



In response to a petition filed by [Ed Greenberg](#) on behalf of the National Customs Brokers and Forwarders Association of America.

FMC Grants Petition to Broaden NRA and NSA Exemption

On June 6, 2018, the Federal Maritime Commission voted unanimously in its Docket 17-10 to approve groundbreaking relief for NVOCCs by significantly expanding the Negotiated Rates Arrangement (NRA) and NVOCC Service Arrangement (NSA) exemptions. Although the expanded exemption will not become effective until the agency is able to issue a formal decision (which we expect to be done in about a month), the vote by the commissioners made it very clear that the agency would no longer be content to let early 20th century regulatory theory impede the dynamic nature of the ocean shipping industry.

What does this mean for NVOCCs? With respect to NSAs, it means that NVOs will no longer be required to file their NSAs or amendments with the Commission. Nor will they be required to publish the so-called essential terms of the NSAs in their tariffs.

As to NRAs, it means a number of things. First, the prohibition against amending NRAs will be lifted. Accordingly, NVOCCs and their customers will be able to enter into longer term negotiated agreements and be able to amend them at will so they can be more responsive to changes in the ocean shipping marketplace. Second, there will no longer be a prohibition on including other economic terms in an NRA, so that an NVOCC can agree with its customer on a broad range of issues, including *but not limited to*:

- Minimum volumes
- Liquidated damages
- Credit
- Service guarantees
- Surcharges and GRIs
- EDI services
- Dispute resolution terms
- Liability for loss and damage

Third, recognizing that it is often difficult for an NVOCC to get a shipper to acknowledge in writing its acceptance of the terms of an NRA, the new rule will make it clear that the tender of cargo in response to an NRA will constitute acceptance and the formation of a lawful contract (just as would be the case in non-regulated industries).

It is important to understand the significance of the changes that were voted on by the FMC. While NVOCCs can still publish rate tariffs if they so choose, and can still enter into formal NSA contracts with their customers if that is how they prefer to do business, they are now also free to do business with their customers in a virtually deregulated manner. Although an NRA must still be in writing and must be given

to customers, that is not surprising and would be a prudent business practice even if rates were totally deregulated.

In other words, by using NRAs, NVOCCS can enter into virtually any arrangement they wish with their customers without having to memorialize it in a tariff or otherwise being concerned about regulatory requirements.

If you have any questions, do not hesitate to contact [GKG Law](#).

Ed Greenberg

Principal

GKG Law, P.C.

202.342.5277

egreenberg@gkglaw.com