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August 26, 2013

VIA HAND DELIVERY

Karen V. Gregory, Secretary
Federal Maritime Commission
800 N. Capitol Street, N.W.
Washington, D.C. 20573-0001

Re: FMC Docket No. 13-05

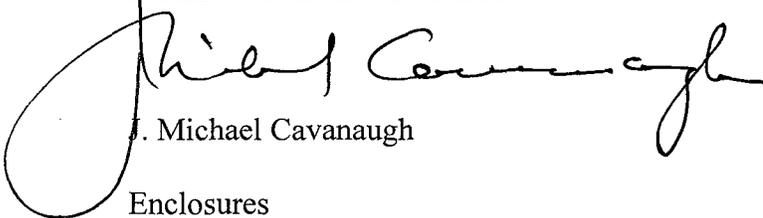
Dear Ms. Gregory:

Enclosed for filing are an original and five (5) copies of the comments of UPS Ocean Freight Services, Inc. in response to the Commission's May 21, 2013 Advanced Notice of Proposed Rulemaking in Docket No. 13-05.

Per the notice, we will also submit a copy of this document in .pdf format by email addressed to your office.

Sincerely yours,

HOLLAND & KNIGHT LLP



J. Michael Cavanaugh

Enclosures

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**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 13-05

**AMENDMENTS TO REGULATIONS GOVERNING OCEAN TRANSPORTATION
INTERMEDIARY LICENSING AND FINANCIAL RESPONSIBILITY
REQUIREMENTS, AND GENERAL DUTIES**

COMMENTS OF UPS

In an Advanced Notice of Proposed Rulemaking (“ANPRM”) issued May 21, 2013, the Federal Maritime Commission (“Commission”) seeks comments concerning its proposal to amend regulations regarding the licensing, financial responsibility and general duties of ocean transportation intermediaries (“OTIs”), including Non-Vessel Operating Common Carriers (“NVOCCs”) and ocean freight forwarders. UPS Ocean Freight Services, Inc., a licensed NVOCC (License No. 016871N) which has two unlicensed foreign-based NVOCC affiliates, UPS Europe SA (Org. No. 021750) and UPS Asia Group Pte. Ltd. (Org. No. 023718), and a licensed ocean freight forwarder, UPS Supply Chain Solutions, Inc. (License 00275F) (collectively “UPS”), submit the following comments on specific proposed regulatory changes set forth in the ANPRM.

I. BACKGROUND

UPS is a global intermodal package delivery, freight and logistics services provider, with over 322,000 employees in the United States and some 397,000 worldwide at 2,915 facilities. UPS makes over 4.1 billion annual deliveries of packages and cargo globally, ranging from parcels to full marine containers and heavy-lift items such as industrial vehicles and machinery. UPS operates 96,000 trucks and one of the world's largest airlines, and operates more than 560 aircraft. UPS's forwarding and logistics business provides services in more than 175 countries and territories worldwide, and includes supply chain design, execution and management, freight forwarding and distribution, customs brokerage and trade finance services.

UPS and its predecessor ocean forwarding and NVOCC companies have been in operation for many decades. UPS ocean volume is currently approximately 500,000 TEUs annually. Most UPS ocean freight moves on a door-to-door, port-to-door or door-to-port intermodal basis with ocean/truck, ocean/rail or ocean/air interface to optimize delivery times and cost and meet customer needs.

UPS seeks to be an innovator in improving efficiency, customer service and value, streamlining operations and in advocating regulatory policies that best serve and balance the needs of the shipping public, shipping industries and government. UPS was among the leaders in seeking the Shipping Act exemptions to permit NVOCCs to use service agreements, and participates in Commission rulemaking processes with the objective of improving efficiency and delivering benefits to shippers and the economy in general.

II. UPS COMMENTS

UPS believes the Commission's current licensing provisions and regulatory duties provisions are adequate, and urges that changes proposed in the ANPRM be narrowly and

carefully focused on solving clearly-identified problems without creating unintended other effects. In this regard, UPS comments on specific ANPRM proposals:

A. Requirement to Display License and Registration Numbers in Advertising

Going beyond the Commission's current regulations that require license numbers to be displayed on stationery, invoices and shipping documents, the Commission proposes that Section 515.31(a) and (b) of the licensing regulations be amended to require that OTIs display license or registration numbers on all communications (including written, printed and electronic communications). The Commission also would add a new Section 515.31(j) requiring OTIs to include license or registration number in all advertisements. These provisions are overly broad, impose a substantial and unnecessary burden on the OTI industry, and are unlikely to solve problems with unlicensed or unregistered entities engaging in forwarding or NVOCC services.

