

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 13-05

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

**COMMENTS OF MARISOL INTERNATIONAL IN RESPONSE TO AMENDMENTS
TO REGULATIONS GOVERNING OCEAN TRANSPORTATION INTERMEDIARY
LICENSING AND FINANCIAL RESPONSIBILITY REQUIREMENTS
AND GENERAL DUTIES**

My name is Carie Samuel and I am the Chief Compliance Officer of Marisol International. I am submitting the comments below in response to the Advanced Notice of Proposed Rulemaking (“ANPRM”) published in this docket May 31, 2013 (78 Fed Reg 32946)

Marisol International has been a NVOCC, OTI & Freight Forwarder for 11 years, functioning under FMC License# 18183NF. We have 8 operational offices in 5 states and we work with a number of agents in foreign countries, having a close agent relationship with several partners worldwide. Our industry is a highly regulated industry, as I trust the Commission is aware, and we must answer to a number of government agencies for our import and export cargo, as well as our domestic traffic.

Marisol International is a member of the NCBFAA. We are familiar with the issues raised by the ANPRM and we are very concerned about these issues as they affect us and the freight forwarding community. We believe that these changes noted in the ANPRM do nothing to improve the efficiency or reliability of the shipping industry while adding ever increasing

regulatory burdens, focusing on areas that have not proven to be significant problem areas for the majority of the OTI community.

Following are the areas of the proposal with which we have specific areas of concern.

We are concerned about the FMC's proposal to require all forwarders and NVOCCs to renew licenses every two years by filing an application and paying a fee. We do not support this proposal for the following reasons:

- 1. This is unnecessary because all OTIs are already required to keep the Commission informed of any changes in their corporate structure, officers and directors, and locations of their headquarters and branch offices and pay a fee if any changes are advised.*
- 2. If the Commission is concerned that some OTIs are not complying with this obligation, a simpler proposal would be to require all OTIs to file an annual certification, without requiring a formal application.*
- 3. Requiring applications necessarily means that someone at the agency will be required to review and approve them, but the Commission has neither the staff nor budget to handle the added burden of doing this every two years for all OTIs.*
- 4. This would require a significant expenditure of time to complete the application by our staff which is already fully engaged in providing services to our customer base, so it is an added burden to our business model. Having just completed the Application for Business Structure Change and Qualifying Individual, and reading that the application should take approx. 2 hours to complete (it took about 5 hours), I do not relish the idea of spending several*

more hours than two hours every other year re-applying when nothing has changed in our business structure. There is no apparent purpose for this proposal other than revenue generation for the agency.

- 5. There is no reason to have to pay any filing or user fee for this, as we are not seeking any benefit or new license from the Commission. Paying a fee to make a significant change known is acceptable and makes perfect sense. But to go through this "just because" makes no sense.*
- 6. Requiring recent certificates of good standing to be filed as part of this application renewal process is costly and burdensome, and is unnecessary since the Commission can quickly obtain proof of a company's good standing when and if that issue becomes relevant.*
- 7. In view of the information Commission staff often seeks during the process of reviewing a license application, there is reason for concern that the renewal process will take up a great deal of time looking for information that has little or no relevance to the company's performance.*

On the subject of Qualifying Individual, we do believe that the proposal to require three years of experience for a potential Qualifying Individual is a good proposal, including that the individual's experience must be based on work done while employed by a licensed OTI, shipper or VOCC.

With regard to the proposal to increase the bond amount from \$50,000 to \$75,000 for ocean forwarders, from \$75,000 to \$100,000 for NVOCCs, and \$150,000 to \$200,000 for foreign registered NVOCCs, we do not agree with this portion for the following reasons.

- 1. This would be an increase in the cost of business for small OTIs, which just increases cost without providing any benefit in the services that are being provided.*
- 2. No good reason has been given for why any increase is appropriate. If the examples provided of claims against an OTI in the amount of \$550,000 are the basis for the increase, the proposed increases would not cover a claim of this size. But to make this proposal because of TWO large instances seems irrational when there are thousands of transactions handed on a daily basis by OTI's / NVOCC's.*
- 3. It is not clear why OTIs are being singled out for these increased bonds; if VOCCs go bankrupt or experience mishaps where a vessel sinks or it is necessary to declare general average, the shippers are hurt far worse, so why is the FMC focusing on OTIs?*
- 4. Most commercial shippers are insured against cargo loss and damage.*
- 5. If we had a legitimate claim from a shipper, we would pay it, so that there is no reason for anyone to proceed against our bond; indeed, no one ever has.*
- 6. If the real problem that the Commission is facing deals with the transportation of household goods for non-commercial shippers, there is no reason to increase the bonds for mainstream OTIs that do not handle such items.*
- 7. There is no indication in the ANPRM that any claim has been made against a licensed forwarder's bond, so that there is no rationale for increasing forwarder bonds.*

