

**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 JEFFREY TUCKER**

I am Jeffrey Tucker, CEO of Tucker Company Worldwide, Inc.

Tucker Company Worldwide is licensed by FMC as NVOCC and Ocean Freight Forwarder (license #021989NF), and by the Federal Motor Carrier Safety Administration (FMCSA) as domestic Property Broker (MC# 130735). Tucker maintains offices in three states: New Jersey, New York, and Texas. Tucker is an active member in good standing of both NCBFAA (National Customs Brokers and Forwarders Association of America) and TIA (Transportation Intermediaries Association); in those capacities, among others, I am very familiar with the issues raised by the ANPRM and very concerned about the issues raised by the ANPRM.

Below, I will address several specific issues, in turn. First, as a general comment, I want to emphasize the integrated, inter-modal, global nature of today's supply chain and transportation sector, and my strong belief in the corresponding need for harmonizing regulations promulgated by FMC and FMCSA (and other agencies and administrations), to promote efficiency and fairness. By way of example, on July 7, 2013, the President signed into law P.L. 112-141 (MAP-21). Title 2, the Commercial Vehicle Safety Enhancement Act of 2012, addresses the licensing,

financial responsibility, and general duties of domestic transportation intermediaries, or third-party logistics companies. Much of the debate in Congress involved the FMC and Congress's interest in harmonizing rules and regulations for intermediaries across modes and among agencies. In fact, the original bond amount proposed for domestic brokers licensed by FMCSA was \$100,000, and Congress reduced the amount to the \$75,000 levied by FMC. With these very recent acts of Congress aimed at harmonizing rules within FMC and FMCSA, it is unwise for FMC to contemplate any rule that would conflict with, or expand beyond the bounds of, the rules so recently established by Congress for transportation intermediaries.

**A. Updating Registration Information**

Specifically, I write to oppose the proposal to require all forwarders and NVOCCs to renew licenses every two years by filing an application and paying a fee. This is unnecessary, first, 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. 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. 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. 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, and to commerce in general. Second, there is no reason to require any filing or user fee for this, as we are not seeking any benefit or new license from the Commission.

Back to the theme of harmonization: MAP-21 sets forth that no later than four years after the date of enactment, the Secretary of Transportation shall require any domestic property broker or freight forwarder to renew its license, and the law requires renewal every five years thereafter. I urge the Commission to see itself as part of the integrated oversight of an integrated supply chain and transportation sector that is managed, largely, by integrated service providers, like Tucker, and the many members of NCBFAA and TIA. To this end, I encourage the Commission to adopt the five-year renewal scheme set forth in MAP-21. Moreover, 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. And finally, considering 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.

**B. Financial Responsibility and Bond Amounts**

I also write to oppose the proposed increases in bond amounts. As Congress and FMCSA have recently recognized, the market, here defined as thousands and thousands of competent professionals interacting on a daily basis within a multi-billion dollar industry sector, has access to information that is frankly beyond the ken of any single body, and this includes the Commission. As such, the market is the best, most efficient, and most effective mechanism for establishing the appropriate amount of any bond. And the market has set the level. Codification of this hard-won determination is all that is needed from the Commission.

In MAP-21, Congress recognized this market determination concerning financial responsibility and set the requirement at \$75,000 for domestic property brokers and forwarders

regardless of the number of offices; the Commission should follow suit. No justification has been advanced for the Commission to establish bond amounts higher than the limits so recently established by Congress. Beyond consistency and harmonization, there are other good reasons for a uniform bond amount across modes. First, to avoid burdensome increases in the cost of business for small OTIs, without providing any benefit in the services that are being provided. Second, 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? Third, most commercial shippers are insured against cargo loss and damage. 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.

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. 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.

