BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 21-03

Comments on Notice of Proposed Rulemaking

Carrier Automated Tariffs

Submitted by

NEW YORK NEW JERSEY FOREIGN FREIGHT FORWARDERS & BROKERS ASSOCIATION, INC.

The New York New Jersey Foreign Freight Forwarders and Brokers Association, Inc. ("NYNJFFF&BA") respectively submits its comments concerning the Federal Maritime Commission's Notice of Proposed Rulemaking (NPRM) on tariff access and NVOCC co-loading regulations. Established in 1917, the NYNJFF&BA is one of the oldest trade associations for licensed freight forwarders, non-vessel operating common carriers (NVOCC), and Customs Brokers in the United States with over 125 regular members and industry –related affiliates, including beneficial cargo owners, truckers, and warehouses. The proposed changes will directly impact our membership, which consists of both publicly traded global logistics giants as well as small businesses.

Tariff Access Fees

As stated in response to the Advance Notice of Proposed Rulemaking (ANPRM) Docket 21-03, the NYNJFF&BA supports the proposed change requiring that carriers and conferences provide free access to their tariffs. This is routed in the belief that information required to be made publicly available should be provided free of charge.

While its purpose is to promote transparency and the availability of price information is laudable, the practical effect is likely to be minimal for the following reasons:

- Nearly all ocean freight cargo is moving under service contracts or privately negotiated rate arrangements. In the post OSRA period, shippers have abandoned checking tariffs to learn about ocean freight pricing. If not already secured under a longer-term contract, pricing is agreed by quotation prior to shipment. A shipper has ample opportunity to obtain multiple quotes from multiple carriers and Non-Vessel Operating Common Carriers (NVOCCs).
- Comparative market rate pricing is readily available from numerous online platforms.
- The removal of a tariff access cost in those few instances where it is still applicable will not improve the ease of locating desired information. Ocean carrier tariffs are generally quite complex and difficult to navigate. It is not easy to find quickly specific information, especially for surcharges.
- Our NVOCC membership, as previously indicated to the Commission, has almost never seen the shipping public attempting to access their tariffs.

Concerning additional costs, some impact could be felt by ocean carriers and NVOCCs that use third party providers to manage their rules and pricing tariffs. Those providers will most likely assess a fee to cover the cost of access to their service. Instead of charges to the entity requesting it, these costs will be borne by the common carrier. Since most NVOCC freight is now moving under NVOCC Negotiated Rate Arrangements (NRAs), the effect of the proposed change will complete the transition away from filing tariff rates. In fact, the current NVOCC trend under the NRA format is to bring their Rules Tariff in-house on their own website rather than on third-party sites since most transport charges are now dictated via the NRA process between NVOCCs and their customers.

Cross Referencing Tariffs

The NYNJFF&BA does not believe that the proposal to allow NVOCCs to cross reference Vessel Operating Common Carrier (VOCC) tariffs with the surcharges and accessorial charges being passed through to the shipper is operationally practical. Nor will it fulfill its intended purpose to provide NVOCCs with additional flexibility while clarifying the charges for the shipper.

In fact, it appears to impose a new burden to list “clearly” the pass-through charges in the NVOCC’s tariff. This will be extremely difficult as each VOCC uses a different terminology in identifying similarly based charges and then can introduce new charges. If each surcharge has to be cross-referenced to the VOCC tariff location where it can be verified, an NVOCC would now be tasked with identifying and maintaining hundreds of links subject to change. NVOCCs are often notified of surcharges through VOCC advisories, which would then have to be researched to identify where they can be specifically found in an online tariff. Any change in the location of the information would create problems for the NVOCC to stay current with the updates. If each surcharge need only link to the general VOCC tariff, it would not prove very useful to the shipper, who would then have to invest time to search and hope to match the relevant item to his quoted freight movement.

