below in accordance with the Commission’s request for the submission of written comments by interested parties on this important issue. Given the Company’s reliance on both NSAs and NRAs to conduct its NVOCC business operations, as well as, the Company’s long experience in working with countless shippers and NVOCCs to facilitate, in particular, US-Canadian trade, Livingston brings a critical and unique perspective in response to the Commission’s request for comments.

II. Support for Reforming NRA Regulations at 46 C.F.R. Part 532

A. The proposals for reform of NRAs regulations are a welcome sign of progress, but should be followed by additional deregulation and flexibility for NRAs.

FMC regulations at 46 C.F.R. Part 532 generally provide for the use of NRAs by NVOCCs, and outline the requirements imposed by the Commission on and for their use. The expressed purpose of the NRA regulations is to exempt NVOCCs from the tariff rate publication and adherence requirements of the Shipping Act of 1984, as amended. See 46 C.F.R. § 532.1 (Purpose). This in turn increases the flexibility and agility not only of NVOCCs but also of
shippers as the two coordinate in the highly competitive international marketplace for ocean transportation services.

Livingston fully supports the proposal, presented by NCBFAA in the original petition (P2-15) filed with the Commission on April 16, 2016 and proposed by the Commission in its NPR, to eliminate 46 C.F.R. § 532.5(e) and to expand the NRA exemption in 46 CFR Part 532 to allow for modification of NRAs at any time upon mutual agreement between an NVOCC and a shipper. This increased flexibility would allow these key players in the market for shipping services to respond more quickly to the competitive and dynamic market conditions in the industry. As the FMC itself has noted in the NPR, an NVOCC and its customer should not be compelled to create a new NRA in every instance simply because the rules do not currently provide for amendment. This additional regulatory obstacle unnecessarily slows down the process to coordinate much-needed transportation services, applying the brakes on cross-border trade.

Livingston also supports the further change proposed by the Commission to modify 46 C.F.R. § 532.5(c) to allow a booking request made pursuant to an NRA to constitute the required shipper acceptance of such NRA. Livingston agrees that this practice more closely corresponds to the manner in which a shipper usually provides acceptance when responding to a written rate quote in practice. Moreover, Livingston believes requiring particular wording on an NRA regarding whether booking constitutes acceptance adds regulatory burden instead of removing it. Livingston understands that it may be necessary for notice to be provided to shippers regarding
NRA acceptance procedures, but respectfully asserts that a more straightforward approach would be for the Commission to require such notice without dictating any specific wording.

Despite the real signs of progress that Livingston acknowledges are demonstrated by this NPR, Livingston believes that the steps proposed by the FMC should be followed by additional deregulation and further flexibility for usage of NRAs.

III. Support for Eliminating or Reforming NSA Regulations at 46 C.F.R. Part 531

A. The filing and publication requirements in Part 531 should be eliminated, as they pose an unnecessary burden on NVOCCs and shippers.

FMC regulations at 46 C.F.R. Part 531 generally provide for the use of NSAs by NVOCCs. The expressed purpose of the NSA regulations is facilitate the filing of NSAs and the publication of certain essential terms of those NSAs as a means to exempt NVOCCs from the tariff rate publication and adherence requirements that would be otherwise applicable under the Shipping Act of 1984. See 46 C.F.R. § 532.1 (Purpose).

Livingston respectfully asserts that NSAs regulated by 46 C.F.R. Part 531 have filing and publication requirements that render NSAs unnecessarily burdensome and time consuming for NVOCCs and shippers to use effectively. Nevertheless, it is Livingston’s position that an NSA can serve as a useful tool to facilitate ocean transportation services for certain customers. In particular, an NSA can provide a meaningful commitment of cargo from a shipper over a longer and specified period of time, and can be amended repeatedly to provide some ability to adjust to market conditions. Furthermore, an NSA can be made subject to charges published by an NVOCC in its tariff. Given the benefits provided by NSAs, their usage may make sense for
certain longer term arrangements, despite the regulatory requirements that currently burden their usage. Therefore, Livingston respectfully asserts that the most appropriate approach for the Commission to take is to amend the regulations authorizing and governing NSAs in order to make them more flexible. This would ensure that NSAs continue to be an option for shippers and NVOCCs but with reduced regulatory burden.

To that end, Livingston supports the Commission’s proposals to eliminate the filing and essential terms publication requirements for NSAs. The proposed reform would substantially improve the NSA process and is fully in line with the Commission’s recently announced Regulatory Reform Initiative, which supports reform intended to reduce unnecessary regulatory burdens.

IV. Conclusion

In conclusion, Livingston supports the FMC’s efforts to amend the regulations governing NRAs in order to make them more flexible and useful for NVOCCs and shippers. Livingston believes that these amendments will facilitate trade and create greater flexibility for key players in the shipping industry, while at the same time maintaining the capacity for the FMC to have oversight of the industry. These proposed changes to the NRA regulations would help to ensure that NVOCCs and shippers remain competitive in the global market, and should be followed by further deregulation and regulatory reform. Livingston reiterates that the regulatory burdens associated with NSAs are unduly time-consuming and too costly for most NVOCCs. Livingston agrees that the NSA filing and essential terms publication requirements should be eliminated.
Livingston appreciates the opportunity to provide the FMC with its thoughts and opinions on these regulations. Please do not hesitate to contact the undersigned if the Commission has any questions on these comments.

Respectfully Submitted,

[Signature]

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