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**VIA EMAIL**

Mr. Bryant VanBrakle, Secretary  
Federal Maritime Commission  
800 North Capitol Street, NW, Suite 1046  
Washington, DC 20573

**RE: NCBFAA Comments to Docket No. 01-05**  
***Alternative Dispute Resaltuion***

Dear Bryant:

Consistent with the Notice of Proposed Rulemaking in this docket, I am attaching by email the National Customs Brokers and Forwarders Association of America, Inc.'s Comments in this proceeding.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Edward D. Greenberg

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

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**DOCKET NO. 01-05**

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**Alternative Dispute Resolution**

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**COMMENTS OF THE NATIONAL CUSTOMS BROKERS  
AND FORWARDERS ASSOCIATION OF AMERICA, INC.**

The National Customs Brokers and Forwarders Association of American, Inc. ("NCBFAA"), together with its thirty affiliated local associations, is the trade association spokesman for this nation's Ocean Transportation Intermediaries ("OTIs"). As such, the NCBFAA is pleased to have the opportunity to provide its comments to the Commission's proposal to issue regulations implementing the Administrative Dispute Resolution Act.

The NCBFAA supports both the policy behind the proposed Alternative Dispute Resolution ("ADR") procedures as well as most of the specific provisions that have been proposed. In many instances, OTIs are involved in formal proceedings before the Commission. And, while all parties to a given proceeding may not ultimately agree that the ADR procedures should be utilized, the fact that such procedures are available may tend to move parties in the direction of using the mediation and/or arbitration procedures in lieu of the more time consuming and expensive procedures typically associated with a formal proceeding.

The NCBFAA would like to offer several suggestions that, it believes, will tend to foster greater use of the ADR procedures.

First, while the NCBFAA recognizes that there may well be issues entailing significant questions of governmental policy that are not appropriate for ADR, as noted in proposed § 502.403(b), it is not plain that the ADR procedures should necessarily be inapplicable merely because a component of the Commission, such as the Bureau of Enforcement (“BOE”), is a party. (See proposed § 502.406(a)(1)). It may well be that the FMC office involved in a dispute will conclude that the ADR procedures are not appropriate for a particular controversy; accordingly, since the use of ADR requires the consent of all parties, the matter would not be handled under these proposed rules. That is not to say, however, that there is no reason for ADR to even be considered. The NCBFAA believes that mediation or arbitration can be an effective way to resolve disputes and that the mere availability of such procedures may well lead to an amicable resolution of controversies in a way that minimizes the unnecessary use of the Commission’s resources and the expenses of the various parties. Accordingly, the NCBFAA suggests that the Commission delete the exception from proposed § 502.406(a)(1).

Second, although there is reference to the possibility of discovery in certain portions of the rules (see, e.g., proposed §§ 502.405(e) & (f)), there does not appear to be a procedure for actually obtaining discovery in arbitration proceedings. While the Association strongly supports the goal of simplifying and expediting such proceedings, it is still often the case that discovery will be required in order to present the arbitrator(s) with an appropriate record upon which a decision can be based. Accordingly, the NCBFAA believes that the rules should at least reflect the possibility

that discovery is available in arbitration cases, subject to such limitations as may be appropriate in any given matter.

In addition, there also does not appear to be any procedure in the proposed rules requiring that testimony in such matters be given under oath. Again, as is the case with discovery, the NCBFAA believes that the arbitration process can be a valuable tool to members of the industry and to the Commission itself as long as all parties recognize that it can be an effective way of resolving disputes. The Association is concerned that with the absence of discovery and sworn testimony, it will be more difficult for parties to be comfortable that they will receive a fair hearing. In that instance, the members of the industry will be less likely to submit matters to the ADR process, thus defeating the very goals enunciated in the Notice of Proposed Rulemaking.

Nonetheless, the NCBFAA believes that the proposed rules are a positive step for the industry. Properly implemented, they should have a beneficial effect on reducing the costs that are today associated with resolving disputes through formal litigation.

Respectfully submitted,

NATIONAL CUSTOMS BROKERS &  
FORWARDERS OF AMERICA, INC.

By:

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