

Before the Federal Maritime Commission

Comments in Response to the June 1, 2017 Notice of Inquiry Regarding *Regulatory Reform Initiative*

Docket Number 17-04

Submitted by

FedEx Trade Networks Transport & Brokerage, Inc.

FedEx Trade Networks Transport & Brokerage, Inc (FedEx Trade Networks) hereby submits these comments in response to the Federal Maritime Commission's (FMC) *Notice of Inquiry* regarding the identification of outdated, unnecessary and ineffective regulations. FedEx Trade Networks is a large Ocean Transportation Intermediary (OTI), both a freight forwarder and non-vessel operating common carrier (NVOCC), providing transportation services worldwide. FedEx Trade Networks operates NVOCC affiliates which are separately licensed by and registered with the FMC.

FedEx Trade Networks appreciates the opportunity to submit comments. Our firm and long-standing belief and recommendation is that regulations regarding tariff filing, requirements to annotate particular documentation, and compensation declarations should be eliminated. These serve little or no purpose while creating unnecessary costs. Further, the lack of clarity regarding Qualifying Individuals and OTI applications create confusing requirements which may be unevenly applied.

Tariffs under 46 CFR 520, 531 and 532

We respectfully request that 46 CFR part 520 on Carrier Automated Tariffs be considered for elimination. Requiring NVOCCs to file tariffs under 46 CFR Part 520, or use alternatives to tariff filing under 46 CFR Part 531 (which provides for NVOCC Service Arrangements) and Part 532 (which provides for NVOCC Negotiated Rate Arrangements), is an onerous resource burden for NVOCCs which provides little to no benefit to the shipping community.

Properly administering rate tariffs is extremely complicated. NVOCCs, such as FedEx Trade Networks, must be sure that the accurate transportation charges are memorialized in a tariff for each shipment. We must specify the amount and type of each applicable charge during the time period the rate is active, showing the origin and destination, and ports (if different), the commodity, the container size and type and other additional details. We need be sure that the bill to the customer is the same as the filing. If there is an increase in rates, we must publish that 30 days in advance in the tariff. New rates may not duplicate existing rates.

In today's commercial environment, rate filing is extremely complex. Our rates are based on the amount negotiated by us with the ocean carrier or co-loader. Because of frequent rate changes by ocean carriers to NVOCCs in the most common lanes, we must often file rates for a minimal amount of time.

Though many ocean carriers change rates as often as every week, the NVOCC must provide notice 30 days in advance in our tariff for rate increases. Often the ocean carrier's rates, which help determine the NVOCC's rates, are only finalized the day before they are effective. The carrier may announce a rate increase at a particular dollar-level and implement a lower dollar amount, due to market conditions, immediately before becoming effective.

The NVOCC also must maintain a set of rules that support the tariff rates. (46 CFR 520.4(d))

Shippers do not use NVOCC tariffs to check rates. FedEx Trade Networks has maintained a tariff since 2010. It has been accessed by FedEx Trade Networks' staff, our agents and the FMC only. We are prepared to provide a free password and access to our tariff to any person who requests to do so. No shipper or any other person (other than those listed above) has ever accessed our tariffs. Consequently, we have found the regulatory requirement for tariffs are unnecessary.

The tariffs are impractical for shippers to use. Despite extensive query and sort functions, the shipper may have to compare many similar filings. For example, a rate for a t-shirt commodity could be described at many levels of specificity (for example, "cotton t-shirts for women in petite sizes," "knit tops" or "garments"). A filing could show a routing through a particular port or a group of ports or even all ports in a country or region. There are different rates depending on whether the shipment is "less than container load" or by the size of the container.

Instead, shippers rely exclusively on written quotes provided by FedEx Trade Networks for the exact commodities and routing. Shippers often obtain quotes from more than one NVOCC. It is important to consider that the process of obtaining written quotes from multiple NVOCC's is identical to the process used by shippers in obtaining air and road quotes – all without tariffs, and without major harm to the air and road shipments.

The FMC has previously acknowledged that the NVOCC industry is highly competitive, consisting of more than 3,300 licensed and 1,100 registered NVOCCsⁱ. It is very easy for a shipper or importer to use more than one NVOCC and/or to switch NVOCCs. In today's commercial environment, a company that fails to provide good customer relationships and competitive pricing will find it difficult to remain in business. Furthermore, NVOCCs will go to great lengths to keep customers happy considering all the competition in our industry.