If the primary goal is to provide transparency to shippers that the charges are being passed at cost, this would be better handled with a short statement on an NRA quotation or in an NVOCC Rules Tariff that verification of pass-through charges can be provided upon request. Many NVOs currently provide their customers with copies of carrier invoices for additional charges as pass throughs at the time of billing. Certainly, this can be made available when requested by the shipper. For Less than Container Load (LCL) shipments, it would be more difficult to match exactly a pass-through charge applied for a full container. The rate often assessed to the customer is calculated on average weight / measure load factors for all 20’, 40’, and 40’ HCs with the objective of closely approximating the surcharge. Given the tremendous volume of large consolidators, it would be impossible to pass through a surcharge calculating it exactly for every container to every shipper in a specific container.

VOCC Pass Through Charges of Outside Entities.

The proposed regulation to extend the same flexibility to NVOCCs that VOCCs have concerning pass throughs of third-party charges is welcomed. These charges are outside the control of the ocean carrier and subject to changes without notice. VOCCs pass them to the NVOCC who should be allowed to recover the expense from the shipper.

However, in order for the charges to qualify as pass throughs the name of the charges must be “clearly” listed in the NVOCCs tariff. The precise name of all charges may not be known prior to cargo receipt and movement. Some third-party charges may

also be assessed due to special circumstances applicable to specific cargo movements. That the precise name of a charge is not listed should not prohibit the NVOCC from being reimbursed for the expense paid on behalf of the shipper.

The Commission's concern for clarity in freight surcharges can be met very simply by 1) a notice in the NVOCCs rules tariff that any third party charge outside of the control of the carrier will be passed at cost and 2) a statement in the rules tariff and to the shipper at time of quotation that supporting documentation for any such charge can be provided upon request. This will obligate the NVOCC and fully satisfy the desired goal of transparency.

General Guidance on Application of Surcharges

In its discussion of pass-through charges, the Commission is proposing to introduce a new layer of complexity and most likely confusion in defining the type of charge that will be allowable for NVOCCs to pass on to the shipper. Only a charge representing a "separate fee for ancillary costs associated with that transportation" is eligible. Thus, the Commission is specifically **not allowing surcharges called General Rate Increase** (GRI) to be passed on. This is because the Commission is defining a GRI as a "component of base ocean freight." It is not a practical and meaningful distinction to separate GRI from any other VOCC-originated surcharges for the following reasons:

- A NVOCC has no control of any surcharge assessed by a VOCC. These charges function much like the third-party pass throughs in relation to a VOCC. The VOCC has no control of those third-party charges and is allowed to collect reimbursement from the shipper.
- The FMC has recognized in this proposed regulation as well as the final rule on Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements (Doc. 17-10) that it is impractical for NVOCCs to be able to manage and recover increases from the rapidly changing and proliferating VOCC charges related to the ocean transportation. NVOCCs are most vulnerable to the imposition of GRIs. GRIs are often announced with the required 30- day notice and at high levels testing the market. Uncertainty prevails until prior to the effective date, when the rate can be suddenly reduced, or the effective date delayed. The shipper would lose all opportunity to pay a lower market price being forced to pay the inflated

amount that was first set 30 days in advance by the NVOCC pursuant to the currently considered changes which are not flexible to allow GRIs to be dealt with on the same basis as other pass throughs. Similarly, in periods of rising rates it would be destabilizing to the shipper if GRIs were not allowed as a pass through. NVOCC's would have to raise rates even higher than announced GRIs in order to protect themselves from the surcharge in place at time of cargo receipt. The problem of timing cargo receiving dates is magnified in the current crisis of port congestion, trucking capacity, and equipment shortages. Cargo is often delayed considerably and thus subject to different surcharges than expected at the time of quotation. Regulations should be flexible enough to work well under all port conditions. Allowing GRIs to be included as pass throughs would ensure this flexibility.