UPS advertising includes television, radio, newspaper, magazine, on-line and other media presentations that promote the corporate group's global integrated logistics solutions. Inclusion of license and registration numbers in these media, especially television and radio, would be awkward at best, and would impose cost and compliance monitoring requirements. Most likely the same will be true for any licensed or registered OTI that advertises, large or small. Requiring registration numbers of NVOCCs based overseas also adds a substantial administrative burden. These companies have established document forms and data processing systems to comply with local licensing requirements. Revising these systems and forms to include an FMC registration number at the overseas location would be costly and would not be meaningful to shippers at these foreign origins.

Additionally, extending the license number requirement to all "communications" would require that many tens of thousands of employees' email and texting systems be modified to

ensure that the license number would appear each time the person sends a message, however trivial and whoever the addressee may be.

These costs and burdens are entirely unnecessary, and do not address the unlicensed OTI problem identified in the recent Fact Finding 27. Unlicensed OTIs that advertise or communicate with the public or customers, especially those that falsely advertise they are "FMC approved," are already knowingly violating the law. This new requirement provides no additional disincentive. Experienced shippers know that a license or registration is required, and can protect themselves by looking on the Commission's website list of OTIs to see if a company is properly licensed and publishes a tariff. Conversely, inexperienced shippers will not know to search for a license number on ads when selecting a carrier or forwarder. Commission staff enforcing the laws can look at a company's ads and readily check the company name against the Commission's on-line list of bona fide OTIs to see if it is licensed or registered.

The Commission has other far more effective enforcement tools available to combat these violators, including the ability to enjoin unlicensed forwarding and NVOCC enterprises and to impose substantial fines. The other proposed new items in the ANPRM imposing requirements on agents are all that is necessary to strengthen the Commission's regulatory powers without imposing excessive additional burdens and inefficiencies. Accordingly, UPS suggests that the requirement for publication of license numbers should remain limited to the license numbers only and the current scope of stationery, invoices and shipping documents, which the industry understands to include items such as booking notes, cargo receipts and bills of lading.

B. Licensee Eligibility

New eligibility requirements in Section 515.11 as proposed in the ANPRM impose more detailed requirements on applicants generally and upon the OTI's Qualifying Individual ("QI").

The proposed rule will require that the QI be "responsible for general supervision" of the applicant's OTI operations. The scope of background information on applicants and their personnel is stated in considerable detail, including information about officers and directors of the applicant and affiliated companies and shareholders.

While UPS agrees that more detail about what character and background information the Commission and staff will consider and who and what will be deemed acceptable is useful, UPS is concerned about the burdens this may unintentionally place upon corporate operations. For example, requiring that the QI must effectively be the general manager for all OTI operations places unreasonable constraints on corporate hiring, promotion and organization. In a multi-company integrated logistics operation, businesses should be free to organize their chain of authority in the most efficient and effective manner, taking into account the skills of their personnel and needs of the business. It may be that in a given setting, the QI might most effectively serve in a number of positions other than the general manager, including for example, as the compliance officer, or as an executive vice president reporting to the CEO who has ultimate responsibility, or another similar role. Likewise, a company whose QI resigns or retires and does not have another qualified QI on staff would be forced to take undue risk if it can only hire externally for the CEO position rather than promoting a deserving person from within and adding a newly-recruited QI in a responsible supporting role. UPS believes the Commission's logical objective of making sure the QI has a position of meaningful input can be adequately served by requiring that the QI "have a position of significant authority and oversight with respect to OTI operations" rather than mandating that such person can only have the ultimate authority.

UPS objects to the proposed new requirement in Section 515.20(c) that when a QI leaves the company or no longer has supervisory authority, the OTI must report and provide the name of the replacement QI within 15 days. The current 30 day period for this task already places significant strains upon licensees, whether big or small. Where a QI departs with little warning due to an illness or acceptance of employment elsewhere, the OTI must scramble to recruit a new qualified person, especially if this occurs during the peak shipping season, or during summer vacations or year-end holidays. Forcing OTIs to make a hasty decision in recruitment or promotion of a new QI under threat of license suspension is not in the best interest of the industry or shippers. The Commission should assure that the best-qualified persons serve as QIs, not merely the most immediately available applicant.

