

BEFORE THE FEDERAL MARITIME COMMISSION

DOCKET NO. 13-05



ORIGINAL

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

COMMENTS ON ADVANCE NOTICE OF PROPOSED RULEMAKING

These confidential comments are ----- in
opposition to the proposed new rule embodied in a proposed new paragraph of Commission
regulations, designated as 46 CFR § 515.11(e).¹ It provides:

Foreign-based licensed NVOCC. A foreign-based NVOCC that elects to obtain a license
must establish a presence in the United States by opening an unincorporated office that is
resident in the United States, is qualified to do business where it is located and is staffed
and operated by a full-time *bona fide* employee.

----- believes that the proposed requirement for a *bona fide* employee on site at the
unincorporated United States office is overly burdensome and unnecessary. ----- does not object
to the requirements that licensed foreign NVOCCs have unincorporated United States offices
that are qualified to do business where they are located. ----- is a licensed foreign
NVOCC (No. -----) registered in the ----- . See attached -----'s Certificate
of Authority from the ----- and a Certificate of Good Standing dated August 26,
2013. (Attachment 1).

The rulemaking notice does not provide justification or rationale for the employee
requirement that outweighs the burden and expense that would be caused unnecessarily. The
notice cites only a prior Commission ruling to the effect that “in order for a foreign-based NVOCC

¹ Advance Notice of Proposed Rulemaking published in the above-referenced docket on May 31,
2013 (78 Fed. Reg. 32946).

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to obtain a license it ‘must set up an unincorporated office that is resident in the United States.

Docket No. 98-28, Licensing, Financial Responsibility Requirements, and General Duties

for Ocean Transportation Intermediaries, 28 SRR 667, 668 (FMC 1999).” However the cited 1999

ruling makes no reference to a *bona fide* employee in the premises of a licensed foreign NVOCC.

The current proposal amounts to excessive regulation at a time when President Obama has urged

reduction in regulation so as not to overburden business. The president has said:

[E]ach agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations. . . .²

The objective should be “to maximize net benefits and to eliminate unnecessary regulatory burdens and costs on individuals, businesses both large and small, and state and local governments.”³ The proposed employee requirement, however, is not accompanied by a demonstration of regulatory benefits or benefits to NVOCCs’ customers, of any complaints the Commission has received, or of any information gaps needed filling for regulatory or enforcement purposes, *i.e.*, no public interest is to be served.

In Docket No. 98-28 (above-cited), the Commission dealt with the issue of licensed foreign NVOCCs having unincorporated offices in the United States (28 SRR 636-638), but

² Executive Order 13563 of January 18, 2011, “Improving Regulation and Regulatory Review,” 76 Fed. Reg. 3821 (January 21, 2011). (Attachment 2).

³ A Regulatory System for the Twenty-First Century, Cass Sunstein, Administrator, Office of Information and Regulatory Affairs, November 30, 2011. (Attachment 3). See, also, “Statement of Commissioner Rebecca Dye Ocean Transportation Intermediary Advanced Notice of Proposed Rulemaking,” May 15, 2013: “[A]ny new regulatory proposal must clearly define the harm our regulatory changes would address, in light of the standards and priorities of Executive Order 13563. . . .” Also, it is necessary “to determine whether or not our proposals make our program more efficient and less burdensome for the shipping public.” (Attachment 4).

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without reference to requiring a *bona fide* employee in that office. The Commission's purpose was to revise the definition of what is considered to be "in the United States" for applying the NVOCC licensing requirement in the Shipping Act of 1984. The act provides that licensing of an NVOCC is required of any person "in the United States." 46 U.S.C. § 40901(a). An NVOCC not in the United States need not be licensed, and even might not have been eligible for licensing without the rule amendment made in Docket No. 98-28, *i.e.*, without a presence in the United States by virtue of, at least, an unincorporated office. The changed definition of "in the United States," in effect, allowed foreign NVOCCs to become licensed by expanding the scope of entities required to be licensed.

