



Founded in 1917

**Before the
Federal Maritime Commission
Washington, D.C**

Docket No. P2-15

**PETITION OF THE NATIONAL CUSTOMS BROKERS AND FORWARDERS
ASSOCIATION OF AMERICA, INC. FOR INITIATION OF RULEMAKING**

Comments Submitted by

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

I am Charles Riley, President of the New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. ("NYNJFFF&BA"), writing on behalf of our members. As one of the oldest trade associations for licensed freight forwarders, Non-Vessel Operating common Carriers (NVOCC), and Customs Brokers in the United States, the NYNJFFF&BA has over 125 members, consisting of both publically traded multi-national companies as well as small businesses. Sixty percent (60%) of our full time members are directly impacted by ocean freight rate setting regulations.

The NYNJFFF&BA greatly appreciated the decision of the Federal Maritime Commission ("Commission") in March 2011 to grant an exemption from tariff filing by allowing for Negotiated Rate Arrangements ("NRAs"). As we had stated at the time, the Commission took an important step in recognizing that NVOCCs operate in a very competitive and quick-moving industry with rates determined by a fast changing marketplace and resulting agreements with customers reflect rates and charges not contained in static tariffs. The NRA represents an exceedingly important step to bring the regulations closer to business practice and help reduce costs involved with maintaining rate tariffs.

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Our Association supports the petition of the National Customs Brokers and Forwarders Association of America (“NCBFAA”) to revise the regulations concerning NRAs and Non-Vessel Operating Common Carrier Service Arrangements (“NSA”).

Improving NRAs

The NCBFAA makes a compelling argument in favor of allowing NRAs to include economic terms beyond rates and to be modified at any time if the NVOCC and shipper are in agreement.

It is generally recognized that the ocean freight market has evolved in to one where rates are negotiated between NVOCCs and their shippers. The level of the rate is influenced by many factors, such as the volume of freight to be tendered, cost of credit terms granted, services required and perhaps guaranteed, liabilities imposed, to name a few. These factors resulting in rate structures are specific to the individual shipper. Under present regulations they cannot be included in the NRA. They must be incorporated in the NVOCC’s rules or rate tariffs. This is not only cumbersome and more costly for the NVOCC, but makes the rate and associated conditions for a specific shipper less transparent for that shipper as complete information pertaining to the costs of the freight are located in different places. The NYNJFFF&BA believes it is commercially reasonable for an NRA to include all elements affecting the rate and agreement with the specific shipper. If these factors can be included in an NSA, why can’t they be included in a single NRA as well? If a particularly low rate is granted to a shipper based on a time/volume commitment why cannot that be made part of the NRA? It is a vital component of the rate level. As the NCBFAA has pointed out, the Commission granted the NRA exemption in order to allow NVOCCs “to better serve their shipper customers.” What better way is there to serve the shipper than to make the NRA an instrument that promotes clarity and covers all conditions affecting the freight movement without having to adhere to the formalities of an NSA? It is in the interest of the shipper and the NVO to make the NRA a flexible commercial instrument.

In the event of any conflict between the terms of an NRA and the NVOCC’s rules tariff, the NRA agreement with the shipper would prevail. From a shipper’s perspective that is the ultimate clarity it would wish for---- i.e., the terms of the transactions(s) are clearly visible in one place without reference to tariff material, which in most cases is not user friendly.

The NYNJFFF&BA strongly supports the recommendation that NRA’s can be amended at any time after the receipt of cargo provided that the shipper agrees in writing. An ocean freight rate can easily be subject to at least six additional surcharges that Vessel Operating Common Carriers (“VOCC”) are constantly revising. When VOCCs are attempting to implement General Rate Increases or Rate Recovery Initiatives, they file proposed surcharges in their tariffs in order to

protect their ability 30 days later to charge the higher amount. Often the amount filed is greater than the level that supply and demand can support. Since the regulations require 30 day notice for an increase in rates but allow for immediate reduction, VOCCs preserve their flexibility by filing higher rate levels. If the market does not accept the new rates or surcharges, the VOCCs will delay the effective date or file a lower amount. This strategy is a rationale response to the requirements of tariff regulations. It is also a destabilizing factor contributing to the uncertainty of ocean freight rate / charges. NRAs established in this environment will have to be quoted at the highest levels reflecting the announced future surcharges in place at the time of the agreement. If those surcharges are reduced when the shipment actually takes place, the shipper will not have any recourse to the lowered charges(s) because NRAs cannot be amended after the cargo is received. Furthermore, the NVOCC must issue new NRAs to reflect the changes in surcharges since no amendment is possible. If a shipper agrees to accept a total or partial pass through of the tariffed surcharges imposed by the VOCCs, why can that not be allowed in an NRA? The Commission has already accepted that the shipper cannot always fully know exactly the total cost for a freight movement. This has become evident in the current period of port congestion where terminals are allowed to charge for daily demurrage and detention for indefinite time periods with large swings in freight costs for account of the shipper. If NRAs can be amended in conjunction with the shipper's agreement the NRA will become more directly responsive to competitive market conditions and business practices prevalent in the current marketplace.

Our membership is increasingly using NRAs in establishing ocean freight rates with their NVOCC customers. By including the full scope of the agreement with the shipper and the possibility to amend the arrangement, NRA's would become a far more effective tool for both the shipper and the NVOCC.

NSAs

The NYNJFFF&BA agrees with the NCBFAA's petition that NSA and NRAs could be combined in to one mechanism. NSAs now must be filed and essential terms published, and are, therefore, more formal, more costly, and more time-consuming to put in place. We understand that they are not widely used by our membership. Nor are they practical particularly for our smaller members when moving lower or less frequent freight volumes. If existing restrictions on NRA's can be removed, there would no longer be a commercial need for NSAs.

Conclusion

The ocean freight rate market is highly competitive, fluid, and determined by private rate negotiations that work to the benefit of shippers. The NYNJFFF&BA wholeheartedly supports the

NCBFAA petition to initiate a rulemaking to expand the NRA to include all shipping terms beyond just rates, and to allow NRAs greater flexibility to be amended in order to promote realistic commercial responses to a vibrant fluid marketplace. The NRA could become a more practical mechanism for both the shipper and the NVOCC in establishing rates and terms under which ocean freight moves. Shippers would be protected and NVOCCs would benefit from more simplified regulation, without detriment to the Commission's oversight responsibility.

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

Executed on June 5, 2015



Charles Riley, President

NYNJ Foreign Freight Forwarders & Brokers Association, Inc.