

Karen Gregory

From: Mary Angel on behalf of Secretary
Sent: Tuesday, August 23, 2005 9:36 AM
To: Bryant VanBrakle; Karen Gregory, Rebecca Fenneman
Subject: FW: FMC Docket 05-05
Attachments: FMC Docket 05-05 Comments of the American Institute For Shippers' Associations doc, FMC Docket 05-05 Comments of the American Institute For Shippers' Associations pdf

Fyi

From: Andrew M. Danas [mailto:adanas@gjcobert.com]
Sent: Monday, August 22, 2005 9:20 PM
To: Secretary
Cc: Ron Cobert
Subject: FMC Docket 05-05

Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W., Room 1046
Washington, D.C. 20573-0001

Dear Secretary VanBrakle:

This law firm represents the American Institute for Shippers' Associations, Inc. (AISA). Attached in both Word and Adobe Acrobat Format please find a copy of AISA's Comments in the above-referenced proceeding. It is our understanding from the Notice of Proposed Rulemaking that by submitting this electronic, e-mail version of these comments, AISA is not required to file paper copies of its comments. If this understanding is incorrect, please call us at 202-296-2900 ext 219 on Tuesday morning so that we may arrange service filing of hard copies of these comments.

Very Truly Yours,

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8/23/2005

CC. 05/09/08
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via email:
(Chairman
(09/11/08)
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CPS

ORIGINAL

BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

_____)
_____)
Non-Vessel-Operating Common Carrier) Docket No. 05-05
Service Arrangements)
_____)
_____)
_____)

COMMENTS OF
AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC.

COMES NOW AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC., ("AISA"), by and through its undersigned counsel, and herein files its comments in the above-referenced proceeding.

As the Commission knows, AISA is the trade association for shippers' associations. AISA filed comments in FMC Docket No. 04-12, the proceeding in which the Commission adopted the exemption authorizing NSAs. In its comments, AISA opposed the restrictions on use of NSAs by shippers' associations with nvocc members. It was, and is, AISA's position that the Commission lacks the legal and statutory authority to regulate or impose restrictions on shippers' associations, especially the restrictions that are contained in current FMC regulation 46 C.F.R. 531.3(o). *Status of Shippers' Associations Under the Shipping Act of 1984*, 49 F.R. 21799 (May 23, 1984), FMC, *Petition For An Amended Statement of Policy Regarding the Status of Shippers' Associations; Order Denying Petition*, 50 Fed. Reg. 7225 (Feb. 21, 1985). It was, and is, AISA's position that the reasons given by the Commission for imposing such restrictions are and were wrong and unlawful both as a matter of policy and law.

The Commission rejected AISA's comments in Docket No. 04-12, including AISA's petition for reconsideration. As a consequence, AISA has filed a judicial challenge to the legality of the NSA regulations in the United States Court of Appeals for the District of Columbia. *American Institute for Shippers' Associations, Inc. v Federal Maritime Commission* (D.C. Cir. Docket No. 05-

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1036)(consolidated with *International Shippers Association v. Federal Maritime Commission* (D.C. Cir. Docket No. 05-1037). AISA's appeal is currently pending.

The reasons cited by the Commission in the Notice of Proposed Rulemaking for now removing the restrictions on the right of shippers' associations to enter into NSAs are virtually identical to the reasons AISA claimed that such restrictions are unlawful. The proposed revision of 46 C.F.R. §531.3(o) thus appears to correct an unlawful regulation. Adoption of the final rule correcting Section 531.3(o) would obviously require both the Commission and AISA to mutually re-evaluate the legal issues that may or may not still be pending in that appeal, with the likely result of a quick and voluntary dismissal thereof. AISA thus supports adoption of the proposed rule.

Respectfully submitted,
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Dated: August 23, 2005