

emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www.va.gov/orpm/>, by following the link for “VA Regulations Published From FY 2004 Through Fiscal Year to Date.”

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this rule are 64.009 Veterans Medical Care Benefits and 64.011 Veterans Dental Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farris, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on March 29, 2017, for publication.

Dated: March 30, 2017.

Janet Coleman,

Chief, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Dental health, Government contracts, Health care, Health professions, Health records, Veterans.

For the reasons set forth in the supplementary information of this rulemaking, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

- 1. The authority citation for part 17 is amended by adding an entry for § 17.169 in numerical order to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.169 also issued under 38 U.S.C. 1712C.

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§ 17.169 [Amended]

- 2. Amend § 17.169 by removing the sectional authority citation.

[FR Doc. 2017–06579 Filed 4–3–17; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 530 and 531

[Docket No. 16–05]

RIN 3072–AC53

Amendments to Regulations Governing Service Contracts and NVOCC Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) amends its rules governing Service Contracts and NVOCC Service Arrangements. The rule is intended to update and modernize the Commission’s regulations and reduce the regulatory burden.

DATES: *Effective Date:* May 5, 2017.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact: Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001. *Phone:* (202) 523–5796. *Email:* TradeAnalysis@fmc.gov. For legal

questions, contact: Tyler J. Wood, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001. *Phone:* (202) 523–5740. *Email:* GeneralCounsel@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1984, Congress passed the Shipping Act of 1984 (the Shipping Act or the Act), 46 U.S.C. 40101 *et seq.*, which introduced the concept of carriage under service contracts filed with the Federal Maritime Commission. The pricing of liner services via negotiated contracts, rather than exclusively by public tariffs, was a change that had profound effects on the liner industry. FMC regulations require all ocean freight rates, surcharges, and accessorial charges in liner trades be published in ocean common carrier tariffs or agreed to in service contracts filed with the Commission. Contemporaneous with the filing of service contracts, carriers are also required to make available to the public a concise statement of essential terms in tariff format.

In 1998, Congress passed the Ocean Shipping Reform Act (OSRA), amending the Shipping Act of 1984 relating to service contracts. To facilitate compliance and minimize the filing burdens on the oceanborne commerce of the United States, service contracts and amendments effective after April 30, 1999, are required by FMC regulations to be filed with the Commission in electronic format. This eliminated the regulatory burden of filing in paper format, thereby saving ocean carriers both time and money. In addition, OSRA reduced the essential terms that had to be made publicly available.¹ Service contracts and amendments continue to be filed in the Commission’s electronic filing system, SERVCON.

In 2005, the Commission issued a rule exempting non-vessel-operating common carriers (NVOCCs) from certain tariff publication requirements of the Shipping Act, pursuant to section 16 of the Shipping Act, 46 U.S.C. 40103. 69 FR 75850 (Dec. 20, 2004) (final rule). Under the exemption, NVOCCs are relieved from certain Shipping Act tariff requirements, provided that the carriage in question is performed pursuant to an NVOCC Service Arrangement (NSA)

¹ Prior to OSRA, contract rates were published in the essential terms tariff publication, thereby allowing similarly situated shippers to request and obtain similar terms. In enacting OSRA, Congress limited the essential terms publication to the following terms: The origin and destination port ranges, the commodities, the minimum volume or portion, and the duration.

filed with the Commission and that the essential terms are published in the NVOCC's tariff. 46 CFR 531.1, 531.5, and 531.9.

This rulemaking is the first comprehensive review of the FMC's service contract regulations in part 530 since the Commission promulgated implementing rules pursuant to OSRA and the first substantive revisions to the NSA regulations in part 531 since NSAs were introduced by rule in 2005. Given the industry changes that have transpired since these rules were last revised, the Commission has sought extensive public comment throughout this rulemaking process. Most recently, the Commission published a Notice of Proposed Rulemaking (NPRM) proposing to amend parts 530 and 531, and received six comments. 81 FR 56559–56571 (Aug. 22, 2016). Previously, the Commission sought public input through the publication of an Advance Notice of Proposed Rulemaking (ANPRM) 81 FR 10198–10204 (Feb. 29, 2016), and received twelve comments. In addition, public comments were received earlier from the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) and a group of major ocean common carriers in response to the Commission's Plan for Retrospective Review of Existing Rules.² All the aforementioned comments are available on the Commission's Web site under Docket No. 16–05 through the Electronic Reading Room link at: <http://www.fmc.gov/16–05>.

The six comments filed specifically in response to the NPRM were submitted by Crowley Latin America Services, LLC and Crowley Caribbean Services, LLC (jointly, Crowley); NCBFAA; the National Industrial Transportation League (NITL); UPS Ocean Freight Services, Inc., UPS Europe SPRL, UPS Asia Group Pte. Ltd. and UPS Supply Chain Solutions, Inc. (collectively, UPS); the World Shipping Council (WSC), and one anonymous commenter purporting to be an export trading company that trades agricultural products.

² The commenting carriers consisted of 30 ocean carriers participating in the following agreements active at that time: The 14 members of the Transpacific Stabilization Agreement; 10 members of the Westbound Transpacific Stabilization Agreement; the 6 members of the Central America Discussion Agreement; the 11 members of the West Coast of South America Discussion Agreement; the 5 members of the Venezuela Discussion Agreement; the 3 members of the ABC Discussion Agreement; the 6 members of the United States Australasia Discussion Agreement; and the 3 members of the Australia and New Zealand-United States Discussion Agreement.

The commenters in this proceeding represent a broad cross-section of industry stakeholders, including vessel-operating common carriers (VOCCs), major trade associations, licensed NVOCCs and freight forwarders, registered foreign-based NVOCCs, beneficial cargo owners, a shippers' association, and a tariff publishing and contract management firm. The Commission has benefited from the wide public participation of stakeholders in this rulemaking and carefully considered their perspectives.

