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**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 BRIAN C. BUCKHOLZ**

I am President/CEO/Owner of WEST Forwarding Services, Inc. FMC license number 3118NF, located at 17851 Jefferson Park, Middleburg Heights, Ohio 44130.

The proposed requirement for all forwarders and NVOCCs to renew licenses every two years by filing an application and paying a fee is unnecessary and burdensome; particularly in terms of time required for the OTI processing the application and the FMC staff reviewing and approving the application. The ANPRM states there are 5,900 companies either licensed or registered with the FMC. Assuming that the time spent by applicants, their attorneys and the FMC staff is 20 hours (or more) for each application cycle, the corresponding costs are easily in

millions if not tens of millions of dollars. An expenditure of this level is unnecessary. If there are material changes to an application on file the OTI is presently required to advise the FMC. Why spend valuable staff time of the OTI and FMC to resubmit, review and approve accurate up-to-date information presently on file?

The proposed requirement to increase bond amounts is costly and unnecessary particularly for small to medium size OTIs. The Rule Summary states that “The proposed rule is intended to adapt to changing industry conditions, improve regulatory effectiveness, improve transparency, streamline processes and reduce regulatory burdens”. The ANPRM then contradicts itself. “the Commission proposes to increase the ocean freight forwarder financial responsibility amount from \$50,000 to \$75,000; the NVOCC amount from \$75,000 to \$100,000; and \$200,000 for registered NVOCCs (an increase from \$150,000)” (page 19).

- Under the present and proposed system an OTI office handling 500 shipments annually has the same bond coverage as an OTI handling 5000 shipments. The former has a much higher bond cost per shipment.
- The ANPRM does not consider “changing industry conditions” as mentioned in the Rule Summary. When bonding requirements were first put into place, they were intended to provide unsophisticated shippers and transportation providers safeguards from unethical NVOCC’s. A lot has changed over the decades. Typically, the beneficiaries of bond protection have very knowledgeable and experienced individuals making decisions with regard to doing business with an OTI.

- There should not be a requirement that an OTI be bonded to protect sophisticated businesses from normal business risks or their decision not to perform reasonable due diligence with regard to deciding to do business with a particular OTI.
- Over the years, many financial tools have been developed to protect those doing business with OTI's. These include shipper's all risk insurance, accounts receivable insurance, etc. OTI's should not be required to develop risk management tools for both themselves and those with whom they do business. On the contrary, OTI's lose tens of millions annually in the form of shippers' accounts receivable write-offs, freight claims resulting from unbounded service providers located both in the USA and outside the USA, etc.
- The cases cited in the ANPRM seem to deal with a few isolated cases for companies involved with the moving of household goods. Why change the bonding requirements for 5,900 licensed and registered OTI's because of the bad behavior of one or two companies?

Under the present bonding system, many of the 5,900 registered or licensed OTIs have multiple bonds. Assuming average annual bond premiums of \$2,000.00 (and it is most likely much more), the industry aggregate would be well in excess of \$10 million. Instead of offering bond protection, which limits protection to \$75,000.00; consideration should be given to the establishment of an OTI Financial Responsibility Fund managed by the FMC or an appointed third party. OTIs would self-assess themselves (maybe \$.05/shipment) and make an annual remittance to OTI Financial Responsibility Fund. This would be more equitable (those with

higher shipping volumes/risk would pay more) and afford much more protection than the present bonding system (which uses much of the premium amounts for insurance company administrative costs vs. shipper and transportation provider protection). An OTI Financial Responsibility Fund would eliminate the requirement to prioritize claims. All legitimate claims would be paid. The annual assessment could be periodically adjusted either up or down based on the OTI Financial Responsibility Fund balance and anticipated or pending claims. An OTI Financial Responsibility Fund would reduce OTI costs yet provide significantly more (potentially millions of dollars vs. \$100,000.00) to shippers, transportation companies and others engaged in business with an OTI unable or unwilling to meet its financial responsibilities. To insure this system is not abused, payments from the OTI Financial Responsibility Fund would trigger revocation of the OTI's license.

The ANPRM proposes that the FMC website list claims by carriers and sureties that relate in any way to the transportation activities of a forwarder or NVOCC. Since initial claims may not have merit this would have the effect of tarnishing the name of a reputable OTI and could be very damaging. This is no different than an innocent individual receiving front page coverage for having "been alleged" to commit a crime and subsequently found not to have been involved. Many if not most OTIs will settle financial responsibilities either directly or through an insurance company (i.e. errors and omissions insurance). This process takes time and an OTI's name and reputation should not be tarnished so long as the OTI is adhering to common business practices with regard to resolving a claim (which may be legitimately in dispute).

The ANPRM proposes rules with respect to the advertising by the OTI and its agents. Specifically, the Commission proposes regulations requiring that any shipping documentation or advertising by the agents bear the name and license number of the principal OTI. Aside from not being clear with regard who is an agent; there does not appear to be a compelling reason for this requirement which is burdensome and costly without a corresponding benefit.

If The Federal Maritime Commission is sincere and would like to “amend its rules governing the licensing, financial responsibility requirements and duties of Ocean Transportation Intermediaries and propose rules intended to adapt to changing industry conditions, improve regulatory effectiveness, improve transparency, streamline processes and reduce regulatory burdens” there should be serious consideration to:

- Totally eliminate OTI rate tariff publication.
- Eliminate filing NVOCC Service Agreements (“NSAs”) or publish their essential terms.

In my individual capacity, I have been the President/CEO/Owner of a major freight forwarder and NVOCC/OTI for over 37 years. During that time, I have personally met with hundreds of customers and filed thousands of tariff rates. Not once has a customer ever inquired about rates on file with the FMC. Clearly, one has to question the value of a regulation that requires the daily accumulation of and filing of tariff rates that have never once been accessed or provide any public service benefit.

Tens of millions of dollars are spent annually on the rate publishing requirement. This is a waste of both private sector and taxpayer funds. OTIs devote significant resources (i.e., employees, computer systems and payments to tariff bureaus) to publish rates that are seldom, if ever, accessed by the shipping public. Ultimately, shippers and taxpayers pay the price of unnecessary tariff filing regulations. Tariff filing regulations require OTIs to maintain rate publishing systems and the FMC to focus its limited resources and staff on corresponding tariff compliance and enforcement activities, all for information (which though in the public domain) is not accessed by the public. The question needs to be asked: why spend tens of millions of dollars to accumulate and regulate information that is basically archived, never used and serves no public or commercial purpose.

President Obama has stated that small businesses are the economy's economic engine and his administration will take steps to eliminate unnecessary regulation so small business can lead our economy out of the current recession. Unnecessary regulations, such as those outlined in the ANPRM and tariff rate filing regulations, unduly burden small businesses that are integral to our nation's economic success. The choice is simple. We either spend funds on regulations that contribute little if anything to the public good or which serve no useful purpose or we use our very limited capital in a productive manner including job creation and hiring new employees.

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Brian C. Buckholz