The Commission then adopted a definition of the phrase "in the United States" so as to provide that "a person is considered to be 'in the United States' if such person is resident in, or incorporated or established under, the laws of the United States." 28 SRR 637. The Commission's reasoning was that this was equitable and would increase competition, saying that the new definition was "a good step towards leveling the playing field between OTIs in the United States who are within the Commission's jurisdictional reach and those who are outside of that reach." 28 SRR 638. That good and sufficient rationale did not, at all, relate to licensed foreign NVOCCs' operations or to the manner in which they conduct their NVOCC business. The Commission said this result "accommodates the suggestion of some commenters that foreign NVOCCs be permitted to seek to become licensed." *Id.*

The Commission's notice in this proceeding provides only a very brief explanation for the addition of section 515.11(e) to the regulations governing ocean transportation intermediaries, relying inaptly on the explanation in Docket No. 98-28 for the then new

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definition of “in the United States,” which had a well delineated purpose. The instant notice states:

A new section 515.11(e) is added to provide that a foreign-based NVOCC that opts to obtain a license rather than register is required to establish a presence in the United States by opening an unincorporated office that is operated by a *bona fide* employee and qualifies to do business where it becomes resident. This provision reflects the Commission’s 1999 clarification that in order for a foreign-based NVOCC to obtain a license it “must set up an unincorporated office that is resident in the United States.” Docket No. 98-28, Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries, 28 SRR 667, 668 (FMC 1999). Failure to establish and maintain such an office may result in termination or revocation of a license pursuant to section 515.16(a)(9).

No basis appears for the proposed employee requirement.

Importantly, the Commission does not seem to rely on a belief of any greater exercise of regulatory oversight or enforcement that could arise from the placement of a “*bona fide* employee” in a United States unincorporated office. In fact, it appears that the Commission has issued licenses to NVOCCs who do not conduct NVOCC operations in their office located in the state of corporate registration. Licensed foreign NVOCCs, for various reasons (such as marketing, logistics, tax or other reasons) might not conduct shipping activities in a United States unincorporated office. A “*bona fide* employee” located there might therefore engage in corporate activities unrelated to shipping transactions, or be wholly unnecessary. And that very practical consideration leads to another defect in the proposed requirement.

The Commission has not identified or defined what is meant by a “*bona fide* employee” or a “full-time *bona fide* employee.” The Commission also has not explained the qualifications, duties or activities such a person would need to possess or perform, none of which the NVOCC might determine, as a business or practical matter, would relate to shipping transactions.

In addition to these deficiencies in the employee proposal, is the matter of the costs that clearly would be occasioned in order to support a United States-based “*bona fide* employee” –

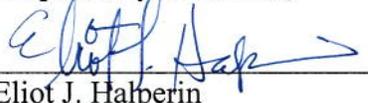
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the financial, administrative, practical and business burdens that the proposed requirement would impose on NVOCCs, especially in relation to the absence of a defined necessity or consumer request for this regulation. No explanation is provided as to why this additional regulatory imposition is necessary; and the record appears devoid of such information.

The Shipping Act as revised in 1998 mandates that the Commission, as among its purposes, promote United States exports and increased competition “by placing a greater reliance on the marketplace,” that is, “with a minimum of government intervention and regulatory costs.” 46 U.S.C. § 40101. Contrarily, the Commission would increase regulation and impose a requirement on internal business management without explaining the regulatory need or identifying members of the public seeking, requesting or demanding the additional requirement.

For the foregoing reasons, ----- respectfully urges the Commission to withdraw the proposed new regulation – 46 CFR § 515.11(e) – as unnecessary, unjustified, without record support, overly regulatory, contrary to the Shipping Act’s declared Commission’s purposes, and unjustifiable.