II. Discussion

The Commission's primary focus in this rulemaking has been to identify areas appropriate for possible regulatory relief, as well as opportunities to streamline both FMC and industry business processes and leverage Commission technology to facilitate compliance, while maintaining the Commission's ability to carry out its oversight responsibilities. In addition, recent Executive Orders have highlighted the benefits of reducing unnecessary and costly regulations.³ Although these Executive Orders may not directly apply to the Commission,⁴ the Commission respects the purpose of the Executive Orders and is committed to reducing regulatory burdens where feasible. Accordingly, the Commission has carefully considered the appropriate regulatory relief that will allow parties to commercial shipping transactions to more efficiently engage in the movement of U.S. import and export cargo on the high seas, while protecting shippers from potential financial harm. While this rule is deregulatory in nature, the rule preserves the Commission's ability to carry out its mission under the Shipping Act of 1984.

Below, on a section-by-section basis, is a discussion of the regulations governing service contracts and NSAs in 46 CFR parts 530 and 531, respectively. In some instances, the Commission has determined that proposed changes in the NPRM do not necessarily decrease regulatory burdens on the industry and is thus not adopting those changes in the final rule. The Commission is deferring these changes for the time being but may reconsider them in a future rulemaking.

³ Executive Order (EO) 13771, *Reducing Regulation and Controlling Regulatory Costs* (Jan. 30, 2017); EO 13777, *Enforcing the Regulatory Reform Agenda* (February 24, 2017).

⁴ See Office of Information and Regulatory Affairs, *Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled "Reducing Regulation and Controlling Regulatory Costs"* (Feb. 2, 2017).

Part 530—Service Contracts

Subpart A—General Provisions

Section 530.3 Definitions

Section 530.3 Affiliate

The current regulations regarding service contracts do not define the term “affiliate,” and the Commission periodically receives requests from ocean carriers for guidance regarding the criteria used to determine affiliation with respect to the shipper party to service contracts. Whether an entity is determined to be an affiliate of the contract shipper is an important matter because affiliates, as parties to the service contract, have full access to the rates, terms and conditions of the otherwise confidential contract. In contrast, the Commission's regulations governing NSAs at § 531.3(b) and NVOCC Negotiated Rate Arrangements (NRAs) at § 532.3(e) define the term *affiliate*, to mean: “two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers.” To the extent that a lack of clarity regarding service contract shipper party affiliates stems from the absence of a definition of *affiliate* in part 530, the Commission sought to address this inconsistency by proposing to adopt the same definition currently published in parts 531 and 532.

The Commission's NPRM requested comment on this issue. In its comments, Crowley supported the addition of the definition “subject to the understanding that carriers would remain free to adopt alternative definitions (e.g., by requiring a minimum level of common ownership).” To this point, WSC, in its earlier comment on the ANPRM, asked the Commission to clarify that the adoption of the definition “does not preclude more specific definitions of that term in service contracts or tariffs, so long as those more specific definitions fall within the scope of the Commission's definition.” WSC cited as an example the inclusion in an individual carrier's service contract of a minimum level of ownership between two shipper entities to be considered affiliates. The Commission confirms that the inclusion of the definition of *affiliate* in part 530 does not preclude an individual carrier adopting a more narrow definition of affiliate in its service contracts.

UPS raised a separate concern regarding affiliates in its NPRM comments, stating that global logistics

companies commonly employ non-affiliated overseas agents to facilitate the movement of cargo and that those agents have historically been listed as the NVOCC's "affiliates" under service contracts with VOCCs. This enables the local agent to originate bookings under the service contract. In connection with such shipments, UPS states that the overseas agent is listed as the "shipper" on the VOCC's master bill of lading, with the FMC licensed or registered NVOCC listed as the "consignee." UPS asks the Commission to "consider and address" whether this practice is still compliant as long as the non-affiliated booking agent clearly acts as the agent for the NVOCC and/or the NVOCC appears on the VOCC's master bill of lading as the consignee or notify party.

Given the concerns in the comments about the effect of this change on current industry practices and the Commission's determination, as noted above, to only adopt in this final rule those changes that will immediately reduce regulatory burdens, the Commission has determined not to add a definition of *affiliate* to Part 530.

Section 530.3(i) Effective date

Pursuant to Commission rules, a service contract or amendment cannot become effective prior to its filing with the Commission. Carriers and shippers have asserted that the service contract effective date requirement is overly restrictive, given current commercial practices, particularly with respect to service contract amendments. Further, carriers aver that the majority of amendments are for minor revisions to commercial terms, such as a revised rate or the addition of a new origin/destination or commodity. Carriers have cited instances in which the parties have agreed to amend the contract, however, due to unavoidable circumstances, the cargo was received before the carrier filed the amendment with the Commission. In such cases, the amendment's rates and terms may not be applied to that cargo pursuant to the Commission's rules, leading the parties to effect a commercial remedy in a future amendment to compensate the shipper for the financial harm resulting from the carrier's failure to timely file the amendment. In their comments, carriers and shippers requested that the Commission consider introducing regulatory flexibility by allowing up to 30 days for the filing of service contract amendments after agreement is reached between the parties.

As noted, during this regulatory review the Commission has carefully weighed the extent to which the regulatory burden imposed on the ocean

transportation industry could potentially be reduced, given the FMC's mission, strategic goals and oversight responsibilities. In the NPRM, the Commission sought additional comment on a proposal to allow the filing of sequential service contract amendments in the SERVCON system within 30 days of the effective date of the agreement reached between the shipper and carrier. NCBFAA, NITL, WSC, UPS and Crowley all supported this change for service contract amendments in their NPRM comments.

