

The Honorable Michael A. Khouri
Remarks at the Annual Meeting of International Association of Movers
Denver, Colorado - September 15, 2011

Thank you and good afternoon. It's a pleasure to join you again this year and my thanks to Terry Head and Brian Limperopulos for the kind invitation to address your Annual Meeting and provide an update on current events at the Federal Maritime Commission and a report on Fact Finding No. 27.

As is customary, my comments today are my personal views, I do not speak on behalf of the FMC or the U.S. government.

We've had a number of items on the Commission's agenda since I spoke with you last year in San Diego.

First, the FMC is now operating with a full complement of five Commissioners, when, in June, Mario Cordero was sworn into office. Prior to his appointment, Commissioner Cordero was an attorney in private practice in Southern California and served eight years on the Long Beach Board of Harbor Commissioners. The Commission is already benefiting from his experience with the San Pedro Bay port complex – the nation's largest container port.

Commissioner Rebecca Dye, during the same Senate process, was confirmed for a new 5 year term – she is now in her ninth year of service with the Commission.

And I am honored that President Obama sent my re-nomination over to the Senate early this month for a new five-year term.

Briefly, in the legislative arena, when I addressed this group last October, then-Chairman Oberstar of the House Transportation and Infrastructure Committee had introduced a bill that would have ended the ability of container vessel operators in the United States foreign trades to participate in rate discussion agreements. That legislation died with the end of the 111th Congress.

The 2010 mid-term election changed the makeup and control of the House of Representatives in the new 112th Congress. A Republican, Rep. John Mica of Florida is the new Chairman of the House Committee on Transportation and Infrastructure. The Committee's current attention is focused on the reauthorization of the highway and aviation bills. I have seen no indication that either the House or the Senate has a focus or intension to address Shipping Act issues in this term.

My focus at the Commission continues to be on finding ways within our current statutory authority to enhance competition and reduce or eliminate any unnecessary regulatory burdens or

barriers to efficiencies that result in higher transportation costs for our country's exporters, importers and consumers.

One example of the Commission's effort to eliminate unnecessary regulatory burdens is the new exemption for NVOs from the Shipping Act requirement to publish and adhere to rate tariffs.

I was very pleased when the Commission on February 25th issued its Final Rule to relieve licensed Non-Vessel-Operating Common Carriers from the burdens and costs of publishing rate tariffs, subject to certain conditions. That new regulation became effective on April 18th.

The extensive written comments and the public testimony during the rulemaking made it crystal clear that rate tariff system served no practical commercial purpose. No one was consulting published NVO tariffs as a part of negotiations for future rates or for any other purpose.

Of particular significance to me was the fact that not one single shipper filed a negative comment. The total silence from the shipper community spoke volumes to me as to the commercial necessity or continued viability of NVO tariffs.

Even though no interested parties expressed any serious or sound reservations concerning elimination of tariff filing for all NVOs – including FMC bonded and registered foreign based NVOs - the Commission staff expressed concerns that immediate extension of the exemption to these entities could harm the agency's mission. Therefore, the exemption currently only applies to "licensed" NVOs.

The Commission voted, however, to commence proceedings to potentially modify the final rule, including the possible extension of the exemption to these foreign NVOCCs. Chairman Lidinsky expressed his hope that these modifications could be reviewed and considered by the Commission within a year. I hope we will be able to do this.

While the NVO exemption is still relatively new and NVO's are adjusting their business practices, I am informed by staff that, to date, only about 100 NVOs have indicated their intention to operate in the new system, - that is with Negotiated Rate Agreements and without rate tariffs. I am very interested in receiving some feedback from you during our Q & A period as to what the Commission might do to increase participation.

As a result of Commissioner Dye's Fact Finding No. 26 which investigated the issue of ocean vessel capacity and shipping equipment availability for U.S. exports and imports during 2009 and early 2010, the Commission voted to use its "special circumstances" authority to temporarily increase its oversight of the two Pacific trade carrier discussion agreements – the eastbound Transpacific Stabilization Agreement and the Westbound Transpacific Stabilization Agreement – by requiring transcripts of certain meetings.

