

**The Honorable Michael A. Khouri**  
**Remarks Before**  
**The Propeller Club Of the United States**  
**Washington D.C.**  
**January 19, 2011**

Thank you Clint and it's my pleasure to join this group today. I appreciate the invitation to share some thoughts about the Federal Maritime Commission, a brief review of 2010 issues and a look ahead as we begin a new year.

I began my term at the FMC the first week of January, 2010. As a first order of business, I want to thank John Moran for encouraging me at that early time to join the Propeller Club. I have enjoyed these lunch events and I hope my presentation today does not seriously detract from the past record of excellent talks that you have come to expect and enjoy.

Today's remarks reflect my personal views and are not offered as the official position of the Federal Maritime Commission.

It has been a busy and interesting year – in terms of significant developments in the international liner trades and the FMC's activities in response. At my first Commission meeting last February, I joined Chairman Lidinsky and Commissioner Dye in a vote to initiate a rulemaking that would relieve Non-Vessel-Operating Common Carriers from the burdens and costs of publishing rate tariffs, subject to certain conditions. We took this action under the exemption authority set forth in Section 16 of the Shipping Act, as that authority was amended and liberalized by the Ocean Shipping Reform Act of 1998.

With minor paraphrase, Section 16 provides that the Commission may, by order or rule exempt for the future any specified activity of regulated persons from any requirement of the Shipping Act if we find that the exemption will not result in substantial reduction in competition or be detrimental to commerce.

Last February, a majority of the Commissioners reviewed the record that had been generated over many months of petition and open comments and agreed that the current rate tariff system for NVOs served no practical commercial purpose.

Then, in April, the Commission published a Notice of Proposed Rulemaking and requested written comments. In a final effort to have as full a record as possible, I supported a fellow Commissioner's request for a public hearing to receive oral testimony and then, further written comments as rebuttal for any issues presented in the public hearing. The open public hearing was held in May and the comment period closed in June.

The sequence of written comments and the public testimony made it crystal clear that no one is consulting filed NVO tariffs as a part of negotiations for future rates or for any other purpose. The only parties that argued to maintain filed tariffs were the tariff publishing houses. In the May public hearing; however, even a tariff publisher conceded – “no one is really looking at these published tariffs”.

Of particular importance to me was this fact – not one single shipper filed a comment, not for the February Commission meeting, or the May public hearing or the June open comment period. The total silence from the shipper community spoke volumes to me as to the commercial necessity or continued viability of NVO tariffs.

As a side issue, no interested parties expressed any concerns or reservations concerning elimination of tariff filing for all NVOs – that is, for foreign based, FMC bonded and registered NVOs and U.S. based, FMC bonded and licensed NVOs.

After all of the referenced public commentary and deliberations, the Commission has not published a final rule. Individual NVOs spend as much as \$200,000 each, per year to maintain their tariff filing program – and there are over 4,400 NVOs within the FMC’s jurisdiction who file rate tariffs. It is past time to act and provide this regulatory relief.

Next item - Passenger Vessel Operator Financial Responsibility. The FMC has been considering for some time whether to revise the PVO regulations concerning requirements for cruise operators to provide evidence of financial responsibility in the event a cruise is cancelled.

There have been twelve incidents over the last eleven years and only two in the last five years where cruise lines have experienced financial difficulty or have failed.

To the Commission’s knowledge, no passengers from any of these incidents have failed to receive refunds of covered deposits – but some have expressed concern that the current regulatory system is inadequate.

There was a Notice of Inquiry issued in December of 2009, with a public hearing in March 2010 and then follow-on questions from the FMC to the cruise lines. Updated staff reports are in circulation and the matter remains under consideration.

Next item - ocean vessel capacity and Fact Finding 26 which was recently concluded. When I was nominated in the Fall of 2009 and preparing for my Senate hearing in December, this issue was just barely beginning to percolate.

Much has been written about the various causes for the shortage of containers and vessel capacity that developed in the fall of 2009 and continued on into the Winter and Spring of 2010. The Commission ordered a non-adjudicatory fact finding. Commissioner

Dye and her team of career staff from several agency bureaus did an excellent job. Perhaps the most important outcome of that fact-finding was the recognition that the FMC can play an important role as a "Facilitator" for joint shipper and ocean carrier problem solving without resorting to enforcement actions, fines or new rule making.

