VENABLE LLP

international trade alert

SHARE THIS CONTENT MORE

click here for a print-friendly version

www.Venable.com
APRIL 2010

If you have questions regarding this alert, please contact the authors below or another member of the **International Trade and Customs** team.

Authors:

Ashley W. Craig
awcraig@Venable.com
202.344.4351

Lindsay B. Meyer
lbmeyer@Venable.com
202.344.4829

Robert L. Hart
rlhart@Venable.com
202.344.4073

Carrie Kroll
cakroll@Venable.com
202.344.4574

FMC Issues Long-Awaited Proposed Rule on NVOCC Tariff Rules

On April 29, 2010, the Federal Maritime Commission ("FMC") released the much-anticipated Notice of Proposed Rulemaking that would grant nearly 3,300 FMC-licensed Non-Vessel Operating Common Carriers (NVOCCs) an exemption from the current requirements for publishing in tariffs the rates they charge for shipments.

The Notice of Proposed Rulemaking is available for review on the FMC website at this address: http://www.fmc.gov/userfiles/pages/file/NVOCC%20Tariff%20Exemption%20NPRM.pdf.

Specifically, the proposed rule would introduce a new version of Title 46, Part 532 of the Code of Federal Regulations to provide an exception to the rate-publishing provisions of the Shipping Act of 1984 and related FMC regulations. The exception would be made available to those NVOCCs utilizing an instrument called a "negotiated rate arrangement," which is defined to mean "a written and binding arrangement between a shipper and an eligible NVOCC to provide specific transportation service for a stated cargo quantity, from origin to destination, on and after the receipt of the cargo by the carrier or its agent."

Licensed[1] NVOCCs who enter into negotiated rate arrangements with their customers will be exempted from the requirement of publishing their rates in tariffs so long as they meet several conditions. These include:

- NVOCCs would continue to publish rules tariffs containing terms and conditions governing shipments;
- NVOCCs would be required to provide those rules to the public free of charge;
- Rates charged by NVOCCs must be agreed to and memorialized in writing by the date cargo is received for shipment; and
- NVOCCs must retain documentation of the agreed rate and terms for each shipment for a period of five years, and must make that documentation available promptly to the Commission on request.

Interested parties should evaluate how the enactment of such an exception would affect your business, as well as areas in which the contours of the rule might benefit from modification before a final rule is adopted.

The FMC will accept comments on the proposed rulemaking through **June 4, 2010**. Additionally, if an interested party requests an opportunity to present oral comments by **May 14, 2010**, the FMC will hold a **public hearing on May 24**. We encourage you to consider drafting and submitting comments on this proposed rule, and we are prepared to assist you in voicing your position on this timely issue.

For more information, please contact a member of Venable's International Trade group.

[1] Although foreign-domiciled NVOCCs may obtain an FMC license, the majority are only "registered" with the agency; thus, such companies would not be eligible for the tariff publication exemption, as currently proposed by the FMC.

For assistance navigating these reforms, submitting your comments or any other maritime and international trade issues, *please contact: Ashley Craig at 202.344.4351 or at awcraig@Venable.com.*

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com