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FEDERAL MARITIME COMMISSION

June 4, 2010

Secretary  
Federal Maritime Commission  
800 North Capitol Street, NW  
Washington, DC 20573-0001

DHL-Danzas D.B.A. DHL Global Forwarding D.B.A. Danmar Lines Ltd. is one of the leading global NVOCC/Ocean Intermediaries. Ocean carriers and their customers, including NVOCCs in today's marketplace, are struggling with equipment and space shortages. Certain ocean carriers are evaluating their capacity and developing creative pricing structures to address the marketplace as it exists now and we expect will be for some time to come. This Rule-making Proposal is being considered in an environment where shippers, including NVOCCS, are being inundated with a barrage of constantly changing rate increases and surcharges to meet the rapidly changing marketplace. There continues to be a dire shortage of equipment and corresponding container slots. Certain large shippers, anticipating lower inventory levels, are accepting increases over their service contract rates to ensure that their cargo is loaded. This trend is driven by needs expressed by shippers seeking an opportunity to get cargo loaded even in situations where there are space constraints in specific trades. It is driven by a need expressed by our customers to always have an opportunity to get cargo loaded even in a situation where there may be some constraints in a given trade. In general shippers, including NVOCCs, have been experiencing shortages of containers and equipment all over the world. More and more carriers are imposing extra positioning costs. In view of these general conditions, it is our expectation that other carriers will follow suit with creative pricing programs that will result in a plethora of sudden surcharges and increased rate structures.

The point of the above is that the current marketplace is a dynamic one with rapidly fluctuating rates and emerging surcharges. NVOCCs need the flexibility to compete by quick and timely responses in the NRA structure. As noted, a timely response sometimes means that a container gets on a vessel or an untimely one means that cargo stays on the pier. This is the marketplace scenario that is expected to continue for sometime in the future. The NRA must be a vehicle in which prompt and timely responses can be accomplished to meet rate and surcharge pressures. Therefore, DHL-Danzas makes the following suggestions in terms of structuring the proposed NRA.

The Commission in its Proposed Rule-making has invited comments "on additional terms to be required in the NRA documentation", and on which "elements should be required to qualify the NRA for a "safe harbor" status that affords a presumption that the corresponding shipment is not subject to the tariff rate publication requirement." It has been the experience of the NVOCC industry that when negotiating with its customers, all cost factors including those relating to surcharges, are on the table. Surcharges inevitably will become part of the NRA "document" in the back and forth exchanges between shippers and NVOCCs since shippers will want to know the total pricing structure of the intended transport.

DHL Global Forwarding  
19120 Kenswick Drive  
Humble, TX 77338 USA)

Phone +1 281.964.2500  
Fax +1 281.964.2624  
[www.dhl.dgf.com](http://www.dhl.dgf.com)

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FMC 17482NF

DHL-Danzas submits that the NRA, in order to provide a meaningful exchange between an NVOCC and its shipper customers, must allow some reference to the applicability of charges which are necessary to define the rate(s) themselves. A prime example of this is the conventional understanding by the parties that the offered and accepted rates are "All inclusive". This term would end up in the NRA written exchanges. The NRA should similarly provide flexibility in including references to charges which may assist in defining the rate(s) themselves such as "All in". Rate-defining provisions should be permitted in NRAs such as those that identify which surcharges are included in the rate(s) and which are not. The NRA should include all the possible variables relating to surcharges that apply to the shipments at hand. For example, information as to which surcharges are to be added to the rates either as would be provided in the NRA itself, or by reference to the Rules Tariff. The NRA should also be able to indicate if the parties opt to "pass on" all surcharges imposed by the underlying ocean carrier. This feature is most important in that in trade lanes with various ocean carriers providing service each of these may have varying surcharges that apply. The NVOCC and shipper should be free to express that they agree that these will be "passed on" to the shipper. Finally, the parties should have the flexibility to amend the NRA terms as needed. As noted above, in the current Asia to U.S. trade lanes, some carriers are requiring and some shippers may agree to pay increased rates and/or surcharge premiums to insure that cargo obtains equipment and is loaded on a vessel. The NRA must have this flexibility to allow timely responses for pricing changes.

DHL-Danzas, in view of the above, respectfully requests that NRAs be allowed to clearly identify the surcharges which are applicable to the rate(s), and if these are contained in the Rules Tariff, the web-site location where these rates may be contained. This is language now generally found in service contracts, NSAs, and even in tariff line items. Therefore, this is not a new feature to the shipping environment. DHL-Danzas also notes that the Commission may be indirectly providing for this result by its Proposed Rule at §532.2 (g). That Proposed Rule states that the current 46 C.F.R. § 520.4 (a) (4) would no longer apply to exempt NVOCCs. § 520.4 (a) (4) provides as follows:

**§ 520.4 Tariff contents.**

(a) *General.* **Tariffs published pursuant to this part shall:**

(4) **State separately each terminal or other charge**, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part of the aggregate of the rates or charges; (Emphasis Supplied).

From the above, since the exempt NVOCC would no longer be required to state "each terminal or other charge" in its published tariffs, it is then clear that it is the Commission's intent to allow language in an NRA relating to charges similar to that illustrated in the discussion above. DHL-Danzas respectfully requests that the Commission address and clarify this understanding.

Respectfully yours,



Steen Christensen  
Sr. Vice President Ocean Freight North America