



March 26, 2012

Karen V. Gregory  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573-0001

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

Dear Secretary Gregory:

The National Industrial Transportation League ("League") hereby submits its comments in response to the Notice of Inquiry ("Notice") issued by the Federal Maritime Commission ("Commission") on December 20, 2011, regarding the tariff publication exemption ("Exemption") for non-vessel-operating common carriers ("NVOCCs"). The Notice seeks comments on ways to make the Exemption more useful, including extending the Exemption to foreign, unlicensed NVOCCs. As the League has previously informed the agency, it believes that extending the Exemption to all NVOCCs will result in pro-competitive commercial benefits for shippers, while reducing regulatory costs and burdens for foreign NVOCCs, a benefit already enjoyed by US-based licensed NVOCCs.

Founded in 1907, the League is the oldest and largest organization of shippers in the United States. Its members conduct industrial and/or commercial enterprises of all sizes throughout the nation and overseas. The League's members ship a wide variety of commodities, via all modes of carriage, across interstate, intrastate, and international boundaries. Multiple League members use the services of both domestic and foreign NVOCCs.

This NOI proceeding is an outgrowth of prior proceedings at the Commission in which the agency initiated a rulemaking to exempt only US-based licensed NVOCCs from the regulatory burdens of tariff publication, in response to a petition filed by the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") which requested an exemption for the benefit of all NVOCCs. In March 2011, when the Commission issued its final rule, it limited use of the Exemption to only licensed NVOCCs. This limitation was based on concerns from FMC Staff over enforcement of the rule against foreign, unlicensed NVOCCs. However, the agency agreed to reevaluate this finding in a future proceeding. The League actively participated in the prior Commission proceedings and supported an exemption from tariff publication for all NVOCCs in its submissions to the agency in September 2008, and January and June 2010.<sup>1</sup>

The League believes that the Commission should now extend the Exemption to include foreign, unlicensed NVOCCs. This action will increase the commercial benefits currently engendered by the

---

<sup>1</sup> In its June 2010 filing, the League supported a grant of the Exemption for all NVOCCs but in deference to the concerns of the Commission Staff also stated that: "If the Commission decides that its concerns prevent the immediate extension of the exemption to all NVOCCs, the League proposes that the Commission adopt the NRA Rule with the licensing limitation as soon as possible to effectuate in a timely manner the commercial benefits that will flow from the rule. The League also urges the Commission to simultaneously initiate a further review of the basis for its concerns regarding the extension of the exemption to foreign-based NVOCCs, and to conclude such review within one year." NITL Comments, pp. 5-6.

existing Exemption. This extension will enhance competition among NVOCCs by ensuring that all NVOCCs—not just licensed NVOCCs—can offer shippers negotiated rate arrangements (“NRAs”). NRAs provide shippers and NVOCCs with greater flexibility to respond to changing market conditions, which is critical to the business model of many NVOCCs, who handle a significant amount of “spot” shipments. Because the spot market for reselling vessel space is dynamic, NVOCCs and shippers need the flexibility to react to changing market conditions without having to endure delays or expend resources needed to frequently update tariff rates. Moreover, in this dynamic market, many shippers prefer to negotiate movement specific rates via phone or email, which is faster, cheaper, and more responsive than using tariff rates. Accordingly, extending the Exemption will enhance competition among NVOCCs, provide shippers with more choices when selecting an NVOCC, and align ocean shipping regulations more closely to the actual operation of the marketplace.

An extension of the Exemption is consistent with the Commission’s statutory policy directives. Under 46 U.S.C. § 40101(2), one of the purposes of ocean shipping regulation is to “provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices.” As mentioned above, the extension will align the Commission’s regulations more closely to the actual operation of the international marketplace. In addition, it will eliminate the disparate treatment of domestic NVOCCs and foreign NVOCCs.

There is little risk that expanding the Exemption will cause harm. Unlicensed, foreign NVOCCs must have in place a surety in the amount of \$150,000—double the amount required for domestic NVOCCs—covering their activities.<sup>2</sup> In addition, vessel-operating common carriers (“VOCCs”) should not be affected by the extension; they already have the advantage of anti-trust immunity and, unlike NVOCCs, they tend to contract with large multi-national shippers for the movement of full container loads of cargo under long-term agreements. Moreover, the primary purpose of tariff publication—to prevent discriminatory pricing among shippers—is no longer relevant because the abundance of service alternatives allows shippers to obtain competitive pricing in most cases. Also, shippers rarely review rate tariffs, which further undercuts the need for and burdens associated with tariff publication.

Thus, the Commission can make the Exemption more useful by extending it to include foreign, unlicensed NVOCCs. This extension will expand the benefits to NVOCCs and shippers by increasing cost savings, competition, and rate flexibility. Accordingly, the League urges the Commission to commence a rulemaking proceeding to extend the Exemption to include foreign, unlicensed NVOCCs.

Respectfully submitted,



Bruce J. Carlton  
President and CEO  
The National Industrial Transportation League

---

<sup>2</sup> 46 C.F.R. § 515.21(a).