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

Shipco Transport Inc. ("Shipco" 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 NVOCC 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). Shipco 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

Shipco is a non-vessel-operating common carrier ("NVOCC") formed under the laws of the state of New Jersey. Shipco operates pursuant to FMC Ocean Transportation Intermediary License No. 008352N. The Company provides, among other things, intermodal Less-than

Container Loads (LCL), Full Container Loads (FCL), and airfreight services. It also offers Sti-Online, a package of web e-commerce tools to provide various rate engines, quote requests, reports/statistics, shipment documentation, and cargo management functions for Shipco customers, agents, and vendors. The Company also provides EDI/integration packages for clients and agents. Given Shipco’s business lines, the Company has a strong interest in the Notice of Proposed Rulemaking.

Shipco submits the comments below in accordance with the Commission’s request for the submission of written comments by interested parties on this important issue.

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 is increases the flexibility and agility of NVOCCs as they engage in the highly competitive international marketplace for ocean transportation services.

Shipco 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 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 its customer (i.e. a shipper). This increased flexibility would allow Shipco and similarly situated NVOCCs 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.

Shipco 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. Shipco agrees that this change would more closely correspond to the manner in which a shipper usually provides acceptance to a written rate quote in practice. Moreover, Shipco does not believe that the Commission should require any particular wording on an NRA regarding whether booking constitutes acceptance. Shipco understands that it may be necessary for notice to be provided to shippers regarding NRA acceptance procedures; nevertheless, Shipco respectfully asserts that a more straightforward approach would be for the Commission to require such notice but not dictate any specific wording. Requiring specific wording would merely raise the risk of noncompliance for NVOCCs without providing any real benefit to shippers.

Despite the real signs of progress that Shipco acknowledges are demonstrated in the NPR, Shipco 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 impose an unnecessary burden on NVOCCs, and should be reformed or eliminated.

FMC regulations at 46 C.F.R. Part 531 generally provide for the use of NVOCC Service Arrangements (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 due to the Shipping Act of 1984. See 46 C.F.R. § 532.1 (Purpose).

It is Shipco’s position that the NSAs regulated by 46 C.F.R. Part 531 have filing and publication requirements which render NSAs far too burdensome and time consuming to merit their regular use by NVOCCs. Due to the formality, burden and cost of these requirements, Shipco rarely, if ever, finds itself in a position to use an NSA as a more appropriate and preferable rate vehicle. Shipco has found that NRAs, while not perfect and having a need for improvement, have additional flexibility that make them a better choice for most NVOCC operations, including its own.

Shipco respectfully asserts that the most appropriate approach for the Commission to take is to eliminate the regulations authorizing and governing NSAs. This approach would be in line with and in furtherance of the Commission’s recently announced Regulatory Reform Initiative. This elimination of NSAs would facilitate the FMC’s capacity to provide additional attention and resources to increase its support for industry use of NRAs.

Nevertheless, in the event that the Commission decides to keep the regulations regarding NSAs, Shipco agrees with the Commission’s position that the NSA filing and essential terms publication requirements should be eliminated.
IV. Conclusion

In conclusion, Shipco supports the FMC’s efforts to amend the regulations governing NRAs in order to make them more flexible and useful for NVOCCs and shippers, while at the same time maintaining their efficacy in providing the transparency, accountability, and oversight needed for a well-functioning ocean transportation industry. The proposed changes to the NRA regulations will help to ensure that US NVOCCs and shippers remain competitive in the global market, and should be followed by further deregulation and regulatory reform. Shipco reiterates that the regulatory burdens associated with NSAs are unduly time-consuming and costly for NVOCCs. Given that the proposed amendments to the NRA regulations, offering greater flexibility and agility to NVOCCs, would essentially render NSAs unnecessary, Shipco supports the elimination of NSA regulations entirely. In the event that the Commission decides to keep these regulations, Shipco agrees that the NSA filing and essential terms publication requirements should be removed.

Shipco 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,

Klaus P. Jepsen
Group CEO
Shipco Transport Inc.