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Docket No. 10-03, NVOCC Negotiated Rate Arrangements

To:  
Karen V. Gregory, Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Room 1046  
Washington, D.C. 20573-0001  
[secretary@fmc.gov](mailto:secretary@fmc.gov)

From:  
Charles Brennan, Vice President  
NACA Logistics (USA), Inc.  
dba Vanguard Logistics Services OTI# 017237  
857 E. 230<sup>th</sup>. Street,  
Carson, CA 90745

Further to previously submitted comments in response to the NCBFAA's exemption petition in support of the exemption. Our company has been a licensed NVOCC for over 10 years. We utilize dozens of ocean carriers, serve hundreds of customers, and handle about 100,000 TEU per year in all major world trades.

We would like to express our thanks to the Federal Maritime Commission for having considered the various comments in the proceeding and granted the exemption that was requested.

Please allow us to reiterate the need for the exemption;

- a. Based on changes in buy rates with the Carriers, our sell rates are constantly changing for both our LCL and FCL products. Examples of these rate changes are Bunker Adjustment Factors, Currency Adjustment Factors, Fuel Adjustment Factors and other surcharges that Carriers are applying in the market place. The tariff filing burden is heavy due to the high number of Customers and ongoing rate changes being applied by the vessel operators.
- b. In view of the large number of Customers that we service and the large number of Carriers that we utilize, the publication process becomes a very cumbersome and costly endeavor, and is devoid of use by our Customers. The full costs of establishing a tariff website, rate tariff publication, maintenance of same, internal IT development and the costs of personnel assigned to tariff compliance is estimated at \$100,000 annually in resources. We feel this to be a high cost for a system that is not utilized by the shipping public.

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**857 E 230<sup>th</sup> St Carson CA, 90745, USA. Tel: 310 847 3000 Fax: 310 847 3261  
OTI# 017237**

NACA LOGISTICS GROUP provides, through its constituent companies, ocean transportation to and from the United States and throughout the world. NACA Logistics (USA) Inc. is the cornerstone U.S. company, serving as the local agent in its own name or its U.S. trade name Vanguard Logistics Services for the Brennan International Transport, Conterm Consolidation Services, Direct Container Line, Ocean World Shipping, Box Consolidators, Mercosur Container Line, Vanguard Logistics Services (Hong Kong) Limited and Global Consolidation Services (HKG) Limited companies.



- c. NACA is able to track the frequency with which Shippers or other persons attempt to access our tariffs. It would appear that Shippers do not rely upon rate tariffs as we can confirm that there have been no attempts to access our tariffs by any Shippers in either 2007 or 2008.

As information, NACA has an established charge for Tariff Subscription, and its monthly fees are USD 350.00 per user. The amount that has been collected for tariff subscription in 2007 and 2008 is zero.

NACA supports the proposal:

- a. Rates and Services negotiated with Shippers are already memorialized in writing via softcopy rate agreements, rate quote confirmations, etc. hence NACA is already in compliance with the "writing" requirement
- b. NACA is in agreement to add a note on NACA's written rate agreements indicating that the exempt rates (the Negotiated Rate Agreements or NRAs) are subject to our rules tariff and that NACA will eliminate any access fee for its rules tariff

Further, we urge that the final rule includes the following modifications:

- a. The exemption should be extended to all lawful NVOCCs, including foreign registered, not just licensed companies. Making this exemption applicable to US-based licensed NVOCCs only would be discriminatory. The exemption was intended to be for the entire industry. In addition, this would be cause for concern that other foreign governments, perhaps the PRC, might take retaliatory action against US licensed NVOCCs if unjustified burdens were left on registered NVOCCs.
- b. The parties should be able to amend rates at any time, as long as their agreement to do so is memorialized in writing by both parties (Otherwise, the parties will not have the flexibility to react to changes in the carriers' rates when dealing with an agreement covering multiple shipments.)

"I, Charles Brennan, declare under penalty of perjury that I have read the foregoing and it is true and correct to best of my knowledge, information and belief"

Charles Brennan, Vice President

Executed on June 3, 2010

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Issued: April 29, 2010

**FEDERAL MARITIME COMMISSION**

**46 CFR Parts 520, 532**

**Docket No. 10-03**

**RIN 3072-AC38**

**NVOCC Negotiated Rate Arrangements**

**AGENCY:** Federal Maritime Commission

**ACTION:** Notice of Proposed Rulemaking

**SUMMARY:** The Federal Maritime Commission proposes a new part 532 providing an exemption for non-vessel-operating common carriers agreeing to negotiated rate arrangements from certain provisions and requirements of the Shipping Act of 1984 and certain provisions and requirements of the Commission's regulations. The Commission also proposes to add a provision at 46 CFR 520.13(e) to reflect the existence of these instruments.

**DATES:** Written comments are due by June 4, 2010. If an interested party requests an opportunity to present oral comments to the Commission concerning the proposed regulatory changes by May 14, 2010, the FMC will hold a public meeting on May 24, 2010.

**ADDRESSES:** Submit all comments concerning this proposed rule to:

Karen V. Gregory  
Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Room 1046  
Washington, D.C. 20573-0001  
[secretary@fmc.gov](mailto:secretary@fmc.gov)