



August 16, 2013

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Phone: (202) 523-5725
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Reference : Docket No. 13-05
RIN: 3072-AC44
Comments of Peter Hofmann
Amendments to Regulations Governing Ocean Transportation
Intermediary Licensing and Financial Responsibility Requirements,
And General Duties

Dear Ms. Gregory :

I am Peter Hofmann, Vice President and Qualifying Individual for Kuehne + Nagel Inc.

Kuehne + Nagel Inc. is a transportation provider operating as freight forwarder and NVOCC, d/b/a Blue Anchor America Line, License Nr. 001162NF, as well as being agents for Transpac d/b/a Blue Anchor Line, a foreign based NVOCC.

Kuehne + Nagel Inc. has fifty Branch Offices in the United States and is part of the global Kuehne + Nagel organization with over 1,000 offices world wide.

Kuehne + Nagel Inc. has provided freight forwarding services in the United States since 1966 and has been operating based on the prevailing FMC regulations. We are very much concerned about this latest ANPRM as it appears to be adding regulations without providing value to the shipping public.

1) License Renewal every 2 years

46CFR 515.14 (c) – Issuance, renewal and use of license

We are strongly opposed to the proposed License renewal process 46CFR 515.14(d) which serves no practical purpose and does not strengthen the license requirement.

OTI's are already required to keep the Commission advised of changes in their corporate structure, officers, directors and locations of operations. Preparation of renewal application with all supporting documents and evidence is unnecessarily burdensome and expensive, and provides no measurable benefit to any party involved in transportation. Requiring recent certificates of good standing to be provided as part of the renewal application is time consuming, costly and burdensome. There is no benefit to be derived by requiring companies to obtain these certifications of good standing from the States every two years, since we are obviously in business and fully compliant with all bonding requirements.

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If the Commission has concerns that certain license holders are not in compliance with reporting obligations as per 46CFR 515.20 it would be more practical to provide a simple certification that the License holders details remained unchanged, which could be provided simply on the FMC web site. In addition, regulations already require maintenance of proof of financial responsibility in accordance with 46CFR 515.21, and lack thereof is cause for termination of the license as stipulated. In the event the Commission should decide that a license renewal is absolutely necessary, we would propose a electronic renewal process, through which license holders can either update or certify essential license data, for example similar to form FMC-1.

2) QI – Qualifying Individual Requirements

46CFR 515.11(a)(1) Requirement for QI to document 3 years of relevant and diverse experience in intermediary activities in the United States. We are in support of this proposal and believe that this requirement will enhance the level of compliance with the pertinent regulations of the Commission.

3) Registration of foreign based NVO

46 CFR 515.19(a) – Registration of foreign-based non-vessel-operating common carriers. We are opposed to the proposed registration renewal process 46CFR 515.19(d) which serves no practical purpose other than a bureaucratic effort. There is already a requirement of maintaining Form FMC-1 and a tariff in compliance with 46CFR 520, as well as reporting requirement as per 46CFR 515.19(f), as well as proof of financial responsibility. The requirement of a registration renewal process and providing supporting documentation is overly burdensome, expensive, and provides no measurable benefit to any party.

4) Priority System Claim Settlement against Bonds

46CFR 515.23 Claims against an ocean transport intermediary

46CFR 515.23 (c) We strongly object to the establishment of an arbitrary positioning of Priority of Claims settlement system, which attempts to provide certain advantages to certain claimants with no relationship to the justification of any such claims. This may even be in conflict with established case law.

46CFR 515.23(d) is likewise flawed by providing potentially undue advantages for claimants who otherwise would be deemed as unqualified.



5) Carriers / Terminals and Bond Companies to list / report claims against Bonds

46CFR 515.23(e)(1) Claims against Bond Reporting Requirement carriers and marine terminal operators

We strongly oppose this reporting requirement which only creates a damaging effect to the OTI, whereby there is no effective mechanism to qualify such claims for validity, and, overrides the requirement to attempt a resolution or even justification of any claim prior to escalation. Quite obviously this proposal is aimed to compensate certain parties for claims which were caused by poor credit policies by these same parties. This may in fact encourage claimants to report even unsubstantiated and questionable claims, just so they can secure a preferential position in the event they should prevail – and use this same method to force companies to settle nuisance claims which are otherwise not justified.

The Rules do not appear to have a provision for discharging any such posted claim notices, regardless of the eventual closing of the issues.

46CFR 515.23(e)(2) Requirement of sureties to publication of claim payments

We strongly oppose this requirement which only creates a damaging effect to the OTI, regardless to the qualification and / or validity of such claims, and may in fact be detrimental to claim resolutions without prejudice.

6) Advertising

46CFR 515.31(j)(1) Advertisements - Requirement to add license or registration number in all advertisements

We strongly object to this requirement and believe that this regulation does not provide any sensible purpose and in addition of being unenforceable, it does not promote the presumed general and comprehensive definition of the matters, items and actions sought to be established by the Commission.

To require agents to include name and license or registration number of the OTI principal on all “such advertisements” is well beyond the reach and control of any OTI, particularly if such agents represent a number of OTI’s and may advertise for their services in a general manner.

46CFR 515.31(j)(2)

We strongly object to this requirement, there are no practical means to police or enforce the Commissions regulations on agents for business which is otherwise unrelated. The principal is already responsible for the actions of such agents as they relate to transportation business.



7) Special License for Barrel Trade

Request for Comments relating particularly to fact finding No. 27 Recommendation to establish a new “Small Package/Barrel” NVOCC License

We strongly object to the proposal of establishing a “new” class of license category for entities wishing to operate on the so called “barrel trade”. The objective of the Commission appears to be to achieve compliance by such entities, and, to provide certain assurances to the shipping public. It is counter productive to consider that by simply lowering the standards of OTI licensing the alleged violators of the regulations will become more compliant and responsible for their actions. Simply due to the nature of the business, there is no clear delineation of what type of transportation business would be subject to a “special license”, or, what exceptions may apply for accepting business which may be deemed borderline within certain parameters. We would consider it impossible to trade off lower licensing standards for i.e. promises to transact only limited volumes or trades. Accepting a lower standard for a certain segment of the trade sets precedence for other special interest or niche operators to demand lesser scrutiny due to the type of business targeted. The Commission should not provide a special license for this trade.

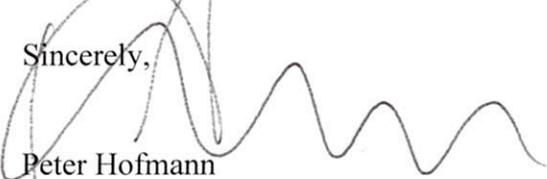
8) Additional Proposals

As long as the Commission is considering changes, there are several items that would really help the industry to reduce costs and improve the efficiency and competitiveness of NVOCC’s, and, provide some real benefit for the shipping public.

NVO FMC Tariff Publication – we think the Commission should recognize that the procedural requirements for entering into NRA’s are unnecessary and do not take into account quite common business practices. It is clear that shippers do not rely on published tariffs and instead regard the rates quoted as the basis for our contractual arrangements. The regulatory requirements just make the process less efficient.

NVO FMC Service Agreement – we think the Commission should eliminate the requirement to file NSA’s with the Commission, or, that their Essential Terms be published in tariff format. The introduction and acceptance of NRA’s has rendered this process mostly obsolete. Just because vessel operators have to file tariffs and Service Contracts it should not be construed as a necessity that NVOCC’s are subject to the same Rules.

Sincerely,



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