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FEDERAL MARITIME COMMISSION

Founded in 1917

Before the
Federal Maritime Commission
Washington, D.C

Docket No. 10-03

COMMENTS ON NVOCC NEGOTIATED RATE ARRANGEMENTS

Submitted by

NEW YORK NEW JERSEY FOREIGN FREIGHT FORWARDERS & BROKERS ASSOCIATION, INC.

The New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. ("NYNJFFF&BA") is one of the oldest trade associations for freight forwarders, NVOCCs, and customs brokers in the United States. Fifty-eight percent (58%) of its full time members operate as OTI NVOCCs, who will benefit from the proposed regulations to exempt NVOCCs from the burden of tariff rate publication requirements. The entire customer base of its membership is made up of exporters and importers, who will be positively impacted by enhanced market efficiency from changes as a result of the proposed regulations.

In September 2008, the NYNJFFF&BA had submitted a statement supporting the NCBFAA Petition for exemption from mandatory rate tariff publication, Docket No. P1-08.

The NYNJFFF&BA would like to express our appreciation to the Federal Maritime Commission for seriously considering the petition, for recognizing the validity of the supporting comments, and for granting the exemption requested.

Support for Negotiated Rate Arrangements

The NYNJFFF&BA supports the Federal Maritime Commission's ("FMC") proposed rulemaking providing NVOCCs relief from tariff rate publication requirements and permitting the alternate vehicle of Negotiated Rate Arrangements ("NRA"). By

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allowing NRAs the FMC is recognizing the practical reality that ocean transportation rates currently accepted by customers are first quoted, negotiated, and agreed to and then they are filed in tariffs. A shipper's decision to tender freight to an NVOCC is determined by the first step in the process and not the second tariff filing step. Good business practice has dictated that agreed rates are confirmed in writing for the mutual protection of both parties. NRAs recognize what the shipping public wants and is currently practicing. Tariff filing has outlived its usefulness. NRAs will assist the shipping public to respond more quickly to changing economic conditions and subsequent fluctuations in the costs of ocean transportation.

Comments Modifying the FMC's Proposed Regulation

The NYNJFFF&BA submits the following comments for consideration.

The proposed regulation would exempt licensed NVOCCs from tariff rate filing requirements, but not unlicensed yet registered NVOCCs. We are in favor of having the exemption extended to foreign NVOCCs that are registered with the FMC and are fully bonded and compliant.

- a) We believe that all entities operating as NVOCCs should be subject to the same regulations. Rate tariff filing requirements no longer serve a useful purpose, whether one is a licensed NVOCC or a registered NVOCC. There is no reason to exclude registered NVOCCs from using NRAs to respond more quickly to market conditions.
- b) Registered NVOCCs work with U.S. companies as their agents. If the tariff filing exemption is not granted to registered NVOCCs, it would place them and their U.S. agents at a competitive disadvantage to the detriment of the shipping public.
- c) All customers of all NVOCCs should be able to benefit from the NRAs, whether they are working with licensed or registered NVOCCs.
- c) By extending the regulatory tariff filing exemption to registered NVOCCs, it could aid compliance efforts and encourage more overseas companies to register with the FMC.
- d) It would provide the FMC with a tool to argue against other countries' imposing more stringent regulations on U.S. based NVOCCs versus those operating within their nations.

The NYNJFFF&BA would like the FMC to clarify that the price being stated in an NRA can include all the components of a freight movement and is not just a replacement of a base ocean freight rate now being filed in tariffs. To be an effective agreement, the NRA must be able to include in a clear and simple way the complete cost that the shipper is requiring for a given service. The NYNJFFF&BA understands that the FMC's primary intent is the protection of the shipper. A key concern of the shipper is to identify the total cost for a freight movement. In today's world, that total cost has numerous components. Surcharges are an increasing portion of the total ocean transportation cost. They are also a more volatile component than base ocean freight rates. They fluctuate in response to different factors such as fuel price levels, security measures, piracy concerns, port congestion, space availability etc. A base ocean freight rate to move goods from origin to destination is only one factor and at times can represent less than 50% of the total cost.

