Memo

To: **Our Valued NVOCC Members**
Subject: FMC Tariff Rule and Rate Filing Requirements
Date: 22Aug2018

The U.S. Federal Maritime Commission (FMC) requirements for tariffs are complex and not easily satisfied. Recent changes to these regulations allow NVOCCs more flexibility, but also introduce new requirements. Distribution-Publications, Inc. (DPI) was established in 1975 to help our customers/members understand and comply with the FMC tariff regulations. We are pleased to share our expertise with you, and help you establish a reliable and cost-effective program for FMC compliance which will help your company minimize the risk of FMC penalties. By this memo we review all the points of FMC's tariff rule and rate filing requirements for NVOCCs and offer our guidance. All the information provided herein is also presented in our video tutorials at https://www.dpiusa.com/videos

Initial FMC Tariff Publication Requirements / Tariff Rules:

Each ocean carrier and NVOCC serving the foreign commerce of the United States must publish a tariff in compliance with FMC regulations. Chapter 405 of the Shipping Acts of 1984 and 1998 requires each common carrier to keep open for public inspection, in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices. The FMC tariff regulations, issued in 46 CFR Part 520, provide much more detailed requirements for tariffs, and allow optional alternatives to the tariff rate filing requirement.

Here at DPI we are experts in these regulations. NVOCC tariffs published by DPI provide all the FMC required rules and regulations for NVOCC service both port-to-port and intermodal shipments moving between USA and Worldwide Ports and Points, and also include our recommended rules for NVOCC service – these rules were written by our in-house tariff experts and provide your company with the maximum in flexibility allowed by FMC and to provide our recommendations on best practices for compliance.

Our recommended tariff rules provide for documentation fees and other related fees, and our staff will be pleased to explain how your tariff rules can provide for surcharges and additional fees that you collect from your customers in addition to (on top of) your selling rates for ocean freight.

Your House Bill of Lading (HB/L):

Before your initial FMC tariff is published we must review your house bill of lading (HB/L) which must list complete terms and conditions. Please send this to us by scanned email – both the front and back of your HB/L. We will review and advise if FMC will require any changes. If you do not yet have an HB/L we can provide examples and suggestions. Your HB/L terms and conditions will be included in your tariff rules. This is strictly required by FMC. In future, if you plan to change your HB/L terms and conditions on the back or add clauses to the front please advise us timely so we can review and update your tariff rules as required by FMC.

FMC Tariff Updating (Filing) Requirements:

All freight rates and surcharges applied on NVOCC house bills of lading (HB/Ls, or equivalent shipping documents) for shipments to/from the USA to be carefully documented using either:

a) Tariff rate filing in the NVOCC's tariff, or
b) NVOCC Negotiated Rate Arrangement (NRA), or
c) NVOCC Service Arrangement (NSA).

This requirement applies on both U.S. exports and imports. In this memo we introduce the key features and benefits of each of these alternatives. More detailed advice on each alternative is provided in separate documents and in our video tutorials at www.dpiusa.com/videos With DPI's service and the tariff rules we will publish for your company you will be able to understand all three alternatives and use them to your best advantage.

a) Tariff Rate Filing is used by many NVOCCs to satisfy FMC's requirement. Our service will help you understand this alternative and use it efficiently. Tariff rates must be published for a minimum of 30 days and are organized within your tariff according to commodity description, which can match the description of the goods on the HB/L or can be more generalized. Tariff rates must be specific as to origin, destination, service provided, rate amount and rate basis, validity dates, and may also specify additional restrictions or cargo characteristics, but cannot be restricted or limited to named shipper or forwarder. Tariff rates must be filed no later than the date cargo is received for shipment at origin. Expiration dates are optional for tariff rate filing.

Once a tariff rate is filed it can be used for multiple shipments and will be subject to surcharges provided in your tariff rules, unless your rate filing indicates an exception. Our **Tariff Filing Guideline**s explains the tariff rate filing procedure in detail. When you have questions, we will take the time to carefully explain these and guide them in the correct filing procedure. Our expertise is always at your service.

When you use the tariff rate filing option to satisfy FMC's requirements you are not required to send your shipper customer a rate quotation or NRA, and you are not required to obtain your customer's acceptance. The tariff rate filing procedure is completely under your control, and DPI manages the tariff record keeping required by FMC. Once your rate is filed in your tariff you can use it for multiple shipments. This is why many NVOCCs use tariff rate filing instead of the other alternatives. For these NVOCCs, tariff rate filing is the most efficient way to comply with FMC's regulations.

The best way to manage tariff rate filing is the **Rate File Request** page on www.dpiusa.com This is an online menu driven process with lots of help, quality control and time-saving shortcuts built in. Our video tutorial at https://www.dpiusa.com/videos/newfilerequest_information explains and demonstrates in just 12 minutes. This online process also provides real-time status and email updates. However, we do also accept requests sent to us via e-mail or fax. Once tariff rate is filed we send a detailed confirmation message via e-mail. Most rates are filed on same day requested and confirmed later the same business day. DPI's tariff rate filing service also includes the maintenance of tariff history in in the manner required by FMC.