We extended these reporting requirements for an additional six months at the Commission's August meeting. This limited extension was appropriate, but I have publically expressed my reluctance for any future extensions unless done pursuant to the Commission's regular "notice and comment" rulemaking authority.

Now, for the issue that is very close to your hearts, last October, I reported to you on the Commission's fact finding into problems encountered by consumers in the international shipment of household goods and personal property.

While not a major part of the total goods carried in U.S.-Foreign ocean commerce, the international shipment of household goods and personal property generates a substantial number of the complaints and problems addressed by the Commission's Office of Consumer Affairs and Dispute Resolution. This is an important consumer protection issue in that it affects many average Americans who are very often first-time or occasional users of international shipping services.

The Chairman and the Commissioners ask me to lead the effort to take a comprehensive look at this area, to develop a record of the nature and scope of potentially unlawful, unfair or deceptive ocean transportation practices by household goods movers and to make recommendations for the full Commission's consideration.

Last year, I described the initial steps the Fact Finding team had undertaken to:

- Identify potential sources of information to assist in problem identification, root cause analysis, problem solving and identification of industry "best practices";
- Meet with other government agencies and trade associations that represent companies involved in the international transportation of household goods; and
- Conduct interviews in New York, Florida and Washington, D.C.

We produced an Interim Report in November of last year and then a Final Report in April of this year.

At its meeting in May, the Commission considered the team's Final Report and unanimously approved action on a series of specific recommendations. The recommendations fall into three categories.

The first is "educating the consumer". I believe that every person in this room would agree that an informed and educated public consumer is the first line of defense and the best means to prevent problems that result from simple miscommunications, poor OTI business practices, or in some cases, intentional fraud. Knowledge about the moving process empowers the consumer to make meaningful and appropriate choices and decisions – particularly with respect to selecting a reputable mover – like each of you - and for executing the various stages of an international move.

In the education area, the Commission approved a number of specific steps:

- Creation of a set of information materials to provide public consumers with basic information about what to expect and how to handle international shipment of household goods, and answers to frequently asked questions.
- The Commission intends to adapt these materials and incorporate them into the Commission's website so they are easily located, accessible to household good shippers and shared with other governmental agencies and private sector partners. We also want to incorporate social media technology into our consumer education efforts as an additional tool that allows industry stakeholders to follow current events, learn of news alerts, communicate with the FMC about household goods issues and learn about Commission programs or activities.
- We are developing and implementing outreach plans for ethnic and immigrant communities that historically have experienced problems in the international shipment of household goods.
- We are in the process of identifying internet search engines and lead-source providers that advertise international relocation services on the Internet and obtain their help to educate public consumers and raise awareness about information and services available to the shipping public from the FMC.
- We will encourage licensed and foreign registered OTIs that maintain their own websites, to link their sites to the Commission's website which will provide an additional access point to the FMC's information on household goods shipments.

The second broad category is "improving the consumer experience". Certain practices, if developed by the Commission together with industry stakeholders and voluntarily adopted by OTIs, would substantially increase the likelihood that consumers will have more satisfactory experiences and fewer problems will be encountered in the shipment of household goods.

In this area the Commission will:

- Identify examples of current practices and forms used by top tier OTIs - such as you - and work with you and other stakeholders, industry partners and other government agencies to develop industry "best practices" and model forms that - if consistently used - would reduce the potential for problems and thereby increase shipper satisfaction.
- We will develop and circulate FMC "guidance documents" that would provide suggested "best practices" and model forms to those providing international transportation services to household goods shippers.

The third broad category is “protecting the consumer”. In addition to educating the public and taking steps to improve the consumer’s experience, the Commission will take affirmative steps to protect the shipping public through several initiatives.

If adopted and implemented, these recommendations would enhance the Commission’s ability to quickly and effectively respond to problems encountered by consumers in the shipment of household goods.