### **C. Payment of Claims**

I do not believe it is appropriate for the Commission to institute a priority system for paying claims that are made against bonds. Here, we can again draw from recent USDOT experience. There, the Administration eliminated the requirement that motor carriers file proof of cargo insurance with FMCSA. The rationale, in part, was based on the understanding that market actors would, out of prudence, require proof of cargo insurance from motor carriers on a transaction by transaction basis, making the FMCSA requirement redundant and unnecessary.

This approach makes sense for two reasons. First, it places incentives where they are most effective: A shipper wants proof of insurance from carriers for the shipper's own protection, and carriers want to meet shipper expectations to continue to attract business and remain viable. Recognizing these natural mechanisms at work, FMCSA realized it really had no place in the proof of insurance regime. Second, the market-based approach is actually a better manager of risk. In the old, carrier-must-file-with-FMCSA model, proof of insurance was only truly valid on the day it was filed by the carrier, every twelve months. Under the new, market-driven approach, proof of insurance is demanded by shippers, and proffered by carriers, for every business transaction on a near-daily basis.

Back to the priority system for paying claims. As proposed, the Commission would require that the sureties pay, first, any shippers with claims, then any carriers and OTIs; and third, any government claims. There is no need for the Commission to intervene in this market-driven system, and no reason why shippers should have a priority over OTIs, since NVOs are also shippers in their relationship to the carriers. 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. And, once again, Congress has recently spoken on this issue. MAP-21 makes the bond issuer, trust or other security holder ultimately responsible for failure to make required payments, the law specifies procedures for providing notice of cancellation, and for addressing claims. MAP-21 also establishes a "loser pays" process in the event that claims are fought in court. I urge the Commission to follow Congress's lead.

It is also not appropriate for the Commission to require carriers and sureties to file 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. 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.

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.

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 the industry operates.

**D. Agents, Independent Contractors, and Advertising**

The Commission proposes regulations requiring that any shipping documentation or advertising by agents bear the name and license number of the principal OTI. A similar situation exists among domestic intermediaries, and the issue was addressed by Congress. There, Congress did not impose an obligation for the agent to identify its principal in any advertising. Rather, Congress specified that the USDOT Number associated with each authority (carrier, broker, forwarder) shall be unique, even within the same company operating under more than one authority, and that the USDOT Number shall be applied and disclosed in each transaction. An agent would use its principal's USDOT Number when entering a transaction. This is a sensible approach. Many break bulk agents, sales agents and other types of companies providing agency services represent a number of OTIs at the same time.

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. I do not support a requirement that an independent contractor must be forced to disclose (the potentially many, and often fluid) principals he or she represents.

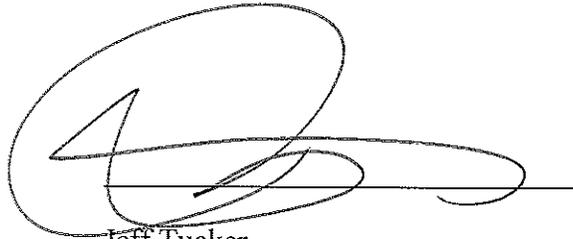
What is more, it is not clear which agents would be covered by the regulation; for example, an agent could be considered to be an accounting firm, drayage companies, warehouses, railroads, truckers, packing companies, and not just break bulk and loading agents. Are they all covered? It is not clear. It is also not clear whether written agency agreements should be required. 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 all of the independent firms and persons who may represent the OTI.

In any event, this regulation of simply appears unnecessary, since the principal would always be responsible for the actions of the agent, why impose new regulations that relate to how the principal and agent interact? If the real problem the FMC is having relates to 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. The unique issues involving household goods are best addressed in an inter-agency fashion, and treated separately from general freight. I support the TIA proposal for the Commission to pull together an inter-agency meeting of the FMC, FMCSA, DOD, and the various trade associations involved in household goods movements. Such a meeting would be an ideal forum for identifying and addressing the issues unique to the household goods sector.

**E. Other Issues the Commission should Address**

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.

DATED: August 29, 2013

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a trailing flourish.

Jeff Tucker,

CEO, Tucker Company Worldwide, Inc.