

**STATEMENT OF
MARIO CORDERO
CHAIRMAN, FEDERAL MARITIME COMMISSION
800 NORTH CAPITOL ST., N.W.
WASHINGTON, D.C. 20573
(202) 523-5911
(202) 275-0518 (Fax)**

**BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES**

September 10, 2013

Good morning Chairman Hunter, Ranking Member Garamendi, and members of the Subcommittee. Thank you for the opportunity to address you today on matters related to the Commission's regulations.

I am pleased to report that the Commission has taken a systematic approach in reviewing its regulations in order to minimize unnecessary burdens while ensuring a cost-effective regulatory regime that ensures economic security, both for parties involved in international oceanborne commerce, and the consumers that rely on it. While I understand that the Subcommittee is focused on the Commission's amendments to its regulations governing ocean transportation intermediaries, I think it is helpful to view this initiative within the broader context of the Commission's comprehensive review.

The Commission's regulatory review of its regulations is being conducted pursuant to Executive Orders 13563 and 13579. On January 18, 2011, Executive Order 13563 was issued to emphasize the importance of public participation in:

- Adopting regulations;
- Ensuring integration and innovation in regulatory actions;
- Promoting flexible approaches in achieving regulatory objectives; and
- Ensuring the objectivity of any scientific and technological information and processes used in regulatory actions.

The Executive Order required executive agencies to develop a plan to periodically review their existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make such regulatory programs more effective and less burdensome in achieving their regulatory objectives.

On July 11, 2011, Executive Order 13579 was issued to encourage independent regulatory agencies to also pursue the goals stated in Executive Order 13563.

In accordance with the spirit and intent of the Executive Orders, the Commission developed a plan for the Retrospective Review of Existing Rules (Plan) with respect to its regulations. We

have carried out the review with an eye toward maximizing public participation throughout the process.

The Commission's Plan includes an orderly review of regulations to be updated or modified. The Commission sought public comment on the preliminary plan and then adopted it on November 4, 2011. This plan was publicly updated at a Commission meeting in February of this year. The Commission's goals in these retrospective reviews are to determine a schedule for identifying and reconsidering certain significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. The review process is intended to facilitate the identification of rules that warrant repeal or modification; strengthening, complementing, or modernizing rules where necessary or appropriate, so as to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives.

FMC Recognizes Changes to the Industry

I would like to take a moment to highlight some of the recent regulatory modifications that have been implemented, as well as some of the proposed regulations that are currently before the public:

- In the years since the original implementation of the Commission's regulation of ocean transportation intermediaries (OTIs), it has taken several actions to provide the regulated industry relief at its request. In 2004, the Commission addressed potentially restrictive practices by the Government of the People's Republic of China (PRC) by creating the ability for U.S. non-vessel-operating common carriers (NVOCCs) to obtain an alternative, U.S.-based, FMC-administered, financial instrument accepted in lieu of the PRC's cash deposit requirements. The Commission's optional bond rider to the NVOCC bond allowed regulated entities to use the Commission-sanctioned bond at a small fraction of the cost of tying up cash in a bank in China. This action allowed regulated entities to put into use tens of thousands of dollars in capital that would have otherwise been used as dollar-for-dollar collateral to satisfy the PRC. Recently, in 2011, the Commission continued to assist U.S. NVOCCs to update the optional bonds to reflect the change in currency valuation. Once again, this action of the Commission allowed NVOCCs to satisfy requirements of the PRC for pennies on the dollar that would otherwise have to be deposited in Chinese financial institutions.
- In February 2011, the Commission issued a final rule amending its Rules of Practice and Procedure to update, clarify, and reduce the burden on parties to proceedings before the Commission. Specifically, the Commission made its regulations less burdensome by streamlining document filings and other administrative processes while increasing protections related to parties' privacy rights in formal proceedings before the Commission. It has been estimated that these changes will allow parties to proceedings before the Commission to annually save a total of approximately \$260,000 in reproduction, postal, and courier costs. In April 2011, the Commission issued an Advance Notice of Proposed Rulemaking to seek public comments on how to further update and clarify the Commission's Rules of Practice and Procedure to increase their effectiveness, enhance administrative efficiency, and reduce the burden on parties to proceedings before the Commission. The Commission also sought public

comment to revise its discovery rules to conform more closely to the Federal Rules of Civil Procedure. The review of the Commission's Rules of Practice and Procedure is ongoing. On July 22, 2013, the Commission issued a final rule to make it easier for parties to participate in proceedings and rulemakings; and to clarify the qualifications to allow non-attorneys to practice before the Commission.

