

**Federal
Maritime
Commission**

Karen Gregory <kgregory@fmc.gov>

**Fwd: Docket No. 11-22, Comments on Non-Vessel-Operating Common Carrier
Negotiated Rate Arrangements; Tariff Publication Exemption**

1 message

Secretary Mailbox <secretary@fmc.gov>

Thu, Apr 18, 2013 at 5:13 PM

To: Karen Gregory <kgregory@fmc.gov>, Rachel Dickon <rdickon@fmc.gov>

----- Forwarded message -----

From: **Jay Ruais** <ruais@tinet.org>

Date: Thu, Apr 18, 2013 at 3:46 PM

Subject: Docket No. 11-22, Comments on Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption

To: "secretary@fmc.gov" <secretary@fmc.gov>

To: Karen V. Gregory
Secretary, Federal Maritime Commission
800 North Capitol Street
NW., Washington, DC 20573-0001

From: Robert Voltmann
President, CEO Transportation Intermediaries Association
1625 Prince Street, Suite 200
Alexandria, Virginia 22314

RE: Docket No. 11-22, Comments on Non-Vessel-Operating Common Carrier Negotiated Rate Arrangements; Tariff Publication Exemption

Best,

Jay Ruais

Government Affairs Manager

Transportation Intermediaries Association

1625 Prince Street, Suite 200



**BEFORE THE
FEDERAL MARITIME COMMISSION**

FMC Docket No. 11-22

**Notice of Proposed Rulemaking
NVOCC Negotiated Rate Arrangements;
Tariff Filing Exemption**

COMMENTS

SUBMITTED BY THE

TRANSPORTATION INTERMEDIARIES ASSOCIATION

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April 18, 2013

The Transportation Intermediaries Association (TIA) submits these comments on the above referenced Notice of Proposed Rulemaking (NPRM) seeking comments on extending the existing *tariff filing exemption to foreign based non-vessel-operating common carriers* (NVOCCs) not licensed by the Commission.

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the \$162 billion third party logistics industry. TIA is the only U.S. organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is the voice of transportation intermediaries to shippers, carriers, government officials, and international organizations.

TIA members include approximately 1200 motor carrier property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and NVOCCs), air forwarders, customs brokers, warehouse operators, logistics management companies, intermodal marketing companies, and motor carriers.

TIA is also the U.S. member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing more than 40,000 companies in virtually every trading country.

THE ROLE OF TRANSPORTATION INTERMEDIARIES

Transportation intermediaries or third party logistics professionals act as the “travel agents” for freight. They serve tens of thousands of shippers and carriers, bringing together the transportation needs of the cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers. Transportation intermediaries play a key role in cross border transportation.

Transportation intermediaries are primarily non-asset based companies whose expertise is providing mode and carrier neutral transportation arrangements for shippers with the underlying asset owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation, to meet those needs. Transportation intermediaries bring a targeted expertise to meet the shippers' transportation needs.

Many shippers in recent years have streamlined their acquisition and distribution operations. They have reduced their in-house transportation departments, and have chosen to deal directly with only a few "core carriers." Increasingly, they have contracted out the function of arranging transportation to intermediaries or third party experts. Every Fortune 100 Company now has at least one third party logistics company ("3PL") as one of its core carriers. Since the intermediary or 3PL, in turn, may have relationships with dozens, or even thousands, of underlying carriers, the shipper has many service options available to it from a single source by employing an intermediary.

Although intermediaries are described in the business and trade literature as "non-asset-based," many intermediaries in fact own some assets, broadly defined. These include local pickup and delivery vehicles, over the road trucks, warehouses and cargo consolidation centers, complex computer and telecommunications systems, dispatching centers and sales offices.

Past studies have shown that there are thousands of companies in the intermediary industry. Despite this fragmentation and intense competition, approximately 80% of the NVOCC business is controlled by 20% of the companies. Most of those 20% are very large companies that move many thousands of containers annually. The rest are small to medium size companies, many

owned and run by their founders, who aspire to the success of their larger counterparts, and compete head-to-head with the majors in niche or specialized markets where they can gain a competitive edge.

SHIPPERS AND CARRIERS RELY ON TRANSPORTATION INTERMEDIARIES

Shippers rely upon *transportation intermediaries* to arrange for the smooth and uninterrupted flow of goods from origin to destination, and many carriers rely upon them to keep their equipment filled and moving. It is, therefore, difficult to describe a typical intermediary, or to divide them into fixed categories. Most in international trade offer a mix of land, sea, and air services, customs brokerage (either directly or through subcontractors), warehousing, consolidation and deconsolidation, electronic tracking and tracing and trade advisory services (advice on letters of credit, commercial shipping terms, export administration requirements, transportation security and the like) adapted to the needs of their specific customer base or market niche.

NVOCC NEGOTIATED RATE ARRANGEMENTS; TARIFF PUBLICATION EXEMPTION

TIA has strongly supported use of the Commission's exemption authority under the Shipping Act of 1984 to relieve NVOCCs from the burden and expense of tariff publication. Indeed, the Shipping Act's statement of purpose includes references to "a minimum of government intervention and regulatory costs;" providing "an efficient and economic transportation system that is, insofar as possible, in harmony with, and responsive to, international shipping practices;" and promoting US exports "by placing greater reliance on the marketplace."

The NVOCC tariff publication exemption is intended to reduce operating costs for our NVOCC members, and allow them to concentrate on quality and price, rather than expending unnecessary time and expense on administrative compliance. We have not received any reports

from members about complaints or objections from their customers about the way that the exemption has worked in practice. However, the requirement to freeze the rate in place for its duration has introduced a rigidity that has severely limited the commercial usefulness of the exemption, especially in trades where the underlying ocean carrier rates tend to be volatile, and rates quoted to customers must be modified frequently to take these changes into account.

If the Commission does not finalize this proposed rule, discrimination would exist between licensed NVOCCs in the United States and those outside the United State that are subject only to the registration requirement. The exemption could subject registered NVOCCs to a competitive and cost disadvantage. They would have to continue to incur the cost and potential enforcement risk of tariff publication, and their rates would be on the public record for their competitors to see. At the same time, the rates of licensed NVOCCs able to take advantage of this exemption would be confidential. Not only is this fundamentally unfair, but the disparity that it would create could lead to retaliation that may subject U.S. NVOCCs to similar treatment by our trading partners in other countries.

Therefore, we commend the Commission for moving forward with this Notice of Proposed Rulemaking to extend the existing tariff exemption for to foreign-based, unlicensed NVOCCs, and to clarify the nature of the information needed on the registration form. This action will level the playing field for foreign-based NVOCCs and their competitors in the United States and will give them the same tools to serve their customers without incurring additional cost. We appreciate the Commission's work on this matter and looking forward to working with the Commission in the future.

Respectfully submitted,

TRANSPORTATION INTERMEDIARIES
ASSOCIATION

By:

A handwritten signature in black ink, appearing to read "Robert A. Voltmann", followed by a horizontal line.

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