

**Statement on Review of NVOCC Negotiated Rate
Arrangements**

Commissioner Rebecca Dye

April 18, 2012

- **If the Commission identifies regulatory relief that would not substantially reduce competition or be detrimental to commerce, I believe that we should provide this relief.**
- **Especially under today's economic conditions, we should grant reasonable regulatory exemptions to simplify businesses processes, put cash back into companies, and generate additional jobs.**
- **Exemptions from unnecessary regulations would make the entire international ocean transportation supply chain more flexible and efficient.**
- **I strongly supported the Commission's final rule that became effective last April to relieve non-vessel operating common carriers (NVOCCs) from the costs and burdens associated with publishing tariffs.**

- **Unfortunately, NVOCCs have failed to realize the benefits we anticipated from the tariff publication exemption.**
- **Only about six percent of licensed NVOCC's are using the new NVOCC negotiated rate agreements (NRAs).**
- **Many of the intermediaries that responded to the Commission's recent notice of inquiry (NOI) reported that they find it easier to continue to publish tariffs rather than negotiate an NRA with their customers.**
- **There is no incentive for an NVOCC to use our new NRAs, because they are overly regulated and basically tariffs under another name.**
- **In fact, the majority of comments the Commission received in our current NOI are the same suggestions the Commission rejected in our NRA final rule.**
- **The individual intermediaries along with trade associations representing thousands of intermediaries and shippers report fundamental problems with NRAs. They say the exemption procedure is confusing, overly regulatory, expensive and burdensome.**

- **NRAs are inflexible and may not include economic terms such as credit and payment terms, minimum quantities, penalties or incentives.**
- **A substantial problem is created because NRAs may not be amended by the parties once the subject cargo has been received by the NVOCC. This creates enormous problems for NVOCCs and ocean carriers carrying cargo under NRAs, NVOCC Service Arrangements (NSAs) and service contracts.**
- **Shippers, especially exporters, are unable to make commodity or destination changes without delays or higher prices.**
- **Finally, foreign legally operating NVOCCs are not allowed to enter into NRAs with their customers.**
- **Of course, I would support changes that would make NRAs more flexible and useful. However, I do not believe this would provide the most benefit to the shipping public.**
- **I strongly supported extending the exemption to foreign NVOCCs, who are operating lawfully in the U.S., in the**

final rule last year, and I continue to support this extension.

- **Foreign legally operating NVOCCs must carry double the amount of bond as licensed NVOCCs. It is unnecessary to continue to require these foreign NVOCCs to publish tariffs when their U.S. counterparts are exempted.**
- **I am also concerned that our failure to extend the exemption to foreign NVOCCs operating legally in the United States could possibly be in violation of certain international treaties to which the U.S. is a party or give rise to negative retaliatory actions by our important trading parties.**
- **I believe that to significantly improve the international ocean shipping system, the Commission should eliminate all unnecessary regulatory requirements, including tariff publication and enforcement, for American and foreign NVOCCs as well as ocean carriers.**

- **The Commission has been petitioned to exempt NVOCCs from tariff publication at least three times over the past twenty years.**
- **NVOCCs that have responded to our NOI are trying to get us to incorporate their actual business practices in our regulatory regime.**
- **The only way to accomplish this goal is to exempt NVOCC's and ocean carriers from the tariff publication and enforcement of the Shipping Act and extend this exemption to our lawfully operating foreign NVOCCs.**
- **Liberalizing NRAs will never entirely eliminate the inherent inefficiencies of our tariff regulations.**
- **Each time we refuse to acknowledge the business realities in the international ocean transportation system, along with the fact that published tariff rates are no longer used by shippers for price information, the Commission loses more credibility from the shipping public.**

- **I believe the most responsible and economically efficient way for the Commission to handle this issue is to exempt NVOCCs and ocean carriers completely from the tariff publication requirements of the Shipping Act.**
- **I also want to take this opportunity to thank my colleagues for their support of the recent NOI concerning joint NSAs. Mr. Chairman, I look forward to working with you on future changes to our NRA and NSA regulations.**
- **Thank you, Mr. Chairman.**