

(S E R V E D)
(August 5, 2008)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

PETITION P1-08

**PETITION OF THE
NATIONAL CUSTOMS BROKERS AND
FORWARDERS ASSOCIATION OF AMERICA, INC.
FOR EXEMPTION FROM
MANDATORY RATE TARIFF PUBLICATION**

NOTICE OF FILING

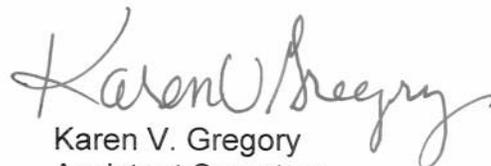
Notice is hereby given that National Customs Brokers and Forwarders Association of America, Inc. ("Petitioner") has petitioned, pursuant to 49 U.S.C. §40103 (former Section 16 of the Shipping Act of 1984 ("the Shipping Act")), and 46 C.F.R. §§ 502.67 and 502.69, for an exemption from the provisions of the Shipping Act that require non-vessel-operating common carriers ("NVOCCs") to publish and adhere to all ocean tariff rates. Specifically, Petitioner requests that NVOCCs be exempted from the provisions of the Shipping Act requiring NVOCCs to publish and adhere to rate tariffs in those instances where an NVOCC has individually negotiated rates with its shipping customers and memorialized those rates in writing. Petitioner further clarifies its request by stating that: (1) the exemption would be voluntary and apply only to rate tariffs; (2) negotiated rates and related disputes would be governed by contract law and

therefore exempt from 49 U.S.C. §§40501(a) - (e) and (g) (formerly sections 8(a), (b), (d) and (g) of the Shipping Act - governing tariff contents and publication, time volume rates, 30 day's notice for increases, and accessibility and accuracy of automated tariffs); §40503 (formerly section 8(e) - setting out procedures for refunds and waivers) and §§41104(2), (4) and (8) (formerly sections 10(b)(2), (4) and (8) - prohibiting service not in accordance with tariffs, unfair or unjustly discriminatory practices regarding rates, cargo classifications, cargo space accommodations, loading or landing of freight or adjustment or settlement of claims; and, undue or unreasonable preferences or advantages or undue or unreasonable prejudices or disadvantages); (3) NVOCC Service Arrangements would continue to be filed with the FMC and essential terms published; (4) all NVOCC-negotiated rates would be memorialized in writing; (5) the Commission would have access to documentation underlying negotiated rates; (6) the exemption would not convey antitrust immunity on NVOCCs; and (7) the exemption would apply to FMC-licensed or registered NVOCCs.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than September 26, 2008. Replies shall consist of an original and fifteen (15) copies, be directed to the Assistant Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, and be served on Petitioner's counsel Edward D. Greenberg, Esq., Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., 1054 Thirty-First Street, N.W. Washington, D.C. 20037-4492. A copy of the reply shall be submitted in electronic form (Microsoft Word 2003) by email to secretary@fmc.gov. The Petition will be posted on the Commission's website at

<http://www.fmc.gov/reading/Petitions.asp>. Replies filed in response to this petition also will be posted on the Commission's website at this location.

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through email in lieu of service by U.S mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.


Karen V. Gregory
Assistant Secretary