Fees for DPI's tariff rate filing service are reasonable: USD 12 or USD 14 per commodity item new or amended, including up to 10 rates for any origin/destination per commodity item. The lower fee of USD 12 applies to requests submitted via the Rate File Request link on our website, the higher fee of USD 14 applies to requests submitted via email. Commodity items can include any number of products in the description. Tariff rates can apply to/from multiple origins and destinations. If more than 10 rates are filed for a commodity, the fee is USD 2 per rate. Our **Tariff Filing Guidelines** explains in more detail. We invoice for tariff commodity item and rate filing on monthly basis. Our invoices provide a summary and detail of rates filed; they are sent via email on the second business day of each month. Unlike other tariff publishers, we do not assess a minimum monthly fee for tariff updates or web access. If your tariff is unchanged from month-to-month, no charges are incurred.

b) NVOCC Negotiated Rate Arrangements (NRA) are rate quotations that are used as an alternative to tariff rate filing. An NRA documents the freight rate and all surcharges agreed to by an NVOCC and its customer, the NRA shipper, for a shipment or shipments of a specific cargo quantity. When an NRA is used a tariff rate need not be filed, but the NRA must be offered (quoted) to the customer before cargo moves. Unlike tariff rates, NRAs are not required to be valid for 30 days; NRAs can be valid for any time period specified in the NRA. An example of an NRA is attached. As you will see, the NRA includes all the same details as a tariff rate filing, plus the names of the NRA shipper and its representative – these details are required by FMC's regulation.

Each NRA is unique to your customer who agrees to it by shipping with your company. Thanks to an amendment to FMC regulations effective 22Aug2018 NRAs can be changed / amended from time to time, provided the amendment is carefully documented in the manner required by FMC and delivered to the customer/shipper timely, and does not apply to shipments already in transit.

NRAs can provide for all-inclusive rates, or for rates that are subject to surcharges provided in tariff rules, or surcharges specifically noted in the NRA. When your NRA provides for all-inclusive rates, or for rates plus surcharges provided in your tariff rules, or as noted in your NRA, and you want to change the rate or surcharge you must amend your NRA in the manner FMC requires. NRAs can also provide for surcharges and third-party charges that apply on a pass-through basis, provided the specific surcharge or third-party charge is explained in the NRA; for example: "Subject to GRI, if incurred, of the underlying ocean carrier on a pass-through basis."

NRAs are subject to strict record keeping requirements; five (5) years of NRA record keeping as required by FMC. NRAs are not filed with FMC but may be reviewed and audited by FMC at any time. Due to this, NVOCCs are strongly recommended to establish formal procedures and/or implement software systems that provide this record keeping. When FMC audits it may request complete shipment files, including master BL, house BL, freight invoices, booking confirmation, arrival notice, freight payment confirmation, and NRAs.

If you want to use NRAs as an alternative to FMC tariff rate filing you can do so by managing your NRAs on your own, or you can use our **NRA Management System (NRAMS),** which provides a paperless solution. NRAMS uses a menu driven procedure for creating new NRAs via a web browser, offering these to shippers, obtaining shipper acceptance, and updating status. It maintains NRA history in a secure database with appropriate data security. It works closely together with your tariff rules to provide you with everything required to satisfy the FMC requirements. NRAMS is only available to NVOCCs whose tariffs are published by DPI.

The attached provides full details of NRAMS; pricing for is simple –the annual fee is USD 396 – this provides unlimited use for one User ID for one year, and the USER ID can be shared by all your staff. If you prefer to have separate User IDs these are available for just USD 198 per year each. There are no transaction fees, and no filing fees, and no limit to the number of NRAs. You can create, offer and accept an unlimited number of NRAs. Please note, NRAMS is an optional service of DPI, it is not required. If you prefer to manage your rate quotes/NRAs on your own you can do so, that is your lowest cost option for FMC compliance.

c) NVOCC Service Arrangements (NSAs) are contracts for ocean and/or intermodal transportation between an NVOCCs and its shipper customer (the NSA Shipper), who may be a cargo owner or another NVOCC. The NSA provides key terms of the service the NVOCC will provide to the NSA Shipper and the applicable freight rates and surcharges. When an NSA is used the NVOCC is not required to have an NRA or to file tariff rates to document its selling rates for its customer, the NSA Shipper. DPI provides expert guidance on NSAs and handles the FMC required record keeping for NSAs in our database.

NSAs are more complex than tariff rate filings or NRAs but offer advantages that are worth consideration. With an NSA an NVOCC can offer its customer a freight rate, or an entire spreadsheet of freight rates, that are exclusive and confidential. With an NSA an NVOCC can offer unique service terms and/or require its customer to ship a minimum quantity of cargo over a fixed period of time. This is often called a minimum quantity commitment or "MQC." The amount of the MQC can be one container, or one cubic meter, or it can be a substantial number of containers.