- We want to formalize relationships with major groups, such as IAM, and specialty associations representing those engaged in the international transportation of household goods by water.
- We intend to develop and implement a program of cooperative law enforcement efforts with Federal, state and local law enforcement officials to focus public and media attention on the unique problems associated with the shipment of household goods.
- We are promoting the Commission’s alternative dispute resolution services, including ombudsman and mediation services and arbitration, as means to quickly and effectively address issues in the household goods area.
- We will enhance public consumer protection in the household goods area by implementing a voluntary “Household Goods Participant Program” with voluntary compliance to certain standards and rules and with an appropriate designation placed on the license of the NVOCC participant.
- We are developing a new NVOCC license category for those operating in solely the barrel trade with a lower bond and tailored standards could enhance public consumer protection in the barrel trade and bring currently unlicensed operators within the system and improved overall standards in this part of the industry.
- We want to simplify and expedite the collection of information and enforcement actions necessary to allow the Commission to protect public consumers shipping household goods.
- As a part of that effort, we will work to clarify the Commission’s authority over those persons and entities that advertise, through any media or method, where they are offering to provide international transportation services for household goods.
- To provide clarity and transparency for the consumer, and better monitor OTI license compliance, the Commission is looking to require the disclosure of any agent/principal relationship and the FMC license number on all relevant shipping documents to be furnished to the consumer, such as a bill of lading, freight invoice, delivery receipt, arrival notice. The same information should be disclosed on all advertising, including on websites.
- The Commission could also adopt a legal process whereby the failure to disclose the agent/principal relationship and the principal’s FMC license number on shipping documents would give rise to a presumption that the issuer of the document is engaged in regulated OTI activity that required them to be licensed and bonded.

- Where practicable, “best practices” should include disclosure of “destination agent” or contact party on arrival notice and any agency agreement should be in writing, signed and available for review by FMC.

The Commission staff is developing proposals for implementation of these recommendations and will report to the Commission by September 30th.

The problems encountered by consumers in the international shipment of household goods and personal property are varied and multifaceted. If adopted by the Commission, I am confident that the measures I discussed will provide meaningful progress towards protecting the consumer in this area and support the Commission’s overall mission to protect the shipping public.

The Commission also voted to make the Final Report for Fact Finding No. 27 available to the public and you can find it on the Commission’s website, www.fmc.gov.

Building on the work of Fact Finding No. 27, the Commission is in the process of reviewing Part 515 of its regulations - the Ocean Transportation Intermediary rules - and identifying potential improvements to protect the shipping public and maintain the integrity of the Commission’s licensing requirements. The staff is expected to submit a proposed rule for the Commission’s consideration this fall.

In addition to cleaning up and clarifying the current rules, I would like to see these revisions include a badly needed licensing renewal system for OTIs and a streamlined procedure for appeal of any denial of OTI license applications and revocation or suspension of existing OTI licenses. We also need a more efficient way to terminate the application process where the applicant fails to submit information and documents necessary to process its application by an established deadline.

I also hope that these revisions to the OTI rules will incorporate several of the recommendations of Fact Finding No. 27, including clarifying the Commission’s authority over advertising by OTIs and their agents. I would like to see the Commission consider a rule that advertising by an entity to provide or perform ocean transportation intermediary service should give rise to a rebuttable presumption that the OTI has, in fact, performed such services – and thus provide for a prompt opportunity to close down businesses that are operating without the license and bond that every company in this room applied for, paid for through fees and bonds and earned through continued demonstration of good character and sound business practices.

I think that the Commission should consider whether to require OTIs to ensure that their bona fide agents disclose information about the principal in the agents’ advertising and on shipping documents prepared or issued by the agents, and whether the failure of the agent to do so should give rise to a rebuttable presumption that the so called “agent” is actually operating as an OTI in its own name and not as an agent on behalf of a licensed OTI. The Commission may consider whether to require agency agreements to be in writing, signed by the parties, and available for Commission review.

The Commission should consider ways to address the issue of common carriers working with and accepting cargo from NVOCCs who do not have an FMC license, tariff, and proper evidence of financial responsibility or from a freight forwarder that is operating without a license or financial responsibility.

The revision of the OTI rules and regulations provides the Commission with an opportunity to update and really improve our relationship with – you - this important part of the shipping community, and I hope we will do that.

With that, I will close and thank you for the opportunity to visit with you today and for your kind attention. I welcome your thoughts or questions. And I especially invite comments and questions regarding the new Negotiated Rate Agreement rules for NVOs and Fact Finding N0. 27.