



# UNDERSTANDING U.S. REGULATORY ISSUES



# REGULATORY ISSUES IN OCEAN FREIGHT

## FEDERAL MARITIME COMMISSION



## About the FMC

- Established by Congress in 1961
- Independent Regulatory Agency
- Regulates Liner Ocean Transportation in U.S. Foreign Trades



# FMC Statutes and Regulations

- Shipping Act of 1984, as Amended  
46 U.S. Code 40101 – 41309
- Code of Federal Regulations  
46 CFR Part 500

Much more information at [www.fmc.gov](http://www.fmc.gov)





# What is a freight forwarder?

## From the FIATA Model Rules:

2.1 Freight Forwarding Services means services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the Goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the Goods for official purposes, procuring insurance of the Goods and collecting or procuring payment or documents relating to the Goods.



# FIATA Model Rules:

## 7.1 The Freight Forwarder's liability as Carrier

The Freight Forwarder is subject to liability as principal not only when he actually performs the carriage himself by his own means of transport (performing Carrier), but also if, by issuing his own transport document or otherwise, he has made an express or implied undertaking to assume Carrier liability (contracting Carrier).



The FMC legal model does  
NOT  
incorporate the FIATA concept allowing  
dual or alternate roles for the  
freight forwarder





# Ocean Transportation Intermediaries (OTIs)

- Ocean Freight Forwarder (FF)
  - *An agent for the shipper that dispatches shipments from the U.S. via common carrier, books space, processes documents and performs related services*
- Non-Vessel Operating Common Carrier (NVOCC)
  - *A common carrier of import and export cargo that takes responsibility for the cargo (traditionally consolidators)*



## Attributes of FFs

- Not a common carrier
- Only serves as agent
- Does not issue bill of lading
- Must identify the shipper on master bill of lading:
  - Cargo owner is listed as shipper; OR
  - “FF as agent for John Doe”

## Attributes of NVOCCs

- Common carrier status under FMC regulations
- Serves as a shipper to the vessel operator
- Serves as carrier to its shipper customer(s)
- Shown as shipper on the vessel operator’s Master Bill of Lading



Seems clear;  
So, what's the issue  
for freight forwarders?



Key differences arise in legal status, with important commercial implications:

Let's start with NVOCCs:

- US-based NVOCCs are licensed and bonded
- Foreign-based NVOCCs must register, appoint US agent for service of legal process, and post bond



## Freight forwarders have own distinct status:

- Freight forwarders in U.S. are separately licensed and bonded
- Foreign freight forwarders are not licensed if not present in US, but cannot serve as shipper for contracting purposes



- *Shipper* means a cargo owner; the person for whose account the ocean transportation is provided; the person to whom delivery is to be made; a shippers' association; or an NVOCC that accepts responsibility for payment of all applicable charges under the service contract.

46 U.S.C. 40102(22) and 46 CFR 530.3.



	FMC requirement	FMC bond amount	Service contracts with VOCCs
U.S.-based NVOCC	License required	\$75,000	yes
Foreign-based NVOCC	Registration required	\$150,000	yes
Foreign-based NVOCC	Licensing optional - if establish a qualifying US branch office	\$75,000	yes
U.S.-based forwarder	License required	\$50,000	no
Foreign freight forwarder	Not eligible	n/a	no



- **Service Contracts (46 CFR 530)**
- File copy with FMC
- Must be filed prior to cargo moving and contain the following essential terms:
  - Origin and destination port range or areas
  - Commodity or commodities
  - Minimum volume or portion
  - Line- haul rate
  - Duration
  - Liquidated damages for nonperformance, if any
  - Reference to tariff(s) of general applicability and carrier's essential terms tariff publication number





# Service Contract Requirements

- Signature page must contain signatories typewritten names, titles and addresses
- Shipper parties must meet definition of “shipper” under Commission rules; NVOCCs must provide proof of FMC bond/license and tariff publication
- Affiliate requires corporate affiliation or ownership interest
- Multiple unrelated signatory shipper parties to single contract permitted, but each has own liability under contract



In effect,  
cannot intermingle your status  
in negotiating with vessel operators



- If not licensed or registered as NVOCC, cannot enter into service contracts to move your freight, 46 CFR 530.6 and 46 USC 41104 (12)
- If enter service contract as NVOCC, cannot include cargo you service only as forwarder
- If serving only as forwarder, any service contracts with carrier must be in name of the cargo owner as principal (and cannot commingle others' shipments)



	Status	Freight rates per tariff	Freight rates per NSA	Freight Rates per NRA
U.S.-based NVOCC	Carrier in relation to cargo owner	Published on Internet	Filed with FMC; confidential	Not filed; confidential
Foreign-based NVOCC	Carrier in relation to cargo owner	Published on Internet	Filed with FMC; confidential	Not eligible*
Foreign licensed NVOCC	Carrier in relation to cargo owner	Published on Internet	Filed with FMC; confidential	Not filed; confidential
U.S.-based forwarder	Agent only	Not eligible	Not eligible	Not eligible
Foreign freight forwarder	Agent only	Not eligible	Not eligible	Not eligible