- In March 2011, after extensive public participation, the Commission issued a final rule exempting licensed NVOCCs that enter into negotiated rate arrangements from the tariff rate publication requirements of the Shipping Act and certain provisions of the Commission's regulations. Before the exemption, NVOCCs were required to publish rate changes for each charge to a shipper. Publishing an amended tariff takes person-hours to perform and result in tariff publication costs. NVOCCs that handled many shipments and quoted different prices based on volume thus faced higher administrative costs to comply with the Shipping Act. Through this rule, the Commission lessened the burden and cost of rate publication requirements for licensed NVOCCs. It has been estimated that if 25% of licensed NVOCCs take advantage of the exemption, total annual savings could exceed 150,000 person-hours, or \$10 million, including the fees paid to tariff publishers. If all 3,400 licensed NVOCCs take advantage of the exemption, total annual savings could exceed 600,000 person-hours, or \$40 million. On July 12, 2013, after receiving input from the public, the Commission determined to extend this exemption to foreign-based registered NVOCCs.
- In March 2012, after issuing a proposed rule and receiving comments from the industry, the Commission issued a final rule that allows ocean carriers and shippers more freedom, flexibility, and certainty in their commercial arrangements. This final rule allows companies that enter into service contracts to reference freight indices or other external information in formulating their contracts. This rule recognizes new tools that common carriers and shippers may utilize in order to manage freight rate volatility and other market risks common to the commercial maritime industry.
- In February 2013, the Commission updated its passenger vessel operator (PVO) regulations by changing the financial responsibility nonperformance cap from \$15 million to \$30 million. The nonperformance cap had not been changed since 1990. In 1990, the total financial coverage provided by a PVO was nearly 25% of outstanding unearned passenger revenue (UPR). This year's modernization of the regulations equates to only 14% of UPR. The cap will be adjusted every two years, based on the Consumer Price Index for All Urban Consumers (CPI-U). The final rule also provides relief to smaller cruise lines by recognizing the existence of additional forms of financial protection. These measures strengthened protections for consumers with regard to their deposits and prepayments while at the same time reducing financial responsibility requirements imposed on smaller cruise lines.

I hope the explanation and examples I have outlined above give you a better understanding of the work the Commission has recently completed with respect to its reviewing and updating its regulatory mandate.

The Ocean Shipping Reform Act and FMC Regulation of OTIs

In 1998, the Ocean Shipping Reform Act (OSRA) redesignated both ocean freight forwarders and NVOCCs as OTIs. In 1999, as directed by OSRA, the Commission adopted new regulations to implement changes effectuated by the amendments to the law. The Commission has not substantially revisited the rules governing licensing, financial responsibility or general duties of OTIs since 1999.

Now, I will turn to the Commission's review of its OTI rules. As you will see, this review has been an open and transparent process.

- The Commission's November 2011 Retrospective Review Plan specifically noted that the Commission's OTI rules were under active Commission review, and that the Commission planned the issuance of a Notice of Proposed Rulemaking.
- On December 12, 2012, the Commission held a public meeting which included a briefing by the Commission's staff on OTI Regulations.
- The Retrospective Review Plan was revised in February 2013 at a public meeting, at which time it was noted that the Commission planned to seek comment on the OTI rules through an Advance Notice of Proposed Rulemaking (ANPRM).
- On May 15, 2013, the Commission held another public meeting to approve the issuance of ANPRM seeking public comment on possible revisions to the OTI rules it had been considering.
- On May 31, 2013, the ANPRM was issued and requested public comments by July 31, 2013, which the Commission later extended to August 30, 2013.

In addition to the formal hearings, meetings, and notices related to OTI modifications, Commissioners and staff have met and discussed informally with representatives of industry stakeholders at various industry forums. This included: the Pacific Coast Council of Customs Brokers and Freight Forwarders Association's Wescon Conference in 2010, the National Customs Brokers and Freight Forwarders Association's 38th Annual Conference in 2012, the Transportation Intermediaries Association, and the International Federation of Freight Forwarders Associations.

To further advance the dialogue on Commission matters, in January 2013, I commented to the Transportation Research Board that the Commission was currently reviewing its OTI regulations to ensure that a credible licensing process is in place. On April 16, 2013, I apprised the Subcommittee that the Commission was reviewing its regulations concerning the licensing and oversight of OTIs. Last month, I addressed members of the Los Angeles Customs Brokers & Freight Forwarders Association to provide further discussion on the ANPRM. In addition, I have accepted the invitation of the Pacific Coast Council of Customs Brokers and Freight Forwarders Association's Wescon Conference for next month to continue the dialogue on issues important to the maritime industry.

