VANGUARD LOGISTICS SERVICES (USA), INC.
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OTI# 017237N

VANGUARD LOGISTICS SERVICES (USA), INC. provides, through its affiliated companies, ocean transportation to and from the United States and throughout the world. Vanguard Logistics Services (USA), Inc. (OTI# 017237N) is the cornerstone U.S. company, serving in its own name or its U.S. trade names Vanguard Logistics Services, Vanguard, Brennan International Transport, Brennan, Conterm Consolidation Services, Conterm, Direct Container Line, DCL, Ocean World Shipping, OWS, Ocean Express and Oceanexpress or as the local agent for the Vanguard Logistics Services (Hong Kong) Limited dba Vanguard Logistics Services dba Vanguard (OTI# 019927) and Vanguard Logistics Services (Japan) Limited dba Vanguard Logistics Services dba Vanguard (OTI# 021711) companies.
Docket 17-10, Comments on Proposed NSA/NRA Regulations

January 26, 2018

To Rachel E. Dickson, Assistant Secretary
Federal Maritime Commission
800 North Capitol Street NW,
Washington, DC 20573-0001
Email: secretary@fmc.gov

We appreciate and applaud the Commission's efforts to reduce the regulatory burden to NVOCCs and their customers.

With respect to NSAs, we agree with the position stated in the NPRM that there is no reason for NVOCCs to have to file NSAs with the Commission or publish their essential terms in tariffs. As a result, assuming the FMC adopts the proposed rule, NVOCCs would no longer be required to file their NSAs with the FMC or publish the essential terms. Instead, to have a valid NSA, one would only need to assign a distinct number to each contract and amendment.

We propose that the Commission end the restriction that precludes NVOCCs from including economic terms other than rates in their negotiated NRAs. Under the current rules, it is not appropriate for NRAs to include minimum volumes, liquidated damages for non-performance, arbitration clauses, surcharges & GRIs, service guarantees, etc. At this point, the Commission has not included this issue in the proposed rule but has specifically invited the shipping public, particularly shippers, to provide comments on how broadening the NRA exemption in this way would be beneficial to their business.
We ask the Commission:

- To allow inclusion of any non-rate economic terms in NRAs (including but not limited to Credit and Payment terms, EDI services, Minimum Quantity Commitments or Time/Volume Rates, Liquidated Damages, Freight Forwarder Compensation, Free Time, Demurrage, Surcharges, GRI s or other pass-through charges from Carriers or Ports, Penalty Provisions, Dispute Resolution, Rate or Service amendments, Service Guarantees and/or Service Benchmarks, Rate Amendment Processes; etc.). Each of these terms are relevant to some extent to rate and service negotiations between an NVOCC and an existing or prospective customer. Yet, none of the items on this list can properly be included in an NRA.
- To allow for NRAs to be made subject to rate changes.
- To permit NRAs to be amended at any time before, upon or after cargo receipt. We request that the FMC remove the significant limitation that precludes NVOCCs from amending NRAs. Under the current regulation, the parties cannot amend any NRA, even if the shipper and NVOCC agree. We believe that this restriction severely limits the use of NRAs.
  - NRAs may require amendment *after* cargo receipt. This applies when an NRA is issued for a specific volume/weight. For example, the NRA is for 2 cbm and the cargo is booked as 2 cbm, but the cargo received is 3 cbm. Currently, this scenario would require a new NRA to be issued, a new booking to be created, and acceptance by the Shipper to be confirmed in writing. This is inefficient and cumbersome.
- To allow the act of booking or tendering cargo to be considered acceptance of a rate under the terms of an NRA or NRA amendment. The act of booking or tendering the cargo should constitute acceptance of an NRA or NRA amendment, provided that the NRA includes "prominent written notice to that effect".
  - As this additional NRA methodology is intended to be optional to the NVOCC and its shipper customers, the requirement that a shipper's agreement to an NRA should otherwise be in writing or by email should not be eliminated.
  - The Commission invites public comment on whether it should require particular wording in order to more prominently give notice to the shippers as to the NVOCC's practice with respect to booking as acceptance of an NRA. We suggest the following: "Your booking and/or tendering of cargo is considered acceptance of the NRA rates and terms that were negotiated with you for the shipment of the cargo."
- To allow NRAs to be extended, expired or cancelled.
- To remove the requirement to provide public access to shippers to NVOCC Rules tariff. Tariffs are not used by shippers.