While NCBFAA supports a 30-day period for filing both service contract amendments and NSA amendments, it tempers its support with a note of caution. NCBFAA advises that VOCCs often announce General Rate Increases (GRIs) and Peak Season Surcharges that are later mitigated prior to their effective dates. NCBFAA requests that the Commission "ensure that any retroactive amendment reflects the actual agreement between the parties at the time that agreement is reached." The Commission believes that adherence to the agreed upon terms of a service contract provides the shipper with important protections. Carrier abuse of those protections is a serious matter under the Shipping Act and such carrier behavior will be subject to close scrutiny by the Commission, with appropriate Commission action if violations of the Act are found. In addition, a shipper that believes a carrier has breached the agreed-upon terms of a contract may bring an action in the appropriate court or in another forum agreed to by the contract parties.⁵

The Commission also sought comment in the NPRM regarding the concerns of Global Maritime Transportation Services, Inc. (GMTS) regarding the impact of a 30-day period for filing service contract amendments on carrier compliance with § 530.6 and § 515.27, which require carriers to obtain proof that an NVOCC has complied with the Shipping Act and prohibit carriers from serving noncompliant NVOCCs. In its comments to the ANPRM, GMTS asserted that the current requirement for filing a service contract amendment on or before its effective date ensures that full compliance with the tariff, contract, and amendments are determined prior to filing with the FMC. In its comments to the NPRM, WSC maintains that, from both a regulatory and commercial perspective, carriers and shippers are incentivized to manage service contract documentation carefully.

⁵ See 46 U.S.C. 40502(f).

The Commission has carefully considered the request for regulatory relief by both carriers and shippers to allow amendments to service contracts to become effective prior to their being filed with the Commission. The Commission notes the inherent commercial difficulties when a service contract rate cannot be applied to a given shipment due to a delay in filing. Additionally, the Commission has considered the impact of this change on the carriers' associated filing burden. Ocean carriers have cited the regulatory burden associated with filing more than 550,000 service contract amendments annually with the Commission as the largest administrative burden for both carriers and their customers. For example, under the current filing requirements, during a 30-day period, a service contract amendment can only be processed and filed on or before its effective date. The proposed relief would allow the processing and filing of multiple service contract amendments initiated during a 30-day period at a set or scheduled time during that period as determined by the carrier.

The Commission has also weighed the need to fulfill its regulatory responsibilities to ensure shipper protections and the impact this relief would have on its ability to successfully maintain those protections. On balance, the Commission believes that this change will reduce the filing burdens on the shipping industry while maintaining the Commission's ability to protect the shipping public. Further, by adjusting the date on which amendments can become effective, this change reduces the commercial harm from delayed filings by allowing the parties to apply the rates and terms agreed to in a service contract amendment to the intended shipments. The Commission has therefore determined to amend the definition of "effective date" to mean the date upon which a service contract amendment is scheduled to go into effect by the parties, so long as that date is no more than 30 days prior to the amendment being filed with the Commission.

Section 530.5 Duty To file

The Commission sought comment in the NPRM regarding its proposal to amend the regulations to ensure that ocean carriers are aware of the availability of the automated web services process for filing original service contracts and amendments. No comments were received in response to the NPRM on this issue. The Commission has determined not to adopt its proposal to amend the regulations to provide notice of the

availability of the automated web services process because it does not appear to immediately reduce regulatory burdens.

Section 530.6 Certification of Shipper Status

Shippers entering into service contracts must certify their status, and VOCCs are required to obtain proof of an NVOCC's compliance with tariff and financial responsibility requirements. Section 530.6(b) currently allows carriers to obtain such proof by any of the methods in 46 CFR 515.27. Many carriers routinely utilize one of the prescribed methods, consulting the FMC's Web site, *www.fmc.gov*, to verify whether an NVOCC contract holder or affiliate is in good standing, while other carriers employ more rigorous standards by requiring copies of the NVOCC's bond and the title page of its published tariff.⁶ In addition, many VOCCs incorporate the NVOCC's 6-digit FMC Organization Number into the service contract, indicating that the VOCC validated its compliance with the requirements of § 530.6 for shipper parties that are NVOCCs. A carrier that meets the requirements in § 530.6(a) and (b) is also deemed to be in compliance with 46 U.S.C. 41104(12) (section 10(b)(12) of the Shipping Act), which prohibits carriers from knowingly and willfully entering into service contracts with ocean transportation intermediaries that do not meet the Act's tariff and financial responsibility requirements.⁷

In response to regular queries from carriers about the capability of FMC's electronic systems to automatically determine the status of an NVOCC party in a service contract and to verify compliance with § 530.6, Commission staff explored potential options that would leverage technology and the FMC's databases. The Commission asked for comments in its NPRM on whether the FMC should move forward in requiring filings to include the 6-digit FMC Organization Number of any NVOCC parties to a service contract in a new data field created on the SERVCON filing screen. This would reduce a carrier's need to consult the Commission's Web site or use other methods to obtain proof of NVOCC compliance with the relevant

requirements before filing service contracts.

The Commission received comments to the NPRM regarding this proposal from WSC, Crowley and UPS, all of which supported an additional dedicated field in SERVCON for entry of an NVOCC's Organization Number to validate whether the NVOCC is in good standing. UPS's comments sought assurance that the practice of reliance on the NVOCC's certification and the FMC's Web site information would continue to provide a "safe harbor" under § 530.6(d) with respect to 46 U.S.C. 41104(12). WSC's support was based on their understanding that "carriers could continue to rely upon existing compliance procedures outside of SERVCON if they so choose."

The Commission has further investigated the technical feasibility of adding the proposed Organization Number entry and verification capabilities to SERVCON and has determined that the necessary improvements would take well over a year to make to the system. In addition, the comments suggest a preference by some VOCCs to continue to use current methods to certify NVOCC compliance, rather than relying on verification from SERVCON in response to the entry of the NVOCC's Organization Number. Given the time and resources necessary to reprogram SERVCON, and the uncertainty raised by the comments regarding the benefit to the industry from the change, the Commission is not adopting the requirement that VOCCs input an NVOCC's 6-digit FMC Organization Number in a new data field in the SERVCON system, when an NVOCC is the contract holder or affiliate. The Commission may reconsider this requirement in a future rulemaking.

