



March 26, 2012

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, D.C. 20573

RE: Docket No. 11-22 Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Filing Exemption

Dear Secretary Gregory,

My name is Melzana W Wilson and I am the Vice President of Compliance for Mallory Alexander International Logistics, LLC.

On behalf of Mallory Alexander International Logistics, LLC and our NVOCC, Mallory Transportation System, I would like to take this time to express my gratitude to you and the Federal Maritime Commission for taking the initiative in updating the regulations as they are reflected in the current business environment in which we work. As an active member of the National Customs Brokers and Forwarders Association of America, Inc., we support the comments presented by Mr. Edward Greenberg on its behalf.

As an NVOCC, Mallory Transportation System is not utilizing NRA for several reasons; the main being the varying interpretations of some elements of the new regulations. For us, these interpretations are a cause of concern from an implementation and process standpoint.

The following are examples of such regulations and the elements that are causes of concern by our industry.

§ 532.5 Requirements for NVOCC negotiated rate arrangements

“(b) Contain the legal name and address of the parties and affiliates; and contain the names, title and addresses of the representatives of the parties agreeing to the NRA;”

- Legal Name– There are times when the legal name of the client is not reflected in the documentation, but instead initials or an abbreviated name are utilized in place of the name. If the quote is done via email, the full legal name of the client may not necessarily be noted in the signature.
- Address – There are times when we make a quote to a client who has multiple locations. Is it necessary to list all of the physical addresses of the legal entity we are quoting?
- Affiliates – There may be an affiliate name utilized or multiple affiliates that may be working with the negotiating party that we are unaware of at the time of the quote.
- Names, Titles, and Addresses – Titles are normally not on quotes to negotiating parties. In an email exchange, if the client does not have their signature set up properly, all correspondence could easily not have a title associated with the content. In a request for a title, is it necessary to have a title of a person of authority, or simply any title within the organization of the client? Also, does the address need to match the address of the legal name of the company?

“(c) Be agreed to by both NRA shipper and NVOCC, prior to receipt of cargo by the common carrier or its agent (including originating carriers in the case of through transportation);”

- Agreed - There are varying degrees of interpretation of what constitutes “agreed” by both parties. There are some that state there must be a return email or confirmed proof of the agreement of terms. There are others that state that the booking of the cargo serves as confirmation of agreeing to the rate. If the booking by the client is indeed a confirmation of the agreement of the rate, does the booking need to be by the same party that receives the quote or can it be with another party within that organization? In the booking, must there be reference to the rate? The process would not only be more labor intensive for our teams, but also for our clients who in the past have not had to do anything.

“(d) Clearly specify the rate and the shipment or shipments to which such rate will apply;”

- Rate - There needs to be clarification. The current market has accessorial and surcharges in constant fluctuation, even on a daily basis, with GRIs being of the greatest concern. By ours and others’ interpretation, it appears that the policy regulating the NRAs and their application to rates actually leaves less flexibility than how we file rates for the FMC today.

“(e) May not be modified after the time the initial shipment is received by the carrier or its agent (including originating carriers in the case of through transportation).”

- Modified - As previously noted, our rates are constantly fluctuating. While we would not change a rate for a client after receipt of cargo, the likelihood of the rate changing within the specified time frame as noted in 532.3 (b) is strong. Some interpret this exactly how it is written while others note that this is corrected by simply issuing another NRA. Being unable to amend the NRA is restrictive in our processes.

§ 532.6 Notices.

“An NVOCC wishing to invoke an exemption pursuant to this part must indicate that intention to the Commission and to the public by a prominent notice in its rules tariff and bills of lading or equivalent shipping documents.”

- Bills of Lading – A majority of the time, operations or documentation employees will have no visibility to whether or not the booking is moving under an NRA or standard tariff filing since they would not be a party to the handling of the negotiated rate with the client. To meet the requirements of this regulation would involve our employees doing more research concerning the rate basis. Also, to give the ability to the employees to take option and add additional language, would require additional cost to and time from our IT department or software vendor.

46 CFR 532 is a significant step in changing our processes. We welcome this recognition by the Commission to see the true environment in which our industry operates. That being said, the restrictions and requirements of the Negotiated Rate Arrangement, leave our company at a point of not applying at this moment due to the lack of clarification in the application of regulations.

Finally, in our daily operations, we may be asked to provide a quote to a client utilizing all modes of transportation – air, rail, truck, and ocean. Ocean is the only mode of transportation that governs the rate I secure from a service provider or the rate that I sell to the client. I have had the responsibility of our FMC product for nearly 10 years. Within that period of time, no one has requested access to our rates formally on file as required by the Federal Maritime Commission. I request, as previously done by the NCBFAA, that NVOCCs are granted the total exemption of filing rates under the regulatory guidelines of the FMC.

I declare under penalty of perjury that I have read the foregoing and it is true and correct to the best of my knowledge, information, and belief.

Sincerely



Melzana W Wilson

Vice President

Compliance

Mallory Alexander International Logistics, LLC

Mallory Transportation System