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Federal Maritime Commission  
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**DOCKET NO. 13-05**

**COMMENTS OF ANK DE ROOS, NACA LOGISTICS (USA), INC. IN RESPONSE TO AMENDMENTS TO REGULATIONS GOVERNING OCEAN TRANSPORTATION INTERMEDIARY LICENSING AND FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES**

I am Ank de Roos, Director of Global Compliance for NACA Logistics (USA), Inc. dba Vanguard Logistics Services dba Vanguard dba Brennan International Transport dba Brennan dba Conterm Consolidation Services dba Conterm dba Direct Container Line dba DCL dba Ocean World Shipping dba OWS dba Ocean Express dba Oceanexpress and submit these comments in response to the Advanced Notice of Proposed Rulemaking ("ANPRM") published in this docket May 31, 2013 (78 Ref. Reg. 32946).

NACA is a leading, neutral NVOCC under license number 017237N operating 18 Offices in the US, and 63 Offices and a network of over 200 Agents globally. NACA is familiar with the issues raised by the ANPRM and appreciates the opportunity to express the following concerns.

**FMC's proposal to require all forwarders and NVOCCs to renew licenses every two years by filing an application and paying a fee.**

1. We believe this creates an unnecessary burden to both the OTIs and the Commission, 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.
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 electronically file a bi-annual re-certification, without requiring a formal application.
3. There is no reason for OTIs to pay any filing or user fee for this, as OTIs are not seeking any benefit or new license from the Commission.
4. 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 if and when that issue becomes relevant.

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**FMC's proposal requiring that the three years of experience for a potential Qualifying Individual must be based on work done while employed by a licensed OTI, shipper or VOCC.**

1. We agree that the three years of experience for a potential QI should be experience gained while employed by a licensed OTI. Unlicensed activities should not be the basis for obtaining a license.
2. The use of the term "general supervision" raises questions. Does this new definition mean that the Commission intends to hold the QI personally liable for any actions that might contravene the Act? Is the QI responsible to supervise the licensee's various branch offices? The Commission should provide clarification.
3. We suggest that existing 30-day period to report any change in QI status be retained, instead of shortened to 15 days.

**FMC's proposal to delete reference to "ocean freight broker".**

1. The rule proposes to delete section 515.4(d), which refers to ocean freight brokers. Clarification is needed as to why this reference is being deleted.

**FMC's proposal to institute a priority system for paying claims that are made against bonds; 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.**

1. There is no reason why Shippers should have a priority over OTIs. NVOCCs are also Shippers in their relationship to the carriers, and are in no different position in relation to the bond than the Shippers.
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 is the case with Shippers. Thus, we do not believe it is fair for the Commission to establish priority tiers.
3. It certainly appears that tiered priority may pose an anti-trust issue.

**FMC's proposal to 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.**

1. 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.
2. The proposal indicates that claim notices to the FMC only relate to notices made by Carriers and Marine Terminal Operators and does not mention claims made by an NVOCC against another NVOCC (customer).
3. What about demurrage and detention claims that are made against an OTI, but which in reality are attributable to and ultimately the responsibility of the cargo interest? Demurrage and detention claims should never appear on any published list of claims unless made against the cargo interest.



4. The publication by the FMC of notices 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.

**FMC's proposal requiring that any shipping documentation or advertising by the agents bear the name and license number of the principal OTI.**

1. It is not clear which agents would be covered by the regulation; for example, is an agent considered to be drayage firms, warehouses, truckers, packing companies, or just (sales) agents?
2. Clarification is needed if "shipping documents" refers to the ocean bill of lading?

**FMC's proposal for special license for OTIs providing service in the small package household goods barrel trade business**

1. Current OTI licensing requirements should apply to so-called "barrel-trade" companies
2. If a special license category is established for household goods, licensed OTIs that are already handling this type of cargo should be "grandfathered" and not required to re-apply for this new license
3. There should be no reason to impose a cap on the volume or value of shipments of household goods that any licensed OTI should be able to handle. Putting restrictions on the volume of traffic licensed OTIs can handle does not address the problem caused by unlicensed companies.

**Other Initiatives**

There are other initiatives that we propose to the Commission for consideration in order to eliminate unnecessary regulatory burdens or otherwise facilitate the role of OTIs in the movement of traffic.

1. Total elimination of NVOCC rate tariff publication, so as to avoid any procedural requirements.
2. The elimination of current NRA requirements
3. The elimination of the requirement for NVOCCs to file NVOCC Service Agreements ("NSAs") or publish their essential terms.
4. 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.

NACA appreciates having been given the opportunity to comment on the proposals set forth in the ANPRM.

Sincerely,  
  
Arik de Roos  
Director, Global Compliance  
NACA Logistics (USA), Inc.

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