- Ocean freight carriers have chosen to segment their rate structure and limit the proportion of base ocean freight. There are many reasons for this. Years ago, the ocean carriers wanted to reduce the amounts paid in freight forwarding commissions by shrinking the base upon which it was calculated. In some trade lanes where a shipper was responsible for the ocean freight, it was convenient to keep ocean freight amounts low and shift other named charges for payment at destination. It is wrong to assume that any of the VOCCs surcharges are wholly set to recover specific constant costs. They are rather an additional way to recover revenue on top of longer-term fixed agreements. The sum of the surcharges reflects the final price at which the VOCCs are willing to move cargo. There is no real difference between a GRI and any other surcharge. GRIs can be renamed to identify any other component contributing to the operating costs of a vessels.
- The proposed regulation will establish a precedent that the Commission will be determining which VOCC-oriented charges will be considered appropriate as a pass through and which charges will be considered part of base ocean freight. This will add to confusion and undercut efficiency. This is best left to the ocean carrier. If they determine a cost is part of base ocean freight rate, they should include it in the ocean freight cost. Other charges not named ocean freight are introduced and fluctuate based on other factors related to the operations of the vessels.

The NYNJFF&BA is at a loss to understand why the Commission is reversing its position stated in the Final Rule on Amendments to Regulations Governing NVOCC Negotiated Rate Arrangements and NVOC Service Arrangements (Docket 17-10) issued in July 2018. That ruling stated: "For pass-through charges and ocean carrier GRIs for which the NRA or rules tariff does not include a specified amount, the NVOCC may invoice the shipper for only those charges the NVOCC actually incurs with no markup. The Commission is removing the prohibition on the pass-through of ocean carrier GRIs in order to increase efficiency and flexibility within the NRA framework." If it is working, it should not be changed.

In sum, the regulations should allow for the inclusion of any VOCC-oriented additional to base ocean freight. Charges that cannot be fixed in the VOCC quotation but are subject to the tariffs in place at time of shipment should be allowed to be passed through. Ocean carriers quote shippers with GRIs subject to tariff rates valid at time of shipment (VATOS). These charges including GRIs are out of the control of the NVOCC and function the same as third party fees.

NVOCC Administrative Fees connected to pass throughs are not allowed.

The NYNJFF&BA would like to bring to the attention of the Commission that the proliferation and constant change of surcharge amounts has created a huge cost and burden on NVOCCs. The option for an assessment of an administrative or processing fee should be allowed solely to recover the cost in labor, time, systems, accounting and funds advancement resources needed to manage the pass-through charges. The NYNJFF&BA recognizes that the exemption from the advance notice of surcharges was not intended to allow a markup over the carrier's cost. Since that exemption was put in place, the number of surcharges has grown tremendously and the changes to them have increased in volatility. The NVOCC is not merely passing on charges but filtering them for accuracy and challenging the carrier for legitimacy. The shipper benefits from this role that the NVOCC has undertaken. Furthermore, the NVOCC is advancing funds on behalf of the cargo owner and should be allowed to recoup a cost for this service and financing. Depending upon the method of payment and vendor a processing fee can be incurred. The NVOCC's payment of surcharges contributes to the efficiency in processing cargo movements. Most

cargo owners would prefer that the NVOCC handle these payments and present them with one invoice rather than directly having to arrange payment.

It would seem that a concern of the Commission in granting NVOCCs the ability to charge an administrative fee is to protect the shipper from additional abusive costs that could be imposed without notice. This concern can be removed by including in the NRA or notice to the shipper at time of quotation and acceptance a fixed amount for an administrative or funds advancement charge that would be identified and passed along with any surcharge.

Co-Loading

In its proposed changes to the co-loading regulations, the Commission recognizes that "the various arrangements made among NVOCCs can provide efficiencies and result in lower transportation costs." After many years where it seemed the Commission thought there was something suspicious in NVOCCs tendering freight to each other it is very welcome to see this. Furthermore, it is appreciated that the Commission senses the great confusion created by the co-loading regulations and is attempting to clarify them. It is welcome that the Commission is removing the co-loading rate section (46 CFR 520.22 (c)(3) in recognition that it is out-of-date since the NRA / NVOCC Service Arrangement (NSA) exemptions were put in place. With private ocean freight agreements allowed the restrictions on NVOCCs offering special rates to other NVOCCs is no longer applicable. The comments below will address the immediate proposed changes as well as the larger issue of whether there is any longer a need to have regulations defining co-loading.