It has become a serious challenge for NVOCCs and their customers to manage the variety of surcharges and the constant changes to them announced by different ocean carriers for service within the same trade lanes and even the same vessels. NRAs offer a natural and simple vehicle for capturing the total cost to the shipper and identifying what is included. When specifying the rate as a requirement of the NVOCC negotiated agreement with its customer, the FMC should allow a description of what surcharges or other fees, such as advance manifesting, are included or not included. It should provide for the possibility to pass on these additional charges as assessed by an ocean carrier. This description is a normal component of NVOCCs current quotations to prospective customers. It is also a normal component of carriers' quotations to NVOCCs and then outlined in service contracts. The NRA should truly reflect all costs for a complete agreement between the NVOCCs and their customers.

The FMC has solicited comment on whether "the regulation should also specify that when a tariff rate and a duly executed NRA appear to address the same shipment, the lower rate should prevail." The NYNJFFF&BA believes that the NRA is a rate that is mutually agreed, specifically defined, comprehensive, and tailored to the requirements of both parties. It would also recognize specific service levels. It should take precedence over a tariff rate. NRA's should be subject to change or amendment by mutual agreement of the parties.

In the requirements for the NVOCC NRAs, it is indicated in section (d) that NRAs "may not be modified after the time the shipment is received by the carrier or its agent."

The NYNJFFF&BA asks if this can be clarified. If it is in the interest of both parties to the agreement to modify any portion of it, it would make sense to allow this to occur at any time as long as it is in writing and the agreement is mutual.

The NYNJFFF&BA also seeks clarification that more than one rate can be incorporated into an NRA. When defining the requirements of the NVOCC Negotiated Rate Arrangements, the proposed regulation only uses the singular form of rate. The NYNJFFF&BA suggests that the plural form of rate be used in order to make clear that a negotiated rate arrangement could cover multiple movements from various ports to various destinations. What is important is that the costs are clearly identified for the benefit of both parties. It is the understanding of the NYNJFFF&BA that through the proposed regulation the FMC is offering an option for relief from unnecessary and costly tariff rate publishing requirements. It is the practice, particularly of the smaller NVOCCs, to provide their customers or prospective customers multiple rates covering all the transportation points and including this in one written communication. If, for example 10 port pairs were covered in that communication it would not be practical to have an NVOCC be required to provide ten separate NRAs. This would not add any additional transparency of costs for the shipper and add to the record keeping burden of the NVOCC.

While the NYNJ FFF&BA agrees that NRAs should be clearly stated in writing, it should not be necessary that it be in writing "by the time cargo is received by the carrier or its agent." The purpose of the NRA is to protect the shipper / consignee responsible for the freight costs. What is important is that the shipper / consignee agree to the rate and the date it is effective. It should be allowed that a shipper / consignee agree to an NVOCC's offer after the receipt of the cargo. There can be instances when cargo is received by truck for stuffing close to the port. Due to space

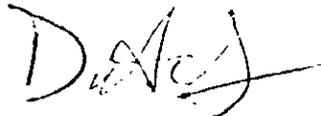
constraints in loading on planned vessels, other carriers may need to be used. Those carriers may charge higher rates. The consignee may be willing to move the goods at the higher rate in order not to delay the sailing. For import goods, it could be difficult to meet the requirement of having the agreement in writing by the date the cargo is received, due to time zone differences. What is most important is that the shipper / consignee, who agrees to the NRA, accept to have the shipment moved at the identified rate with an agreed effective date. Thus, the NYNJ FFF& BA believes that the proposed rule should allow for a rate to have an effective date that can be agreed to at any time. Both the shipping public and the NVOCC need the capability to respond to changes in the market. Without the flexibility to have an effective date determined by agreement or the ability to amend an NRA after the cargo has been received, cargo can be delayed from moving and at times cause loss of business or sales penalty to the shippers and consignees. When the rate is mutually agreed, the timing of the cargo receipt should not be an issue.

The NYNJ FFF&BA believes that disputes between a shipper and an NVOCC can be resolved by application of contract law, and by the courts, if necessary.

In conclusion, the NYNJFFF&BA would like to reiterate its support for the NCBFAA Petition and to applaud the FMC for its proposed regulation that will benefit both NVOCCs and the shipping public. The comments in this submission reflect the views of our membership and are submitted in recognition of the practical realities of moving ocean freight in a global competitive environment and of serving the shipping public, who is their customer base.

Executed on June 4, 2010

On Behalf of the NYNJ Foreign Freight Forwarders & Brokers Association, Inc.

A handwritten signature in black ink, appearing to read "D. Schlenger", with a long horizontal stroke extending to the right.

David Schlenger
President
NYNJ Foreign Freight Forwarders & Brokers Association, Inc.