

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 13-05**

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**AMENDMENTS TO REGULATIONS GOVERNING OCEAN TRANSPORTATION  
INTERMEDIARY LICENSING AND FINANCIAL RESPONSIBILITY  
REQUIREMENTS, AND GENERAL DUTIES**

**COMMENTS OF A. WESLEY WYATT**

I, A. Wesley Wyatt, President & CEO of Daniel F. Young Incorporated, submit these comments in response to the Advanced Notice of Proposed Rulemaking ("ANPRM") published in this docket May 31, 2013 (78 Fed Reg 32946).

Daniel F. Young, established in 1903, is an International Freight Forwarder operating under OTI license number 000656 and NVOCC license number 16226N, with eight offices in the United States, one office overseas in Australia and agents worldwide. The company is licensed by the US Customs and Border Protection (CBP) as a customs broker and certified participant in its Customs-Trade Partnership Against Terrorism ("C-TPAT"); and approved as an indirect air carrier by the Transportation Security Administration ("TSA").

As a member of the NCBFAA, I am very concerned about the issues raised by the ANPRM.

## **I. License Renewal**

Proposed Section 515.14(c) provides that OTI licenses would need to be renewed every two years by filing an application and paying a fee. While the license renewal is intended to ensure that information essential to the oversight of OTIs is verified periodically, the application process is implied to be a formal request with potential for denial and increased regulatory burden for a review process “when an OTI supplies information that requires such review”.

Proposed Section 515.12(c) further states that an applicant’s failure to submit materials responsive to the reviewing official’s request “by the established date will result in the closing of its application without further processing.” Taken literally, this seems unduly restrictive. The wording of this new section should not suggest that the response deadlines will be either unduly short or inflexible, as there are occasions when it is difficult to obtain information that is necessary.

## **II. Qualifying Individual**

Proposed Section 515.20(c) would require OTIs to report changes, such as the death or retirement of a QI, within 15 days and to provide a replacement. This is a significant reduction from the existing 30 day period, which in and of itself is often an insufficient period of time to replace a QI when an individual unexpectedly leaves the employ of the company. The process of locating, interviewing, vetting and hiring replacement QIs – each of whom must be an officer of the company, typically takes longer than 15 days, unless the company already has a competent replacement on staff. The Commission should consider a time frame comparable to CBP of 120 days for replacement of the qualifying officer as on the Federal customs broker license.

### **III. Other Procedural Licensing Issues**

Proposed Section 515.17 concerning the hearing procedures for denial, revocation or suspension of OTI licenses raise concerns whether the ANPRM recognizes the importance of a company's license and entitlement to due process for the opportunity to demonstrate or achieve compliance with all lawful requirements instead of revocation without giving the right to cure.

### **IV. Changes in OTI Bonds**

Proposed changes to Section 515.23 relating to the requirement to report claims to the FMC so that the Commission can then publish its list "for information purposes only" on its website is another serious issue. Although proposed 515.23(e) indicates that the notices relate only to claims made by carriers and marine terminal operators with "court actions or claims filed or claims received", just having a list published on the Commission's website will result in the publication of sensitive, commercial data that would likely be detrimental and further problematic if claims are never actually charged against the bond.

### **V. Agency Issues**

The proposed requirement for agents to show the name of the principal and license number on all shipping documents and communications (including written, printed and electronic communications) is increased regulatory burden to secure written agreements with all of the parties that could be acting as agent in a given transaction. Basic tenets of principal/agency law make it quite clear that NVOCCs and freight forwarders are directly responsible for the actions of their agents. The manner in which personal effects and household goods providers hold out their services to the public is specifically problematic according to the report, and such activities should be isolated and addressed through special licensing requirements aside from the OTIs in commercial international trade.

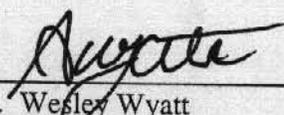
**VI. Recommendation to Establish "New Small Package/Barrel" NVOCC License**

Consideration should be given to a new NVOCC license category for those operating in the "Personal Effects / Household Goods" segment outside commercial international trade activity. These parties represent the most complaints received by the FMC which resulted in the initiation of an investigation for these practices. Under the circumstances outlined in the report, any lesser requirement for experience or financial responsibility is lending further culpability to less than adequate parties providing OTI services to the individual consumer of household goods and personal effects.

**VII. Conclusion**

The Commission is urged to focus on the issues and traffic addressed by Commissioner Khouri in the report issued in Fact-Finding Investigation No. 27, dated April 15, 2011 ("FF 27 Report") which is appropriately limited to household goods and personal effects for individual consumers. Nothing in that investigation reflected any need for more stringent regulation on the movement of commercial cargo in international trade, contrary to the Commission's experience with rogue companies engaged in the shipment of household goods.

Respectfully submitted,

  
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Date: August 30, 2013