Limitation of Co-loading Definition to LCL cargo.

The Commission is seeking to amend the co-loading definition to limit it to less than container load shipments. Thus co-Loading would mean the combining of less than container loads of cargo by two or more NVOCCs for tendering to an ocean common carrier under the name of one or more of the NVOCCs. The NYNJFF&BA does not see the purpose of having a definition of co-loading for LCL cargo or for that matter of FCL cargo. Before NRAs, when NVOCC freight moved under common tariffs available to all shippers, the concept of co-loading for LCL cargo offered NVOCCs the possibility to obtain lower rates sharing space in a container based on carrier-to-carrier agreements. Now that

cargo is largely moving under NRAs or NSAs there is no reason to maintain the co-loading section of the regulations. Among our membership are some of the largest global neutral consolidators moving their LCL freight using NRAs offered directly to NVOCCs or beneficial cargo owners. Entities tendering cargo are doing so as shippers. The NYNJFF&BA has not yet identified a member who is any longer issuing carrier-to-carrier agreements for LCL cargo.

Under this proposed change, the entire section 520.11 (c) will only apply to LCL cargo. This leaves the other sections of the regulations to govern the very common and useful practice of NVOCCs tendering full containers to master loaders. It is puzzling to understand why LCL cargo needs more regulation with a co-loading section than FCL cargo. The obligations of the NVOCC to the shipper remain the same whether LCL or FCL freight is involved. These are governed by its rules tariff and bill of lading terms. This raises the serious question: what purpose does the co-loading section serve that is not already in place with the other sections of the regulations? The NYNJFF&BA does not see how this section provides the shipper with any additional protection. In fact, it continues to perpetuate an unnecessary requirement to describe its relationship with other NVOCCs in its tariff. The NRA exemption allows NVOCCs to agree privately with other NVOCCs. Why does this need to be described in the tariff with distinctions about which shippers do not care?

Documentation for Co-Loading and Other NVOCC Arrangements

The Commission proposes to add a regulation at 46 CFR 520.11(d) to require that the documentation accompanying LCL and FCL shipments be annotated with the name of all NVOCCs associated with the cargo. The Commission states that this annotation requirement ensures that, for either co-loaded cargo or full container loads, the BCO has the information required to contact any NVOCC which may have control of its freight. This concept has no basis in reality in view of the fact that there is no existing data that indicates that NVOCCs are somehow greater risks as carriers than any other ocean common carrier. Additionally, the Commission's statement that the Beneficial Cargo owner (BCO) will have the information required to contact any NVOCC which may have control of its cargo, is misleading because such NVOCC would have no contract privity with the BCO.

The NVOCC issuing the Bill of Lading (B/L) to the shipper is the entity that is legally responsible for fulfilling the services in the contract of carriage. The shippers will have legal recourse against that NVOCC and not against the others listed on the B/L. What practical purpose will it serve to list all other NVOs involved in the cargo? The BCO can do nothing with that information. There is a legal chain of liability that must be followed and, in that process, the BCO's rights are adequately protected. The terms and obligations of the Bill of Lading contract of Carriage should apply.

The annotation requirement is an unnecessary intrusion on commercial relationships between NVOs and their customers. This is a very dynamic competitive arena and it would be counterproductive for NVOCCs to have their identity on a transportation document of another NVOCC for no better purpose than it might be useful, in the event of the underlying NVOCC's demise.