Respectfully submitted,



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August 30, 2013

Attachment 1

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Presidential Documents

Title 3—

Executive Order 13563 of January 18, 2011

The President

Improving Regulation and Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. *General Principles of Regulation.* (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Sec. 2. *Public Participation.* (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally

be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Sec. 3. *Integration and Innovation.* Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

Sec. 4. *Flexible Approaches.* Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

Sec. 5. *Science.* Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

Sec. 6. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 7. *General Provisions.* (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

THE WHITE HOUSE,
January 18, 2011.

[FR Doc. 2011-1385
Filed 1-20-11; 8:45 am]
Billing code 3195-W1-P

Attachment 3

AS PREPARED FOR DELIVERY

A Regulatory System for the Twenty-First Century

Cass Sunstein, *Administrator, Office of Information and Regulatory Affairs*
11/30/11

As you may have noticed, the national debate over regulation has become unusually politicized and polarized.

In recent months, some people have stressed the crucial importance of regulatory safeguards – including rules that reduce deaths on the highways, prevent fraud and abuse, keep our air and water clean, and ensure that the food supply is safe.

Other people have objected to expensive regulations and burdensome mandates that impair growth, competitiveness, and innovation -- and that cost jobs.

In some contexts, both sides make exceedingly important points. The first sentence of the President's January Executive Order explicitly recognizes those points, emphasizing the need to protect public health and welfare while also promoting growth and job creation.

But in some ways, the polar positions remain stuck in outmoded and decreasingly helpful debates from decades ago – from the 1970s and before.

In recent years, we have learned a lot about regulation. We know a lot more than we did during the New Deal period and the Great Society; we also know far more than we did in the 1980s and 1990s.

Here are eight of the most important things that we have learned:

- **Cataloguing consequences.** We have developed state-of-the-art techniques for anticipating, cataloguing, and monetizing the consequences of regulation, including both benefits and costs.
- **Systemic effects.** We know that risks are part of systems. We know that efforts to reduce a certain risk may increase other risks, perhaps even deadly ones, thus producing ancillary harms. At the same time, we know that efforts to reduce a certain risk may reduce other risks, perhaps even deadly ones, thus producing ancillary benefits.
- **Flexibility.** We know that flexible, choice-preserving approaches, respecting heterogeneity and the fact that one size may not fit all, are often desirable, both because they preserve liberty and because they cost less – sometimes a lot less.
- **Small steps, large benefits.** We are aware that large benefits can come from seemingly modest and small steps – including simplification of regulatory requirements, provision of information, and sensible default rules, such as automatic enrollment for retirement

savings.

- **Public participation.** We know, more clearly than ever before, that it is important to allow public participation in the design of rules, because members of the public will have valuable and dispersed information about likely effects, existing problems, creative solutions, and possible unintended consequences.
- **Disclosure.** We know that if carefully designed, disclosure policies can promote informed choices and save both money and lives. Consider, for example, the recently redesigned fuel economy label, drawing attention to the concrete economic consequences of differences in miles per gallon, and the substitution of the clear Food Plate for the confusing Food Pyramid.
- **Evidence, not anecdotes or intuitions.** We know that intuitions and anecdotes, however compelling they may seem, and however suggestive that regulation is helpful or harmful, are both unreliable, and that advance testing of the effects of rules, as through pilot programs or randomized controlled experiments, can be highly illuminating.
- **Continuing scrutiny.** We know that it is important to explore the effects of regulation in the real-world, to learn whether they are having beneficial consequences or producing unintended harm. In short, we need careful assessments before rules are issued, and we need continuing scrutiny afterwards.

Of course it is true that people's values differ, and in some cases, the relevant values will lead in a certain direction even if the evidence is clear. What I want to emphasize here is the opposite possibility, and the neglected one – that when the evidence is clear, it will often lead in a certain direction even when there are differences with respect to underlying values.

If, for example, a regulation would save a lot of lives and cost very little, people are likely to support it regardless of their party identification; and if a regulation would produce little benefit but impose big costs on real people, citizens are unlikely to favor it, regardless of whether they like elephants or donkeys. At least this is so if we engage on the facts.