With an NSA an NVOCC can provide its shipper customer a unique discount or refund, which may be paid by the NVOCC to its customer when the MQC has been shipped, or on any basis you and customer agree to. An NSA can provide special credit or payment terms for the NSA Shipper. An NSA can include other related services and fees for these; for example, warehousing, storage, shrink wrapping/packaging, and container loading/unloading.

A unique feature of NSAs is their ability to provide an NSA Shipper with freight rates that remain fixed for the term of the NSA but are subject to surcharges filed in the NVOCC's governing rules tariff that are changed and update as needed – without amending the NSA and without customer approval. In other words, fixed freight rates, but "floating surcharges" that you, the NVOCC, control by updating your tariff rules to provide surcharge amounts. This is a unique feature of NSAs that is not allowed in FMC tariffs or in NVOCC Negotiated Rate Arrangements (NRAs). This makes NSAs uniquely suited for contracts that are valid for 90 days or more; many NSAs are valid for one year, which may be extended.

DPI's handling fee for each new NSA is USD 28. The fee for amendments to NSAs already in effect is USD 18 each. These fees include our regulatory review and advice, and maintenance of NSAs in our secure database. Secure access to NSAs is provided via www.dpiusa.com We provide each NVOCC customer with our recommend NSA template and detailed handling procedures; this is also provided as video tutorial https://www.dpiusa.com/videos/nsa_information

FMC Penalties for Non-Compliance:

All freight rates invoiced by NVOCCs or their agents on both U.S. exports and imports must be filed in FMC tariffs or provided in NRAs or NSAs that conform with FMC's regulations. This is legally required in the USA. Penalties for non-compliance with FMC regulations can be as high at USD 58,562 per B/L. NVOCCs who continue to operate after FMC revokes their registration or license can be penalized USD 114,782. FMC has the authority to use an NVOCC bond to satisfy these penalties.

Ocean carriers or NVOCCs who help an unregistered/unlicensed NVOCC to ship to/from the USA can also be penalized by FMC. For more info please see our SIGNALS™ newsletters. The risk of FMC penalties is a key reason why compliance with FMC's tariff regulations is so important.

SIGNALS™ Newsletters:

Each DPI member whose FMC tariff rules are in effect and maintained by DPI also receives a subscription to our monthly SIGNALS™ newsletters. Our newsletters provide detailed and timely information on FMC regulations and activities, and details of ocean carrier surcharges and general rate increases (GRIs). Copies of recent issues are enclosed in our folder; back issues are available at our web site. If you have questions about items in our newsletter, please let us know and we will provide additional detail to clarify.

Adobe™ PDF Tariffs, Web Access Via www.dpiusa.com and MS-Excel Reports

DPI's database systems access via www.dpiusa.com and tariffs in Adobe™ PDF format which can be downloaded from our web site or provided via email. We also provide tariff rate data in MS-Excel reports. Additionally, whenever tariffs are updated, our systems provide Publication Confirmation Reports, which we forward via email. Your initial tariff will be provided in hard copy, and in an Adobe PDF file. Each of our publishing customer/member is provided with unlimited access to its own tariff as maintained at our web site: www.dpiusa.com Tariff items may be viewed individually, and each DPI member can download their own complete tariff in the Adobe PDF format.

Operations in the USA must be licensed by FMC before any shipment is received:

Companies operating as ocean freight forwarders or NVOCCs in the USA are required to obtain a license from the Federal Maritime Commission (FMC) before they begin any ocean operations. This license is called the Ocean Transportation Intermediary license, or the "FMC-OTI" license. The OTI license is not required and not available to NVOCCs whose operations are located completely outside the USA. Only the FMC registration, tariff, and a bond of USD 150,000 are required for NVOCCs outside the USA.

When an NVOCC outside the USA uses an agent in the USA to provide transportation services, however, this agent must be licensed by the FMC as an OTI. Operating as an NVOCC agent in the USA without a license, bond, and tariff is a violation of the Shipping Act. Due to this, before an NVOCC outside the USA consigns a shipment to an agent in the USA, the NVOC must confirm this agent holds its own FMC-OTI license. Only holders of this license are authorized to operate in the USA 'as agents' for other NVOCCs based outside the USA, who do not hold this license, but who have registered with FMC and filed the required bond and tariff.

Annual Tariff Database Maintenance Fee, USD 432 per year:

All tariffs published by DPI are maintained at our Internet web site: www.dpiusa.com in the form and manner required by FMC for "automated tariff systems." FMC's regulations for this are complex and not easily satisfied. Each NVOCC is required by FMC to maintain its historical tariff data for a period of five (5) years after cancellation and must provide on-line access to tariff data for at least two (2) years. DPI provides this required service. This is why the annual tariff database maintenance fee of USD 432 is required. We pro-rate this annual fee for new customers who join us after January of each year.