Current global shipping practices have reduced the ability of smaller NVOs and in some instances virtually shut them out of obtaining bookings with ocean carriers. Without the possibility to tender cargo to high volume NVOCCs, who can obtain space with the ocean carriers, competition would be reduced to the detriment of the shipper and small to mid-sized NVOs would have their business restricted. The requirement to annotate bills of lading with every NVOCC raises the possibility that a BCO would seek to work directly with the master NVOCC having the contract with the ocean carrier. This could ultimately lead to a reduction in competition and the number of NVOs offering services to shippers.

That the BCO entrusted an NVOCC to handle its cargo is based on many factors from price to service to reputation. The NVOCC has a responsibility to choose well-vetted sub-contractors or other NVOCCs. This judgment, knowledge, and expertise is what the BCO has engaged. This is part of the value that an NVOCC brings to the international freight system as a well-recognized ocean transportation intermediary. By requiring an NVOCC to list its vendors is to undermine this. When an NVOCC executes a door movement, the FMC is not requiring that the name of all the other truckers and subcontractors be listed.

This requirement will add an overwhelming burden on the NVOCC to know every NVOCC in the bill of lading chain, if that is even possible. The proposed change to require this additional annotation for any LCL or FCL shipments would create an operational

nightmare that would add to the costs of moving freight, would be particularly harmful to smaller NVOCC, and not provide any material change to the shipper in most instances.

VOCCs do not need to annotate their B/Ls to show all the partners with whom they are joining to move the cargo, including the vessel operator controlling the ship, the name of the terminals, CFS stations, truckers, rail yards engaged to provide a linear. service. The same logic should apply for NVOCCs when tendering freight to another NVOCC. The risks are just as high with failing to perform in the management of the vessel operation. The NVOCC is being unfairly singled out.

We would suggest that instead of requiring annotation on the bill of lading, language be used such as follows: “Carrier shall provide the identity of an NVOCC to whom Carrier may have tendered Shipper’s cargo for transport upon request.” This is somewhat akin to the following language the Commission requires ocean freight forwarders which quote lump sums to shippers to provide on the face of the invoice:” Upon request, we shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges.”

Co-Loading Regulations No Longer Serve a Purpose

The NYNJFF&BA asks the Commission to give serious thought concerning the need to continue defining co-loading with separate requirements in today’s post OSRA shipping world. Numerous reasons include:

- The concept of co-loading as it exists in the current regulations for either FCL or LCL by NVOCCs has largely become a practice of the past, mainly due, not only to the present ambiguities contained in the current co-loading rules, but also by the successful proliferation of new pricing mechanisms----i.e., NVOCC Negotiated Rate Arrangements and NVOCC Service Arrangements.
- The Commission is proposing to limit co-loading to LCL cargo. This segment of the industry is well organized with cargo consolidating NVOCCs offering rates to other NVOCCs and direct shippers largely on an NRA basis. Smaller NVOCCs are similarly tendering freight to neutral NVOCCs on a shipper-to carrier relationship covered under NRAs. It appears from historic Bureau of Enforcement examples that the FMC staff was pretty much intolerant of so- called carrier-to-carrier pricing mechanisms where no bills of lading were being issued, presumably as allowed by

the current co-loading regulations. In fact, to a large extent, inquiry of large NVOCCs that consolidate LCL cargo has uncovered that most, if not all, of these NVOCCS currently utilize the NRA or NSA structures. Sometimes the term “carrier-to-carrier” agreement is utilized but the pricing for the transaction is usually covered by either an NRA or NSA, and bills of lading are issued. It seems that all parties, including the FMC, are dealing more with semantics rather than the competitive shipping reality dynamics that is actually in play to the shipper’s benefit.

