



A member of the *KWE* Group

APL Logistics, Ltd
17600 N. Perimeter Drive, Suite 150
Scottsdale, AZ 85255

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 21-03

**Comments on Notice of Proposed Rulemaking
Carrier Automated Tariffs**

COMMENTS SUBMITTED BY APL LOGISTICS, LTD

APL Logistics, Ltd (“APLL”) is a non-vessel operating common carrier (“NVOCC”) and global supply chain provider operating in 190 locations across the globe. APLL respectfully submits the following comments on the Notice of Proposed Rulemaking (“NPRM”) regarding tariff access and co-loading issued by the Federal Maritime Commission (“FMC”). APLL’s comments will focus on the NPRM as it relates to co-loading – specifically the proposed amendment to the definition of co-loading and new documentation requirements.

Definition of Co-loading:

The NPRM proposes to amend the definition of “co-loading” in § 520.2 to state specifically that co-loading applies only to less-than-container-load (“LCL”) shipments. This definition would expressly exclude co-loading full-container-load (“FCL”) shipments from the definition of co-loading. According to the NPRM, the purpose of this change is to align regulations with current industry practices.

While APLL appreciates the effort to align FMC regulations with industry practices, the proposed amendment in this case would have the opposite effect. APLL would agree that FCL co-loading is a decidedly less prevalent than LCL co-loading, however this fact does not mean that FCL co-loading is not a standard industry practice. Many NVOCC’s do in fact rely on FCL co-loading opportunities in order to provide their services to the shipping public. This has been particularly true over the last few years when space limitations and other challenges to the supply chain have required NVOCCs to utilize all means available to secure space on vessels.

Rather than harmonizing the definition of co-loading with current industry practices, the proposed amendment to the definition of co-loading would result in a significant change to how the industry currently operates and it would be a change that would limit the ability of NVOCCs to provide their services the shipping public. The ability of NVOCCs to work together, particularly when available space is severely limited, is critical to ensure shipper’s are provided access to vessel space. Any change that would limit this collaboration should be viewed with skepticism. As FCL co-loading is a standard industry practice that serves a valuable role in the transportation of cargo,

APL Logistics

17600 N. Perimeter Drive Suite 150
Scottsdale, Arizona, USA 85255
www.apllogistics.com

APLL believes the definition should remain unchanged or, in the alternative, a new, separate definition specifically addressing current FCL co-loading practices should be introduced.

Documentation of co-loading and other NVO arrangements:

The NPRM proposes to add a regulation that would require the documentation accompanying any co-loaded shipments be annotated with the name of all NVOs associated with the cargo. The stated purpose of the new regulation would be to address the potential reduction in transparency that could result from standard co-loading practices.

APLL strongly believes that the new proposed regulation would not only impose a significant hardship on NVOCCs in the supply chain, but that the proposed regulation would not provide any real benefit to the BCOs it is intended to assist. APLL is unaware of any circumstance where a BCO has wanted or needed to know the identity of all NVOCCs in the chain – in the event of a failure to perform, the focus of the BCO will always be on the NVOCC with whom they have contracted, as that is the party with an obligation to perform and against whom the BCO has a contractual remedy available. From APLL's perspective the proposed regulation appears to be a solution in search of a problem.

As stated above, the new documentation requirements would impose a significant hardship on the NVOCC community. To comply with the regulatory requirement NVOCCs would be required to collect information on every NVOCC connected to any shipment they are involved in – in most cases, this information is not relevant and therefore not currently in the possession of individual NVOCCs. This will therefore require that NVOCCs adopt a new process to ensure not only that the information is collected, but that it appears on every bill of lading they issue. This change in documentation will likely require implementation of system enhancements, which in turn will require expenditure of resources (time and money) that many NVOCCs do not have freely available. All of this effort would be necessary to ensure compliance with the new regulation, a new regulation that would provide questionable benefits to any party in the supply chain.

From an operational standpoint, the new regulation potentially creates a significant obstacle for NVOCCs that are issuing documentation for ocean shipments. As noted above, in order to comply with the regulation NVOCCs would be obligated to collect additional information and adopt new processes to ensure the required information is properly displayed on the bill of lading. Requiring the additional information could easily result in delayed issuance of required documentation, which in turn could lead to shipment delays and/or rolled cargo, and ultimately more challenges to the supply chain. Rather than benefitting the BCO, requiring the additional information be collected and displayed could actually have a negative impact on the movement of their cargo throughout the supply chain.

Aside from the operational hardships associated with the proposed regulation, requiring identification of all NVOCC parties within the commercial chain could have a devastating impact on the ability of NVOCCs to operate within the industry. As the FMC is likely aware, in many cases the contractual relationship between parties are confidential in nature – many contracts

APL Logistics

17600 N. Perimeter Drive Suite 150
Scottsdale, Arizona, USA 85255
www.apllogistics.com

explicitly include the existence of the contract within the definition of “confidential information.” This confidentiality applies not only to NVOCC to NVOCC contracts, but also the contracts between a NVOCC and BCO. NVOCC’s dedicate significant time, effort, and resources to developing the relationship with their BCO customers and often these relationships span years or even decades. In our capacity as an NVOCC APLL is able to provide our customers with the best option for cargo movement by leveraging our deep understanding of their needs and our relationships with ocean carriers and other NVOCCs. Requiring disclosure of every party in the full commercial chain on every shipment undermines the value we are able to add, and creates a scenario that could negatively impact the ongoing viability of the entire NVOCC industry.

As an additional matter, most contracts require that any remedy for performance failure or breach of the contract be pursued against the other contracting party, not its subcontractors or agents. This is the strong preference of nearly all contracting parties – it clearly lays out responsibilities and obligations and ensures an injured party can pursue a remedy for any damages sustained. If there is a performance failure related to a particular shipment, the BCO is going to look immediately to the NVOCC with whom it had contracted for relief, it is not going to pursue a third party with whom it has no relationship. Including the names of all related NVOCCs on the bill of lading will not create any additional protection or remedy for the BCO, but it could create confusion regarding the obligations of the various entities named on the bill of lading.

APLL appreciates the opportunity to provides its comments on this very important issue.

APL Logistics

17600 N. Perimeter Drive Suite 150
Scottsdale, Arizona, USA 85255
www.apllogistics.com