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FEDERAL MARITIME COMMISSION

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

VERIFIED SUPPORTING STATEMENT OF LORI FLEISSNER

My name is Lori Fleissner and I am the President of Global Fairways, Inc. ("GFW"), a company headquartered at 6680 Brandt Street, Suite 100, Romulus, Michigan 48174. GFW operates in the U.S. out of two branch offices, which are located in the New York and Chicago areas, and provides NVOCC services under License No. 3639N. In addition, GFW, which is primarily engaged in the import trade, works with a number of agents in various locations around the world.

GFW is a member of the National Customs Brokers and Forwarders Association of America ("NCBFAA") and has been very supportive of a number of the Association's initiatives that have been crucial to reducing or eliminating unnecessary regulatory obstacles that have burdened international transportation and logistics. For example, I worked closely with the NCBFAA when U.S. Customs and Border Protection ("CBP") initially promulgated its so-called 24-hour advanced manifest rules and was perhaps the first NVOCC applied to participate in CBP's Advance Manifest System. In addition, GFW has been certified by CBP for its Customs-Trade Partnership Against Terrorism ("CTPAT") and also have been certified by the Transportation Security Administration ("TSA") as an air forwarder. And, as a licensed Customs broker, GFW is very cognizant of the various regulatory requirements that govern the movement of international cargo

into and out of the United States. I can state that one of the largest and unnecessary obstacles burdening the operations of NVOCCs is the existing requirement that require us to memorialize rates that have been negotiated with our shippers into formal rate tariffs that are apparently reviewed by no one.

As the Commission is well aware, the ocean shipping marketplace is rather dynamic, with rates changing constantly based upon a combination of factors. These factors include vessel operator capacity and market considerations, their ever-changing surcharges and adjustment factors, their decisions concerning the implementation of general rate increases, and various individual marketing and competitive considerations. Consequently, even though GFW is a participant in a number of service contracts with various steamship lines, much – if not most – of our traffic moves under bullet rates that are negotiated on the spot market from time to time. This necessarily means that our “sell” rates that are negotiated with our customers are also changing daily, if not hourly, based upon the rates we are able to procure from the vessel operators that are utilized.

Both GFW and our agents separately negotiate rates with each individual customer for all of the traffic that we handle. Specifically, these rates will include all required transportation and logistical services, any necessary inland transportation, consolidation/deconsolidation services, and Customs brokerage on traffic moving inbound to the United States. This individualized rate negotiation process takes place whether the traffic is full or less-than-container load. But no matter how our rates are developed, there are no circumstances under which the shipper has come to GFW based upon our existing published tariff rates, as all of our business is based upon individually tailored rates and services. As part of that process, we typically exchange emails with

our customers, in which we offer the rates that are to be charged for our services, and the customer responds to them in writing. In other words, in almost every instance there is documentation that establishes the classic offer and acceptance that is used in normal commercial dealings.

Once those rate negotiations are completed, existing law requires that GFW memorialize those rates in published rate tariff form. This is the case despite the fact that it does not appear that these rate publications serve any purpose at all. Certainly, neither GFW nor the shipper has any use for it. Indeed, we are not aware that any shipper has ever accessed our rates for any reason, despite the fact that GFW has never assessed an access fee. No one has accessed the rate tariff in the ten years since the law required that these be published and made available electronically. Nor have we ever had a dispute with one of our customers concerning the propriety of the rate being charged. That is not surprising since both we and our customers are comfortable relying upon the rate to which we have agreed. At the least, this is strong evidence that there is neither reason nor value in requiring that these rate tariff publication obligations continue in those situations where the rates are negotiated.

Despite the lack of relevance of or value in rate tariff publication, we are still obligated by existing regulations to actively maintain our rate tariffs. As GFW is a small company, we cannot afford to develop a dedicated software system for this purpose and accordingly utilize the services of a tariff publishing agent. Our direct, out-of-pocket costs that are paid to this tariff agent, for no apparent particular purpose, amount to approximately \$7,000.00 per year. In addition, a substantial percentage of employee time that could be dedicated for useful purposes is now taken up with the task of overseeing

the rate publication process to ensure that the negotiated rates established both by GFW by our agents are appropriately memorialized in tariff form, even though those rate agreements are documented in our shipment files.

It is perhaps also worth pointing out that, in order to be 100% compliant, we are required to publish rate tariffs on traffic that we may never actually move. In other words, even though we may be negotiating rates and offering them to customers, those customers may ultimately use the services of someone else. Nonetheless, in order to ensure that these rates are published in advance of the traffic moving, we end up having to publish rates from time to time that have no meaning whatsoever. Here again, the rate publication procedure is totally useless, resulting in a significant waste of resources.

GFW recognizes that it is possible to enter into NVOCC Service Arrangements (“NSAs”) as an alternative to publishing rates in tariff form. However, we have not found this to be particularly useful in our business for a number of reasons. First, while NSAs are confidential, it is hard to imagine anything being more confidential than our rate tariffs, since no one has ever accessed the information contained there. Second, NSAs still have to be written documents that are filed with the FMC, so that they are far more formal than the normal offer and acceptance procedure under which virtually all of our traffic moves. And, in our experience many shippers don’t want to actually sign NSAs, as they feel that they are much too formal, do not provide them with the flexibility they want and are not generally useful for the short term arrangements that are of interest to them. Moreover, under the rules applicable to NSA, the essential terms of those contracts still have to be published in our rate tariff, so that this process is even more expensive than the procedure required to publish rate tariffs.

In closing, GFW is proud of its reputation as an efficient and regulatory compliant company. We spend a great deal of time training our employees concerning the regulatory obligations that are applicable to the movement and handling of international cargo. Similarly, we have spent countless hours with our agents on the same subject. One thing that we have not been able to explain to anyone is why, in view of the volatile nature of the market and the way in which traffic actually moves, there is still a reason to spend the time and money putting rates in a database that no one will ever access. We strongly urge that the Commission give full consideration to the NCBFAA's petition and agree to eliminate this burden on efficient NVOCC operations.

I, Lori Fleissner, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on this September 16, 2008.

Lori Fleissner