- Leaving the requirement for NVOCCs to describe “its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo” is unnecessary and should be eliminated. The very definition of an NVOCC makes it apparent that this type of ocean freight intermediary does not own vessels and is tendering cargo to VOCCs, usually under service contracts, or to other NVOCCs. Shippers are not looking up NVOCCs rules tariffs to locate this information. If shippers are interested to know if the NVOCC is loading its own boxes or obtaining space from consolidators, they can certainly ask and be informed by the NVOCC service provider. See our comments above.
- The responsibility to pay charges for transportation is the essence of the service being offered. It should not be necessary to have to enumerate specially this basic obligation. Each NVOCC is vetted for financial responsibility and must maintain a bond against which the shipper can claim for service failures.

Changing the definition of co-loading to apply just to less-than-container loads raises questions of how the Commission will look upon the tendering of freight between NVOCCs for full container loads. Retaining separate regulations for co-loading only adds to confusion, especially in view of the fact that the industry has pretty well moved on by utilizing NRAs and NSAs, both dynamic pricing and quoting mechanisms in a fast-changing marketplace. It is hoped that the Commission recognizes the vast majority of freight volume placed by NVOCCs with other NVOCCs concerns full container loads. The current regulations provide for NVOCCs to offer space to other NVOCCs either through NRAs, NSAs, or carrier-to-carrier agreements. The practice that has developed even when the agreements are being termed “carrier to carrier” is the utilization of either the NRA or NSA models. It cannot be overemphasized that the shipper has been the major beneficiary of

NVOCCs buying space from each other. The practice has grown because it fulfills the purpose of helping the large NVOCC meet its volume commitments and the smaller NVOCC to obtain lower freight costs and access to space than it otherwise could. There is no regulatory reason to be upsetting a very dynamic marketplace.

The ability to obtain space with the large NVOCCs became a lifeline for many small and medium size NVOCCs as well as shippers over the past two years. The concept that has been lost in the shuffle is that small mid-sized NVOCCs also perform other valuable services such Customs brokerage, FMCSA Property Brokerage for purposes of arranging surface transportation, which in the current climate is a valuable skill set. The idea that everything is price driven in the NVOCC is short sighted since the shippers have grown to depend on small and mid-sized NVOCCs in many facets of the supply chain. It has become increasingly apparent that steamship lines were not wanting to work and issue service contracts with smaller volume NVOCCs. Without the ability of large NVOCCs to secure space, the smaller NVOCCs would have been cut out of the market. Even medium size NVOCCs benefited from this when they could not obtain all the space they needed with allotments reduced despite service contract commitments. In short, space sharing of vessel capacity in the NVOCC market has been extremely useful for the shipper in keeping freight moving over the past two years. Without this facility, smaller NVOCCs could not have had all their cargo loaded due to the severe constraints on vessel capacity.

The practice of space sharing or co-loading promotes competition and offers the shipper a wider variety of pricing, availability, and sailing options. This has been recognized with the practice of VOCCS sharing space on vessels. The better utilization of space has allowed for a reduction in operating costs among VOCCs. This practice of space sharing by NVOCCs is no different. It can take the form of a portion of one container consolidating loads from many shippers or other NVOCCs and of full container loads purchased according to agreement with another NVOCC having a service contract with a VOCC. This is a very efficient market mechanism facilitating trade at market prices. All of these practices work well and are beneficial to the VOCC, by ensuring that the NVOCC can meet its volume commitments and by streamlining operations with fewer companies. If VOCCs felt otherwise they could put terms in their service contracts to govern NVOCC behavior. These terms are part of the commercial agreement between VOCCs and NVOCCs and not a matter for the Commission’s attention.

Over the years, it seems that the Commission has focused on unlawful NVOCC access to service contract rates. Under current regulations an NVOCC can purchase freight from a master NVOCC who has a steamship line contract. NVOCCs securing space for full container loads do so under carrier-to-carrier agreements, NSAs and NRAs. By re-selling the space to smaller NVOCCs the large NVOCCs or master loaders act in the capacity of a wholesaler contributing to a more efficient functioning of the ocean freight market. The shipper is the beneficiary of this system and has not complained of harm from NVOCCs purchasing space from each other. There is no need to have separate regulations for this. It only adds to confusion for regulators and for the industry trying to define something where no value added is achieved in so doing. The regulatory discussion of documentation and the name assigned to the derivation of a rate (co-loading, carrier-to-carrier, NSA, NRA, or even tariffs) is overly complicating the simple reality that a shipper is accepting to move cargo based on a private agreement in advance of cargo receipt.