Subpart B—Filing Requirements

Section 530.8 Service Contracts

For the reasons discussed above, the Commission is permitting the filing of service contract amendments up to 30 days after the effective date of the agreement. Accordingly, as proposed in the NPRM, the Commission is revising § 530.8(a) to reflect this change. The Commission believes that permitting immediate implementation of changes to service contracts upon agreement by the parties rather than delaying implementation until the contract amendment is filed with the FMC, will result in positive benefits affecting the business processes of shippers, carriers, and the maritime industry supply chain as a whole by expediting the flow of commerce. This assertion is also

supported by comments in this rulemaking record received by both ocean carriers and shippers.

The Commission sought comment in the NPRM on two options for allowing service contract amendments to be filed up to 30 days after agreement: (1) Filing each service contract amendment individually and sequentially within 30 days of its effectiveness; or (2) consolidating any number of service contract amendments into a single document, to be filed within 30 days of the effective date of the earliest of all amendments contained in the document. The Commission engaged in a detailed explanation in the NPRM of the manner in which service contract amendments are presently filed into the SERVCON system, and described considerations that filers should take into account when evaluating and commenting on the two approaches.

Option 1 closely reflects current filing procedures, and therefore, requires minimal, if any, reprogramming of SERVCON. Under this sequential amendment filing procedure, SERVCON would process the initial service contract as Amendment "0," with subsequent amendments to the contract numbered sequentially, beginning with Amendment No. "1." Each amendment filing would require the filer to enter the effective date of that amendment. Under this option, the only difference from the present process would be that the effective date of the contract entered into the SERVCON system could be up to 30 days prior to the filing date.

Option 2 would allow the consolidation of multiple service contract amendments into a single "batch" filing. This option was considered based on an earlier carrier proposal to aggregate several contract amendments into a single document to effect a monthly filing. As explained in the NPRM, SERVCON is not currently capable of processing multiple amendments consolidated into a single filing, e.g., Amendment Nos. 2 through 10, with multiple effective dates. Thus, this approach would require a substantial amount of reprogramming and considerable expense to enable the system to capture multiple effective dates and multiple amendment numbers. Consolidating several service contract amendments would also prevent carriers from using the Commission's web services technology in accordance with § 530.5, thereby offsetting the advantages of web services, which requires no manual data entry and is intended to streamline processes and reduce the burden of filing.

⁶ In addition to permitting carriers to consult the FMC Web site to obtain proof NVOCC compliance with the tariff financial responsibility requirements, § 515.27 permits carriers to use any other appropriate procedure to obtain such proof, provided that the procedure is set forth in the carrier's tariff.

⁷ 46 CFR 530.6(d).

In this regard, the WSC's NPRM comments stated:

In light of the programming changes that would be required in SERVCON (and the possible programming requirements that might be required by carriers), WSC at this stage accepts the Commission's proposal not to change the SERVCON system to accept multiple amendments in a single document. Simplicity, not additional complexity, should be the guiding principle. If it becomes possible for the Commission to process multiple amendments in a single document, then the Commission should accept such filing when the capability becomes available.

Crowley further commented:

Moreover, given a choice between a prompt implementation of the proposals contained in the NPR and delaying implementation of those proposals until the SERVCON system can be reprogrammed to accommodate batch-type filings, Crowley would prefer prompt implementation of the proposals. However, having said this Crowley does not believe that reprogramming of the SERVCON system is necessary to accommodate batch-type filings.

NITL also commented on this issue, stating that in light of the technical difficulties associated with filing "batches" of amendments, it agreed with the Commission's sequential filing approach. While Crowley suggests that reprogramming of the SERVCON system would not be required to accommodate "batch" filing of multiple service contract amendments in a single document, the Commission's Office of Information Technology disagrees with Crowley's assessment.

The Commission's current service contract filing system requires filers to specify the effective date when uploading an original service contract or a contract amendment. The Commission's rules do not prohibit the inclusion in an original service contract or amendment of rates and terms that become effective on a date that is later than the contract or amendment's overall effective date. Carriers are reminded, however, of their obligations under 46 CFR 530.12(b) to provide "certainty of terms" in service contracts, including clearly designating all effective dates and the specific terms to which such dates have application. Based on the comments received, the Commission has determined to maintain its existing protocol requiring sequentially numbered amendments to service contracts, *i.e.*, Option 1.

Section 530.10 Amendment, Correction, Cancellation, and Electronic Transmission Errors

This section of the regulations addresses how service contracts may be amended, corrected, cancelled, and how to treat electronic transmission errors.

VOCCs' earlier comments noted that current service contract correction procedures are outdated, and maintained that these procedures are "ill suited" to the manner in which service contracts are employed today. The carriers requested a number of revisions to these requirements. The NPRM sought comment regarding service contract correction requests and corrected transmissions. An item by item discussion follows.

Electronic Transmission Errors

Pursuant to § 530.10(d), carriers may file a "Corrected Transmission" (CT) within forty-eight (48) hours of filing a service contract or amendment into SERVCON, but only to correct a purely technical data transmission error or a data conversion error that occurred during uploading. A CT may not be used to make changes to rates, terms or conditions and, accordingly, its application is limited.

Most service contract filings are uploaded into the Commission's SERVCON system without encountering problems. When electronic transmission errors do occur, however, carriers often do not discover the error until after the initial 48-hour period has passed. Generally, these types of mistakes are attributable to data entry errors on the SERVCON upload screen (*e.g.*, a typographical error is made when entering the amendment number, service contract number or effective date, or the incorrect contract or amendment is attached during uploading).

