FedEx Trade Networks Transport & Brokerage, Inc (FedEx Trade Networks) hereby submits these comments in response to the Federal Maritime Commission’s (FMC or Commission) Notice of Proposed Rulemaking regarding amendments to NVOCC Negotiated Rate Arrangements (NRAs) and NVOCC Service Arrangements (NSAs). 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.

We appreciate the Commission’s efforts to modernize regulations and reduce regulatory burdens. We commend the FMC for considering industry petitions.

We hope that the Commission will take into account the comments received under Docket 17-4 in response to the Notice of Inquiry Regarding Regulatory Reform Initiative. After the FMC requested information on any suggested regulatory reforms, 41 sets of comments were posted. While the original solicitation covered all FMC regulations, of the 41 sets of comments, 34 (83%) gave strong recommendations to remove NVOCC tariff filing requirements. (6 comments were on other topics or broadly discussed the situation, and 1 forwarder wanted to keep the tariff filing rules). The tariffs are not used by shippers. A dozen comments specifically stated that over the years (or decades), no shipper has requested/used tariff access. Yet NVOCCs expend a substantial amount of human and monetary resources to maintain a system of tariff filing (or tariff filing alternatives). Furthermore, NVOCCs do not have anti-trust immunity, and have never requested it.
Short of granting relief by eliminating tariff filing requirements, we support the FMC’s proposal to make NRAs and NSAs more flexible, better fitted to today’s business environment, and less burdensome. Below are our specific comments.

NRAs

- We support the clarification as to how shippers may signal their acceptance of the NRA. Allowing acceptance to be demonstrated by the shipper’s booking with the NVOCC after receipt of the NRA (with explanatory text) conforms with the current shipping environment.
- Allowing NVOCCs and shippers to modify existing NRAs with mutual agreement, instead of establishing a new NRA, reduces bureaucracy.
- We strongly agree that the prohibition against NRAs including non-rate economic terms should be rescinded. We endorse the list of examples of non-rate economic terms. The ability to include credit and other terms is important. The Commission says it requests further public comment on how expanding the exemption to allow inclusion of non-rate economic terms would impact business. We respectfully request that text clarifying the role of third-party pass-through assessorials, such as GRIIs (General Rate Increases) be included in the regulations.

NVOCCs’ ability to keep up with assessorial fees passed down by carriers is especially challenging. These rates sometimes change weekly in the most common lanes. Often ocean carriers announce the establishment and amount of an assessorial 30 days in advance, but the amount decreases over the 30 days, and is only finalized the day before the effective date. NVOCCs have very limited control over this process. However, the assessorial costs are generally passed on to the shipper. The NVOCC’s process is labor-intensive.

We propose that NRAs be permitted to contain a clause stating that assessorial charges by third parties will be passed through to the customer without being marked up or discounted. We further propose that NRAs also be permitted to contain a clause referring the user to the NVOCC’s tariff, or other website location if/when tariffs are eliminated, for the assessorial amounts charged by third parties.

NSAs

- We support the proposal to remove requirements to post essential terms. The essential terms serve no purpose. The definition of Statement of essential terms in 531.3(q) might be removed.
- The proposal to removal the NSA transmission requirement to the FMC via SERVCON should make use of this tariff filing alternative less cumbersome.
Conclusion

FedEx Trade Networks offers our sincere gratitude for requesting and considering this input. Our firm and long-standing belief and recommendation is that regulations regarding tariff filing and filing exemptions should be eliminated. Short of elimination, we believe the changes proposed by the Commission would substantially decrease the regulatory burden and implementation produce rules more fitting in today’s environment.