

Motion Directing Staff to Prepare Proposed Rule

Move to instruct Staff to draft a proposed rule to provide NVOCCs an exemption from the requirement (and associated cost) of publishing rates in Section 8(a) of the Shipping Act of 1984 (46 USC § 40501(a)-(c)). The rule would be issued pursuant to the Commission's authority in Section 16 (46 USC § 40103), and will be based on the Commission's finding that granting the exemption with the general parameters and conditions described below "will not result in substantial reduction in competition or be detrimental to commerce."

The exemption would have the following parameters:

1. The exemption would be voluntary – i.e., NVOCCs may choose whether to utilize the exemption.
2. The voluntary exemption only applies to licensed NVOCCs.
3. The exemption is limited to rates. An NVOCC that opts in to the exemption must continue to publish a rules tariff that complies with all requirements of section 8(a) of the Shipping Act, except the requirement that rates be published.
4. The proposed rule would exempt licensed NVOCCs from the following provisions of the Shipping Act of 1984: Section 8(a)'s rate publication requirement; 8(b); 8(d); 8(e); 10(b)(2)'s requirement of adhering to the published tariff rate. The proposed rulemaking would request comment on whether the exemption should also extend to Sections 10(b)(4) and 10(b)(8).

If an NVOCC chooses to utilize the exemption, the exemption is subject to the following conditions:

1. Notice must be published in a prominent place within the rules tariff that the NVOCC has chosen to operate under the exemption and opt out of publishing tariff rates.
2. Public access to the rules tariff must be granted free of charge. Or, in lieu of free public access, an NVOCC may provide a copy of the rules tariff with each of its rate quotes or proposals.
3. Unpublished rate arrangements must be agreed to and memorialized in writing, including the applicable rate for each shipment, by the date the cargo is received by the common carrier or its agent (including originating carriers in the case of rates for through transportation). The unpublished rate arrangement documentation must include prominent notice of the existence and location of the rules tariff. The proposed rulemaking will request comment on additional terms to be required in the rate arrangement documentation. The proposed rulemaking would request comment on whether the condition should include a definition of "rate" which could be defined consistently with 46 CFR 520.2. In addition, the proposed rulemaking will seek comment on which elements should be required to qualify the unpublished rate arrangement for a "safe harbor" status that affords a presumption that the corresponding shipment is not subject to the tariff rate publication requirement.
4. Recordkeeping and availability: 5 years for every unpublished rate arrangement and associated communications; records of unpublished rate arrangements would be subject to the general OTI records availability requirement of 46 CFR § 515.31(g).