# Tariffs

- Publishing tariffs (46 CFR 520)
- All common carriers must publish all rates, rules and charges
- Rate changes
  - Increases no less than 30 days' notice
  - Reductions effective on date of publication
  - No retroactive publication



- Tariffs must clearly identify the specific rates and charges for each shipment
- Tariffs must include sample bill of lading  
(Formal “registration” of bill of lading not required)
- Cancellation of Tariffs
  - Must inform BTA in writing and specify effective date



# NVOCC Service Arrangements (NSAs)

- NSA requirements (46 CFR 531)
- File copy with FMC
- Must be filed prior to cargo moving and contain the following essential terms:
  - Origin and destination port range or areas
  - Commodity or commodities
  - Minimum volume or portion
  - Line-haul rate
  - Duration
  - Liquidated damages for nonperformance, if any



## NSA Requirements

- Signature page must contain signatories' typewritten names, titles, and addresses
- Shipper parties must meet definition of “shipper” under Commission rules; NVOCCs must provide proof of FMC bond/license and tariff publication
- Affiliate requires corporate affiliation or ownership interest





- Multiple unrelated signatory shipper parties to a single NSA permitted
- NSAs may be amended by mutual agreement of the parties.
- This is the NVOCC equivalent to service contracts.



# NVOCC Negotiated Rate Arrangements

- Rules for NRAs published at 46 CFR 532
- Required Written Content:
  - Rate
  - Shipment(s) for which rate applies (i.e. Cargo Quantity)
  - Commodity description
  - Origin and destination pairs
  - Both the names of the Parties and representatives which agree to the NRA



- Shipper's agreement (consent) to NRA must be in writing
- Surcharges, accessorial may be included in NRA as part of an "all-inclusive" rate; or may be listed separately
- Parties may not modify an NRA after shipment received by NVOCC or its agent
- Licensed NVOCCs must amend tariffs to indicate the intention to use NRAs by a prominent notice in its rules tariff.



- Continue to publish rules tariff and provide free public access. This requirement bars access fees or subscriptions but does not restrict NVOCCs from requiring users to have a login and password to view its rules tariff.
- Commission currently considering whether to extend exemption to foreign registered NVOCCs

# NRA



**LINE, INC.**  
DALLAS, TX 75247-5207

*EXPORT QUOTATION / NRA*

CUSTOMER	DATE	QUOTE EXPIRES	QUOTE #
[REDACTED] DUBAI UNITED ARAB EMIRATES	06/26/12	07/19/12	013768
RATES ARE IN USD UNLESS OTHERWISE SPECIFIED. RATES ARE SUBJECT TO CHANGE WITHOUT NOTICE. RATES IN USD ARE SUBJECT TO CREDIT APPROVAL AND STANDARD TERMS AND CONDITIONS. ALL APPLICABLE TARIFFS, DUTIES AND FEES ARE SUBJECT TO THE RATES APPLICABLE.			
Contact: [REDACTED] Tel.: [REDACTED]			

ORIGIN	PORT OF LOADING	CUSTOMER REF
VANCOUVER	VANCOUVER	[REDACTED]
ORIGIN / DISCHARGE	PORT OF DESTINATION	MODE / TYPE
DUBAI		DOOR TO PORT

**FREIGHT DETAILS**

Type Containers : 1 x 40 FT HIGH CUBE

Commodity : MACHINERY PARTS      Pletses / Packages    LBS:      KGS:      CFT:      CBM:

Notes :

**Protect your investment! Please ask us about cargo insurance for your shipment!**

The company conducts business under the terms and conditions of the NCBFAA and has a policy against payment, seizure or receipt of any rebate, directly or indirectly, which would be unlawful under the United States Shipping Act of 1984.

DESCRIPTION OF THE CHARGES	PREPAID AMOUNT	COLLECT AMOUNT						
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">AUST RATE PER CONTAINER</td> <td style="width: 20%;">TAXES</td> <td style="width: 40%;"></td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	AUST RATE PER CONTAINER	TAXES					00	
AUST RATE PER CONTAINER	TAXES							
<b>TOTAL CHARGES</b>	<b>\$ 00</b>							



## Which NVOCC status should you adopt?

	FMC requirement	FMC bond amount	Service contracts with VOCCs	Use of NRAs?
U.S.-based NVOCC	License required	\$75,000	yes	yes
Foreign-based NVOCC	Registration required	\$150,000	yes	no
Foreign Licensed NVOCC	Licensing optional - qualifying US branch office	\$75,000	yes	yes



## Which NVOCC status should you adopt?

- Corporate, tax and liability considerations
- Control, control, control
  - Good partners vs. good employees
  - Liability for acts of foreign agents
- Future plans and expansion
  - Do you expect major commitment to US trades?



Thanks for listening!