Regarding the proposal for the FMC to institute a priority system for paying claims that are made against bonds; as proposed, the Commission would require that the sureties first pay any shippers with claims, then any carriers and OTIs; and third, any government claims. We oppose this proposal for the following reasons:

- 1. There is no reason why shippers should have a priority over OTIs, since NVOs are also shippers in their relationship to the carriers.*
- 2. Similarly, if an OTI is a claimant, any monies that may be due from another OTI under the bond is money for which the claimant cannot be insured, unlike the situation with shippers, so it is unfair for the Commission to pick winners and losers.*

Along with this proposal regarding payment priorities, we do not agree with the comment from the Commission that would require carriers and sureties to file with the FMC a list of any claims made by them that relate in any way to the transportation activities of a forwarder or NVOCC, when that listing will be made public on the Commission's website for the following reasons:

- 1. The publication by the FMC of claims made against OTIs, especially since those claims may have little or no merit, could be very damaging to the company.*
- 2. Even with a disclaimer that the Commission is not making any judgment about the veracity of the allegations, this listing would likely have a damaging effect on the company's reputation and would threaten its business and viability.*

3. *When our company has valid claims against it, either it or its insurance companies pay those claims, so that there has never been an occasion when a claimant has been forced to move against our FMC bond; accordingly, this required publication has little or no relevance to the commercial realities of how business is done.*

Concerning the proposed regulations relating to agents and their advertising, we disagree with the proposal requiring any shipping documentation or advertising by the agents bear the name and license number of the principal OTI. Our reasons for disagreement are as follows:

1. *It is not clear which agents would be covered by the regulation; for example, an agent could be considered to be an accounting firm, drayage companies, warehouses, railroads, truckers, packing companies, and not just breakbulk and loading agents. Are they all covered?*
2. *It is not clear whether written agency agreements should really be required. Again, given the nature of the vast array of agency arrangements that necessarily arise in this industry, it may be impossible for any OTI to have a written arrangement with certain companies.*
3. *Many breakbulk agents, sales agents and other types of companies providing agency services represent a number of OTIs. It would therefore be very difficult, if not impossible, for them to always list the name of the relevant principal they are representing on all of their advertising.*
4. *It is not clear why any regulation of this nature is required, since the principal would always be responsible for the actions of the agent anyway; accordingly,*

why impose new regulations that relate to how the principal and agent interact?

- 5. If this proposal stems from FMC problems with agents moving household goods in the so-called barrel trade, it is not clear why the Commission should be imposing these new regulations on regular, commercial OTIs.*

With regard to the specific company related questions asked by the Commission, please see our answers to the eight specific questions:

- 1. Your company's total revenues in 2012. – Marisol International was a privately held company in 2012 and these figures are unavailable.*
- 2. How much you pay for the FMC bonds. – We secure our bonds through Avalon Risk Management at a competitive rate, but it is a significant cost to be able to offer this product.*
- 3. The number of staff hours required to comply with the existing bonding requirements. 10-15 hours annually for policy review, accounting procedures.*
- 4. The number of staff hours that would be required to comply with the changes relating to the increased bond, priority and claim reporting system in the proposed rule. 25-35 hours annually.*
- 5. How much of an increase would be required for the amount of the bond proposed in the ANPRM.*
- 6. Whether the proposal would change your type of coverage. Not that I am aware*
- 7. Your estimated annual cost of compliance with the new financial responsibility requirements. \$5000*

We do ask that the Commission, rather than implementing proposals set forth in the ANPRM, again consider the repetitive requests by the NVOCC / OTI community to answer and explain their silence on the following requests:

1. Total elimination of OTI rate tariff publication, so as to avoid any procedural requirements.
2. The elimination of the need for NVOCCs to file NVOCC Service Agreements (“NSAs”) or publish their essential terms.
3. The FMC should require the vessel operators to file their contingency plans with the Commission, which could be posted on the Commission’s website, so that the trade can be advised of those plans in the event there are severe weather or labor issues that could lead to significant service disruptions.
4. The Commission could work with the FMCSA to establish a common bond for OTIs and motor carrier property brokers, which would reduce the financial burden on intermediaries.

As a member of the OTI community, I appreciate the opportunity to share our position on the proposals set forth in the ANPRM. We do believe that the majority of the proposal would do little if anything to improve the efficiency of our industry.



Carie Samuel

Chief Compliance Officer

Marisol International LLC – FMC #18183NF

DATED: August 30, 2013