To evaluate regulation, and its actual benefits and costs, we have to do that. Consider three facts:

- In the first two years, the net benefits of rules issued in the Obama Administration have been over \$35 billion – over three times the corresponding number in the first two years of the Clinton Administration, and over ten times the corresponding number in the first two years of the Bush Administration.
- There has been no increase in rulemaking in this Administration. On the contrary, the number of significant rules reviewed by OIRA and issued in the first two years of the Obama administration is **lower** than the number issued in the last two years of the Bush administration – and indeed, the Obama Administration average is, through its first two years, lower than the Bush Administration average through its eight.

- In the past decade, the costs of economically significant rules reviewed by the White House Office of Information and Regulatory Affairs (OIRA) were highest in 2007 and 2008, not 2009 and 2010. In its last two years, the administration of George W. Bush imposed far higher regulatory costs than did the Obama administration in its first two years.

On January 18th of this year, President Obama set out a fresh approach to federal regulation – an approach that reflects a lot of the new thinking about regulation. The very first paragraph of his executive order, a kind of mini-constitution for the twenty-first century regulatory state, emphasizes the importance of “economic growth, innovation, competitiveness, and job creation.” It states that our regulatory system “must promote predictability and reduce uncertainty.” It adds that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.”

The new approach promises, at once, to maximize net benefits and to eliminate unnecessary regulatory burdens and costs on individuals, businesses both large and small, and state and local governments.

Among other things, the President called for an unprecedentedly public, and an unprecedentedly ambitious, government-wide “lookback” at federal regulation. The lookback requires all agencies to reexamine their significant rules, and to streamline, reduce, improve, or eliminate them on the basis of that examination.

Over two dozen departments and agencies have released final plans to remove what the President has called unjustified rules and “absurd and unnecessary paperwork requirements that waste time and money.” The plans span over 800 pages and offer more than 500 proposals.

In the coming years, billions of dollars in savings are anticipated from just a few initiatives from the Department of Transportation, the Department of Labor, HHS, and EPA. And all in all, the plan’s initiatives will save tens of millions of hours in annual paperwork burdens on individuals, businesses, and state and local governments.

Some of the plans list well over fifty reforms. Many of the proposals focus on small business. Indeed, a number of the initiatives are specifically designed to reduce burdens on small business and to enable them to do what they do best, which is to create jobs.

Many of the reforms will have a significant economic impact. Here are just a few examples:

- The Department of Health and Human Services recently announced proposed and final rules that are expected to eliminate over \$1 billion in annual regulatory costs.
- The Occupational Safety and Health Administration has announced a final rule that will remove over 1.9 million annual hours of redundant reporting burdens on employers and save more than \$40 million in annual costs.

- OSHA plans to finalize a proposed rule projected to result in an annualized \$585 million in estimated savings for employers. This rule would harmonize U.S. hazard classifications and labels with those of a number of other nations by requiring the adoption of standardized terms.
- Since the 1970s, milk has been defined as an “oil” and subject to costly rules designed to prevent oil spills. In response to feedback from the agriculture community and the President’s directive, EPA recently concluded that the rules placed unjustifiable burdens on dairy farmers -- and exempted them. The exemption gives whole new meaning to the phrase “don’t cry over spilled milk.” And over the next decade, the exemption will save the milk and dairy industries, including small business in particular, as much as \$1.4 billion.
- The Departments of Commerce and State are undertaking a series of steps to eliminate unnecessary barriers to exports, including duplicative and unnecessary regulatory requirements, thus reducing the cumulative burden and uncertainty faced by American companies and their trading partners. These steps will make it a lot easier for American companies to reach new markets, increasing our exports while creating jobs here at home.
- In line with proposals from the Jobs Council, the Department of State has indicated that it will revisit current visa requirements and consider how best to promote tourism, thus promoting growth and creating jobs.

