

U.S. TRAFFIC SERVICE

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May 24, 2010

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Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Room 1046
Washington DC 20573-0001

SUBJECT: Docket No. 10-03 Comments on NVOCC Negotiated Rate Agreements

Dear Ms. Gregory:

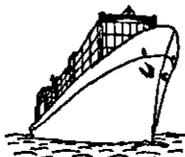
I am President of Kaslea Corporation, dba U.S. Traffic Service, a tariff publisher under my ownership and day-to-day management since 1992. I am admitted as a Practitioner before the Federal Maritime Commission, Certificate #1334.

I offer the following comments on Docket 10-03:

1. I had assumed from my reading of proposed 46 CFR 532 that an NVOCC invoking the exemption from rate publication does so for the entirety of its NVOCC operations, fulfilling the requirements as relate to public notice (532.6) and publishing a "rules tariff" (532.3) bereft of mention of rates and charges.

Nevertheless, the Section-by-Section analysis (page 20, Docket 10-03, published April 29, 2010) discusses a possible conflict between a "published rate and a duly-executed NRA" thus indicating that some sort of "blended" NVOCC operation would be permitted, and thus the "rules tariff" for these NVOCCs' would indeed be a "rules and rates" tariff as per current practice. (The May 5 newsletter published by Distribution-Publications, Inc., a prominent tariff publisher, has interpreted the proposed Rules as allowing ongoing rate filings for "some or all shipments.") If this will be the case, then I suggest that the FMC should mandate wording to be prominently noticed in the NVOCC's tariff or via FMC-1 to the effect that the NVOCC has elected to invoke the exemption provided in 46 CFR 532 for a portion of its operations and that the mention of any charges in any rule does not apply to that traffic. (Thus, surcharges, arbitraries, terminal handling charges, documentation charges and the like, when mentioned in a rule, apply only to the traffic for which rates are published, and none other.)

2. If, however, the intent of 46 CFR 532 is that an NVOCC invoking the exemption must do so for **all** of its traffic, then the definition of "Rules tariff" (532.3) includes two words which are superfluous, namely "charges" and "classifications", since all traffic will travel under individually negotiated private



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treaties (NRA's) between the shipper and the NVOCC in which whatever charges and classifications, as agreed to by the parties, have already been taken into account. The NRA, of necessity, will include all charges ("rate" per 532.3 (b) further defined as "a price stated for providing a specified level of transportation service for a stated cargo quantity, from origin to destination, on or after a stated date or within a stated time frame") imposed on the shipper by the NVOCC, including basic ocean freight or through multi-modal rate, surcharges and arbitraries, documentation fees, BAF, emergency fuel charge, terminal handling fees and the like, since there is no provision in the "rules tariff" to augment whatever amount(s) have already been decided upon between the parties to an NRA because the definition of "rules tariff" 532.3 (c) ends with the words "and does not include a rate."

3. Assuming that an NVOCC invoking the exemption was required to do so for the entirety of its operations, but then wishes to "reverse course" and publish rates at some future time, some provision in the Rules should be made for this eventuality, and specifically as to notice, and the ongoing validity of NRA's under which some traffic might still be flowing as of the effective date of resumption of rate publication, and their possible conflict with rates and charges newly published. (This is touched on in paragraph 1. above, but the question there was as regards an ongoing operation vs. what would be a "transition" period here.)
4. An overriding concern here is that proposed 46 CFR 532 substantially removes the activities of NVOCC's invoking the exemption from rate publication from Federal Maritime Commission oversight, except on an *ex post facto* basis, and thus they no longer are what is commonly understood as a "common carrier" but rather a "contract carrier" with the further distinction that the contracts themselves, the NRA's, unlike NSA's, do not have to be filed or registered with the FMC, nor noticed in their tariffs in any way. This seems to "strike at the heart" of the intent of Congress in its passage of the Shipping Act of 1984 and subsequent relevant legislation and mandates.

I appreciate the opportunity to present my views on this important matter; please don't hesitate to contact me if you have any questions on the above.

Very truly yours,

Stewart M. Crawford
President

Kaslea Corporation dba U.S. Traffic Service.