

August 30, 2013

Karen V. Gregory, Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W. Room 1046  
Washington, D.C. 20573-0001

Re: **DOCKET NO. 13-05**  
**AMENDMENTS TO REGULATIONS GOVERNING OCEAN TRANSPORTATION INTERMEDIARY**  
**LICENSING AND FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES**

I, Richard J. Roche, am the Vice President of International Transportation at Mohawk Customs & Shipping Corp. DBA Mohawk Global Logistics, headquartered in Syracuse, NY. Mohawk is a licensed NVOCC and Freight Forwarder (License No. 003952NF) and operates in 4 other branch offices in addition to our Headquarters facility. Mohawk is a member of NCBFAA and I also serve as the Chairman of the NVOCC Sub-Committee of the Transportation Committee at NCBFAA. As a result of this position, I am very familiar with the issues raised by the ANPRM and quite concerned about the changes that are proposed:

**License Renewal:** The proposed requirement for licensed OTI's to renew their corporate license bi-annually is unfounded and extremely burdensome. The FMC issues licenses to OTI's as business entities that include Corporations, LLC's and Sole Proprietors. As long as the business entity possessing the license remains in good standing, with bonds intact and without complaint

from customers or industry, then the license initially granted should stand until surrendered or rescinded. I have grave concern about the possibility that the renewal process could render the license invalid for even a day while the OTI continues to have regular business demands. Such possibility would severely cripple the OTI's ability to do business in the fast-paced and competitive environment that we work in. It is my belief that the FMC does not currently have adequate staffing to review renewals of more than 4,500 licensed OTI's, nor should it be something the FMC contemplates at further cost to the taxpayer while providing no real benefit. Reapplication every two years, and fee payment for same are unnecessary steps that serve no purpose for OTI's or our customers.

If the FMC is interested in factual data updates, then a requirement to update corporate structure, location, and ownership information periodically by interactive website would be our preferred way to handle this. Notwithstanding the fact this information is already required to be updated by statute whenever it changes, an interactive website for regular interval certification or when changes occur would be better than using the lengthy FMC-1 format that is currently required today for changes. Perhaps the FMC would consider getting in synch with the Customs Triennial requirement and require recertification every three years via the website as an ongoing information gathering process, but not a license renewal.

The requirement to provide certificates of good standing for all OTI's is collectively a time-consuming and expensive process that penalizes all those OTI's in good standing. It would make

Far more sense for the FMC to confirm a company's standing only if or when there is a legitimate complaint. Since I understand complaints against properly licensed OTI's are few and far between, having the FMC research or request a company's standing would be preferable to our industry rather than having all OTI's filing this on a regular basis with the added expense and workload for both us and the FMC.

**Qualifying Individual:** I am concerned about the proposed changes for Qualifying Individual (QI). I agree that the prerequisite for the position should include three years of experience in the trade, but this must be at a legitimately licensed OTI or VOCC. Time employed at an unauthorized or non-compliant company should not be counted. My biggest concern for QI's is the review of their personal status at time of renewal that may bring hardship upon the OTI without due cause should an event be taking place with the QI that jeopardizes his or her employer. Would an unrelated legal matter currently being pursued against the QI from any cause be grounds to revoke that QI's eligibility to continue as QI for the renewal at hand? If so, then the language should be restructured. I am also opposed to reducing the filing requirement for a replacement QI from 30 to 15 days in the event of a death, retirement or resignation of current QI. There is no rationale that a company who loses their QI would change anything about the way they operate in the 16 to 30 day time period following such loss.

**Due Process:** I have serious concerns about the new language covering procedures by which licenses can be suspended or revoked. The act of revocation or suspension of a license should

be reserved as a final step to terminate an OTI that has been found guilty of willful violations that have caused the public or industry some measurable harm. This should not be a first line of defense for some error that contravenes a regulation particularly where there was no intention to gain, defraud or harm.