Of course, we don’t only need to look back; we also need to look ahead about how we regulate in the future.

The January Executive Order provides a series of new directives to govern future rulemaking. Emphasizing the importance of predictability and certainty, those directives are consistent with, and informed by, what we have learned about regulation in recent years. And those directives have been explicitly informing our efforts since January. You may have noticed that several rules, including some in the area of labor, have been withdrawn or are being rethought with reference to the principles in the new Executive Order.

Let me emphasize five key points.

- **Public participation.** The President made an unprecedented commitment to promoting public participation in the rulemaking process – with a central goal of ensuring that rules will be informed, and improved, by the dispersed knowledge of the public. Agencies are not merely required to provide the public with an opportunity to comment on their rules; they must also provide timely online access to relevant scientific and technical findings, thus allowing them to be scrutinized.
- **Advance consultation.** The Order directs agencies to act, even in advance of rulemaking, to seek the views of those who are likely to be affected. This group explicitly includes “those who are likely to benefit from and those who are potentially subject to such rulemaking.” Among other things, this emphasis on early involvement is an effort to

acquire relevant information and to avoid unintended harmful consequences.

- **Simplification and harmonization.** The Order specifically directs agencies to take steps to harmonize, simplify, and coordinate rules. It emphasizes that some sectors and industries face redundant, inconsistent, or overlapping requirements. In order to reduce costs and to promote simplicity, it requires greater coordination. The order also explicitly connects the goal of harmonization with the interest in innovation, directing agencies to achieve regulatory goals in ways that promote that interest.
- **Quantification.** The Order firmly stresses the importance of quantification. It directs agencies “to use the best available techniques to quantify anticipated present and future benefits as accurately as possible” – and to proceed only on the basis of a reasoned determination that the benefits justify the costs.
- **Flexibility.** The Order directs agencies to identify and to consider flexible approaches that reduce burdens and maintain freedom of choice for the public. Such approaches may include, for example, public warnings, appropriate default rules, or provision of information “in a form that is clear and intelligible.” We know that simplification of existing requirements can often promote compliance and participation and that complexity can have serious unintended consequences. We also know that flexible performance objectives are often better than rigid design standards, because performance objectives allow the private sector to use its own creativity to identify the best means of achieving social goals. To promote flexibility, we have recently issued a call to all agencies to reduce reporting burdens on small business and to eliminate unjustified complexity. We have received dozens of important initiatives in response; they were made public in September.

Our goal, in short, is not modest. It is to change the regulatory culture of Washington, first by requiring careful analysis of anticipated consequences, including unintended ones, and second by constantly exploring what is working and what isn't, with careful attention to the importance of growth, innovation, competitiveness, and job creation.

As you can see from the lookback plans, agencies have created teams to continue to review their rules – to make sure that the lookback is not just a one-time event. Every one of the twenty-six plans emphasizes this point. And very recently, we have asked agencies to report regularly on their regulatory reform efforts – not just to OIRA but to the public as a whole.

One of our hopes is that the current effort to rethink the regulatory system might inaugurate a broader and more empirical conversation about how we might promote economic growth and job creation while protecting the health and safety of the American people.

Over two centuries ago, Alexander Hamilton helped inaugurate another and even larger conversation, when the nation was in the midst of an even more passionate and polarized debate. Hamilton's own work can be found, in part, in a series of papers that came to be known as The Federalist Papers. Attempting at once to lower the volume of the discussion and to raise its level, he wrote quietly but firmly, and at the very start of The Federalist No. 1:

“It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.”

Of course the current process of regulatory reform does not have anything like the momentousness of the decisions made by We the People in the late 1700s.

But the process is also in its way an effort not to depend on accident and force, but to promote good government by reflection and choice. In that sense, it might be seen as an effort, in one domain, to honor our founders' extraordinary achievement.

Thank you.

