

Holland & Knight

800 17th Street, NW, Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564
Holland & Knight LLP | www.hklaw.com

RECEIVED

2013 APR 29 PM 6:05

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM.

J. Michael Cavanaugh
(202) 828-5084
michael.cavanaugh@hklaw.com

April 29, 2013

VIA HAND DELIVERY

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

Re: FMC Docket No. 11-22

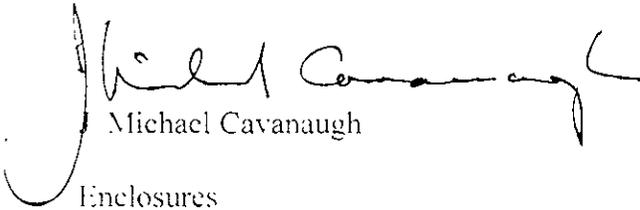
Dear Ms. Gregory:

Enclosed for filing are comments of UPS Ocean Freight Services, Inc. in response to the Commission's February 21, 2013 Notice of Proposed rulemaking in Docket No. 11-22.

Per the notice, we will also submit a copy of this document in .pdf format by email addressed to your office.

Sincerely yours,

HOLLAND & KNIGHT LLP


Michael Cavanaugh

Enclosures

23020300 v1



**ORIGINAL
RECEIVED**

**BEFORE THE
FEDERAL MARITIME COMMISSION**

2013 APR 29 PM 1:05

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

DOCKET NO. 11-22

**NON-VESSEL-OPERATING COMMON CARRIER NEGOTIATED RATE
ARRANGEMENTS – TARIFF PUBLICATION EXEMPTION**

COMMENTS OF UPS OCEAN FREIGHT SERVICES, INC.

In a Notice of Proposed Rulemaking ("NPRM") issued February 21, 2013, the Federal Maritime Commission ("Commission") has sought comments from the public concerning its proposal to extend the exemptions in 46 C.F.R. Part 532 pertaining to Non-Vessel Operating Common Carrier ("NVOCC") negotiated rate arrangements ("NRAs") to foreign-based unlicensed NVOCCs that comply with the Commission's regulations for operation in United States trades. UPS Ocean Freight Services, Inc. ("UPS"), a licensed NVOCC which has two unlicensed foreign-based NVOCC affiliates, submits the following comment on the proposal.

I. BACKGROUND

In 2011, in Docket No. 10-03, the Commission implemented the NRA procedure set forth in 46 C.F.R. Part 532 and made the NRA exemption available to licensed NVOCCs. The Commission has now proposed to allow foreign-based unlicensed NVOCCs to utilize NRAs, provided such NVOCCs register with the Commission pursuant to a proposed new Section 515.19 of the Commission's regulations, and meet other regulatory requirements. Under the proposed rule, such foreign NVOCC registrations must be renewed every three years, and may be terminated or suspended on various grounds, including failure to maintain proof of financial responsibility, violations of the Shipping Act of 1984 or other laws or Commission orders or regulations, failure to respond to Commission inquiries, making false or misleading statements,

failure to maintain a Form FMC-1 and tariff, or failing to maintain an agent for service of process.

II. UPS COMMENTS

UPS opposes the requirement in the proposed rule for a formal renewal process every three years for foreign-based NVOCCs to maintain eligibility to use NRAs. This is an unnecessary regulatory burden that clearly will not facilitate Commission regulation or enforcement in any way, and does not otherwise benefit US commerce or shippers. Alternatively, UPS suggests that the renewal process could be greatly simplified for compliant foreign NVOCCs, avoiding a burdensome process and removing uncertainty for the preponderance of the NVOCC industry.

The proposed NVOCC registration requirements at 46 C.F.R. §515.19(f) already require that any changes to the registered NVOCC's details or corporate information must be reported to the Bureau of Certification and Licensing within thirty days. This assures that each registered NVOCC must maintain up-to-date information with the Commission at all times, and if any item reported on its original application changes, it must be updated promptly. Failure to do so could lead to suspension or termination of the NVOCC's eligibility to use NRAs. Additionally, the foreign NVOCC will continuously be required to maintain its Form FMC-1, ocean tariff and proof of financial responsibility in accordance with Commission rules at 46 C.F.R. §520.11, or it will not be able to operate in U.S. trades at all.

It serves no useful purpose to require submission of an "updated registration form" by an NVOCC that is properly registered, has already updated its information at the time any changes have occurred, which actively meets all other regulatory requirements and otherwise has not been subject to any enforcement action. It would simply necessitate that the NVOCC resubmit

exactly the same information already on file with the Commission. There would be nothing to "update." The proposed rule does not say whether a fee would be imposed for re-application. It also does not say whether the NVOCC's existing registration and NRA eligibility continues in effect while processing of the updated form. This raises the possibility its operations might be suspended over some small technicality or administrative delay, which injects a significant level of uncertainty for businesses in many cases making considerable investments in improving efficiency of their operations for the benefit of the shipping public.

Accordingly, UPS submits that where foreign NVOCCs are already required to update their information promptly under proposed new Section 515.19(f), the requirement for re-submission of an "updated registration form" every three years is unnecessary, burdensome and serves no substantial regulatory or compliance purpose, and should be dropped from the proposal.

Alternatively, UPS submits that a previously-registered foreign NVOCC that has had no informational changes since its initial registration, or which has duly reported any changes in accordance with 46 C.F.R. §515.19(f), should be able to renew its registration simply by filing a certificate stating that all information previously submitted to the Commission in its original registration or any updates continues to be accurate and complete. UPS suggests that 46 C.F.R. §515.19(d) be revised by adding to the end thereof the following:

...provided, however, that where applicable, a registered foreign NVOCC may submit in lieu of an updated registration form a certificate signed by a duly-authorized representative reading: "[Name of NVOCC] hereby certifies that all information previously provided to the Commission in its registration form and updates in accordance with 46 C.F.R. §515.19(f) continues to be accurate and complete "

Respectfully submitted,

UPS Ocean Freight Service, Inc.

By: Thomas F. Jensen

Thomas F. Jensen

Vice President

UPS

Suite 300

316 Pennsylvania Avenue, SE

Washington, DC 20003-1185

By: J. Michael Cavanaugh

J. Michael Cavanaugh

Holland & Knight LLP

800 17th Street NW, Suite 1100

Washington, DC 20006

Telephone: 202-828-5084

Facsimile: 202-955-5564

Attorney for UPS Ocean Freight Service, Inc.

Date: April 29, 2013