



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:

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President

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I am a member of the NCBFAA and I am very concerned with the issues raised by the ANPRM. The FMC's Docket No. 13-05 Advanced Notice of Proposed Rulemaking (ANPRM) provides for several amendments to the regulations governing NVOCC's and OTI's. In an era of overburdening regulation, the ANPRM provides for further regulation, licensing, and costs making business in the shipping industry less efficient, less effective and less competitive.

Instead of providing for a more competitive advantage for American businesses in the global marketplace, these proposed changes to the regulations place additional burden on American business that are not consistent with the industry internationally. No other country has such requirements of their freight forwarders and NVOCC's. Furthermore, these changes go against

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President Obama's Executive Order to eliminate inefficient and burdensome regulations where possible.

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.
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.
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. Furthermore, this is being proposed without even providing the renewal fee amount.
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.
8. It is unclear whether any problems the FMC might have with a QI at the time of license renewal would also jeopardize the license of the company; for example, would a company's license be jeopardized because its QI is engaged in litigation over some alleged debt?

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The proposal to amend the experience of a qualifying individual is reasonable in as much as it provides for a proper lineage for a future NVOCC/OTI qualifying individual to have developed their required experience within a legally licensed NVOCC/OTI.

I disagree with 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.

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.
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.

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I do not believe it is appropriate 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 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, 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.

We do not believe it is appropriate to have the FMC require our company to file a list of any claims made against it. Our company has a clean and responsible track record of over 37 years and an added responsibility to file information that may or may not be legitimate serves no purpose.

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.

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Proposals to change agent relations and responsibilities are somewhat disheartening as the proposed scenario provides for the opportunity to place “speed traps” as noted by the requirement to add license and registration number of the principal on all advertising and when an agent does not include that information in its advertising, the regulations would establish a presumption that the agent has performed the services offered in the advertisement as a principal, which would mean that it was providing unlicensed activities. This provides another regulatory burden that simply provides for a presumed scenario allowing the FMC to penalize. That hardly follows the mission statement of the FMC “to foster a fair, efficient and reliable international ocean transportation system and to protect the public from unfair and deceptive practices.”

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 break bulk 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 break bulk 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 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.

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While the implementation of the NSA in December of 2004 was a game changer for the NVOCC community, the limited use as compared to the total amount of licensed NVOCC's provides a clear indication that tariff filing and subsequent arrangements are still a burden on the industry. There are other initiatives that the Commission should consider in order to eliminate unnecessary regulatory burdens or otherwise facilitate the role of OTIs in the movement of traffic such as:

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.

Sincerely,

Gabriel Rodriguez

8/26/13

President

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