The cost of maintaining a compliant tariff is extremely burdensome in terms of resources and time. FedEx Trade Networks employs three full-time staff members whose sole responsibility is reviewing requests and filing rates in our tariff. In addition, operational

staff in the United States and elsewhere may need to ensure that the tariff rate is requested from the tariff filers and properly posted before taking possession of the freight. Furthermore, FedEx Trade Networks must be sure the shipment is billed according to the quote to the customer and the tariff filing. Sustaining this complex compliance system also requires additional professional support services, including computer programming and legal review. These additional services add layers of cost and complexity for compliance. Removing these regulatory burdens would greatly streamline and facilitate trade, and cut down on unnecessary costs.

We are aware of no other country which has similarly onerous tariff requirements. Moreover, no other mode of transportation in the United States requires similar tariff filings. Given our extensive experience as an NVOCC, we have found the entire system to be unnecessary.

The burden of filing tariffs uniquely raises the cost of U.S. exports and U.S. imports via ocean. Removal of this burdensome and unnecessary regulation in 46 CFR Part 520 would immediately provide benefits, including increased competitiveness, to NVOCCs, shippers and importers.

Documentation requirements under 46 CFR 515.31(b) and 515.13(c)

We believe that requiring stationery and other documents to be permanently imprinted with identifying information, as required in 46 CFR 515.31(b) is antiquated. Stationery use is the exception today, of course. Most correspondence and other information is sent via e-mail or using another electronic method. Further, the most current licensing and registration status of an NVOCC is easily found on the FMC's web-site.

Additionally, requiring the Bill of Lading to name the co-loader, when another NVOCC is used, is another regulatory requirements that apparently serves little purpose (under 515.13(c)). This extraneous information requires additional computer programming or must be keyed in.

Compensation requirement under 46 CFR 515.41 and .42,

We believe that the requirements surrounding forwarder compensation codified in 46 CFR § 515.41 (which provides for forwarder and principal fees), and 46 CFR § 515.42 (which provides for forwarder and carrier compensation; fees) are antiquated because, in our experience, ocean carriers no longer provide compensation. Consequently, we believe that these regulations are unnecessary and should be eliminated.

Modification of Qualifying Individual and Ocean Transportation Intermediary application

NVOCCs are required to employ a Qualifying Individual ("QI") and complete an Ocean Transportation Intermediary ("OTI") application to establish or change the QI pursuant to 46 CFR § 515.11.

Per 46 CFR § 515.11 (a), the requirements to be accepted as a Qualifying Individual according to the regulations are that the applicant:

- Possess three years of experience in ocean transportation. The experience must be in the United States for U.S.-based OTIs and in the U.S. or elsewhere for foreign-based OTIs,
- Have the necessary character. The QI has not been involved with list of violations and other actions which indicate lack of character enumerated in 46 CFR § 515.11(a)(2), and
- Be a corporate officer for corporate OTIs pursuant to 46 CFR § 515.11(a)(2).

The details of how to prove experience and character are unclear and applied arbitrarily. For example, industry association relationship has impacted the acceptance of references for some applications and not for others. The proof required to demonstrate “necessary character” under the regulation should be clarified in order to standardize the process of applying to be a QI. Consequently, we respectfully request regulatory clarification on the following points:

- What constitutes “experience” for the purpose of the regulation? We believe that supervision of an OTI position constitutes experience. Further, we request that the requirement of U.S. licensee QIs limiting the geographic location of the experience be reviewed.
- What type of references are acceptable for the purposes of 46 CFR § 515.11(a)(2)?
- What supporting materials are needed for a change in Qualifying Individual?

Conclusion

We hope that you consider eliminating the regulations we highlighted in 46 CFR regarding tariff filing and alternatives, specific documentation, compensation requirements and Qualifying Individuals. We believe that these regulatory requirements are onerous, burdensome and costly. Removing these requirements will greatly enhance the competitiveness of NVOCC shipping and facilitate trade. We offer our sincere gratitude for considering this input.

ⁱ December, 2011 Notice of Inquiry Regarding Non-Vessel-Operating Common Carriers Negotiated Rate Arrangements; Tariff Filing Exemption, Docket Number 11-22, p. p.11352.