The Commission believes that allowing additional time to correct technical data transmission errors would provide regulatory relief to a narrow category of service contract filing problems without hampering the Commission's regulatory responsibilities. Consequently, in the NPRM, the Commission proposed extending the time permitted to file a Corrected Transmission from 48 hours after the service contract or amendment filing to 30 days. None of the commenters objected to this proposal and WSC, Crowley, and NCBFAA expressly supported the change.

The Commission recognizes that purely technical data transmission errors occur when service contracts and amendments are uploaded into the SERVCON system and has determined to provide regulatory relief by substantially extending the time period to correct such errors. While the industry has not submitted data quantifying the cost savings of this relief, the Commission anticipates that this change will allow service contract

filers additional flexibility in conjunction with the 30-day amendment process, further streamlining their business processes. Accordingly, the Commission hereby amends its regulations to allow the filing of Corrected Transmissions within 30 days of the service contract or amendment filing.

Extend Filing Period for Correction Requests to 180 Days

The Commission's rules at § 530.10(c) permit the retroactive correction of a clerical or administrative error in a service contract if the request for correction is filed in accordance with the Commission's requirements and is submitted within 45 days of service contract filing. Current practices in ocean shipping can result in long transit times due to carriers' global pendulum services or slow steaming, at times leading to the shipper's discovery of a discrepancy between the rate quoted and that filed in its service contract long after cargo has been moved and invoiced on the bill of lading. These administrative or clerical errors therefore might not be detected within 45 days of the cargo being tendered for transportation. In other cases, shippers may initiate internal or outsourced audits of their bills of lading, which detect errors in filed service contracts that differ from rates offered. These audits may occur well after the 45-day period.

The Commission recognizes that the discovery of a clerical or administrative error in a service contract which is contrary to the agreement of the parties may not occur within 45 days of filing. The Commission frequently responds to inquiries from carriers asking to correct a service contract error which was not discovered until after the current 45-day time limit for correction requests has expired. In such cases, no regulatory remedy exists and the parties must make a commercial accommodation in the service contract to address the problem.

Given the foregoing, the Commission's NPRM proposed extending the period in which to file a service contract correction request from 45 days after the contract's filing to 180 days. None of the commenters objected to this proposal, and WSC, Crowley, and NCBFAA support extending the time to file a service contract correction request to 180 days. The Commission believes that extending the time period to file service contract correction requests provides a more efficient solution to address a service contract administrative or clerical error than the costly commercial "work arounds"

described by carriers and used to address an error to remain in compliance with existing regulations.

The Commission recognizes that ocean carriers and shippers can avoid the potentially costly consequences of such errors if they have more time to file a service contract correction request. Increasing the time to file by four-fold will not only better align the Commission's filing requirements with industry business processes used to identify and correct errors, it will eliminate costly and inefficient commercial solutions used to comply with the current regulations.

Therefore, the Commission is hereby amending its regulations to allow a service contract correction request to be filed within 180 days of the contract's filing with the Commission.

Eliminate Carrier Affidavit and Significantly Reduce Filing Fee

Ocean carriers requested that the Commission eliminate the affidavit requirement for a service contract correction request and reduce the filing fee, previously set at \$315. NITL supported the elimination of the affidavit requirement terming it "unduly burdensome." If the affidavit requirement were eliminated, however, Commission time spent researching and verifying information would lengthen considerably, and concomitantly, the filing fee would increase commensurate with the additional time required for research and analysis. The Commission has determined that eliminating the carrier affidavit requirement would not be beneficial to the service contract correction process, as the filing party is required to attest with specificity to the factual circumstances surrounding the clerical or administrative error. With respect to the request to lower the filing fee, in the Commission recently reduced the fee in a separate rulemaking, from \$315 to \$95, to reflect the Commission's streamlined internal processes, which rely upon the affidavits submitted with the requests.⁸ The Commission has therefore determined to maintain the existing affidavit requirement as it provides clarity and certainty to the corrections process and results in a lower filing fee for correction requests.

Extend the Service Contract Correction Procedure To Include Unfiled Contracts and Amendments

Prior to the initiation of this rulemaking and in response to the Commission's request for comments on

its Plan for Retrospective Review of Existing Rules, the ocean carriers requested that the Commission allow the correction process to also be used for unfiled service contracts and service contract amendments. That is, they wanted to use the process for correcting clerical or administrative errors to fix the error of failing to file a service contract or amendment in the first place. In response to the ANPRM, GMTS indicated its support for this proposal, provided that the Commission maintain the requirement that an entity seeking a correction file an affidavit supporting the correction. In the NPRM, the Commission did not propose extending the correction process for clerical or administrative errors to situation in which a carrier failed to file the contract. The Commission explained that extending the correction process in this manner would undermine the Shipping Act's filing requirements and shippers' reliance thereon.

None of the commenters to the NPRM directly sought to revive the carriers' proposal. NITL did, however, mention it in its comment and stated that "[t]he failure to file a contract or contract amendment that is agreed upon between the shipper and carrier can have serious adverse consequences for the shipper." NITL further noted that "[w]ithout a contract on file the tariff must apply which is often higher." NITL accordingly emphasized that "there should be a process available to ensure that a shipper is not penalized for a carrier's error in failing to file" a service contract or amendment thereto.

To the extent that the "process" NITL seeks is the carriers' proposal to extend the correction process to include failing to file a service contract or amendment, the Commission reiterates that the Shipping Act requires that service contracts be filed with the Commission. In the past, shippers have expressed confidence in knowing that both the shipper and carrier will honor those commitments found in service contracts filed with the FMC. As discussed above, the Commission recognizes that some flexibility in filing is needed and is allowing amendments to service contracts to be filed within 30 days of the agreement between the parties.