The above examples represent the Commission's deliberate efforts to reach out to our stakeholders and provide notice of the opportunity to participate in the regulatory process.

I will now summarize the current ANPRM for OTIs. The Commission's ANPRM suggests modifying the following bonding minimums originally set in 1999:

- NVOCC bond minimums from \$75,000 to \$100,000;
- Ocean freight forwarder bonds from \$50,000 to \$75,000; and
- Foreign NVOCCs registered to do business in the U.S. trades from \$150,000 to \$200,000.

The Commission noted that even these adjustments to the levels of financial responsibility set in 1999 would not, for the most part, fully reflect an inflation-adjusted increase (for example, the NVOCC bond adjusted for inflation would be calculated at \$105,000). These bond levels have been unchanged by the FMC for 14 years. The Commission has observed the commercial disruption that has occurred with the failures of well-known NVOCCs and the inadequacy of the financial instruments intended to protect market participants against such failures. In the past three years alone, there have been over 40 federal lawsuits against OTIs, of which nearly 20 cases involved claims where the bond amount did not approximate the claims that would have been covered by the bond.

- The Commission's ANPRM proposes that licensed or registered OTIs be required to renew its license every two years. OTIs would be able to do this by submitting an updated renewal form. Currently, there is no requirement for an OTI to renew its license. The Commission's experience has shown that too many OTIs cannot be found at the address of record, operate without a current Qualifying Individual, with new or different branch offices, new or different officers, or with previously unknown or unregistered trade names. Out of date information has resulted in futile attempts to locate licensed OTIs in investigations, enforcement actions and private complaints.
- The ANPRM also proposes that OTIs require their agents to include the principal's name, address, and license number on shipping documents prepared or issued by agents on behalf of the principal. To address those harmful shipping practices such as failure to deliver the cargo and refusal to return the pre-paid ocean freight, loss of the cargo, significant delay in delivery, charges to the shipper for marine insurance that was never obtained, the list goes on – this proposal attempts to provide transparency and clarity on the agent and principal relationship of OTIs.
- To address practices in the OTI industry that harm the shipping public, the ANPRM proposes that the qualified individual representing the licensed OTI have three years of OTI experience with a registered or licensed OTI. That person would also have to be at least 21 years old, be responsible for the general supervision of the licensee's operations, and meet the statute's character requirements, in order to obtain an OTI license.
- The existing provision that foreign-based OTIs who wish to obtain an FMC license must establish a presence in the U.S. by opening an unincorporated office is clarified to newly

require that it is qualified to do business where it is located, and staffed and operated by a full-time bona fide employee.

- The ANPRM seeks comments on filing and payment of claims, priorities for claims, and methods of improving reporting provisions by surety companies to promote faster and fairer allocation to claimants.
- The ANPRM seeks to further streamline the Commission's processes by ensuring its records are up-to-date so that the Commission and the public do not waste valuable time attempting to contact licensees. Similarly, streamlining the revocation of the license will alert the shipping public that it should not do business with that OTI.
- The ANPRM proposes to reduce regulatory burdens on licensed OTIs by recognizing the developments in the law enabling their use of agents. Burdens are also reduced on OTIs that operate with branch offices: the ANPRM proposes eliminating the additional \$10,000 bond amount currently required for each of a licensed OTI's branch offices.
- With smaller operators also in mind, the Commission specifically requested public comment in the ANPRM on how it might differentiate in its regulation between OTIs that operate in the small package or "barrel trade" and those that operate primarily in one cargo type or volume; and what might be the effects of lower financial responsibility requirements for some defined type of smaller OTI.

As the comment period ended only eleven days ago, on August 30, 2013, we are still in the process of carefully evaluating the comments and will be using those comments to further assess the proposed regulations. As this subcommittee is undoubtedly familiar, the Commission received numerous comments in the final days of the comment period. In the last week of the comment period alone, the Commission received 52 sets of comments.

Under the rulemaking process set forth in the Administrative Procedures Act and aforementioned Executive Orders, the Commission will review and consider all of the submitted comments. The Commission will then evaluate whether it is appropriate to make adjustments to the proposed amendments and seek further public participation.

Mr. Chairman, I hope that my testimony has provided you with an overview of the process by which the Commission is conducting the review of our regulations, and, specifically, the proposed amendments governing ocean transportation intermediaries. As we work through this process, I look forward to continuing to work closely, not only with this Subcommittee, but also with our stakeholders. I am happy to answer any questions you may have.