Next item - antitrust from across the pond. I will take a pass on commenting on last year's U.S. antitrust legislative issues and simply note that no new efforts are heard or visible at this time. The FMC is; however, continuing its study of the European Union's repeal of their antitrust block exemption.

Quick summary - the EU repealed their antitrust program in 2008. The FMC began a study to analyze the effects of that action by looking at various data sources for a period of two years prior and then two years after with 2008 as a center "sorting out" year.

The four areas of inquiry are: (1) pricing – both overall rates and component parts; (2) exporter competitiveness – that is, EU versus U.S.; (3) rate volatility; and (4) effectiveness of surviving consortia and vessel sharing agreements in the EU trades.

That study is scheduled to be ready in the fall of this year.

Next item - the continuing problems with international household goods movers. The issues surrounding container movement of personal and household goods are parallel if not identical to issues found in the domestic moving industry. I note that last Sunday's Washington Post had an article on abuses and things to beware of with local moving companies.

The Commission ordered a fact finding, No. 27, into this issue and designated me as the fact finding officer. Preliminary recommendations were approved during our December meeting and further recommendations should be ready by mid-February.

The various areas of abuse by both unlicensed and licensed Ocean Transportation Intermediaries create a serious consumer protection problem that will require multiple tools and time to correct. I will simply note that the Department of Transportation and the Federal Motor Carrier Safety Administration have struggled with this issue in the domestic market for years.

As I said earlier, when I joined the FMC last January, we did not have the container and vessel capacity issues and Fact Finding 26 in the bright center of our radar screen. So, looking out into 2011 is equally uncertain. As the venerable Yogi is often quoted, "predicting the future is hard to do".

But I do believe there is a developing and overarching theme that will bear upon my focus and, I suspect, will impact the Commission's agenda, including some of the items I just discussed.

This theme is regulatory review, agency self-analysis and possible reforms. The occasional roll of a drumbeat has been audible for some time, but the pace has definitely picked up.

There have been, for some time, numerous news articles and op-ed pieces concerning a wide range of federal agencies and their rulemaking activities. And, I am not here to comment on any other agency or their business. But two recent articles bear recognition.

Last Wednesday, the Wall Street Journal published an op-ed article with the headline, "The U.S. Loses Ground on Economic Freedom". The article discusses the "Index of Economic Freedom" which is a ten component index compiled annually by the Wall Street Journal and the Heritage Foundation. One of the key components is business regulation. The United States dropped this year from 8<sup>th</sup> to 9<sup>th</sup> in the world and this is our lowest economic freedom score in a decade.

I recommend the entire article to you, but I cite one particular line. In summarizing what individuals want, it states, "They want governments that facilitate...". Recall my comment regarding Fact Finding 26 and the capacity issues. I believe the full Fact Finding 26 team of dedicated staff professionals should take some cheer in seeing affirmation of their problem solving approaches.

The second article is an op-ed piece published yesterday in the same Wall Street Journal and written by our President Barack Obama. It is titled "Toward a 21<sup>st</sup> Century Regulatory System".

In the article, he discusses the drivers in our economy over two centuries, the evolution of regulatory agencies and their work product – i.e., regulations. President Obama talks about many of the worthwhile and laudable reforms that federal agencies have fostered.

If we reach that point, I believe that some new regulations to curb the abuses of rogue household goods movers in our Fact Finding 27 will comfortably fit within the President's vision of approval.

But our President goes on to criticize burdensome, ill conceived, out dated, poorly administered and otherwise costly or unnecessary regulations – regulations that I will submit, added to our drop in the Index of Economic Freedom.

I believe that the NVO tariff filing exemption should and will – when completed – be a grand example of relieving companies who assist in our export and import container trade from unnecessary regulations and costs.

On the other hand, as I look at the Passenger Vessel Operators financial responsibility issues, I want to be certain that the FMC is not adding new burdens and layer upon layer of added costs on an industry that relies on U.S citizens spending purely discretionary income in a fragile economic climate. People tend to forget that the cruise vessels that embark and disembark from U.S. ports rely on U.S. businesses from many different industry segments. This translates into thousands upon thousands of U.S. jobs.

The article also announces a new Executive Order for each federal agency to begin a review of its regulatory portfolio.

We have just received this Executive Order but have not yet begun a review of its terms and direction.

I can make this prediction of the future – it will receive a warm reception in my office and will receive my cooperation, support and best efforts towards implementation.

Thank you for your attention and, if time is still available, I will try to field a few questions.