The potential for abuse of the correction process by allowing the submission of unfiled contracts and amendments as much as 180 days after shipments have commenced, however, raises significant concerns of potential harm to shippers. As noted supra, commenters such as NCBFAA have raised concerns that retroactive filings may lead shipper parties to learn of GRIs or other additional charges only

when the retroactive filing is made with the Commission; such changes, in effect, deprive the shipper of the opportunity to negotiate the mitigation of any new or previously uncommunicated charges. In the case of original service contracts, shipper protections at the time of contracting and for the ensuing contract term are best assured by requiring that the agreement be contemporaneously filed as the best evidence of the actual agreement between the parties when first reached. Such a change could also compromise the Commission's ability to conduct its investigatory and enforcement duties if unfiled contracts were submitted on such a delayed basis through the correction process. Unlike those limited and modest revisions to accommodate industry needs for correction of contract amendments, failure to file the original contract may conceal the very existence of a contractual arrangement in a given trade lane or lanes, avoiding early detection of market-distorting practices by individual carriers. For competing carriers and NVOCCs, extension of the correction process to unfiled original service contracts also may serve to conceal or delay recognition of another VOCC's failure to adequately distinguish between NVOCCs lawfully entitled to contract with VOCCs, and those unlicensed or unregistered entities who are completely barred under the statute from so contracting.

Given the foregoing considerations, the Commission is not expanding the service contract correction process to include unfiled service contracts and amendments.

Subpart C—Publication of Essential Terms

Section 530.12 Publication

During discussions with stakeholders held prior to the initiation of this rulemaking, several advised that essential terms publications were no longer accessed by the public or useful. The Commission did not propose modifying its rules regarding the publication of essential terms. NITL, however, commented:

In our view, the publication of essential terms of service contracts has likely now outlived its commercial value. We do not believe that shippers or other primary stakeholders engaged in the ocean shipping market rely on their publication any longer; it is likely a regulatory burden without any benefit, and we encourage the Commission to eliminate the requirement for publication of essential terms in a service contract.

However, other stakeholders indicated that they rely on them for various purposes, such as during a

⁸ See FMC Docket No. 16–06, *Update of Existing and Addition of New User Fees*, 81 FR 59141–59145 (Aug. 29, 2016). The reduced fee became effective October 1, 2016.

grievance proceeding under collective bargaining agreements. Given that some stakeholders have indicated they still find them of value, the Commission is not eliminating this requirement.

UPS commented that it supports the “concept of allowing amendments to be filed and essential terms publication to be completed within a reasonable time after the effective date, rather than in advance.” In this regard, 46 CFR 530.12(h) provides that when the published statement of essential terms is affected by filed amendments, corrections or cancellations, the current terms shall be changed and published as soon as possible. We interpret that to mean the essential terms publication associated with an amendment should be contemporaneous with the filing of the amendment with the Commission.

Subpart D—Exceptions and Implementation

Section 530.13 Exceptions and Exemptions

Section 530.13(a) Statutory Exceptions

Section 530.13(a) of the Commission’s regulations exempts certain commodities from the tariff publication and service contract filing requirements of the Shipping Act. See 46 U.S.C. 40501(a)(1) and 40502(b)(1). Commodities currently exempt pursuant to the Act are bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, and waste paper or paper waste.

WSC and Crowley supported expanding the list of exempt commodities in their comments on the ANPRM. Concerns regarding expansion of the list of exempt commodities centered around shipper experiences pertaining to currently exempt commodities. Of note, two of the commodities proposed for exemption by WSC and the ocean carriers are commodities for which shippers pay some of the highest freight rates in the U.S. export trade, namely, refrigerated cargoes and cattle hides. Exporters of currently exempt commodities have expressed frustration regarding the ocean carrier practice of offering exempt commodity tariff rates with periods of limited duration, in some cases for only 30 to 60 days, rather than for the longer periods that are customary in service contracts. Further, exempt commodity tariffs are not published and do not provide shippers with 30 days’ notice prior to implementation of rate increases. Whereas service contracts allow shippers to negotiate rates and terms with carriers to tailor services and terms to the shipper’s specific needs, many exporters advise that shippers of

exempt commodities are not afforded this opportunity.

Only two parties commented on the issue of expanding the exempt commodity list. NITL stated that it “believes this matter merits further examination and public dialogue.” NITL did not elaborate or provide any additional information regarding the nature of the dialogue it suggests. Nor did it suggest that this matter be addressed in the current rulemaking.

A second, anonymous commenter identifying itself as an export trading company which trades agricultural products and ships approximately 5,000 TEUs annually, opposes expanding the current exempt list of commodities, citing “the business struggles it would create for ourselves and our customers that would arise if we did not have a service contracts [*sic*] with carriers.”⁹ The company explains that the contracts they enter into with their customers “contain many requirements that are also guaranteed in our service contracts with ocean carriers” and expresses “fear” that without service contracts, rates may only be offered to them on a 30-day basis. As this export trading company’s sales timeline is usually 90 days or more forward, they anticipate that the ocean carriers would “gouge” them on price, assessing GRIs and raising rates without notice.

Given the potential disadvantage to shippers in negotiating with ocean carriers for transportation of exempt commodities, and the lack of shipper support for exempting additional commodities, the Commission will not exercise its exemption authority under 46 U.S.C. 40103 (section 16 of the Shipping Act) at this time to add new commodities to the list of those exempted from the FMC’s tariff publication and service contract filing requirements. Opening a dialogue on whether to expand the exempt commodity list could significantly delay this rulemaking, and the Commission notes that concerned stakeholders with compelling reasons to request an exemption may petition the Commission at any time.

Section 530.14 Implementation

As the Commission will allow up to 30 days for filing service contract amendments after the agreement of the parties, corresponding changes will be

made in this section to address when performance may commence under a service contract amendment. No comments were received regarding these changes.

