

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. The proposed rule involves a minor revision that provides administrative relief but does not change the conformity rule's underlying requirements for regional conformity analyses.

**List of Subjects in 40 CFR Part 93**

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: October 4, 2011.

**Lisa P. Jackson,**

*Administrator.*

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**FEDERAL MARITIME COMMISSION**

**46 CFR Parts 530 and 531**

[Docket No. 11-17]

RIN 3072-AC47

**Certainty of Terms of Service Contracts and NVOCC Service Arrangements**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes to amend its rules regarding certainty of terms of service contracts and non-vessel-operating common carrier service arrangements. The proposed rule is intended to provide common carriers and their customers with certainty and flexibility if they decide to use long-term contracts that adjust based on a freight rate index that reflects changes in market conditions.

**DATES:** Comments or suggestions due on or before November 28, 2011.

**ADDRESSES:** Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, Phone: (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** *Submit Comments:* Submit an original and five (5) copies in paper form, and if possible, send a PDF of the document by e-mail to [secretary@fmc.gov](mailto:secretary@fmc.gov). Include in the subject line: Docket No. 11-17, Comments on Certainty of Terms of Service Contracts and NSAs.

**Background**

The Federal Maritime Commission (FMC or Commission) has found that an increasing number of service contracts filed with the Commission reference freight rate indices. These indices include, for example, the China Containerized Freight Index (CCFI), the Shanghai Containerized Freight Index (SCFI), the Drewry Freight Insight Index, and the Transpacific Stabilization Agreement (TSA) Index. The ocean freight rates in these negotiated service contracts adjust in increments based upon the changes in the referenced index levels or their annual or quarterly averages. It appears that some carriers and shippers in the ocean transportation industry are seeking stability through long-term contracts, while trying to preserve flexibility to adjust contract rates reflecting changes in market conditions.

Questions have arisen, however, whether references to these indices in service contracts are consistent with the

Commission's current regulations. The Commission's regulations with respect to terms of service contracts and Non-Vessel-Operating Common Carrier (NVOCC) service arrangements (NSAs) state that the terms, if they are not explicitly contained in the contracts, must be "contained in a publication widely available to the public and well known within the industry." 46 CFR 530.8(c)(2), 531.6(c)(2).

The Commission has received inquiries from the industry as to whether certain freight rate indices meet the Commission's standard, particularly its "widely available to the public" requirement. For example, until August 2011, the TSA index was not available to the public, even though some service contracts referenced TSA index before its publication. In addition, CCFI, SCFI, and Drewry indices make their current index levels available to the public without charge, but access to their historical data requires payment of subscription fees that can reach several thousand dollars per year.

As the Commission began to consider whether these service contracts referencing freight indices comport with its regulation, it decided to do a more fundamental assessment of whether the regulation in its current form is more restrictive than is necessary to protect the shipping public and carry out the purposes of the Shipping Act.

When adopting the rules for "[c]ertainty of terms" of service contracts, the Commission recognized that through the Ocean Shipping Reform Act of 1998, Congress intended, by lifting the requirements that tariffs be filed with the Commission, to allow parties to service contracts more freedom and flexibility in their commercial arrangements. *See* 63 FR 71062, 71066 (Dec. 23, 1998). More recently, the President has directed federal agencies to review their regulations and to reduce burdens and promote flexibility where appropriate. *See* Exec. Order 13563, 76 FR 3821 (Jan. 21, 2011); Exec. Order 13579, 76 FR 41587 (Jul. 14, 2011).

**Proposed Change**

Consistent with Congressional intent and the President's directives in Executive Orders 13563 and 13579, the Commission seeks to revise its regulations so that they are not unnecessarily burdensome and do not impede innovation and flexibility in commercial arrangements, while ensuring continued compliance with the Shipping Act's requirements.

The proposed change would facilitate references to indices in service contracts and NSAs so that contracting parties can

pursue long-term contracts with rates that adjust through an agreed and ascertainable manner. The change will also ensure compliance with two important Shipping Act requirements. First, the Shipping Act requires that a service contract be a "written contract," in which the ocean carrier "commits to a certain rate or rate schedule." 46 U.S.C. 40102(20). In order for a rate or rate schedule to be "certain" in a valid contract that is the product of a meeting of the minds, the rate should be known or easily ascertainable to the contracting parties.

