

Issued August 30

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FEDERAL MARITIME COMMISSION

46 CFR Part 531

Docket No. 05- 06

Non-Vessel-Operating Common Carrier Service Arrangements

Agency: Federal Maritime Commission.

Action: Notice of Inquiry.

Summary: The Federal Maritime Commission is requesting comments on possible changes to its exemption for non-vessel-operating common carriers (NVOCCs) from certain tariff publication requirements of the Shipping Act of 1984.

Dates: Submit original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications, no later than October 6, 2005.

Addresses: Address all comments to:

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Supplementary Information:

On January 19, 2005, a final rule of the Federal Maritime Commission ("FMC" or "Commission") exempting non-vessel-operating common carriers ("NVOCCs") from certain tariff publication requirements of the Shipping Act of

1984 ("Shipping Act") became effective. 69 Fed. Reg. 75850 (December 20, 2004). The rule was issued pursuant to the Commission's authority under section 16 of the Shipping Act, 46 U.S.C. app. 1715. The exemption enables individual NVOCCs to offer NVOCC Service Arrangements ("NSAs") to NSA shippers, provided that such NSAs are filed with the Commission and their essential terms are published in the NVOCC's tariff. The rule defines an NSA as "a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level." 46 CFR 531.3 (p).

Since the publication of the proposal that led to the final NSA rule, the Commission has heard from participants in the NVOCC industry that it would be useful if the exemption permitted NSAs to be jointly offered by unaffiliated NVOCCs. At its meeting of August 3, 2005, the Commission determined that it would seek further comment on the issue. The Commission now seeks comment on the following specific questions:

1. In what manner could two or more unaffiliated NVOCCs jointly offer NSAs? Would two or more NVOCCs use a single document to offer their services as carriers to other NVOCCs acting as shippers? Would two or more NVOCCs offer identical services or rates in separately-filed NSAs? Are there other possibilities?
2. How would rates and defined service levels for such jointly offered NSAs be determined?
3. Would unaffiliated NVOCCs jointly offering NSAs keep the terms of such NSAs confidential from non-participating NVOCCs? From other shippers (including NVOCCs)?
4. How would such an exemption meet the statutory requirements of section 16 of the Shipping Act of 1984? Would such an exemption cause a substantial reduction in:
 - Competition among NVOCCs;
 - Competition between NVOCCs and vessel-operating common carriers (VOCCs);
 - Competition among beneficial cargo owners; and
 - Other competition?
5. Would such an exemption cause detriment to commerce by any general or specific adverse economic impacts on the carriage of cargo in the U.S.-foreign trade or U.S. commerce generally?
6. What might be the benefits or harm to beneficial cargo owners of jointly-offered NSAs?
7. Do any issues with regard to NVOCC financial responsibility arise stemming from jointly-offered NSAs? For example, should a joint bond or higher individual bond be required for NVOCCs that jointly offer NSAs? If so, how should the amount be determined?
8. Would there likely be any specific benefits or harm to small NVOCCs if jointly offered NSAs were permitted?
9. If jointly offered NSAs are allowed, should there be limits on the number (or combined market share) of the NVOCCs participating in a single joint NSA? If so, how should the relevant market be defined? Should the Commission or the parties determine the market share? Should NVOCCs be required to obtain Department of Justice business review letters prior to offering jointly offered NSAs?
10. What would be the likely impact, if any, of joint NSAs on individual rates offered by the participating NVOCCs in the same trade? In other trades?
11. Should the contract details which must be made publicly available ("essential terms") be more extensive for jointly offered NSAs than for other NSAs? For example, should the Commission require that the identities of each of the NVOCC carrier parties to the jointly offered NSA be made public?

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12. Are there any additional procedures (e.g. registration, reporting, monitoring, measuring) that should be considered to ensure that each jointly-offered NSA does not result in a substantial reduction in competition or detriment to commerce?

13. Should the Commission require some type of notification to the VOCC carrying the cargo moving under a jointly offered NSA? If so, describe what form such notification should take and when it should be required.

14. How would bills of lading be issued for cargo moving under a joint NSA?

15. Please describe any other matters that may be relevant to the Commission's consideration of this issue.

In order best to facilitate the Commission's consideration of the issues raised in this Notice of Inquiry, commenters should provide detailed responses, and should supply examples whenever feasible.

By the Commission.

Bryant L. VanBrakle
Secretary