Part 531—NVOCC Service Arrangements

Subpart A—General Provisions

In response to the NPRM, NCBFAA reiterated its earlier comments in response to the Commission’s Plan for Retrospective Review of Existing Rules, and NCBFAA’s petition for rulemaking in FMC Docket No. P2–15.¹⁰ NCBFAA supported the Commission’s consideration of regulatory changes focused on reducing unnecessary regulatory burdens and easing compliance by potentially allowing more time to process amendments to service contracts and NSAs, and to correct technical or substantive errors made in filings. More specifically, NCBFAA supports the filing of amendments for NSAs to be delayed up to 30 days after an amendment is agreed to by the parties. UPS also supports the concept of allowing NSA amendments to be filed “within a reasonable time after the effective date,” as does NITL.

NCBFAA also proposes, both in its comments to the NPRM and in its P2–15 petition, to “eliminate NSA filing and publication requirements and broaden the utility of NVOCC Negotiated Rate Agreements (‘NRAs’).” UPS strongly opposes “phasing out” NSAs in favor of unfilled NRAs. And NITL believes that the Commission “has correctly deferred a decision on proposing more fundamental changes in the NVOCC regulatory realm to a future proceeding.”

The Commission will address the requests to eliminate the NSA filing and publication requirements in a separate rulemaking in response to NCBFAA’s petition. Accordingly, the Commission takes no position at this time on the comments supporting or opposing such a change, and the Commission hereby implements those amendments to part 531, described in detail below, specific to this rulemaking.

Section 531.3 Definitions

Section 531.3(k) Effective Date

The Commission’s regulations presently require that an NSA or

⁹ Although exempting additional commodities from the tariff publication and service contract filing requirements would not prevent shippers and carriers from entering into service contracts for those commodities, it appears that the commenter is echoing our concern, stated above, that carriers often do not afford shippers of exempt commodities the opportunity to enter into service contracts.

¹⁰ NCBFAA filed a petition for rulemaking on April 18, 2015. See Docket No. P2–15, *Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Initiation of Rulemaking* (NCBFAA Petition). The Commission has accepted the NCBFAA Petition and, as previously announced, will address the proposals presented therein in a subsequent rulemaking proceeding.

amendment be filed on or before the date it becomes effective. The majority of commenters addressing NSA amendments supported the Commission granting NVOCCs the same flexibility in filing NSA amendments that it is granting to carriers in filing service contract amendments. As described in detail above, the Commission has determined to allow the filing of service contract amendments up to 30 days after an amendment is agreed to by the contract parties. The Commission believes that it is appropriate to extend the same regulatory relief to NVOCCs and hereby allow amendments to NSAs to become effective on the date specified by the parties, so long as the amendment is filed no later than 30 days after agreement is reached.

Section 531.5 Duty To File

The Commission is adding regulatory language in § 530.5 to apprise service contract filers of the option to use the automated web services when filing contracts and their corresponding amendments. As larger volume filers of NSAs may find web services advantageous, the Commission wishes to avail NVOCCs of this option as well. Therefore, the Commission is adding language to this section to alert NSA filers of their ability to use web services to file NSAs and amendments, should they so choose.

Subpart B—Filing Requirements

Section 531.6 NVOCC Service Arrangements

Currently, the Commission's regulations require that an NSA or amendment be filed on or before the date it becomes effective. As discussed above, the Commission will allow up to 30 days for filing NSA amendments after their effective date, and will make corresponding changes to § 531.6. As with service contracts, amendments are to be filed sequentially rather than in "batches."

Section 531.6(d) Other Requirements

Pursuant to § 531.6(d)(4), an NVOCC may not knowingly and willfully enter into an NSA with another NVOCC that is not in compliance with the Commission's tariff and proof of financial responsibility requirements. As more fully discussed above with respect to the revisions in § 530.6, the industry frequently refers to the Commission's Web site, www.fmc.gov, to verify whether an NVOCC contract holder or affiliate is compliant with these requirements.

The NPRM requested comment on different options that, upon

development, would allow the FMC's SERVCON system to alert filers at the time of uploading service contracts, NSAs, and amendments thereto, if an NVOCC contract signatory or affiliate is not in good standing. The system-generated alert notifying the filer that an NVOCC is not in good standing is intended to leverage technology to assist filers with compliance. It does not result in the rejection of an NSA filing.

The Commission has further investigated the technical feasibility of adding the proposed Organization Number entry and verification capabilities to SERVCON and has determined that the necessary improvements would take well over a year to make to the system. As with the corresponding review of allowing VOCCs to check the status of an NVOCC, the Commission has determined not to proceed with regulatory modifications at this time. The Commission may take up this issue in future rulemaking proceedings.

Section 531.6(d)(5) Certification of Shipper Status

As noted above, shipper parties to service contracts must certify their status under the current service contract regulations in part 530. The Commission sought comment on whether to make this requirement consistent and uniform for both service contracts and NSAs. No comments were filed that directly addressed certification of shipper status in NSAs. Because this proposal would not result in immediate deregulatory impacts, the Commission has determined not to adopt an amendment to this requirement.

Section 531.8 Amendment, Correction, Cancellation, and Electronic Transmission Errors

Under the Commission's regulations, both VOCC service contracts and NSAs are agreements between a common carrier and a shipper for the carriage of cargo. Given these congruencies, the Commission plans to treat NSAs in a similar manner as service contracts regarding the correction procedures. A complete discussion of the changes requested by commenters concerning service contract amendment, correction, cancellation, and electronic transmission errors is included above. NCBFAA and NITL supported applying the regulatory relief extended to VOCCs to NVOCCs as well.

Therefore, the Commission is: (1) Extending the period to file a Corrected Transmission to remedy an NSA electronic transmission error under § 531.8(c) from 48 hours to 30 days after

the NSA or amendment's filing; and (2) extending the period to file an NSA correction request under § 531.8(b) from 45 days to 180 days after the NSA or amendment's filing.

Subpart C—Publication of Essential Terms

Section 531.9 Publication

As noted previously, NCBFAA's comments requested that the Commission consider whether the NSA filing and the essential term publication requirements are necessary, and proposed eliminating those requirements. Similarly, NITL expressed that, in their view, the publication of essential terms has likely outlived its commercial value.

