January 29, 2018

Federal Maritime Commission
800 North Capitol Street, N.W., Ste. 1046
Washington, D.C. 20573

Subject: Docket No. 17-10
Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements

I am Jeanette R. Gioia, president and qualifying officer of Serra International, Inc. (OTI 0282F) and its wholly owned NVOCC subsidiary, Serra Shipping, Inc. (OTI 16314N). We have been a U.S. business since 1919 and consider ourselves to fall in to the small to mid-sized OTI range, operating OTI activities from only two offices.

Our company greatly appreciates the Federal Maritime Commission’s ( Commission) intention to “update and reduce” the regulatory burden and to issue a Notice of Proposed Rule Making concerning Negotiated Rate Arrangements (NRAs) and NVOCC Service Arrangements (NSAs). Our company holds membership in the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) and the New York New Jersey Foreign Freight Forwarders and Brokers Association (NYNJFFF&BA) and has long supported their positions to modify or remove outdated or unnecessary regulations.

Concerning NRAs, we support the Commission’s proposal:
• to make them a more flexible instrument that includes any non-economic terms important to both the NVOCC and the shipper in the movement of the freight. This would be particularly useful to the small and medium size companies who do not have the volume to justify more elaborate NSA contracts. NRAs could then better reflect how the ocean freight market operates and the factors determining a shipper’s choice of NVOCC and the terms offered by the NVOCCs. As with any agreement, it should be allowed to include whatever is important to the two parties and could encompass any of the terms the Commission has identified, such as service amendments, per-package liability, free-time, detention or demurrage provisions; dispute
resolution issues; minimum time and volume commitment; credit terms; penalties; service guarantees; GRI and other pass through charges, etc.

• to allow for NRAs to be amended would cut down on the re-issuance of new NRAs necessitated by the dynamic shipping environment and the restrictive regulation that changes are simply not possible. We believe this should extend even to freight that has been received. Shippers could certainly benefit from situations when steamship line surcharges are reduced or removed at the last minute. What is most important is that a shipper and an NVOCC mutually agree to amend an NRA.

• to recognize that tendering or booking of cargo constitutes acceptance of the rate and terms quoted in an NRA. This follows industry practice acceptable to both NVOCCs and their customers.

We do not believe that it is necessary for an NVOCC to have a prominent notice that booking is considered an acceptance of the NRA. Nor do we believe that the form and wording of such a notice should be a matter worthy of government interest and regulation. Any dispute that might arise between an NVOCC and a shipper, who has tendered cargo after being quoted, should be able to be resolved between the two parties. The vast majority of freight flows smoothly and with knowledgeable parties. If the Commission is concerned that bad actors can take advantage of individuals or very small shippers, we would suggest that the regulation for an entire industry should not be crafted for the exceptional situation, which can still have remedies through the legal system.

Increasingly technology and supply/demand conditions have encouraged the development of a vibrant ocean freight spot market. Surcharges, notably GRIs have become a wild card factor in final rate costs. Since regulations require ocean carriers to announce increases in surcharges 30 days in advance, the industry routinely files and provides notice. Then when the market cannot sustain all or some of the increase, the surcharges are cancelled or rolled to a future date. This is destabilizing for all industry participants and particularly difficult for NVOCCs to manage. We ask the Commission to allow these pass through charges to be referenced in an NRA and applied with full shipper knowledge and understanding.

Concerning NSAs, we agree with the Commission’s proposal to reduce administrative costs without sacrificing any benefit and eliminate:

• the filing requirement for NSAs
• the publication of their essential terms in tariffs.

When considering the proposed changes, we respectively ask that the Commission take an additional step and seriously study the possibility of using its exemption authority to remove the tariff publishing requirements for NVOCCs. We have long advocated that the removal of the requirement to publish tariffs will not be detrimental to the shipping public and actually lead to a reduction in costs that will assist economic growth. This has been the case with the deregulation of the airfreight and trucking industries. The fears expressed prior to deregulation did not materialize.
Competition increased and the shipping public benefited with reduced pricing and service choices.

It is our belief that there is a segment of the NVOCC market who is interested in maintaining the status quo. They have invested in good systems to manage the maintenance of tariffs / NRAs / NSAs and view this as providing a competitive advantage and using regulation to raise the barrier of entry. If the requirement to publish tariffs were removed, the need for NVOCCs to manage the rate structures and provide a good customer service will still exist. NVOCCs can still offer an equivalent of an NSA to large volume shippers that want to formalize all aspects of the agreement. Business practice will still dictate that customers will want to know their costs before committing their freight. We do not see much change in how the industry will operate. The good software and systems will still be put to use to provide a quote in what is now called an NRA. There is no need for the government to be involved in the minutia of the rates and format.

The internet is radically changing the ocean freight market place. Software intermediaries are offering real time rate comparisons and booking options that allow shippers access to market rates and the ability to make informed decisions. OTIs will be better able to compete in this new environment if regulations can be updated so that those complying are not handicapped against a proliferation of new competitors. We fully support the elimination of tariff publishing regulations both for OTI NVOCCs and ocean common carriers as they are simply not used and thus provide no benefit to the shipping public.

Respectfully submitted,

SERRA INTERNATIONAL, INC.

Jeanette R. Giola
President