NVOCC Failure to Update Tariff

The proposed addition of 520.3 (f) revoking an NVOCC's license or suspending a foreign-based NVOCCs registration for failure to update its tariff seems excessively harsh. The NYNJFF&BA recognizes the importance for NVOCCs to maintain rules and rates tariffs in compliance with the FMC regulations. However, tariffs are quite complex and to subject an inadvertent error in updating to the penalty of a loss of operating authority is excessive. The industry would be better served if the Commission issued a warning to those NVOCCs if their tariffs are found to be non-compliant and provide an opportunity to remediate any failing. The goal is to bring the industry in to compliance.

The NYNJFF&BA suggests this section be amended to read: "Failure to maintain a tariff may result in penalty and if not remediated may result in revocation of an NVOCCs license or suspension of a foreign-based NVOCCs registration."

Conclusion

While the intent of the NPRM is to promote transparency in pricing and information, the NYNJFF&BA does not see that many of these proposed changes will be of any practical use to the shipper for the preponderance of their ocean freight movements. Furthermore, they would place additional costs and burdens on the NVOCC thus contributing to inefficiency in the international freight process. While it is worthy that tariff access be free, shippers are not relying on tariffs for rate information but instead on privately quoted rate arrangements or contracts. Numerous and changing VOCC surcharges are difficult to locate in VOCC tariffs. NVOCC cross-referencing of VOCC pass-through charges is simply not practical. All VOCC surcharges, including GRIs should be allowable as a pass-through outside the control of the NVOCC. The proposal for NVOCCs to annotate their bills of lading with every NVOCC involved does not improve a shipper's control over a movement and is an infringement of commercial arrangements with greatest potential harm to smaller companies.

The biggest barrier to transparency in costs for a shipper is the proliferation of surcharges. As stated in our response to the ANPRM, it is the tariff system that encourages the widespread use of confusing surcharges. Once intended to help protect the shipper from carrier abuse and to ensure freight cost transparency, it has become a tool to achieve the exact opposite. Tariffs have become a weapon against the shipper being able to know what his final freight costs will be and should be eliminated. Large NVOCCs offering their own LCL services have managed to provide transparent fixed rates to shippers by limiting the time for the duration of the offer and tightly controlling costs. These NVOCCs have honored their rate quotations despite the volatile current market conditions. If NVOCCs can do this, why can't VOCCs, who are controlling the vessels, the most critical component? There should be a regulatory requirement that ocean carriers' total rates inclusive of all components agreed with the shipper for a set of services whether in an extended contract or transactional quote must be fully transparent and the terms respected. References to a myriad of surcharges valid at time of shipment does not contribute to transparency.

Finally, our Association strongly questions the purpose of the co- loading regulations and believe if this section were eliminated it would have no negative effect on the shipper and would remove a source of great confusion. The Commission took the

extraordinary step to align regulations with market practice by the introduction of NRAs and NSAs, which have efficiently taken over as dominant vehicles in NVOCC transportation transactions. There is a seismic shift underway in the ocean freight transportation market, driven by technology and favoring shorter-term market-based pricing and bundled end-to-end services. It is hoped that the Commission recognizes the continued changes taking place and the importance of regulations to be necessary to achieve their intended purpose. The NYNJFF&BA respectfully submits these comments and greatly appreciates the Commission's flexibility in receiving and considering them.

Executed on June 30, 2022

On Behalf of the NYNJ Foreign Freight Forwarders & Brokers Association, Inc.

Jeanette R. Gioia

President

NYNJ Foreign Freight Forwarders & Brokers Association, Inc.