The Commission will address the request to eliminate all NSA publication requirements in the future rulemaking regarding NCBFAA's petition, No. P2–15.

Subpart D—Exceptions and Implementation

Section 531.10 Excepted and Exempted Commodities

The Commission sought comment on whether to treat VOCC service contracts and NSAs, as well as the tariffs of both VOCCs and NVOCCs, in a similar fashion with respect to exempted commodities. No comments were filed addressing this issue in the context of NVOCCs. As the Commission is not exercising its exemption authority under 46 U.S.C. 40103 (section 16 of the Shipping Act) to exempt additional commodities for VOCCs, it will not do so for NVOCCs under this section.

Section 531.11 Implementation

Changes regarding the effective date of service contract amendments have been adopted by the Commission under part 530. The Commission is adopting similar requirements for NSA amendments in part 531.

III. Regulatory Notices and Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the Administrative Procedure Act (APA) (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604–605. The

¹¹ See FMC Policy and Procedures Regarding Proper Considerations of Small Entities in Rulemakings 4 (Feb. 7, 2003), available at http://www.fmc.gov/assets/1/Page/SBREFA_Guidelines_2003.pdf.

within one-hundred eighty (180) days of the contract's filing with the Commission, accompanied by remittance of a \$95 service fee and shall include:

* * * * *

(d) *Electronic transmission errors.* An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting a service contract filing or amendment thereto is permitted to file a Corrected Transmission ("CT") of that filing within 30 days of the date and time of receipt recorded in SERVCON.

* * *

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■ 5. Amend § 530.14 by revising paragraph (a) to read as follows:

§ 530.14 Implementation.

(a) *Generally.* Performance under an original service contract may not begin before the day it is effective and filed with the Commission. Performance under a service contract amendment may not begin until the day it is effective, provided that the amendment is filed with the Commission no later than thirty (30) calendar days after the effective date.

* * * * *

PART 531—NVOCC SERVICE ARRANGEMENTS

■ 6. The authority citation for part 531 continues to read as follows:

Authority: 46 U.S.C. 40103.

■ 7. Amend § 531.3 by revising paragraph (k) to read as follows.

§ 531.3 Definitions.

* * * * *

(k) *Effective date* means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the contract. For an original NSA, the effective date cannot be prior to the filing date with the Commission. For an NSA amendment, the effective date can be no more than thirty (30) calendar days prior to the filing date with the Commission. An NSA or amendment thereto becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date.

* * * * *

■ 8. Amend § 531.6 by revising paragraphs (a) and (d)(1) to read as follows:

§ 531.6 NVOCC Service Arrangements.

(a) Authorized persons shall file with BTA, in the manner set forth in appendix A of this part, a true and complete copy of:

(1) Every NSA before any cargo moves pursuant to that NSA; and

(2) Every amendment to a filed NSA no later than thirty (30) days after any cargo moves pursuant to that NSA amendment.

* * * * *

(d) * * *

(1) For service pursuant to an NSA, no NVOCC may, either alone or in conjunction with any other person, directly or indirectly, provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules and practices contained in an effective NSA.

* * * * *

■ 9. Amend § 531.8 by revising paragraphs (b)(1) and (c) to read as follows:

§ 531.8 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(b) * * *

(1) Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within one-hundred eighty (180) days of the NSA's filing with the Commission, accompanied by remittance of a \$95 service fee.

* * * * *

(c) *Electronic transmission errors.* An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting an NSA or an amendment thereto is permitted to file a Corrected Transmission ("CT") of that filing within 30 days of the date and time of receipt recorded in SERVCON. This time-limited permission to correct an initial defective NSA filing may not be used to make changes in the original NSA rates, terms or conditions that are otherwise provided for in § 531.6(b). The CT tab box in SERVCON must be checked at the time of resubmitting a previously filed NSA, and a description of the correction made must be stated at the beginning of the corrected NSA in a comment box. Failure to check the CT box and enter a description of the correction will result in the rejection of a file with the same name, since documents with duplicate file names or NSA and amendment numbers are not accepted by SERVCON.

* * * * *

■ 10. Revise § 531.11 to read as follows.

§ 531.11 Implementation.

Generally. Performance under an original NSA may not begin before the day it is effective and filed with the Commission. Performance under an NSA amendment may not begin until

the day it is effective, provided that the amendment is filed no later than thirty (30) calendar days after the effective date.

By the Commission.

Rachel Dickon,

Assistant Secretary.

[FR Doc. 2017-06557 Filed 4-3-17; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket No. 10-90, WT Docket No. 10-208; FCC 17-11]

Connect America Fund; Universal Service Reform—Mobility Fund

Correction

In rule document 2017-05665 appearing on page 15422 in the issue of Tuesday, March 28, 2017, make the following corrections:

§ 54.1016 Letter of credit (a)(2) [Corrected]

■ 1. On page 15452, in the third column, in the 51st through 54th line, paragraph (2) should read:

“(2) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:”

§ 54.1019 Annual reports (f) [Corrected]

■ 2. On page 15455, in the second column, in the 56th through 64th line, paragraph (f) should read:

“(g) A mobile eligible telecommunications carrier that submits the annual reporting information required by this section within three (3) days of the July 1 deadline will not receive a reduction in support if the mobile eligible telecommunications carrier has not missed the July 1 deadline in any prior year.”

§ 54.1020 Milestone reports (2)(g) [Corrected]

■ 3. On pages 15455 and 15456, § 54.1020(2)(g) should read:

“(f) A mobile eligible telecommunications carrier that submits the milestone reporting information required by this section within three (3) days of the deadline will not receive a reduction in support if the mobile eligible telecommunications carrier has not missed the deadline in any prior year.”

[FR Doc. C1-2017-05665 Filed 4-3-17; 8:45 am]

BILLING CODE 1301-00-D