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BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 07-06

AMENDMENT TO REGULATION GOVERNING THE FILING OF PROOF OF FINANCIAL RESPONSIBILITY

COMMENTS SUBMITTED BY THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

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The Transportation Intermediaries Association (TIA) submits these comments in support of the Commission's Notice of Proposed Rulemaking (NPRM) proposing to reduce the amount of time an applicant for an ocean transportation intermediary (OTI) license may have to file proof of financial responsibility after FMC approval of its license application. As long as the government continues to require proof of financial responsibility from OTIs, or from any other federally licensed intermediaries such as surface freight forwarders, motor carrier brokers of property, brokers of household goods, or customs brokers, those requirements should be promptly, strictly and even-handedly enforced on anyone seeking to operate pursuant to such authority.

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the $80.6 billion third party logistics industry. TIA is the only U.S. organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is the voice of transportation intermediaries to shippers, carriers, government officials, and international organizations. TIA members include motor carrier property brokers, surface freight forwarders, international ocean transportation intermediaries (ocean freight forwarders and non-vessel-operating common carriers), air forwarders, customs brokers, warehouse operators, logistics management companies, intermodal marketing companies, freight payment companies, and motor carriers.

TIA is also the U.S. member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing more than 40,000 companies in virtually every trading country.

THE ROLE OF TRANSPORTATION INTERMEDIARIES

Transportation intermediaries or third party logistics professionals (3PLs) act as the "travel agents" for freight. They serve tens of thousands of shippers and carriers, bringing together the transportation needs of the cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers.

3PLs are primarily non-asset based companies whose expertise is providing mode and carrier neutral transportation arrangements for shippers with the underlying asset owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation, to meet those needs. 3PLs bring a targeted expertise to meet the shippers' transportation needs. 3PLs invest in sophisticated software that helps maximize logistics efficiency.

Many shippers in recent years have streamlined their acquisition and distribution operations. They have reduced their in-house transportation departments, and have chosen to deal with only a few "core carriers" directly. Increasingly, they have contracted out the function of arranging transportation to intermediaries or third party experts. Every Fortune 100 Company now has at least one 3PL as one of its core carriers. Since the 3PL, in turn, may have relationships with dozens, or even thousands, of underlying carriers, the shipper has many service options available to it from a single source by employing an intermediary. In 2001, 3PLs directed the purchase of \$80.6 billion in transportation services.[1]

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[1] TIA estimates that property brokers and freight forwarders directed the purchase of \$57 billion of motor transport, intermodal marketing companies directed the purchase of \$4.2 billion in rail intermodal, ocean transportation intermediaries directed the purchase of \$5.0 billion in ocean transport, and air forwarders directed the purchase of

SHIPPERS AND CARRIERS RELY ON TRANSPORTATION INTERMEDIARIES

Shippers rely upon 3PLs to arrange for the smooth and uninterrupted flow of goods from origin to destination, and carriers rely upon them to keep their equipment filled and moving. Many carriers, especially ocean carriers without large in-house sales forces, rely on OTIs to find freight for them, and to process the paperwork necessary for the ocean transportation movement.

TIA and its members support outsourcing part or all of an entity's supply chain to a third party logistics professional. To be successful, both parties need to be clear about what is expected, how it will be measured, and how it will work. The shipper and its 3PLs work together to craft the best solution by lane and circumstance to meet the shipper's needs.

Thus, in the comments that follow, TIA has taken into account the experience and needs both of is own members and of the customers they serve.

THE FINANCIAL SECURITY REQUIREMENT FOR OTIs

TIA believes that a self-regulating market is the best means of protecting the shipping public and carriers from uncreditworthy or inexperienced intermediaries. To that end, TIA has instituted a number of voluntary educational programs to improve professionalism in the industry. For example, it offers on-line and live training courses, as well as standard forms of agreement to be used in structuring the business relationships between its members, their customers and underlying service providers. Through its subsidiary, TIA Services Corporation, TIA offers a property brokers trust fund program to eligible members and non-members alike, and it recently

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$14.4 billion in air freight. TIA further estimates that its members represent more than 50 percent of the total 3PL market.

announced a Guaranteed Payment Program that will guarantee participating members' payment of their obligations up to either $25,000 or $100,000, depending on the level of protection they choose to purchase. TIA also has a mandatory Code of Ethics applicable to all member companies, and a formal process for deciding complaints filed against member companies alleging violations of the Code of Ethics. In the long run, TIA believes that these private efforts are more effective in identifying and promoting the use of responsible intermediaries than any government sponsored program. At the same time, TIA has urged the federal government to make stronger efforts to crack down on criminal fraud and cargo theft that are beyond the ability of the private sector to police.

TIA recognizes that some sectors of the 3PL industry, including ocean transportation, continue to be regulated by the federal government. As long as this is the case, as the representative of the industry, TIA has insisted on strict, uniform and even-handed enforcement of the regulatory requirements, including those involving proof of financial security. Because its membership consists of the most responsible intermediaries with a strong interest in promoting ethics and competence, TIA has grown increasingly concerned by the growth of complaints it has received in recent years from carriers and shippers about unauthorized intermediary operations and about failure timely to remit payments due to carriers. While these complaints do not ordinarily involve TIA members directly,[2] they give the entire industry a black eye. Moreover, because TIA member companies devote considerable financial resources and personnel time to ensuring

[2] Violation of licensing and financial responsibility requirements is grounds for suspension and termination of membership in TIA. To enforce this standard, TIA has in place not only the ethics complaint process described above, but also a random compliance check on members at the time of their annual membership renewal. Thus, those planning to operate in violation of the legal requirements seldom apply for membership in TIA to begin with.

that they operate strictly in compliance with the law and meet their financial obligations, it puts them at a competitive disadvantage when others in the industry do not.

Therefore, TIA agrees with the views stated in the NPRM that two years is far too long for a successful OTI applicant to obtain proof of the required surety bond. This long time lag between approval of the application and submission of proof of financial responsibility could well be an open invitation for an unscrupulous NVOCC or ocean freight forwarder to avoid the cost of the bond by operating without it for an extended period of time after its basic license application has been granted. By shortening the time allowed to obtain a bond to 120 days, or even less, the Commission will not only prevent abuse of the licensing process, as the NPRM suggests, but also require prospective licensees to prove their creditworthiness before they commence operations.

It has been TIA's experience, both in offering its own bond as noted above and in reviewing other bond programs, that the sureties and their underwriters will demand a financial statement, balance sheet and other proof of financial stability and strength (or, some cases, posting of a large cash deposit) before agreeing to underwrite the bond. This early, marketplace based review of a prospective OTI's ability to meet its financial obligations is perhaps the truest test of its financial integrity and responsibility, and should certainly take no more than 120 days. Indeed, it should occur as soon as possible after the applicant has established to the Commission's satisfaction that it meets the basic OTI licensing criteria in the FMC regulations, and before it starts doing business with the public. If it cannot meet the basic standards imposed by underwriters for a surety bond promptly, then approval of its license application should invalidated, as the Commission has proposed.

Respectfully submitted,

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