C. Frequency of License and Registration Renewal

The Commission proposes periodic license and registration renewal. UPS urges that the renewal period in Section 515.14(c) be set at four or five years, rather than two years as proposed. With over 5,000 licensed or registered OTIs, the administrative burdens on the Commission and staff will be enormous. The existing licensing requirements already provide that any changes to an OTI's corporate information must be reported to the Bureau of Certification and Licensing within 30 days, with an amendment to applicable parts of the OTI's Form FMC-18. Renewals serve a good purpose in reminding OTIs to keep their Form FMC-18s and FMC-1s current, and the mere addition of the renewal requirement should be sufficient to focus the industry's attention on this element of compliance. UPS also suggests that the renewal process be streamlined to permit a licensee or registrant whose information on file with the Commission is current and complete to comply by filing electronically a certificate similar to the form recently adopted by the Commission in regard to registrations in Docket 11-22.

D. Hearing Process for License Revocation

The Commission's proposal, in Section 515.17, for an abbreviated hearing process regarding license denials or revocations, unintentionally abbreviate Constitutionally required due process. A license denial or revocation has grave consequences and would deprive a licensee of its commercial livelihood and property. UPS understands the intent is that the Commission would only utilize this procedure in "default" cases where the applicant or licensee does not appear or does not comply with the usual process in the Commission's Rules of Practice and Procedure at 46 CFR Part 502 ("Rules"), in which case there is no apparent reason to carry out the full process. UPS suggests that this section state that in any situation in which the applicant or licensee formally appears and complies with the Rules, the regular provisions for assignment to an Administrative Law Judge, prehearing motions and discovery, presentation of evidence and hearing procedures, as well as appeal and review by the Commission, will continue to apply.

E. Prohibition on Dealings with Unlicensed NVOCCs

The Commission's additional emphasis on unlicensed OTIs, including the proposed new Section 515.16(a)(7) that provides for license revocation for knowingly and willfully accepting cargo from, processing, booking, or transporting cargo, creates unintended potential risk for NVOCCs, even those that are vigilant about compliance. The obvious purpose of the regulation is to prevent actual carriage of cargo for the benefit of unlicensed OTIs. However, evolving industry practice in booking and processing of transactions emphasizes speed and efficiency, including on-line bookings. NVOCCs' IT systems may include checks and balances to determine at an appropriate point that the booking forwarder is licensed and that the shipper is in fact either the beneficial cargo owner or a licensed or registered NVOCC. But it may be difficult or impossible to do so at the moment of booking or commencement of processing of a transactions. As the Commission is aware, shipping documentation is complex and non-uniform and unlicensed OTIs are difficult and even impossible to

detect in some situations. A bad faith company that is willing to make a false certification or check a box on a booking form can easily beat the system, at least to a point. UPS suggests that Section 515.16(a)(7) and other relevant parts of the regulations addressing dealings with unlicensed OTIs be modified to add a "safe harbor" to the effect that if an OTI operates in a manner and with procedures reasonably designed to detect and prevent transactions with unlicensed or unregistered OTIs, the OTI will not be deemed in violation for booking or processing a transaction.

F. Federal Register Notices

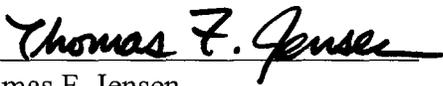
The Commission proposes that notices of license revocation or suspension will be published only on the Commission's website. While this website is updated frequently it is not always current on a daily basis, and there is no official archive of what was published on the website or when information such as the revocation of a license was published. Generally the industry standard for determining official actions on a timely basis has always been a *Federal Register* notice, which provides an effective date and researchable published archive. If the Commission does not publish actions in the *Federal Register*, potentially OTIs may be at risk for not having timely information about shipper status. The Commission's regulations should make it clear that regulated OTIs may confidently rely on the information about an OTI's status appearing on the Commission's website without the risk of being in violation, and the Commission should have a process for verifying the dates of publication of changes.

III. CONCLUSION

UPS thanks the Commission and staff for their painstaking efforts to understand the evolving ocean shipping industry, and to develop the Commission's policies and regulations to serve the causes of efficiency and innovation and the needs of shippers and the U.S. economy.

Respectfully submitted,

UPS

By: 

Thomas F. Jensen

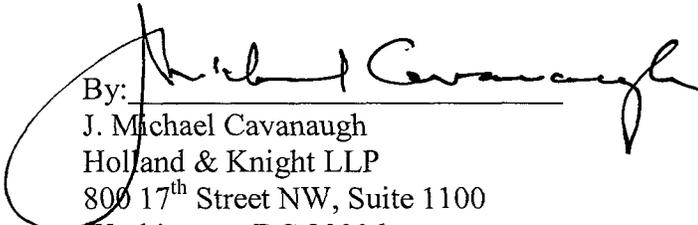
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Date: August 26, 2013