PTS *Paramount Tariff Services, Inc.*

To: Karen V. Gregory, Secretary, Federal Maritime Commission
From: Paramount Tariff Services, Inc.
Date: August 23, 2013
Re: Docket No. 13-05, Comments on Advance Notice of Proposed Rulemaking Amendments to Regulations Governing Ocean Transportation Intermediary Financial Responsibility Requirements

Dear Secretary Gregory:

The Federal Maritime Commission ("FMC" or "Commission") recently issued an Advanced Notice of Proposed Rulemaking[1] that proposed to significantly amend 46 C.F.R. Part 515[2] and has sought comments from interested parties. Paramount Tariff Services, Inc. ("PTS"), as an interested party, respectfully submits the following comments in response.

1. Recommended process for renewing OTI licenses

Under the proposed Section 515.14(c), an OTI is required to renew its license every two years after it has been issued an OTI license. As a part of the renewal process, a licensee must submit a license renewal application 60 days prior to the expiration date of its license. *46 C.F.R. Part 515.14(d).* Currently, no OTI licenses bear an expiration date. We concur that by using the same day and month of the license's original issue date as the day and month of the license's expiration date would create certainty for the licensees. However, we believe that this method may potentially create a different problem with respect to grandfathered OTI licensees.[3] Many of these applicants who filed by the May 1, 1999 deadline was given an issue date of May 1, 1999 on their license. Anecdotally, about 19 percent of our current clients with NVOCC licenses have this issue date. Using this percentage, and assuming that there are currently 4,500 licensed NVOCCs, we arrived at a crude calculation of 850 NVOCCs with this issue date currently in existence. If those NVOCCs were all given an expiration date that corresponded with the issue date of May 1, it is not unforeseeable that the Bureau of Certification and License ("BCL")

[1] FMC Docket No. 13-05, Amendments to Regulations Governing Ocean Transportation Intermediary Licensing and Financial Responsibility Requirements, and General Duties, Advanced Notice of Proposed Rulemaking, (May 21,
[2] 46 CFR Part 515 governs the licensing, financial responsibility requirement and duties of Ocean Transportation Intermediaries ("OTIs").
[3] During the early stages of implementation of the then-new Ocean Shipping Reform Act of 1998 ("OSRA"), the Commission exempted existing Ocean Freight Forwarder ("OFF") licensees from new requirements set forth under 46 C.F.R. Part 515. Similarly, the newly created Non-Vessel Operating Common Carrier ("NVOCC") license was granted to those entities that, at minimum, maintained a tariff and adequate financial responsibility that was in effect on or before April 30, 1999 and had filed a license application by May 1, 1999.

will be inundated with renewal applications just prior to that date. This will cause an unreasonable burden on the BCL and will likely result is processing delays.

We respectfully recommend that those with the May 1 issue date be given different dates, spread out evenly throughout the year to lessen the burden and reduce possibility of processing delays. Those licensees with May 1 issue date were not required to provide an email address on the license application and likely did not provide one for that very reason. Therefore, once BCL assigns the expiration dates for each OTI, we further recommend that BCL send an email notification to each licensee, if email address is known, and its tariff publisher to ensure receipt of the notification and enable renewal of license without confusion.

2. New "Small Package/Barrel" NVOCC License

FMC approved a series of recommendations found in the Fact Finding 27 Final Report ("FF27"). A recommendation that was approved was to establish a new so-called "barrel trade" NVOCC license category. We respectfully recommend that the new category of license be reconsidered because: a) it is discriminatory against traditional NVOCC licensee[4], b) it is discriminatory against shippers, and c) the license may be subject to abuse by NVOCC applicants.

a) The "Barrel Trade" NVOCC License Category Discriminates Against Other NVOCCs

Compared to the traditional NVOCC license, this new category requires lower financial responsibility and less experience, but is limited to handling small shipments of personal and household goods. Under the OSRA regime, regulatory process for the common carriage of goods by water in the foreign commerce of the United States must be nondiscriminatory. *46 U.S.C. § 40101(1).* And yet this new license category ostensibly favors the "barrel trade" licensee over the traditional NVOCC licensee with respect to personal and household goods. Traditional NVOCC licensee is required to have more experience and higher financial responsibility than the "barrel trade" licensee even when both may be moving the same personal and household goods. This seems to demonstrate that the new license category will effectively discriminate against traditional NVOCC licensee by requiring more experience and higher financial responsibility than is required of the "barrel trade" licensee.

b) The "Barrel Trade" NVOCC License Category Discriminates Against Shippers

This new license category discriminates against the shipper in favor of the "barrel trade" licensee. Under the new category, the licensee would not be required to carry the same

[4] We have attached the term "traditional NVOCC licensees" for those who have to meet the stricter requirements (e.g., 3 year minimum experience, $75,000 minimum financial responsibility) set forth under the current 46 C.F.R Part 515 to distinguish it from the proposed category of "barrel trade" NVOCC licensees.

amount of financial responsibility as a traditional NVOCC licensee. This means that if there is a shipper who makes a valid claim for $75,000 against a traditional NVOCC licensee for damages incurred while moving personal or household goods, the shipper will be able to collect the whole $75,000, assuming that there are no other competing claims against the NVOCC. If, however, the same claim were made against a "barrel trade" licensee for the same claim, the shipper would be able to collect a sum less than $75,000 because the licensee was required to carry lower financial responsibility. This clearly favors the "barrel trade" NVOCC licensee over the shipper.

As it currently stands, the proposed rulemaking does not make tariff publication or a statutory equivalent, e.g., negotiated rate arrangement an express requirement. Without either, the "barrel trade" licensee has carte blanche to charge shippers any rate, even if the disparity of rates charged between several shippers were based on discriminatory purpose in derogation of OSRA's statutory intent. We respectfully recommend that tariff publication or a statutory equivalent be expressly required.

c) "Barrel Trade" License May Be Subject to Abuse

The new category of license is understood to be for those NVOCC's that deal mainly with personal and household goods. However, it is not unforeseeable that there would be unscrupulous characters that want to take advantage of the lower financial responsibility requirement and the lower one-year experience requirement. If the answers to the questionnaire provided in the Advanced Notice of Proposed Rulemaking[5] become the basis for "barrel trade" licensure, it seems to suggest that the new category of license may be grant the licensee to transport, *inter alia,* household goods and personal automobiles. We believe that, unless there is a clear definition of what constitutes household goods or personal automobiles, there may be extra regulatory costs to enforce against those who may operate in the gray area. Further, enforcing against those who are at the cargo threshold volume is likely to further increase regulatory costs.[6]

We would respectfully recommend that FMC reconsider the "barrel trade" NVOCC license for the reasons set forth above. In the alternative, if the "barrel trade" NVOCC license category is created, we recommend that maintenance of a tariff or a statutory equivalent, e.g., negotiated rate arrangement, be made part of the requirement for the new license category.

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[5] Notice at 34, 35.

[6] The threshold volume has yet been set and is understood to be set in the future after the comments have been submitted.

3. Application for Renewal of Ocean Transportation Intermediary License Form

We recommend that the renewal application require the disclosure of: 1) tariff location, and 2) bond information, including bond number, surety company, and bond coverage amount. This information, we believe, will assist the BCL ensure that the OTIs' tariff location and bond information remains current.

Respectfully submitted,

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Paramount Tariff Services, Inc.