

NORM COLEMAN  
MINNESOTA

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September 23, 2003

CLERK OF THE SECRETARY  
FEDERAL MARITIME COMMSecretary Bryant L. VanBrakle  
Federal Maritime Commission  
800 North Capitol Street, NW  
Washington, DC 20573

United States Senate

WASHINGTON, DC 20510-2307

Dear Commissioners:

It is my understanding that UPS has Bled for an exemption from the prohibition on Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. Due to the operational characteristics of UPS and recent developments within the ocean shipping marketplace, a revision of the antiquated regulatory **scheme** governing NVOCCs should be considered. I w-rite to request your consideration of the UPS petition currently pending before the FMC.

During consideration of the Ocean Shipping Reform Act (OSRA) revisions of 1998, Congress carefully considered all aspects of the ocean shipping industry including the role of NVOCCs. Based on the nature of ocean shipping at the time, Congress determined that NVOCCs should be regulated differently than vessel operators. In the late 1990s, most NVOCCS were small enterprises that neither owned ocean vessels nor the cargo being shipped. In order to **protect** shippers and to guarantee liability **coverage**, Congress determined that NVOCCs should operate under a published tariff system when dealing with their customers.

However, the state of the U.S. ocean shipping industry has changed dramatically since passage of **OSRA**. There has been unprecedented consolidation among ocean carriers resulting in. the loss of **major** U.S. flagged carriers. In an effort to offer customers a full range of services, these very same carriers have created vertically integrated logistics companies that now compete with **NVOCCs**.

UPS operates a sophisticated, integrated, **intermodal** transportation network, which **includes** air, rail, surface, and NVOCC transportation and is deemed a "carrier" in the surface and **air freight** industries. Furthermore, **UPS** makes significant annual capital **investments** to its asset-based transportation infrastructure. These facts alone set UPS apart from **the** companies that first raised concerns about the regulatory status of **NVOCCs**.

The UPS petition, citing the recent evolution of the ocean shipping marketplace, is precisely the reason Congress granted such broad exemption authority to the FMC. While anticipating dramatic changes in the ocean shipping industry with tie passage of **OSRA**, Congress did not contemplate how fast or how smoothly the market could adapt to these changes. **By** granting this petition, the FMC will acknowledge these changes, level the playing field between NVOCCs and vessel operators, and ultimately benefit **occan** shipping consumers around the world.

I am hopeful the FMC will give the UPS petition its utmost consideration and render an equitable decision based upon the merits of the UPS case.

Sincerely,

A handwritten signature in black ink, appearing to read 'Norm Coleman', with a long horizontal flourish extending to the right.

Norm Coleman  
United States Senate

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Washington, DC 205 10  
Phone: (202) 224-564 1  
Fax: (202) 224-1. 152

**Norm Coleman**  
**United States Senator**  
**Minnesota**

# Fax .

To: Secretary Bryant VanBrakle From: Senator Norm Coleman

Fax: 202-523-0014 Date: 9-23

Phone: \_\_\_\_\_ Pages: (Including Cover) 3

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Please call Lauri Heltinger at 202-224-7424 upon receipt.

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