

WRITER'S DIRECT DIAL
(202) 463-2510

August 23, 2005

VIA HAND DELIVERY

Mr. Bryant VanBrakle
Secretary
Office of the Secretary
Federal Maritime Commission
Room 1046
800 North Capitol Street, N.W.
Washington, D.C. 20573

Re: Docket No. 05-05; Non-Vessel-Operating
Common Carrier Service Arrangements

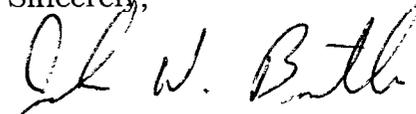
Dear Mr. VanBrakle:

Enclosed please find the original and fifteen (15) copies of the World Shipping Council's comments in FMC Docket No. 05-05, Non-Vessel-Operating Common Carrier Service Arrangements.

A copy of this letter and its enclosure have been provided for your acknowledgement of receipt.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned at (202) 463-2510.

Sincerely,



John W. Butler
Counsel for World Shipping Council

/seo
Enclosure

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Before The
FEDERAL MARITIME COMMISSION

NON-VESSEL-OPERATING COMMON CARRIER SERVICE ARRANGEMENTS
Docket No. 05-05

ORIGINAL

COMMENTS OF THE WORLD SHIPPING COUNCIL

The World Shipping Council (the "Council") submits these comments in response to the Commission's Notice of Proposed Rulemaking published in the Federal Register on August 8, 2005 (70 Fed. Reg. 45626). The Council takes no position on the question of whether the proposed amendments to the Commission's regulations governing NVOCC Service Arrangements ("NSAs") are consistent with Section 16 of the Shipping Act.

These brief comments instead focus on the need for clarity and certainty with respect to the action in this docket and carriers' national security requirements administered by U.S. Customs and Border Control ("CBP") under 19 C.F.R. § 4.7(b)(2), the so-called "24-Hour Rule," which requires carriers (VOCCs and NVOCCs) to file import cargo declaration information electronically 24 hours before loading at a foreign port. The Council's concern is to ensure that the action proposed by the Commission cannot be used or interpreted by "shipper" NVOCC parties to NSAs in a way that would allow them to seek to avoid their obligations as "carriers" to timely file their cargo declarations with CBP.

The definition of "non-vessel-operating common carrier," which appears in the Shipping Act at section 3(17)(B), 46 U.S.C. App. 1702(17)(B), and which is adopted in the CBP 24-Hour Rule definitions at 19 C.F.R. § 4.7(b)(3)(ii), states that:

“Non-vessel-operating common carrier” means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.”

Under a scenario in which one NVOCC enters into an NSA with a second NVOCC, the second NVOCC, which the Commission’s proposed regulations designate as the “shipper” party to the NSA, does not have a “relationship with an ocean common carrier.”

There is no practical way for the ocean carrier transporting these containers to know who such NSA “shipper” NVOCCs are, or whether they are complying with all their regulatory obligations. Nevertheless, their compliance with Customs’ security requirements can affect the ocean carrier’s operations and the cargo of other shippers on the ocean carrier’s vessel.

NVOCC “co-loading” practices can be varied and confusing, as can monitoring and enforcement of their obligations. This proposed rulemaking, which could increase the number and potentially the confusion of “co-loading” arrangements, emphasizes the “shipper” attributes of an NVOCC that has an NSA with another NVOCC.¹ It must be made clear that any NVOCC with an NSA, no matter how far removed from the ocean carrier and no matter its “shipper” status, cannot at any time avoid its “carrier” obligations. In particular, its obligations as a “carrier” to CBP are an important part of the Department of Homeland Security’s “24 Hour Rule” cargo security screening regulatory regime.

Existing Commission and CBP regulations and guidance state that an NVOCC does not lose its status as such, or its regulatory obligations, by virtue of being in a “shipper” relationship with another NVOCC. In the interest of avoiding any possible question with respect to the

¹ We note that this chain could extend to more than two NVOCCs under the Commission’s proposal; that is, NVOCC A can enter into an NSA with NVOCC B, which can enter into an NSA with NVOCC C, and so on

point, and in light of the importance of having an uninterrupted flow of advance cargo declaration information for both national security and trade facilitation purposes, the Council respectfully requests that the Commission in any final rule clarify that nothing in its new regulations may be interpreted to release NVOCCs – even when they are acting as “shippers” with respect to other NVOCCs and may be two or more steps removed from the ocean carrier – from their duties as “carriers” under the Shipping Act definitions or CBP’s 24-Hour Rule regulations.

Respectfully submitted,

WORLD SHIPPING COUNCIL

By Its Attorneys:

A handwritten signature in black ink, appearing to read "Stanley O. Sher", written over a horizontal line.

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