**Change in Bond Structure:** I applaud the FMC's previous actions that have resulted in allowing the China Rider to be counted in the aggregate of total bond issuance. This consolidation of bonding amounts is a relief for NVOCC's of all sizes who have chosen this additional layer of licensing in China. I do not feel that any further changes to the current bonding structure are necessary. It is my understanding that the existing bond levels are adequate and the loss ratios from the surety companies will prove the minimal number of occasions these bonds have been called upon. As such, legitimately bonded companies have been providing adequate coverage under the existing program. It seems the offenders are the companies acting illegally without bonds, particularly in the barrel trade. While this is a legitimate problem, and it is understood that the cost of bonds may be a barrier for entry for these small entities, I do not feel that changing the bond structure to entice the offenders into compliance at a lower cost while pushing the bonds up for legitimately licensed and bonded OTI's is the proper way to go. We should leave the bonding structure as is and the FMC should enforce the licensing and bonding requirements in the barrel trade on an even stricter basis while continuing the public outreach programs that forewarn the public to choose well whom they entrust their property to.

**Claim Priority System:** The proposal to introduce a multi-tiered priority system for claims against OTI bonds is fraught with problems. Publication of such claims on the FMC's website, whether the claims are legitimate or not, could severely impact the OTI's business without due process. The payment scheme ( requiring sureties to pay shippers first, then carriers and OTI's, followed by government entities) is not a proper solution for all cases that may be brought. OTI's in fact can be shippers on the Master Bill of Lading issued by VOCC's or NVOCC's alike. In some cases the shipper may also have other remedies at hand that the OTI is precluded from, calling out another problem with placing Shipper's automatically at the top of the list. Instead, a better method would be determination of payee priority based on the findings and outcome of the specific case.

**Agency Issues:** The proposed regulation on advertising and documentation by agents of OTI's is too broadly written to properly comply with or enforce. Even small OTI's may deal with hundreds of overseas agents with whom they have little control over how their business is conducted specific to advertising or documentation. In some cases the span of time between use of a certain agent may be significantly long with no visibility as to how they are conducting business for extended periods leading up to a particular shipment. As the documents may come in without required texts, logos, registration numbers and principal's names, there is little that can be done to correct for that shipment. Letter of Credit documentation may be particularly difficult to correct. Wording that includes all agents and all written, printed and electronic communications (that we interpret to be globally inclusive) is simply unmanageable.

**Other issues of Concern:** Our industry has witnessed an evolution in the post-OSRA environment from that of common carrier to contract carrier. As such we have changed our toolbox very little. NVOCC Service Arrangements (NSA) are used by some, but have little appeal to the average NVO or our customers. As NVO's, we are still required to file tariffs, though we have been granted some relief with the Negotiated Service Arrangement (NRA) regulations in lieu of tariff filing, however many NVO's lack the clarity of how to implement or use this tool. The simplification we were hoping for as an industry resulted in what some might consider equally as much regulation that provided little impetus for change. While we have effectively proven that tariffs serve no business purpose, and I highly suspect few NRA's have been required for presentation to defend a cause brought by the shipping public, I must continue to challenge the logic for NVOCC's to be compelled to expend time, effort and money to keep either a tariff or NRA. I respectfully appeal to the FMC to consider the complete elimination of tariff filing and NRA requirements altogether as they serve no purpose in the business of international marine shipping.

I would also encourage the FMC to work with the FMCSA on consolidating bonding requirements that have been brought about by new wording and regulations promulgated under MAP-21. Such consolidation of bonding, similar to the program adopted for the China Rider would help ease the additional financial burden on OTI's for overlapping jurisdiction.

Lastly, given the serious problems we have suffered through and the experience we have all gained in dealing with recent labor and system problems, force majeure, and other natural disasters such as Hurricane Sandy, I am supportive of the FMC becoming a clearinghouse for information from our collective base of VOCC's and Terminal Operators, specifically covering contingency plans and costs for such alternative services. This would not only be helpful to VOCC's and OTI's alike, but will aid peripheral users such as Customs Brokers, truckers and the shipping public in understanding what operational changes are taking place, and the potential impact on their cargo in terms of time and additional cost. This is the kind of change we would like to see from the FMC where new regulations have measurable benefit in dissemination of critical information and rationalization of unforeseen cost where there is a fundamental and broad-sweeping need.

I very much appreciate the opportunity to participate in this comment process and remain available for discussion should anything I have written require further clarification.

DATED: August 30, 2013

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Richard J. Roche, VP Intl. Transportation