Attachment 4



FEDERAL MARITIME COMMISSION

Regulating the nation's international ocean transportation
for the benefit of exporters, importers, and the American public

The Federal Maritime Commission Newsroom

Statement of Commissioner Rebecca Dye Ocean Transportation In Advanced Notice of Proposed Rulemaking

May 15, 2013

Cut Compliance Costs to Improve American Competitiveness

Mr. Chairman, I believe the Commission's regulatory strategy should be to limit government compliance costs, promote greater supply chain efficiency, and allow American businesses to be more competitive in the global market.

Adding new layers of regulatory requirements and costs on American small businesses is going in the wrong direction.

Clearly Define Harm, In Cooperation With Industry

At the Commission's December, 2012, meeting, I outlined four general objections to the regulatory changes in the draft Advanced Notice of Proposed Rulemaking considered by the Commission.

Unfortunately, I do not believe the additions and revisions to the Advanced Notice contained in the current draft address my concerns.

First, I stated that any new regulatory proposal must clearly define the harm our regulatory changes create in light of the standards and priorities of Executive Order 13563.

I also stated that the analysis of harm should be developed in cooperation with our stakeholders, to ensure that our proposals make our program more efficient and less burdensome for the shipping public.

Executive Order 13563 calls for Federal agencies to perform a Retrospective Review of Existing Rules. A comprehensive review of our significant regulations is to determine whether they should be modified to make the Commission's regulatory program more effective and less burdensome in achieving our regulatory objectives.

The Executive Order also requires agencies to give high priority to reforms that will promote economic growth.

In the public comments on our Regulatory Review, several areas of demonstrable harm were discussed, including regarding the inflexibility of Commission service contract filing requirements and the need to eliminate

requirements.

None of the comments mentioned the need to add additional requirements to our OTI regulations.

I do not believe that this proposal adequately justifies the need for the regulatory changes included in the proposal. It will make it more difficult and expensive for individuals and small businesses to become licensed and

operate. While the staff met with two OTI organizations and the Commission was briefed by a west coast interagency document contains no changes to reflect their advice.

I recently attended a presentation by an official with the U.S. Customs and Border Protection Agency. An example of that agency's successful efforts in cooperating with trade and transportation stakeholders to solve their problems.

In this example, three major intermediaries met for one day with Customs officials and agreed on a solution to a problem. They implemented the solution system-wide in 30 days time.

This is an example of the government working with stakeholders to develop a workable solution to a problem.

Regulatory Costs Clearly Defined

My second objection is that this proposal should contain a thorough review of the cost basis for any new regulations. Today this ANPR document still contains blanks in place of a number of new user fees to be paid by businesses.

Are our stakeholders supposed to guess the levels of the fees? Our stakeholders must be allowed to comment on the amount of increased user fees, especially since a high user fee would make it much less likely the industry will accept the proposed two-year license renewal requirement.

Finally, since the ocean transportation intermediary industry is made up of thousands of small businesses, the Regulatory Flexibility Act Analysis for this proposal.

Quantify Harm Justifying Increased Bonding Levels

My third objection to the proposal is that it does not quantify the harm to the public that would justify increased bonding levels.

The proposal should also address whether raising the bond would deter new entrants from entering the market and adversely affect competition in the marketplace.

Annually, there are millions of ocean shipments handled by American OTIs; at least forty percent of the cargo to and from the U.S. are handled by OTIs.

The relatively few cases cited in which an OTI bond was insufficient does not justify raising the bonding levels.

Harmonize with Other Transportation Regimes

Changes to our OTI regulatory system related to the timing of renewals and bonding levels should be consistent with those recently enacted by Congress in MAP-21, Public Law 112-141.

This legislation establishes a five year renewal period and a \$75,000 bonding level for brokers and fr under the Department of Transportation's jurisdiction for domestic motor carrier freight movements.

I do not believe we should create a higher bonding level and a shorter renewal time period than the Department of Transportation levels.

Thank you, Mr. Chairman. I intend to vote "no" on this proposal.

Back to News