Second, the Shipping Act requires service contracts to be "filed" with the Commission. 46 U.S.C. 40502(b). The Commission believes that both the language and purpose of the Shipping Act's filing requirement would be undermined if contracting parties were permitted to include in service contracts references to unfiled terms, in this case important rate terms, which are not readily available to the Commission. The Commission is especially interested in public comments on the possible methods by which contracting parties could ensure that the information referred to in service contracts is readily available to the Commission. The Commission is also interested in public comments on ways to reduce any impediments to small shippers having the option of index-linked service contracts.

The Commission also proposes the same change to the rule for NSAs, which are NVOCCs' contracts with their shippers and analogous to ocean common carriers' service contracts with their shippers.

#### Certifications

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule simply provides parties to service contracts and NVOCC service arrangements more freedom and flexibility in their commercial arrangements and will not adversely affect contracting parties.

This rule is not a "major rule" under 5 U.S.C. 804(2).

#### List of Subjects in 46 CFR Parts 530 and 531

Freight, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission proposes to

amend 46 CFR parts 530 and 531 as follows.

#### PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

**Authority:** 5 U.S.C. 553; 46 U.S.C. 305, 40301–40306, 40501–40503, 41307.

2. Revise § 530.8(c)(2) to read as follows:

##### § 530.8 Service contracts.

\* \* \* \* \*

(c) \* \* \*

(2) Make reference to terms not explicitly contained in the service contract itself unless those terms are readily available to the parties and the Commission.

\* \* \* \* \*

#### PART 531—NVOCC SERVICE ARRANGEMENTS

3. The authority citation for Part 531 continues to read as follows:

**Authority:** 46 U.S.C. 40103.

4. Revise § 531.6(c)(2) to read as follows:

##### § 531.6 NVOCC Service Arrangements.

\* \* \* \* \*

(c) \* \* \*

(2) Make reference to terms not explicitly contained in the NSA itself unless those terms are readily available to the parties and the Commission. Reference may not be made to a tariff of a common carrier other than the NVOCC acting as carrier party to the NSA.

\* \* \* \* \*

By the Commission.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–26418 Filed 10–12–11; 8:45 am]

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#### DEPARTMENT OF TRANSPORTATION

#### Surface Transportation Board

#### 49 CFR Part 1241

[Docket No. EP 706]

#### Reporting Requirements for Positive Train Control Expenses and Investments

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board proposes to amend its rules to require rail carriers that submit to the Board "R-1" reports that identify information on capital and

operating expenditures for Positive Train Control (PTC) to break out those expenses so that they can be viewed both as component parts of and separately from other capital investments and expenses. PTC is an automated system designed to prevent train-to-train collisions and other accidents. Rail carriers with traffic routes that carry passengers and/or hazardous toxic-by-inhalation (TIH) or poisonous-by-inhalation (PIH) materials, as so designated under federal law, must implement PTC pursuant to federal legislation. We propose to adopt supplemental schedules to the R-1 to require financial disclosure with respect to PTC to help inform the Board and the public about the specific costs attributable to PTC implementation.

**DATES:** Comments on this proposal are due by December 12, 2011. Replies are due by January 11, 2012.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 706, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments received by the Board will be posted to the Board's Web site at <http://www.stb.dot.gov> and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC. Copies of the comments will also be available by contacting the Board's Chief Records Officer at (202) 245–0236 or 395 E Street, SW., Washington, DC. 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Paul Aguiar, (202) 245–0323. Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** As authorized by 49 U.S.C. 11145, the Board requires large (Class I)<sup>1</sup> rail carriers to submit annual reports,

<sup>1</sup> The Board designates 3 classes of freight railroads based upon their operating revenues, for 3 consecutive years, in 1991 dollars, using the following scale: Class I—\$250 million or more; Class II—less than \$250 million but more than \$20 million; and Class III—\$20 million or less. These operating revenue thresholds are adjusted annually for inflation. 49 CFR pt. 1201, 1–1. Adjusted for inflation, the revenue threshold for a Class I rail carrier using 2009 data is \$378,774,016. Today, there are 7 Class I carriers.